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August 18, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Please find attached comments of the Natural Resources Defense Council concerning the Commission's Proposed Fixed Utility Distribution Rates Policy Statement in the docket referenced above.

Thank you very much.

Sincerely,

Mark Szybist
Senior Attorney and Pennsylvania Advocate
Natural Resources Defense Council

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMMENTS OF NATURAL RESOURCES DEFENSE COUNCIL

Dated: August 18, 2020

INTRODUCTION AND SUMMARY OF COMMENTS

The Natural Resources Defense Council (NRDC) submits the following comments in response to the August 10, 2020 letter of Commission Chairman Gladys Brown Dutrieuille posted to this docket. That letter requests comments regarding the Commission’s March 13 Emergency Order prohibiting utility service terminations due to the COVID-19 pandemic (“moratorium”), and regarding what customer protections the Commission should impose “should the absolute service termination moratorium be lifted.” We appreciate the opportunity to comment on these critically important issues.

NRDC is a nonprofit environmental organization with more than 1.4 million members and online activists, including more than 90,000 in Pennsylvania. Since our founding in 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world’s natural resources, its public health, and the environment.

NRDC’s primary mission in Pennsylvania is to reduce pollution and create an equitable clean energy economy. The pathways to such an economy – expanding energy efficiency and renewable energy, electrifying our vehicles and buildings, developing clean technologies for industrial processes like steel production, etc. – have the potential to bring widespread economic opportunity and prosperity. But decarbonizing our economy at the rate that we must, to avoid the worst impacts of climate change, requires political will. And such will depends on the existence of a stable civil society in which all Pennsylvanians have an opportunity to flourish. In the first instance that means a society where people are able to meet their basic needs, including the need for utility services.

During the COVID-19 pandemic, the provision of electric, gas, water, and telecommunication utility services is not only a basic need but a critical element of maintaining public health. For example, the Centers for Disease Control continues to emphasize that frequent handwashing is one of the most important measures to protect oneself and prevent community spread of COVID-19.¹

¹ See Centers for Disease Control, “Coronavirus 2019 (COVID-19): Prevent Getting Sick” (updated July 30, 2020); available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/index.html>

In the interest of ensuring that all Pennsylvanians have continued access to utility services during the pandemic, we offer in the following comments:

- First, the moratorium is critical to the Commonwealth’s response to the COVID-19 pandemic and should be maintained until the Commission has developed a comprehensive and equitable plan to transition away from it.
- Second, the Commission should initiate a statewide proceeding to create that plan and determine what new consumer protections should be established in its place, on the basis of a complete evidentiary record.

Pending the outcome of such a proceeding, NRDC supports the consumer protections recommended by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Tenant Union Representative Network (TURN), and the Action Alliance of Senior Citizens of Greater Philadelphia, which we summarize below.

PROCEDURAL BACKGROUND

On March 6, 2020, as the COVID-19 pandemic began to spread in Pennsylvania and around the United States, Governor Wolf issued a Proclamation of Disaster Emergency for 90 days.² On March 13, the Commission issued an Emergency Order pursuant to its authority under section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501 prohibiting regulated electric, gas, water, wastewater, telecommunications, and steam utilities from terminating service to customers during the pendency of the Disaster Emergency (“Emergency Order”). The Order was ratified by the Commission at its March 26 public meeting.

On May 29, the Commission issued a Secretarial Letter to all regulated utilities requesting information on various topics, including the number of customers that would be subject to termination at the end of the Disaster Emergency and a comparison with the number at the same time in 2019.³ Utilities filed responses between June 8 and June 16.

² Governor Tom Wolf, Proclamation of Disaster Emergency, March 6, 2020, available at <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

³ See Docket Number M-2020-3020055, COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information.

On June 3, Governor Wolf issued an Order extending the Disaster Emergency for 90 days, or until September 2.

On June 18, 2020, Commissioner Coleman filed a motion to modify the Commission's Emergency Order and end the moratorium effective July 1. The motion failed, with Commissioners Coleman and Yanora voting in the affirmative and Chairman Brown Dutrieuille and Vice Chairman Sweet voting in the negative.

On July 16, Chairman Brown Dutrieuille filed a motion to convene a stakeholder process to discuss both "the appropriate time to end the moratorium" and "needed customer protections" upon termination. The motion included 11 customer protections recommendations.⁴ It too failed by a 2-2 vote.

