



October 27, 2020

*Via Efiling*

Rosemary Chiavetta, Secretary  
PA 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**

**Joint Petition for Clarification of the Commission's October 13<sup>th</sup> Order**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Joint Petition of the Tenant Union Representative Network (TURN), Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) for Clarification of the Commission's October 13, 2020 Order at the above-referenced docket.

Due to the ongoing COVID-19 pandemic, this Petition is being served via email to all parties of record at the docket, as indicated on the attached Certificate of Service.

Sincerely,

Joline R. Price, Esquire  
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*Enclosures*

Cc: Certificate of Service  
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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**JOINT PETITION OF**

**TENANT UNION REPRESENTATIVE NETWORK (TURN),**

**ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, AND**

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY**

**EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

**FOR CLARIFICATION OF THE COMMISSION'S OCTOBER 13, 2020 ORDER**

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October 27, 2020

The Tenant Union Representative Network (TURN), Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (together, Joint Petitioners), on behalf of their respective members and constituents, pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), and Section 5.572 of the Commission’s regulations, 52 Pa. Code §5.572, submit this Petition for Clarification of the Commission’s October 13, 2020 Order, establishing “Phase 2 of the Termination Moratorium” in response to the ongoing COVID-19 pandemic.

**I. INTRODUCTION**

1. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (Proclamation) that identified the COVID-19 pandemic as a disaster emergency affecting the entire Commonwealth. On March 13, 2020, Chairman Gladys Brown Dutrieuille issued an Emergency Order (March 13 Emergency Order) establishing a prohibition on the termination of public utility service and urging the reconnection of service to customers previously terminated, to the extent it could be done safely, for the duration of the Proclamation, or until a time otherwise established by the Commission.<sup>1</sup> That Order was ratified by the Commission at its March 26, 2020 Public Meeting.

2. On August 10, 2020, Chairman Brown Dutrieuille issued a Letter at the Emergency Order docket seeking comments from “interested persons and organizations regarding the moratorium and consumer protections for at-risk customers, should the absolute service termination moratorium be lifted.” (August 10 Letter).

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<sup>1</sup> March 13, 2020 Emergency Order, at M-2020-3019244.

3. The Joint Petitioners submitted comments in response to the August 10 Letter, identifying the crucial need for residential and low-income customers to maintain stable and uninterrupted utility service for the health and safety of the family and the broader community,<sup>2</sup> and identifying the heightened risk of harm during the COVID-19 pandemic.

4. The Joint Petitioners' comments urged the Commission to maintain the emergency moratorium, in light of the continuing spread of the novel coronavirus causing COVID-19. We urged the Commission to conduct an on-the-record proceeding to examine the financial impacts of the ongoing pandemic and emergency moratorium,<sup>3</sup> 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 communities. Finally, the Joint Petitioners identified specific consumer protections that must be included in a plan to help equitably address the build-up of arrears throughout the pandemic.

5. On October 13, 2020, the Commission entered an Order (October 13 Order) lifting the absolute moratorium on utility termination on November 9, 2020, and implementing "Phase 2 of the Termination Moratorium," which allows utility terminations to proceed for nonpayment and establishes protections for certain subsets of residential and small business customers. In recognition of the fact that the pandemic is ongoing and that the future economic and health conditions are uncertain, the October 13 Order indicated that its terms would be revisited to

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<sup>2</sup> 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, February 2018 Public Utilities Fortnightly (Interview with Commissioner Place).

<sup>3</sup> Joint Petitioners also submitted a Petition for Due Process Relief, seeking to establish a formal, data driven proceeding to determine if, and how, the moratorium on terminations could be lifted on August 5, 2020, which the Commission denied on September 17, 2020.

