Comments of the Independent Regulatory Review Commission

Pennsylvania Public Utility Commission Regulation #57-348 (IRRC #3487)

Rulemaking to Further Amend the Provisions of 52 Pa. Code Chapter 56

November 12, 2026

The Independent Regulatory Review Commission (IRRC) submits for your consideration the following comments on the proposed rulemaking published in the May 30, 2026 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (Commission) to respond to all comments received from us or any other source.

1. **Determining whether the agency has the statutory authority to promulgate the regulation and whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.**

On December 31, 2024, the former Chapter 14 of the Public Utility Code (Code) expired. The Commission explains in the preamble that in anticipation of the sunset of former Chapter 14, it entered a Statement of Policy on December 24, 2024 (at Docket No. M-2024-3052328) to provide certainty to public utilities, consumers, and affected stakeholders regarding inter alia, payment arrangements, and public utility service terminations. The Statement of Policy provides that Chapter 56 of the Commission's regulations remain in effect until amended and that all final orders issued pursuant to the former Chapter 14 of the Code remain in effect and enforceable until the Commission abides by the specific process to amend an existing final order as prescribed by Chapter 7 of the Code. 66 Pa.C.S. §§ 701-703.

Rep. Carl Walker Metzgar, Republican Chairman of the Consumer Protection, Technology, and Utilities Committee, submitted the following comments arguing that the Commission lacks statutory authority:

> The [Commission] lacks the foundational legal authority to proceed with this Proposed Rulemaking. The Commission's attempt to amend Chapter 56 to modify or replace regulations derived from Chapter 14 of the [Code] relies on an enabling statute that expired at the end of 2024. Administrative agencies possess only those powers expressly granted or necessarily implied by the General Assembly. Because the underlying sunset provision of the specific enabling statute has taken effect without legislative renewal, the Commission is attempting to exercise regulatory power where none exists.

> Under Pennsylvania law, an administrative agency cannot bypass the legislature to preserve, codify, or alter provisions of an expired statute through independent administrative rulemaking. The statutory provisions governing utility service terminations, payment agreements, and collections under Chapter 14 were enacted with explicit sunset dates. The expiration of this underlying statute terminated the specific framework and regulatory powers granted to the Commission under that chapter.
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> The decision of the General Assembly not to reenact or extend the underlying statute must be interpreted as a deliberate legislative choice. ln statutory construction and administrative law, legislative inaction in the face of a statutory sunset deadline is a clear signal that the legislature intended for the statutory framework, and the specific authority derived from it, to lapse.
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> By initiating this rulemaking, the Commission is attempting to administratively construct a regulatory proxy for expired statutory mandates. Whether well intended or not, this type of ultra vires regulation is an affront to the fundamental doctrine of separation of powers. This rulemaking impermissibly arrogates legislative authority to the Commission.
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> The Commission cannot rely on general supervisory authority under the [Code] to resurrect or reformulate terms tied to an expired, specific statutory scheme. The failure of the legislature to reenact Chapter 14 leaves this proposed rulemaking without a valid enabling statute. Because it lacks authority, the Commission should immediately terminate this rulemaking by withdrawing the Notice of Proposed Rulemaking and should defer to the General Assembly for explicit legislative direction.

We ask the Commission to address Rep. Metzgar's assertion that the Commission "lacks authority," "should immediately terminate this rulemaking," and "should defer to the General Assembly for explicit legislative direction." We will evaluate the Commission's response to Rep. Metzgar in determining whether the agency has the statutory authority to promulgate the regulation and whether the regulation represents a policy decision of such a substantial nature that it requires legislative review.

2. Determining whether the regulation is in the public interest; Reaching consensus among IRRC, the standing committees, interested parties, and the agency.

