

PROPOSED RULEMAKING

STATE POLICE

[37 PA. CODE CH. 55]

Megan's Law

As a requirement of 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders) (act), these proposed regulations are necessary for the general administration of the act (relating to Megan's Law). The effective date of the act was April 21, 1996. As set forth, the proposed regulations define what a neighbor will be for the purposes of community notification when sexually violent predators are released from incarceration or change residences.

Effect

The proposed regulations will affect all Commonwealth law enforcement agencies.

Fiscal Impact

The proposed regulations will not impose costs on State and local government.

Paperwork Requirements

The proposed regulations will not require the completion of additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the State Police submitted a copy of these proposed regulations on June 4, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Judiciary Committee and the Senate Law and Justice Committee. In addition to submitting the proposed regulations, the State Police has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of the material is also available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the State Police within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the State Police, the General Assembly and the Governor of objections raised.

Sunset Date

No sunset date has been assigned. However, due to the sensitivity and emotion that crimes like this evoke in people and communities, every facet of these proposed regulations will be continuously reviewed for effectiveness, clarity and whether they are serving the greater interests of citizens of this Commonwealth.

Public Comment

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party and a concise statement with sufficient detail on the subject. Written statements may be directed to the State Police, Attention:

Director, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110.

Contact Person

The contact person is Trooper R. M. Van Buskirk, State Police, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-4898.

COLONEL PAUL J. EVANKO,
Commissioner

Fiscal Note: 17-57. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

Subpart H. MEGAN'S LAW

CHAPTER 55. MEGAN'S LAW—NEIGHBOR NOTIFICATION

Sec.	
55.1.	Policy.
55.2.	Legislative finding.
55.3.	Immunity for good faith conduct.
55.4.	Definitions.
55.5.	Notification.

§ 55.1. Policy.

(a) The General Assembly has declared its intention to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood.

(b) The General Assembly further declared it to be the policy of the Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and that the same is not to be construed as punitive.

(c) The General Assembly has determined and declared as a matter of legislative finding that the release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information is rationally related to the furtherance of those goals.

(d) Information gathered for 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders) will not be disclosed outside the established criminal justice system, except as allowed by law.

§ 55.2. Legislative finding.

(a) The General Assembly has determined and declared that if the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement agencies to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children.

(b) Persons found to have committed sexually violent offenses have a reduced expectation of privacy because of

the public's interest in public safety and in the effective operation of government.

(c) Release of information about sexually violent predators to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally related to the furtherance of those goals.

§ 55.3. Immunity for good faith conduct.

The General Assembly has also declared that the following entities are immune from liability for good faith conduct under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders):

- (1) The State Police and local law enforcement agencies and employes of law enforcement agencies.
- (2) District Attorneys and their agents and employes.
- (3) Superintendents, administrators, teachers and employes engaged in the supervision of children in a public, private or parochial school.
- (4) Directors and employes of county children and youth agencies.
- (5) Presidents or similar officers of universities and colleges, including community colleges.
- (6) The Board of Probation and Parole and its agents and employes.
- (7) Directors of licensed day care centers.
- (8) Directors of licensed preschool programs.

§ 55.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Neighbor—For the purposes of 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), those persons occupying residences or places of employment, or both, located within a 1,000 foot radius of a sexually violent predator's residence, or the 25 most immediate residences or places of employment, or both, in proximity to the sexually violent predator's residence, whichever is greater.

Sexually violent predator—A person who has been convicted of a sexually violent offense as set forth in 42 Pa.C.S. § 9793(b) (relating to registration of certain offenders for ten years) and who is determined to be a sexually violent predator under 42 Pa.C.S. § 9794(e) (relating to designation of sexually violent predators) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

§ 55.5. Notification.

Chief law enforcement officers, or the State Police where no municipal police jurisdiction exists, shall provide written notices of the current address of sexually violent predators to neighbors within 72 hours of receipt. Notwithstanding other provisions, verbal notification may be used if written notification would delay meeting this time requirement. See Chapter 56 (relating to guidelines for administration of Megan's Law—statement of policy).

[Pa.B. Doc. No. 96-1010. Filed for public inspection June 21, 1996, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[L-00960116]

[52 PA. CODE CH. 59]

Meter Tests

[CORRECTION]

An error occurred in the Fiscal Note as printed at 26 Pa.B. 2805, 2806 (June 15, 1996). The correct version should read:

Fiscal Note: 57-172. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 96-959. Filed for public inspection June 14, 1996, 9:00 a.m.]

[52 PA. CODE CH. 56]

[L-960114]

Standards and Billing Practices

The Pennsylvania Public Utility Commission (Commission) adopted a proposed rulemaking to clarify, simplify and remove excessive and burdensome requirements from parties dealing with the Bureau of Consumer Services. The proposed changes redefine the term "dispute" to allow a more in-depth investigation of an initial inquiry by a utility and provide for a deadline for filing disputes. The proposed changes account for increased reliability in metering devices reducing the frequency of required actual readings. The proposed changes remove the administrative burdens imposed: (1) where less than \$25 is involved; (2) where a customer breaks a payment agreement; (3) where a customer is satisfied with the utility's resolution of a dispute; or (4) where a personal contact is required. The proposed changes eliminate the use of composite credit groups. The proposed changes eliminate regulations which are in conflict with other regulations. The proposed changes require customers to attempt to resolve disputes with their utility before they file a complaint with the Pennsylvania Public Utility Commission. The contact persons are Kathryn G. Sophy, Assistant Counsel, Law Bureau, (717) 772-839 and Louis Sauers, Bureau of Consumer Services, (717) 783-6688.

Executive Summary

On June 3, 1995, this Commission published an Advance Notice of Proposed Rulemaking (ANPR) in the *Pennsylvania Bulletin* inviting public comments, 25 Pa.B. 2188. The ANPR generated numerous constructive comments from interested parties. The Commission reviewed all the comments and has incorporated many of them into this revised proposed rulemaking.

The comments illuminated the need to evaluate and update the procedures set forth in Chapter 56. After careful and meticulous review of Chapter 56, the Commission approved proposed changes designed to clarify, simplify and remove excessive and burdensome requirements from parties dealing with our Bureau of Consumer Services.

Section 56.2 has been revised to allow a utility to call a customer back or to allow contact with more than one utility employe without escalating the matter to the

level of a "dispute." The chapter has been revised to require less frequent actual meter readings, to remove the use of composite credit groups and to revise utility recordkeeping requirements.

Chapter 56 has been revised further to modify the requirements associated with termination of service. The revisions clarify when a utility may terminate service and what steps are required to be taken before termination may occur.

Finally, § 56.211 has been modified to require customers to attempt to resolve their disputes with their utilities before bringing their complaints to the Commission.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of these proposed amendments on June 11, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of any objections raised.

Public Meeting held
February 8, 1996

Commissioners present: John M. Quain, Chairperson, concurring and dissenting in part—statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger, concurring and dissenting in part—statement follows; David W. Rolka, concurring and dissenting in part—statement follows; and Robert K. Bloom, concurring and dissenting in part—statement follows

Proposed Rulemaking Order

By the Commission:

By Order entered May 23, 1995, we issued an ANPR to review and rescind all obsolete and excessive rules and regulations at Docket No. L-950103. The advance notice was published in the *Pennsylvania Bulletin* on June 3, 1995, 25 Pa.B. 2188, and a 60-day comment period set.

In addition to the many useful suggestions received from our own Bureau of Consumer Services, we received comments from several utilities which point to the need to evaluate and update the procedures contained in Chapter 56. We are setting forth proposed changes which we believe will clarify, simplify and remove excessive and burdensome requirements from the parties dealing with our Bureau of Consumer Services.

Our review of Chapter 56 was careful and meticulous. We are well aware of our duty to ensure that the quality

of utility service remain high while not crippling the efforts of the utility companies to collect amounts due to them.

What follows is a summary of the proposed changes to which we invite comments from any interested party. In addition to the specific modifications set forth in this Preamble, the Commission is very interested in receiving comment from parties on whether Chapter 56 adequately provides for the special circumstances of customers with disabilities. Specifically, the Commission requests comment on the following questions. Do the procedures and standards in Chapter 56 adequately serve and provide sufficient protections for customers with disabilities? Are current regulations adequate or are more specific requirements necessary? For instance, are the proposed amendments adequate to serve the hearing impaired? Should braille notices be required for the visually impaired? Is in-person customer contact necessary to convey the required information to customers with certain disabilities? Interested parties are encouraged to address these and related questions, and to give concrete suggestions for specific revisions to Chapter 56 which the Commission should incorporate to better address the special needs of Pennsylvanians with disabilities.

