



COMMONWEALTH OF PENNSYLVANIA

August 18, 2020

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Emergency Order at Docket Number / M-2020-3019244

Dear Secretary Chiavetta:

Enclosed please find the Comments, on behalf of the Office of Small Business Advocate ("OSBA"), pursuant to Chairman Gladys Brown Dutrieuille's Letter issued August 10, 2020 in the above-captioned proceeding.

An electronic copy will be served on Secretary Rosemary Chiavetta, as indicated below.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Secretary Rosemary Chiavetta, rchiavetta@pa.gov

**COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

I. Introduction

On August 10, 2020, Chairman Gladys Brown Dutrieuille of the Pennsylvania Public Utility Commission (“Commission”) issued a letter (“*Letter*”) addressing the Service Termination Moratorium (“*Moratorium*”), stating, as follows:

The pandemic and its economic effects have not disappeared, and no one knows how long they will remain. This health crisis has caused significant economic hardship for many utility customers and utility income is being negatively affected as well. While it would be easy to simply keep the absolute moratorium in place, protecting 100% of the customers for the duration, I do not believe that is sustainable. Eventually, lack of payment to utilities could reach a critical mass where the provision of safe and reliable public utility service could be impacted. To prevent the possibility of such an outcome, as well as to ensure that customers are properly accessing available assistance programs, it is my intent to address the termination moratorium at the Commission’s August 27, 2020 Public Meeting.

I believe that any move from an absolute moratorium would require customer protections. By this *Letter*, I seek comments from interested persons and organizations regarding the moratorium and customer protections for at-risk customers, should the absolute service termination moratorium be lifted.

Letter, at 2 (footnote omitted).

In accordance with the August 18, 2020, deadline set forth in the *Letter*, the Office of Small Business Advocate (“OSBA”) submits the following Comments.

II. Lifting the *Moratorium*

A. Impact upon Commonwealth Public Utilities

As set forth above, the Chairman stated that “Eventually, lack of payment to utilities could reach a critical mass where the provision of safe and reliable public utility service could be impacted.” *Letter*, at 2. The OSBA observes just how hypothetical the Chairman’s statement is at

this time: specifically, that *eventually* public utilities *could* reach a point where their service is impacted.

Not only could “eventually” be far in the future, but what level of uncollectibles does the Commission consider a critical mass? Over what period of time? What evidence exists that *any* reasonable forecast of incremental uncollectibles costs associated with continuing the *Moratorium* would result in a public utility defaulting on its financial obligations?

The OSBA respectfully submits that engaging in this type of speculation is to be expected from regulated public utilities. Simply put, there is no evidence that any Commonwealth public utility has reached “critical mass” such that its operations are in any way threatened by the *Moratorium*.

The OSBA is an active participant in the various traditional base rates cases, as well as the Chapter 30 alternative regulation cases, that are currently before the Commission. The OSBA has seen no evidence that any public utility is in dire financial need due to the *Moratorium*. Moreover, the OSBA has seen no evidence whatsoever that the *Moratorium* has had any significant financial impact to date on any public utility.

In fact, the Commission recently ruled that Columbia Gas will be made whole (through retro-active billing) rather than forego any revenues due to a slight extension in its 2020 Base Rates case procedural schedule. In another case, UGI Gas worked closely with both the statutory and low-income advocates to not only provide relief to those affected by the COVID-19 pandemic, but also to make UGI Gas financially whole over time but for some minor shareholder contributions.

Respectfully, it is theoretically possible that public utilities could eventually reach a point where their financial viability is threatened. And even then, it is theoretically possible that those public utilities would choose to operate their assets in a dangerous fashion rather than restructure themselves in a responsible manner. However, that point is not now.

B. The Pandemic is Still in Full Force

It bears repeating that, while we would all like SARS-CoV-2 virus to be defeated, it has not happened yet. There are a variety of available resources that will easily confirm that the COVID-19 pandemic is still with us.

For example, John Hopkins University & Medicine has been tracking daily confirmed new cases for all 50 states, including the Commonwealth of Pennsylvania. A graph of the new cases in the Commonwealth may be accessed at this URL:

<https://coronavirus.jhu.edu/data/new-cases-50-states/pennsylvania>

The John Hopkins graph also demonstrates a critically important point about the COVID-19 pandemic – it is an ever-changing phenomenon. Governor Wolf renewed his Proclamation of Disaster Emergency by another 90 days on June 3, 2020. Currently, there is no vaccine for SARS-CoV-2, nor is there a universally implemented treatment for the resulting COVID-19.¹

Furthermore, a simple review of any current news outlet will document how the SARS-CoV-2 virus is significantly, and unpredictably, affecting all of the 50 states. This includes the intense (and endless) debate over the efficacy and necessity of wearing facial masks. This also includes the reverse-quarantine that Pennsylvania has enacted against 17 states:

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Travelers.aspx>

Once the scientific data shows material improvement in the number of new cases, or a vaccine is developed, or effective treatments are confirmed, the lifting of the *Moratorium* may be appropriate.

C. Impact upon Commonwealth Small Businesses

¹ A similar analysis can be found at <https://www.nytimes.com/interactive/2020/us/pennsylvania-coronavirus-cases.html#cases>. This reference shows also that the Pennsylvania death rate from the virus has bottomed out and is starting to rise.

