

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: RULES AND REGULATIONS GOVERNING
THE TERMINATION OF RESIDENTIAL ELECTRIC,
GAS AND WATER UTILITY SERVICE

: Docket No. 3876

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WRITTEN COMMENTS OF GEORGE WILEY CENTER

Introduction

The George Wiley Center (the Center) will not repeat here the many compelling points made orally at the public hearing on October 11, 2007. Every one of those public comments opposed proposed amendments (3), (4) and (5). The Center joins in that opposition. The Center also joins Senate President Joseph Montalbano and others in seeking a reduction of the percentage a customer must pay on an arrearage in order to restore service.

Proposed Amendment # 3:

**Removal of Provision Permitting Non-Lawyers to
Represent Customers (VI. § 5, p. 43)**

The Center commends the comments of attorney John Lawlor to the PUC's attention. The Rhode Island Supreme Court is "of the opinion that the informal hearings, together with lay representation, may well serve the public interest." *Unauthorized Practice of Law Committee v. State of Rhode Island*, 543 A.2d 662, 666 (R.I. 1988). It serves the public interest here.

The PUC is charged with "providing full, fair, and adequate administrative procedures and remedies." R.I.G.L. § 39-1-1(c). Proposed amendment # 3 inhibits rather than enhances that mandate.

If the PUC is convinced that lay representation nonetheless constitutes unauthorized practice of law, the Center urges the Commission to carry out its statutory mandate by finding another way to ensure that low-income customers are not left at sea during the hearing process. The Rhode Island chapter of the American Civil Liberties Union has suggested one such way. The PUC can, at a minimum, revise its regulations to require that low-income advocacy groups have the right to intervene in such hearings on behalf of their own organizations, whose interests parallel those of the consumer.

The General Assembly intends that consumers have such support available to them at evidentiary hearings before the Division. R.I.G.L. § 39-1-17 requires that, “in every formal hearing conducted by the division, the consumers’ council shall be deemed to be an interested party for all purposes, and as such, shall ... participate as a party in administrative hearings, ...” The Consumer’s Council was once a strong voice for low-income utility customers. It was stilled in 1993 when the General Assembly curtailed its funding, repealing §§ 42-42-1 to 42-1-7. The General Assembly left § 39-1-17 on the books, however. The General Assembly thereby signaled that an interested institutional intervenor should be available to support the consumer in all formal division hearings. It is up to the PUC to carry out spirit, even if it cannot carry out the letter, of this law. It can do so by amending the rules to provide that low-income advocacy groups can intervene as of right in formal evidentiary hearings before the division.

The PUC has a number of other public-spirited options available as well consistent with its mandate to ensure “full, fair and adequate administrative process and remedies” (§ 39-1-1(c)), *e.g.*:

- It can petition the Supreme Court to determine whether lay representatives may represent low-income consumers before the Division;
- It can provide counsel to low-income consumers who cannot afford counsel;
- It can seeking funding from the General Assembly for the Consumer Council;
- It can seek to amend state law to permit appropriately trained lay representatives to represent consumers before the Division.

The Center also notes that, contrary to the Rules of the Rhode Island Supreme Court, the proposed regulation would forbid *all* non-lawyers from appearing at evidentiary hearings. The proposed rule permits only “an attorney” to represent a customer. *Proposed Rule VI, § 5*. Rule 9 of Article II of the Rules of the Supreme Court, however, permits third year law students to practice before administrative tribunals under the general supervision of a member of the bar. The proposed rule is objectionable on this ground alone.

Proposed Amendment # 4:

No Discretion for Less Stringent Plans (p. 25, § V
(4)(A) “Maximum Terms”)

The Center agrees with the Rhode Island Chapter of the ACLU that this proposal is truly shocking. The Center is aware of no other jurisdiction that that has adopted a policy that a utility’s leniency is always, in every case, no matter what the circumstances, *per se* objectionable. To state the proposition is to demonstrate its unreason.

It is particularly unfair and irrational where low-income consumers are concerned. The General Assembly has recognized that low-income customers do not fall behind because they are unwilling to pay their bills. They fall behind because massive increases in energy costs in recent years have outpaced increases in their incomes. In the words of

the General Assembly: “The legislature finds and declares: (a) That energy costs have been rising while the incomes of low income households have been declining with the result that energy costs are a substantial and growing hardship;...” R.I.G.L. § 42-141-1.

The Center urges the PUC in the strongest terms not to adopt this draconian amendment. But, if the PUC decides to adopt this amendment nonetheless, the Center asks that it at the very least make an exception for protected customers, for whom leniency is a legislative, economic, moral and humane imperative.

Proposed Amendment # 5:

**Removal of PUC Authority to Order Immediate
Restoration (VII, § 1, p. 45)**

According to Commission counsel, this amendment was proposed out of concern that the PUC was being asked to make decisions with only one side of the story. The PUC is apparently concerned that a commissioner might make an error and restore service to a customer who in fact does not have an emergency need for service after all.

This amendment is inhumane and ill-advised. The question is where the risk of error should fall when potentially irreparable human consequences are at stake. The answer should be clear. Indeed, it tends to be clear in other judicial settings. Temporary restraining orders, for example, may be granted by the Superior Court on an emergency basis, hearing from one side only, upon showing of potential irreparable harm. R.I.Super.R.Civ.P. 65. This is not an unusual procedure or radical concept. The point is that, where potential irreparable human harm is concerned, fear of the risk of error should not deter immediate action.

Commission counsel has also stated that this amendment transfers emergency powers exclusively to the Division out of respect for the Division’s greater expertise with

individual cases. It is that very experience, however, that can make participation by PUC commissioners in emergencies necessary. A fresh look can impart a new perspective. It can correct mistakes. It can alter the balance when personalities clash. It can dilute attitudes that build up over time in relation to particular customers.

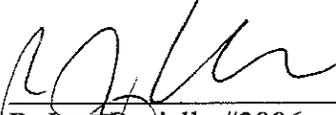
It is rarely a good idea to foreclose discretion. It is a particularly unfortunate idea to foreclose discretion where irreparable human harm is at issue.

Proposed Reduction in Percentage Arrearage Payment

Last year's budget crisis has become this year's energy crisis for low-income Rhode Islanders low-income. The Center therefore joins Senator Montalbano in asking that the PUC reduce the percentage down payment required to restore service from 25% to 15%. The Center also asks that it be expanded consistent with the arrearage payment plan National Grid adopted effective last week in recognition of this reality, *i.e.*, that protected step 3 customers be required to pay 15% down instead of 25% down; that protected step 4 customers be required to pay 25% down instead of 35% down; and that protected step 5 customers be required to pay 40% down instead of 50% down.

The General Assembly has recognized that that low-income people lack, not the will, but the means to pay make payments for utility costs that have increased exponentially in the last five years despite lagging incomes. It tried to give them some relief and was thwarted only by the dire state of last year's budget. The Senator has asked therefore that the PUC give low-income a break on arrearage down payments pending the General Assembly's ability to provide more substantial relief. National Grid has joined in the effort. The PUC should join in this effort as well. It is the right thing to do.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on the 5th day of November, 2007, I emailed a copy of this document to all parties on the service list for this docket.