“consider whether longer term options may be needed” to appropriately serve the public interest, and invited comments and proposals from interested parties by February 16, 2021.<sup>4</sup>

6. The October 13 Order provides ongoing protection from termination for “protected customers,” defined in the Order as residential customers with household income at or below 300% of Federal Poverty Income Guidelines (FPIG). To be classified as a “protected customer,” the October 13 Order requires such customers to “apply for all Assistance Programs for which the customer is eligible” and to “request a payment arrangement from the utility, if appropriate.”<sup>5</sup> No further direction was provided regarding which programs the consumer must apply for, how a household must prove that they applied, or the circumstances under which a payment arrangement is or is not “appropriate.”<sup>6</sup>

7. The October 13 Order also requires utilities to waive late fees, connection, reconnection and deposit fees for protected customers and to provide payment arrangements for small business customers.<sup>7</sup>

8. The October 13 Order further provides residential customers with two additional medical certifications, and requires utilities and the Commission’s Bureau of Consumer Services (BCS) to accept income and business status information through “flexible means.”<sup>8</sup> While the Order offers examples of possible “flexible means” for verification, encouraging utilities to accept verification “over-the-phone or via electronic mail,” the Order does not explicitly require utilities to waive the submission of formal income documentation.

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<sup>4</sup> October 13 Order at 3, 7.

<sup>5</sup> October 13 Order at 4.

<sup>6</sup> October 13 Order at 5.

<sup>7</sup> October 13 Order at 5.

<sup>8</sup> October 13 Order at 5-6.

9. The October 13 Order establishes ongoing reporting requirements for utilities concerning the accumulation of customer indebtedness and rate of terminations, and requires utilities to provide an additional “communication” to customers whose unpaid balances will put them at risk of termination.<sup>9</sup>

10. Although the Joint Petitioners recognize and appreciate that the Commission, in its October 13 Order, intended to establish ongoing protections from termination for customers who are unable to satisfy utility payment demands, we are concerned the Order lacks critical points of clarity to guide utility actions. Furthermore, the October 13 Order does not adequately explain what is required of customers to protect them from termination in the short timeframe established. The Joint Petitioners understand that there are already substantial deviations in the utilities’ interpretation of these requirements, leading to uneven and unequal implementation of the Commission’s October 13 Order across the state. If unresolved, this confusion is likely to place significant additional strain on already over-burdened families, as well as social services, program administrators, utilities’ consumer services departments, and the Commission’s complaint system.

11. The Joint Petitioners respectfully request that the Commission clarify its October 13 Order to prevent unnecessary loss of service and the potential overburdening of customers, utilities, social service agencies, and BCS that will occur if the protections intended by the October 13 Order, discussed more fully below, are not further defined and left subject to misinterpretation.

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<sup>9</sup> October 13 Order at 1, 9.

## II. ARGUMENT

### A. The Joint Petitioners' Request for Clarification Meets the Standard for Review

12. The Commission has authority to grant this Petition for Clarification and modify its October 13 Order pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), and Section 5.572 of the Commission's regulations, 52 Pa. Code § 5.572.

13. The standard for granting a Petition for Clarification is the same as the standard for granting a Petition for Reconsideration.<sup>10</sup>

14. The standard for granting this Petition is set forth in Duick v. Pennsylvania Gas & Water Co.:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under the code to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them...what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.<sup>11</sup>

15. Joint Petitioners submit that, for the reasons that follow, the Commission's October 13 Order is appropriate for clarification due to the considerations that have been overlooked by the

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<sup>10</sup> Petition of Peco Energy Co. for Approval of Its Revised Elec. Purchase of Receivables Program (Office of Small Bus. Advocate Petition for Clarification of 06/18/10 Comm'n Opinion & Order), No. P-2009-2143607, 2010 WL 3418419, at \*2 (Aug. 18, 2010).

<sup>11</sup> Duick v. Pennsylvania Gas & Water Co. 56 Pa. P.U.C. 53 (1982).

Commission, which are particularly significant in light of the ongoing COVID-19 pandemic. The content of the October 13 Order was not previously subject to comment that would have enabled Joint Petitioners and other stakeholders to identify these critical implementation issues and recommend corrections and improvements, such as those identified in this Petition. Since October 13, COVID-19 cases have surged across the state and are currently spiking at more than 2,000 new cases per day, warranting the Commission’s further attention to the details of its October 13 Order.

