

The Saga Continues: Pennsylvania PUC Delays Action on Terminating the Moratorium on Utility Shut-offs

In March 2020, the Pennsylvania Public Utility Commission (PUC) issued an emergency order that prohibits Pennsylvania electric, natural gas, water, wastewater, telecommunications, and steam utilities from terminating customers' service during the COVID-19 pandemic emergency, declared by Governor Tom Wolf earlier in March. The PUC's prohibition of terminations failed to take into consideration a customer's ability to pay and failed to identify whether the moratorium was based upon public health concerns associated with utility service terminations or the deterioration of economic conditions.

In June 2020, a deadlocked PUC refused to terminate the moratorium. In July 2020, a deadlocked commission failed to pass a motion to convene a stakeholders initiative to discuss ending the moratorium.

At its August 27, 2020, meeting, the PUC was scheduled to consider a motion addressing termination of the moratorium, but consideration of that motion was postponed until the commission's September 17 meeting. The stated reason was the need for more time to evaluate comments that had been filed with the PUC.

Related PUC Proceedings

On August 5, 2020, the Tenant Union Representative Network (TURN), the Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Joint Petition for Due Process Relief. The joint petition argued that "involuntary termination of utility service to a home during the pandemic is likely to cause irreparable harm to the life and property interests of vulnerable consumers, placing them at added risk of increased exposure to the COVID-19 virus." They urged the commission to keep the moratorium in effect while conducting an on-the-record proceeding to (1) evaluate whether the involuntary termination of utility service to a person's home will hinder the response and recovery from COVID-19, and (2) develop a "just and equitable plan" to address the accrual of utility debts as a result of the pandemic.

On August 10, 2020, Chairman Gladys Brown Dutrieuille issued a letter to interested persons and organizations regarding the moratorium and customer protections for at-risk customers, should the moratorium be lifted. She noted that the pandemic had caused significant economic hardship for many utility customers, but had also negatively impacted utility income. She expressed concern about the potential consequences to both customers and utilities of maintaining the moratorium too long. Her letter sought comments and indicated that, based on those comments, the chairman intended to address the moratorium at the PUC's August 27, 2020, meeting.

Comments were submitted by a wide variety of individuals and organizations, including elected officials (e.g., the governor, the attorney general, and the mayor of Philadelphia), trade organizations (e.g., the National Association of Water Companies – Pennsylvania Chapter, the Pennsylvania Rural Electric Association, the Pennsylvania Telephone Association and the Energy Association of Pennsylvania), public advocates (e.g., the Office of Consumer Advocate and the Office of Small Business Advocate), environmental groups (e.g., the Sierra Club and the Natural Resources Defense Council), individual utilities, and others (including the American Association of Retired Persons – Pennsylvania, the Pennsylvania State Grange, TURN and CAUSE-PA).

Several parties also filed Answers or Petitions to Intervene in response to the Joint Petition. Several of these pleadings argued that the comments submitted in response to the chairman's letter provided the PUC with sufficient information to proceed with a decision on lifting the



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moratorium. At this time, it does not appear that the joint petition has been assigned to an Administrative Law Judge for hearings.

Related Recent Developments

On August 25, 2020, Governor Tom Wolf announced a proposal for \$100 million in grants to be divided between the Low-Income Home Energy Assistance Program and a new emergency water/wastewater program to be administered by the Pennsylvania Infrastructure Investment Authority to assist residential customers who would be subject to termination of service when the moratorium is lifted. This proposal requires legislative approval and it is unclear exactly how the grant programs would be funded.

In addition, Governor Wolf recently nominated Haley Book to fill a vacancy on the PUC. Commissioner Andrew Place resigned from the PUC in April after voting in favor of the service termination moratorium, leaving a PUC composed of two Democrats and two Republicans. The June and July motions on the moratorium were deadlocked 2-2 along party lines. Ms. Book, a Democrat, was a deputy consumer advocate within the Office of Attorney General and an assistant to former Commissioner Place. She is currently a senior adviser on energy and climate to the Secretary of the Department of Environmental Protection and a leading advocate for the Wolf administration's controversial push to bind Pennsylvania, through executive agency action, to the Regional Greenhouse Gas Initiative (RGGI) over the objection of Republican legislators.

Republican lawmakers in the Senate and the House of Representatives are exploring ways to force the governor to end the disaster declaration. Earlier this summer, the General Assembly passed a resolution to force the governor to end the disaster emergency, but the Supreme Court of Pennsylvania ruled that the legislature could not act unilaterally to terminate the emergency. The resolution was subsequently presented to the governor, who vetoed it. Some legislators have expressed interest in overriding the veto.

Breaking the Deadlock

By its own terms, the duration of the PUC's moratorium is tied to the duration of the governor's COVID-19 emergency proclamation. That proclamation is set to expire in early September, but is likely to be extended, thereby extending the duration of the moratorium. Barring an override of the governor's veto, the commission will need to decide how and when to terminate the moratorium and who pays for the mounting customer arrears (customers responsible for the arrears, paying customers, utility shareholders, or a combination thereof). That may not happen unless Ms. Book is confirmed by the Republican-controlled Senate, breaking the current deadlock on the commission. It is unclear whether that will happen before the September 17 meeting of the PUC. In fact, it is unclear whether the deadlock will be broken before the annual moratorium on winter terminations begins on December 1.
