

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Modification and Extension of Termination  
Moratorium:**

**Public Meeting June 18, 2020  
3020409-CMR  
Docket No. M-2020-3019244**

**Natural gas distribution customers June 19, 2020**

**All other non-residential customers  
July 1, 2020**

**All other residential customers July 15, 2020**

**MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.**

The Commission’s Emergency Order Establishing a Termination Moratorium

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (Proclamation) that identified the COVID-19 pandemic as a disaster emergency affecting the entire Commonwealth. Pursuant to this Proclamation, the Governor subsequently ordered the closure of all schools and non-life sustaining businesses, banned large gatherings, and ordered all Pennsylvania citizens to stay at home except under very limited circumstances.

On March 13, 2020, relying on both this Proclamation and in anticipation of expected travel and work restrictions, under the provisions of Section 1501 of the Public Utility Code, the Commission issued an Emergency Order establishing a prohibition on the termination of public utility service and directing the reconnection of service to customers previously terminated for the duration of the Proclamation, or until a time otherwise established by the Commission. The Commission reasoned that the provision of utility service to all customers, even those previously terminated and those substantially behind on their bills, was necessary for the safety of the public given the expectation that most citizens would be required to shelter in place for some time. The Commission’s actions preceded and preempted the normal expiration of the annual “Winter moratorium” on the termination of low-income residential electric and natural gas customers that began on November 30, 2019 and would have otherwise ended on April 1, 2020.<sup>1</sup> I voted to ratify the Emergency Order on March 26, 2020 with the knowledge that seven high-population counties were then under a stay-at-home order, schools had been shuttered statewide, and a statewide stay-at-home order was imminent.

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<sup>1</sup> Residential electric and natural gas distribution customers whose incomes are at or below 250% of the Federal Poverty Level may not have their service terminated between November 1 and April 30 regardless of their payment status. 66 Pa.C.S. § 1406(e)(1).

The past three months have been one of the most difficult periods for citizens in the history of this Commonwealth. Many people have contracted the COVID-19 infection, become ill, and died. Many businesses have closed, and many workers have lost their jobs. The Commonwealth itself is facing profound fiscal challenges, and much work remains to be done to protect the health and safety of our citizens, and to restore the prosperity of our economy.

To the best of our knowledge, compliance with our Emergency Order has been exemplary, and no public utilities have knowingly or deliberately failed to comply with it. We thank them for their cooperation with the Commission's actions during this period. The Commission has acknowledged that its Emergency Order will likely result in substantial incremental costs associated with undercollections, for which the utilities have the right to seek cost-recovery from ratepayers so that they may continue to provide safe, reliable and reasonably continuous service.<sup>2</sup>

### Developments Since March 6, 2020

There has been progress in the struggle with the COVID-19 pandemic. Due to the hard work and self-sacrifice of many, the trajectory of infections has been one of steady decline for several months. In recognition of these developments, Governor Wolf rescinded the mandatory "stay-at-home" provision of his Emergency Proclamation on June 4, 2020.<sup>3</sup> Governor Wolf has also determined that enough progress has been made to begin lifting other restrictions on businesses, public gatherings, and other activities. As of June 19, 54 of Pennsylvania's 67 counties will have achieved "Green" status, under which all businesses and schools may open, and prohibitions on public gatherings of less than 250 have been lifted.

Additionally, the federal government has provided a robust array of assistance programs in response to the pandemic. On March 27, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law. The CARES Act provides for an array of programs, including direct assistance to businesses in the form of grants, loans, and tax credits, individual rebates to taxpayers, and an additional \$600 a week in unemployment benefits for up to four months for anyone who has lost their job. Pennsylvania has also received a \$34.9 million LIHEAP supplement, which is now available through a special program administered by our Department of Human Services.<sup>4</sup>

Despite this good news, however, there now exists substantial uncertainty about the validity of the continued enforcement of the Commission's Emergency Order. On June 9, 2020, the Pennsylvania General Assembly approved and signed a Concurrent

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<sup>2</sup> *COVID 19 Cost Tracking and Creation of Regulatory Asset*, Docket No. M-2020-3019775 (Secretarial Letter issued May 13, 2020).

<sup>3</sup> On June 3, 2020, Governor Wolf extended his Emergency Proclamation for another 90 days, approximately until September 1, 2020, but let the stay-at-home mandate expire.

<sup>4</sup> More information about the LIHEAP Recovery Crisis program is available at [www.compass.state.pa.us](http://www.compass.state.pa.us).

