

**BEFORE THE
HOUSE CONSUMER PROTECTION,
TECHNOLOGY AND UTILITIES COMMITTEE**

Testimony of

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Regarding
HB1077

Chapter 14 of the Public Utility Code

Harrisburg, Pennsylvania
January 17, 2024

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**House Consumer Protection, Technology, and Utilities Committee
Public Hearing on HB 1077 (Chapter 14)**

Good morning, Chairman Matzie, Chairman Marshall, and Members of the House Consumer Protection, Technology and Utilities Committee. My name is Patrick Cicero. I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for allowing me to provide comments this morning about HB 1077 and the changes needed to Chapter 14 of the Public Utility Code. My office, the Pennsylvania Office of Consumer Advocate (OCA), was created in 1976 to serve as an advocate for Pennsylvania consumers before the Public Utility Commission (PUC).

I urge this Committee to adopt most of the substantive amendments to Chapter 14 set out in HB 1077 as part of any consideration of the continuation of its provisions. Currently, Chapter 14 is set to expire on December 31, 2024, unless reauthorized by the General Assembly. The existing provisions of Chapter 14 were originally 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 still apply only to PGW. In 2014, the General Assembly reauthorized Chapter 14 for an additional ten years and added provisions that provided moderate protections to consumers. The balance remains skewed, however, in favor of termination of service rather than the continuation of service. This is the failure of Chapter 14. In my view, Chapter 14 continues to provide inadequate protection for households to maintain service or to expediently reconnect service if their service is terminated for non-payment.

Chapter 14 was never intended to ensnare customers who cannot pay because of economic vulnerability, medical hardship, or domestic violence. Indeed, this body declared that the intended policy was to “provide protection against rate increases for timely paying customers resulting from other customers’ delinquencies” by “eliminating opportunities for customers

capable of paying to avoid the timely payment of public utility bills.” 66 Pa. C.S. § 1402(2). At the same time, the General Assembly sought “to ensure that service remains available to all customers on reasonable terms and conditions.” Id. at § 1402(3).

As Consumer Advocate, I share the goal that those who can pay should pay and that utilities be equipped with appropriate tools for collection when necessary to avoid imposing costs on other ratepayers. However, it is necessary to contextualize that utility uncollectible expenses, while important to contain, are not the paramount driver of rate increases by utilities.

Unfortunately, as it relates to Chapter 14, over the past twenty (20) years, we have seen that the pendulum has swung too far in favor of the utilities’ collection rights – resulting in a dramatic and wholly avoidable increase in utility terminations – without considering the truly life and death needs of customers who try to pay their bills but are unable to do so in a timely manner. As a result, there are certain necessary reforms to Chapter 14 to ensure a more appropriate balance.

The major concern with Chapter 14 is that it deprives the PUC of too much of its discretion in developing payment arrangement standards and resolving disputes between utilities and customers, and instead gives greater discretion to the utilities. This discretion by utilities has meant more terminations because soon after Chapter 14 was enacted, the number of utility terminations increased substantially. Among electric and natural gas utilities, the number of customers whose service was terminated went from 186,695 in 2004 to 273,677 in 2005, an increase of 46.6%. By 2014, when Chapter 14 was last reauthorized, electric, and natural gas utility terminations increased to 341,710 per year. This represents an increase of 83% over pre-Chapter 14 levels and 25% above 2005 levels. As evidenced by Charts 1 and 2 below, these

numbers have not gone down except for the extraordinary period during the COVID-19 moratorium on terminations.