**B. The COVID-19 Pandemic is Far From Over, and Protections Remain Critical**

16. On October 14, 2020, the day after the Commission’s October 13 Order, Pennsylvania’s Secretary of Health warned of the precipitous increase in cases through the state. While highlighting the work underway to prepare for a fall resurgence, Secretary Rachel Levine reported in excess of 1,000 new cases per day for nine consecutive days.<sup>12</sup> This transmission rate is no longer primarily attributed to young adults and college students, but is broadly occurring and linked to an increase in hospitalization.<sup>13</sup> As of October 14, the day after the Commission’s October 13 Order, Pennsylvania reported its highest seven-day average of new cases since April 15, 2020, with no sign of a reduction to come.<sup>14</sup> On October 22, Pennsylvania reported 2,063 more cases and 1,042 hospitalizations – triggering Governor Wolf to indicate that additional targeted

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<sup>12</sup> Department of Health Prepared for Fall Surge in COVID-19 Cases, Working to Protect Pennsylvanians (October 14, 2020), available at: <https://www.media.pa.gov/pages/health-details.aspx?newsid=1071>.

<sup>13</sup> Justine McDaniel and Erin McCarthy, Pennsylvania faces a ‘fall resurgence’ as COVID-19 cases rise nationwide, the Philadelphia Inquirer (October 14, 2020), available at: <https://www.inquirer.com/news/coronavirus-covid-19-pa-nj-fall-surge-rising-cases-levine-crowd-20201014.html>.

<sup>14</sup> Id.

mitigation measures may be required.<sup>15</sup> On October 24, 2020, the Pennsylvania Department of Health reported that “[d]aily increases are now comparable with what we saw in April 2020.”<sup>16</sup>

17. While the October 13 Order notes that Pennsylvania’s shelter-in-place order has been lifted and unemployment numbers have improved, the increasing rate of COVID-19 transmission, coupled with the onset of cold and flu season, indicate that the coming months will be extraordinarily challenging for Pennsylvania and may entail a return to various forms of restriction aimed toward mitigation.

18. In many states, termination moratoriums remain in place as communities continue to experience high risk of transmission.<sup>17</sup>

19. While myriad uncertainties associated with the spread of COVID-19 continue, making it impossible to measure the full financial impact it has had and will have on all Pennsylvanians, there is no question that the virus continues to pose an imminent threat to the health and safety of individuals, families and communities, with the potential to completely overwhelm the health care system in the coming months. It remains critically important that customers remain safely housed and connected to essential services to keep themselves, their family, and their community safe.

20. Joint Petitioners urge the Commission to clarify its October 13 Order to eliminate the uncertainty it has created, and to ensure that customers can connect to and maintain critical utility protections during the pendency of COVID-19, consistent with the Commission’s clear intent. As set forth more fully below, the consumer protections the Commission seeks to create in the October

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<sup>15</sup> Ford Turner, Pennsylvania Coronavirus Update: Gov. Wolf says ‘targeted’ mitigation possible as 2,063 more cases reported, Morning Call (Oct. 22, 2020), <https://www.mcall.com/coronavirus/mc-nws-virus-stats-oct22-20201022-y5qriz2a3nch7mnmtypw2uxn3u-story.html>

<sup>16</sup> Pa. Media, Department of Health Provides Update on COVID-19, 2,043 Positives Bring Statewide Total to 192,622 (Oct. 24, 2020), <https://www.media.pa.gov/pages/health-details.aspx?newsid=1094>.

<sup>17</sup> See NEADA, Summary of State Utility Shut-Off Moratoriums Due to COVID-19 (last updated Oct. 19, 2020), <https://neada.org/utilityshutoffsuspensions/>.

13 Order are not adequately defined and present new logistical difficulties that will place customers at unnecessary risk.

**C. Obligation to Apply for All Available Assistance**

21. Joint Petitioners recognize that the October 13 Order announced the Commission’s well-intentioned goal of implementing a “mix of holistic, short-term and long-term solutions to offer customers protections and ensure the payment of bills from customers that are able to pay.”<sup>18</sup> However, we submit that the October 13 Order lacks critical points of clarity that will make it difficult for utilities to comply and enable customers to access those protections.

