

Phase 2 of the Moratorium on Utility Shut-offs in Pennsylvania Extended

On February 19, 2021, Pennsylvania Governor Tom Wolf signed the fourth 90-day renewal of his Proclamation of Disaster Declaration for the COVID-19 Pandemic. Significantly for Pennsylvania public utilities, this action had the effect of extending Phase 2 of the moratorium on terminations of public utility service, as ordered by the Pennsylvania Public Utility Commission (PUC).¹

Background

The governor originally issued his proclamation on March 6, 2020. Such a proclamation expires by operation of law in 90 days, unless extended by the governor. The governor has renewed his proclamation several times; the most recent renewal of the proclamation extends the emergency declaration from February 22 to May 19, 2021.

On March 13, 2020, PUC Chairman Gladys Brown Dutrieuille issued an *ex parte* emergency order² generally prohibiting the termination of public utility service by electric, natural gas, water, wastewater, telecommunications, and steam utilities (the impacted utilities), and encouraging the impacted utilities to reconnect service to customers previously terminated, to the extent it could be done safely. This moratorium was to continue for the duration of the proclamation.

After several unsuccessful attempts to terminate or modify the moratorium,³ the commission entered an order on October 13, 2020, (the October order)⁴ modifying the emergency order to implement Phase 2 of the moratorium on utility shut-offs. The October order is to remain in effect until the earlier of: (1) March 31, 2021; (2) the date on which the governor's proclamation is rescinded; or, (3) a time otherwise established by the commission. If the governor's proclamation had expired on February 22, Phase 2 of the moratorium would have expired as well. By extending the proclamation to May 19, 2021, therefore, the governor's action also had the effect of extending Phase 2 of the moratorium until March 31, 2021 (unless the PUC extends the moratorium or terminates it sooner).

Phase 2

Briefly,⁵ the October order lifted the absolute ban on public utility service terminations by impacted utilities effective November 9, 2020, but provided additional protections for consumers. Some of these protections are procedural. For example, impacted utilities are required to issue an additional pre-termination notice to customers at risk of having their utility service terminated. Other protections are more substantive. For example, impacted utilities generally cannot terminate service to residential customers at 300 percent or less of federal poverty income guidelines, and impacted utilities must waive certain types of charges for these customers (including late payment charges and connection, reconnection, and deposit fees). Impacted utilities are also required to offer a payment arrangement (for not less than 18 months) to small business customers with a past due amount.

The PUC recognized that compliance with its orders on the moratorium could increase costs for impacted utilities. It therefore allowed impacted utilities to continue⁶ tracking extraordinary nonrecurring incremental COVID-19 related expenses, and permitted most impacted utilities to create a regulatory asset for incremental expenses incurred as a result of the PUC's COVID-19 orders. Impacted utilities must maintain detailed records of these expenses.

Finally, the PUC ordered impacted utilities to report certain information to the PUC monthly (including the number of residential and non-residential accounts disconnected for non-payment,



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as well as the total number of residential and non-residential accounts at risk of termination).

Next Steps

In its October order, the PUC requested that interested stakeholders submit comments and proposals regarding revisions to the October order. These comments and proposals were due by Tuesday, February 16, 2021. Almost four dozen sets of comments and proposals were submitted by individuals, utilities, public advocates (the Office of Consumer Advocate and the Office of Small Business Advocate), elected officials, and other interested parties. The PUC's staff is currently reviewing these comments and will provide a recommendation to the PUC. This recommendation will be considered at an upcoming public meeting of the PUC.

It is expected that little information will be available to the public about this staff recommendation prior to the public meeting at which it is considered. Utilities and other stakeholders should watch the PUC's website⁷ to review meeting agendas before March 31, 2021, to see when the PUC will take further action on the moratorium.

¹ The PUC does not regulate most utility systems owned by municipal authorities, nor does it regulate municipally owned utility systems that only serve customers within the municipality. Consequently, the moratorium on public utility shutoffs does not extend to these utility systems.

² *Public Utility Service Termination Moratorium, Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019244. An *ex parte* emergency order may be issued by the chairman, a commissioner, and certain high-ranking commission staff members. It must be ratified, modified, or rescinded by the full commission at its next public meeting. 52 Pa. Code § 3.3 (Disposition of *Ex Parte* Emergency Orders). The emergency order was ratified by the full commission on March 26, 2020.

³ See our previous Alert, *The Saga Continues: Pennsylvania PUC Delays Action on Terminating the Moratorium on Utility Shut-offs*

⁴ *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244. The PUC subsequently denied a petition for reconsideration of this order. *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order; Joint Petition of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania*, Docket No. M-2020-3019244 (Order entered Dec. 17, 2020).

⁵ For additional details on Phase 2, see our previous Alert, *Pennsylvania Public Utility Commission Enters Phase 2 of the Moratorium on Utility Shut-offs*

⁶ The PUC originally issued a secretarial letter on May 13, 2020 requiring impacted utilities to track extraordinary, nonrecurring incremental COVID-19 related expenses and to maintain detailed accounting records of such expenses. The secretarial letter also authorized most impacted utilities to create a regulatory asset for incremental uncollectible expenses incurred above those embedded in rates since the issuance of the emergency order. The PUC will consider in future proceedings whether any impacted utility's request for recovery of a regulatory asset or "exogenous event recovery" related to the emergency order is just and reasonable pursuant to 66 Pa. C.S. §§ 1301, 1308, and applicable Chapter 30 plans. *COVID-19 Cost Tracking and Creation of Regulatory Asset*, Docket No. M-2020-3019775 (Secretarial Letter issued May 13, 2020).

⁷ <https://www.puc.pa.gov/about-the-puc/public-meetings-hearings/>