



November 1, 2021

Regulatory Flexibility Authority Report Pursuant to 71 P.S. § 532-F(d)

On March 6, 2020, pursuant to subsection 7301(c) of the Emergency Management Services Code, 35 Pa.C.S. §§ 7101, *et seq.*, Governor Tom Wolf issued a Proclamation of Disaster Emergency (Proclamation) proclaiming the existence of a disaster emergency throughout the Commonwealth for a period of up to 90 days, unless renewed by the Governor. Shortly thereafter, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic.

The Proclamation of Disaster Emergency authorized and directed the suspension of “the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions . . . would in any way prevent, hinder, or delay necessary action in coping with this emergency.”¹ The Governor renewed the Proclamation of Disaster Emergency a total of five times.²

Termination Moratorium Report

On March 13, 2020, at Docket No. M-2020-3019244, relying on the Proclamation and Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, Chairman Gladys Brown Dutrieuille issued an Emergency Order prohibiting all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission’s jurisdiction from terminating service during the pendency of the Governor’s Proclamation of Disaster Emergency, except for reasons of safety, or unless otherwise directed by the Commission. *Public Utility Service Termination Moratorium, Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019244 (Emergency Order issued March 13, 2020). Termination and payment arrangements are normally governed under 66 Pa.C.S. §§ 1405, 1406, and Chapter 56 of the Commission’s regulations, 52 Pa. Code §§ 56.1, *et seq.* The Chairman further encouraged utilities to restore service to customers whose service has been terminated to the extent it could be

¹ *Proclamation of Disaster Emergency*, Commonwealth of Pennsylvania, Office of the Governor (March 6, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

² *Amendment to Proclamation of Disaster Emergency*, Commonwealth of Pennsylvania, Office of the Governor (May 20, 2021) available at <https://www.pema.pa.gov/Governor-Proclamations/Documents/Proclamation-Amending-Disaster-Emergency-COVID19-052021.pdf>.

accomplished safely. The Commission ratified the Emergency Order on March 26, 2020, finding it was in the public interest.

The Commission subsequently modified portions of the termination moratorium by Orders at Docket No. M-2020-3019244 entered on October 13, 2020, March 18, 2021, and July 15, 2021, as described below, due to changes in the circumstances surrounding the COVID-19 pandemic.

- **October 13, 2020:** On October 13, 2020, the Commission entered an Order modifying the March 13 Emergency Order by initiating Phase 2 of the public utility service termination moratorium. The Order continued the termination moratorium for “protected customers” at or below 300% of the federal poverty income guideline, under certain conditions, and established additional protections for certain residential and small business customers. The termination moratorium and customer protections established by Order were set to expire on March 31, 2021.
- **March 18, 2021:** On March 18, 2021, the Commission entered an Order lifting the utility service termination moratorium and providing that disconnections could commence effective April 1, 2021. The Commission ordered certain additional modifications and customer protections to existing collection policies for all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission’s jurisdiction until December 31, 2021. The Commission authorized extended and additional repayment arrangements.
- **July 15, 2021:** On July 15, 2021, the Commission issued an Order revising the expiration date of the March 18, 2021 Order from December 31, 2021, to September 30, 2021, consistent with Act 21 of 2021. Further, the Commission clarified that payment arrangements and Commission-approved COVID-19 customer protection plans entered into before September 30, 2021, shall remain in full force and effect according to their individual terms even if the terms of those plans and payment arrangements extend beyond September 30, 2021. The Commission ordered that all new payment arrangements entered into after September 30, 2021, must adhere to the provisions of the Public Utility Code and Commission regulations.

Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements Report

On March 20, 2020, Chairman Gladys Brown Dutrieuille issued an Emergency Order suspending the Commission's regulatory procedures under Chapters 1, 3, and 5 of the Commission's regulations, and other regulations relating to filings and procedures. *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order issued March 20, 2020). The Emergency Order delegated the authority to determine the suspension, extension, waiver or change of any regulatory, statutory, or procedural deadlines to individual Commission Bureau Directors whose bureaus are tasked with matters before the Commission. Each Bureau Director was authorized to make decisions regarding the necessity of modifying such deadlines. These modifications were treated as an action of staff and were reviewable by the Commission pursuant to 52 Pa. Code § 5.44 (regarding petitions for reconsideration from actions of the staff). The Emergency Order also provided that the Commission shall accept only e-filings of all documents. Additionally, that Order provided that any filings containing confidential or proprietary information should be emailed to the Secretary of the Commission. Finally, we directed that service by the Commission on parties will be exclusively electronic and service on Commission staff, as a party or otherwise, also shall be exclusively electronic. The Commission ratified the Emergency Order on March 26, 2020, finding it was in the public interest.