Chart 1 – Residential Electric

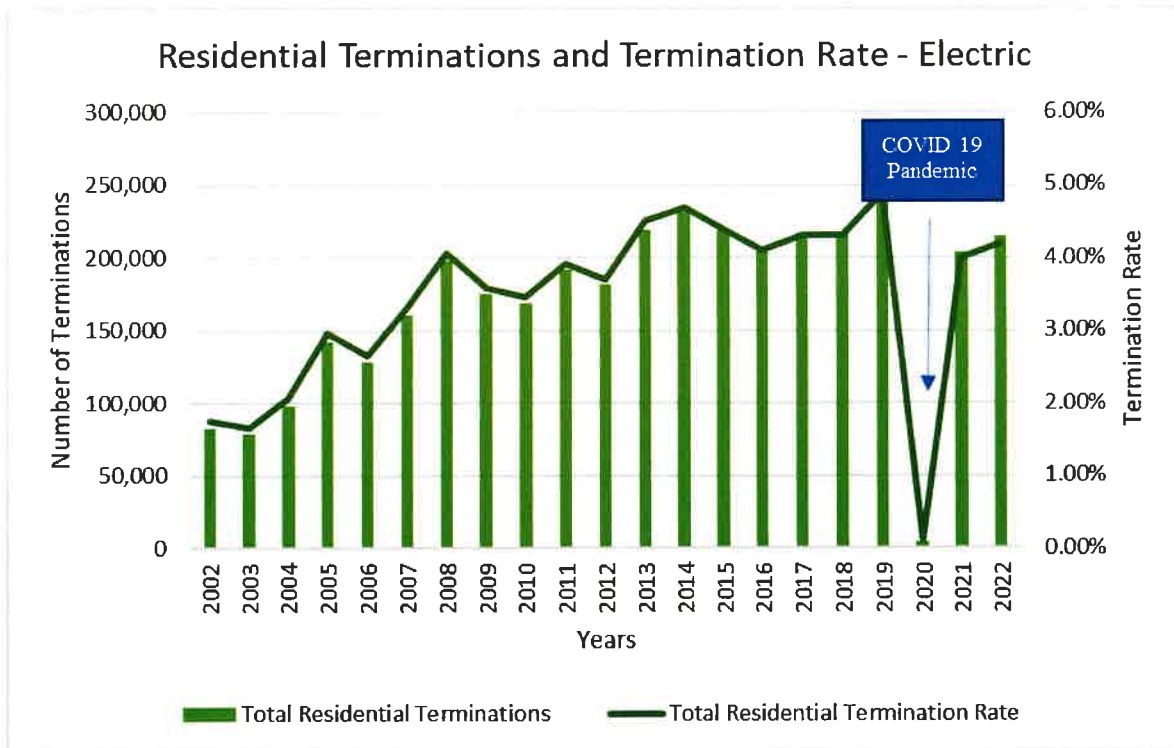
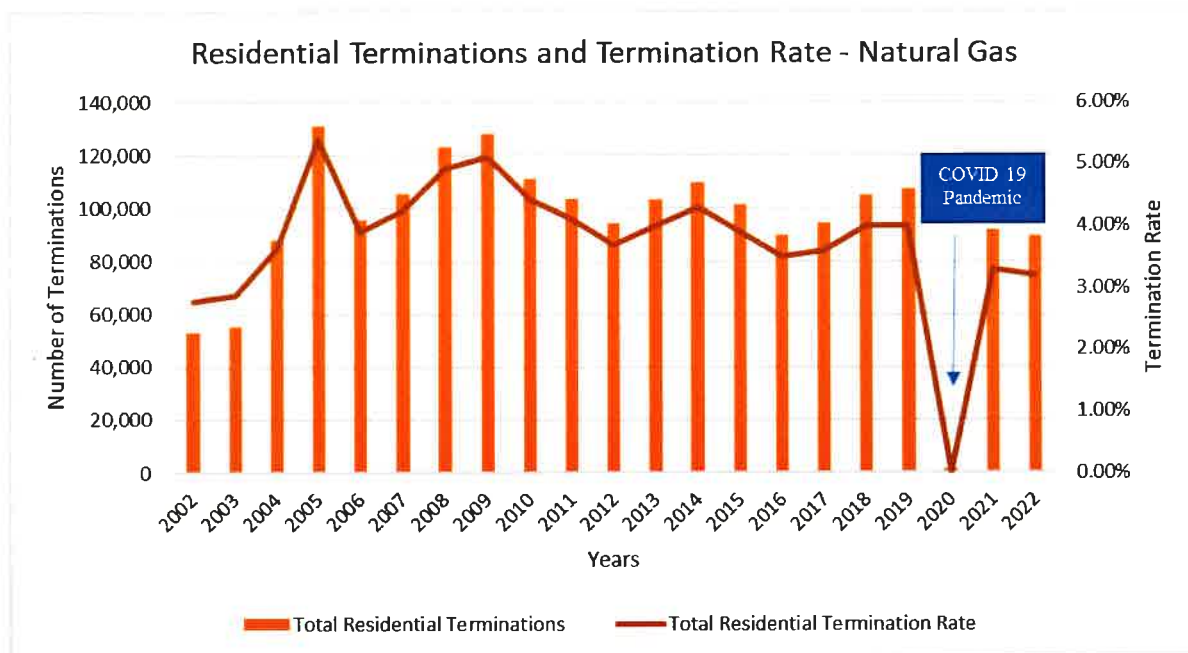


