

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Comments of

**SONNY POPOWSKY
CONSUMER ADVOCATE**

**Regarding
Chapter 14 of the Public Utility Code**

**Harrisburg, Pennsylvania
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**Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048 - Office
(717) 783-7152 - Fax
Email: spopowsky@paoca.org
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**Chairman Godshall, Chairman Preston
and Members of the House Consumer Affairs Committee**

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979. Thank you for permitting me to provide these Comments regarding the status of Chapter 14 of the Public Utility Code.

The provisions of Chapter 14 were added to the Public Utility Code by Act 201 of 2004, partially in reaction to utility collection problems at the municipally owned natural gas utility – Philadelphia Gas Works (PGW). Indeed, several of the provisions of Chapter 14 apply only to PGW. While the most serious collection problems were occurring at PGW, the General Assembly took the opportunity in 2004 to address concerns raised by other electric and natural gas utilities regarding the Public Utility Commission’s interpretation and enforcement of existing customer service regulations.

Significantly, Chapter 14 specifically required the PUC to submit a Report to the General Assembly every two years regarding the effects of the chapter’s provisions on utilities and consumers. Act 201 also contained a self-executing expiration date of December 31, 2014, unless sooner re-enacted by the General Assembly.

The PUC issued its most recent Biennial Report on the implementation of Chapter 14 on January 14, 2011. Overall, the latest PUC Report concludes that Pennsylvania utilities “have successfully implemented Chapter 14 since its passage” in 2004. The PUC Report points to a number of improvements in utility collections data, particularly for PGW. At the same time, the Report sets forth a number of statistics and issues that raise concerns about the effects of Chapter 14 on payment-troubled customers.

For example, the Report notes that “terminations increased dramatically since the passage of Chapter 14 but have leveled off in recent years,” and that “more customers now enter the winter without a central heating source and the Commission is concerned about the health and safety of the occupants in these dwellings.” Particularly relevant here is the Report’s statement that “the Commission has turned away 94,777 customers who are ineligible to receive a PAR [Payment Agreement Request] since the passage of Chapter 14.”

The Report notes that low income consumers have benefitted in recent years from the substantial growth in enrollment in Customer Assistance Programs (CAPs), which has increased by 92% from 2004 to 2009. I agree with that conclusion, but I would not attribute that increase to the provisions of Chapter 14. Rather, I would point to the General Assembly’s enactments in 1996 and 1999 of electric and natural gas restructuring laws, both of which contained strong “universal service” provisions and, I believe, have helped lead to some of the best utility low-income programs in the Nation.

My own major concern with Chapter 14 when it was enacted was that it deprived the Public Utility Commission of too much of its discretion in developing standards and resolving disputes between utilities and customers, and instead gave greater discretion to the utilities. This is best illustrated by the 94,777 customers who, as noted above, were “turned away” by the Commission because the PUC could no longer help them under the terms of Chapter 14.

Utilities have a right to be paid for their service, and to the extent that some customers do not pay their bills, those “uncollectible” expenses can be passed on to other customers. At the same time, the Public Utility Commission’s regulations traditionally sought to maximize revenue collection while treating the termination of essential utility service as a last resort for those who

fail to meet reasonable payment arrangements. Chapter 14 removed much of the discretion from the Public Utility Commission and instead placed that discretion in the hands of the utilities.

I understand that at the time Chapter 14 was under consideration, many utilities expressed strong objections to the manner in which the Commission was interpreting and enforcing some of its regulations, particularly with respect to the imposition of successive payment agreements for many customers who did not pay their bills and developed large arrearages. In my view, however, Chapter 14 may have imposed too many restrictions on the PUC that may prevent it from assisting those customers who cannot pay their bills.

