



PULP

PENNSYLVANIA
UTILITY LAW PROJECT



VIA E-FILE

August 18, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
rchiavetta@pa.gov

**Re: Public Utility Service Termination Proclamation of Disaster Emergency, Docket No.
M-2020-3019244**

Joint Comments of CAUSE-PA and TURN et al.

Dear Secretary Chiavetta:

Attached for filing, please find the **Joint Comments** of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), the Tenant Union Representative Network (TURN), and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively, the Low Income Advocates).

Respectfully submitted,

Elizabeth R. Marx
Counsel for CAUSE-PA

Robert W. Ballenger
Counsel for TURN et al.

Enclosure.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Service Termination :
Proclamation of Disaster Emergency - : **Docket No. M-2020-3019244**
COVID-19 :

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served copies of the **Joint Comments of CAUSE-PA and TURN et al.** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

SERVICE BY EMAIL ONLY	
Terrance J. Fitzpatrick Donna Clark, Esq. Energy Association of Pennsylvania 800 North Third Street Harrisburg, PA 17102 tfitzpatrick@energypa.org dclark@energypa.org	Richard Kanaskie, Esq. Bureau of Investigation and Enforcement Pennsylvania Public Utility Commission P.O. 3265 Harrisburg, PA 17105-3265 rkanaskie@pa.gov
Tanya J. McCloskey, Esq. Acting Consumer Advocate Office of Consumer Advocate 555 Walnut Street 5th Floor, Forum Place Harrisburg, PA 17101-1923 TMCCloskey@paoca.org	John R. Evans Small Business Advocate Office of the Small Business Advocate 555 Walnut Street 1 st Floor, Forum Place Harrisburg, PA 17101 jorevan@pa.gov

Dated: August 18, 2020

Respectfully submitted,



Elizabeth R. Marx, PA ID 309014
118 Locust Street
Harrisburg, PA 17101
emarxpulp@palegalaid.net
717-710-3825

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Public Utility Service Termination :
Proclamation of Disaster Emergency - : Docket No. M-2020-3019244
COVID-19 :

JOINT COMMENTS OF**

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA,
TENANT UNION REPRESENTATIVE NETWORK,
AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA**

On Behalf of CAUSE-PA

Elizabeth R. Marx, Esq.
Ria M. Pereira, Esq.
John W. Sweet, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

On Behalf of TURN and Action Alliance

Robert W. Ballenger, Esq.
Josie B. H. Pickens, Esq.
Joline R. Price, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jprice@clsphila.org

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	4
III.	THE MORATORIUM REMAINS CRITICAL TO THE COMMONWEALTH'S RESPONSE TO AND RECOVERY FROM THE PANDEMIC, AND MUST REMAIN IN PLACE.....	7
IV.	THE COMMISSION MUST INITIATE A ROBUST, ON-THE-RECORD PROCEEDING TO PROPERLY CONSIDER THE EVIDENCE AND DETERMINE WHETHER, WHEN, AND HOW TO LIFT THE MORATORIUM.	13
V.	LOW INCOME ADVOCATES' RECOMMENDATIONS FOR NECESSARY CONSUMER PROTECTIONS	15
a)	Continue Moratorium for Pennsylvania's Most Vulnerable Consumers.....	15
b)	Statewide Standards for Customer Outreach	16
c)	Standardized Post-Moratorium Termination Procedures.....	16
d)	Payment Arrangements	17
e)	Debt Forgiveness	18
f)	Medical Protections	19
g)	Universal Service Program Enrollment Flexibility.....	20
h)	Water and Wastewater Assistance	21
i)	Supplement Hardship Fund Budgets	21
j)	LIHEAP Acceptance Policy	21
k)	Data Collection and Reporting.....	22
l)	Complaint Handling.....	22
m)	Contingency Plan	23
n)	Assessment and Assignment of Costs.....	23
VI.	CONCLUSION	24

I. INTRODUCTION

On August 10, 2020, Chairman Brown Dutrieuille issued a Letter at this Emergency Order docket seeking comments from “interested persons and organizations regarding the moratorium and consumer protections from at-risk customers should the absolute service termination moratorium be lifted.” (August 10 Letter). The Chairman’s letter further states that she intends to address the termination moratorium at the Commission’s August 27, 2020 Public Meeting. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)¹, together with Tenant Union Representative Network (TURN)² and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance)³ (collectively referred to herein as the Low Income Advocates), file the following comments in response to the Chairman’s August 10 Letter.

Access to stable and uninterrupted utility service is crucial to maintaining a safe and healthy home. Running water allows families to clean and sanitize their homes; electricity and natural gas allows families to cook food and to light, cool, and heat their homes; and telecommunications services allow families to connect with vital services and supportive networks and to remotely attend work or school. Under normal circumstances, families that cannot maintain any one of these services will face significant financial hardship and other far-reaching impacts

¹ CAUSE-PA is a statewide unincorporated association of low- and moderate-income individuals, which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being.

² TURN is a not-for-profit corporation with many low and lower income members. TURN’s mission is to advance and defend the rights and interests of tenants and homeless people. TURN’s goal is to guarantee to all Philadelphians equal access to safe, decent, accessible, and affordable housing.

³ Action Alliance is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low- and moderate-income residential customers of public utilities in proceedings before the PUC.

that are disruptive to the health and safety of the family and the broader community.⁴ But during the pandemic, the loss of any one of these services may create an even more acute risk of harm, as it will place the household and the community at large at greater risk of contracting and spreading COVID-19.

