

**BEFORE
THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
CONSUMER AFFAIRS COMMITTEE**

Comments

Harry S. Geller
Executive Director
Pennsylvania Utility Law Project

Regarding
Chapter 14-Act 201 of 2004

November 1, 2011

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 232- 2719

Good Morning Chairman Godshall, Chairman Preston and Members of the Consumer Affairs Committee. My name is Harry Geller. I am Executive Director of the Pennsylvania Utility Law Project (PULP). PULP is the designated statewide specialized project of the non-profit Pennsylvania Legal Aid Network. For three decades PULP has provided support, information, consultation and advocacy in conjunction with local legal aid and community based organizations representing the interests of the Commonwealth's low-income residential utility consumers. I have served as Executive Director since 1988. Thank you for the opportunity provided to me to comment on the status of Chapter 14/Act 201 of 2004.

Chapter 14 was enacted primarily to address the significant financial difficulties of the Philadelphia Gas Works ("PGW"). At the same time, in response to the concerns expressed by other utilities regarding the Public Utility Commission's ("PUC") implementation of its residential customer credit and collection rules (Chapter 56) as well as the gaming of the system by customers with the ability to pay, the General Assembly extended the scope of the legislation beyond PGW boundaries and extensively revised the existing paradigm. PUC oversight of payment agreements and service terminations was dramatically curtailed, utility companies were provided broad areas of discretion without review, and the financial responsibilities of residential consumers were significantly increased.

The potential effect of these modifications on consumers, particularly the low-income, was of significant concern to the General Assembly and to Governor Rendell. The Declaration of Policy asserts that "the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions." The Governor stated his concern that the legislation should be able to ensure that "service remains available under reasonable terms to customers with legitimate financial, medical and other problems." And that "we should

pay close attention to how these new rules are used by the utilities and enforced by the PUC.”

Because of these concerns about the unknown and unintended effect the changes would have on consumers, the legislation specified that Chapter 14 should, if not reenacted, expire on December 31, 2014. In the interim years, the Commission is required to issue biennial reports reviewing the progress and effect of the legislation. While other matters may be included, these reports are required to address:

- (1) The degree to which the chapter’s requirements have been successfully implemented.
- (2) The effect upon the cash working capital or cash flow, uncollectible levels and collections of the affected public utilities.
- (3) The level of access to utility services by residential customers, including low-income customers; and
- (4) The effect upon the level of consumer complaints and mediations filed with and adjudicated by the Commission.

A review of the data submitted by utilities, the reports issued by the Commission and the direct experience of PULP and the legal aid programs throughout the Commonwealth lead to the clear and unfortunate conclusion that, since the passage of Chapter 14, the level of access to utility services by residential customers, including low-income customers and the level of access by residential customers, especially low income Customer Assistance Program customers, to the Public Utility Commission has significantly deteriorated.

The number of annual involuntary service terminations dramatically increased immediately following the passage of Act 201 and have continued at unacceptable levels each year. The number of households, whose service has been involuntarily terminated during the

course of each year and who enter the cold weather months without safe central heating increased following the passage of Chapter 14 and remain at continually dangerous levels; and the restrictions imposed on Commission oversight and review has resulted in significantly reduced ability to obtain PUC review and remediation of complaints.

In its First Biennial Report, the Commission noted that there was a 44.7% increase in annual electric terminations (98,693 to 142,794) and a 55.4% (71,819 to 111,614) increase in natural gas terminations in the period 2004-2005. In its Second Biennial Report, the Commission noted that terminations had reached record levels and its Third Report the Commission found that involuntary terminations increased by 78.6 percent for the electric industry and by 45.5 percent for the gas industry from 2004-09.

Another standard which the Commission employs to determine the level of access to utility service is the Cold Weather Survey ("CWS") conducted by electric and natural gas companies. The survey measures the numbers of households shut-off during the year, who remain without a safe or central heat source on December 15. Experience and common sense clearly indicate that when service remains shut-off going into the heart of winter the household not only had an economic inability to afford to maintain service but has a continuing inability to access the necessary resources to restore service. Lack of service in the middle of winter is not one of choice.

The Third and most recent Biennial Report indicates that in the pre-Chapter 14 period of 2001-2004, there was an average of 12,049 households that entered the winter heating season without heat-related utility service compared to the near peak level of 17,037 reached in 2009. In addition, the Commission reported that 3,992 residences were using potentially unsafe heating sources, bringing the total homes not using a central heating system to 21,029 in 2009. The total

number of homes not using a central heating system continues to be considerably higher than the pre-Chapter 14 average of 14,979.

Unfortunately, this is not the whole picture. As the Commission has noted, the CWS does not provide any indication as to how long the household has been without utility service. The number of customers whose service was terminated in a prior year and has not been reconnected are not reflected in these figures.