As this Committee considers the status of Chapter 14 and begins to consider whether or not the statute should be renewed or modified prior to its statutory expiration date in 2014, I would respectfully urge you to consider some of the proposals that have been made previously that would in my view restore a greater balance between the Commission's authority and the utility's sole discretion in a number of areas. While I recognize that this is an informational meeting and there are no specific legislative amendments before you, I would particularly urge the Committee to re-examine some of the proposals that were sponsored by Chairman Preston and other House members in prior legislative sessions. Several of those proposals were originally included in House Bill 824 of 2007, on which this Committee held a hearing (and at which I testified) in Pittsburgh on October 9, 2007. Some similar proposals were also included by Chairman Preston in House Bill 1399 of 2009. In my view, House Bill 824 of 2007 in particular recognized the need for continued vigilance in ensuring payment from those customers who can afford to pay, but also would have restored some of the Commission's ability to balance the interests of the utility and the customer in the most reasonable manner. I would like to briefly describe some of those proposed amendments at this time.

First with respect to payment agreements, Chapter 14 now limits the Commission to ordering a single “payment agreement” under which a customer can pay off overdue bills without having their service terminated. This provision was initially interpreted by some utilities, however, as prohibiting the Commission from ordering even a single payment agreement for a customer who had received a prior payment agreement from the utility. House Bill 824 made it clear that every customer can go to the PUC for assistance in obtaining one payment agreement from the PUC. House Bill 824 would also have explicitly required the utility to inform customers who enter into payment agreements of the availability of the utility’s Customer Assistance Program (CAP), which would enable low-income, payment-troubled customers to receive a discount on their monthly bill.

Second, with respect to termination of service, except during the winter months, Chapter 14 eliminated the prior PUC requirement that a utility must make personal contact with a customer before termination or, in the absence of personal contact, must post a notice at the customer’s premises that termination is about to occur. House Bill 824 would restore these notice requirements on a year-round basis. I would submit that this type of personal notice requirement has taken on even greater importance in recent years as “smart meter” technology allows utilities to employ “remote disconnection” devices where utility services can be shut off with the touch of a button from the utility’s headquarters. This new remote technology may save utilities money, but it also increases the chances that a utility may terminate service in a manner that unintentionally endangers the life of the customer. It should be recalled that it was the death of an elderly woman living alone in Munhall, whose utility service had been cut off in the winter of 1976, that gave rise to the Commission’s original protections against winter shutoffs. House Bill 824 also clarified the protections against shutoffs where a doctor or nurse practitioner

certifies that a member of the household is seriously ill or has a medical condition that would be aggravated by the cessation of utility service.

Third, with respect to deposits, Chapter 14 allows a utility to demand upfront cash deposits of two months payments for many new customers applying for electric, natural gas, and water service. These combined deposits can add up to several hundred dollars for an individual or family seeking to obtain necessary utility services. The inability to pay these large sums in advance can delay access to these vital services. Under House Bill 824, the utility would be limited to requiring a one-month deposit, and the customer would be able to pay that deposit over a 90-day period. House Bill 824 would also require PUC approval for any “credit scoring” methodology used by the utility in determining whether to require a deposit from an individual customer in the first instance.

Fourth, with respect to reconnection of service after termination, Chapter 14 requires the customer to pay a reconnection fee and, in some cases, 100% of any balance owed in full before service can be restored. House Bill 824 would limit the amount of any reconnection fee, and would give all customers at least six months to pay off any outstanding balances in order to restore service. Additional periods to pay off outstanding balances would be permitted, depending on the customer’s income level.

There were other beneficial provisions in House Bill 824 of 2007, as well as the subsequent proposals contained in House Bill 1399 of 2009. But generally, as the descriptions above illustrate, these Bills would have modified some of the provisions of Chapter 14, while leaving the necessary framework in place under which utilities and the PUC can assure that customers who can afford to pay their bills must do so in a timely manner.

I believe that our goal should be to protect consumers who truly cannot afford to pay their bills on time from undue hardship, while at the same time seeking to ensure that utilities are able to collect full and prompt payment from those customers who can pay their bills but who choose not to do so. In my view, Chapter 14 may have swung the pendulum too far in favor of the utilities' collection efforts without leaving the Commission adequate authority to consider the needs of customers who try to pay their bills but are unable to do so in a timely manner. As this Committee considers the status and future of Chapter 14, I would urge you to consider methods in which that balance can be restored.

Thank you again for permitting me to present these comments here today. I would be happy to answer any questions you may have at this time.

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