The Low Income Advocates urge the Commission to maintain the moratorium on utility terminations for the duration of the Governor’s Proclamation of Emergency Disaster, consistent with the Commission’s March 13, 2020 Emergency Order. The basis of the Commission’s Emergency Order has not changed: Involuntary termination of utility services during the pandemic continues to create a clear and present danger to the health and safety of Pennsylvania’s most vulnerable residents and the communities in which they live and work. While Pennsylvania continues to work to reopen businesses, and schools across the Commonwealth have developed tentative plans to allow students to return to classes in some limited capacity, the serious and substantial risk of spreading the virus has not subsided. It very much remains the case that one’s home is the safest place to be – especially for vulnerable households. Terminating critical utility services to residential homes while the pandemic is ongoing, and the Governor’s Emergency Proclamation is in place, will further exacerbate the already inequitable spread of the virus in low income communities and communities of color, undermining the state’s progress in controlling the virus and exacerbating already stark inequities in the economic and health implications of the virus across our Commonwealth.⁵

⁴ See Diana Hernández, Understanding Energy Insecurity and Why it Matters to Health, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5114037/>; see also Nat’l Ctr. for Children in Poverty, Energy Insecurity among Families with Children, at 3 (Jan. 2014), available at http://www.nccp.org/publications/pub_1086.html.

⁵ See CDC, COVID-19 in Racial and Ethnic Minority Groups (June 25, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>; APM Research

The Low Income Advocates recognize that there is a financial cost associated with the continued moratorium. However, the Commission has not conducted any formal, data-driven inquiry to determine the actual extent of the costs created by the moratorium; to assess whether permitting the involuntary termination of utility service to consumers who cannot pay will help to remediate those costs; or to identify whether and to what extent alternatives to termination can help improve collections *without* depriving vulnerable households of service.⁶ Indeed, termination of service is only an effective collections tool if households have the ability to pay; otherwise, termination acts merely as a punitive measure – in this case, depriving households with very little resources of essential services they need to survive in a pandemic.

The August 10 Letter is a critical step in the right direction to begin assessing appropriate next steps; however, a single round of comments from stakeholders is insufficient to fully and publicly engage all relevant perspectives and does not allow for the exchange of any factual data or information to fairly assess and recommend possible solutions and associated costs. We therefore urge the Commission to engage in a robust, on-the-record proceeding to examine the

Lab, The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S., (July 8, 2020), available at: <https://www.apmresearchlab.org/covid/deaths-by-race> (COVID-19 mortality rates for Black Americans is approximately 2.3 times as high as the rate for white and Asian Americans); Maria Gody, What Do Coronavirus Racial Disparities Look Like State by State?, NPR (May 30, 2020), available at <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state> (showing Pennsylvania has proportionately more COVID deaths among African Americans); Pitt. University Center for Social and Urban Research, Initial Labor Force Impacts of the COVID-19 Pandemic in Allegheny County (June 2020), available at https://www.ucsur.pitt.edu/files/center/AlleghenyCountyLaborForceReport_June172020.pdf; Graff, M. & Carley, S. COVID-19 Assistance Needs to Target Energy Insecurity, J. Nature Energy 5, 352–354 (May 2020), available at <https://doi.org/10.1038/s41560-020-0620-y>; Nat'l Urban League, State of Black America: Unmasked (2020), available at <https://online.flowpaper.com/78ab0743/NULSOBA2020ESweb/#page=1>.

⁶ Notably, the only relevant, publicly available data that the Commission has reviewed to date regarding the impact of the moratorium on consumers was collected in the first week of June, and included data from March through May. This data – which is now nearly three months old, and was limited to information about the number of consumers then eligible for termination, and did not include information about the amount of arrears associated with those accounts. The Commission did not establish any subsequent proceeding to further engage with and better understand the data that was reported, and to ask follow-up questions about the information contained in each utilities' report. As explained below, the Low Income Advocates submit that – in establishing an on-the-record proceeding, the Commission should start by soliciting standardized data requests with weekly reporting requirements to ensure real-time monitoring leading up to and after the moratorium is lifted.

financial impacts of the pandemic and emergency moratorium, and to develop a just and reasonable plan to address those impacts while ensuring that low income and other vulnerable Pennsylvania consumers are able to maintain safe and healthy homes and protect against further spread of the COVID-19 virus in their community. Below, the Low Income Advocates suggest a number of consumer protections that we believe must be included in such a plan to help equitably address the build-up of arrears throughout the pandemic.

Ultimately, and as explained in greater detail below, the Low Income Advocates urge the Commission to maintain the Emergency Order, and to initiate a robust proceeding to (1) identify, based on record data, whether and when it may be safe to resume residential utility terminations; (2) identify the financial impacts associated with the pandemic on vulnerable consumers and the utilities' adherence to the moratorium on utility terminations; and (3) develop a comprehensive and unified set of statewide policies, programs, and procedures to equitably address the build-up of utility arrears that will ensure Pennsylvania's most vulnerable consumers remain connected to vital utility services. The Low Income Advocates offer a number of recommendations for pandemic-related policies, programs, and procedures for adoption in such a plan, and urge the Commission to engage in a careful and thorough process to ensure that the parameters of these policies, programs, and procedures are well designed and accessible to all those in need.

II. BACKGROUND

On March 6, 2020,⁷ Pennsylvania Governor Tom Wolf issued a Proclamation of Emergency Disaster (Proclamation) providing, in pertinent part:

I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute,

⁷ On June 3, 2020, Governor Wolf renewed the Proclamation for an additional ninety (90) days.

order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.⁸

On March 13, 2020, Chairman Brown Dutrieuille issued an Emergency Order, which was subsequently ratified by the Commission at its March 26, 2020 meeting. The Commission's Emergency Order recognized that involuntary termination of public utility service was dangerous to the health and safety of Pennsylvanians and would be fundamentally at odds with the needs of Pennsylvanians during a pandemic. As the Commission concluded in its Emergency Order, “[i]rreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.”⁹

Pursuant to the Governor’s Proclamation, the Commission determined that a moratorium on utility terminations was necessary and within the Commission’s authority pursuant to Section 1501 of the Public Utility Code. Accordingly, the Commission ordered that “all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission’s jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order.”¹⁰ In addition to prohibiting involuntary utility terminations, the Commission’s Emergency Order also encouraged the reconnection of service to customers previously terminated, to the extent reconnection could be done safely.

