Rhode Island Affiliate, American Civil Liberties Union

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October 24, 2007

Luly Massaro
Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: PROPOSED REVISIONS OF RULES GOVERNING THE TERMINATION OF RESIDENTIAL ELECTRIC, GAS AND WATER UTILITY SERVICE
PUBLIC UTILITIES COMMISSION DOCKET #3876

Dear Ms. Massaro:

Enclosed please find an original and nine copies of written testimony we are submitting regarding the above-cited proposed rules.

If you have any questions about this, please feel free to let me know.

Sincerely,

Steven Brown
Executive Director

Enclosures

ACLU

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COMMENTS ON PROPOSED REVISIONS OF RULES GOVERNING THE TERMINATION OF RESIDENTIAL ELECTRIC, GAS AND WATER UTILITY SERVICE PUBLIC UTILITIES COMMISSION DOCKET #3876 OCTOBER 24, 2007

The R.I. ACLU offers the following written comments on the proposed revisions of rules governing the termination of residential electric, gas and water utility service. There are three provisions in particular of concern to us that we wish to address.

1. Part VI, Section 5 [Page 41] proposes the removal of a provision in current law "which allows non-lawyers to represent customers at formal hearings before the Division of Public Utilities and Carriers and the addition of language that allows only lawyers permitted to practice law in the State of Rhode Island to do so." We strongly object to this change. Allowing private advocates to represent customers at hearings regarding the shut-off or restoration of utilities services provides an important due process safeguard to indigent tenants.

We understand that the PUC's rationale behind this proposal is a concern that the present rule allows for the unauthorized practice of law by non-attorney advocates. At the recent public hearing that was held on these regulations, the PUC was provided testimony that rebutted that concern. We would only add that, *even if* the PUC's legal concern had validity, the solution would not be to simply eliminate private consumer advocates from the hearing process.

Rather, we would urge that, at a minimum, the regulation be revised to specify that such advocacy groups have the right to intervene in these hearings on behalf of their own organizations. Because the advocacy groups' interests will generally directly coincide with those of the customer, the groups can provide information and advocacy to the PUC that would

otherwise be missing if indigent customers were forced to fend for themselves. Obviously, the financial situation of the customers facing these hearings is such that they are simply not in a position to be able to hire an attorney to represent them. As a fundamental matter of due process and basic fairness, we believe it is essential that an explicit mechanism be established in the PUC regulations to authorize this type of indirect assistance if direct representation is to be banned.

Such a rule would benefit not just the customer, but the PUC as well, by giving the agency a better sense of the issues involved in the hearing request. We would note that, in explaining another proposed rule (see #3 below), a PUC representative was quoted as expressing concern about the agency hearing only one side of the story. However, by banning consumer advocacy involvement and pitting indigent, often uneducated, customers alone against a mammoth utility company and its legal forces, the PUC is essentially *mandating* the same result it is condemning elsewhere.* We urge the PUC to delete this proposal or, in the alternative, to explicitly provide for intervention status by consumer advocacy groups in these hearings.

2. An amendment to Part V, Section (4)(A) [Page 24] proposes to remove a provision "which allows utility companies to offer more lenient payment plans than those allowed by the Termination Rules." The agency's rationale for this rule, as expressed in a recent *Providence Journal* story, was that

> the companies were allowing some customers to build up huge arrearages . . . When that occurs, it becomes more difficult for the utilities to collect that money and it ends up being classified as "bad debt." That means that all other utility customers pick up the tab. The commission ... needs to keep that in mind and make sure it protects all ratepayers. (quotation marks omitted)

*Although his comments were made in a slightly different context, we note that Governor Carcieri only a week ago, in condemning the use of taxpayer funds for state interpreting services for persons seeking state benefits, explained that the individuals should rely instead on family members and friends to help them. The PUC's proposal, in contrast, would leave these customers completely defenseless, with neither state nor private assistance.

We find this proposal truly shocking. Indeed, it would appear unprecedented to see the agency set up to protect the health and welfare of the public actually propose to encourage cutting off basic services to people whom the utility companies themselves want to help.

One of the purposes of the Commission is to regulate utilities in order to "protect and promote the convenience, health, comfort, safety, accommodation and welfare of the people." R.I.G.L. §39-1-1(a)(2). Fearing "bottom line" actions by utility companies, the General Assembly has further specifically required the agency to adopt rules "necessary to ensure that termination of utility service for outstanding indebtedness shall be authorized only after the utility has complied with reasonable methods of debt collection." R.I.G.L. §39-1.1-3. (See also 2007 P.L. 297, restricting termination of utility services in residences with infants).

In adopting such a requirement, surely the legislature never suspected that indebted customers should be more worried about having their utilities terminated by the PUC rather than by the utilities companies themselves. But that is precisely the effect of this proposal. By taking away the ability of utility companies to arrange for more lenient individualized payment plans, the PUC is condemning most of the affected customers to having their services cut off.

We assume the more lenient payment plans agreed to by utility companies in particular cases are made only after very careful consideration of individual circumstances. One would think their interest is no less strong as the PUC's in discouraging unpayable debts from customers. As commendable as the PUC's interest is in protecting the ratepayers, it is cruel for the agency to abdicate its oversight mission in this way and to, in effect, chide the utility companies for being too nice to its customers. We urge deletion of this proposal.

3. Changes on Page 43 propose to remove Part VII, Section 1(A) of the Termination Rules allowing the Commission to order immediate restoration of service while amending Part VII, Section 1(B) to allow the Administrator of the Division of Public Utilities and Carriers to order immediate restoration without determining that the Commission is available.

This proposal, shifting authority to the DPUC to hear cases of dire financial circumstances, is purportedly being made, according to the *Providence Journal*, because the DPUC "usually has more expertise and knowledge about individual cases. There was a concern that the commission was being asked to make decisions with only one side of the story..." Like the other rule changes we have questioned in these comments, this one seems intended to make it harder for customers to keep their electricity, heat or other utilities services in onerous situations. In the absence of a compelling rationale for such a change, which has not been provided, we do not believe the agency should revise a process that, as far as we can determine, has worked well and fairly.

We appreciate your attention to our views, and trust they will be given careful consideration. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us.

Submitted by: Steven Brown, Executive Director
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