

Pennsylvania Public Utility Commission Enters Phase 2 of the Moratorium on Utility Shut-Offs

In March, 2020, the Pennsylvania Public Utility Commission (PUC) unanimously issued an emergency order that generally prohibited Pennsylvania electric, natural gas, water, wastewater, telecommunications, and steam utilities (the affected utilities) from terminating customers' service during the COVID-19 Pandemic Emergency. The PUC failed to incorporate an "ability to pay" test in implementing the service termination moratorium. On October 8, 2020, the PUC voted 3-1 to adopt a motion by Chairman Gladys Brown Dutrieuille modifying the emergency order. On October 13, 2020, the PUC entered an order (the October order),¹ based on the motion, that loosened, but did not eliminate, the restrictions that the PUC placed on utility shut-offs in the emergency order.

Importance of the Issue

The moratorium on utility shut-offs is an important issue for all stakeholders. Residential customers who lost their jobs due to the COVID-19 pandemic have an interest in preserving their utility service until they can get back on their feet. Similarly, businesses that experienced reduced revenues due to the economic slowdown have an interest in preserving utility service until they can pay their bills. Utilities who must continue to provide adequate and reasonable service have an interest in collecting amounts due to them in a timely manner. Finally, residential and business customers who are able to pay their bills in a timely manner do not want to see their rates increase to cover large amounts of uncollectible bills.

Previous Attempts to Modify the Moratorium

During the summer of 2020, several attempts to terminate or modify the moratorium were unsuccessful.² In September 2020, the PUC rejected as moot a "Joint Petition for Due Process Relief" asking the PUC to "initiate a public review process to evaluate the impacts of lifting the termination moratorium and develop a statewide plan addressing the accrual of utility debts as a result of the COVID-19 pandemic."³

On August 10, 2020, the PUC issued a letter from Chairman Dutrieuille requesting comments regarding the moratorium and customer protections for at-risk customers, if the PUC lifted the absolute service termination moratorium. Comments were submitted by approximately 29 individuals and organizations. This procedure satisfied the Pennsylvania Public Utility Code's requirement that the PUC provide notice and an opportunity to be heard before amending a PUC order.

Phase 2

The October order lifted the absolute moratorium on utility service terminations, allowing disconnections to commence effective November 9, 2020.⁴ It also modified the PUC's existing policies regarding the termination of utility service by affected utilities. These modifications will remain in effect until the earlier of: (a) March 31, 2021, (b) the date that the governor's Proclamation of Disaster Emergency is rescinded, or (c) a time otherwise established by the PUC.

The October order requires affected utilities to issue at least one communication to customers whose unpaid balances put them at risk of service termination after November 9, 2020. This communication is required to: inform the customer that he is at risk of service termination, give the customer a general time frame for when service termination will occur, and inform the customer of available options. At least 10 days after sending this notice, an affected utility may issue the standard 10-day termination notice required by the PUC's regulations.



David P. Zambito

Chair, Utility & Energy

dzambito@cozen.com
Phone: (717) 703-5892
Fax: (215) 989-4216



Jonathan Nase

Member

jnase@cozen.com
Phone: (717) 773-4191
Fax: (717) 703-5901

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For small business customers with a past due amount, affected utilities are required to offer a payment arrangement for a period of no less than 18 months. Service to a small business customer cannot be terminated if the customer remains current on its current bill and payment arrangement.

For residential customers whose income is at or below 300 percent of federal poverty income guidelines (protected customers), affected utilities cannot terminate service. However, to receive this protection from termination, a protected customer generally must request a payment arrangement from the utility and must apply for all assistance programs for which the customer is eligible. Affected utilities are required to waive all late payment charges for protected customers, and are required to waive all connection, reconnection, and deposit fees for protected customers.

Existing PUC regulations allow a customer to postpone the termination of utility service by submitting a medical certificate indicating that the customer, or a member of the customer's household, is seriously ill or afflicted with a medical condition that will be aggravated by the termination of service. Existing regulations further provide that a medical certificate may be renewed twice. The October order, however, requires affected utilities to accept at least two more medical certificates. Additionally, due to increased medical patient loads during the pandemic, medical professionals have seven additional days to submit the medical certificate to the affected utility.

Affected utilities are required to be flexible in accepting income verification and business status information for qualifying customers for protected status, payment arrangements, or universal service programs.

Affected utilities are required to report certain information to the PUC by December 15, 2020, and on the 15th of every month thereafter. This information includes the number of accounts disconnected for non-payment, the number of accounts at risk of termination, and the aggregate dollar amounts of arrears. Additionally, affected utilities are required to continue tracking extraordinary, nonrecurring COVID-19 related expenses. For rate-making purposes, most affected utilities are permitted to create a regulatory asset for incremental expenses incurred resulting from the directives in the October order. However, the affected utility must maintain detailed records of the expenses.

Toward Phase 3

Due to the dynamic nature of the COVID-19 pandemic, the PUC recognized the need for a stakeholder process to consider whether longer-term options may be needed, and whether the protections in the October order continue to serve the public interest. Consequently, the October order invites interested parties to submit comments and proposed revisions to the PUC by February 16, 2021. During the first quarter of 2021, the PUC will reconsider the protections put in place in the October order.

Conclusion

How and when to terminate the moratorium on utility shut-offs is a difficult decision for the PUC — and for public utility regulators in many other states. One of the most-significant issues that remains is: Who will ultimately pay for the uncollectibles that have already arisen, and will arise, as a result of the PUC's emergency order and subsequent actions/inactions?

Regulators will no doubt continue to wrestle with this decision for months to come. Vice Chairman Sweet, who dissented from the PUC's October order, believed the moratorium should remain in place pending an evaluation of the circumstances that exist at the end of winter. The majority instead decided to move into Phase 2 of the moratorium at this time, and to gather information that will allow the PUC to move into Phase 3 early next year. Unfolding economic and other conditions will determine whether additional phases will follow.

¹ *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered October 13, 2020).

² See (1) <https://www.cozen.com/news-resources/publications/2020/in-party-line-vote-the-pennsylvania-puc-continues-the-moratorium-on-utility-terminations>; (2) <https://www.cozen.com/news-resources/publications/2020/pennsylvania-puc-remains-deadlocked-over-terminating-the-moratorium-on-utility-shut-offs>; and (3)

<https://www.cozen.com/news-resources/publications/2020/the-saga-continues-pennsylvania-puc-delays-action-on-terminating-the-moratorium-on-utility-shut-offs>

³ *Public Utility Termination Proclamation of Disaster Emergency – COVID-19; Joint Petition of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Tenant Union Representative Network, and the Action Alliance of Senior Citizens of Greater Philadelphia for Due Process Relief*, Docket No. M-2020-3019244 (Order entered September 17, 2020) p. 1.

⁴ The Pennsylvania Public Utility Code, 66 Pa. C.S. § 1406(e), restricts terminations of service by electric distribution companies and natural gas distribution companies between December 1 and March 31 of each year.