The Commission terminated the suspension of the Commission's procedural and filing deadlines on September 30, 2021, pursuant to Commission Order entered July 15, 2021. *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order entered July 15, 2021).

Finally, we note that on September 15, 2021, the Commission entered an Order to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021). An exception to this general waiver is where the Public Utility Code requires service by specified means, e.g., Section 702; or where our regulations require a specific service type, e.g., 52 Pa. Code § 3.391. Additionally, service on Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise. The Commission took this action under its general regulatory authority and the need for continued flexibility in response to the pandemic. 66 Pa.C.S. §501, 52 Pa. Code §§ 1.2, 1.91, and 5.43.

Marketing Moratorium Report

Commission Regulation of Sales and Marketing Activities

The Commission has promulgated residential sales and marketing regulations for suppliers under its jurisdiction at 52 Pa. Code §§ 111.1-111.14. Door-to-door, public event, and in-person sales and marketing activities are described in the Commission's regulations at 52 Pa. Code § 111.2, and are defined as:

Door-to-door sales--A solicitation or sales method whereby an agent proceeds randomly or selectively from residence to residence.

...

Public event--An event in a public location which may facilitate sales and marketing activities or may result in a customer enrollment transaction.

Sales and marketing--The extension of an offer to provide services or products communicated orally, electronically or in writing to a customer.

52 Pa. Code § 111.2.

Commission Suspension Of Door-To- Door, Public Event, And In-Person Sales And Marketing Activities

On March 16, 2020, at Docket No. M-2020-3019254, Chairman Gladys Brown Dutrieuille issued an Emergency Order prohibiting jurisdictional electric generation suppliers and natural gas suppliers (collectively, suppliers) from engaging in door-to-door, public event, and in-person sales and marketing activities during the pendency of the Governor's *Proclamation of Disaster Emergency*, or unless otherwise directed by the Commission. *In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019254 (Emergency Order issued March 16, 2020). The Chairman directed the cessation of these sales and marketing activities to protect the health and safety of customers and supplier employees by minimizing social contact to reduce the spread of COVID-19. The Commission ratified the Emergency Order on March 26, 2020, finding it was in the public interest.

The Commission subsequently lifted portions of the marketing moratorium in Orders at Docket No. M-2020-3019254 entered on June 4, 2020, December 3, 2020, May 6, 2021, and July 15, 2021, as described below, due to changes in the circumstances surrounding the COVID-19 pandemic. The following Orders were conditioned on

compliance and reporting requirements, including that suppliers comply with all relevant orders and guidance of the Governor and Secretary of Health and continue to adhere to all Commission regulations and orders, and report their intent to resume the relevant sales and marketing activities to the Commission's Office of Competitive Market Oversight (OCMO) and Bureau of Consumer Services (BCS).

- **June 4, 2020:** In the Commission's Order entered June 4, 2020, the Commission lifted the moratorium on in-person sales and marketing activities for all jurisdictional suppliers as it pertains to activities at retail businesses open as a result of the Governor's directives regarding the yellow and green phases.
- **December 3, 2020:** In the Commission's Order entered December 3, 2020, the Commission lifted the moratorium on in-person sales and marketing activities at public events for all jurisdictional suppliers only as it pertains to outdoor public events held in accordance with orders and directives issued by the Governor and the Secretary of Health.
- **May 6, 2021:** In the Commission's Order entered May 6, 2021, the Commission lifted the moratorium on in-person sales and marketing activities for all suppliers as it pertains to activities with commercial and industrial customers that are open.
- **July 15, 2021:** In the Commission's Order entered July 15, 2021, in light of the further easing of COVID-19 mitigation measures and restrictions in Pennsylvania and the potential for economic harm associated with maintaining the marketing moratorium, the Commission modified its prior Orders to lift the moratorium on all door to-door, public event, and in-person sales and marketing activities for all jurisdictional suppliers. The Commission continued to require suppliers to (1) comply with all relevant orders and guidance of the Governor and the Secretary of Health and continue to adhere to all applicable Commission regulations and orders, (2) report their intent to resume the door-to-door sales and marketing activities to OCMO and BCS, and (3) report the use of a third-party vendor to perform door-to-door sales and marketing activities to BCS.
- **September 30, 2021:** The remaining conditions from the Commission's July 15, 2021 Order terminated on September 30, 2021.