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August 18, 2020

BY EMAIL AND ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120
rchiavetta@pa.gov

Re: Public Utility Service Termination Moratorium – March 13th Emergency Order;

Joint Petition of CAUSE-PA and TURN et al. for Due Process Relief; Docket No.
M-2020-3019244

**COLUMBIA WATER COMPANY'S COMBINED COMMENTS AND
ANSWER TO JOINT PETITION OF CAUSE-PA AND TURN ET AL. FOR
DUE PROCESS RELIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Columbia Water Company's Combined Comments and Answer to the Joint Petition of CAUSE-PA and TURN et al. for Due Process Relief. This Comment/Answer is served electronically pursuant to the COVID-19 Suspension Emergency Order dated March 20, 2020 and ratified March 26, 2020

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Bryce R. Beard
Counsel for the Columbia Water Company

WES/das

Enclosures

cc: Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) and the Commission's March 26, 2020 COVID-19 Suspension Emergency Order.

BY ELECTRONIC MAIL ONLY

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/s/ Whitney E. Snyder
Thomas J. Sniscak
Whitney E. Snyder
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Dated this 18th day of August, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Public Utility Service Termination
Moratorium –March 13th Emergency Order

Joint Petition of CAUSE-PA and TURN et al.
for Due Process Relief

Docket No. M-2020-3019244

**COLUMBIA WATER COMPANY COMMENTS AND ANSWER TO JOINT PETITION
OF CAUSE-PA AND TURN ET AL. FOR DUE PROCESS RELIEF**

Pursuant to the August 10, 2020 Letter the Chairman issued seeking comments on a potential end to the Commission’s utility shut-off moratorium and 52 Pa. Code § 5.61(e) (Answers to Petition), the Columbia Water Company (CWC or the Company) files these combined Comments and Answer to the Petition of CAUSE-PA and TURN et al. for Due Process Relief (Joint Petition).

Below, CWC will present its position on termination of service and customer protections going forward, the impact the shut-off moratorium has had on CWC, and CWC’s position from a legal perspective on continuing the shut-off moratorium and the Joint Petition.

In sum, CWC believes that the moratorium on terminations should be lifted as soon as possible because the longer the moratorium goes, the more difficult it will be for customers to be able to catch up, which will result in these past due accounts stretching out for many months, maybe even years. This will create long term cash flow problems for utilities.

Termination of Service and Customer Protections

First, CWC notes that it agrees with and supports the Comments of the National Association of Water Companies.

CWC General Comments on Procedures

CWC submits that the Commission should not order any utility to engage in any course of customer protections not already provided for in the Public Utility Code or the Commission's regulations and that such action is beyond the power of the Commission. Instead, the Commission should give each utility the flexibility to implement its own procedures going forward that are consistent with existing law and regulation.

As to CWC, it is willing to allow a payment plan over a 24-month period for qualified customers only. The qualified customers would be those that are on unemployment only. Customers that receive social security income or receive other regular government assistance should not have seen any reduction in their income due to COVID-19 and really have no reason for why they stopped making their water bill payments.

CWC is willing to implement a minimum monthly payment for arrearages of \$30.00 per month if the moratorium ends within the near future. A \$15/month payment for arrearages would not allow for repayment within 24 months for most of these customers. The longer the moratorium goes, the higher the minimum monthly repayment amount will need to be.

CWC Comments on Specific Suggestions

CWC's comments on each of the Chairman's suggestions regarding procedures to end the moratorium are as follows.

- **Letter.** The establishment of a one-time pre-termination notice to be issued as soon as practical, to residential and commercial customers whose unpaid balance would put them at risk of termination in the absence of the moratorium, which shall inform customers of options to mitigate service termination.

CWC Comments. CWC does not object to a one-time special notice.

- **Letter.** The extension of the 10-day termination notice to 20-days.

CWC Comments. This will cause unreasonable expense to CWC and is beyond the Commission's regulatory authority. This will require getting new pre-printed notices and changes

to CWC's billing software and procedures. It will require employee training on potential new guidelines.

- **Letter.** The waiver of all connection, reconnection, and deposit fees otherwise required for service.

CWC Comments. CWC strongly objects to this. It is illogical and beyond the Commission's regulatory authority. If these fees are waived, there is little incentive for customers to pay on time. It will, in the end, cost everyone more as CWC runs back and forth turning customers' water service on and off with no consequence for missing a payment, etc. The \$30 restoration fee is an effective incentive for customers to make their payment and to avoid shut off.

- **Letter.** The waiver of late payment charges for residential and small commercial customers. Such customer classification shall be determined by the utility in-line with its rate classifications.

CWC Comments. CWC has already been waiving the late payment fees. However, it erodes the incentive to make timely payments and customers who are normally on time with payments have been sometimes paying late because of the removal of this incentive for timely payment.

- **Letter.** The allowance of 2 additional medical certificates for customers who may have otherwise exhausted them.

CWC Comments. CWC would not object to this measure. It has been CWC's experience that few people utilize medical certificates.

- **Letter.** Permission to utilize flexible income verification means such as over-the-phone or via electronic mail.

CWC Comments. CWC does not have the ability to perform income verifications. To impose this on CWC would be costly and beyond the Commission's regulatory authority.

- **Letter.** The establishment of flexible payment arrangements by the utilities for residential customers, regardless of poor payment history, outside the specific formula established in Chapter 14 of the Code utilizing the theme of affordability and prudence.

CWC Comments. See General Comments above.

- **Letter.** The establishment of flexible payment arrangements by the utilities for small commercial customers.

CWC Comments: See General Comments above.

