

**CONSUMER AFFAIRS COMMITTEE  
HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA**

**Informational Hearing On Chapter 14, PUC**

**November 1, 2011**

**TESTIMONY OF COMMUNITY LEGAL SERVICES, INC.**

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My name is Thu Tran, a Senior Staff Attorney in the Energy Unit at Community Legal Services (“CLS”). CLS provides free legal services in civil matters to low income residents of Philadelphia. During the past 12 months, CLS received more than 700 requests for legal assistance with utility matters. Well over 500 of these cases involve the regulated utilities of PECO Energy and Philadelphia Gas Works (“PGW”) that serve Philadelphia residents. In practically all of these PECO and PGW cases, customers are coming to us with shut off issues that they were not able to resolve with the utility. I started working at CLS in mid-2004, so I have seen the impact that Act 201 of 2004 (hereinafter “Chapter 14”) has had on low and lower income Philadelphia residents. I am here on behalf of CLS and our client community to inform the House Consumer Affairs Committee of our experience and to provide recommendations based on that experience.

The Public Utility Commission (“PUC” or “Commission”) has so far published three biennial reports on Chapter 14, with the Third Biennial Report to the General Assembly and the Governor pursuant to Section 1415 on the Implementation of Chapter 14, dated January 14, 2011 (the “2011 Biennial Report”). This latest Commission report alerts us to the record levels of service terminations that have occurred since Chapter 14 was passed. From 2004 through 2009, electric terminations rose 78.6 percent, with PECO shutting off 76,862 customers in 2009, or one in 18 customers, (pp. 35, 38). Service terminations for gas utilities statewide increased 45.5 percent from 2004-09, with PGW shutting of 38,536 customers in 2009, or one in 12 customers (p. 36, 39).

This Committee will likely hear from the utilities that reconnections have also increased. The increases in reconnections have never matched the increases in terminations. Also, what those statistics do not reveal are the conditions under which customers suffered while trying to obtain resources sufficient to obtain service reconnection. We commonly meet customers who have gone for months without heat and hot water for basic comfort and sanitation, or have been unable to cook healthy meals without cooking gas or refrigeration for food. When service terminations pick up just before Winter and in the Spring, we brace for the stories of fires caused by kerosene heaters and candles used in the absence of gas and electricity. In the 2011 Biennial Report, the Commission acknowledges that “more Pennsylvanians are without electric and gas service since the passage of Chapter 14,” (p. 48).

Throughout the state, and in Philadelphia in particular, we saw a dramatic increase in the number of households entering the winter without heat-related utility service. The Commission’s annual Cold Weather Surveys show an upward spike in numbers of households without safe heat in winter after passage of Chapter 14.<sup>1</sup> This is indicative of the inability of households to afford the overly restrictive reconnection terms which Chapter 14 authorizes utilities to impose upon customers – which often include the requirement that the customer pay the total amount due, as well as reconnection fees and deposits before service will be restored.

PGW repeatedly leads other gas utilities in the state with the highest number of terminations and rate of customers unable to restore service before the onset of cold weather. The 2011 Biennial Report shows that in December 2009, PGW reported that 8,397 households which heat with natural gas are without service with the approach of winter -- the highest number of all utilities and half of all off gas accounts in the state, (p. 45).

I will not go into a full list of recommended reforms today, and will highlight those Chapter 14 rules that have had particularly harsh consequences in Philadelphia. Our recommendations today will focus upon payment agreements, treatment of customers enrolled in customer assistance

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<sup>1</sup> In the pre-Chapter 14 period of 2001-04, there was an average of 12,049 households that entered the winter heating season without heat-related utility service. This number peaked in 2005 at 17,057 households. The 2009 number continues to be at a near peak level of 17,037. (2011 Biennial Report, p. 45).

programs (CAPs), grounds for immediate utility service terminations, and PGW-specific provisions in Chapter 14.