The Commission proposes in this rulemaking to amend its Chapter 56 regulations to incorporate the provisions of the former Chapter 14 and make minor ministerial revisions to the Chapter 56 regulations in line with these amendments. The Commission notes in the preamble:

> [T]he instant rulemaking is not intended as a general review of Chapter 56 of the Commission's regulations. This rulemaking is intended to expeditiously amend the Chapter 56 regulations… and provide prompt regulatory certainty in light of the expiration of Chapter 14 of the Code. While we recognize that a general review to evaluate whether there is a need for further amendments to the Chapter 56 regulations may be necessary in the future, this rulemaking serves to incorporate the provisions of the former Chapter 14 of the Code, as it was in

effect prior to its sunset, including those currently being followed by the Commission via its Statement of Policy.

The preamble also contains a Statement of Vice Chair Kimberly Barrow which states in part:

> I do not believe that the expired Chapter 14 provisions should be the ultimate goal for this rulemaking. The Commission's mission is to balance the needs of consumers and utilities; ensure safe and reliable utility service at reasonable rates; and protect the public interest. Ignoring lessons learned in the past 10-20 years Chapter 14 had been in place and ignoring the current landscape of affordability and vulnerability faced by Pennsylvania customers today does not achieve this mission. Simply copying and pasting the prior Chapter 14 into our regulations is not in the public interest, and is frankly a disservice. Accordingly, I would have appreciated seeking comments on and potentially incorporating into Chapter 56 the following topics:
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> - Adjusting payment arrangement lengths and levels;
> - Adding an increased change in income as a justification for a new payment arrangement;
> - Extending payment arrangements to small businesses;
> - Creating a term length for restarting the clock for defaulted and fulfilled payment arrangements;
> - Expanding the group of people who can sign a medical certificate;
> - Establishing a summer termination prohibition procedure based upon heat advisories;
> - Updating and/or creating provisions reconciling termination notices, or lack thereof, and [Low Income Home Energy Assistance Program] eligibility for crisis grants;
> - Updating provisions relating to personal contact prior to termination or other interruption or disruption of service; and
> - Increasing minimum federal poverty levels for: waiver of late payments, prohibiting reconnection fees, and prohibiting in-person meter reading fees.

We received comments responding to Vice Chair Barrow's statement and requesting greater protections for utility customers from: the Office of Governor Josh Shapiro, Joint Commenters for Utility Access (signed by four members of Philadelphia City Council; Senators Art Haywood, Nikil Saval, and Lindsey Williams; Representatives Danilo Burgos, Elizabeth Fiedler, and Rick Krajewski; and agencies, organizations, and associations), and several advocacy groups. We provide the following examples of commenters' concerns:

- "The sunset of Chapter 14 gives the Commission an opportunity to meaningfully improve access to safe, affordable utility service for all. We

urge the Commission to reform the collections paradigm, emphasizing prevention over punishment in its amendments to Chapter 56."

- "When the Commission finalizes the proposed regulation, it must, at a minimum, provide stronger and more reasonable protections for customers regarding the accrual of late payment charges, disconnection practices, and payment arrangement procedures."

- **Section 56.2 (relating to definitions):** "Amend the definition of 'change in income' to mean a change in income of [ten] percent or more (rather than 20 percent or more) for a customer whose household income level exceeds 300 percent of the Federal poverty level (FPL), and a change of [five] percent or more (rather than [ten] percent or more) where a customer's household income is 300 percent or less of FPL, and [a]mend the definition of 'significant change in circumstances' which currently lists four specific life events that warrant the extension of a payment plan, by establishing a general qualitative standard for significant changes and including the current life events (if at all) as *non-exclusive* examples of such changes. The qualitative standard should capture two concepts: first, that some changes in circumstances may increase a customer's non-utility expenses, making completion of a payment plan more difficult, even if the customer's income remains constant, and second, that some changes in circumstances result in material and logistical impediments to payment, regardless of whether a customer has the ability to pay."

- **Section 56.22 (relating to accrual of late payment charges):** "… the Commission should: Prohibit utilities from charging reconnection fees for customers below 300 percent of the FPL; Prohibit utilities from charging reconnection fees for any residential customers during winter months—December 1 through March 31—to help restore service during cold weather that can be dangerous for disconnected customers; Prohibit utilities from charging late payment fees for customers below 300 percent of the FPL. . . .; Allow customers below 300 percent of the FPL to connect to service without paying a cash deposit."

