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**TESTIMONY ON PROPOSED PUBLIC UTILITIES COMMISSION REGULATIONS
GOVERNING THE TERMINATION OF RESIDENTIAL
ELECTRIC AND NATURAL GAS SERVICE
Docket No. 4450
Public Hearing: December 20, 2013**

The ACLU wishes to raise one specific, but important, concern about these proposed regulations, including the repeal of the PUC's current rules on the topic.

As the Commission's notice of rulemaking acknowledges, the proposed regulations "reflect a comprehensive rewrite" of the agency's existing rules. A regulation that is presently more than 50 pages long is being reduced to nine pages. A major rationale offered in the rulemaking notice for this significant reduction is that a number of the current provisions overlap with the Division of Public Utilities and Carriers' ("DPUC" or "Division") responsibilities. Such a state of affairs has apparently arisen, according to the notice, "because many of the various provisions were promulgated when the PUC and the Division were a single agency." As a result of this state of affairs, "the Division is arguably under no obligation to comply with" the overlapping provisions in the PUC's current regulations.

Such an explanation raises a fundamental concern about the timing of this proposal, especially in light of the significant substantive changes being made to the utility shutoff process. The Division itself has not yet taken any administrative rule-making action to fill in any gaps that will be left by the PUC's adoption of a stripped-down version of the current rules. We do not believe that the PUC should be unilaterally divesting itself of responsibilities without any corresponding adoption of rules by the DPUC to pick up those obligations. Rather than having two agencies sharing responsibilities, or one agency having responsibilities that should more

appropriately be handled by another – the case that allegedly exists now, whether wise or not – adoption of these regulations without DPUC action would leave *neither* agency with certain responsibilities. This is a much more troubling scenario, especially when one considers the vulnerable populations at risk in light of the revisions.

While the PUC's notice expresses concern about the "confusion" that might occur due to the overlapping regulations and the DPUC's potential unwillingness to abide by them, this overlap has apparently existed for some time. There would appear to be a much more likely prospect of confusion with a unilateral change in the rules by the PUC without awaiting action by the Division. Indeed, severe due process problems could arise in light of the gaps faced by consumers that might ensue.

Perhaps the PUC plans to withhold finalizing these proposed regulations until the Division also proposes a companion rewrite of its own, but this is problematic as well. First, as some advocates with a direct interest in the substance of these rules have noted, it is difficult to provide enlightened testimony on these regulations, and particularly the PUC's proposed divestment of obligations, without any corresponding idea as to how the Division plans to address them. Obviously, one's testimony on the substance of this proposal could be very different depending on what the Division offers in its stead. If the PUC agrees that the Division must take up its own rule-making before it would be appropriate to finalize this proposal, that is a reason for the rulemaking to be done in tandem. At the very least, these proposed regulations should be considered only once the DPUC has put on the table its own proposal.

Under the Administrative Procedures Act, holding up adoption of these regulations is problematic for other reasons. The proposed regulations say nothing about a delayed effective date. As a result, these rules will, as a matter of law, automatically be effective 20 days after they are filed with the secretary of state. Under R.I.G.L. 42-35-4(b), a later date of implementation must be "required by statute or specified in the rule." The absence of a delayed

effective date in the proposed regulations is, in and of itself, a sufficient reason for the PUC to hold another hearing on this proposal once the DPUC itself has initiated action.

There is also something troubling from a policy perspective about holding a hearing on proposed rules now if the PUC's expectation is that they won't be formally promulgated until some indefinite time in the future. The public is forced to testify on them now even though intervening events could render that testimony obsolete, out-of-date, or irrelevant. There is no opportunity for the public to provide meaningful and *timely* testimony when a hearing is knowingly held prematurely. At a minimum, the rules should be re-promulgated for hearing with a specification about their effective date.

For all these reasons, we urge the PUC to put these proposed rules in abeyance and to hold another public hearing on them after the DPUC has proposed revised regulations of its own on this topic.

We appreciate your attention to our views, and trust that you will give them your 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. Thank you.