Restore Commission discretion to establish payment agreements

When I first started working at CLS, prior to the passage of Chapter 14, if customers fell behind on their bills and were unable to reach an agreement with the utility, we were able to refer utility customers to the Commission. Especially with the approach of cold weather, low income customers in need of assistance could usually obtain Commission terms to combine federally-funded LIHEAP grants with a payment agreement and get through the winter with heat-related utility service.

Before Chapter 14, the Commission's Bureau of Consumer Services ("BCS") would assess individual circumstances in determining payment agreements terms to permit the customer to catch up on past due bills. This dramatically changed after passage of Chapter 14 in December, 2004 to the great detriment of tens of thousands of Pennsylvanians properly looking to their state government for help to counter-balance the monopoly power of the local utility. In the 2011 Biennial Report, the Commission noted that the Commission had "turned away 94,777 customers who are ineligible to receive a PAR [Payment Arrangement Request] since the passage of Chapter 14," (p. i).

After the passage of Chapter 14, some utilities contended that the Commission may not even establish one payment agreement for a customer whose service had been terminated to allow for service reconnection and payment of outstanding arrearages in monthly installments over time. After initial hesitation, the Commission interpreted Chapter 14 to authorize the Commission under certain limited conditions to provide a payment agreement to a customer whose service had been terminated for non-payment.

Chapter 14 should be amended to clarify that the Commission has authority to provide a payment agreement for a customer whose service has been terminated for non-payment. Such an amendment would confirm the General Assembly's intent, buttress the Commission's position,

and silence once and for all the claim that the Commission does not have the authority to establish even one payment agreement for customers whose service has been terminated for non-payment.

CLS recommends amending Section 1405(d) to relax the limits on the number and length of agreements that the Commission may establish or order a public utility to establish. It is not unusual for a customer to experience more than one household emergency, such as a need for a car repair to ensure transportation to work or a need to repair a broken heater or other major appliance, within a couple year period. Current law only allows the Commission to establish one agreement and then only extend agreements by 6 months when extenuating circumstances exist such as “onset of a chronic or acute illness,” “catastrophic damage to the customer’s residence,” or total “loss of the customer’s residence.” Payment agreement rules should reflect this reality and allow the Commission to establish payment agreements depending on the circumstances.

#### Delete Section 1405(c) to allow payment agreements for CAP low income customers

CLS recommends deleting §1405(c) so that the PUC is not prohibited from establishing a payment agreement for customers enrolled in a customer assistance program (CAP). In the Commission’s Second Biennial Report in 2008 regarding Chapter 14 implementation, the Commission noted that customers enrolled in a customer assistance program (or CAP) were at the “greatest risk because they are out of options.”<sup>2</sup> This concern was reinforced in the 2011 Biennial Report, which noted that, as of October 2010, the Commission had turned away 50,624 CAP customers who were seeking review of their payment arrangements, as a result of Section 1405(c) specifically.

The prohibition on CAP customer payment agreements is premised on an underlying assumption that CAP bills are inherently affordable, when in reality these CAP bills are often beyond low income customers’ consistent ability to make payment in full and on time. The PUC affordability guidelines are high compared to other states, including our neighboring cold weather states. So

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<sup>2</sup> Second Biennial Report to the General Assembly and the Governor Pursuant to Section 1415, at 35 & 39 (accessed at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/Chapter14-Biennial121408.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/Chapter14-Biennial121408.pdf)).

CAP bills do not always result in affordable bills. These CAP customers should be given at least the same chance as other customers to catch up on bills when they fall behind.

The 2011 Biennial Report emphasizes the growth of enrollment in the customer assistance programs since Chapter 14 was enacted. However, let us be clear that Chapter 14 did nothing to enhance customer protections under the CAP programs. Universal Service programs were statutorily required of utilities by the Gas and Electric Competition Acts that provided for deregulation, in recognition of the need to ensure affordable utility service for the most vulnerable customers. Chapter 14 Section 1405(c) in fact directly diminished the low-income protections under the Universal Service programs by precluding CAP customers from affordable payment agreements, and effectively making CAP the only and last option for low income customers, and insulating the CAP customer's account from PUC review.

