

COVID-19 and the Utility, Energy, Telecommunications & Transportation Sectors: What You Need to Know

COVID-19 (coronavirus) continues to have an increasingly adverse impact on people and operations around the globe. The utility and energy industries are essential service providers. They must, for the health, safety, and economic vitality of the public and our nation, conduct their operations, regardless of crises, such as the coronavirus, without interruption, in a safe and reliable manner.

As the coronavirus spreads, it has become more challenging for the industry to do so. On the positive side, and at least for now, the public is not likely to get the coronavirus from those services being provided. For example, the U.S. EPA has preliminarily determined that the coronavirus has not been detected in drinking water, and based on current evidence, the risk to water supplies is low. As for wastewater, the World Health Organization has concluded that there is no evidence to date that the coronavirus has been transmitted by sewerage systems. U.S. EPA has also determined that wastewater treatment plants treat viruses and other pathogens and that coronavirus is the type of virus that is particularly susceptible to disinfection. On the negative side, the industry can be adversely impacted by business interruptions, revenue declines, expense increases, employee absenteeism, supply chain disruptions, quarantines, mass cancellations and third party claims.

Also, during all of this, companies and organizations must remain compliant with regulatory requirements and operate under existing permits and approvals and continue to obtain many types of permits and approvals to maintain and expand operations. This will be very difficult due to regulators cutting back their own operations due to the coronavirus.

This Alert discusses what is happening in Pennsylvania and New Jersey. Please keep in mind, that the information provided herein is current as of the date of the Alert, and that information on the coronavirus crisis has been changing rapidly.

PENNSYLVANIA

Public Utility Commission (PUC) — All offices of the PUC are currently closed, but employees are working remotely through at least March 27, 2020. All hearings have been cancelled through April 10, 2020, and no public input hearings are being scheduled at this time. The consumer hotline is still open but it has limited staff, resulting in longer than normal wait times. The PUC's public meeting scheduled for March 26, 2020, will be held telephonically.

On March 13, 2020, PUC Chairman Gladys Brown Dutrielle signed an Emergency Order imposing a moratorium on terminations of electric, natural gas, water, wastewater, telecommunications, and steam service unless (a) the termination is required to ameliorate a safety emergency, or (b) the PUC determines that the termination is permissible. This moratorium took effect immediately and will remain in effect during the pendency of Governor Tom Wolf's Proclamation of Disaster Emergency (up to June 4, 2020, unless renewed by the governor).

In addition, on March 16, 2020, Chairman Brown Dutrielle signed an Emergency Order imposing a moratorium on all door-to-door, in person, and public event sales activities by agents of electric and natural gas suppliers. This moratorium applies to all customer classes, not just residential customers. It took effect immediately and will remain in effect during the pendency of Governor Wolf's Proclamation of Disaster Emergency.



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Related Practice Areas

- Utility & Energy

On March 19, 2020, Governor Wolf issued an executive order for all “non-life-sustaining businesses” in the commonwealth to close their physical locations. Governor Wolf said that he will use all possible methods of enforcement — including citations, fines, cutting off state loans, loss of disaster relief, and license suspension. The order classifies utilities as “life-sustaining businesses” that are allowed to continue operations; however, the order classifies certain construction businesses, upon which utilities rely, as non-life-sustaining businesses. On March 20, 2020, the governor clarified that construction businesses may continue to provide “emergency services.” Based on this guidance, utilities can presumably rely upon construction businesses insofar as necessary to address emergency situations. Utilities with questions about whether they can continue to rely on certain construction contractors should email ra-dcedcs@pa.gov. Contractors seeking exemptions are encouraged to email ra-dcexemption@pa.gov.

On March 20, 2020, Chairman Brown Dutrielle signed an Emergency Order delegating authority to PUC bureau directors to extend or waive any regulatory, statutory, or procedural deadline. This may be done at the request of the parties or on the initiative of the bureau (subject to a right to appeal to the commissioners). The commissioners also reserved the right to waive a deadline *sua sponte*. This order applies during the pendency of Governor Wolf’s Proclamation of Disaster Emergency. During that period, deadlines generally will not be extended for more than 90 days, but after the disaster emergency expires, deadlines may be extended by an additional 30 days. This order also modified filing and service requirements in PUC proceedings.

On March 23, 2020, Governor Wolf issued “stay at home” orders for the following seven Pennsylvania counties: Allegheny, Bucks, Chester, Delaware, Monroe, Montgomery, and Philadelphia. Individuals residing in those counties are ordered to stay at home, except as needed to access, support, or provide life sustaining business, emergency, or government services. Under the order the following are among the entities that may continue physical operations: water, sewage, and other systems, natural gas distribution, electric power generation, transmission and distribution, telecommunications, and various forms of transportation. The policy took effect at 8:00 p.m. on Monday, March 23, 2020, for a period of two weeks, specifically until April 6, 2020.