22. In the October 13 Order, the Commission highlighted the necessity that utilities inform customers that they are at risk of termination to ensure that customers requiring assistance “*be evaluated for participation* in various assistance programs, including, but not limited to, the Low Income Home Energy Assistance Program (LIHEAP), Customer Assistance Programs (CAP), Lifeline, and Hardship Funds.”<sup>19</sup>

23. The Joint Petitioners agree with the Commission that it is vital that customers be evaluated for participation in Assistance Programs, but the October 13 Order does not impose any obligation on utilities to perform such evaluation. While many utility customer service centers, social service agencies, County Assistance Offices, and other critical community resources remain closed to the public, and access to assistance is more difficult than ever (especially for those without access to the internet), the October 13 Order imposes only a single requirement that a “communication” be sent at least 10 days prior to issuance of a 10-day termination notice.<sup>20</sup> This communication is

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<sup>18</sup> October 13 Order at 3.

<sup>19</sup> October 13 Order at 3 (emphasis added) (internal citations omitted).

<sup>20</sup> October 13 Order at 4.

required only to generally inform customers that they are at risk of termination, the timeframe for likely termination, and information about “available options.” It falls short of requiring utilities to provide program information and eligibility guidelines to consumers to identify appropriate program options that would enable consumers to evaluate available options.

24. Moreover, even if a customer has applied for available assistance, the October 13 Order provides no guidance to customers or utilities as to how a customer can demonstrate that they applied. The vast majority of customers applying for utility assistance programs, including CAP or Hardship Fund grants, apply directly with an outside entity or third party administrator. Program administrators do not typically track customers who are screened out as ineligible before applying or those customers whose applications are rejected. If a CAP application was mailed, but not received or delayed in delivery, verifying that the customer applied would be delayed or prevented entirely. Importantly, rejected applicants do not always receive a rejection letter or other proof that they have applied, and there are inadequate systems established for program administrators to communicate information with utilities about pre-screening rejections, pending applicants, or rejected applicants. Given most social service agencies, utility customer service locations, County Assistance Offices, and other critical agencies remain closed to the public, applications for nearly all assistance programs statewide are being conducted by phone or by mail, meaning customers are unlikely to receive a timely responsive documentation to demonstrate that they have applied or were accepted into the program. Of course, ongoing delays in mail delivery times further complicate this issue for anyone who must apply for assistance through the mail.<sup>21</sup>

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<sup>21</sup> While the focus of concern around delays in mail has been on implications associated with the election, the ongoing postal delays is a serious concern for the process established by the Commission in its October 13 Order. In addition to raising questions for the adequacy of the 10-day time-frame for delivery of the additional pre-termination “communication” – postal delays also raise serious implications for the timeframe required to apply for available assistance programs by mail. See Jacob Bogage & Christopher Ingraham, Key Swing States Vulnerable to USPS

25. Finally, and critically, the requirement for a customer to apply for “all Available Assistance programs” fails to account for the fact that such programs may or may not be relevant to the pending termination at issue. The Commission’s Order is very broad, in that it provides an open-ended list of possible assistance programs that covers both DHS and utility administered programs, making it unclear how far the mandate extends. For example, it is unclear if the Commission intends its requirement to extend only to programs offering direct utility assistance, or more broadly to all local, state, and federal assistance programs such as food, rental, and medical assistance that help more generally improve a household’s available resources. Even if intended to only apply only to utility-focused assistance programs, it is likewise unclear which utility programs a customer must apply to avoid termination. For example, if a customer is subject to potential termination of electric service, the October 13 Order could be interpreted to nonetheless require that customer to apply for a Lifeline telecommunications discount. We do not believe this is the correct interpretation. Similarly, the October 13 Order creates an ambiguity concerning whether a customer would have satisfied the requirement if, for example, the customer directed LIHEAP assistance to a gas utility or deliverable fuel vendor, but was threatened with termination by an electric utility.<sup>22</sup>

26. Joint Petitioners submit that, without substantial clarification, the October 13 Order’s requirement that customers apply for “all Assistance Programs” imposes an unworkable and unprecedented burden on customers. The October 13 Order should be clarified to permit statewide

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Slowdowns as Millions Vote by Mail, Data Shows, Washington Post (Oct. 20, 2020), <https://www.washingtonpost.com/business/2020/10/20/swing-states-election-usps/>.