Small businesses comprise an extraordinarily diverse set of activities, making it difficult to generalize about the impacts of the pandemic. Many businesses have closed, and many of those will remain closed. Small shops, restaurants, and bars (which represent a material share of small businesses in the Commonwealth) have been particularly hard hit.

Despite the idea in the Chairman's *Letter* that Pennsylvania has re-opened, there remain substantial restrictions on small business activity. Telework remains required where feasible, and businesses are generally restricted to 75 percent occupancy, except where stricter guidelines apply. Even in the "Green Phase" of reopening, restaurants are only permitted to operate at 25 percent of capacity for indoor dining, bars essentially remain closed except where meals are served, personal care services are limited to 50 percent of occupancy, et cetera.

<https://www.governor.pa.gov/process-to-reopen-pennsylvania/>

To assume that small businesses are fully operational and able to meet all of their obligations incurred over the past five disastrous months is a fantasy.

Furthermore, the Chairman's *Letter* offers little rationale for allowing utilities to shut off service to small businesses for non-payment. The OSBA is concerned that the Commission appears to be solely focusing on residential customers, for whom many low-income assistance programs are available (as well as extensive Chapter 56 protections) rather than also considering the implications for small and medium businesses. Unlike the typical residential customer, when a small business does not pay its utility bills, it gets shut off. The Commission appears to conclude that simply because the Commonwealth is allowing businesses to "re-open," regardless of the constraints under which they must operate, there is sufficient justification to end the *Moratorium*.

The Chairman states that "Maintaining a total moratorium for a time-period that is too lengthy may only work to accelerate the accrual of arrearages for many utility customers and place them at increased risk of default and termination in the future, when large bills inevitably become

due.” The OSBA respectfully observes that shutting off a small business’ utilities would necessarily cause the small business to slide into bankruptcy. The small business would then have no rehired employees, no continued usage of utility services, and would presumably result in an empty storefront or unused office space for months or years. It is difficult to understand how that scenario would be superior to an alternative approach in which the *Moratorium* is retained and credible repayment/forgiveness plans are reasonably negotiated with those small business customers.

In addition, even for the surviving small businesses, many will face a cash crunch as they attempt to re-start or ramp up after the pandemic emergency period. Cash is needed to build working capital to pay wages and salaries for re-hired workers and to build business inventories. As banks are likely to be skittish about lending to small businesses in this period of continuing economic uncertainty, cash will be at a premium during a business restart. Allowing utilities to shut off service for non-payment at exactly the same time small businesses are increasing their hiring and attempting to rebuild their businesses would be a counterproductive economic policy.

D. Post-Moratorium Protections are Illusory

The *Letter* seeks “customer protections for at-risk customers, should the absolute service termination moratorium be lifted.” *Letter*, at 2. The OSBA agrees that the Commission needs to implement significant additional consumer protections before the *Moratorium* can be lifted, particularly for small business customers. The flaw in the Commission’s proposal is that these two actions could or should be taken concurrently. Ending the *Moratorium* is easy. Establishing effective consumer protections, particular when both residential and business customers are considered, is much more difficult and time consuming.

Developing and implementing effective consumer protections will require a significant expenditure of time and effort on the part of the public utilities, as well as the Commission, the statutory advocates, and the other parties to the regulatory process.

For example, each public utility will have to develop some type of test/screen to determine a ratepayer's at-risk status.² Just a few of the multitude of questions that the public utility may have to ask include:

- Is some household member(s) currently unemployed?
- Are they furloughed?
- Are the most recently available business revenues down by more than x% from the corresponding period last year?
- Has your small business participated in any State program? Any Federal Program?
- Is your small business open at 100% capacity? When did this occur? What are your current cash requirements? Are you able to cover your current utility bills? Can you make some contribution to the arrearage?

The point is that public utilities are not in a position to gather and process such information, particularly for small business customers. If it were feasible (or the Commission required such data collection and analysis), such a project will only increase the administrative costs of a "responsible lifting" of the *Moratorium*.

Finally, to be blunt, it is likely that the sole reason that any public utility would want to lift the *Moratorium* now is so that they can use shut-offs as a threat. The OSBA is cognizant that not being able to shut-off a non-paying customer does put the public utilities at a disadvantage when negotiating a payment arrangement. However, the reverse is also true. Without the *Moratorium*, a

² This test/screen may have to be developed in a collaborate if the public utilities, statutory advocates, industrial advocates, and low-income advocates cannot agree on the language.

small business has zero negotiating leverage. In those circumstances, the OSBA expects that the utilities will default to their traditional behavior: just shut them off.

The OSBA therefore respectfully submits that the Commission must undertake the hard job of putting the consumer protections in place, before taking the easy step of ending the *Moratorium*.

III. Conclusion

The OSBA opposes an arbitrary and unsupported end to the *Moratorium* for small and medium businesses at this time. The OSBA encourages the Commission to work with utilities and small businesses to develop approaches that will (a) provide incentives for utilities to negotiate reasonably with their small business customers, and (b) develop a mechanism for struggling but surviving small businesses to allow for forgiveness or gradual repayment of unpaid utility bills accumulated during both the emergency period and the period of economic restart.

In the alternative, the OSBA recommends that terminating the *Moratorium*, in any fashion, be remanded to the Office of Administrative Law Judge for the full development of a record and the issuance of an Initial Decision.

Respectfully submitted,

/s/ Steven C. Gray

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For:

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Dated: August 18, 2020