Chart 2 – Residential Natural Gas



While the charts above only look at electric and gas utilities through 2022, we know that total termination numbers in 2023 have not improved based on the PUC’s published data. The table below shows that through November 2023, there were 330,046 households who had their service terminated for non-payment across all industries covered by Chapter 14.

Table 1 – Terminations and Reconnections January 2023 - November 2023

**Terminations and Reconnections: Year-to-Date November 2022 vs. Year-to-Date November 2023
As Reported by Utilities Pursuant to Monthly Reporting Requirements at 52. Pa. Code 56.231**

Company	Terminations	Terminations	Percent Change	Reconnections	Reconnections	Percent Change
	2022	2023		2022	2023	
Duquesne Light	30,451	24,802	-19%	23,917	19,448	-19%
Met-Ed	28,548	26,400	-8%	25,184	23,023	-9%
PECO	75,689	87,488	16%	61,374	75,240	23%
Penelec	20,385	19,317	-5%	16,190	15,273	-6%
Penn Power	3,197	4,005	25%	2,453	3,153	29%
PPL	35,157	17,640	-50%	24,270	11,158	-54%
UGI Electric	1,606	1,450	-10%	1,210	1,030	-15%
West Penn Power	20,921	19,962	-5%	17,070	16,009	-6%
Total - Electric	215,954	201,064	-7%	171,668	164,334	-4%
Columbia Gas	11,376	10,454	-8%	6,511	5,466	-16%
National Fuel	6,861	6,981	2%	4,884	5,024	3%
Peoples	15,335	21,400	40%	11,544	17,212	49%
Philadelphia Gas Works	14,410	34,681	141%	9,275	23,400	152%
UGI Gas	26,882	31,066	16%	19,314	22,071	14%
Total - Gas	74,864	104,582	40%	51,528	73,173	42%
Total (Electric & Gas)	290,818	305,646	5%	223,196	237,507	6%
Aqua Pennsylvania	5,497	6,011	9%	4,723	4,951	5%
Pennsylvania-American	23,578	18,181	-23%	15,799	10,363	-34%
Pittsburgh Water & Sewer Authority	440	208	-53%	151	76	-50%
Water - Total	29,515	24,400	-17%	20,673	15,390	-26%
Total (Elec., Gas & Water)	320,333	330,046	3%	243,869	252,897	4%

12/20/2023

Terminations for non-payment.

Reconnections for full customer payment, partial payment or payment arrangement; for customer submission of a medical certification; and for reasons other than customer payment or medical certification.

