

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Emergency Order Re: Establishing Public Utility
Service Termination Moratorium

:

M-2020-3019244

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA IN RESPONSE TO
CHAIRMAN DUTRIEUILLE’S LETTER OF AUGUST 10, 2020**

I. INTRODUCTION & SUMMARY OF COMMENTS

The Energy Association of Pennsylvania (“EAP” or “Association”) submits these comments on behalf of its electric distribution company and natural gas distribution company members in response to the August 10, 2020 letter of Chairman Gladys Brown Dutrieuille at the above docket. The Chairman’s letter states that it is time to reconsider the Commission’s Emergency Order of March 13, 2020 imposing a moratorium on utility service terminations for all classes of customers due to the COVID-19 pandemic. It notes the changed circumstance since that time and expresses concern that continuing an across-the-board moratorium on all terminations may lead to an accelerated growth of customer arrearages that ultimately place customers in danger of termination. The Chairman further notes that lack of payment to utilities may eventually impact the ability to provide safe and reliable service. The letter requests comments by August 18, 2020 on the moratorium and on protections for residential customers in particular if the moratorium is lifted.

EAP agrees with the general thrust of the Chairman's letter that continuing the moratorium indefinitely is not sustainable or in the best interest of customers, and it is time for the Commission to adopt a new approach. Specifically, EAP agrees that circumstances have changed since March, that prolonging the moratorium indefinitely increases the risk that growing arrearages will ultimately result in increased terminations, that customers who are falling behind in paying their bills should be alerted to the danger of growing arrearages and informed of assistance programs, and that it is necessary to provide customer protections and assistance. The comments below support each of these key points.

Initially, EAP's members have voluntarily offered support to customers during these unprecedented circumstances. Examples include providing expanded corporate giving to hardship funds, food banks and other community support organizations and increased outreach campaigns to bolster customer awareness of assistance available during the COVID-19 pandemic. In addition, depending on the circumstances facing their customers during the pandemic, which vary significantly by utility based on a number of factors, utilities have exercised their discretion to adopt other policies. Examples include waiving late payment charges and reconnection fees, halting customer assistance program removals, and offering payment agreements to small business customers.

Voluntary utility-led programs during the pandemic augment the robust regulatory programs historically available for customers who are struggling to pay their utility bills. These include exhaustive procedural protections (e.g., personal contact requirements, bars on termination when there is a dispute, postponement of termination for customers with medical conditions, opportunities for agreements to repay past due amounts via utility and Commission payment agreements), utility-specific universal service programs for low income customers

(discounted rates, access to hardship funds), and taxpayer-funded programs (the federal Low Income Home Energy Assistance Program, including a special LIHEAP program instituted in response to COVID-19).

But despite the ample protections and assistance programs cited above, there is continuing uncertainty over the magnitude and duration of economic damage caused by the pandemic. In this situation, it would be appropriate for the Commission to continue to monitor the situation after lifting the moratorium, for example by scrutinizing monthly reports regarding terminations, etc., filed by utilities pursuant to 52 Pa. Code § 56.231 and perhaps requiring reporting of any other relevant, important data. This information could provide the basis for the Commission to adopt new policies to the extent they fall within its authority delegated under the Public Utility Code.

II. COMMENTS

A. The Commission Should End the Blanket Prohibition on Service Terminations to Restrain the Growth of Customer Arrearages and to Encourage Customers to Enroll in Available Assistance Programs

As recognized by Chairman Dutrieuille in her August 10 letter, the Commonwealth is now in a different position relative to COVID-19 and its impacts since the time the termination moratorium was put in place in March. EAP agrees with the Chairman's assessment and believes it to be an appropriate time to move away from a statewide service termination moratorium on all customers.

Continuing the moratorium indefinitely will exacerbate the problem of nonpayment, which is contrary to the interests of both those customers with growing arrearages and the general body of customers who will eventually be called upon to pay growing uncollectible expenses. Experience over the last few months reveals that, during the moratorium, residential

customers of a number of utilities are not applying for the assistance offered by either their utilities or by the extended federally-funded LIHEAP Recovery Program. EAP collected information from its members showing that arrearage totals from March 2020 to June 30, 2020 increased 39% for residential customers, 23% for low-income residential customers, and 54% for non-residential customers compared to the same period in 2019.¹ Reinitiating the collection process, with its well-established consumer protections, will likely motivate customers to take more immediate advantage of available assistance.