On August 5, 2020, the Low Income Advocates submitted a Joint Petition for Due Process Relief (Joint Petition) at the docket in this proceeding. The Joint Petition principally urged the

⁸ March 6, 2020 Declaration of Emergency Disaster, available at: <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

⁹ Public Utility Service Termination Moratorium, Emergency Order, Docket No. M-2020-3019244, at 2 (Mar. 13, 2020).

¹⁰ Id.

Commission to initiate a robust public review process, on the record, to fairly evaluate whether and under what circumstances involuntary termination of service may proceed without posing a risk of irreparable injury and loss of life and impeding vital pandemic response and recovery efforts. The Low Income Advocates further noted that through such a review process, the Commission should consider whether the termination of utility service to a person's home will exacerbate the current public health crisis or otherwise hinder the response to and recovery from COVID-19. Finally, the Low Income Advocates urged the Commission to develop a just and equitable statewide plan to address the accrual of utility debts as a result of the economic devastation created by COVID-19, without creating a clear and present danger to the health, safety, and welfare of Pennsylvanians.

While the Low Income Advocates continue to urge the Commission to grant the Joint Petition, we submit these Comments consistent with the Chairman's August 10 request for comments. As set forth below and as mentioned above, the Low Income Advocates submit that – based on available data and information – the moratorium on utility terminations remains critically necessary to aid in coping with this emergency, and that resumption of involuntary utility terminations at this time will undermine the Commonwealth's response to and recovery from COVID-19, putting the health and safety of hundreds of thousands of Pennsylvania families at risk. The Low Income Advocates maintain that a robust, on-the-record proceeding as requested in the Joint Petition is necessary and appropriate to engage in the significant factual analysis necessary to determine, based on substantial evidence, (1) whether, how, and under what circumstances involuntary termination of service may proceed *without* impeding vital pandemic response and recovery efforts; and (2) to develop a plan to adopt and implement critical policy protections which must be in place before lifting the moratorium on involuntary termination of

service.¹¹ With regard to the latter, the Low Income Advocates offer specific recommendations for additional protections and policy solutions that could help to protect vulnerable customers from loss of service should it become safe to lift the moratorium in the future.

III. THE MORATORIUM REMAINS CRITICAL TO THE COMMONWEALTH'S RESPONSE TO AND RECOVERY FROM THE PANDEMIC, AND MUST REMAIN IN PLACE.

The Low Income Advocates recognize the serious economic consequences the COVID-19 pandemic has created across the Commonwealth. We further recognize the Chairman's concern with the potential acceleration of accrual of arrearages for utility customers and the increased risk of default and termination they may face in the future.¹² However, threats of utility termination are an ineffective and inappropriate collections tool when the customer threatened with the loss of service has neither the resources nor capacity to respond.¹³ While the utilities may be able to provide information to the Commission regarding the rate at which customers are currently falling behind on payments, that is not the only factor that the Commission must consider in assessing the continuing appropriateness of the moratorium. Indeed, the more significant question – which requires thorough assessment – is how many hundreds of thousands of Pennsylvania families have been thrust into poverty (or experienced deepened poverty) as a result of COVID-19 and would be unable to equitably address their indebtedness under current policies and practices.¹⁴ In other

¹¹ Joint Petition ¶12.

¹² August 10 Letter at 1.

¹³ Universal Service programs – and specifically Customer Assistance Programs (CAPs) – were founded on the overarching premise that universal service programs offer “a more cost effective approach for dealing with issues of customer inability to pay than are traditional collection methods.” 29 Pa. B. 2495; see also Bureau of Consumer Services, Investigation of Uncollectible Balances: Final Report to the Pennsylvania Public Utility Commission, Docket No. I-900002, at 150-52 (Feb. 1992).

¹⁴ As the Commission is well aware, there were well over 700,000 electric and natural gas customers alone who were eligible for termination at the start of June. An additional 50,000 regulated water and wastewater customers were likewise at risk of termination at the start of June. COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, Docket No. M-2020-3020055. This data is now outdated and there is no publicly available data that would assist the Commission in assessing the current scope of the issue, including the number of Pennsylvanians who may currently at risk of termination and the levels of accrued arrearages.

words, how many customers who have fallen behind will be able to pay without sacrificing other necessities, such as medication, nutritious food, and mortgage or rental payments? The prospect of increasing utility collections by authorizing shut offs relies upon a premise that is incorrect in this circumstance: that customers are not making payment and not seeking assistance solely because they are not at risk of shut off.

To the contrary, many customers are seeking assistance, where available, to address utility balances. The LIHEAP Crisis Recovery Program, which is scheduled to close on August 31, 2020, was specifically designed to allow consumers to access assistance with a past due utility bill – rather than requiring a termination notice – provided the balance would otherwise result in termination notwithstanding the current moratorium.¹⁵ Through the Utility File Transfer program, many households do not even need to apply – utilities can match households to assistance and help to process grants without an application. As of July 25, just 9 weeks after the program opened, over 75,000 applications were received and over 39,000 households were approved for a LIHEAP Crisis Recovery grant. At that time, roughly half of all funds for this program had already been depleted. This is a remarkable number of applications to process, especially given that applications are only available online and County Assistance Offices which process LIHEAP grants are operating with diminished capacity as a result of staggered workforce measures. Notably, the differential between application and approval rates shows that many households are *actively seeking assistance* but have been unable to find help – often because they are just over income, or they are not far enough behind on their bill to qualify for crisis assistance.¹⁶ The Department of

¹⁵ Utilities vary in terms of when they consider a customer to be eligible for termination. As such, the accessibility of LIHEAP Crisis Recovery assistance may depend more on a household's geographic region than their total balance owed.