Chapter 56. Standards and Billing Practices for Residential Utility Service

§ 56.2. Definition of "dispute." The definition is amended to allow a utility to call a customer back without the matter being classified as a dispute and to define an initial inquiry so as to permit contact with more than one utility employe.

§ 56.2. Definition of "utility." This definition is expanded to specifically claim Commission jurisdiction over the employes or agents of a utility.

§ 56.12. Meter reading; estimated billing; ratepayer readings. The new language allows gas, water and electric utilities which use remote reading devices to do an actual reading every 5 years instead of every 2, which reflects the increasing reliability of meters used in each utility field. To balance the chance that any underbilling discovered may be proportionately higher, language is added to require that the utility comply with the requirements of § 56.14.

§ 56.14. Previously unbilled utility service. To remove an unfair administrative burden for utilities when less than \$25 is involved, this section now requires that companies comply with § 56.14 only if the billing or rebilling exceeds otherwise normally estimated bills by at least 50% and \$25, whichever is greater.

§ 56.33. Composite credit group; cash deposits; third-party guarantors. Composite credit groups are eliminated as an option to payment of a deposit.

§ 56.35. Payment of outstanding balance. Under the proposed language, a utility must maintain account records in accordance with § 56.202.

§ 56.53. Refund of deposit. Paragraph (3) is eliminated to remove the use of composite credit groups.

§§ 56.61—56.65. Composite credit groups. These sections have been eliminated to remove the use of composite credit groups.

§ 56.91. General notice provisions. This section is changed to reflect proposed changes to § 56.93.

§ 56.93. Personal contact. The proposed language changed the actions constituting personal contact to a more efficient and less burdensome approach for the utilities.

§ 56.95. *Deferred termination when no prior contact.* New language in this section incorporates the definition changes in section § 56.93.

§ 56.97. *Procedures upon ratepayer or occupant contact prior to termination.* This section is modified to provide that the authorized utility employe explain the reasons for the proposed termination, how to avoid termination, and the medical emergency procedures before discussing a settlement or payment agreement.

§ 56.101. *Limited notice upon noncompliance with report or order.* Language is altered to eliminate the distinction between mediation and other than mediation formal complaints and to allow the use of limited notice on a restricted basis during the nonwinter period whenever a customer breaks a payment agreement entered after the company issued a 10-day notice.

§ 56.114. *Length of postponement; renewals.* Language is added to allow a ratepayer to renew a medical certification only twice in situations when the ratepayer is not fully meeting the obligation under § 56.116 to equitably arrange to make payment on all bills.

§§ 56.121—56.126. *Termination at residential dwellings where service is in the name of the landlord.* These sections are eliminated in light of the specific requirement in 66 Pa.C.S. §§ 1523—1528.

§ 56.140. *Follow-up response to inquiry.* This section is added to provide that a utility may not terminate service during the period that a customer is awaiting a response to an inquiry which does not yet fall into the category of "dispute."

§ 56.142. *Time for filing a termination dispute or informal complaints.* Language is added to eliminate the possibility that a dispute may be filed with the representative of the utility company when that representative shows up to terminate service. Disputes must be filed prior to that time.

§ 56.151. *General rule and § 56.152. Contents of the utility company report (Utility company dispute procedures)* The section reflects the general change that if a customer is satisfied with the dispute resolution the company does not need to provide all of the information in § 56.152. If, however, the customer is not satisfied, then the company would adhere to the current full requirements at § 56.152.

§ 56.162. *Informal complaint filing procedures.* The list of requested information now includes the telephone number of the complainant.

§ 56.191. *General rule. (Restoration of service)* This section is modified to allow companies to require the catch-up amount on a payment agreement or, if conditions warrant, request a higher amount for restoration of service.

§ 56.202. *Record maintenance.* This section is modified to require that a company which seeks to recoup an outstanding balance of a bill must maintain records for that period of time covering the accrual of the unpaid debt.

§ 56.211. *Informal complaints.* This section is modified so as to require customers to attempt to resolve disputes with their utility providers before bringing their complaints to the Bureau of Consumer Services.

In proposing these changes, we believe that our efficiency as a regulatory agency will be enhanced. We are eliminating those sections which no longer serve a useful purpose and we are modifying others to promote the ease

of application as well as fairness. We encourage those affected by these changes to file comments.

Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the Commonwealth Documents Law (45 P. S. § 1201 et seq.), and the amendments promulgated thereunder, we shall institute a rulemaking proceeding to accomplish the objectives described in the body of this order. *Therefore,*

It is Ordered That:

1. A rulemaking proceeding is hereby instituted at this docket.

2. The Commission's regulations are hereby proposed to be amended by:

(a) adding § 56.135

(b) deleting §§ 56.61—56.65 and 56.121—56.126

(c) amending §§ 56.2, 56.12, 56.14, 56.33, 56.35, 56.53, 56.91, 56.93, 56.95, 56.97, 56.101, 56.114, 56.142, 56.151, 56.152, 56.162, 56.191, 56.202 and 56.211

3. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order and Annex A for informal review by the designated standing committees of both houses of the General Assembly, and for informal review and approval by the Independent Regulatory Review Commission.

6. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Interested persons may submit written comments, an original and 10 copies, to John G. Alford, Secretary, Pennsylvania Public Utility Commission, and shall have 30 days from the date this order is published to submit comments.

7. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JOHN G. ALFORD,
Secretary

Statement of Chairperson John M. Quain

I respectfully dissent from the Motions offered today by my colleagues which delete sections from the Law Bureau's recommendation regarding this rulemaking.

It was my hope that this Commission could have gained some important perspectives by at least publishing these sections for comments. Unfortunately, that input will not be possible at this time.

Many of these recommendations, in fact, were suggested and supported by the Bureau of Consumer Services for the purpose of soliciting comments on whether modifications to our procedures are appropriate.

Statement of Commissioner John Hanger

Some of the proposals put forth in this proposed Rulemaking go far beyond the intended limited purpose of this Rulemaking to eliminate obsolete or excessive regulations. Indeed, some of the proposals would have reduced or eliminated basic consumer protections at a time when reductions in LIHEAP funding already make safe and

affordable utility service difficult to maintain for hundreds of thousands of Pennsylvanians.

Such overreaching changes are not necessary, and fortunately a majority of this Commission has rejected the most overreaching proposals. Pennsylvania gas and electric utilities are not experiencing a worsening collections problem at this time. Although the dollar amount of gas residential debt rose by 28% from 1990 to 1994, gas rates and revenues also increased by 28% over the same period. Gas industry residential debt as a percent of revenues actually decreased from 6.72% in 1990 to 6.67% in 1994. In the electric industry, residential debt decreased from 7.15% of revenues in 1992 to 6.67% of revenues in 1994. Both industries experienced a 5% decrease in gross residential billings written off as uncollectible from 1992 to 1994. These modest improvements have come at a time of large reductions in the availability of energy assistance dollars.

In such circumstances, this Commission should not be cutting back on its commitment to consumer services. Yet, Bureau of Consumer Services (BCS) staffing has been reduced from 61 to 52 during the last year. About 90% of all consumer calls to the BCS concerning payment arrangements are from low-income households. Because of inadequate staffing, only about 13% of all incoming calls are even answered. Just imagine the outcry if this Commission only answered 13% of incoming calls from utilities!

The facts indicate that BCS is a well run Bureau efficiently and fairly doing a great deal of work with tight resources. Fortunately, Chapter 56 provides sound standards and procedures, making such performance possible. No major changes in Chapter 56 are needed at this time. While most of the proposals for major changes have been rejected by a majority of this Commission, I strongly dissent from the following proposals which have been included because they seriously undermine the health and safety of hundreds of thousands of Pennsylvanians without justification.

The Law Bureau has proposed expanding the definition of "utility" in § 56.2 to include "employees or agents" of the utility in order to claim Commission jurisdiction over a utility's employees, contractors and agents. Several utilities in recent years have hired outside contractors to perform activities required under Chapter 56 despite current language in our regulations which specify that "employees" must perform Chapter 56 functions. Thus, the proposed changes do not expand Commission jurisdiction over outside contractors at all. To the contrary, the proposed changes provide a stamp of approval for the hiring of outside contractors.