B. Robust Residential Customer Protections and Assistance are in Place for Resumption of Targeted Collection Activity

The Public Utility Code and its associated regulations provide a robust safety net for residential customers in need, particularly through the collections process and utility customer assistance programs (CAPs) and universal service programs. Other, non-utility-run assistance is also available to households to help households pay energy bills.

Residential Procedural Protections:

Existing utility regulations ensure proper notice and offer opportunity to avoid termination at several steps along the collections process. Before service is shut off, utilities are required to send residential customers a 10-day notice, which allows customers up to 60 days to contact the utility and make agreements to avoid termination.² Utilities must also make separate, personal contact attempts³ at least three days before actually terminating service, and at the time of termination. If personal contact by one method is not possible, the public utility is obligated to

¹ Internal data collection showed that for 2019, members had customers in arrears in the total amount of \$290.6 million (residential), \$147.3 million (low-income), and \$48.6 million (non-residential) for this period in 2019. For 2020, dollars owed increased to \$403.7 million (residential), \$181.2 million (low-income), and \$74.9 million (non-residential).

² 52 Pa. Code § 56.91.

³ 52 Pa. Code § 56.93.

attempt another method. During the winter months, if the utility cannot reach the customer, they must leave a physical 48-hour notice on the premises.⁴ If a person in the household is seriously ill, medical certification can be obtained to halt termination for 30 days with permitted renewals.⁵ If the customer wishes to dispute the charges owed, termination cannot proceed.⁶ The complaint (dispute) process affords another opportunity for the customer to reach a payment agreement with the utility for the amount owed to avoid termination. In addition, specific protections are in place for victims of domestic violence.

Financial Assistance for Customers in Need:

In addition to procedural protections, financial assistance for residential customers in the form of utility-run Universal Service Programs – including Customer Assistance Programs (“CAPs”), the Low-Income Usage Reduction Program (“LIURP”), Customer Assistance and Referral Evaluation Services (“CARES”) and Hardship Funds – have been available for decades to low-income customers, where low-income is defined by 52 Pa. Code §§ 54.72 and 62.2 as those residential customers whose household income is at or below 150% of the Federal Poverty Income Guidelines (“FPIG”). These programs are fully functioning and immediately accessible for customers who have experienced significant negative financial impacts during the COVID-19 pandemic. Assistance may also be available to qualifying non-low-income customers based on individual program parameters or household circumstances. The purpose of these programs is to ensure that utility service is accessible; they provide significant bill reductions, payment assistance, and arrearage forgiveness for qualifying customers. Pennsylvania already provides one of the largest utility-funded assistance programs in the country and this funding can only be

⁴ 52 Pa. Code § 56.95.

⁵ 52 Pa. Code § 56.114.

⁶ 52 Pa. Code § 56.92.

expected to increase given current economic conditions. The Commission's customer protection regulations also give the PUC the authority to grant a payment agreement to customers⁷, ensure utilities make good faith attempts to reach agreement regarding payment of arrears and restoration before each winter (e.g. the cold weather survey), and redress grievances through the informal and formal complaint processes. EAP believes that the procedural and financial protections already in place are among the most exhaustive in the nation available to residential utility customers and ensure that Pennsylvania utility customers are uniquely positioned to have affordable utility service available to them.

Additional Utility Assistance:

Utilities have gone above and beyond these legal and regulatory requirements in light of the pandemic and its impact on customers. These additional, pandemic-specific accommodations may include, but are not limited to: special payment agreements not bound to income levels or minimum terms; enrollment in assistance programs via company websites; waiver of payment requirement for access to Hardship Fund grants; company-funded grant programs for those residential customers otherwise not income eligible for assistance; increased empathy training for call center employees relative to pandemic impacts; maintaining CAP enrollment for those who have yet to recertify; waiver of late payment fees; adjusted documentation requirements for customers unable to obtain unemployment documentation due to the pandemic; and instructional videos on how to access all this assistance. Further, as may be further addressed in individual company filings, companies are willing to consider payment agreements to small businesses impacted by COVID-19 and continue consumer education and outreach about available

⁷ In addition to those offered directly by the utility.

assistance and company-specific policies. During this period, many utilities have also increased their charitable contributions even as they lost revenue due to the economic downturn.