¹⁶ See Appendix A, DHS LIHEAP Recovery Program Numbers (data shared publicly with LIHEAP Advisory Committee at August 5, 2020 meeting).

Human Services (DHS) has stated that it will not run the program past August 31, 2020, even if funding remains – which will leave most Pennsylvanians without access to critical utility grant assistance until LIHEAP reopens on November 1, 2020.

The Low Income Advocates agree with the Chairman that “it is vital” for public utilities to provide timely information to customers that can assist them in avoiding the risk of termination, and believe it is both necessary and appropriate to urge utilities to communicate about utility assistance programs and LIHEAP.¹⁷ However, the currently available utility assistance programs are inadequate to address the number of customers who are now in need – or the extent of those needs.

As a threshold matter, most of the water and wastewater utilities do not have established universal service programs, and those with established programs offer limited assistance.¹⁸ Pennsylvania’s water and wastewater assistance programs are simply not equipped to handle the current crisis. The lack of financial assistance for water and wastewater service presents an especially unique public health concern because access to running water is necessary to prevent the spread of COVID-19.

Moreover, counsel for the Low Income Advocates understand that a number of utilities’ Hardship Fund programs are already depleted or nearly depleted of available funds due to

¹⁷ August 10 Letter at 1.

¹⁸ Pennsylvania American Water Company, for instance, provides an 85% discount on the monthly service fee. <https://amwater.com/paaw/customer-service-billing/low-income-program>. While an 85% discount sounds quite generous, it amounts to approximately \$14.03/month (85% of \$16.50 service charge). <https://amwater.com/paaw/customer-service-billing/your-water-and-wastewater-rates>. Unlike electric and natural gas CAPs, the program does not include any arrearage management component, and is therefore constrained in its usefulness to address the build-up of utility debt throughout the pandemic. Notably, while Pennsylvania American Water serves roughly 2.4 million customers, and is the largest private water company in Pennsylvania, only 2,147 were enrolled in the program last year. https://amwater.com/paaw/news-community/pa_news_feed/id/4924791.

overwhelming need. Without assistance through LIHEAP or Hardship Fund programs, many low income families facing the loss of service will have nowhere to turn. Importantly, while Customer Assistance Programs (CAPs) offer many low income consumers critically important bill assistance and arrearage forgiveness for electric and natural gas services, the Commission recently found that CAPs are not currently delivering an appropriate level of affordability – often leaving the most economically vulnerable consumers to pay up to 17% of their income on energy costs alone.¹⁹

Informing customers about the availability of assistance does not mean that the customer is eligible for and can enroll in the program. Indeed, even if a customer is income eligible for a gas or electric Customer Assistance Program, they may be ineligible for the program as a result of missed payments accrued while previously enrolled in the program or after a household has been removed from such programs. Likewise, most CAPs only offer consumers a single opportunity for arrearage forgiveness. If a household falls behind a second or subsequent time, they may be eligible to enroll in CAP to receive the monthly discount – but they very often must first pay down any arrears accrued while in CAP or since leaving CAP before they may reenroll – and in any event the consumer would not be eligible for a second chance at arrearage forgiveness.

In addition to eligibility issues, the pandemic has also created a number of other practical impediments to program enrollment. The physical offices of many utilities remain closed and unable to provide pre-COVID levels of support to customers seeking to access utility payment assistance or to accept in-person payments.²⁰ At the same time, state County Assistance Offices,

¹⁹ See 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019).

²⁰ Low income and minority consumers disproportionately lack access to banking and credit to enable remote payments, and are thus more likely to make cash payments – which must be made in person. See Fed. Reserve Bank of Atlanta, Low-Income Consumers and Payment Choice (Feb. 2020), <https://www.frbatlanta.org/media/documents/research/publications/wp/2020/02/20/low-income-consumers-and-payment-choice.pdf>; see also

community based organizations, and other assistance agencies remain closed to the public, further complicating the ability of households without access to the internet or stable telecommunication services to apply for service or receive assistance.²¹ The Commission’s Bureau of Consumer Services is also limited in its capacity to fully address and resolve consumer complaints, given the Commission’s offices remain closed to the public. To our knowledge, BCS is currently only equipped to address emergency calls. This fact further complicates the ability for low income households to exercise their rights to various protections pursuant to the Public Utility Code and Commission regulations. These widespread closures continue because it remains unsafe to reopen without risk of further community spread of COVID-19. If it is unsafe for emergency assistance agencies and the Commission to open to the public, then it is likewise unsafe to turn off running water, wastewater, electricity, natural gas service, or telecommunication service to someone’s home as a result of nonpayment.²² The loss of essential utilities will drive economically vulnerable families from their homes, forcing them to seek refuge in congregate shelters or with family and friends or to take other risks to their health and the health of others to preserve utility service to their home. Such a result will further complicate the Commonwealth’s ability to curb the spread of the virus and presents an ongoing risk to the health and safety of Pennsylvanians, contrary to both the Governor’s Proclamation and the Commission’s charge to protect against a clear and present danger to life and property.

