

Continuing the “Return to Normalcy” at the Pennsylvania Public Utility Commission

The Pennsylvania Public Utility Commission (PUC), like many other public and private organizations, is gradually returning to pre-pandemic procedures. Commission staff will soon return to the office and the PUC has issued orders gradually ending the emergency measures it took in response to the pandemic.¹ On July 16, 2021, the PUC issued two more orders² taking additional steps toward a “return to normalcy.”³

Background

Following the issuance of Governor Tom Wolf’s *Proclamation of Disaster Emergency* in March 2020, identifying the COVID-19 pandemic as a disaster emergency affecting the entire commonwealth, the PUC issued several emergency orders affecting consumers, the regulated community and public utility practitioners. Among other things, these orders: (1) prohibited the termination of public utility service by electric, natural gas, water, wastewater, telecommunications, and steam utilities; (2) established a procedure for extending statutory and regulatory deadlines; and (3) modified the requirements for filing and serving documents in PUC proceedings.

On June 10, 2021, the General Assembly passed a concurrent resolution terminating the *Proclamation of Disaster Emergency*. The next day, Governor Wolf signed Act 21, which provides “temporary regulatory flexibility authority” to commonwealth agencies that suspended a statute establishing procedures for the conduct of commonwealth business. In view of these developments, the PUC adopted the *Termination Moratorium Order* and the *Deadline Suspension Order*.

Extended Payment Arrangements Entered Into by Utilities

In its March 2021 order terminating the moratorium on public utility service connections, the PUC ordered utilities to offer extended repayment terms to residential and small business customers. For example, utilities were required to offer payment arrangements with a minimum term of five years to residential customers with incomes below 250 percent of the federal poverty level. Utilities were also required to offer payment arrangements with a minimum term of 18 months to small business customers.

The requirement to offer customers payment arrangements with extended repayment terms was originally scheduled to remain in effect until December 31, 2021, but the *Termination Moratorium Order* eliminates that requirement after September 30, 2021. On and after October 1, 2021, payment arrangements must adhere to the provisions of the Pennsylvania Public Utility Code and PUC regulations. Payment arrangements with extended terms that were entered into prior to September 30, 2021, will remain in effect for the duration of their terms.

Extended Payment Arrangements Ordered by the Commission

The March 2021 order terminating the moratorium on public utility service connections also provided that, in response to a formal or informal complaint filed by December 31, 2021, the PUC could order payment arrangements with extended repayment terms for residential and small business customers. Since the key date was the date the complaint was filed, this provision applied even if the PUC did not issue an order in the case until after December 31, 2021.

Under the *Termination Moratorium Order*, after September 30, 2021, payment arrangements ordered by the PUC must adhere to the provisions of the Pennsylvania Public Utility Code and PUC regulations. A PUC order entered on or before September 30, 2021, establishing a payment



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arrangement with an extended repayment plan, will continue to be valid according to its terms after September 30, 2021.

Regulatory Asset

During 2020, the PUC recognized that its orders responding to the COVID-19 pandemic imposed costs on utilities. All jurisdictional utilities were directed to track extraordinary, nonrecurring, incremental, COVID-19-related expenses, and to maintain detailed accounting records of such expenses. The PUC also authorized electric, natural gas, water, wastewater, steam, and rate base/rate of return telecommunications utilities to create a regulatory asset for any incremental expenses incurred above those embedded in rates resulting from the PUC's COVID-19 related directives.

The *Termination Moratorium Order* confirmed that utilities are to continue tracking extraordinary, nonrecurring, incremental, COVID-19-related expenses and maintaining detailed records of such expenses. The *Termination Moratorium Order* also confirmed that electric, natural gas, water, wastewater, steam, and rate base/rate of return telecommunications utilities may create a regulatory asset for any incremental expenses incurred above those embedded in rates resulting from the *Termination Moratorium Order* and prior PUC orders relating to the pandemic.