Outreach:

Utilities have been using a myriad of options to reach out to customers to educate and inform them of all the assistance available if they are experiencing changes in income and having difficulty paying their utility bills. These methods include company website and social media postings, emails to customers, bill inserts, updates to call center scripting, direct outbound calls to customers, TV and radio advertisements, and press releases.⁸

Federal Assistance:

In addition to the regular and extraordinary assistance being offered directly by the utilities, the federal government has extended unemployment benefits, provided stimulus funds to households and businesses, and sent funding to states for financial assistance related to the economic impacts of COVID-19. Further, the Pennsylvania Department of Human Services (DHS) is running a LIHEAP Crisis Recovery Program this summer which granted automatic supplements to prior LIHEAP recipients as part of its regular season and allowed for new applications for customers in termination-level arrears for a new summer season through August 31, 2020. DHS made a policy change to allow for past due amounts to be evidence of a crisis so as to allow utility customers to access these monies during the PUC's termination moratorium; during the regular LIHEAP Program year, such allowance has not historically been available.

⁸ See utility-specific filings to the Secretarial Letter dated May 29, 2020 Re: COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, Docket No. M-M-2020-3020055, for examples of outreach.

Pending Legislation for Additional Funding:

Utilities have also been working with the General Assembly to direct assistance provided to states from federal CARES Act legislation to utility customers. One such proposal, Senate Bill 1234, would offer additional assistance to residential customers (including incomes above 150% of FPIG) through LIHEAP and to small businesses through the Commission. Regardless of the ultimate legislative vehicle, EAP and its members remain committed to ensuring CARES funding is made available to customers in need through their advocacy efforts.

Utilities intend to continue outreach efforts, including offers of assistance and program enrollment. The regulated termination path would provide an avenue for additional outreach, while ensuring that customers have the ability to take advantage of the many related protections. The Commission's processes and supervision of utility programs have always balanced the dual goals of providing assistance while striving to limit costs for other ratepayers; such checks and balances will continue to be utilized as customers, utilities, and the PUC move into this "new normal" with COVID-19.

C. The Commission Should Monitor Circumstances Moving Forward to Adjust Policies and/or Make Recommendations to the General Assembly

Taken as a whole, the procedural protections and financial assistance available to customers constitute a comprehensive safety net to utility customers in Pennsylvania to help households maintain access to utility service. Still, uncertainty regarding the magnitude and duration of the economic damage wrought by the pandemic may create accompanying uncertainty over the adequacy of assistance available to customers. In this situation, it would be reasonable for the Commission to closely review the monthly reports provided under 52 Pa. Code § 56.231 which include detailed information on, for example, the number of 10-day, 3-day

and 48-hour termination notices issued, the number of residential accounts terminated for nonpayment, the number of residential accounts restored, and the number of accounts subject to a payment agreement. Moreover, to the extent the Commission believes additional information is needed, it could exercise its authority under section 504 of the Public Utility Code, 66 Pa. C. S. § 504 to request additional reporting.

The data in these reports could provide a factual basis for the Commission to adopt new policies to assist customers. To the extent the Commission believes that circumstances warrant new policies that exceed its authority under the Public Utility Code, the proper course of action would be for the Commission to make recommendations to the legislature. Whether or not there continues to be a state of emergency in the future pursuant to a proclamation of the Governor, the Commission must act within the scope of powers delegated to it under the Public Utility Code. *See, Delaware River Port Authority v. Pa PUC*, 145 A.2d 172, 174 (Pa. 1958).⁹

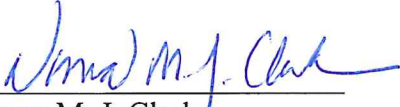
⁹ As an independent agency not subject to direct supervision and control of the Governor, the PUC's authority cannot be expanded beyond its statutory mandate under the powers granted to the Governor by the Emergency Services Management Code, 35 P.S. Section 7101, *et. seq.* Moreover, while this Code empowers the Governor to "suspend the provisions of any regulatory statute *prescribing the procedures for conduct of Commonwealth business. . . .*", 35 P.S. Sec. 7301 (f) (1) (emphasis added), nothing in the Code authorizes suspension of substantive statutory provisions.

III. CONCLUSION

For the reasons explained above, EAP respectfully requests that the Commission adopt an Order at the August 27, 2020 Public Meeting restoring the collections process, including terminations, authorized under the Public Utility Code and the Commission's regulations effective September 1, 2020 for all classes of customers.

Respectfully submitted,


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