This Commission recently has settled cases with three utilities concerning numerous Chapter 56 violations by contractors hired by the utilities to perform required Chapter 56 functions. Chapter 56 contains vital consumer protections. Proper implementation of Chapter 56 requires well-trained personnel who are directly under the control of the utility. Experience shows that outside contractors have not been able to perform certain Chapter 56 functions effectively. At this point, the record of violations by personnel who are not utility employees mandates opposition to any modification of the existing language in § 56.2. The proposal also should not be included in this rulemaking because it is a policy decision which is presently being addressed by this Commission in other ways.

I agree in part to the changes to the definition of "dispute" in § 56.2. Presently, most utilities categorize an inquiry as a dispute if it appears to be a dispute at the end of the first customer contact. While this practice is not mandated by existing regulations, the proposed Rulemaking changes the definition of "dispute" to clearly permit a utility, with the consumer's agreement, to end the phone call without deciding whether or not a dispute exists. This is intended to provide an opportunity for utility personnel to investigate the matter and respond to the customer with appropriate information. At that point in time, the matter can properly be characterized as a dispute or not. This change is useful, and I support it.

However, the additional proposed language goes too far in that it could permit a customer to be bounced around from employe to employe, receive inconsistent responses from different employes, or permit utilities to negotiate results by passing the call on to supervisors. The customer could be thoroughly confused. The proposed language makes the definition of dispute less clear, and could encourage substantial customer service problems. I dissent from this proposal.

The proposed changes require a customer to attempt to resolve a matter with the utility prior to contacting the Bureau of Consumer Services for assistance. While this proposal is not onerous in most cases, neither is it necessary. BCS routinely encourages potential complainants to seek to resolve differences with the utility before accepting a complaint. BCS turned away over 4400 potential disputes in 1995, requiring utility contact first. Only 2% of electric cases and 1% of gas cases accepted by BCS involved situations in which the customer did not first seek resolution with the utility. Additionally, a complainant indicated that attempts to resolve the matter with the utility first but the utility indicated that it had no record of any contact characterized as a dispute in 8% of electric cases and 6% of gas cases.

BCS has been extremely effective in resolving disputes. Historically, less than 2% of all cases handled by BCS have been appealed as Formal Complaints before an Administrative Law Judge. Such a record documents that both utilities and consumers have been quite satisfied with the results from BCS. No changes are needed since the vast majority of BCS contacts involve prior attempts to resolve the matter with the utility and BCS voluntarily encourages such contacts. When BCS does take a case, it successfully resolves them expeditiously and cost-effectively. BCS participation is consistent with this Commission's policies discouraging litigation and encouraging mediation and alternative dispute resolution. There is no problem here that needs to be solved.

The proposed changes to these sections are designed to make it easier for a utility to terminate service. The changes to §§ 56.93 and 56.95 make personal contact unnecessary at the time of termination if personal contact had previously been made during the 3 day notice. The proposed changes to § 56.101 allow a utility to begin the termination process with a 3 day notice, skipping the 10 day notice, when the customer has broken an existing payment arrangement.

The present regulations provide great flexibility and balance to enable utilities to collect past due amounts, prevent terminations, and complete service terminations when necessary. Gas and electric utilities terminated 118,000 customers in 1993 and 85,000 customers in 1994. Electric terminations increased 21% from 1992 to 1994. Peco Energy more than doubled the number of customers terminated in a single year, from 1992 to 1993. The facts

indicate that the procedural safeguards in Chapter 56 do not prevent utilities from terminating service when they seek to do so. Loss of service creates a significant health and safety crisis for the household involved, as well as for the public. Each termination notice or customer contact provides an opportunity to collect arrearages and prevent terminations. Eliminating such steps eliminates these opportunities as well. Existing safeguards should not be eliminated without facts demonstrating that it is necessary and not counter-productive to do so.

While I do not now disagree with the proposed changes to § 56.191, I will review the comments concerning these changes carefully. The proposed changes to § 56.191 give a utility greater flexibility in demanding higher restoration payments than a catch-up of amounts due under an existing agreement. A reasonable reconnection fee already is required. While higher restoration amounts are appropriate for non-low-income customers who have been terminated for non-payment of bills despite adequate income to do so, utilities must use a great deal of common sense in not demanding higher restoration payments from low-income customers. It would be tragic if requiring excessive restoration amounts precluded service or payment of reasonable portions of existing arrearages. The revision as drafted requires consideration of such factors. Are additional specifications useful?

Fiscal Note: 57-171. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. PRELIMINARY PROVISIONS

CHAPTER 56. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL UTILITY SERVICE

Subchapter A. PRELIMINARY PROVISIONS

§ 56.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Dispute—A grievance of a ratepayer or occupant about a utility's application of a provision covered by this chapter, including **[but not limited to]** subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. **A utility, with the consent of the ratepayer or occupant, may offer to review pertinent records or other information and call back the ratepayer or occupant with a response to the inquiry.** If, at the conclusion of an initial inquiry **or, when applicable, a follow-up response,** the ratepayer or occupant indicates satisfaction with the resulting resolution or explanation, the contact **[may]** will not be considered a dispute. **An initial inquiry is defined as the complete process even if it involves more than one utility person during the initial contact.**

* * * * *

Utility—A public utility, **its employes or its agents,** or a municipality, subject to Commission jurisdiction, which provides electric, gas, steam heat, **[sewer] wastewater** or water service.

Subchapter B. BILLING AND PAYMENT STANDARDS

§ 56.12. Meter reading; estimated billing; ratepayer readings.

Except as provided in this section, a utility shall render bills based on actual meter readings by utility company personnel.

* * * * *

(5) *Remote reading devices for water, gas and electric utilities.* A utility may render a bill on the basis of readings from a remote reading device under the following conditions:

(i) When a **gas, electric or water utility** uses readings from a remote reading device to render bills, the utility shall obtain an actual meter reading at least once every **[3] 5 years** to verify the accuracy of the remote reading device. **If the ratepayer of record at the dwelling changes during the 5-year period between actual meter readings, the utility shall make a bona fide attempt to schedule an appointment with the departing ratepayer and, if necessary, the new occupant, to secure an actual meter reading.**

[(ii) When a gas or electric utility uses readings from a remote reading device to render bills, the utility shall obtain an actual meter reading at least once every 2 years to verify the accuracy of the remote reading device.

(iii) Where] (ii) When the actual meter reading establishes that the customer was underbilled due to an error in the registration of the remote reading device, the utility may **[not]** render a bill for the uncollected amount **[and may not recover a loss resulting from this underbilling in subsequent rate proceedings unless there is evidence that the underbilling resulted from tampering with the remote reading device].** **If the rebilling exceeds the otherwise normal estimated bill by at least 50% and at least \$25, the utility shall comply with § 56.14 (relating to previously unbilled utility service).**

* * * * *

§ 56.14. Previously unbilled utility service.

When a utility renders a make-up bill for previously unbilled utility service resulting from utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill by at least 50% **and at least \$25:**

* * * * *

Subchapter C. CREDIT AND DEPOSITS STANDARDS POLICY

PROCEDURES FOR NEW APPLICANTS

§ 56.33. Composite credit group; cash deposits; third-party guarantors.

If an applicant does not establish **[his]** credit under § 56.32 (relating to credit standards), the utility shall provide residential service when one of the following requirements is satisfied:

[(1) Composite credit group. The applicant becomes a member in good standing of a composite

credit group as defined in § 56.61 (relating to general rule) with which the utility has entered into an agreement.

(2)] (1) ***

[(3)] (2) ***

* * * * *

§ 56.35. Payment of outstanding balance.

A utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. In addition, the utility shall maintain account records in accordance with § 56.202 (relating to record maintenance). However, any such outstanding residential account with the utility may be amortized over a reasonable period of time. Factors to be taken into account include [but are not limited to] 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. 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. Examples of [such] situations include a separated spouse or a cotenant. This section does not affect the credit rights and remedies of a utility otherwise permitted by law.

CASH DEPOSITS

§ 56.53. Refund of deposit.

A cash deposit shall be refunded under the following conditions:

* * * * *

[(3) Member of composite credit group. When a ratepayer becomes a bona fide member of a composite credit group, the utility shall refund any cash deposit plus accrued interest unless the ratepayer requests that it be transferred to the credit group.]

