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November 6, 2020

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Re: Answer of the Energy Association of Pennsylvania to Joint Petition of TURN AND CAUSE-PA, ET AL. for Clarification, Docket M-2020-3019244

Dear Secretary Chiavetta:

Attached for filing, please find the Energy Association of Pennsylvania's Answer to the Joint Petition in the above docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Emergency Order Re: Establishing Public Utility : M-2020-3019244
Service Termination Moratorium :

**ANSWER OF THE ENERGY ASSOCIATION OF PENNSYLVANIA TO JOINT
PETITION OF TURN AND CAUSE-PA, ET AL. FOR CLARIFICATION OF THE
COMMISSION’S OCTOBER 13, 2020 ORDER**

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to 52 Pa. Code §§ 5.572(e) and 5.61, the Energy Association of Pennsylvania (“EAP” or “Association”) files this Answer in opposition to the Joint Petition (“Joint Petition”) of the Tenant Union Representative Network (“Turn”), Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) (hereinafter collectively referenced as the “Joint Petitioners”) seeking clarification of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) October 13, 2020 Order.

In its October 13, 2020 Order, the Commission: lifts the absolute ban on utility terminations as of November 9, 2020; establishes new, short-term consumer protections for certain residential and small business customers that augment the existing robust protections found in the Pennsylvania Public Utility Code at Chapter 14 and in Chapter 56 of the Commission’s regulations; and seeks additional public input in the form of written comments due on February 16, 2021 to inform its consideration of possible longer term extraordinary protections that may be

needed based on the COVID-19 related health and economic conditions that exist following the end of Pennsylvania’s annual winter moratorium on March 31.¹

The Joint Petitioners contend that the Commission “overlooked” certain considerations in light of the ongoing COVID-19 pandemic. EAP disagrees with this contention; as laid out below, the Commission has offered myriad opportunities for input, deliberated the relevant issues over several Public Meetings, and its October 13, 2020 Order provides for further review and reevaluation of the policy issues at hand. The Joint Petitioners have failed to raise new or novel arguments that would support a delay of the effective date of the October 13, 2020 Order or would justify the imposition of the numerous prescriptive measures they seek for what is essentially a temporary five-month program. Granting the clarifications sought here would blunt the effectiveness and flexibility of the Commission’s October 13, 2020 Order and delay a central feature of the Order, i.e. communications with at risk customers which encourage those customers to contact their utility so as to determine eligibility for various utility assistance programs.

II. ANSWER²

A. The Joint Petitioners Request for Clarification Does Not Meet the Legal Standard.

EAP agrees that the standard for granting a petition for clarification mirrors the standard for granting reconsideration as set forth in *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982). As such, a party seeking clarification or reconsideration must raise new and novel arguments, not previously heard, or raise issues which appear to have been overlooked. *Id.* at 559. Joint Petitioners have done neither, instead suggesting a host of prescriptive measures which are

¹ 66 Pa. C.S. § 1406(e).

² EAP will not respond to each numbered paragraph in the Joint Petition but does deny the allegations to the extent they are legal conclusions, state arguments or opinion or repeat the request for relief. It is denied that the factual allegations in the Joint Petition provide substantial evidence in support of the relief sought by the Joint Petitioners.

conjectural in nature and would work to delay and complicate the interim program the Commission has established as a phase 2 of the moratorium. That the Joint Petitioners fundamentally disagree with the Commission's decision to lift the absolute moratorium on utility terminations does not meet the legal standard for either clarification or reconsideration.

The Commission's October 13, 2020 Order is straightforward: it lifts the absolute moratorium on utility terminations; it directs utilities to communicate with all customers at risk of termination in advance of initiating their standard collection practices³; it identifies additional consumer protections for certain residential and small business customers that will be in place for an interim period; and it establishes a process to gather additional public input on the implementation of phase 2 of the moratorium and to consider the need for "longer term options." Utilities are afforded some flexibility to implement these directives, particularly the manner and extent of the communication, based on their particular operational circumstances. The October 13, 2020 Order also establishes new monthly reporting requirements for utilities which will assist the PUC in monitoring the implementation and conducting further evaluation. In fact, the PUC Bureau of Consumer Services ("BCS") has already reached out to utilities to gather information on utility intent and plans regarding implementation which will provide yet another means for the PUC to monitor phase 2 of the moratorium.⁴ Thus, there is no need for the prescriptive clarification and guidance sought by the Joint Petitioners.