Section 1406(c) – Grounds for immediate termination should be verified

Consumers are placed at a serious disadvantage when their utility service has been shut off without any prior notice. While living with the stresses of lack of the utility service, the consumer must also work to figure out the reason for the immediate termination and the terms to restore service. We recommend that immediate termination should only be allowed after verification of any of the grounds for immediate termination, and that restoration terms with the underlying rationale for termination be immediately provided. Based on our experience, immediate terminations are occurring based on the utility's mere suspicion of unauthorized usage or tampering. In addition, these terminations occur to the detriment of tenants and other occupants who, many times in our experience, are not responsible for, nor liable for the unauthorized usage. Customers can languish without utility service for weeks, months and even years after an immediate termination of service, as they investigate the reason for the immediate termination, obtain terms required by the utility for restoration of service, and attempt to dispute the termination.

In the case of Ms. J, she was without gas for five years before coming to CLS. She had found a way to cook on a grill in her backyard but lived without a safe heating source for that whole

period. She had made various attempts to learn the basis for and dispute questionable unauthorized usage allegations without success. She was eventually referred by a State Senator's office to CLS, and we were able to negotiate affordable reconnection terms for her.

#### Eliminate discrimination against PGW customers

Chapter 14 contained several provisions intended to provide "additional collection tools" to the Philadelphia Gas Works ("PGW"), the only municipally owned natural gas utility under the PUC's jurisdiction. While confirming PGW's authority to file liens for unpaid gas service under the Municipal Claim and Tax Lien Law, Chapter 14 also allowed PGW more latitude to conduct winter terminations against lower income customers and to impose other collections related burdens on its customers than were granted to any of the other PUC regulated utilities. The General Assembly cited PGW's "financial circumstances" in justification of these measures. Because PGW's collections were improving even at the time that Chapter 14 was passed, it is questionable whether these additional collection tools were actually necessary. Whatever the truth of PGW's situation when Chapter 14 was passed in 2004, now, seven years later, PGW's financial situation has improved to the point where "additional collection tools" are no longer necessary. Regarding winter service terminations and other matters impacting access to utility service, PGW customers should enjoy at least the same protections provided to the customers of any other PUC regulated utility.

PGW will likely attribute its improved financial position to Chapter 14. However, we submit that the evidence does not support this claim. In addition to the collection improvements already underway at the time of Chapter 14's enactment, PGW has in recent years undertaken, a multi-million dollar Business Transformation Initiative to improve its collection procedures and to reduce its costs. The only collection related initiatives included in this transformation work which were in any way related to Chapter 14 were initiatives linked to the exercise of PGW's right under the Municipal Claim and Tax Lien law to file liens for unpaid gas service, a right which existed prior to the enactment of Chapter 14. Other Business Transformation collection initiatives like Write-off Reactivation, Soft-Off Monitoring and Risk Based Collections were not

based on the Chapter 14 provisions subjecting PGW customers to increased risk of service termination in winter and imposing other collections related financial requirements.

*Delete Section 1406(e)(2) & (3).* Section 1406(e)(2) and (3) provides for those circumstances under which PGW may terminate service in winter between December 1 and March 31, to a customer whose household income falls between 150% and 250% of the federal poverty level.<sup>3</sup> For all other regulated utilities in the Commonwealth, Section 1406(e)(1) applies, which prohibits winter termination to customers with household income at or below 250% of the federal poverty level. Given the exceedingly large number of PGW residential heating customers terminated for non-payment who each year are unable to meet PGW financial requirements for service reconnection by the onset of cold weather, Section 1406(e)(2) and (3) only authorize PGW to make a dangerous situation more dangerous. These provisions should therefore be eliminated. Moreover, in the past 7 years, PGW has not used this dangerous winter termination authority, which demonstrates that PGW does not need it. There is no need to retain a provision which puts lower income PGW customers at risk of winter shut off at PGW's sole discretion.