Department of Environmental Protection (DEP) — DEP has announced that in order to prevent the further spread of the coronavirus all DEP offices will remain closed for at least the 14 days beginning March 17. DEP staff that is able to do so are teleworking. This includes reviewing permits, responding to complaints and environmental emergencies, and other work.

Environmental Hearing Board (EHB) — The EHB has announced that due to the closing of the Pennsylvania state government offices to mitigate the spread of the coronavirus, all offices of the EHB are closed until March 30, 2020. The EHB is continuing to operate remotely during this period. The EHB is encouraging the public to electronically file documents and, where possible, to refrain from mailing or faxing documents to the EHB’s Harrisburg office. Requests for extension or adjustments to scheduling may be filed with the EHB and will be addressed on a case-by-case basis.

Compacts

Susquehanna River Basin Commission (SRBC) — SRBC employees are working from home. A limited number of staff in the Harrisburg offices are processing mail and accepting deliveries. The offices are closed to visitors until further notice. They are monitoring emails and voicemails. They will respond, but delays are expected.

Delaware River Basin Commission (DRBC) — The DRBC remains operational, but its West Trenton, N.J., office building is closed and staff are working remotely, until further notice.

NEW JERSEY

Since March 9, 2020, when New Jersey Governor Phil Murphy first declared a state of emergency in the state (EO-103), in the face of a mounting number of COVID-19 cases and related deaths in

the state, he has issued a series of increasingly restrictive measures in order to mitigate the spread of the virus in the state.

Executive Order No. 103 (March 9)

EO 103 declared a state of emergency and public health emergency across all 21 counties in New Jersey, allowing state agencies and departments to utilize state resources to assist affected communities responding to and recovering from COVID-19 cases. Among other things, the declaration prohibits excessive price increases pursuant to New Jersey's Consumer Fraud Act and the ability to waive certain procurement procedures to expedite the delivery of goods and services necessary for coronavirus preparedness and response efforts.

Executive Order No. 104 (March 16)

EO 104 implemented aggressive social distancing measures, indefinitely closing all public and private preschool, elementary, and secondary schools and institutions of higher education, as well as closes all casinos, racetracks, gyms, movie theaters, and performing arts centers.

Executive Order No. 107 (March 21)

EO 107 announced additional restrictions on businesses and a statewide stay at home order, as follows.

Mandatory closure of all non-essential retail businesses. Exceptions include grocery stores, farmer's markets, and farms that sell directly to customers and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store; pharmacies and medical marijuana dispensaries; medical supply stores; gas stations; convenience stores; ancillary stores within health care facilities; hardware and home improvement stores; banks and other financial institutions; laundromats and dry-cleaning services; stores that principally sell supplies for children under five years; pet stores; liquor stores; car dealerships, but only for auto maintenance and repair, and auto mechanics; printing and office supply shops; mail and delivery stores.

All businesses or nonprofits, wherever practicable, must accommodate their workforce for telework or work-from-home arrangements. To the extent a business or nonprofit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or nonprofit should make best efforts to reduce staff on-site to the minimal number necessary to ensure that essential operations can continue.

Examples of employees who need to be present at their work site in order to perform their job duties include, but are not limited to, law enforcement officers, fire fighters, other first responders, cashiers or store clerks, construction workers, **utility workers**, repair workers, warehouse workers, lab researchers, IT maintenance workers, janitorial and custodial staff, and certain administrative staff. Employees, in essential and exempt non-essential businesses, reporting to work are permitted to travel to and from their place of business. However, businesses are encouraged to give each employee a letter indicating that the employee works in an industry permitted to continue operations.

Prohibits all gatherings of individuals, such as parties, celebrations, or other social events, unless otherwise authorized by the order. When in public, individuals must practice social distancing and stay at least six feet apart whenever possible, excluding immediate family members, caretakers, household members, or romantic partners.