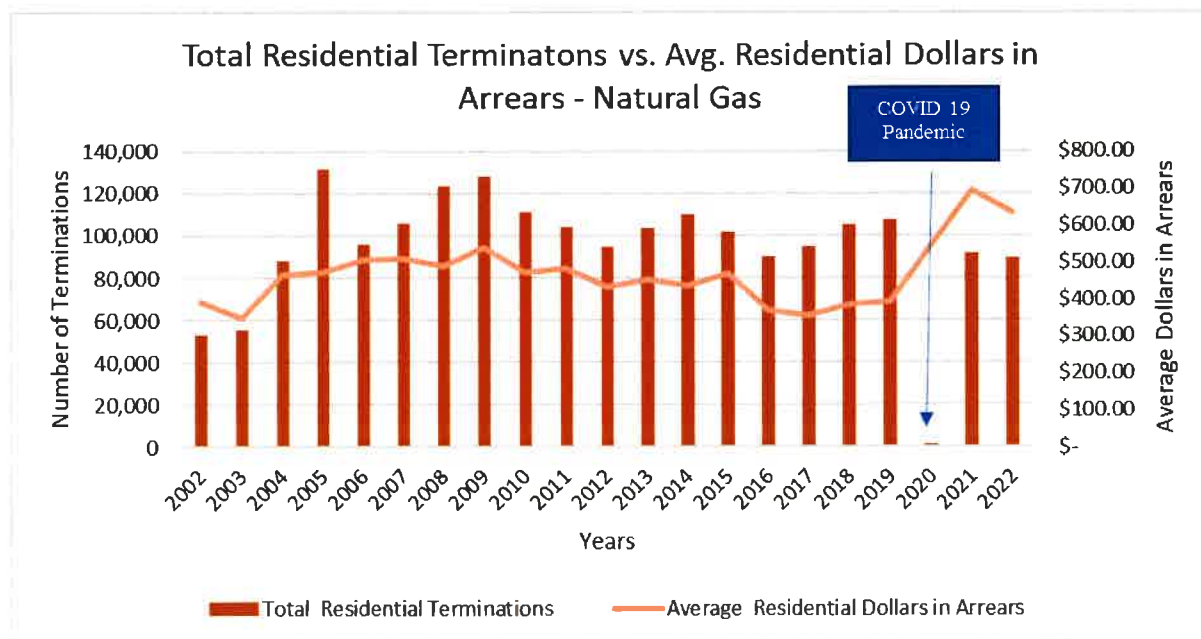
This data paints a clear picture of increasing utility terminations for Pennsylvania households over the past 20 years that can be directly attributed to the enactment of Chapter 14. What Chapter 14 did was to remove discretion from the PUC. For decades prior to Chapter 14, the PUC sought to maximize revenue collection while treating the termination of essential utility service as a last resort for those who failed to meet reasonable payment arrangements. Chapter 14 removed much of the discretion from the PUC and instead placed that discretion in the hands of the utilities. This has not been positive for consumers. The evidence suggests that in contrast to maximizing revenue collection, utilities have exercised their discretion by increasing utility termination. My view is that this does not protect ratepayers, the public, or our communities. The

tools provided by Chapter 14 to utilities also did nothing to reduce arrears as arrearage balances have remained either flat or grown since 2004 as evidenced by Charts 3 and 4, below:

Chart 3 – Residential Electric Terminations and Residential Arrears



Chart 4 - Residential Gas Terminations and Residential Arrears



In sum, the collection of data that we have demonstrates the failure of Chapter 14. Arrearages have not decreased, but terminations have significantly increased. Almost 100% more households are without service for some part of the year because of the decreased flexibility provided to the PUC to manage arrears, but ratepayers overall are no better off. To be sure, Chapter 14 has increased hardship for vulnerable communities, but it has not improved rates or reduced uncollectible expenses. It has merely compounded misery without material benefit to the public.

While utilities have the right to be paid for the service they provide, and ratepayers should be protected from the accumulation of unreasonable uncollectible amounts that could result in higher rates, Chapter 14 has not resulted in these outcomes. Chapter 14 is a failure, and it needs to be amended to better restore the balance between the Commission's authority and the utility's discretion. While continued vigilance is needed to ensure payment from those customers who can afford to pay, it is imperative that the PUC's ability to balance the interests of the utility, the public, and customers is restored in a reasonable manner.

To that end, I highlight some of the provisions of Chapter 14 that I believe need further consideration and amendment to correct the imbalances and assure that the PUC can address the literally life and death consequences of decisions involving essential utility service. All the OCA's recommended amendments, many of which are contained within HB 1077, are designed to minimize disconnection of service, and lessen the duration of any disconnection if it does occur. It should be the policy of the Commonwealth that loss of utility service is the absolute last resort. If this is the case, all efforts should be made to ensure that households with limited means, medical hardships, and other social vulnerabilities have the tools needed to remain connected. This requires restoring flexibility to the PUC to maximize bill payment and lessen disconnection.