<sup>22</sup> See 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket M-2019-3012599, at 50-52 (Nov. 5, 2019) (recognizing the practical issues associated with requiring CAP customers to direct a LIHEAP grant to a specific utility as a condition to enrollment in CAP).

uniformity of application by utilities and enable customers to obtain certainty that they are protected from termination.

27. For these reasons, the Joint Petitioners urge adoption of the following clarifications to the Commission's October 13 Order regarding the additional 10-day pre-termination notice communication:

- (i) **Require utilities to appropriately inform, evaluate, and assist consumers in applying for available assistance programs.**
  - CAP Customers: Because utilities already possess income information confirming the low-income status of participants in their CAP programs, the Commission should impose an affirmative obligation on utilities to apprise at-risk CAP customers of their options to preserve service pursuant to the October 13 Order. Utilities should be required to engage in proactive outreach to CAP customers to obtain updated income information to maximize affordable utility bills. Further, utilities should be instructed to refer CAP customers to their CARES programs if they require additional assistance completing the steps necessary to preserve service.
  - Non-CAP Customers: For non-CAP customers, a utility must, upon contact from the customer, conduct the evaluation the Commission appears to have intended. The utility must assess eligibility for assistance and inform the customer, with specificity, of the Assistance Programs to which the customer must apply. The utility must also offer and provide assistance to ensure that eligible customers are able to access those programs. Customers should be referred to CARES for special assistance applying and overcoming any specific hurdles that might impede their ability to access assistance programs. Only if a customer knowingly fails to apply, after having received guidance on how to apply and assistance with the specific applications required, should a utility be able to proceed with the termination process.
- (ii) **Require utilities to accept a customer's verbal attestation that they have applied for available assistance programs.**
- (iii) **Define the phrase "all available Assistance Programs" as those programs offered by the utility seeking to terminate the customer, for which the customer would be eligible.**

#### **D. Additional Ten-Day Communication**

28. The October 13 Order states that utilities are permitted to issue ten-day termination notices pursuant to 66 Pa. C.S. §1406(b) after satisfying an additional ten-day “communication” obligation.

29. As set forth in the October 13 Order, the utility is required to issue a communication that satisfies the following:

(1) inform the customer that they are at-risk of service termination after the moratorium is lifted (November 9, 2020); (2) indicate a general time range when the customer will likely be terminated unless the customer takes appropriate steps; (3) inform the customer of available options including the customer’s right to file an informal complaint with the Commission if the customer is not satisfied with the arrangement offered by the utility; and, (4) be sent to the customer at least ten days prior to the issuance of the standard ten-day termination notice contained in 66 Pa. C.S. § 1406(b). The additional ten-day communication provided for in this paragraph is a one-time requirement.<sup>23</sup>

30. As discussed above, Joint Petitioners submit that this single communication, without any further obligations imposed on the utility to help inform consumers of available options and evaluate their eligibility for various programs, will be insufficient to aid customers in applying for all Available Assistance programs in compliance with the October 13 Order.

31. If a customer is required to apply for available assistance programs to obtain protection from termination and avoid imposition of fee, the communication must provide specific instructions of the assistance programs available, the steps a customer must take in order to be evaluated for these assistance programs and to avoid termination, and how a customer can obtain assistance with completing and submitting applications.

32. Furthermore, it is not clear what form the communication is required to take. The “communication” could be sent by phone, email/text message, or via a written notice. It is also

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<sup>23</sup> October 13 Order at 3-4.

unclear who must receive the communication, and whether those who are already known to the utility to have income at or below 300% FPIG will receive such a notice if they are otherwise protected from termination until March 31, 2021.

33. Customers and utilities require more detailed instruction to ensure that the communication is sufficiently specific, is actually received, and is understood by the customer.