Legislation

On March 19, Governor Murphy signed into law A-3852/S-2296 allowing for the conducting of state business and legislative sessions at locations other than Trenton during periods of emergency or other exigency. The law also allows conduct of legislative business using electronic means. On March 20, 2020, Governor Murphy signed A3850 into law allowing public bodies to conduct meetings, and provide notice, by electronic means during periods of emergency. In addition, the governor signed A-3849/S-2302 modifying the seven-business-day deadline by which a public agency is required to respond to request for government record during period of emergency (to reasonable effort to provide within seven business days or as possible thereafter), and A-3861/S-

2290 permitting corporations to hold shareholders' meetings in part or solely by means of remote communication during a state of emergency

New Jersey Board of Public Utilities (BPU)

While board offices are closed, the BPU continues to operate on a remote basis. On March 9, 2020, at a regularly scheduled BPU Agenda Meeting, New Jersey Board of Public Utilities President Joseph Fiordaliso reported on his discussions with New Jersey utility executives about their plans to maintain utility services and provide utility support as the COVID-19 experience unfolds. On March 13, the BPU announced that the state's public electric and gas utilities had universally agreed to suspend service shutoffs given the statewide public health emergency and the effort currently underway in response to the COVID-19 pandemic. On March 19, the BPU held an emergency meeting telephonically and remotely and issued an order directing that:

1. All public utilities and regulated entities immediately cease any in-home or business visits unless there is an immediate risk to health and safety;
2. Broadband internet providers may continue to connect new customers or repair existing service for homes with school-age children, those who need internet access to meet job requirements, or other priority customers, as defined by each company, provided that such visits should only be done as a last resort after utilizing hotspots, self-install kits, and like measures to minimize in-home visits; and
3. All door-to-door sales activity by third-party suppliers or other sales persons selling energy or energy-related products (for example: residential solar, community solar, or energy efficiency offerings) are to be suspended immediately.

Further, the board waived all requirements that entities file paper documents with the BPU or with Rate Counsel and, instead, ordered that all submissions to the BPU or Rate Counsel, of any kind, be submitted electronically to the board secretary or to Rate Counsel. This includes, but is not limited to, entities participating in the e-filing pilot project, as well as the requirements of *N.J.A.C. 14:1 et seq.* and *N.J.A.C. 14:17.1 et seq.* In lieu of the paper copies:

1. All parties file documents with the board secretary electronically at board.secretary@bpu.nj.gov, and serve electronically to the rest of the service list; and
2. A document shall be considered filed with the BPU once the party receives an electronic confirmation of the filing from the Office of the Board Secretary or Office of Case Management.

The board also announced that it will construe its filing requirements liberally to minimize the amount of non-electronic filing of any documents and that it will waive the prohibition on the submission of an electronic document from being entered into the record of a formal proceeding, as set forth in *N.J.A.C. 14:1 et seq.* and *N.J.A.C. 14:17.1 et seq.*, and it will be suspending submittal of fees due with the original filing as set forth in *N.J.S.A. 48:2-56* until further notice; suspended filing fees will be due at a future date to be determined by the BPU. The BPU noted its discretion to offer future guidance to be provided in future proceedings, if the need shall arise. As of now, the BPU plans to hold its regularly scheduled agenda meeting remotely, with toll-free telephone access for the public. The phone number is (877) 692-8957 and the access code is 9760685.

Lieutenant Governor, the New Jersey Department of Community Affairs, the New Jersey Department of Environmental Protection Commissioner and Board of Public Utilities

In a joint statement issued March 23, 2020, the lieutenant governor, the New Jersey Department of Community Affairs Commissioner Sheila Y. Oliver, the New Jersey Department of Environmental Protection Commissioner Catherine R. McCabe, and Board of Public Utilities President Joseph L. Fiordaliso called upon all water providers to suspend shut-offs during the COVID-19 outbreak. The joint statement recognizes that the provision of water is an essential public service, critical for both health and personal hygiene, making consistent access to safe water especially vital to New Jersey's response to the unprecedented public health emergency created by the spread by COVID-19. The joint statement calls upon every water system, private or public, including those operated by municipal governments, to commit to a suspension of any water shut-offs for reasons of non-

payment until the outbreak of COVID-19 has subsided by sending its statement of commitment to the Department of Environmental Protection (DEP), via email, to KeepWaterOn@dep.nj.gov. The joint statement thanked those water providers, including the New Jersey-American Water, and SUEZ, Newark Water Department, and Trenton Water Works, that have already publicly made this commitment.

New Jersey Office of Administrative Law

On March 16, 2020, the New Jersey Office of Administrative Law (OAL) issued a message declaring that effective March 18, 2020, OAL staff and judges will begin working from home. All non-emergent matters will be adjourned through April 1, 2020. OAL will then assess and update litigants and attorneys further. Emergent hearings will be conducted via telephone conference.