[(4)] (3) ***

[(5)] (4) ***

[(6)] (5) ***

COMPOSITE CREDIT GROUP DEPOSITS

§ 56.61. [General rule] (Reserved).

[A utility shall enter into an agreement with a composite credit group that can demonstrate its ability to meet the deposit requirements of the members of the group.

(1) Composite credit group. A composite credit group is a group, association, corporation or similar body with 25 or more members formed for the purpose of, among other things, providing a composite cash deposit for its members in lieu of individual cash deposits from each applicant or ratepayer who is a bona fide member of the group. A composite credit group shall designate a person to represent that group to the utility and shall

provide the utility with an address and telephone number where that person may be contacted during business hours. Communications received from that representative by the utility shall be binding upon the group.

(2) Unilateral termination prohibited. A utility may not unilaterally terminate a composite cash deposit arrangement, so long as the group maintains a composite cash deposit determined in accordance with § 56.62 (relating to maximum composite cash deposit).

(3) Discontinuance of cash deposit arrangement. When a composite cash deposit arrangement is discontinued, the utility shall:

(i) Apply an applicable portion of the composite cash deposit to the accounts of the individual members of the group in accordance with § 56.52 (Reserved) and return the remainder of the composite deposit to the representative of the group.

(ii) Notify the individual members of their obligation to place an individual cash deposit, join another composite credit group or provide a third-party guarantor in accordance with §§ 56.41—56.43 (relating to procedures for existing ratepayers).]

§ 56.62. [Maximum composite cash deposit] (Reserved).

[Initially, the maximum composite cash deposit requested by the utility may not exceed 50% of the aggregate deposit requirements of the individual members. Thereafter, composite cash deposit requirements shall be adjusted at the request of either the utility or the group to be not greater than twice the average monthly assessment against the composite cash deposit of the group, to compensate for nonpayment of utility bills of the individual members.]

§ 56.63. [Written authority to become a member of a group] (Reserved).

[A utility may not apply a composite cash deposit to a past due bill of a ratepayer unless it has received prior written authority from the group to include the individual ratepayer or applicant as a member of the group.]

§ 56.64. [Renewal of authority] (Reserved).

[A utility shall require of the group a written renewal of authorization in the following circumstances:

(1) Application of composite case deposit to more than two billing periods. Prior to the application of a composite case deposit to the payment of the bills of a member for more than two billing periods, each renewal of authorization shall entitle the utility to apply the composite cash deposits to the bills of the individual for two billing periods.

(2) Reconnection of service. Whenever service is reconnected following a termination of service.

(3) Refusal to renew authority. Where renewal of authority is refused, a utility shall provide service to the individual ratepayer in accordance with the provisions of § 56.65 (relating to service without continued group membership).]

§ 56.65. [Service without continued group membership] (Reserved).

[A utility shall provide utility service to a former member of a composite credit group under one of the following provisions:

(1) *Establishment of credit.* The member establishes his credit in accordance with § 56.32 (relating to credit standards).

(2) *Cash deposit; third-party guarantor.* The member posts an individual cash deposit or furnishes a written guarantee in accordance with § 56.33 (relating to composite credit group; cash deposits; third-party guarantors).

(3) *Prompt payment of bills.* The member has paid bills for service for 12 consecutive months without having service terminated or having paid his bill subsequent to the due date or other permissible period as stated in this chapter on two or more occasions so long as the ratepayer is not currently delinquent.]

Subchapter E. TERMINATION OF SERVICE

NOTICE PROCEDURES PRIOR TO TERMINATION

§ 56.91. General notice provisions.

Prior to a termination of service, the utility shall mail or deliver written notice to the ratepayer at least 10 days prior to the date of the proposed termination. In the event of a taking or acceptance of utility service without the knowledge or approval of the utility, other than unauthorized use of service as defined in § 56.2 (relating to definitions), the utility shall comply with § 56.93 [(1) (relating to personal contact)] **[or shall hand deliver written notice to the ratepayer or occupant at least 3 days prior to the date of the proposed termination, as well as complying with the provisions of §§ 56.94]**—56.97 (relating to procedures upon ratepayer or occupant contact prior to termination), but need not otherwise provide notice 10 days prior to termination.

§ 56.93. Personal contact.

Except when authorized by §§ 56.71, 56.72 or 56.98 (relating to interruption of service; discontinuance of service; and exception for terminations based on occurrences harmful to person or property), a utility may not interrupt, discontinuance or terminate service without personally contacting the ratepayer or a responsible adult occupant at least 3 days prior to the interruption, discontinuance or termination, in addition to provide [such] other notice as specified by the properly filed tariff of the utility or as required by this chapter or other Commission directive. For purposes of this section, personal contact shall mean:

(1) [Contacting the ratepayer or responsible adult occupant in person or by telephone.

(2) Contacting another person whom the ratepayer has designated to receive a copy of a notice of termination, other than a member or employe of the Commission.

(3) If the ratepayer has not made the designation noted in paragraph (2), contacting a community interest group or other entity, including a local police department, which previously shall have agreed to receive a copy of the notice of termination and to attempt to contact the ratepayer.

(4) If the ratepayer has not made the designation noted in paragraph (2) and if there is no community interest group or other entity which previously has agreed to receive a copy of the notice of termination, contacting the Commission in writing.]

Actual contact with the ratepayer or responsible adult occupant by telephone.

(2) Actual contact with the ratepayer or responsible adult occupant in person at the affected dwelling.

(3) After an unsuccessful attempt to contact the ratepayer or responsible adult in person at the affected dwelling, posting a written 72-hour notice, at the affected dwelling. After the expiration of the 72-hour notice the company may terminate service without application of § 56.95 (relating to deferred termination when no prior contact).

(4) After two unsuccessful attempts at contacting the ratepayer or responsible adult occupant by telephone, mailing a written 72-hour notice to the ratepayer. After the expiration of the 72-hour notice, the company shall comply with § 56.95 if prior contact is not made as required under § 56.94 (relating to procedures immediately prior to termination).

§ 56.95. Deferred termination when no prior contact.

If [a prior] personal contact has not been made [with a responsible adult either at the residence of the ratepayer], as required by § 56.93(1), (2) or (3) (relating to personal contact) or § 56.94 (relating to procedures immediately prior to termination) or at the affected dwelling, the employe may not terminate service but shall conspicuously post a termination notice at the residence of the ratepayer and the affected dwelling, advising that service will be disconnected not less than 48 hours from the time and date of the posting.

§ 56.97. Procedures upon ratepayer or occupant contact prior to termination.

(a) If, after the issuance of the initial termination notice and prior to the actual termination of service, a ratepayer or occupant contacts the utility concerning a proposed termination, an authorized utility employe shall fully explain:

* * * * *

(3) [The right of the ratepayer to file a dispute with the utility and, thereafter, an informal complaint with the Commission.

(4) The procedures for resolving disputes and informal complaints, including the address and telephone number of the Commission: Public Utility Commission, Box 3265, Harrisburg, Pennsylvania, 17120, telephone number 1 (800) 692-7380.

(5) The duty of the ratepayer to pay a portion of a bill which he does not honestly dispute.

(6)] The medical emergency procedures.