Board of Governors of the Federal Reserve System, [Report on the Economic Well-Being of US Households in 2018](https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm) (May 2019), <https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm>. Without access to the utility to make cash payments, many low income consumers simply do not have a way to ensure that payments are made in a timely manner without turning to alternatives such as money orders and prepaid debit cards – which come with additional fees and costs that households already cannot afford.

²¹ Monica Anderson & Madhumitha Kumar, [Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption](#) (May 7, 2019) (“Roughly three-in-ten adults with household incomes below \$30,000 a year (29% don’t own a smartphone. More than four-in-ten don’t have home broadband services (44%) or a traditional computer (46%).”).

²² While wastewater is not “shut off”, water service can be terminated for nonpayment of wastewater bills, which – as a practical matter – prevents the household from properly disposing of wastewater.

While utilities maintain office closures, limit staff at facilities, and suspend LIURP services to protect employees and contractors from COVID-19 exposure, many have yet to adopt appropriate new practices to address the needs of struggling ratepayers. As the Chairman's August 10 Letter recognizes, the pandemic and its economic effects have not disappeared, and no one knows how long they will remain – or whether they may get worse before they improve. Both consumers and utility companies alike are experiencing the financial impacts of the ongoing pandemic, and for many consumers it is yet unknown how long it may take to reach a place of financial stability again.²³ Lifting the moratorium in the midst of such uncertainty about the future, without ensuring that all customers have the ability to retain service, places the interests of the utilities before the interests of their customers.

Importantly, emerging data indicates that the public health crisis is worse in low income communities of color, where Black and Latinx people are disproportionately likely to experience the most detrimental economic and health outcomes associated with COVID-19.²⁴ The potential for utility terminations to further exacerbate negative health outcomes in low income communities and communities of color, and most profoundly among Black and Latinx individuals, is a matter of both racial and economic justice in Pennsylvania that cannot be ignored.

²³ More than 2 million Pennsylvanians have filed claims for unemployment compensation since the start of COVID-19. See <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx>. Supplemental unemployment expired on July 31, 2020. U.S. Unemployment Insurance Program Letter No. 15-20, Dept. of Labor, April 4, 2020 , available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_15-20.pdf. Roughly 10% of unemployment claims filed between mid-March and mid-June have not been processed. See Meghan Schiller, 10 Percent of PA's Unemployment Claims Are Still Stick in Limbo, CBS Pittsburgh (July 13, 2020), <https://pittsburgh.cbslocal.com/2020/07/13/pennsylvania-unemployment-claims-backlog/>. Other assistance programs, such as DHS's Emergency Assistance Program, have also recently ended or will soon come to an end – leaving many with even fewer resources than in past months. See Pa. DHS, Operations Memo #20-07-03 (July 13, 2020).

²⁴ See Pitt. Univ., Ctr. for Social & Urban Research, Initial Labor Force Impacts of the COVID-19 Pandemic in Allegheny County (June 2020), available at https://www.ucsur.pitt.edu/files/center/AlleghenyCountyLaborForceReport_June172020.pdf; Graff, M. & Carley, S. COVID-19 Assistance Needs to Target Energy Insecurity, J. Nature Energy 5, 352–354 (May 2020), available at <https://doi.org/10.1038/s41560-020-0620-y>; CDC, COVID-19 in Racial and Ethnic Minority Groups (June 25, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

The Low Income Advocates submit that, to date, the information available points squarely to the conclusion that lifting the moratorium will very likely have a profoundly negative impact on the health and safety of vulnerable Pennsylvanians, will exacerbate the continued spread of the COVID-19 virus, and will interfere with and prolong pandemic recovery – in direct contradiction with the Governor’s Proclamation and the Commission’s emergency powers. As such, we urge the Commission to continue to uphold its Emergency Order suspending involuntary terminations until the Governor lifts his Emergency Proclamation and/or until such time as the Commission is presented with substantial, health-based data and information that termination of utility service would no longer pose a distinct and likely risk of irreparable injury to the lives of Pennsylvanians.

IV. THE COMMISSION MUST INITIATE A ROBUST, ON-THE-RECORD PROCEEDING TO PROPERLY CONSIDER THE EVIDENCE AND DETERMINE WHETHER, WHEN, AND HOW TO LIFT THE MORATORIUM.

The Commission’s commencement of an appropriate statewide proceeding to fully assess the scope of the problem and develop an equitable plan to resolve the mounting utility debt crisis, as urged in the Low Income Advocates’ Joint Petition, will allow for a more accurate, in-depth assessment of the financial impact on utilities and their customers associated with COVID-19. Without such analysis, the Low Income Advocates submit that the Commission will not be able to form a reasoned and thorough assessment of the consequences of lifting the moratorium.

As noted at the outset of these comments, there is no publicly available data with which to appropriately assess whether and to what extent the moratorium has impacted the accrual of utility arrears and associated costs – nor is there information to suggest that termination will be an effective tool to equitably address the build-up of arrears without presenting an unreasonable risk of harm to consumers. The data that is available is limited in its value and in its application, given

the passage of time and the intervening events; namely, the recent loss of federal supplemental unemployment and the federal stimulus checks – both of which were available resources during the time in which the utilities previously reported, but are no longer available today. Specifically, while the utilities reported on the number of households subject to termination, the majority of utilities did not provide any specific arrearage data to help fully depict the scope of the issue or available remedies.

Additional data and information is critical to determining a number of foundational questions regarding the moratorium. As described above, the data provided by the utilities is out-of-date and fails to identify the breadth and depth of arrears that have accumulated. Further study is necessary to determine whether, and if so how, customers who have experienced financial hardship can repay accumulated debts, and to construct reasonable alternatives to repayment for those customers who cannot afford to repay accumulated debts. The Commission also needs to hear directly from public health officials regarding the likelihood of further community spread, illness, and death associated with COVID-19 if the moratorium is lifted, and whether, and if so how, that risk can be mitigated if the moratorium is lifted. Once these framework questions are answered, further in-depth inquiry into specific details will be necessary to ensure that responsive policies and programs are well-calibrated to deliver a solution for all low income and vulnerable Pennsylvania households.

