

**BEFORE THE PENNSYLVANIA
HOUSE CONSUMER AFFAIRS COMMITTEE**

Testimony of

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Regarding

**Substantive Provisions of Chapter 14
And
House Bill 939**

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**Chairman Godshall, Chairman Daley
And Members of the House Consumer Affairs Committee**

My name is Tanya McCloskey. I am serving as the Acting Consumer Advocate of Pennsylvania since the retirement of Sonny Popowsky at the end of October of 2012. I have worked at the Office of Consumer Advocate since 1987. Thank you for inviting me to give comments before this Committee regarding the substantive provisions of Chapter 14 and House Bill 939 that would amend Chapter 14 of the Public Utility Code to apply to wastewater utilities.

Substantive Provisions of Chapter 14

Let me state at the outset that I urge this Committee to consider substantive amendments to Chapter 14 as part of any consideration of the continuation of its provisions. The existing provisions of Chapter 14 were added to the Public Utility Code in 2004, largely in response to utility collection problems at one municipally owned natural gas utility – Philadelphia Gas Works (PGW). Indeed, many of the provisions of Chapter 14 apply only to PGW. Unfortunately, in my view, Chapter 14 upset the balance of utility tools and consumer protections that had previously been established in regulations by the Pennsylvania Public Utility Commission.

The goal should be to protect consumers who cannot 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 swung the pendulum too far in favor of the utilities' collection efforts without giving adequate consideration to the truly life and death needs of customers who try to pay their bills but are unable to do so in a timely manner.

Soon after Chapter 14 was passed, the number of utility terminations increased substantially. Among electric and natural gas utilities, the number of customers whose service

was terminated went from 170,512 in 2004 to 254,408 in 2005. By 2011, electric and natural gas utility terminations increased to 272,961 per year, despite the much lower natural gas costs. The loss of utility service is harmful to any household, but in some cases can lead to tragic results such as fires caused by candles used for light, or hypothermia or asphyxiation caused by substandard temporary heating devices.

The 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. 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. 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.

If Chapter 14 is to continue, several provisions should be amended to better restore the balance between the Commission’s authority and the utility’s discretion. I would urge the Committee to consider some of the proposals that have been made previously, particularly in House Bill 824 of 2007. House Bill 824 of 2007 recognized the need for continued vigilance in ensuring payment from those customers who can afford to pay, but also would restore some of the Commission’s ability to balance the interests of the utility and the customer in a reasonable manner.

I will highlight below some of the provisions of Chapter 14 that I believe are in need of further consideration and amendment to correct the imbalances and assure that the

Commission has the ability to address the literally life and death consequences of decisions involving essential utility service.

Deposits

Under Chapter 14, a utility can 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. Amendments should be considered to the deposit provisions so that 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. PUC approval should also be required for any “credit scoring” methodology used by the utility in determining whether to require a deposit from an individual customer and such methodology should be related to a customer’s utility bill payment history.

Payment Agreements

Chapter 14 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 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. While the Commission has clarified its authority under this provision, an amendment should be considered to make clear that every customer can go to the PUC for assistance in obtaining a payment agreement from the PUC. Removing any ambiguity would improve the administration of Chapter 14. Additionally, the Commission’s discretion to

allow for a subsequent PUC ordered payment agreement upon a showing of a significant change in circumstances as defined by Act 201 should be restored. It may also be beneficial to require 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.

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. These notice requirements should be restored 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 will allow 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.

Chapter 14 also eliminated the longstanding PUC policy that prohibited utilities from terminating service during the winter months without specific PUC approval. It should be noted that it was the death of an elderly woman 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. Chapter 14 allows winter shutoffs without PUC approval for households with incomes above 250% of the federal poverty level (or above 150% of the poverty level for customers of

Philadelphia Gas Works). Winter shutoffs should not go forward without specific PUC authorization so that the PUC can evaluate all of the circumstances. Clarification is also needed regarding 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.