(b) The utility, through its employes, shall exercise good faith and fair judgment in attempting to enter a reasonable settlement or payment agreement or otherwise equitably to resolve the matter. Factors to be taken into account when attempting to enter into a reasonable settlement or payment agreement may include [but not be limited to] the size of the unpaid balance, the ability

of the ratepayer to pay, the payment history of the ratepayer and the length of time over which the bill accumulated. **If a settlement or payment agreement is not established the company shall further explain the following:**

(1) **The right of the ratepayer to file a dispute with the utility and, thereafter, an informal complaint with the Commission.**

(2) **The procedures for resolving disputes and informal complaints, including the address and telephone number of the Commission: Public Utility Commission, Box 3265, Harrisburg, Pennsylvania, 17105-3265, telephone number (800) 692-7380.**

(3) **The duty of the ratepayer to pay any portion of a bill which he does not honestly dispute.**

NOTICE PROCEDURES AFTER DISPUTE FILED

§ 56.101. **Limited notice upon noncompliance with report or order.**

(a) **Except during the winter period identified at § 56.100 (relating to winter termination procedures), the original grounds for terminations may be revived if a 10-day termination notice was previously issued to the ratepayer. Utilities may proceed with termination as provided in paragraphs (1) and (2) [Upon] upon the failure to timely appeal from or comply with [a]:**

(1) **A utility company report required by § 56.151 (relating to [the] general rule)[,].**

(2) **[an] An informal complaint report required by § 56.161 (relating to general rule; time for filing)[, or].**

(3) **[an] An order from a formal complaint [under § 56.173 (relating to formal complaint procedures other than appeals from mediation decisions of the Bureau of Consumer Services), the original grounds for termination shall be revived and the].**

(4) **A company negotiated payment or settlement agreement if a customer fails during the first 120 days to maintain the agreement and this failure reflects payments of less than 50% of the overdue balance during this same time period.**

(b) **The utility may not be required to give further written notice so long as within 10 business days of the failure to appeal or comply with subsection (a):**

(1) **The ratepayer is personally contacted as described in § 56.93(1), (2) or (3) (relating to personal contact), at least 3 days prior to termination; if the utility is unable to make personal contact as described in § 56.93(1), (2) or (3), it shall proceed with the posting procedure described in § 56.95 (relating to deferred termination when no prior contact).**

* * * * *

EMERGENCY PROVISIONS

§ 56.114. **Length of postponement; renewals.**

Service may not be terminated for the time period specified in a medical certification; the maximum length of the certification shall be 30 days.

* * * * *

(2) *Renewals.* **Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifi-**

cations) and this section if the ratepayer has met the obligation under § 56.116 (relating to duty of ratepayer to pay bills). **In instances where a ratepayer has not met the obligation at § 56.116 to equitably make payments on all bills, the number of renewals is limited to two thirty-day certifications.** If a utility wishes to contest the renewal, it shall follow § 56.118(3) (relating to the right of utility to petition the Commission).

[TERMINATION AT RESIDENTIAL DWELLINGS WHERE SERVICE IS IN THE NAME OF THE LANDLORD]

§ 56.121. **[Notices before terminating service to landlord-ratepayer] (Reserved).**

[(a) Nonpayment of charges. Except when required to prevent or alleviate an emergency as defined by the Commission or except in the case of danger to life or property, before termination of service to a landlord-ratepayer for nonpayment of charges, a public utility shall comply with the following:

(1) **Notify the landlord-ratepayer of the proposed termination, in writing, as prescribed in § 56.123 (relating to delivery and contents of termination notice to the landlord-ratepayer) at least 37 days before the date of termination of service.**

(2) **Notify the following agencies which serve the community in which the affected premises are located, in writing, at the time of delivery of notice to the tenants of the proposed termination of service:**

(i) **The Department of Licenses and Inspections of any city of the first class.**

(ii) **The Department of Public Safety of any city of the second class, second class A or third class.**

(iii) **The city or county public health department or, in the event that such a department does not exist, the Department of Health office responsible for that county.**

(iv) **The grantees of emergency energy funds from the Department of Public Welfare or Department of Community Affairs.**

(3) **Notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination, in writing, as prescribed in § 56.124 (relating to delivery and contents of first termination notice to tenants) at least 7 days after the notice to the landlord-ratepayer under this section and at least 30 days before the termination of service. If within 7 days of the receipt of the notice issued under paragraph (1), the landlord-ratepayer files a complaint with the Commission disputing the right of the utility to terminate service, the notices to tenants may not be rendered until the complaint has been adjudicated by the Commission.**

(b) *Discontinuance of service.* **Before a discontinuance of service by a public utility to a landlord-ratepayer one of the following shall be met:**

(1) **The landlord-ratepayer shall state in a form bearing his notarized signature that the affected dwelling units are unoccupied or that the tenants affected by the proposed discontinuance have consented, in writing, to the proposed discontinuance, which form shall conspicuously bear a notice that**

the information provided by the landlord-ratepayer will be relied upon by the Commission in administering a system of uniform service standards for public utilities and that false statements are punishable criminally.

(2) The tenants affected by the proposed discontinuance shall inform the utility orally or in writing of their consent to the discontinuance.

(3) The landlord-ratepayer shall provide the utility with the names and addresses of the affected tenants under § 56.122 (relating to request to landlord-ratepayer to identify tenants) and the utility shall notify the community service agencies and each dwelling unit under this section and § 56.124.

(c) *Rights of tenants.* Under the discontinuance procedures of subsection (b)(3), the tenant shall have the rights provided in § 56.125 (relating to right of tenants to continued service).]

§ 56.122. [Request to landlord-ratepayer to identify tenants] (Reserved).

[(a) *Duty of landlord.* Upon receiving a lawful request for the names and addresses of the affected tenants under this subchapter, the landlord-ratepayer shall provide the utility or Commission with the name and address of every affected tenant of any residential building or mobile home park for which the utility is proposing to discontinue or terminate service unless within 7 days of receipt of the notice the landlord-ratepayer pays the amount due the utility or makes an arrangement with the utility to pay the balance.

(b) *Time for providing information.* The information shall be provided by the landlord-ratepayer:

(1) Within 7 days of receipt of the notice to the landlord-ratepayer required by § 56.121 (relating to notices before terminating service to landlord-ratepayer).

(2) Within 3 days of an adjudication by the Commission that the landlord-ratepayer shall provide the requested information if the landlord files a complaint with the Commission within 7 days of receipt of the notice to the landlord disputing the right of the utility to terminate service.

(c) *Duty of public utility.* It shall be the duty of a public utility to pursue an appropriate legal remedy it has in order to obtain from the landlord-ratepayer the names and addresses of affected tenants of a residential building for which the utility is proposing discontinuance or termination of service to the landlord-ratepayer. The Commission may order the public utility to obtain the information from the landlord-ratepayer.]

§ 56.123. [Delivery and contents of termination notice to the landlord-ratepayer] (Reserved).

[(a) *General rule.* In addition to other requirements of this chapter for a notice or termination notice the notice required to be given to a landlord-ratepayer under § 56.121 (relating to notices before terminating service to landlord-ratepayer) shall contain the following information:

(1) The amount owed the utility by the landlord-ratepayer for each affected account.

(2) The date on or after which the service will be terminated.

(3) The date on or after which the company will notify tenants of proposed termination of service and of their rights under § 56.125 (relating to right of tenants to continued service) and 66 Pa.C.S. §§ 1529 and 1531 (relating to right of tenant to recover payments; and retaliation by landlord prohibited).

(4) The obligation of the landlord-ratepayer under § 56.122 (relating to request to landlord-ratepayer to identify tenants) to provide the utility with the names and addresses of every affected tenant, to pay the amount due the utility, or to make an arrangement with the utility to pay the balance, including a statement:

(i) That the list shall be provided or payment or arrangements shall be made within 7 days of receipt of the notice.

(ii) Of the penalties and liability which the landlord-ratepayer may incur under 66 Pa.C.S. § 1532 (relating to penalties), by failing to comply.

(5) The right of the landlord-ratepayer to stay the notification of the tenants by filing a complaint with the Commission disputing the right of the utility to terminate service.

(b) *Service of notice.* Any of the following procedures shall constitute effective notice to the landlord under subsection (a):

(1) Notice by certified mail if the utility receives a return receipt signed by the landlord-ratepayer or his agent.

(2) Notice by personal service on the landlord-ratepayer or his agent.

(3) After unsuccessful attempts at personal delivery on 2 separate days, notice by first class mail and conspicuously posting at the landlord-ratepayer's principal place of business, the business address which the landlord provided the utility as the address for receiving communications or the landlord's residence.]

§ 56.124. [Delivery and contents of first termination notice to tenants] (Reserved).

[(a) *General rule.* The notice required to be given to a tenant under § 56.121 (relating to notices before terminating services to landlord-ratepayer) shall be mailed or otherwise individually hand delivered to the address of each affected tenant by unit number is possible and shall contain the following information:

(1) The date on which the notice is rendered.

(2) The date on or after which service will be discontinued or terminated.

(3) The bill for the billing period immediately preceding the notice to the tenants.

(4) The circumstances under which service to the affected tenants may be continued which shall be in the following form:

**NOTICE TO TENANTS
YOUR UTILITIES MAY BE SHUT OFF
PLEASE READ THIS NOTICE ABOUT YOUR
RIGHTS**

THIS NOTICE DOES NOT APPLY TO ANY UTILITY SERVICE NOW IN YOUR NAME AND FOR WHICH YOU ALREADY PAY THE BILL.