34. Finally, the communication requirement, by its terms, appears intended to apply to all customers, including small business customers, and all utilities. However, the timing of the communication is tied to the provision of a Section 1406(b) notice, which section does not apply to small business customers, nor does it apply to regulated telecommunications utilities.

35. The October 13 Order does not provide sufficiently specific instruction to utilities in communicating with customers to ensure they are consistently informed of their rights and obligations. Indeed, the October 13 Order could permit utilities to utilize different forms of communications with different customers arbitrarily, and without taking into consideration language access needs, timing of anticipated mailing delays, or the quality of the communication itself.

36. For these reasons, the Joint Petitioners urge the Commission to adopt the following clarifications of its October 13 Order with regard to the 10-day communication requirement:

- (i) **Require that the additional 10-day communication be written, detailed, and accessible.**
  - **Written.** The additional 10-day communication with customers should be accomplished by a written notice
  - **Detailed.** The additional 10-day communication should meaningfully apprise customers, in detail, of available assistance programs and the steps necessary to apply for these assistance programs and to obtain protection against termination, consistent with the Joint Petitioners' earlier points of clarification. The additional 10-day communication should also include a statement that the utility will assist the customer to evaluate eligibility for available programming.

- **Accessible.** The additional 10-day notice should be in plain and accessible language. To address language access needs, utilities should be required to include a translated statement in Spanish, as well as other commonly spoken languages, indicating that the notice contains information regarding possible termination of service, and to contact the utility for assistance. The translated communication should also include clear instructions that customers can obtain translation services if they contact the utilities, and any additional steps a customer might need to take in order to receive translation.
- (ii) **Provide a standardized, model 10-day communication to be adapted by each utility to include information about the specific Assistance Programs the utility provides.**
- (iii) **If the additional 10-day communication requirement is intended to benefit small business customers and apply to telecommunications utilities, the Commission should clarify the notice timing under the termination standards applicable to those customers and utilities.**

#### **E. Protected Customer Income, Verification, and Flexibility**

37. The October 13 Order states that utilities and BCS are required to accept income verification “through flexible means” and goes on to provide examples of over-the-phone verification and verification by electronic mail. However, the October 13 Order seems to stop short of requiring utilities and BCS to explicitly accept income verification provided through either means. As a result, utilities and BCS lack explicit guidance regarding accepting these forms of verification.

38. The ambiguity in the Commission’s Order regarding the requisite means for a customer to verify their income will result in wide variations in implementation – both across utilities and within a utility – making it difficult for consumers to comply and for the Commission to enforce and oversee.

39. The October 13 Order also lacks clarity with respect to which customers must verify their income with the utility. Specifically, the Order fails to indicate whether a utility must use information already on file to apply “protected customer” status to those at risk of termination. It

likewise fails to indicate whether a utility has an affirmative duty, prior to terminating service to a residential customer, to determine whether a customer is in fact a “protected customer.”

40. For these reasons, the Joint Petitioners recommend the following clarifications of the Commission’s October 13 Order:

- (i) Require utilities and BCS to accept verbal, over-the-phone verification of income from all customers.**
- (ii) Require utilities to apply “protected customer” status to all residential customers for which the utility has information indicating that they have income at or below 300% FPIG.**
  - This should include, but not be limited to, current enrollment in a utility assistance program or with an income-based payment arrangement, as well as those who have received a LIHEAP or Hardship Fund grant within the last three years.
- (iii) Require utilities and BCS to affirmatively request income and household composition information prior to termination to determine whether customers are protected from termination or otherwise eligible for protections pursuant to the October 13 Order.**

#### **F. Medical Certifications**

41. As discussed above, Phase 2 of the Termination Moratorium coincides with the start of the cold weather season while COVID-19 cases are now spiking across the state. In an effort to protect medically vulnerable customers, the October 13 Order authorizes two additional medical certifications beyond the number of medical certifications authorized by the Commission’s regulations.<sup>24</sup>

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<sup>24</sup> October 13 Order at 4-5. Joint Petitioners note that customers are not limited to three medical certifications, as stated in the October 13 Order. Customers are limited to one medical certification and two renewals for the same set of arrearages only if they are unable to meet their obligations to equitably make payments on all bills, in which case additional renewals are available. See 52 Pa. Code §§ 56.114(2), 56.354(2).