Reconnection of Service

In order to obtain 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. Consideration should be given to limiting the amount of any reconnection fee, and giving all customers at least six months to pay off any outstanding balances in order to restore service. Additional periods to pay off outstanding balances should also be permitted, depending on the customer's income level. Restoration periods may also need to be revisited, particularly when there is a smart meter on the residence and in situations where no street or sidewalk digging is required. Even in situations where street or sidewalk digging is required, the current time periods to restore service may be excessive.

There are other provisions of Chapter 14, some of which apply only to Philadelphia Gas Works and others that apply to all affected utilities that should be further examined in this process. I look forward to working with this Committee to develop modifications to Chapter 14 that would leave the necessary framework in place under which utilities and the PUC can assure that customers who can afford to pay their bills continue to do so

in a timely manner while at the same time, customers who truly cannot afford to pay their bills are provided the assistance that they need.

House Bill 939

As I mentioned, 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). 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.

Act 201 also included water companies as public utilities subject to the provisions of the statute, but it did not include wastewater companies in its provisions. There are more than 2,000 water systems and over 1,000 wastewater systems operating in Pennsylvania, but the PUC regulates just about 100 of the water systems and about 60 wastewater systems. Many of these wastewater systems are very small, serving less than 1,200 customers. Throughout the 1980s and much of the 1990s, it was not very common for a large investor-owned water company regulated by the PUC to also own or operate a wastewater company. There has now been greater consolidation in this area particularly as many of the small troubled wastewater systems have been acquired by larger regulated water systems.

As I understand the purpose of House Bill 939, it is intended to address the situation where regulated water companies and regulated wastewater systems are under the same corporate ownership. The bill seeks to address administrative challenges where utilities provide both services but must operate under two sets of billing and collection rules. In my view, if a

water and wastewater system are under the same corporate parent and operate common billing systems and call centers for both their water and wastewater customers, it would be less confusing for customers and more efficient for the utility to have the same set of rules. As I testified, though, amendments to Chapter 14 to restore the Commission's ability to balance the interests of the utility and the customer in a more reasonable manner are needed before extending the provisions of Chapter 14.

While including wastewater utilities that are part of the same corporate family as a regulated water utility may be more efficient, this situation does not apply to all of the 60 regulated wastewater systems in Pennsylvania. As I read the language of House Bill 939, all wastewater utilities, even those not affiliated with a water company, would be included under the provisions of Chapter 14. From our work with the small wastewater systems, our Office is not aware of significant problems with uncollectible expense for wastewater service at these small utilities, the problem that Chapter 14 sought to address. The billing system and administrative system changes that might be necessary for these companies to conform to Chapter 14 could be costly to implement for very little, if any, gain. As I mentioned earlier, many of these wastewater systems are very small which means that the costs to conform to Chapter 14 would be borne by a very small number of customers.

If the purpose of House Bill 939 is to address the combination water and wastewater companies, I would suggest that the language be modified to make this clear. By way of example, the definition of public utility in Act 201 could be amended to add the phrase "or wastewater utility that is wholly owned by a common parent company as a water distribution utility." In the alternative, I would suggest that wastewater companies be given the option of

whether to change their systems to meet the requirements of Chapter 14. Under this alternative, those companies finding it cost-effective to make the change could do so.

One other important issue regarding the termination of service arises if wastewater utilities are included in Chapter 14. Wastewater service cannot be terminated as there is no “shutoff valve” on the wastewater lines. When a customer becomes delinquent on a wastewater bill and termination of that service becomes necessary, the wastewater company works with the customer’s water service provider to have the water service terminated. That water service provider may be a municipal water entity, a water authority not subject to the Commission’s jurisdiction, or a regulated water company. Even for wastewater companies that are owned by the same corporate parent as a regulated water company, the water service provider for some of its customers could be different than its affiliated water company.

Wastewater companies typically have negotiated agreements with these entities to provide the water service termination if needed. If wastewater companies are required to follow Chapter 14, issues may arise as to the termination of service through a water service provider that is not regulated by the PUC. It is not clear whether agreements with municipal water entities or water authorities would need to be renegotiated or if these entities could follow the procedures in Chapter 14. This again suggests that it may not be appropriate to fully extend the provisions of Chapter 14 to all wastewater companies on a mandatory basis.

Conclusion

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

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