THE [NAME OF THE UTILITY AND TYPE OF SERVICE] BILL FOR YOUR BUILDING HAS NOT BEEN PAID. YOUR [TYPE OF SERVICE] WILL BE SHUT OFF ON OR AFTER [] UNLESS THIS BILL IS PAID.

**AS A TENANT YOU HAVE THE FOLLOWING
RIGHTS:**

1. You can join with the other tenants to pay the utility bill for the last thirty (30) days preceding this notice, or you can pay the total bill yourself. If you pay either way, you do not have to pay a deposit or get credit granted in your name. You will not have to pay your landlord's other debts or the debts of prior tenants, and utility service will remain in the name of the landlord.

2. You may deduct your payment to the utility company from your rent due now or from future rent. The utility company will tell your landlord how much you paid for that utility service.

3. If your building has one meter for more than one tenant, the utility bill is for all tenants and must be paid in full. If you only pay part of the last monthly billing, your utility service will be shut off and the utility company will return your money.

4. Your landlord cannot punish you if you pay the utility bill. Your landlord cannot raise your rent, cannot evict you, and cannot take action against you in any other way for paying the utility bill and deducting it from the rent. You have a right to recover money damages from the landlord for any damages or injury he causes you for exercising your rights as a result of this Notice.

5. You can get your utility service billed in only your name if your unit has its own meter. Or, you can get your own service if a meter can be put in with only a few changes in pipes, wires, and land. Please call the utility company if you want further information.

6. Payments must be made by check or money order to the company. The utility will tell your landlord how much you paid for service.

7. You will be told that the shut-off is cancelled if your landlord pays the bills.

First, if you have any questions about your rights and responsibilities, please telephone your utility company at []. If, after discussing your problem with the utility you remain dissatisfied, call the Public Utility Commission at 1-800-692-7380 or write Service Termination Mediation Unit, Bureau of Consumer Services, Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania, 17120. **YOU SHOULD CALL OR WRITE BEFORE THE TERMINATION DATE.**

(b) *Information posted by utility.* The information in subsection (a) shall be posted by the utility in those common areas of the residential building or mobile home park where it is reasonably likely to be seen by the affected tenants. Any officer or

employee of the utility may, at any reasonable time, enter the common hallways and common areas of such building for the purpose of complying with this section.]

§ 56.125. [Right of tenants to continued service] (Reserved).

(a) *Application for continued service.* At any time before or after service has been discontinued or terminated by a public utility, the affected tenants may apply to the utility to have service continued or resumed.

(b) *Payment of charges by tenants.* A public utility may not discontinue or terminate service or shall promptly resume service previously discontinued or terminated if it receives from the tenants an amount equal to the bill of the landlord-ratepayer for the 30 days preceding the notice to the tenants. Thereafter, the utility shall notify each tenant of the total amount of the bill for the second and each succeeding billing period; and, if the tenants fail to make payment of a bill within 30 days of the delivery of the notice to tenants, the utility may commence termination procedures consistent with this chapter; however, no termination may occur until 30 days after each tenant has received written notice of the proposed termination in addition to the other notice provisions required under § 56.126 (relating to additional notice procedures prior to termination). Payments of charges by tenants to the utility on account of nonpayment by the landlord-ratepayer shall be made by check or money order drawn by the tenant to the order of the utility.

(c) *Delivery of termination notices.* Termination notices issued under this section shall be individually mailed to each affected tenant by first class mail or individually hand-delivered to the address of each affected tenant by unit number if possible and shall contain information required under § 56.2 (relating to definitions).

(d) *Disposition of payment by utility.* Upon receiving a payment the utility shall notify the landlord-ratepayer who is liable for the utility service of the amount paid by a tenant and the amount credited to the landlord's bill for each tenant under subsection (b). If the tenants fail to satisfy the requirements of subsection (b) to maintain or restore service and service to the affected dwelling unit is terminated, the utility shall refund to each tenant the amount paid by the tenant toward the bill which the tenants failed to pay, either upon the request of the tenants or after holding the tenants' payment during 60 consecutive days of terminated service, whichever occurs first.

(e) *Agreement for individual service.* A tenant of a residential building or mobile home park who has been notified of a proposed termination of utility service, under § 56.121 (relating to notices before terminating service to landlord-ratepayer) shall have the right to agree to subscribe for future service individually if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.]

§ 56.126. [Additional notice procedures prior to termination] (Reserved).

[At least 10 days prior to a proposed termination under §§ 56.121—56.125, the utility shall again con-

spicuously post and hand-deliver notice of the termination at the affected dwelling. If possible, the notices shall be posted in common areas of the dwelling and individually hand-delivered to the address of each affected tenant by unit number.

(1) Notices under this section shall contain the information and be in the form prescribed by § 56.124 (relating to delivery and contents of first termination notice to tenants) for terminations under § 56.121 (relating to notices before terminating service to landlord-ratepayer).

(2) Notices under this section shall contain the information required in § 56.125(c) for terminations under § 56.125(b).]

FOLLOW-UP RESPONSES

§ 56.135. Follow-up response to inquiry.

When a customer is waiting for a follow-up response to an inquiry under § 56.2 (relating to definitions), termination or threatening termination of service for the subject matter in question shall be prohibited until the follow-up response, and when applicable, subsequent dispute resolution is completed by the utility.

Subchapter F. DISPUTES; TERMINATION DISPUTES; INFORMAL AND FORMAL COMPLAINTS

GENERAL PROVISIONS

§ 56.142. Time for filing a termination dispute or informal complaints.

To be timely filed, a termination dispute—which may not include disputes under §§ 56.35 and 56.191 (relating to payment of outstanding balance; and general rule)—and informal complaints shall be filed prior to the [actual termination of service] day on which the utility arrives to terminate service. If the utility arrives to terminate service and posts a deferred termination notice in lieu of termination or otherwise fails to terminate service, then the time for filing a termination dispute or informal complaint shall be extended until the end of the business day prior to the utility again arriving to terminate service.

UTILITY COMPANY DISPUTE PROCEDURES

§ 56.151. General rule.

Upon initiation of a dispute covered by this section, the utility shall:

* * * * *

(5) Within 30 days of the initiation of the dispute, issue its report to the complaining party[;]. [the reports shall be in writing and shall be sent to the complaining party if requested]

(i) If the informal complainant is not satisfied with the dispute resolution, the utility company report shall be in writing and conform to § 56.152 (relating to contents of the utility company report). In these instances, the written report shall be sent to the complaining party if requested or if the utility deems it necessary.

(ii) If, however, the complaining party is satisfied with the orally conveyed dispute resolution, the written utility company report may be limited to

the information at § 56.152(1) and (2) and, if applicable, § 56.152(7)(ii) or (8)(ii).

(iii) If the complaining party expresses satisfaction but requests a written report, the report shall conform with § 56.152, in its entirety.

§ 56.152. Contents of the utility company report.

A utility company report shall include the following:

* * * * *

(6) A full and complete explanation of procedures for filing an informal complaint with the Commission [including]. See § 56.162 (relating to informal complaint filing procedures). If a written report is not requested by the complaining party or deemed necessary by the utility, the utility shall provide the information at § 56.162(1), (2) and (5). In addition, the utility should always provide the telephone number and address of the [nearest regional] office of the Commission where an informal complaint may be filed.

* * * * *

INFORMAL COMPLAINT PROCEDURES

§ 56.162. Informal complaint filing procedures.

An informal complaint may be filed orally or in writing and shall include the following information:

(1) The name and address of the ratepayer and, if different, the address at which service was provided.

(2) The [address] telephone number of the ratepayer [and, if different, the address at which service provided].

* * * * *

Subchapter G. RESTORATION SERVICE

§ 56.191. General rule.

(a) When service to a dwelling has been terminated, the utility shall reconnect service by the end of the first full working day after receiving one of the following:

(1) Full payment of an outstanding charge plus a reasonable reconnection fee. Outstanding charges and the reconnection fee may be amortized over a reasonable period of time. Factors to be taken into account shall include[, but not be limited to,] the size of the unpaid balance, the ability of the ratepayer to pay, the payment history of the ratepayer, and the length of time over which the bill accumulated[; or].

