

**Before the
Consumer Protection, Technology & Utilities Committee
Pennsylvania House of Representatives**

**Hearing on House Bill 1077
Reauthorization of Chapter 14 of the Public Utility Code
January 17, 2024**

**Testimony of
Terrance J. Fitzpatrick, President and CEO
Energy Association of Pennsylvania**

Good morning, Chairman Matzie, Republican Chairman Marshall and members of the House Consumer Protection, Technology & Utilities Committee. I am Terry Fitzpatrick, President and CEO of the Energy Association of Pennsylvania (“EAP” or “Association”), a trade association comprised of electric and natural gas utilities—also known as electric and natural gas distribution companies—operating in Pennsylvania. EAP advocates for its members before the General Assembly and state agencies, assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through its operations and consumer services conferences. Thank you for this opportunity to provide testimony regarding House Bill 1077 and reauthorization of Chapter 14 of the Public Utility Code.

The History and Purpose of Chapter 14

Chapter 14 is entitled “Responsible Utility Customer Protection.” It was enacted in 2004 and reauthorized with some revisions in 2014. Chapter 14 establishes standards for key aspects of the collections process of public utilities, including payment arrangements for customers who fall behind in paying their bills and the process that governs termination and reconnection of utility service. The Declaration of Policy section of Chapter 14 states that the rules the Public Utility Commission applied in this area prior to passage of the Chapter “. . . have not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers’ delinquencies.” This

section goes on to state that “[t]he General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.”¹

Prior to the enactment of Chapter 14, there were no specific limits on the PUC’s discretion on collections issues such as the length or number of payment arrangements. Over time, the PUC established extended payment arrangements in which customers were granted periods of 10, 20, 50, and even 100 years to repay past due amounts. I observed this troubling trend during my service as an assistant counsel in the PUC law bureau, as counsel on the staff of a Commissioner, and later as a member of the Commission from 1999 to 2007. I was Chairman of the Commission when Chapter 14 was being debated in the General Assembly, and I thought then, and think now, that it was necessary to establish some limits on the PUC’s discretion in this area.

The language from the declaration of policy section that I quoted above uses the word “equity” to describe the goal of the collections process. A similar word often used to describe the goal of utility regulation is “balance.” As applied to the collections process, we believe public policy should seek a balance between the rights of customers who pay their bills on time and customers who fall behind in paying their bills. This is so because unpaid bills eventually become part of the bad debt expense that is included in setting utility rates that are paid by all customers.

Chapter 14 Contains Extensive Customer Protections

Chapter 14 establishes a fair balance between the interest of paying and non-paying customers and we believe this balance should be preserved in reauthorizing the law. Chapter 14 presently contains extensive protections for customers who fall behind on their bills:

¹ 66 Pa. C.S. Sec. 1402 (1), (2).

- **Multiple notice requirements prior to termination**—this includes a written notice and attempts to make personal contact.² Under PUC rules, the written notice must include information about assistance programs.³
- **The right of customers to stop the termination process by filing a complaint with the PUC**⁴—customers can allege billing errors or just that they disagree with the terms of a payment arrangement offered by the utility.
- **The right of customers to stop the termination process by filing a medical certificate**—these certificates indicate that a member of the household has a medical condition that requires continuation of utility service.⁵
- **A ban on termination of service during winter months**—this provision applies to all customers below 250% of the federal poverty level.⁶
- **The right of customers to at least one payment arrangement from their utility and also one from the PUC**—these arrangements are essentially interest-free loans that give customers a maximum of five years depending on income to repay past-due balances.⁷

I submit that the average person looking at these protections would conclude that the utility collection process it is very fair to those who fall behind in paying their utility bills.

The Existing Customer Protections in Chapter 14 are Subject to Abuse

While the protections in Chapter 14 are intended to help customers who are struggling but trying to pay their bills, the hard truth is that these same protections are also tools that can be used to avoid paying for utility service. The customer service representatives of utilities could provide examples of customers who break multiple payment arrangements (in fact, for some utilities, over half of payment arrangements are broken within the first year), do not make any payments during the winter moratorium, file repeated complaints with the PUC to take advantage of the stay that places on the collections process, and file multiple medical

² 66 Pa. C.S. Sec. 1406 (b).