42. Additionally, the October 13 Order provides an additional seven days for medical professionals to complete the medical certification and authorizes such certifications to be on physician or medical facility letterhead.

43. By authorizing additional medical certifications, customers who were previously terminated and who have been unable to restore service should be able to utilize a medical certificate to restore service. However, the Commission's October 13 Order makes no distinction based on whether customers are currently without service due to a prior termination.

44. Additionally, the October 13 Order states that medical certifications on "the doctor's/medical facility's letterhead" shall be accepted. Although the Commission's intent may have been to make medical certifications more broadly available, this requirement actually further restricts the availability of medical certifications. The current requirements for medical certifications only require that a medical certificate be in writing (including electronic) and include the following information:

- (1) The name and address of the customer or applicant in whose name the account is registered.
- (2) The name and address of the afflicted person and relationship to the customer or applicant.
- (3) The anticipated length of the affliction.
- (4) The name, office address and telephone number of the certifying physician, nurse practitioner or physician assistant.
- (5) The signature of the certifying physician, nurse practitioner or physician assistant.<sup>25</sup>

Indeed, pursuant to the Commission's existing regulations, *any* writing with the requisite elements must be accepted. The new medical certificate protections contained in the Commission's October 13 Order should enhance available protections, not add additional restrictions.

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<sup>25</sup> 52 Pa. Code §§ 56.113; 56.353.

45. In addition, because the Commission has placed a limit on the availability of additional medical certifications, utilities should not be permitted to count a medical certification against a customer's medical certification limit if the certification is submitted during a period when the customer's service could not otherwise be terminated.

46. For these reasons, the Joint Petitioners recommend the following clarifications to the Commission's October 13 Order with regard to additional medical certificates:

- (i) Clarify that the new medical certification opportunities in the October 13 Order are available to restore service.**
- (ii) Clarify that any writing that includes the required elements of a medical certificate, *whether or not on letterhead*, satisfies the Commission's existing regulations and must be accepted by a utility.**
- (iii) Clarify that a utility should not count a medical certification against a customer's medical certification limit if the certification is submitted during a period when the customer's service is otherwise protected from termination.**

#### **G. Coordination with Winter Moratorium**

47. The October 13 Order does not explicitly recognize the continuing effectiveness of the winter moratorium on utility terminations provided in the Public Utility Code.<sup>26</sup>

48. Because the October 13 Order authorizes utilities to resume termination activity, without explicitly acknowledging the existing protections against termination from December 1 to March 31, it is not clear whether the October 13 Order adequately recognizes that customers with income at or below 250% FPIG remain protected by the statutory prohibition on termination.

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<sup>26</sup> 66 Pa. C.S. § 1406(e).

49. As a consequence, without clarification, customers who are otherwise protected from termination may anticipate their service will nonetheless be terminated, leading to significant confusion, unnecessary use of medical certificates, and unnecessary disputes.

50. Joint Petitioners recommend that the Commission clarify its October 13 Order to affirm that the existing, statutory winter moratorium protection remains in place and direct the additional ten day communication to include information on the winter moratorium.

#### **H. Victims of Domestic Violence**

51. The October 13 Order does not explicitly recognize that victims of domestic violence may be entitled to more lenient standards than those provided in Chapter 14 of the Public Utility Code.<sup>27</sup>

52. Since COVID-19 cases surged in March 2020, advocates have reported a significant increase in domestic violence, with victims finding even fewer alternatives available to them to escape an abuser due to stay-at-home orders, job loss, school closures, lack of access to social services, and lack of broadband access.<sup>28</sup>

53. As a result of economic and physical abuse and isolation tactics of their batterer, victims of domestic violence often lack access to household finances and documentation and face unique barriers to access courts and social services for assistance. This is especially true during the pandemic, which has complicated access to the courts, transportation, child care, and other critical social and legal services necessary to accessing available assistance and court-ordered protections.<sup>29</sup>

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<sup>27</sup> See 66 Pa. C.S. § 1417.