(2) Payment of amounts currently due according to a settlement or payment agreement, plus a reasonable reconnection fee, which may be a part of the settlement or payment agreement[; or]. The utility, if warranted, may request a higher amount than the current amount due according to a settlement or payment agreement, but only after reviewing the factors outlined in paragraph (1), and after considering the number of defaulted agreements, including informal and formal complaint decisions.

(3) Adequate assurances that any unauthorized use or practice will cease, plus full payment of the reasonable reconnection fee of the utility, which may be subject to a payment agreement[; and].

(b) When service to a dwelling has been terminated, the utility shall reconnect service by the end of the first full working day after receiving[]:

(4) **Compliance] compliance** or adequate assurance of compliance with an applicable provision for the establishment of credit or the posting of deposits or guarantees.

Subchapter H. PUBLIC INFORMATION PROCEDURES; RECORD MAINTENANCE

§ 56.202. Record maintenance.

A utility shall preserve for [a period of] at least 2 years written or recorded disputes and complaints[,]. **If a company maintains a record of a final account balance to possibly request payment of the outstanding balance in accordance with § 56.35 (relating to payment of outstanding balance), records shall be maintained for the period of time covering the accrual of the unpaid debt. The utility shall keep the records within this Commonwealth at an office located in the territory served by it, and shall make the records available for examination by the Commission or its staff. Information to be maintained shall include the following:**

* * * * *

Subchapter I. INFORMAL COMPLAINTS

§ 56.211. Informal complaints.

(a) The Bureau of Consumer Services (**Bureau**) will have primary jurisdiction over ratepayer, applicant or occupant complaints arising under this chapter. The Bureau [of Consumer Services], through its Director and with the concurrence of the Commission, shall establish appropriate internal procedures to implement [the provisions of] this chapter.

(b) **The Bureau should only handle those Chapter 56 informal complaints in which the customer first attempted to resolve the matter with the utility. The Bureau should initiate an investigation only after the customer and the utility have unsuccessfully attempted to resolve the dispute.**

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missions, the several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions, the conduct of their employes and clerks, the distribution and performance of their business, and the custody, use, and preservation of the records, books, documents, and property pertaining thereto."

Currently, the Department's interpretation of section 3 of the act of July 1, 1994 (P. L. 413, No. 67) section 2301 of the Tax Reform Code (TRC) (72 P. S. § 9301), which replaced 74 Pa.C.S. § 1314 (repealed by the act of June 16, 1994 (P. L. 279, No. 48)) relating to public transportation assistance fund taxes and fees, is set forth as a pronouncement and codified in Chapter 9. Revenue Pronouncements—Statements of Policy, § 9.4. By setting forth its interpretation in a pronouncement, the Department was able to provide taxpayers and tax practitioners an immediate source of information on which they could rely.

The Department has concluded that the issues relating to public transportation assistance fund taxes and fees should be set forth as a regulation. Therefore, in addition to proposing to add § 47.19, this proposed rulemaking is also proposing to delete the pronouncement that appears at § 9.4. To assist taxpayers prior to the adoption of this proposal, the Department has amended § 9.4 to bring it into conformity with 72 P. S. § 9301.

Section 47.19(a) provides general information regarding the authorizing tax statute; registration; returns; payment of taxes and fees; imposition of tax; exemption certificates; direct payment permit and applicability of the TRC.

Details regarding the tire fee are explained in subsection (b). Paragraph (1) provides definitions for use in the subsection of the terms "highway use" and "sale." Paragraph (2) establishes the scope of taxation effective October 1, 1991. Though there is no exclusion for exempt organizations or businesses engaged in manufacturing, processing, farming, dairying, printing, mining or rendering a public utility service, paragraph (3) enumerates specific instances which are exempt from taxation. Paragraph (4) sets forth examples of sales subject to the tire fee and paragraph (5) sets forth examples of sales not subject to the tire fee.

Subsection (c) provides information regarding motor vehicle lease tax. Paragraph (1) provides definitions for use in the subsection of the terms "lease," "lease price" and "motor vehicle." Paragraph (2) details the scope of taxation effective October 1, 1991. It also provides that lease payments made on or after April 1, 1995, for the use of trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) are not subject to the tax. Paragraph (3) relating to exclusion provides that if the lease of a motor vehicle is exempt from sales and use tax imposed by Article II of the TRC (72 P. S. §§ 7201—7282), the lease is exempt from the tax imposed under this subsection.

Information regarding motor vehicle rental fee is set forth in subsection (d). Definitions of "motor vehicle" and "rental" for use in this subsection are set forth in paragraph (1). Paragraph (2) provides the scope of taxation effective October 1, 1991. If the rental of a motor vehicle is exempt from sales and use tax imposed by Article II of the TRC, paragraph (3), relating to exclusions, provides that the rental is exempt from the fee imposed under this subsection. Examples of rentals subject to the rental fee are enumerated in paragraph (4).

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 9 AND 47]

Public Transportation Assistance Fund Taxes and Fees

The Department of Revenue (Department), under authority contained in section 506 of The Administrative Code of 1929 (71 P. S. § 186), proposes to delete § 9.4 (relating to public transportation assistance fund taxes and fees) and to adopt § 47.19 (relating to public transportation assistance fund taxes and fees) as set forth in Annex A. Section 506 of The Administrative Code of 1929 provides, "The heads of all administrative departments, the several independent administrative boards and com-

Subsection (e)(1) relating to utility realty additional tax establishes the scope of taxation effective October 1, 1991. Paragraph (2) provides that returns shall be reported on the public utility realty tax report required by Article XI-A of the TRC (72 P. S. §§ 8101-A—8108-A). Paragraph (3) provides that payment of the tax imposed by this subsection shall be under Article XI-A of the TRC. Paragraph (4) specifies that unless otherwise provided, Article XI-A of the TRC and regulations promulgated thereunder apply to the tax imposed under this subsection.

Subsection (f) relates to periodical tax. For the period from October 1, 1991, to December 31, 1991, paragraph (1) provides that under the act of August 5, 1991 (P. L. 238, No. 26), the sale at retail of periodicals was subject to a 6% public transportation assistance tax. Paragraph (2) provides that under the act of December 13, 1991 (P. L. 373, No. 40) (Act 40), effective January 1, 1992, the periodical tax was deleted from 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund). The paragraph further provides that Act 40 also deleted the exclusion from the TRC, effective January 1, 1992; therefore, periodicals are subject to the sales and use tax.

Fiscal Impact

The Department has determined that the proposed amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

The proposed amendments will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The amendments will become effective upon final publication in the *Pennsylvania Bulletin*. The regulations will be monitored annually. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed amendments to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days from the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on June 12, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the agency within 30 days from the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the agency, the General Assembly and the Governor of objections raised.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-373. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE

PRONOUNCEMENTS—STATEMENTS OF POLICY

(Editor's Note: The Department of Revenue is proposing to delete the current version of 61 Pa. Code § 9.4 as it appears at *Pennsylvania Code* pages 9-6—9-11 (Serial pps. 203018—203023).

§ 9.4. Reserved.

CHAPTER 47. RENTALS

§ 47.19. Public Transportation Assistance Fund taxes and fees.

(a) General provisions.

(1) *General.* This section is promulgated to administer section 2301 of the TRC (72 P. S. § 9301).

(2) *Registration.* A person who makes sales, rentals or leases subject to a tax or fee under subsection (b), (c) or (d) is required to apply for a Public Transportation Assistance Tax License Number on a form prescribed by the Department. The registration is separate from sales tax registration required under Article II of the TRC (72 P. S. §§ 7201—7282).

(3) *Returns.* The taxes and fees collected under subsection (b), (c) or (d) shall be reported on a return prescribed by the Department. The returns shall be filed under sections 217—220 of the TRC (72 P. S. §§ 7217—7220) and § 34.3 (relating to tax returns).

(4) *Payment.* Payment of the taxes and fees under subsection (b), (c) or (d) shall be made under sections 221—224 of the TRC (72 P. S. §§ 7221—7224).

(5) *Imposition of tax.* The taxes and fees imposed under subsection (b), (c) or (d) are in addition to sales or use tax and are excluded from the computation of tax for sales and use tax purposes.

(6) *Exemption certificates.* Claims for exemption from the taxes and fees imposed under subsection (b), (c) or (d) shall be supported by the use of a valid Pennsylvania Exemption Certificate.

(7) *Direct payment permit.* A direct payment permit issued under § 34.4 (relating to direct payment permit) may be used in conjunction with the taxes and fees imposed under this section.