Moreover, in practice, any energy utility action with regard to residential customers will be governed by both the October 13, 2020 Order's effective date of November 9, 2020 and the

³ For residential customers this includes following the mandates and guidance of Chapter 14 of the Public Utility Code and the regulations found at Chapter 56 of the Pennsylvania Code.

⁴ Emails sent from BCS staff on behalf of Bureau Director Alexis Bechtel on October 16, 2020 and October 27, 2020 requested, respectively, information regarding manner and content of the additional 10-day pre-termination communication and information on how the company defined a small business customer under its tariff.

December 1, 2020 start of Pennsylvania’s statutorily mandated annual winter moratorium for the vast majority of residential customers with incomes at or below 250% of the Federal Poverty Income Guidelines (“FPIG”).⁵ Termination of any customer is always a last resort for EAP member companies and, here particularly with respect to residential customers at or below 300% of FPIG, the October 13, 2020 Order provides an additional way for utilities to reach those customers at risk of termination so as to encourage them to contact their utilities, identify themselves as a “protected customer,” and apply for available assistance. The Commission’s October 13, 2020 Order is clear in this regard and there is no need for prescriptive clarifications or the creation of a new regulatory framework as sought by the Joint Petitioners.

B. The October 13, 2020 Order Represents Months of Review and Evaluation of Circumstances Relative to the Need for New Customer Protections Arising from the Impacts of COVID-19.

The Joint Petitioners claim as a basis for requesting Commission clarification of its October 13, 2020 Order that “[t]he content ... was not previously subject to comment that would have enabled ... stakeholders to identify these critical implementation issues and recommend corrections and improvements.” Joint Petition at paragraph 15. EAP denies this factual averment. The Commission’s Docket at M-2020-3019244 evidences months of consideration and opportunity for public input regarding the impacts of COVID-19, the extended moratorium, and options for additional consumer protections should the moratorium be lifted, as well as the impact on the financial health of utilities. Since the moratorium was put in place on March 16, 2020, the Commission has:

⁵ Under certain circumstances, Philadelphia Gas Works has the ability to terminate customers with incomes between 150% and 250% of the FPIG during the winter moratorium. *See*, 52 Pa. Code § 56.100 (c).

- Issued a Secretarial Letter instructing utilities to track all expenses relative to COVID-19 and compliance with the March 16 Order;⁶
- Requested information from utilities via Secretarial Letter issued on May 29, 2020 regarding utility efforts to support customers through initiatives in customer service and billing policies and procedures in response to the COVID-19 pandemic and the ensuing recovery period.⁷
- Reviewed and considered a Motion of Commissioner John F. Coleman at June 18, 2020 Public Meeting Regarding Modification and Extension of Termination Moratorium;⁸
- Received a letter from EAP outlining its position with regard to the ongoing impact of the termination moratorium on utilities and received associated responses to that letter from other interested parties.⁹
- Reviewed and considered a Motion of Chairman Dutrieuille seeking Modification of the March 13 Emergency Order at the July 16, 2020 Public Meeting;¹⁰ Joint Statement of Commissioners Coleman and Yanora to Chairman’s July 16 Motion;
- Reviewed and considered a prior petition by the Joint Petitioners for Due Process relief regarding the Moratorium Order.¹¹

⁶ See Docket No. M-2020-3019775, COVID-19 Cost Tracking and Creation of Regulatory Asset

⁷ See, Secretarial Letter and associated utility filings at Docket No. M-2020-3020055.

⁸ See related Statement of Vice Chairman Sweet to June 18th Motion for Modification.

⁹ The Association sent a letter to the Commission on July 10, 2020 requesting rescission of the COVID-19 moratorium. Replies to this letter were also sent to the Commission by the Office of Consumer Advocate. Letters with perspectives and input were also sent by Community Legal Services and Pennsylvania Utility Law Project, AARP, the Senior Law Center, and the Pennsylvania Council on Aging.