<sup>28</sup> Megan L. Evans, M.D., M.P.H., Margo Lindauer, J.D., and Maureen E. Farrell, M.D., [A Pandemic within a Pandemic — Intimate Partner Violence during Covid-19](https://www.nejm.org/doi/full/10.1056/NEJMp2024046), New England Journal of Medicine (Sept. 16, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

<sup>29</sup> See Amalesh Sharma & Sourav Bikash Borah, [COVID-19 and Domestic Violence: An Indirect Path to Social and Economic Crisis](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7386835/), J. Fam. Violence (July 28, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7386835/>.

54. By omitting any consideration of the special needs of victims of domestic violence, the Commission's October 13 Order fails to properly account for the specific statutory recognition that victims should be afforded additional protections from utility terminations.<sup>30</sup>

55. For these reasons, the Joint Petitioners recommend the following clarifications to the Commission's October 13 Order with regard to protections for victims of domestic violence:

- (i) **Victims of domestic violence are “protected customers” within the meaning of the October 13 Order, without any requirement to apply for additional assistance.**
- (ii) **Utilities and BCS will accept verbal attestation that a customer is a victim of domestic violence for purposes of providing the protections in the October 13 Order.**
- (iii) **Upon contact from a residential customer eligible for termination, utilities and BCS are required to inquire whether the customer is a victim of domestic violence.**

#### **I. Availability and Resolution of Complaints**

56. The October 13 Order states that “a protected customer denied a stay by the utility may file a complaint with the Commission for review of the utility's decision.”<sup>31</sup>

57. The October 13 Order provides additional rights to protected customers beyond the moratorium on termination, including waiver of late payment charges, connection and reconnection fees, and security deposit requirements, but does not specify that customers may file complaints if utilities fail to provide these rights.<sup>32</sup>

58. It is unclear from the October 13 Order whether consumers will be able to file such complaints regarding their status as a “protected customer” even if the Commission previously

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<sup>30</sup> 66 Pa. C.S. § 1417.

<sup>31</sup> October 13 Order at 5.

<sup>32</sup> October 13 Order at 5.

acted on a related consumer complaint prior to the October 13 Order, or whether those previously terminated may file a complaint regarding their status seeking immediate reconnection – as opposed to a stay.

59. Due to the requirement of additional correspondence regarding potential termination, customers are likely to experience significant confusion.

60. A significant influx of complaints should be anticipated in response to utility termination efforts during the COVID-19 pandemic.

61. The Commission’s Bureau of Consumer Services (BCS) may become overwhelmed by the volume of complaints and unable to adequately process or resolve complaints in a timely fashion, due to staffing limitations and the new rules established by the October 13 Order.

62. Joint Petitioners recommend the following clarifications to the Commission’s October 13 Order to clarify the availability of relief through Commission complaints:

- (i) **Customers may dispute not only utility termination efforts, but also the imposition of utility late payment, connection and reconnection charges, and deposit demands.**
- (ii) **In the context of a consumer complaint, BCS should direct the applicable utility to assess whether the complainant is a “protected customer” and report that information to the BCS investigator to expedite resolution of complaints.**

### III. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Joint Petitioners request that the Commission grant this Petition, and provide all stakeholders the necessary clarification of the provisions of the October 13 Order requested in Paragraphs 27, 36, 40, 46, 50, 55, 62 hereof.

Respectfully submitted,

*On Behalf of TURN and Action Alliance*



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## VERIFICATION

I, **Elizabeth R. Marx**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Elizabeth R. Marx, Esq.

On behalf of CAUSE-PA

DATED: October 27, 2020

## VERIFICATION

I, **Robert W. Ballenger**, legal counsel for Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

A handwritten signature in black ink, appearing to read 'R. W. Ballenger', written over a horizontal line.

Robert W. Ballenger, Esq.

*On behalf of TURN et al.*

DATED: October 27, 2020

**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 Petition for Clarification of TURN et al. and CAUSE-PA** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54, as modified by the Commission’s March 20, 2020 Emergency Order.

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