(8) *Applicability of the TRC.* Unless otherwise specifically noted, Article II of the TRC and regulations promulgated thereunder apply to the taxes and fees imposed under subsection (b), (c) or (d).

(b) Tire fee.

(1) *Definitions.* The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Highway use—The use of a tire on a vehicle which is required to be licensed for highway use. If a tire is of the type used on a vehicle normally required to be licensed for highway use under 75 Pa.C.S. (relating to the Vehicle Code), the tire shall be presumed to be for highway use.

Sale—A transfer of the ownership of new tires for a consideration whether the transfer is absolute or condi-

tional and by whatever means the transfer has been effected. The term does not include a rental or lease.

(2) *Scope.* Effective October 1, 1991, the sale of a new tire which is delivered to a location in this Commonwealth for highway use is subject to a \$1 fee. The fee shall be collected by the vendor from the purchaser. If the vendor fails to collect, report or remit the tire fee, the vendor shall be assessed the fee. If the purchaser does not pay the fee to the vendor, the purchaser shall be assessed the tire fee. The sale of new tires in conjunction with the sale of other property shall be subject to the tire fee.

(3) *Exclusions.* There is no exclusion for exempt organizations or businesses engaged in manufacturing, processing, farming, dairying, printing, mining or rendering a public utility service. The following are exclusions:

- (i) The sale of tires not for highway use.
- (ii) The sale of new tires to governmental entities.
- (iii) The rental or lease of new tires. The lessor is required to pay the tire fee on the purchase of tires to be rented or leased.
- (iv) The sale of used tires including retreads or recaps.
- (v) The sale of tires when delivered to the purchaser at an out-of-State location. The subsequent use of the tires within this Commonwealth is not subject to the tire fee.

(4) *Examples of sales subject to the tire fee.*

(i) A purchaser buys a new or used automobile with four new tires and one spare tire. A tire fee of \$5 is due on the sale of five new tires.

(ii) A leasing company buys new tires to use as replacements on its leased licensed vehicle fleet. Since the tires are for highway use, the purchase of the tires by the leasing company is subject to the tire fee.

(iii) A church buys a new tire to replace a tire on a vehicle registered in the name of the church. The purchase of the tire by the church is subject to the tire fee.

(iv) A trucking company buys tires from an out-of-State vendor. The tires are delivered to the trucking company in this Commonwealth. The sale of the tires is subject to the tire fee.

(v) A new car dealer withdraws an automobile from inventory and makes a taxable use of the automobile for sales and use tax purposes. The dealer is required to pay the tire fee directly to the Department.

(vi) A garage replaces a tire in connection with the repair of a damaged motor vehicle. The sale of the tire is subject to the tire fee regardless of whether the cost of the repair is covered by an insurance contract.

(5) *Examples of sales not subject to the tire fee.*

(i) A used car dealer buys new tires to place on a vehicle to be resold. The purchase of tires by the dealer is not subject to the tire fee. The subsequent sale of the vehicle with the new tires to a purchaser for highway use is subject to the tire fee.

(ii) A lessee rents a vehicle with new tires from a leasing company. A tire fee is not due on the rental. The lessor is liable for paying the tire fee on the purchase of the tires.

(iii) A manufacturer purchases new tires for use on forklifts not required to be licensed for highway use. The purchase is not subject to the tire fee.

(iv) A trucking company buys new tires from an out-of-State vendor. The tires are delivered to the trucking

company at an out-of-State location. The sale or use of the tires is not subject to the tire fee even though the tires are subsequently used in this Commonwealth.

(v) A retail tire dealer purchases tires from a tire manufacturer for resale. As the retail tire dealer is not purchasing the tires for highway use, the purchase is not subject to the tire fee. The retail tire dealer's subsequent sale of the tire to a customer for highway use is subject to the tire fee.

(c) *Motor vehicle lease tax.*

(1) *Definitions.* The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Lease—A contract for the use of a motor vehicle for 30 days or more.

Lease price—Full consideration paid or delivered or promised to be paid or delivered to the lessor for a lease period under a lease agreement, whether it is money or otherwise, even though the consideration is separately stated and designated as a payment for downpayment, service, maintenance, insurance, repairs, depreciation, excess mileage fees or similar charges.

(i) The term also includes an accelerated lease payment or buy out purchase price made whether or not made in connection with the termination of the lease.

(ii) The term does not include the option purchase price, penalty fees for early termination of lease, damage fees or similar charges.

(iii) The term does not include sales tax imposed on the lease price.

(iv) Credits or refunds which reduce the lease price reduce the amount subject to tax even though the credits or refunds are issued after termination of the lease.

(v) If the lessor fails to separately state the lease price of other property, such as a trailer, from the lease of a motor vehicle, the total lease price is subject to tax.

Motor vehicle—A self-propelled vehicle required to be licensed for highway use. The term does not include trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) (relating to trucks and truck tractors). Title 75 Pa.C.S. § 1916(a)(1) currently defines trucks in Class 4 as those having a registered gross or combination weight between 9,001 and 11,000 pounds.

(2) *Scope.* Effective October 1, 1991, each lease of a motor vehicle subject to the tax imposed by Article II of the TRC is subject to an additional tax of 3% of the total lease price charged. This tax will be imposed upon lease payments due on or after October 1, 1991, regardless of the date upon which the lease was executed. Lease payments made on or after April 1, 1995, for the use of trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) are not subject to the tax. The tax shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the tax, the lessor shall be assessed the tax. If the lessee does not pay the tax to the lessor, the lessee shall be assessed the tax.

(3) *Exclusions.* If the lease of a motor vehicle is exempt from sales and use tax imposed by Article II of the TRC, the lease is exempt from the tax imposed under this subsection.

(d) *Motor vehicle rental fee.*

(1) *Definitions.* The following words and terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise:

Motor vehicle—A self-propelled vehicle required to be licensed for highway use.

Rental—A contract for the use of a motor vehicle for less than 30 days. If a motor vehicle is rented for less than 30 days, and the use of the motor vehicle subsequently extends beyond a 29-day period, the transaction remains a rental, and the rental payments continue to be subject to the tax until the rental contract is terminated.

(2) *Scope.* Effective October 1, 1991, each rental of a motor vehicle subject to the tax imposed by Article II of the TRC is also subject to a fee of \$2 for each day or part of a day for which the lessor charges the lessee for rental of the vehicle. The fee shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the fee, the lessor shall be assessed the fee. If the lessee does not pay the fee to the lessor, the lessee shall be assessed the fee.

(3) *Exclusions.* If the rental of a motor vehicle is exempt from sales and use tax imposed by Article II of the TRC, the rental is exempt from the fee imposed under this subsection.

(4) *Examples of rentals subject to the rental fee.*

(i) A lessee rents a motor vehicle from a rental company for 5 hours. The rental is subject to a \$2 rental fee.

(ii) A lessee rents a motor vehicle from a rental company for 1 day. The vehicle is returned to the lessor 5 hours after the end of the rental period. If the lessee is charged the daily rental rate plus an additional charge for the period after the end of the rental period, a rental fee of \$4 is due.

(e) *Utility realty additional tax.*

(1) *Scope.* Effective October 1, 1991, every entity required to pay the public utility realty tax imposed under Article XI-A of the TRC (72 P.S. §§ 8101-A—8108-A) shall pay an additional tax of 12 mills upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year.

(2) *Returns.* The tax under this subsection shall be reported on the public utility realty tax report required by Article XI-A of the TRC.

(3) *Payment.* Payment of the tax imposed by this subsection shall be under Article XI-A of the TRC.

(4) *Applicability of the TRC.* Unless otherwise specifically noted, Article XI-A of the TRC and regulations promulgated thereunder apply to the tax imposed under this subsection.

(f) *Periodical tax.*

(1) Under the act of August 5, 1991 (P. L. 238, No. 26), the sale at retail of periodicals was subject to a 6% public transportation assistance tax from October 1, 1991, to December 31, 1991.

(2) Under the act of December 13, 1991 (P. L. 373, No. 40) (Act 40), effective January 1, 1992, the periodical tax was deleted from 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund). Act 40 also deleted the exclusion from the TRC, effective January 1, 1992; therefore, periodicals are subject to the sales and use tax.

[Pa.B. Doc. No. 96-1012. Filed for public inspection June 21, 1996, 9:00 a.m.]
