

Pennsylvania Public Utility Commission Enters a New Phase in Responding to the COVID-19 Pandemic¹

On March 11, 2021, the Pennsylvania Public Utility Commission voted to take additional steps toward returning to pre-COVID-19 pandemic procedures for collecting amounts due for public utility service in Pennsylvania.² As of April 1, 2021, existing commission-ordered restrictions on service terminations will be lifted in favor of modified rules for payment arrangements that allow customers to pay their arrearages over extended periods. These commission-ordered modifications will remain in effect through December 31, 2021, when they will expire and pre-pandemic procedures will once again control the collection process.

Background

In March 2020, the PUC issued an emergency order³ that generally prohibited regulated⁴ Pennsylvania electric, natural gas, water, wastewater, telecommunications, and steam utilities (the affected utilities) from terminating customers' service during the COVID-19 pandemic emergency. By order entered October 13, 2020, (October order),⁵ the commission entered Phase 2 of the moratorium on terminations. The October order lifted the absolute ban on shut-offs effective November 9, 2020, and replaced it with specific limitations on affected utilities' ability to terminate service. Phase 2 was scheduled to end on March 31, 2021.

The March 2021 Motion

The PUC, which is currently composed of four members (one position is vacant), voted on a motion by Vice Chairman David W. Sweet. This motion would have extended Phase 2 until July 15, 2021 or until the commission takes further action, so that the commission could conduct a stakeholder process to address specific issues. The vice chairman's motion failed by a vote of 2-2. The commission then unanimously approved the motion of Chairman Gladys Brown Dutrieuille (the March 2021 motion).

In the March 2021 motion, Chairman Dutrieuille noted that the economy has improved since the October order was entered. She also observed that both Congress and the General Assembly have enacted legislation providing economic assistance during the pandemic, including utility assistance. She concluded "it is time to return to the regular collections process as set forth in the Public Utility Code and the Commission's Regulations, with some additional protections."⁶

Commissioner John F. Coleman, Jr. issued a statement explaining his vote in favor of the March 2021 motion. He noted that, although the absolute ban on shut-offs was lifted during Phase 2, public utilities used this option for relatively few accounts. In addition, during Phase 2, fewer customers than hoped-for had taken advantage of the opportunity to enter into payment arrangements, apply for assistance, or satisfy arrearages. As a result, the size of arrearages continued to grow during Phase 2.

Commissioner Coleman also pointed out that the commission's existing regulations contain strong consumer protections. Noting that the commission must consider and balance the interests of utilities and **all** customers (not just those who have understandably had difficulty remaining current with their utility bills), Commissioner Coleman concluded that the March 2021 struck the right approach.

Replacing the Restrictions on Terminations with Extended Payment Arrangements



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As of April 1, 2021, the restrictions on terminations that were in effect during Phase 2 will cease. Instead, special rules for payment arrangements between customers and affected utilities will be in effect. These rules include:

1. For residential customers with incomes below 250 percent of the federal poverty level, utilities are required to offer a payment arrangement of a minimum of five years. However, the customer may agree to a shorter payment arrangement and the utility may agree to a longer payment arrangement.
2. For residential customers with incomes between 250-300 percent of the federal poverty level, utilities are required to offer a payment arrangement of a minimum of two years. However, the customer may agree to a shorter payment arrangement and the utility may agree to a longer payment arrangement.
3. For residential customers with incomes over 300 percent of the federal poverty level, utilities are required to offer a payment arrangement of a minimum of one year. However, the customer may agree to a shorter payment arrangement and the utility may agree to a longer payment arrangement.
4. For small business customers, utilities are required to offer a payment arrangement of a minimum of 18 months. However, the customer may agree to a shorter payment arrangement and the utility may agree to a longer payment arrangement.
5. If a customer files a complaint against an affected utility by December 31, 2021, the commission may:
 1. a. Order one payment arrangement consistent with Paragraphs 1-3 above for residential customers eligible for a new payment arrangement or for residential customers who previously defaulted on a Commission-ordered payment arrangement.
 2. b. Order one payment arrangement consistent with Paragraph 4 above for a small business customer.

For purposes of establishing a customer's income, the commission allowed affected utilities to be flexible in accepting income information.

The commission also directed utilities to continue tracking extraordinary, non-recurring incremental COVID-19 related expenses, and to maintain detailed accounting records of such expenses. In addition, the affected utilities were directed to create a regulatory asset for any incremental expenses incurred as a result of the emergency order, the October 2020 order, or the March 2021 motion. Detailed records of these expenses also must be maintained. Finally, the commission established certain reporting requirements for affected utilities.

The special rules for payment arrangements, and the other directives of the March 2021 motion, will remain in effect through December 31, 2021. At that time, they will expire by their own terms and the Public Utility Code and the commission's regulations will determine the length of payment arrangements.

Possible Unintended Consequences

Paragraph 5 above, concerning the commission's authority in complaint cases filed before December 31, 2021, was necessary to remove a possible disincentive for affected utilities to agree to payment arrangements, because the code and commission regulations provide for payment arrangements of shorter durations. However, if customers are unable to reach agreements with affected utilities on payment arrangements as December 31, 2021, approaches, this provision could prompt a wave of complaints similar to the wave that followed the Polar Vortex.

The Final Phase?

The March 2021 motion states that the proceeding initiated by the emergency order will be closed no later than January 31, 2022. Clearly, the commission does not contemplate any additional phases in its response to the COVID-19 pandemic. The commission, however, can amend its order⁷ in the future, if circumstances require.

¹ Part of a continuing series. For previous articles discussing the moratorium on public utility shut-offs in Pennsylvania, please see: (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; **and (5)** Phase 2 of the Moratorium on Utility Shut-offs in Pennsylvania Extended until March 31 2021.

² *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (as of this date, no order has been entered).

³ *Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019244 (Emergency Order entered 13, 2020, ratified by the Commission on March 26, 2020).

⁴ 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 did not extend to these utility systems.

⁵ *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered October 13, 2020).

⁶ March 2021 Motion, p. 2.

⁷ 66 Pa. C.S. § 703(g); 52 Pa. Code § 5.572.