The OCA supports the removal the PGW specific provisions.

When originally introduced, Chapter 14 was intended only to apply to PGW, which had at that time recently come under the jurisdiction of the PUC but was amended to provide additional tools to all electric and gas utilities.¹ However, the General Assembly inserted some specific provisions applicable only to PGW, reasoning that it had “unique financial circumstances.” In the last 20 years, to our knowledge, PGW has not routinely used this additional authority. To be clear, what was provided to PGW was the ability to impose *more stringent requirements on its customers*, PGW customers were not being provided with more protection from loss of service they were provided *less* protection. None of these PGW specific rights are needed and all should be repealed. While PGW is different than other utilities because it is owned by the City of Philadelphia and is a cash flow utility, it is no longer unique. In the last few years, the Pittsburgh Water and Sewer Authority has also been placed under PUC authority and it too is a cash flow utility without shareholders. Furthermore, PGW has come a long way in the last 20 years in stabilizing its operations in large part because of the PUC’s oversight and, as such, all the PGW specific provisions of Chapter 14 should be eliminated as set forth in HB 1077.

Definitions (Section 1403)

The OCA supports the list of amendments to Section 1403 as outlined in HB 1077. I will not address the definitions contained here at length but will talk about them in the context of the substantive sections to which they apply and outline why I think the proposed changes are appropriate.

¹ Water and wastewater utilities were added to Chapter 14 in 2014.

Security Deposits (Section 1404)

Currently, under Chapter 14, a utility can demand upfront cash deposits of two months payments from both applicants applying for electric, natural gas, and water service and from current customers. 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.

The OCA supports the full repeal and elimination of the right or ability of a utility to assess a security deposit. This change would help to restore balance in the relationship between utilities and customers, would eliminate the screening that is necessary for income or other creditworthiness determinations, and would recognize the irreplaceable, monopoly nature of utility service where there are no alternatives for distribution providers.

This change is necessary to ensure that households seeking to obtain service are not denied service because of determinations of creditworthiness as there is no substitute for public utility service and households are not able to, nor should they be asked to, go without service for any significant length of time.

Payment Arrangements (Section 1405)

The most significant limitation imposed upon the PUC when Chapter 14 was enacted was the limitation on the number and length of payment arrangements that the PUC could order. Prior to Chapter 14, the PUC routinely ordered payment arrangements that were based on a household's ability to pay and when the household fell on difficult circumstances the PUC routinely modified, amended, and lengthened those arrangements. All of this was done to ensure that households remained connected to service and to maximize revenue for utilities. After Chapter 14, the PUC has been constrained and limited to ordering a single payment arrangement

absent a change in income. (Section 1405(d).) In addition to limiting the number of payment arrangements to one, Chapter 14 also prescribed the duration of a PUC-ordered payment arrangement to a formulaic exercise that only considered the income of a household as opposed to a combination of a household's income and the size of the arrears. (Section 1405(b)).

The effect of both changes means that we now have high balances, growing arrears, and significantly higher termination rates than we did prior to Chapter 14. It is instructive to recall that in 2003, the year before Chapter 14 was enacted, there were approximately 135,000 utility terminations and average arrearages on payment arrangements were \$590, whereas in 2019, the last year pre-COVID, there were more than 350,000 utility terminations and average arrearages on payment arrangements was \$695. Thus, what we got from Chapter 14 was both higher balances and more terminations. One can draw a reasonable inference that it is because of the constraints placed on the PUC's ability to order multiple payment arrangements of reasonable lengths that we have the utility termination crisis that we do today.

While I would go further than HB 1077 does in restoring discretion to the PUC, I support the amendment in HB 1077 that would add Section 1405(b.1) that would allow for an alternative payment arrangement not to exceed two times the length of the payment arrangement that the household would otherwise be entitled to if the customer's monthly payment on the arrangement would exceed 20% of the customer's average monthly bill. I would recommend adding a language clarification: that the 20% threshold outlined in 1405(b.1) would be of the payment arrangement amount, that is, (b.1.) would be applicable if a customer's payment arrangement payment exceeds 20% of a customer's average monthly bill. This change would seek to ensure that households on payment arrangements would have a reasonable likelihood of making their

payments on those arrangements and thereby eliminating or reducing the potential for other customers to have to pay those arrears.