On August 5, CAUSE-PA and TURN filed a joint petition "to initiate a public review process to fairly evaluate, on the record, whether the involuntary termination of utility service to a person's home would exacerbate current risks to public health and hinder the response and recovery from COVID-19."

On August 10, Chairman Brown Dutrieuille issued a letter stating that "[i]t is time to reconsider the March 13th Emergency Order" because maintaining the moratorium for too long "may only work to accelerate the accrual of arrearages for many utility customers and place them at increased risk of default and termination in the future" while "frustrat[ing] customer placement in various assistance programs." The Chairman also suggested that "lack of payment to utilities could reach a critical mass where the provision of safe and reliable public utility service could be impacted." Noting her intention to address the moratorium at the Commission's August 27 meeting, the Chairman's letter requested comments from interested stakeholders through August 18.

PENNSYLVANIA'S ECONOMY AND COVID-19

⁴ See Docket No. M-2020-3019244, Motion of Chairman Gladys Brown Dutrieuille, July 16, 2020.

Pennsylvania has been in a state of health and economic crisis since the start of the COVID-19 pandemic, and while all counties in the state are now in the “green” phase of reopening⁵ millions of Pennsylvanians remain out of work. And hundreds of thousands of households have accumulated significant arrears on their utility bills.

As of August 14, 120,346 Pennsylvanians had been diagnosed with the novel coronavirus and 7,465 had died because of COVID-19, according to the Pennsylvania Department of Health. Black Pennsylvanians represent only 12 percent of the state’s population but account for 21 percent of its COVID-related deaths.⁶ After peaking in April, new diagnosed cases in the Commonwealth declined until mid-June but since then have risen.⁷ During the week ending August 14, the state averaged 838 new cases per day.⁸

To understand the economic consequences of the pandemic in Pennsylvania, it is necessary to understand the state of the state’s economy before the pandemic. Already millions of Pennsylvanians already struggled to make ends meet. As the economy expanded after the Great Recession and the costs of healthcare, housing, and higher education all rose significantly,⁹ the median wage in Pennsylvania increased by less than half a percent annually.¹⁰ During the same period poverty hovered consistently above 12 percent, and between 2016 and 2018 poverty grew in 30 of the state’s 67 counties.¹¹ In 2018, 28 percent of Pennsylvania households had incomes

⁵ See Pennsylvania Department of Health County Dashboard,

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/County-Dashboard.aspx>

⁶ See Department of Health, Weekly Report of Deaths Attributed to COVID-19 Issued August 14,

<https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Death%20Reports/Weekly%20Report%20of%20Deaths%20Attributed%20to%20COVID-19%20--%202020-08-14.pdf>

⁷ See Department of Health, COVID-19 Data for Pennsylvania,

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

⁸ See New York Times, Pennsylvania Coronavirus Map and Case Count,

<https://www.nytimes.com/interactive/2020/us/pennsylvania-coronavirus-cases.html>

⁹ See CNBC, “The cost of college increased by more than 25% in the last 10 years—here’s why,” December 13,

2019, <https://www.cnbc.com/2019/12/13/cost-of-college-increased-by-more-than-25percent-in-the-last-10-years.html>; Kaiser Family Foundation, *2019 Employer Health Benefits Survey*, <https://www.kff.org/report-section/ehbs-2019-summary-of-findings/>; and Marketplace, “Divided Decade: How the Financial Crisis Changed Housing,” December 17, 2018, <https://www.marketplace.org/2018/12/17/what-we-learned-housing/>

¹⁰ See Keystone Research Center, *State of Working Pennsylvania 2019*, available at <https://krc-pbpc.org/wp-content/uploads/SWP-2019-Complete-8-28-19.pdf>

¹¹ See Allentown Morning Call, “Poverty grew in almost half of Pennsylvania counties despite strong national economy,” January 2, 2020, <https://www.mcall.com/news/local/mc-nws-poverty-rates-growing-20200102-rkdgmwx45fasber3slveucuswa4-story.html>

below 200% of the federal poverty level.¹² On the eve of the pandemic, consumer debt in the Commonwealth stood at a record \$483.5 billion.¹³

The economic struggles of Black and Hispanic Pennsylvanians were particularly acute. In 2018, poverty rates for Black and Hispanic households stood at 25 and 26 percent, respectively, compared to 9 percent for non-Hispanic whites.¹⁴ In 2019, the Black unemployment rate in Pennsylvania was twice the rate for whites, and in inflation-adjusted terms the Black median hourly wage was around 10 percent lower than it had been forty years before.¹⁵ In 2017 and 2018, the Hispanic median wage rose above the Black median, but was only 76% of the white median.¹⁶

COVID-19 has exacerbated all of these trends – has “found, exploited, and widened every inequity that the U.S. had to offer,” in the words of one writer.¹⁷ Or, as Commissioner Coleman acknowledged in his June 18 motion to end the moratorium, “[t]he past three months have been one of the most difficult periods for citizens in the history of this Commonwealth. Many people have contracted the COVID-19 infection, become ill, and died. Many businesses have closed, and many workers have lost their jobs. The Commonwealth itself is facing profound fiscal challenges, and much work remains to be done to protect the health and safety of our citizens, and to restore the prosperity of our economy.”