Lack of utility service for an individual household is a significant challenge for each household member; at current statewide levels it has become a broad based concern for safety, public health and welfare. Yet, the statute in its present form significantly restricts the Commission's authority to address these issues. It has dramatically undercut the ability of the Commission to review and resolve individual customer disputes, determine appropriate payment agreements and to restore service. Termination of service is universally seen as a last resort because of its significant negative effect on health and safety. However, since the passage of Chapter 14, the PUC has had limited power to intervene in order to review the discretion provided to the utility in these most important situations. The most recent Biennial Report of the Commission indicates that, since the passage of Chapter 14, the Commission was without the authority to review the disputes of 94, 777 customers who contacted the Commission for review and assistance. These customers were simply turned away. To my way of thinking, the inability of the Commission, to review these life changing issues makes no sense and is poor public policy.

To its credit, the Commission, through its annual letter to utility CEOs attempts to address the critical nature of loss of utility service in the winter. The letter, which in recent years, has been signed by each Commissioner, requests flexibility and outlines commonsense and

reasonable actions which the CEO, at its discretion may take. However, since the Commission no longer has authority to order these actions, the letter may only be considered a request and therefore achieves uncertain and varying results. This is illustrative of the erosion of the authority of the Public Utility Commission, as a result of enactment of Chapter 14.

PULP believes that there are modifications to Chapter 14 which are necessary to redress the most serious of the unintended consequences which have resulted since the passage of Act 201. Of specific concern to PULP, Chapter 14 requires amendment to correct its affect on the low-income. Act 201 was intended to target customers with the ability to pay and not the financially disadvantaged. Unfortunately, the imbalanced collection process and broad net provided to utilities to aggressively collect from the financially able has also dramatically ensnared the poor. The low-income have been and continue to be especially hard hit. The termination rate of confirmed low-income residential electric and gas utility customers, as reported in the PUC Universal Service Reports based upon data provided by the utilities is approximately *three times higher* than that of the general population.

It continues to be asserted that the low-income have not been negatively affected by Chapter 14 and are faring better as a result of the growth of Customer Assistance Programs. This statement inappropriately and inaccurately attributes and correlates CAP growth and benefits to the passage of Chapter 14. This is incorrect. Universal Service and CAPs were required by the General Assembly as part of the Electric and Natural Gas Choice Acts years before the enactment of Chapter 14. Secondly, Although PULP strongly supports the continued growth and expansion of CAPs, in the context of Chapter 14, the benefit of being in a CAP is significantly eroded as the result of the absolute prohibition against the Commission setting any payment agreement terms regarding CAP rates. Finally, because enrollment levels vary significantly

from company to company, most low income customers do not participate. Statewide CAP participation rates reach fewer than 50% of the *confirmed low-income* population. As the Commission has correctly pointed out in its Universal Service Reports, the CAP participation rate would be much lower if the rate reflected estimated rather than confirmed low-income customers.

In sum, low-income customers clearly have lost important protections as a result of the passage of Chapter 14:

- Low-income Customer Assistance Program customers have lost the pre-Chapter 14 right to have *even one* payment agreement for missed payments and the Commission has lost all authority to enter a payment agreement involving CAP rates.¹
- Low-income customers have lost the pre-Chapter 14 right to a reasonable payment agreement based on individual factors.²
- Low-income customers have lost the pre-Chapter 14 right to personal contact from the utility three days prior to termination.³
- Low-income customers have lost their pre-Chapter 14 waiver from the payment of security deposits and reconnection charges;

PULP respectfully submits that in order to regain balance within Chapter 14 that the Committee must, at a minimum, carefully examine and revise the payment agreement and security deposit sections of the Act.

Low-income families, like many other families, occasionally face cash flow problems. A payment agreement is a valid tool to help low-income families deal with these problems and potentially avoid termination. Once terminated, a low-income household must often accumulate a lump sum payment, deposit, and reconnection costs to have service restored. In these circumstances, the ability of the Commission to examine the unique circumstances and provide

¹ See 66 Pa C.S. § 1405(c).

² The individual factors have been replaced by rigid timelines. See 66 Pa C.S. § 1405 and § 1407.

³ Personal contact can now be replaced by two attempted telephone calls. See 66 Pa C.S. § 1406(b)(1)(ii).

reasonable payment agreements is necessary. Chapter 14 should clearly acknowledge the Commission authority to issue *one payment agreement* to residential customers who are with or without service; most especially, the Commission must have the authority to provide one payment agreement to the poorest consumers, those who have outstanding balances that include CAP bills.

Security Deposits

Under Act 201, an applicant determined by a utility to lack 'credit worthiness' may be required to pay the equivalent of two-months of the electric, the gas and the water bill in advance. This extensive payment requirement acts as a barrier for many households to achieve service within a timely period. This amount should be waived or reduced to a more reasonable and more affordable level for low income households. As prior to the passage of Chapter 14, a period of 90 days to pay should be reinstated.

Thank you for your invitation to submit these comments regarding matters of significance to low income utility consumers. I am available and pleased to respond to any questions which you may have.

Harry S. Geller
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 232- 2719