In addition to the change to add Section 1405(b.1), I support the modifications to Sections 1405(d) and (e). These sections concern the number of payment arrangements that the PUC can order (Section 1405(d)) and the ability to extend a payment arrangement once entered (Section 1405(e)). The proposed amendments to both would allow the PUC to ensure that households are paying down balances and reducing terminations.

Both changes are meant to vest discretion with the PUC to react to a household's particular circumstances and not simply order a payment arrangement that may be destined to fail if a household cannot reasonably be said to be able to afford the payment.

Notice of Termination of Service (Section 1406(b))

As indicated throughout, it is the OCA's position that utility termination should be a last resort for utilities and not a means of routine collection. However, when termination of service is necessary, changes are needed to ensure that a household receives adequate notice of a proposed termination of service so that they can prepare. Under current rules, a utility must send a notice by mail providing no less than ten (10) days' notice prior to service termination. The clock begins to run when the notice is mailed, not when it is received by the household. Additionally, while a utility must provide no less than 10 days' notice before terminating service, the termination notice can be acted on for sixty (60) days from the date on the notice. There are multiple problems with the current rules. First, the average time for the Postal Service to deliver a mail piece is 2.5 days.² Depending on when a termination notice is mailed, this alone

² [USPS Reports Consistent Performance Across All Mail Categories - Newsroom - About.usps.com](#) (last visited 1/03/24).

eliminates at least 25% of the minimum notice period. Moreover, many of us are aware of the erosion of the timeliness of U.S. mail delivery that occurred during the COVID pandemic.

Even assuming timely delivery, many consumers, including low-income consumers, have transitioned from receiving all important notices by mail and now routinely receive notices via text message and email. In 2004, when Chapter 14 was enacted, smart phones did not exist. In 2021, 85% of all adults in the U.S. reported that they owned a smart phone and 77% of adults have access to home broadband,³ although the level of ownership varied significantly depending on income and age. Even so, according to Pew, some 76% of households with income less than \$30,000 per year and 61% of persons over the age of 65 owned a smartphone in 2021.⁴

While recognizing the significant gap in access to technology and even with access, adoption of that technology for managing one's affairs, we support the changes contained in Section 1406(b) requiring utilities to send termination by both U.S. Mail and via electronic means (text and/or email) when a household consents to receive these notices electronically. Receipt of a termination notice by mail does and will remain important for the foreseeable future, however, requiring utilities to send the notice electronically will also benefit many households. These households will have the ability to receive the notice as soon as it is sent, providing additional time to allow them to make plans for a payment arrangement or seek financial assistance with the balance.

I also support increasing the minimum notice requirement from 10 days to 20 days as proposed in Section 1406(b)(1)(i).

³ [Mobile Technology and Home Broadband 2021 | Pew Research Center](https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021) (<https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021>) (Last visited 4/22/23)

⁴ Id.

In addition to requiring a utility to send notice by both U.S. Mail and through electronic means with affirmative consent, our office also supports the elimination of the absolute prohibition in the statute stating that the PUC cannot require any additional actions prior to termination. This prohibition is currently found in Section 1406(b)(2) and is overly broad and does not allow for appropriate discretion by the PUC in times of extraordinary circumstances. The proposed change in HB 1077 is not *carte blanche* for the PUC to impose additional requirements, as it is proposing that the prohibition remain “absent special circumstances.” There is no reason to believe that the PUC will abuse its discretion or authority in this regard; instead, this change will restore the balance the PUC needs to effectively protect the public if the circumstances require.