Resolution to terminate Governor Wolf's current Emergency Proclamation. The position of the General Assembly is that the Emergency Proclamation is no longer in effect. If the Emergency Proclamation is no longer in effect, then the Commission's own Emergency Order regarding terminations has expired, and termination activities may commence immediately. A Petition for Mandamus has been filed by the Senate President Pro Tempore and other Senators with the Commonwealth Court of Pennsylvania asking that the Court direct Governor Wolf to carry out its Concurrent Resolution. In response, Governor Wolf has submitted his own legal filing to the Pennsylvania Supreme Court on June 12 asking that the Concurrent Resolution be declared void. The end date of this litigation cannot be known.

Finally, on May 29, 2020, the Commission issued a Secretarial Letter to all public utilities requesting information on a number of topics, including the number of customers that would be subject to termination, and a comparison with the same information from this time in 2019.<sup>5</sup> Many public utilities from all regulated sectors provided responses by the June 15, 2020 due date.

### Reevaluation of the Moratorium

Given these developments, it is appropriate to revisit and evaluate the directives provided through our Emergency Order. Thankfully, our utilities have provided a substantial amount of information to enable this review to be carried out. Other state utility regulators have already or are currently revisiting similar moratoriums. In some states, such as Ohio and Texas, mandated termination moratoriums have already expired. Others are scheduled to expire in the coming days and weeks.<sup>6</sup> In addition to the recent developments already cited, I find the following factors and risks relevant to this question.

Consistent with the Commission's Mission Statement, I believe it is imperative that we balance the needs of all consumers and utilities when evaluating and deciding the status of our Emergency Order. As stated already, the costs associated with the moratorium will increase every day, and will ultimately be recovered from all utility customers, including many low-income ratepayers not eligible for state or federal assistance programs. While utilities will be provided the opportunity to recover these costs sometime in the future, they must address the shortfalls in the present. For example, a prolonged period of significant undercollection may require some utilities to obtain costly, short term financing to meet their payroll obligations. Similarly, maintenance, repair and replacement of critical infrastructure may need to be delayed, to the detriment of safety and reliability. Some of our utilities are operating under legally binding, time-conditioned agreements for the replacement of critical infrastructure. It is

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<sup>5</sup> *COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information*, Docket M-2020-3020055 (Secretarial Letter issued May 29, 2020)

<sup>6</sup> The Iowa Utilities Board is permitting investor owned utilities to resume sending termination notices on July 1, 2020. The Wisconsin Public Service Commission ruled that termination notices may begin going out on July 15, 2020.

in the public interest to provide regulatory certainty to utilities regarding the duration of the moratorium.

A prolonged moratorium also may result in significant financial risks for residential customers. As noted, service to a substantial number of Pennsylvania's residential gas and electric customers continues under a termination moratorium since November 30, 2019. Despite its ominous sound, the initiation of a utility termination process represents the beginning of a conversation between the customer and utility regarding reasonable payment terms. A public utility typically prefers to achieve a reasonable payment resolution rather than lose its customer to termination. As part of this conversation, customers are often encouraged to consider budget billing, a referral to universal service programs, or application for LIHEAP benefits. Because of the Emergency Order, these conversations have not taken place with the same level of focus since last November. While Pennsylvania did receive significant, supplemental LIHEAP funding as part of the CARES Act, this program will expire August 31, 2020, or earlier if funds are exhausted by customers of fuel sources not subject to the moratorium. Inaction on the moratorium may cause many otherwise eligible customers to miss the opportunity to take advantage of these benefits. These customers may instead accrue very large arrearages they can never repay, resulting in the loss of service in their own name, and damaged credit.

The Pennsylvania General Assembly strongly disfavors, as a matter of law, the accrual of large arrearages.<sup>7</sup> By law, the Commission must proactively manage the issue of delinquencies and arrearages to protect all ratepayers from the costs associated with unpaid bills.<sup>8</sup> While the Commission may exercise its discretion to forego civil penalties for large arrearages that developed due to our moratorium, we should give great weight to the General Assembly's directives made pursuant to Chapter 14 of the Public Utility Code.

### Next Steps

Given the legal uncertainty surrounding continued enforcement of our Emergency Order, it is in the public interest to sever our termination moratorium from the Governor's Emergency Proclamation. It may be a substantial period of time until our Courts resolve the matter, and the failure to address this issue will cloud Emergency Order compliance and enforcement obligations. For the Commission to act upon the Proclamation, it relied on Section 1501 of the Public Utility Code. Given the uncertain legal status of the Proclamation, we should now limit the legal basis for the moratorium to that provision, as well as Section 501, going forward.<sup>9</sup>

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<sup>7</sup> Public utilities must report to the Commission on an annual basis all residential arrearages in excess of \$10,000, and what efforts were made to collect payments on these accounts. Failure to make reasonable collection efforts may subject utilities to civil penalties or other sanctions. 66 Pa.C.S. §1410.1(3).