- **Letter.** The establishment of an additional Commission-issued payment arrangement for a repayment term of up to twenty-four months for residential customers affected by the pandemic, for customers not otherwise eligible under existing Statute.

CWC Comments: See General Comments above.

- **Letter.** The establishment of a Commission-issued payment arrangement for a repayment term of up to twenty-four months for small commercial customers not otherwise eligible under existing Statute.

CWC Comments. This would effectively require utilities to provide customers interest free loans. There is no recovery method in place and these interest free loans are not considered in a utilities current rate structure. CWC believes this is outside the Commission's power and unconstitutional.

- **Letter.** Utilities shall provide the following information separated by residential and commercial accounts on a monthly basis:
 - o The number customers disconnected
 - o The number of customers at risk of disconnection
 - o The number of accounts that have entered into payment arrangements

CWC Comments: CWC already provides this information for residential customers and has done this for many years. The information is submitted to the PUC monthly. CWC could provide this information for the commercial accounts.

Impacts on CWC and its Customers

As of August 13, 2020, CWC has 534 residential, 14 commercial and 4 fire services that are past due by at least 30 days. The amount due is \$86,221.70. In August of 2019 CWC had 396 residential customers at least 30 days past due. CWC does not have any record on the number of commercial or fire services past due in August 2019. The 2019 past due information was available since CWC reports the delinquent *residential* customer statistics to the PUC every month. The amount past due in August 2019 was \$26,489.00. There is a 225% increase in the past due amount and a 35% increase in the number of residential customers past due.

The \$59,732 ($\$86,221.70 - \$26,489.00 = \$59,732.70$) additional past due amount impacts CWC's capital improvement budget, leaving less to be used for replacing aging infrastructure as forecasted in its our Long-Term Infrastructure Improvement Plan. In addition, with no date given as to when the shut off moratorium will be lifted, CWC needs to be conservative on what cash it uses towards infrastructure replacement since it needs to reserve sufficient cash to continue to operate should the shut off moratorium stretch on for several more months.

CWC did obtain a \$265,900 PPP loan from the Federal Government and Commission approval thereof. It does plan to file for loan forgiveness. This PPP loan is the sole reason CWC has not experienced cash flow problems during the shut-off moratorium.

Legal Issues With Ongoing Shut-Off Moratorium

CWC appreciates the opportunity for input into these matters. CWC also understands the urgent and uncertain circumstances present in March that led the Commission to take emergency action regarding utility shut-offs. However, the Commission's ongoing shut-off moratorium, which essentially enjoins utilities from exercising their rights provided in 66 Pa. C.S. Chapter 14 to terminate service in the event of a customer non-payment, is overbroad and not narrowly tailored, contrary to the law governing injunctions. *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, Initial Decision at 42, (ALJ Barnes ID entered Jul. 19, 2018), *aff'd* (Order entered Oct. 1, 2018) (Injunctive relief must be narrowly tailored to abate the harm complained of). The shut-off moratorium is overbroad because it fails to take into consideration whether or not a non-paying customer is in fact incapable of paying their utility bills.

The ongoing shut-off moratorium also presents serious Constitutional issues pursuant to *Hope*¹ and *Bluefield*,² which explain a utility is entitled to return on and of its investment, and continued provision of free utility service to non-paying customers with no recourse for the utility to recover these amounts infringes on the utilities right to return. Moreover, regardless of whether or not in the future the Governor continues the state of emergency proclamation, the Commission must act within the scope of its power under the Public Utility Code. *Delaware River Port Authority v. Pa PUC*, 145 A.2d 172, 174 (Pa. 1958) ("The area of administrative activity is not

¹ 320 U.S. 591 (1944).

² 262 U.S. 679 (1923).

boundless; the commission's power is statutory; and the legislative grant of power to act in any particular case must be clear.”).

As to the Joint Petition, it alleges the Commission must put due process protections in place regarding involuntary termination of utility service if the shut-off moratorium is discontinued. The Joint Petition rests on a legal fallacy – that Commission action ending the shut-off moratorium requires any due process for customers. It does not. Due process is required and attaches where a protected right is involved. *Barasch v. Pennsylvania Pub. Util. Comm'n*, 546 A.2d 1296, 1302 (Pa. Cmwlth. 1988) (“Procedural due process does not require notice and a hearing in every conceivable situation involving administrative action.... However, these procedural safeguards should accompany a situation where the administrative action is adjudicatory in nature and involves substantial property rights.”) (quoting *Conestoga Nat. Bank of Lancaster v. Patterson*, 275 A.2d 6, 9 (Pa. 1971)). That is not the case here. Utility customers have no right to free utility service. Utility customers’ rights regarding termination of service for non-payment have already been provided by the General Assembly in 66 Pa. C.S. Chapter 14 and various Commission regulations that have been properly promulgated. Ending the shut-off moratorium now with no further action on the Commission’s part regarding customer protections not already provided for under law or regulation has zero due process implications. The Petition should be rejected on this basis alone.

CONCLUSION

The solution for helping customers continuing to have payment issues is through legislation, not action of a regulatory body beyond its enumerated powers and in violation of the Public Utility Code and the Constitution. As NAWC discusses in its comments, the General Assembly should designate CARES Act money to be made available to utility customers to get

caught up on unpaid bills and the Commission should do whatever it can to make sure that legislative initiative passes.

Respectfully submitted,

/s/ Whitney E. Snyder _____

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Counsel for The Columbia Water Company

Dated: August 18, 2020

VERIFICATION

I, David T. Lewis, on behalf of Columbia Water Company, hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



David T. Lewis, P.E.
Vice President and
General Manager
Columbia Water Company