

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Chapter 14 Implementation –
Reconsideration of
Implementation Order

PUBLIC MEETING October 27, 2005
OCT-2005-L-0113
M-00041802-F0002

STATEMENT OF VICE CHAIRMAN CAWLEY

On March 4, 2005, the Commission issued an Implementation Order addressing certain threshold issues relating to implementing Chapter 14. Before us for consideration is the recommendation of the Law Bureau in response to the Commission's *Section 703(g) Order Seeking Comments* entered on August 24, 2005 ("Reconsideration Order"). I agree with the staff recommendation that the Commission should amend its Implementation Order consistent with the recommendation and offer the following additional reasons in support of changing our original interpretation of our authority under Section 1405. That section provides in relevant part:

§ 1405. Payment agreements

(a) **General rule.**—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established by this chapter.

(b) **Length of payment agreements.**—The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(d) **Number of payment agreements.**—Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

(e) **Extension of payment agreements.**—If the customer defaults on a payment agreement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment agreement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

Having carefully reviewed and considered the several filed comments, I conclude that Section 1405 allows the Commission to establish one payment agreement that meets the terms of Chapter 14 before the prohibition in Section 1405(d) against establishment of a second payment agreement applies.

The plain language of Subsections (a) and (b) of Section 1405, when read together, as they must be, makes clear that the Commission has the authority to establish one payment agreement within the parameters of Subsection (b).

The second sentence of Subsection (a) unequivocally gives the Commission authority “to establish payment agreements between a public utility, customers and applicants within the limits established by [Chapter 14].” The first sentence of Subsection (a) authorizes the Commission “to investigate complaints regarding payment disputes between a public utility, applicants and customers.”

Subsection (b) then provides for the maximum lengths of time that customers are allowed to “resolve” an unpaid balance on an account “that is subject to a payment agreement that is investigated [pursuant to a complaint] by the commission and is entered into by a public utility and a customer....” *Thus, Subsection (b) specifically addresses a customer complaint involving a payment agreement previously entered into between a customer and a public utility.* The Commission may hear that complaint under Section 701 and may grant relief by establishing under Subsection (a) a payment agreement that comports with the parameters of Subsection (b). If the customer-utility payment agreement comports with Subsection (b), the Commission is powerless to do more and must dismiss the complaint (unless it finds that there has been a “change in [the customer’s] income” or a “significant change in circumstance” under Subsections (d) or (e), respectively, as described below). But, at the least, the customer is given one opportunity to appeal to the legislatively-created administrative agency that, since its inception more than ninety years ago, has been the final arbiter of disputes between public utilities and their customers.

In the event that the Commission finds that the customer-utility payment agreement violates the parameters of Subsection (b) and for the first time establishes a compliant payment agreement, “[a]bsent a change in [the customer’s] income,” it may not establish, or order the public utility to establish, “a second or subsequent payment agreement if [the] customer has defaulted on a previous payment agreement.” Subsection (d).

In other words, by the terms of Subsections (a) and (b), even though a customer defaults on a “previous” payment agreement with the public utility involving the same unpaid account balance, that customer may still informally or formally complain to the Commission (there being no statutory deadline line to do so, equivalent to, for example, the 30-day appeal period within which a final Commission decision must be appealed to the Commonwealth Court). The Commission, if it has not yet established a payment agreement involving the same unpaid account balance, may establish a payment agreement in conformity with Subsection (b). Thereafter, absent a “change in income,” the Commission may not establish a second payment agreement or order the utility to do so.

The only other relief possible pursuant to Subsections (a) and (b) is provided by Subsection (e)—reinstatement and extension of the one payment agreement entered into with the Commission or of the payment agreement or agreements entered into with a utility (at its discretion as provided in the second sentence of Subsection (d)) upon proof of a “significant change in circumstance.”

Consequently, by overlooking the plain language of Subsection (b) when read in conjunction with Subsection (a), the Commission in its *Chapter 14 Implementation Order* entered on March 4, 2005, at Docket No. M-00041290F0002, erred by concluding that the Commission has no authority to establish a payment agreement in conformity with Subsection (b) if a customer defaulted on a “previous” payment agreement with a public utility.

For the foregoing reasons, the Commission’s analysis failed to give effect to the authority granted by Subsections (a) and (b) to establish a *first and only* (except where there has been a “change in income”) payment agreement upon complaint concerning a “payment dispute” involving a previous customer-utility payment agreement.

October 27, 2005


James H. Cawley, Vice Chairman