New Jersey Utilities Association on Utility Companies' Response to COVID-19 Pandemic

On March 17, 2020, Thomas R. Churchelow, Esq., president of the New Jersey Utilities Association issued the following statement on the New Jersey Utility Companies' response to COVID-19 Pandemic:

The New Jersey Utilities Association and its 13 member companies continue to closely monitor the rapidly evolving situation related to COVID-19 outbreak. New Jersey's investor-owned utilities work tirelessly, around the clock, to provide essential water, wastewater, electric, natural gas, and telecommunications services to New Jersey residents and businesses. As such, we are working in conjunction with the New Jersey Board of Public Utilities to establish and implement COVID-19 preparedness plans to ensure continuity of service and health of customers and employees.

Additionally, in an effort to keep all New Jersey residents safe during the COVID-19 pandemic, NJUA member companies are suspending shut-offs of electric, gas, and water service at this time. NJUA member companies continue to follow guidance issued by the Governor's Office, the Center for Disease Control, and all appropriate state and federal agencies. We will adjust plans as necessary to support employees and protect the customers and communities we serve.

ISSUES ABOUT WHICH TO BE THINKING

Utility, energy, telecommunications, and transportation companies and municipal operations are encouraged to be thinking about the following issues during and after the COVID-19 pandemic crisis.

Should you issue customer educational materials about the impact of the COVID-19 pandemic?

- Topics could include assurances regarding the continuation of safe, adequate, and reliable service; payment arrangements; arrangements for in-home meter reads; social distancing with operations personnel; and general public safety tips on preventing the spread of COVID-19. As a public service by utilities, effective customer education may be viewed by regulators as good management when considering extra basis points for allowed return on equity.
- Due to increased use of sanitizing hand wipes and toilet paper shortages, wastewater system operators should consider educational materials about the threat to systems caused by flushing of non-degradable materials.

Have you made appropriate arrangements for social distancing for meter readers and operations personnel who must visit a customer's home or business?

- Do such personnel have the appropriate protective gear (such as face masks and gloves)?
- Are shared equipment and facilities being deep-cleaned on a regular basis?

Have you inventoried your supplies (such as face masks) that may be of assistance to health care providers?

- The charitable donation of such items should be tracked because you may receive rate recovery.

Do you have warehouse or other facilities that could be used as mobile hospitals

or drive-through COVID-19 test facilities?

Does your human resources team know how to react to and manage COVID-19 positive test situations?

Is your human resources team familiar with new paid leave, unemployment, and other employment requirements? Is overtime being appropriately tracked?

Has your information technology team taken the steps necessary to protect against cybersecurity threats associated with remote work?

- Is confidential information being transmitted to and from personal devices that may not be secure?

Have you reviewed and updated your business continuity plan in response to the current crisis?

Have you informed your operations personnel of the requirement, in Pennsylvania, to prioritize service to Priority One customers (such as hospitals and nursing homes)?

Have you appropriately coordinated with and provided updated contact information (including work-from-home information) to state and federal authorities, including regulators and emergency management agencies?

- Have you provided work-from-home contact information to your key service providers and vendors?

Do you have, for Pennsylvania compliance purposes, the necessary affiliated interest agreements in place for shared services and the fair cost allocation thereof?

If you have not already, should you enter into mutual aid agreements with neighboring operators to ensure continued operations in the event that key personnel become ill or quarantined?

- We have been assisting PAWARN, to help facilitate this in Pennsylvania.
- Mutual aid agreements can make needed resources available and avoid future disputes regarding the costs of shared resources.

How will the economic downturn impact consumption levels and revenue projections for ratemaking test year purposes?

- Is your company properly tracking extraordinary and non-recurring expenses related to the COVID-19 crisis for possible deferred regulatory accounting treatment and ratemaking purposes?
- How will recent federal and state legislation impact test year claims for ratemaking purposes?

Do you need to request extensions or waivers for reporting requirements (such as annual reports and quarterly earnings reports)?

How will the government-mandated shut down of non-essential businesses affect your supply chain?

- Do you need to adjust your just-in-time procurement processes to account for supply lags?

How has the government-mandated shut down of non-emergency construction services impacted your infrastructure repair and replacement program?

- Do you need to amend your long-term infrastructure improvement plan to account for the slow-down or temporary cessation of construction activity?

Is your company eligible for grants or loans under federal and state economic stimulus legislation?

Have you and your contractors considered and appropriately documented whether new service connections qualify as emergency construction that is exempt from government shutdown mandates?

Public utilities and municipal utility operations play an essential role in the public welfare. Aside from providing essential services, they are in a unique position to assist in emergency situations. Effective planning and forward-thinking will help mitigate the adverse impacts of the COVID-19 crisis on your customers, your business, and the general public.

Cozen O'Connor's Utility & Energy Group is here to help. During the coronavirus crisis, the Utility & Energy Group has been working side-by-side with our clients, regularly advising them on how to manage and avoid legal pitfalls, unique in many ways, because of the magnitude of the problems.