The Low Income Advocates urge the Commission to continue its inquiry beyond this initial round of brief comments to fully understand the scope of the issue, assess the impact of lifting the moratorium on Pennsylvania's vulnerable consumers and other ratepayers, and develop an equitable plan to adopt and implement prudent customer protections before taking any action that could authorize utilities to proceed with involuntary terminations. In the section that follows, the

Low Income Advocates provide a number of recommendations for policies, programs, and procedures to help improve access to service, mitigate unaffordable costs, and resolve the build-up of arrears if and when the Commission determines it is appropriate to resume terminations.

V. LOW INCOME ADVOCATES' RECOMMENDATIONS FOR NECESSARY CONSUMER PROTECTIONS

The Low Income Advocates urge the Commission to adopt a measured and strategic plan to equitably resolve the mounting utility debt crisis without worsening the public health crisis for Pennsylvania's most vulnerable and marginalized groups.

The measures described in the following subsections are not intended to be an exhaustive list of all necessary customer protections that should be implemented before the termination moratorium is lifted. Rather, the discussion below attempts to identify the most critical needs that must be addressed in order to begin to resolve the mounting utility debt crisis, without worsening the public health crisis for Pennsylvania's most vulnerable and marginalized people. The Low Income Advocates submit that the need for additional consumer protections will likely become clear through the course of a robust, record proceeding, and urge the Commission to initiate such a proceeding without further delay.

a) Continue Moratorium for Pennsylvania's Most Vulnerable Consumers

As explained above, the Low Income Advocates submit that the facts and circumstances currently present do not support lifting the moratorium at this time, given the ongoing risk of harm to Pennsylvania's most vulnerable residents. Lifting the moratorium now would cause irreparable harm to Pennsylvania consumers and the communities in which they live and work and would interfere with the pandemic response and recovery. That said, if and when the Commission determines - after examination of relevant data and information - that termination of utility service

would no longer interfere with the response to and recovery from the pandemic, it should proceed with lifting the moratorium in stages based on the level of risk to the consumers.

Specifically, the Low Income Advocates submit that households with income at or below 150% FPL should not be subject to termination until November 1, 2020 at the earliest, when LIHEAP will again be available to assist economically vulnerable consumers to address the build-up of arrearages.

b) Statewide Standards for Customer Outreach

The level of outreach conducted by utilities to at-risk consumers throughout the pandemic varies greatly across the Commonwealth. Utilities should be required to perform additional and targeted outreach to all customers who have fallen behind on their bills to screen for eligibility for appropriate customer assistance programs and/or LIHEAP, to match customers with available energy efficiency and weatherization assistance, and to establish affordable and sustainable payment arrangements. CAP customers who have fallen behind should be specifically asked whether there has been a change in income or household composition so that appropriate adjustments can be made to their payment rate. Such outreach should occur at least 30 days in advance of initiating service termination, and should be conducted through multiple communication platforms – including mail and phone, as well as email or text to the extent the consumer has provided consent to contact them through electronic means.

c) Standardized Post-Moratorium Termination Procedures

The Commission should standardize post-moratorium termination procedures to ensure consistency across the state. Specifically, the Low Income Advocates submit that the timeframe for termination should be extended to provide additional time for consumers to access and apply

for available assistance – and to ensure that notices are timely received.²⁵ Utilities should, in turn, be required to provide additional pandemic-related information along with its standardized notice of termination to explain how to access a variety of utility and housing-related assistance programs available in the utilities’ service territory. Information and notice regarding access to medical certificates, the availability of new payment arrangements, protections for tenants and victims of domestic violence, and the opportunity for arrearage forgiveness (consistent with recommendations below) should also be included.

d) Payment Arrangements

The unforeseen pandemic dramatically and significantly changed the household financial circumstances of hundreds of thousands of Pennsylvania utility customers. And at the same time, many families have experienced a substantial increase in usage as they spend more time at home. Both of these circumstances have created a substantial strain on households’ ability to keep up with their monthly bills.

While the Public Utility Code limits the opportunities available for consumers to obtain Commission-ordered payment arrangements, the Commission should establish new and acceptable payment arrangement opportunities for customers who have fallen behind.²⁶ This should include flexible repayment alternatives, together with extensions of existing payment arrangements, for all

²⁵ Postal service delays pose a unique and alarming concern that consumers will not receive termination notices in a timely manner – truncating the ability for consumers to reasonably respond before service is terminated. See Peter Hall, Does the Mail Seem Slow? You’re Not Imagining It, The Morning Call (Luzerne) (Aug. 1, 2020), <https://www.mccall.com/news/pennsylvania/mc-nws-pa-usps-mail-delivery-operations-slow-20200801-nmabfad46bc43a5mebq23xogbi-story.html>; Ellie Rushing, Mail Delays are Frustrating Philly Residents, and a Short-Staffed Postal Service is Struggling to Keep Up, Phila. Inquirer (Aug. 2, 2020), <https://www.inquirer.com/news/philly/usps-tracking-in-transit-late-mail-delivery-philly-packages-postal-service-20200802.html>.

²⁶ As explained more fully above, the Governor’s Declaration of Disaster Emergency suspended provisions of regulatory statutes, such as the Public Utility Code, to the extent compliance with such provisions would “in any way prevent, hinder, or delay necessary action in coping” with COVID-19.

customers, including customers who have participated in and accumulated CAP arrears and those who have fallen behind on payment arrangements in the past.