For present purposes, the most salient part of this statement is the accurate observation that much work needs to be done to protect the health and safety of Pennsylvania’s citizens. The same is

¹² See Kaiser Family Foundation, “Distribution of the Total Population by Federal Poverty Level (above and below 200% FPL),” <https://www.kff.org/other/state-indicator/population-up-to-200-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

¹³ See Experian, “Debt Reaches New Highs in 2019, but Credit Scores Stay Strong,” March 9, 2020, <https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/>

¹⁴ See Kaiser Family Foundation, “Poverty by Race and Ethnicity,” <https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

¹⁵ See Keystone Research Center, *id.*

¹⁶ *Id.*

¹⁷ Ed Jong, “How the Virus Defeated America,” available at <https://www.theatlantic.com/magazine/archive/2020/09/coronavirus-american-failure/614191/>

true today, and it is why the Commission should proceed deliberately – and on the basis of a complete evidentiary record – on any move to lift the moratorium on utility terminations.

According to analysis released on July 22 by the Pennsylvania Budget and Policy Center, at the end of June more than half a million households in Pennsylvania reported being unable to afford enough food for their children. Twenty percent of renters were unable to pay the previous month’s rent on time. The state unemployment rate stood above 13 percent, with 3,786,000 individuals receiving unemployment benefits.¹⁸

With respect to utility bills, data collected by the Commission pursuant to its May 29 request for utility information indicate that due to arrearages more than 700,000 electric and natural gas customers would be eligible for termination at the start of June, without the moratorium, including more than 200,000 low-income families. More than 50,000 customers of regulated water and wastewater utilities were also eligible for termination.¹⁹

The Commission did not require utilities to submit arrearages balances. However, several did, and their data indicated that arrearage amounts have increased even more than the number of delinquent accounts. Given the recent expiration of enhanced unemployment benefits under the CARES Act and the fact that as of the end of June, Pennsylvania had recovered less than 40 percent of the jobs lost during March and April,²⁰ it is reasonable to assume that the numbers are even higher now.

Although Pennsylvania received \$3.9 billion under the CARES Act, to date it has spent only \$2.6 billion of that amount. A portion of these funds could be made available to help utility customers cure their bill arrearages, and two state legislators – Senator Tom Killion (R-Montgomery) and

¹⁸ See Pennsylvania Budget and Policy Center, “More Relief Needed to Alleviate Hardship in Pennsylvania: PA Households Struggle to Afford Food, Pay Rent, Emerging Data Show,” July 22, 2020, available at <https://krc-pbpc.org/wp-content/uploads/More-Relief-Needed-to-Alleviate-Hardship-PBPC-PA-version-of-CBPP-report.pdf>

¹⁹ See COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, Docket No. M-2020-3020055.

²⁰ See Pennsylvania Department of Labor and Industry Press Release, July 17, 2020, available at <https://www.media.pa.gov/Pages/Labor-and-Industry-Details.aspx?newsid=469>

Senator Steve Santarsiero (D-Bucks) – have issued co-sponsor memoranda for bills to do just that.²¹ However, legislation has yet to be introduced.

SPECIFIC COMMENTS CONCERNING THE MORATORIUM

I. The moratorium is critical to the Commonwealth’s response to the COVID-19 pandemic and should be maintained until the Commission has developed a comprehensive and equitable plan to transition away from it.

The Commission established the moratorium in March on the grounds that “the provision of public utility service is necessary for the safety of the public ... especially ... under the current challenges that resulted in the Proclamation of a pandemic emergency. Irreparable injury to the public is likely to occur with disruption of service, creating a clean and present danger to life.”

Chairman Brown Dutrieuille’s August 10 letter observed that “the Commonwealth finds itself in a different place than in early March.” Clearly this is true in some respects. As the letter notes, that since March Governor Wolf’s statewide “shelter-in-place” directive has been lifted and businesses have generally been permitted to reopen. However, it is also true that despite these changes in policy, the Commonwealth still finds itself in a place where the disruption of utility service is likely to result in irreparable injury to many Pennsylvanians.