³ 52 Pa. Code Sec. 56.91(b)(4-9).

⁴ 66 Pa. C.S. Sec. 1410.

⁵ 66 Pa. C.S. Secs. 1403 (definition of "medical certificate"), 1406 (f).

⁶ 66 Pa. C.S. Sec. 1406 (e).

⁷ 66 Pa. C.S. Sec. 1405(d).

certificates to stop the collections process. As each of these actions take place and the termination process is delayed, arrearages that start as manageable can quickly spiral out of control.

The PUC recently decided a complaint case involving a customer who had an arrearage of \$32,000, upholding the decision of the Administrative Law Judge that the complainant had abused the administrative process to avoid termination of service and that, as a result, the customer should be barred from filing further complaints.⁸ A review of the record in that case shows that over many years the customer took advantage of customer protections in the manner described earlier. In that case, then Vice Chairman DeFrank of the PUC issued a statement expressing concern that the number of customer accounts with balances due over \$10,000 had tripled from 2019 to 2021, to a total of 1,921 statewide. Unfortunately, this is not the only example of misusing the available protections to avoid termination over an extended period of time, resulting in the accrual of large bills.⁹ The many millions of dollars of bad debt expense attributable to these customers will eventually result in higher rates for all residential customers.

The experience during the pandemic also provides a cautionary tale on the need for an effective utility collections process. Recent experience with the extended COVID-related moratorium on terminations ordered by the PUC showed that without the accountability provided by the collections process, many customers put off paying utility bills. Despite an unprecedented level of federal and state assistance, fewer customers applied for assistance than before the

⁸ *Curry v. Pennsylvania Electric Co.*, Docket No. C-2022-3032454, Order entered March 16, 2023.

⁹ A recent sampling of such cases where the PUC found abuse of process against complainants utilizing the protections of the collections process to avoid payment include: *Brown v. PGW*, Docket No. C-2022-3032000, Order entered November 10, 2022; *Moyer v. PPL*, Docket No. C-2022-3031294, Order entered December 8, 2022; *Herr v. West Penn*, Docket No. C-2021-3028202, Order entered September 15, 2022; *Jennifer Patora v. PAWC*, Docket No. C-2017-2627873, Order entered August 8, 2019; *Jennifer Porta v. UGI*, Docket No. C-2018-3003485, Order entered August 8, 2019;

pandemic. This resulted in a 43% drop in LIHEAP receipts¹⁰ for utility customers. Meanwhile, arrearages grew by over 70%.¹¹ This experience shows that, human nature being what it is, many customers will not apply for assistance or pay for service without an effective collections process in place to enforce the customer's obligation to pay for service.

The potential for abuse of the protections in Chapter 14 is a critical consideration when contemplating statutory changes to expand protections for two reasons. First, it drives up the uncollectible expense of utilities. Since this expense is a component of utility rates, higher uncollectible expense puts upward pressure on the rates paid by all customers, including customers of modest means who struggle but manage to pay their bills. It should be noted that this uncollectible expense is likely to grow because total customer arrearages have increased in recent years. I have attached to my testimony a chart showing total customer arrearages, gross write offs, and costs of universal service programs from 2014 to 2022. Gross write offs and arrearages were steady to declining between 2014-2018, showing that the balance achieved by Chapter 14 was working to accomplish its original goal of getting those with the ability to pay, to pay. The COVID related moratorium, imposed via an Order in March 2020, initially banned all utility service terminations and was later modified in October 2020 and March 2021 to restore aspects of the residential collections process under Chapter 14.¹² The subsequent increase in arrearage totals from 2019 to 2022—from \$311 million to \$496 million—is due mostly to the pandemic and the related termination moratorium imposed by the PUC.

Second, the reality that these customer protections can be abused should be kept in mind when considering whether to add new protections or expand existing ones in reauthorizing Chapter 14. For example, just as some customers do not make payments during the winter

¹⁰ Department of Human Services' Weekly Energy Assistance Summaries ("EASUM") Reports for weeks ending 1/23/2020 and 1/16/2021.