*Delete Section 1414(c).* Section 1414(c) authorizes PGW to require an applicant for service to pay or arrange to pay an outstanding judgment or outstanding lien as a precondition of obtaining service. Under existing law applicable to all other PUC regulated utilities, a utility may not refuse service on the basis of a debt for service furnished more than four years prior to the application for service. Section 1404(c), however, does not contain this time limitation. This provision potentially would impose financial requirements on applicants for PGW service which would prevent them from obtaining service, or at the very least, indefinitely delay their ability to obtain service due to their financial circumstances. This discrimination against PGW residential customers is unnecessary and should be eliminated.

*Delete Section 1414(b).* Section 1414(b) authorizes PGW to levy a "minimum fee of \$10" for each instance when PGW personnel visit a customer's residence in the process of attempting to

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<sup>3</sup> A household of 2 persons with annual income between 150% and 250% of the federal poverty level would be between \$22,068 and \$36,780 a year.

complete service termination. No other public utility subject to PUC regulation is allowed to impose such a charge. Termination of service for non-payment is already a costly matter for PGW customers, who already are required to pay between \$123 and \$500 in reconnection fees in addition to a deposit and at least part of or all the outstanding balance in order to obtain service reconnection. This discrimination against PGW residential customers constitutes an unnecessary burden and should be eliminated.

#### Expiration of Act 201 of 2004, Chapter 14

Chapter 14 is so seriously flawed that we believe this Committee should consider whether Chapter 14 needs to be reauthorized or whether it should be allowed to expire in December 2014. The issues of lengthy payment agreement terms and name game type abuses, which were the impetus behind much of the pro-Chapter 14 advocacy, are issues that could have been addressed under regulations that existed prior to Chapter 14. Under then existing Chapter 56 regulations, and under the newly revised regulations, the Commission had and still has discretion to consider individual circumstances in setting payment agreement terms.

In the process of considering Chapter 14's expiration or reauthorization, we urge this Committee to hold hearings to obtain public input. Chapter 14 was quickly enacted without any legislative hearings or public notice. There are many unintended consequences resulting from Chapter 14 that should be heard. The Commission's biennial reports do not include, for instance, the chilling impact of several years of turning away customers from the PUC. Customers and staff of various agencies repeatedly tell us that the PUC is turning away complaints and no longer available to help customers. Chapter 14 was meant to prevent customers with ability to pay from avoiding payment. It was not meant to deprive payment troubled and low income customers from reasonable access to utility service. We recommend that this Committee invite groups such as the Consumer Bankruptcy Assistance Project or the Consumer Unit of CLS to discuss the growing number of utility-focused bankruptcy filings. Without the ability to obtain affordable payment agreements from the utility or the PUC, consumers are seeking bankruptcy discharges or Bankruptcy Court imposed payment agreements instead. Bankruptcies are a drastic last resort

solution to obtain an affordable arrangement for utility arrearages, and depending on the customer's circumstances, are not always available.

In conclusion, we thank members of the Consumer Affairs Committee for this opportunity to provide comment on these important utility consumer issues. In the remaining 3 years before Chapter 14's expiration, we ask this Committee to consider how Chapter 14 has been allowed to subject the low and lower income households of our Commonwealth to hardships and dangerous and unnecessary service terminations. If Chapter 14 is to continue, at a minimum, it should be amended to clarify and enhance PUC authority to establish agreements, eliminate discriminatory provisions barring CAP customers from obtaining Commission established payment agreements, require utility verification of grounds prior to any immediate termination, and eliminate discriminatory and unnecessary PGW-specific collections provisions.

Respectfully submitted,

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