- **Section 56.182 (relating to payment arrangement procedures):** "A payment arrangement should be structured to provide a realistic opportunity for the customer to successfully repay the outstanding balance, rather than merely postpone termination. Allowing repayment over a period of two to five years reduces the monthly arrearage payment to a manageable amount while requiring the Small Commercial Business customer to remain responsible for both its current utility charges and its outstanding debt."

- **Section 56.182 (relating to payment arrangement procedures):** "Consider, for example, the seasonality in the extent to which payment arrangements default. Given that people are required to pay their entire bill for current service plus the installment payment on their payment arrangement, customers who enter into payment arrangements during high cost cold (or hot) months

are more likely to default early on due to their inability to pay their entire bill for current service plus an arrearage installment."

We also received comments requesting a review of whether changes to requirements could make protections, programs, and services more accessible to victims of domestic violence and comments addressing the need for inclusion of protections for small businesses. To address these significant and various issues, the Commission would need to make substantive amendments to the rulemaking, and in some instances, add new language that would broaden the scope of what has been proposed in the regulation.

Section 2 of the RRA relates to legislative intent. Subsection (a) states in part, "To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of consensus among [IRRC], the standing committees, interested parties and the agency." (71 P.S. 745.2(a)). The Commission must consider and respond to commenters' various suggestions and explain why changes to the final regulation will or will not be made. If the Commission decides to adopt recommendations of commenters and expand the provisions of this rulemaking, we ask the Commission to publish in the *Pennsylvania Bulletin* an Advance Notice of Final Rulemaking. This extra step of seeking additional comments from the regulated community could help to build consensus amongst the interested parties, as envisioned by Section 2 of the RRA.

3. Section 56.2. Definitions. – Clarity and lack of ambiguity.

Significant change in circumstance

The Commission proposes to add a definition for the term "significant change in circumstance" consistent with the former Section 1403 of the Code. The term is defined in part by the phrases "significant loss of the customer's household income" and "significant net cost to the customer's household," which are ambiguous phrases that do not set a clear standard for the regulated community. The term is also defined, in part, by an increase in the customer's number of "dependents" in the household. Commenters note that the term "dependents" is vague and lacks clarity. We ask the Commission to amend the definition of "significant change in circumstance" to ensure clarity and lack of ambiguity for the regulated community and customers.

4. Section 56.102. Residential field visit charge. – Economic or fiscal impacts; Need for the regulation; Reasonableness of requirements.

This new provision provides, "A city natural gas distribution operation is authorized to charge a minimum fee of $10 for each instance in which its representative is required to visit the residence of a customer in the process of attempting to complete required service termination steps." Several commenters assert that this provision is specific to one utility company in particular, and that it is unreasonable to provide this utility company with "one-of-a-kind revenue or collections opportunities." While we acknowledge that the language comes directly from Act 201 of 2004, we ask the Commission to explain the need for and reasonableness of a provision that allows one particular utility to impose a field visit charge on its customers. A commenter further argues that "imposing an additional financial penalty solely on Philadelphia natural gas customers facing service termination because they cannot afford to pay does nothing to help customers address their arrears and needlessly creates a barrier to maintaining or restoring service." We ask the Commission to address the economic or fiscal impacts of the field visit charge on customers.

5. Section 56.153. Public utility duties. – Reasonableness.

This new provision addresses duties of a public utility when a customer or applicant contacts a public utility to make a payment arrangement as required by Sections 56.166 and 56.171 (relating to informal complaints; and general rule for formal complaints). The new provision includes the following, "Failure to make reasonable attempts to collect payments on overdue accounts with arrearages in excess of $10,000 may result in civil fines or other appropriate sanctions by the Commission." A commenter disagrees with assessing civil fines or sanctions for high customer account balances, noting that high-balance accounts are generally not the result of insufficient collection efforts by the utility. While we acknowledge that the language comes directly from Act 155 of 2014, we ask the Commission to explain the reasonableness of imposing civil fines or other sanctions on utilities.