¹¹ Compilation of individual company arrearage filings pursuant to PA PUC Docket No. M-2020-3019244, *Emergency Order Re: Establishing Public Utility Service Termination Moratorium*.

¹² *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Emergency Order March 13, 2020, PUC Docket No. M-2020-3019244.

moratorium, this same type of behavior can be expected if a moratorium is imposed during the summer months. Such avoidance behavior not only increases uncollectible expense for utilities and their bill-paying customers, it raises the risk of termination and leads to bills so high as to be unmanageable even with assistance.

Generous Assistance Programs are Available for Customers

There are a number of federal and utility-run assistance programs in place for customers who fall behind on their utility bills. For low-income customers, utilities administer universal service programs under which customers pay discounted rates and can have arrearages forgiven. Electric and gas utilities spent \$567 million dollars on these programs in 2022, and that cost is generally recovered from the general body of residential customers. Low-income customers may also qualify for the federal Low Income Home Energy Assistance Program (LIHEAP). Pennsylvania received just over \$200 million for LIHEAP in 2022. All customers can sign up for budget billing which allows them to spread costs over a year and reduce fluctuations in their monthly bill. Finally, utilities provide financial assistance for customers to make energy efficiency improvements to their homes and free home weatherization for low-income customers.

The attached chart shows that universal service costs have risen from \$361 million per year to \$567 million per year over the past three years. This increase is due to a combination of higher energy costs and a PUC policy statement that increased assistance to customers at the lowest income levels. The ratepayer-funded assistance programs administered by electric and gas utilities in Pennsylvania are among the most generous programs of their kind in the country.¹³ Again, the cost of these programs is recovered from all residential customers – even those who are just above the income guidelines to receive assistance and who also struggle to

¹³ In 2022, New York utility ratepayers funded \$307 million in assistance; Ohio utilities spent \$187 million; New Jersey utilities spent \$215 million. Only California (\$2.1 billion) spends more in ratepayer funded assistance than Pennsylvania utilities.

afford the essentials – and this should be kept in mind when balancing the interest of the general body of customers who pay their bills and customers who fall behind on their bills.

The Potential Impact of House Bill 1077

House Bill 1077 would reauthorize Chapter 14 until the end of 2034 and would make a number of changes to its provisions. Some of these changes include:

- Prohibiting termination of service during the summer months for certain income groups.
- Expanding the scope of the existing winter moratorium to cover all income groups.
- Increasing the number and length of payment arrangements and expanding eligibility.
- Eliminating the ability of utilities to require cash deposits.
- Prohibiting utilities from collecting reconnection fees on certain income groups.
- Lengthening and allowing an unlimited number of medical certificates.
- Removing provisions that are specific to the Philadelphia Gas Works.

Electric and natural gas utilities have concerns regarding these provisions. While providing these additional rights to customers who fall behind on their bills may help those customers in some instances, we believe it will come at an untenable cost to the general body of residential customers who have to pay for these programs and the associated uncollectible costs. Moreover, while the utility collections process should be (and is) fair to all customers and termination is used as a last resort, it is asking too much to have the collections process serve as a means to retain service for customers who cannot afford to pay for that service. Again, it is a hard truth, but we would ask you to consider that all of these additional protections are subject to abuse and that the cost of further obstructing the utility collections process will fall on the general body of customers.

We recognize the difficult task this Committee faces with Chapter 14 reauthorization due to the complex, sensitive issues involved and the divergent views of stakeholders on where to draw the line as to the appropriate balance between the interests of customers who fall behind on their bills and the general body of customers. We look forward to working with you to try and resolve these issues. Electric and gas utilities also have some relatively modest suggestions for changes to Chapter 14 to improve the efficiency of the collections process, address the problem of customers with very high balances, and protect the safety of utility workers, and we hope these recommendations can be considered in any upcoming discussions on the legislation.

Thank you for the opportunity to testify and I'll be happy to answer questions.

APPENDIX