<sup>8</sup> 66 Pa.C.S. § 1402.

<sup>9</sup> Section 501, 66 Pa.C.S. §501, enumerates the general powers of the Commission, which include the enforcement of any provision of Title 66, and all regulations and orders of the Commission.

In considering next steps, I have reviewed the responses of utilities to our May 29 Secretarial Letter. The data does not indicate that a crisis will occur with the expiration of the termination moratorium. In fact, many of our larger gas and electric utilities report *fewer* customers eligible for termination than at the same point in time last year.<sup>10</sup> Customers are now and will continue to benefit from the provisions of the CARES Act, state assistance programs, Commission regulated universal service programs, and consumer protections under Chapter 56 of our regulations.

I find that these options and our existing programs and protections provide sufficient assurance to begin the orderly transition to normal utility operations over the next month. If our utilities make appropriate use of the regulatory tools available to them, they are capable of managing this task without compromising service to the public.

Therefore, I propose the following transition process:

**All natural gas utility customers:** Responses provided to our May 29 Secretarial Letter on COVID-19 issues demonstrate that the number of natural gas customers eligible for terminations is less or comparable to the same period in 2019 for most companies. NGDCs should have adequate resources to manage the immediate return to normal operations. Additionally, it should be recognized that natural gas is largely a seasonal fuel for residential and many small business customers, and we are now far removed from the winter heating season. Accordingly, NGDCs should be permitted to begin the termination process immediately for all customers. Consistent with the provisions of Chapter 56 of our regulations, this will begin with a 10-day notice to residential customers.

**All other utility customers:** In contrast to gas utilities, electric, water and telecommunication utilities show a somewhat larger increase in accounts that would be subject to termination compared to the same period in 2019. However, some do report fewer customers eligible for termination at this time compared with the same period last year, such as Frontier Communications. These increases appear to be concentrated in commercial and industrial accounts, and non low-income residential accounts.

In their responses to our Secretarial Letter, multiple electric distribution companies have requested that they be permitted to begin termination processes as early as July 1, 2020, to allow terminations to begin by late July and early August. They caution that a prolonged delay in resuming normal termination procedures will result in very significant arrearages, and will require them to undertake aggressive collection efforts beginning in early August. It must be remembered that our Order stays termination, but not collection activities. In many cases, it is better that a customer be

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<sup>10</sup> Peoples Natural Gas Company, LLC, Peoples Gas Company, LLC, UGI Utilities, Inc., National Fuel Gas Distribution Corporation, Columbia Gas of Pennsylvania, West Penn Power Company, Pennsylvania Power Company, Metropolitan Edison Company, and Pennsylvania Electric Company report having fewer customers eligible for termination for the period ending May 31, 2020 than for the period ending May 31, 2019.

given the opportunity to resolve an arrearage with a utility, rather than having to address the issue through a debt collection process not subject to our jurisdiction, with the associated negative effects on credit ratings.<sup>11</sup>

Based on these responses and the associated data, I believe it is in the public interest to extend the moratorium for non-natural gas public utilities into July. All non-natural gas utilities will be permitted to begin the termination process for non-residential customers on July 1, 2020. All non-natural gas utilities are permitted to begin the termination process for residential customers on July 15, 2020, consistent with the provisions of Chapter 56 of our regulations.

As we move forward, I encourage all customers to proactively manage their utility service status. If you are concerned about an ability to pay your bill, please begin by contacting your utility. They will review various options with you, including payment agreements, budget billing, and universal service programs, and the supplemental LIHEAP program. If a resolution cannot be achieved, customers may request that the Commission mediate and consider a payment arrangement. If you have already defaulted on a Commission payment arrangement, a change in income may result in eligibility for a second one. A significant change in circumstance may warrant the extension of an existing Commission approved payment arrangement. While non-residential customers are not eligible for payment arrangements under Chapter 14, or subject to Chapter 56 protections, we strongly encourage public utilities to give businesses payment plan opportunities under reasonable terms and conditions for arrearages accrued due to the COVID-19 Pandemic.

**THEREFORE, I move that:**

1. The Commission's Emergency Order of March 13, 2020, at Docket No. M-2020-3019244, be modified, consistent with this Motion.
2. The Law Bureau prepare an Order consistent with this Motion.
3. A copy of this Order be served on all public utilities.



**Date: June 18, 2020**

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**JOHN F. COLEMAN, JR.  
COMMISSIONER**

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<sup>11</sup> The Philadelphia Gas Works may assess liens on homes and business for unpaid utility bills. 66 Pa.C.S. §1414.