¹⁰ See related Joint Statement of Commissioners Coleman and Yanora to Chairman’s July 16 Motion.

¹¹ See related Statement of Vice Chairman Sweet at the September 17, 2020 Public Meeting regarding Joint Petitioners’ Petition for Due Process Relief; Statement of Chairman Dutrieuille at the September 17, 2020 Public Meeting regarding Joint Petitioners’ Petition for Due Process Relief.

- Issued a Letter by Chairman Dutrieuille seeking comment on the moratorium dated August 10, 2020;¹²
- Issued a Secretarial Letter on October 1, 2020 requested all utilities to file with the Commission information regarding number of residential and non-residential accounts at-risk of termination as well as the amount of dollars owed for each group.
- Participated in several legislative hearings with the Pennsylvania General Assembly regarding impacts of COVID-19 and the moratorium on utilities and utility customers.¹³
- Included in its October 13, 2020 Order further opportunity for input and review of the ongoing situation.

The Joint Petitioners assertion that the Commission “overlooked” any particular issue relative to the impacts of the moratorium or the pandemic on regulated utility customers is without merit.

C. The October 13, 2020 Order Does Not Alter Existing Consumer Protections Available Through Chapter 14 and the Regulations in Chapter 56, including the annual Winter Moratorium for Low-Income Customers

The Joint Petitioners appear to be asking for clarification of current regulation, not the content of the Commission’s October 13, 2020 Order in their Joint Petition. EAP does not believe anything in the Commission’s October 13, 2020 Order could be interpreted to waive, alter, or

¹² The Chairman’s letter received response and input from the Association and its member companies, water, wastewater and telecommunications utilities, OCA, OSBA, low-income advocates including the Joint Petitioners, the office of Pennsylvania Governor Tom Wolf, and Pennsylvania Attorney General Josh Shapiro among others.

¹³ September 22, 2020 Public Hearing on "Impacts of COVID shut-down on Homeowners, including utilities" held by the House Commerce Committee; October 26, 2020 Hearing on Utility Shutoffs held by the House Democratic Policy Committee. Chairman Gladys Brown Dutrieuille's testimony can be found at: <https://www.puc.pa.gov/about-the-puc/commission-testimony/>

otherwise impact existing consumer protections available in Pennsylvania statute or current Commission regulation.

For example, the Joint Petitioners ask the Commission to “affirm” the Winter Moratorium.¹⁴ Such “clarification” is unnecessary. Customers eligible for protection under the annual Winter Moratorium as described at 52 Pa Code § 56.100 regarding winter termination procedures will continue to be eligible for the 2020-2021 winter season. Nothing in the October 13, 2020 Order could be construed to mean otherwise. The October 13, 2020 Order instead offers opportunity above and beyond existing regulation for utilities to communicate available assistance to customers and to provide protection to those customers who may find themselves struggling for the first time to pay their utility bills given the economic fallout of the COVID-19 pandemic. The temporary nature of these additional protections was appropriately targeted to address the unique circumstances created by the pandemic and the emergency moratorium. “Clarification” of such is unnecessary.

The Joint Petitioners continue throughout their Joint Petition to ask for “clarification” of the Commission’s directives after their own impractical interpretation of such directives. For example, the Joint Petitioners ask the Commission to “define the phrase ‘all available Assistance Programs’ as those programs offered by the utility seeking to terminate the customer, for which the customer would be eligible.” Joint Petition at paragraph 27 (iii). The Joint Petitioners posit earlier that utilities might withhold assistance or protected status if a customer does not apply for food stamps.¹⁵ EAP believes this to be an unreasonable interpretation of the Commission’s intent to encourage customers to be proactive in taking advantage of existing assistance. The intent of the October 13, 2020 Order was to facilitate communication between past-due customers and their

¹⁴ Joint Petition at paragraph 50.

¹⁵ Joint Petition at paragraph 25.

utilities. Once contact has been established, the utility¹⁶ and customer can best determine which program(s) is appropriate and if the customer would qualify. EAP contends it is a contorted reading of the October 13, 2020 Order to suggest that a utility threatening termination for electric service would require that the customer obtain assistance for their phone bill as a precondition. Clarification of such a point is not necessary. Utility companies will protect income-eligible customers from termination who make good-faith efforts to avail themselves of appropriate assistance pursuant to the Commission's October 13, 2020 Order.