Winter Termination (Section 1406(e))

In general, the OCA would support a more expansive rule that prohibits winter shutoffs for *all* residential customers without specific PUC authorization during the winter months. This would require the removal of the income limitation currently contained in the bill. However, for purposes of the proposed amendments, our office supports the simple clarification in HB 1077 that would prohibit winter shutoffs by *all* public utilities without PUC approval for households with incomes below 250% of the federal poverty level. This would bring in water and wastewater utilities not just gas and electric utilities. In addition, like other sections, we support the elimination of the PGW-specific rules that only apply this prohibition to households at or below 150% of the poverty level be stricken so that all Pennsylvanians are similarly protected. Customers of PGW with income between 151% - 250% of poverty are as deserving of protection from winter termination as households of other utilities. The current rules also set up a strange

scenario whereby someone living in Philadelphia at 175% of poverty could have their gas turned off by PGW but not their electricity turned off by PECO.

Summer Termination Moratorium (Section 1407(e.1))

In general, the OCA remains cautious about the addition of a summer moratorium on utility termination as it is currently written but would support a more targeted moratorium for uniquely vulnerable households at or below 150% of the federal poverty level.

The OCA also believes that if a summer moratorium is permitted it may make sense to apply it only to electric and water utilities rather than natural gas utilities. There is likely an insufficient nexus between summer cooling needs and natural gas service to justify a prohibition on natural gas service termination in the summer months.

Medical Certificates (Section 1406(f))

The OCA supports changes proposed to the medical certificate provisions of Chapter 14. The changes proposed by HB 1077 would allow for a seven (7) day period, prior to termination of service, for a household to temporarily delay termination to allow them to obtain a medical certificate. Given the delays in access to primary care, this is a reasonable length of time for a household that would not unduly delay the termination of service process for households unable to obtain a medical certificate.

In addition, the section would create a statutory period of 90 days from the date a medical certificate is issued where service cannot be terminated or 6 months for households with long-term or chronic illness. While some regulatory clarity may be required about what constitutes long term or chronic illness, the OCA supports these expanded timeframes. In addition, utilities should be statutorily obligated to attempt to negotiate a good faith payment arrangement with a medically vulnerable household or enroll the household in CAP if eligible. The goal of medical

certifications is a temporary pause in the termination process to allow a medically vulnerable household time to address their medical care and their utility debt and, thus, a longer period should be coupled with an obligation by the household and the utility to negotiate a payment arrangement that the household can afford to pay that allows them to remain connected beyond the duration of the medical certificate.

Reconnection of Service (Section 1407)

To obtain reconnection of service after termination, Chapter 14 currently requires the customer to pay a reconnection fee and, in some cases, 100% of any balance owed in full before service can be restored. Both are barriers to reconnection of service. The OCA's position is that Chapter 14 should be amended to prohibit a utility from charging a reconnection fee. HB 1077 does this with the addition of Section 1407(a.1) for households at or below 300% of poverty. The OCA supports this addition. Reconnection fees create barriers for households to reconnect utility service and do nothing to eliminate or reduce high balances because they do not reduce arrears. The goal should be to ensure that households who are disconnected from service can be reconnected with as few barriers as possible and that any money paid to the utility should reduce balances so that the household can remain connected and reduce the future risk to service termination. If reconnection fees are eliminated, a utility can be made whole by having reconnection costs included as a part of a utilities' operating expenses for ratemaking purposes. This is not dissimilar to other costs of operation currently.

The OCA also supports the changes to Section 1407(c) that would lengthen the time allowed to make repayment on past due debt to get reconnected to service. The OCA supports these expanded time periods and is particularly supportive of the addition of 1407(c)(iv) that

would provide Section 1405 payment arrangements for customers or applicants who have not already had one.

Other changes

The OCA supports the other changes added by HB 1077, in particular the expansion of the late payment charge waiver to household up to 300% of poverty contained in Section 1409, the additional duties placed on public utilities under Section 1401.1, the addition of reporting that was added under new Section 1415.1, and the expansion of and clarification of Section 1417's non-applicability to make it less onerous on victims of domestic violence to have more permissive rules to remain connected to utility service.

My office stands ready to be a resource to this Committee throughout the process of determining what changes are needed to Chapter 14 prior to its reauthorization. I look forward to working together collaboratively for the benefit of all Pennsylvanians.

Thank you for permitting me to testify. I would be happy to answer any questions you may have about my testimony, the changes that we have proposed, or those proposed by others.