Specifically, the Low Income Advocates submit that the Commission should issue policy guidance clarifying that the pandemic constitutes a “significant change in circumstances” to extend defaulted payment arrangements pursuant to 66 Pa. C.S. § 1405(e). Likewise, the Commission should establish flexible guidelines for what constitutes a “change in income” to provide additional payment arrangements pursuant to 66 Pa. C.S. § 1405(d). Any pandemic-related impact on a household’s income should provide an acceptable basis to provide consumers with an additional payment arrangement – regardless of whether the household has had a prior payment arrangement in the past. If the Governor’s Proclamation remains in place when the Commission determines that it is appropriate to restart terminations, the Commission should provide further guidance to utilities recognizing that the strict payment arrangement parameters contained in Chapter 14, sections 1405 and 1407 remain suspended. As a result, utilities should be directed to provide more flexible payment arrangement terms based on the individual consumer’s needs – rather than a strict adherence to the income guidelines in those provisions of the law.²⁷

e) Debt Forgiveness

The Commission should also establish new opportunities for customers to eliminate CAP arrears that have accumulated during the pandemic, and should further provide for arrearage management through CAP. For those already enrolled or newly enrolled in CAP, utilities should freeze CAP arrears accrued from March 13 through the end of the Emergency Proclamation, and

²⁷ The Governor’s Proclamation directed Commonwealth agencies to:

[S]uspend the provisions of any regulatory statute ... or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.

allow those arrearages to be forgiven with on-time, in-full payment in the following months. Likewise, utilities should be required to provide returning CAP customers with an additional opportunity to earn debt forgiveness through the program – even if they previously received debt forgiveness through the program in the past.

Furthermore, for purposes of ensuring that those customers just above the CAP eligibility threshold are able to eliminate accumulated debt, the Commission should extend arrearage forgiveness opportunities to those customers. For example, CAP eligibility could be temporarily extended to households with income up to 200% of the Federal Poverty Level for the purpose of providing arrearage forgiveness, similar to the Peoples Gas E-CAP program.²⁸

f) Medical Protections

In order to ensure that Pennsylvania's medically vulnerable consumers are protected from the loss of utility service during the pandemic – including those customers who may have suffered, or may in the future suffer, adverse health consequences due to COVID-19 – the Commission should make a number of improvements to the medical certification process and procedure. Indeed, our medical system is already strained by pandemic response, making it difficult to obtain a medical appointment in order to obtain a written medical certificate from a healthcare provider. Likewise, those with a medical condition should not be subject to additional exposure by going to a healthcare facility to obtain a medical certificate.

Specifically, the Commission should waive the medical certificate procurement and renewal requirements in 52 Pa. Code §§ 56.113 and 56.114, to extend the temporary suspension of termination from 3 days to 30 days and provide households additional medical certificates

²⁸ Peoples Natural Gas Company LLC & Peoples Gas Company LLC, Universal Service and Energy Conservation Plan, 2019-2024, Docket No. M-2019-3012599, at 6 (amended Jan. 3, 2020).

beyond the initial certification and two permitted renewals. In addition, households with a member who has tested positive for COVID-19 should remain protected from termination and should be exempt from requirements to procure a written medical certificate. Instead, utilities should accept verbal or written test results showing that a household member has tested positive for the virus.

g) Universal Service Program Enrollment Flexibility

Low income CAP customers, many of whom have suffered additional financial hardship during the pandemic as a result of increased cost of basic expenses – even if their income remained relatively unchanged, must be provided additional protections from unaffordable utility bills. The following are some of the necessary steps to assist these customers:

- Suspend CAP maximum usage and/or maximum credit standards to ensure that CAP customers who are required to remain in their homes, increasing their usage beyond their ability to control, are able to continue to afford their bills;
- Suspend CAP provisions authorizing removal from CAP for nonpayment or failure to recertify to ensure that CAP customers facing changed economic circumstances and who cannot afford current CAP bills, or cannot leave their homes to obtain documentation to recertify, are not removed from CAP;
- Require CAP programs to accept verbal self-attestation of income and household composition²⁹ for eligible households, with reasonable recertification requirements permitted after Pennsylvania businesses, schools and facilities fully reopen.
- Require that any shortfall in LIURP expenditures will roll over and be added to the program budget for the following year to ensure that usage reduction and energy efficiency needs are addressed and, at the same time, get energy efficiency installers back to work – benefitting Pennsylvania's economy on a broad scale.

²⁹ DHS has implemented similar policies to accept self-attestation of income for many kinds of public benefits.

h) Water and Wastewater Assistance

Require regulated water and wastewater utilities to establish or otherwise enhance customer assistance programs to provide both an increased discount and an opportunity for arrearage forgiveness consistent with the electric and natural gas customer assistance programs.

i) Supplement Hardship Fund Budgets

As noted above, many utility Hardship Fund program budgets have already been depleted or are near depletion. While some utilities have taken the initiative to expand those budgets through voluntary shareholder donations and/or through the allocation of pipeline penalty credits, others have not taken any action to help fill the critical gap in available funding to meet expanded need. The Low Income Advocates recommend that the Commission approve the use of temporary alternative funding sources to supplement dwindling hardship fund donations, including but not limited to pipeline penalty credits, diversion of civil penalties or fines, and/or supplemental funding through the utilities' universal service rider. Likewise, the Commission should require utilities to immediately enhance efforts to obtain voluntary consumer donations to their respective Hardship Fund program, such as increased solicitation through customer bills and campaigns such as "add a buck" to help bring in needed funding to support additional grants to those facing the imminent loss of utility services.

j) LIHEAP Acceptance Policy

Regardless of a household's level of arrears, electric and natural gas utilities should be required to accept LIHEAP Crisis grants (under the Recovery program as well as the upcoming winter program) to resolve the crisis and stop termination.

k) Data Collection and Reporting

It is critical that the Commission set up a system to closely monitor terminations, once it is appropriate for terminations to resume, and to address equity issues which are likely to arise. Utilities should be required to report to the Commission weekly on the number of terminations by zip code or census tract to allow the Commission and the public to track trends that may emerge. If available, additional demographic information should also be tracked and reported, including household income, race and ethnicity, age, and disability status.