D. Joint Petitioners Request a New Regulatory Scheme Rather than Clarification of October 13, 2020 Order.

Several of the requests for clarification offered by the Joint Petitioners are thinly veiled requests to establish a detailed regulatory scheme applicable to a period of roughly five months. For example, it is not "clarification" to request the Commission revise its October 13, 2020 Order to require:

- Utilities and the Commission's BCS to accept verbal attestation of income eligibility for assistance programs (Joint Petition at paragraphs 27 (ii) and 40).
- The additional 10-day communication be "written, detailed, and accessible" as well as "standardized" across all utilities (Joint Petition at paragraph 36).
- Retroactively apply protected customer status to all utility customers where the utility has any income information, including receipt of LIHEAP or Hardship Fund grant within the last three years, that would indicate income-eligibility for protected status (Joint Petition at paragraph 40).

¹⁶ Utilities may use their contracted Community Based Organizations (CBOs) to determine eligibility as provided for in their Commission-approved Universal Service and Energy Conservation Plans.

- Require utilities to accept verbal attestation of a customer’s status as a victim of domestic violence (Joint Petition at paragraph 54).

These requests are outside the scope of a petition for clarification. Furthermore, they are either unnecessary (e.g., such protections already exist as in the case of Chapter 56 applicability for victims of domestic violence) or wholly impractical (standardizing forms) given the short timeframe of the additional protections offered by the October 13, 2020 Order. Utility companies have already begun sending their additional 10-day communication to both residential and small business customers as required by the October 13, 2020 Order with review and input on these communications by BCS.

E. The Plain Meaning of the October 13, 2020 Order Encourages Customer-Utility Contact and Flexibility During a Five Month Interim Period.

The Commission’s October 13, 2020 Order was appropriately limited in scope and intentionally flexible in order to facilitate contact between customers and their utilities in order to stem debt accrual, encourage participation in available utility assistance programs, and avoid termination before the winter. As stated, the Commission’s goal was, “to put customer protections in place that can work for the short term”¹⁷ and allow utilities to collect on debt from those customers with an ability to pay. Given the parameters for phase 2 of the moratorium, the flexible and broad nature of the Commission’s directives is appropriate.¹⁸ Further “clarification” as requested by the Joint Petitioners would delay the essential work provided for in the October 13, 2020 Order necessary to engage customers before their accounts accrue a level of debt that is

¹⁷ Commission’s October 13, 2020 Order at p. 3.

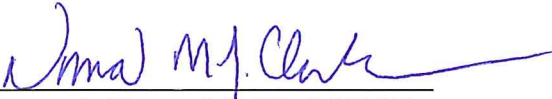
¹⁸ Phase 2 of the moratorium applies only from November 9, 2020 to November 30, 2020 for those customers at or below 250% of FPIG otherwise protected by the annual winter moratorium; and only from November 9, 2020 to March 31, 2021 for those customers who are “protected” with qualifying incomes between 251% and 300% of FPIG and who apply for available utility assistance. *See also*, fn. 5, *infra*.

impossible for them to overcome and burdensome for the remaining residential customers to assume.

III. CONCLUSION

For the reasons stated above, EAP contends that the clarifications sought by Joint Petition are not necessary and should be denied as a matter of law and further requests that the Joint Petition be denied.

Respectfully submitted,



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Date: November 6, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Emergency Order Re: Establishing Public Utility : **Docket No. M-2020-3019244**
Service Termination Moratorium :

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served true and correct copies of the Answer of the Energy Association of Pennsylvania to Joint Petition for Clarification of TURN et al. and CAUSE-PA in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54, as modified by the Commission’s March 20, 2020 Emergency Order.

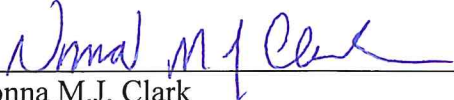
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Date: November 6, 2020


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 Atty. ID # 39866