

In Party-Line Vote, the Pennsylvania PUC Continues the Moratorium on Utility Terminations

On Thursday, June 18, 2020, the Pennsylvania Public Utility Commission (PUC) voted 2-2 to maintain the PUC's moratorium on utility terminations while Governor Tom Wolf's Proclamation of Disaster Emergency (the proclamation) remains in effect.¹ The vote came on a motion by Commissioner John F. Coleman, Jr., who was supported by the other Republican on the commission, Ralph V. Yanora. Chairman Gladys Brown Dutrieuille and Vice Chairman David W. Sweet (both Democrats) voted against the motion. The motion failed for lack of a majority.

Background

In response to the coronavirus pandemic, on March 6, 2020, Governor Wolf (a Democrat) issued the proclamation declaring a disaster emergency throughout the commonwealth for up to 90 days, unless renewed by the governor. The following week, PUC Chairman Dutrieuille issued an emergency order prohibiting Pennsylvania electric, natural gas, water, wastewater, telecommunications, and steam utilities (the fixed utilities) from terminating service during the pendency of the proclamation, except for safety-related or other reasons approved by the PUC. Fixed utilities were also encouraged to reconnect customers whose service had been previously terminated. Notably, the order did not take into consideration a customer's ability to pay and was initially justified on the basis of public health concerns associated with the absence of utility service. The order was unanimously ratified by the PUC on March 26, 2020.

The emergency order upended the legislative mandates of Chapter 14 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1401 *et seq.* (The Responsible Utility Customer Protection Act), on service terminations and reconnections. Passed in 2014, the Act was intended to balance the interests of paying customers and non-paying customers by limiting under-collections by utilities — which will ultimately impact the rates paid by “responsible utility customers.”

On June 3, 2020, Governor Wolf extended the proclamation for another 90 days. The Pennsylvania General Assembly (in which both the Senate and the House of Representatives are controlled by the Republicans) passed a concurrent resolution terminating the proclamation and directing the governor to end the emergency in accordance with the resolution. The Republican leaders of the Senate and the Senate Republican Caucus subsequently filed a mandamus action in the Commonwealth Court of Pennsylvania seeking to compel the governor to comply with the General Assembly's resolution. The governor, in turn, asked the Supreme Court of Pennsylvania to take jurisdiction of the matter, which the court did under its “King's Bench” jurisdiction, staying the proceedings in the Commonwealth Court until the Pennsylvania Supreme Court decides the matter.

The Motion

Commissioner Coleman's motion noted that the PUC's mission statement calls on the PUC to balance the interests of customers and utilities. In terms of the utilities' interests, the motion expressed concern that the moratorium on terminations will increase under-collections by utilities, which will ultimately be passed on to all ratepayers in future base rate cases. The motion also expressed concern that under-collections could cause some utilities to incur short-term debt to cover expenses, further increasing the costs that will be passed on to ratepayers. Finally, the motion expressed concern that under-collections may cause utilities to delay maintenance, repair, and replacement of critical infrastructure.

In terms of consumers' interests, the motion noted that the commission's emergency order prohibits terminations, but does not prohibit utilities from debt collection activities. The motion also noted that commission regulations do not permit immediate terminations, but instead provide for a



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termination process, during which the utility can enter into a payment arrangement with the customer rather than terminating service to the customer. In addition, the motion expressed concern that federal aid to customers in need could be used by customers of fuel sources that are not subject to the moratorium, or could terminate, before the proclamation expires.

Balancing these interests, the motion called for an immediate lifting of the moratorium for natural gas distribution companies. For the other fixed utilities, the moratorium on terminations for non-residential customers would have been lifted on July 1, 2020, and the moratorium on terminations for residential customers would have been lifted on July 15, 2020.

Vice Chairman Sweet issued a written statement explaining his vote against the motion. He noted the health and financial challenges that many Pennsylvanians have faced due to the coronavirus pandemic and the resulting closing of non-life sustaining businesses. Many people continue to face financial challenges due to the expenses incurred while they were unable to work. In addition, many people are still working from home and others must remain at home to care for their families. Under these circumstances, people should not need to fear that their utility service will be terminated.

Vice Chairman Sweet argued that terminating the moratorium at this time would be premature. The coronavirus pandemic is not over, he argued; Pennsylvanians are simply learning to live with it.

Chairman Dutrieu made an oral statement at the meeting explaining her vote, but did not issue a written statement on the motion.

Next Steps

A key part of the legal authority for the PUC's emergency order is the proclamation. The commissioners may need to revisit the issue of terminating the moratorium depending on the outcome of the on-going Supreme Court litigation.

¹ There is currently one vacancy on the commission.