As noted above, low income communities and communities of color are suffering a far greater health and economic impact from COVID-19. And, as the Commission is aware, communities of color – and specifically Black communities – have a consistently higher energy burden, resulting in disproportionate levels of involuntary service termination.³⁰ It is critical that the Commission and the public understand whether these disparities are exacerbated as a result of the pandemic so that the Commission can take appropriate actions to rectify systemic issues through common sense policy changes.

l) Complaint Handling

If the moratorium is lifted, the Commission must first be fully prepared to handle the likely influx of consumer calls and complaints that are likely to follow. As is, the Commission remains closed to the public and many non-emergency complaints have been placed on hold. The Commission should only allow terminations to begin again if and when the Commission is, itself,

³⁰ See Eva Lyubich, Energy Institute at HAAS, The Race Gap in Residential Energy Expenditures (June 2020), https://haas.berkeley.edu/wp-content/uploads/WP306.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerete&stream=top; NAACP, Lights Out in the Cold: Reforming Utility Shut-Off Policies as If Human Rights Matter (Mar. 2017); https://www.naacp.org/wp-content/uploads/2017/04/Lights-Out-in-the-Cold_NAACP-ECJP-4.pdf; ACEEE, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low-Income and Underserved Communities (April 20, 2020), <https://www.aceee.org/research-report/u1602>

fully operational and prepared to address the increased need for emergency assistance and the inevitable influx of complaints.

m) Contingency Plan

The trajectory of the pandemic has been uncertain at best, with many predicting that the pandemic will get far worse before it gets better. It is critical that the Commission plan now for this uncertainty. For example, the Commission should consider whether, based on the recommendations of public health officials, a one-size-fits-all approach to lifting the moratorium would be inappropriate in certain communities or among certain categories of customers. Coupled with the information provided through utility data collection and reporting, described above, the Commission should be clear that, if it permits any utility terminations, it is doing so only on an interim basis, reserving the ability to adjust and respond to the circumstances customers are experiencing, by further restricting termination activity if necessary.

n) Assessment and Assignment of Costs

As a final point, the Low Income Advocates fully recognize that the above policy solutions come with a price tag. But it should not be a foregone conclusion that residential ratepayers will shoulder those costs alone. The Commission must establish a plan and set forth clear guidelines for how those costs will be shared in a just, reasonable, and equitable manner. Such a plan must include some cost sharing both across the rate base and with the utilities. Indeed, at a time when individuals and businesses across the Commonwealth are struggling profoundly to afford basic human needs, it is unconscionable that the utilities would not also share in that burden. Decisions about costs are critical to address upfront, and should not be shelved for later consideration. Rather, the Commission must establish clear expectations and guidelines governing the assessment

and assignment of any pandemic-related costs, and develop a plan for how those costs will be assigned and recovered.

The Low Income Advocates recognize that some cost-related decisions will need to be held for further consideration in the context of a utility's individual rate proceeding; however, there are a number of critical decisions which must be decided quickly to enable the Commission to make more immediate policy determinations regarding the utility moratorium as well as the adoption of post-moratorium policies and procedures.

VI. CONCLUSION

As noted above, the Low Income Advocates submit that the Commission should provide for on-the-record proceedings to engage in the significant factual analysis that must be conducted to determine whether and under what circumstances involuntary termination of service may proceed without posing a risk of irreparable injury and loss of life and impeding vital pandemic response and recovery efforts. Through these Comments, the Low Income Advocates identify a number of consumer protections that must be in place prior to allowing utilities to proceed with termination of service. The Low Income Advocates appreciate the opportunity to submit these Comments, and look forward to participating in further proceedings to ensure that all customers are capable of maintaining utility service as a matter of public health.

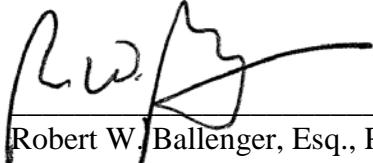
Respectfully Submitted,

On Behalf of CAUSE-PA



Elizabeth R. Marx, Esq., PA ID 309014
Ria M. Pereira, Esq., PA ID: 316771
John W. Sweet, Esq., PA ID 320182
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

On Behalf of TURN and Action Alliance



Robert W. Ballenger, Esq., PA ID 93434
Josie B.H. Pickens, Esq., PA ID 309422
Joline R. Price, Esq., PA ID 315405
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jprice@clsphila.org

Joint Comments of the Low Income Advocates -
APPENDIX A

LIHEAP Recovery Program Numbers

Application Numbers	
Applications Received	75,493
Applications Approved	39,361
Applications Rejected	25,608
Applications Pending	10,524

Funding Numbers	
Total Amount Issued (Supplements and Recovery Crisis as of July 9)	\$19,953,077
Estimated Benefits Approved but not Paid	\$1,926,250
Estimated Funding Remaining	\$23,494,454

Top 5 Rejection Reasons – LIHEAP Recovery Crisis Program Only	
Household Does Not Meet Definition of Crisis	12,928
Household Income Exceeds Program Limit	8,137
Crisis Amount Needed Is Less than \$25	3,673
Duplicate Application Rejection	1,905
Household Did Not Send Proof of Income	1,508