Reporting Requirements

The March 2021 order terminating the moratorium on public utility service connections also directed electric, natural gas, water, wastewater, steam, and telecommunications companies to submit reports concerning accounts at risk of termination, aggregate dollars of arrears, and accounts disconnected for non-payment. The reports were due quarterly, on the 15th day of the month following the end of the quarter, with the last report due on January 15, 2022. The *Termination Moratorium Order* re-stated these reporting requirements, but made clear that they were based on the PUC's statutory authority to require public utilities to file periodic reports⁴ — not on the *Proclamation of Disaster Emergency* or any other order relating to the COVID-19 pandemic.

Suspension/Extension of Deadlines

In March 2020, the PUC established procedures for suspending or extending deadlines established in PUC regulations or in statutes administered by the PUC. For example, in rate cases, the chief administrative law judge was authorized to establish reasonable deadlines under the circumstances, after considering the positions of the parties and the presiding administrative law judge. Deadlines generally could not be extended or suspended for more than 90 days. In addition, following termination of the *Proclamation of Disaster Emergency*, the March 2020 order stated that a suspended deadline could be extended by an additional 30 days.

The *Deadline Suspension Order* states that the authority to suspend or extend a deadline expires on September 30, 2021. Any order issued prior to that date, suspending or extending a deadline, will remain in full force and effect after September 30, 2021, in accordance with its terms.

Filing and Service Requirements

In March 2020, the PUC ordered that all filings be made through its electronic filing system, rather than by mailing paper copies to the PUC. Confidential or proprietary information, which cannot be filed using the PUC's electronic filing system, was to be filed by emails addressed to the PUC's secretary. Finally, the PUC directed that service in PUC proceedings was to be exclusively electronic during the pandemic.

The special rules for filing and service during the pandemic will expire on September 30, 2021. After that date, filing and service is to be made in accordance with PUC regulations.

Conclusion

The pandemic has had a considerable impact on ratepayers and utilities alike. Consequently, the return to normalcy is a process that will take time. That process may be similar to the process of recovering from the polar vortex of 2013-2014. Many consumers have amassed large arrearages and will ask their utilities or the PUC for payment arrangements. Some consumers may also file

complaints challenging fees imposed by their utilities during the pandemic. Utilities that received small rate increases due to economic conditions during the pandemic may file another rate case sooner than would have been the case in the absence of the pandemic. The PUC may review its procedural and substantive regulations to determine what changes, if any, may be desirable based on “lessons learned” during the pandemic.⁵ As a result, developments at the PUC during the next several months certainly bear watching.

¹ For previous articles discussing the PUC’s response to the COVID-19 pandemic, please see our previous Alerts: (1) In Party Line Vote the Pennsylvania PUC Continues the Moratorium on Utility Terminations; (2) Pennsylvania PUC Remains Deadlocked over Terminating the Moratorium on Utility Shut-Offs; (3) The Saga Continues Pennsylvania PUC Delays Action on Terminating the Moratorium on Utility Shut-Offs; (4) Pennsylvania Public Utility Commission Enters Phase 2 of the Moratorium on Utility Shut-Offs; (5) Phase 2 of the Moratorium on Utility Shut-Offs in Pennsylvania Extended Until March 31, 2021; and (6) Pennsylvania Public Utility Commission Enters a New Phase in Responding to the COVID-19 Pandemic.

² *Public Utility Service Termination Moratorium; COVID-19 Cost Tracking and Creation of Regulatory Asset*, Docket Nos. M-2020-3019244 and M-2020-3019775 (Order entered July 15, 2021) (the *Termination Moratorium Order*) and *Suspension of Regulatory and Statutory Deadlines, Modifications to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order entered July 15, 2021) (the *Deadline Suspension Order*).

³ While not a direct subject of this alert, the PUC also entered an order on July 15, 2021, lifting its ban on door-to-door, public event, and in-person sales and marketing activities by electric generation suppliers and natural gas suppliers. *Supplier Door-to-Door and In-Person Marketing Moratorium, Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019254 (Order entered Jul. 15, 2021).

⁴ 66 Pa. C.S. § 504 (Reports by public utilities).

⁵ For several years, the PUC’s Law Bureau has been leading a working group on revisions to the PUC’s Rules of Practice and Procedure. Proposed revisions to the Rules of Practice and Procedure could incorporate lessons learned and efficiencies realized during the pandemic — including greater use of electronic filing/service of documents and use of videoconference hearings.