As noted above, the pandemic continues in Pennsylvania and is disproportionately affecting Black Pennsylvanians. Infection rates are relatively flat now, but as children return to school and proximate human contact increases, rates could likewise increase, especially if people lack water to wash their hands and gas and electricity to heat their water. Electricity will also be critical as the school year begins because many schools children are likely to stagger student attendance schedules in accordance with the preliminary guidance issued by the Pennsylvania Department of Education, with the result that students will need to attend school online at some times.

²¹ See Senator Thomas H. Killion co-sponsor memorandum, “Utility Security for Seniors, Families, and Small Businesses Act,” available at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=32021> and Senator Steven J. Santarsiero co-sponsor memorandum, “Utility CARES Assistance,” available at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=32233>

Meanwhile, as also noted above, hundreds of thousands of Pennsylvanians have significant arrears on their utility bills; hundreds of thousands remain out of work; and the Pennsylvania General Assembly has yet to appropriate CARES Act funds for utility bill assistance, despite support from both the Commission and the Energy Association of Pennsylvania.

We respectfully submit that lifting the moratorium in these circumstances would be contrary to the public interest, as it would undermine Pennsylvania’s efforts to control the spread of the coronavirus and exacerbate the already disproportionate spread of the virus in low income communities and communities of color. Moreover, ending the moratorium without a detailed factual analysis and the creation of a formal record may be illegal. We therefore urge the Commission to maintain the moratorium until a plan to transition away from it has been developed through a record proceeding, as described below.

II. The Commission should initiate a statewide record proceeding to determine when the moratorium should be lifted and what new consumer protections should be established in its place.

In their Joint Petition filed with the Commission filed on August 5, CAUSE-PA and TURN filed a joint petition “to initiate a public review process to fairly evaluate, on the record, whether the involuntary termination of utility service to a person’s home would exacerbate current risks to public health and hinder the response and recovery from COVID-19,” with the goal of establishing “a just and equitable plan to address the accrual of utility debts as a result of the unprecedented economic devastation created by COVID-19...” NRDC supports this request,²² and based on the information currently available supports the particular consumer protections recommended by CAUSE-PA, TURN, and the Action Alliance of Senior Citizens of Greater Philadelphia in a letter dated July 14. Specifically, we recommend that the Commission:

- Establish statewide standards for pre-termination utility outreach to customers,
- Establish enhanced procedural standards for post-moratorium terminations,

²² NRDC supports a national moratorium on shutoffs of water, electricity and gas that extends at least 180 days beyond the end of the state of emergency to allow people to regain their financial footing. *See* Larry Levine, “Congress & States Must Protect Water Access During COVID-19,” August 7, 2020, <https://www.nrdc.org/experts/larry-levine/congress-states-must-protect-water-access-during-covid-19>.

- Require utilities to meet minimum customer service standards for the duration of the Disaster Emergency,
- Direct utilities to engage with stakeholders to discuss extended payment arrangements for accumulated utility bill arrears and arrearage forgiveness programs,
- Enhance consumer protections for residential customers with medical conditions,
- Ensure that universal service programs are available to all customers who need them,
- Require all regulated water and wastewater utilities to offer robust customer assistance programs,
- Establish statewide qualification standards for LIHEAP Crisis and Recovery Crisis grants,
- Require utilities to collect and report data on service terminations and make those data available to the public.
- Establish a schedule to reassess whatever consumer protection it may establish based on the data it collects concerning utility terminations.

These are provisional recommendations. Again, we believe that the Commission should not take action to end the moratorium on utility terminations until after it has conducted a statewide proceeding on the record, and that it should establish post-moratorium consumer protections based on that record.

CONCLUSION

We sincerely appreciate the opportunity to comment on this critical matter. NRDC believes that ensuring the provision of utility service during the COVID-19 pandemic and recession is both crucial for the maintenance of public health and necessary to minimize further widening of inequities that the pandemic has already aggravated. Policymakers and regulators often seek “win-wins.” The goal of utility regulators during the present pandemic should be to mitigate and fairly distribute the losses that will invariably affect all stakeholders, from low-income consumers to utility shareholders. We believe that conducting a record proceeding to determine

when and how to lift the moratorium on utility terminations is the fairest way for the Commission to do that.

Respectfully submitted,

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