

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)

EMERGENCY PETITION OF THE)
CONSUMER ADVOCATE UNIT IN THE)
FINANCIAL DIVISION OF THE OFFICE)
OF THE TENNESSEE ATTORNEY)
GENERAL)

Docket No. 20-00047

CONSUMER ADVOCATE'S COMMENTS
CONCERNING ONGOING UTILITY ISSUES STEMMING FROM
THE COVID-19 PANDEMIC AND THE STATE OF EMERGENCY

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, hereby offers its *Comments Concerning Ongoing Utility Issues Stemming from the COVID-19 Pandemic and the State of Emergency* to the Tennessee Public Utility Commission ("TPUC" or "Commission") for consideration in this Docket

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services by initiating or intervening as a party in any matter or proceeding before the Commission in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and TPUC rules.

2. On March 12, 2020, in response to the COVID-19 pandemic, Governor Bill Lee issued Executive Order No. 14, thereby declaring a state of emergency in Tennessee and implementing, among other things, the State of Tennessee's Emergency Management Plan. This was an expected course of action after overwhelming concern from agencies such as the World

Health Organization and Center for Disease Control. In the release, Governor Lee cited issues relating to vulnerable populations¹, public health, and safety.²

3. On March 18, 2020, the National Association of Regulatory Utility Commissions (“NARUC”) issued a statement.³ NARUC President Brandon Presley stated in part:

In the midst of these challenges, worrying about continued access to utility service should not be among anyone’s concerns. Many people are just beginning to fully realize how closely utility service – and its effective regulation – is tied to public health and the overall public welfare. On behalf of NARUC, I want to thank our commissioners for their attention to the many issues associated with COVID19.

He continued:

The regulators’ mission to serve the public interest by assuring the delivery of safe, reliable service at reasonable rates is critically apparent now. Members of the electricity, gas[,] and water industries have briefed state regulators with their plans to adhere to established health protocols to ensure the safety of both the public and utility personnel. We are pleased to see that many states have placed a moratorium on service disconnections during the pandemic.⁴

4. On March 16, 2020, Governor Lee issued a public statement requesting that schools in Tennessee close by March 20, 2020. Numerous executive orders have addressed the COVID-19 pandemic, including recently Executive Order No. 50, which extends the declared state of emergency through at least August 29, 2020.

5. Economic impact has continued to be severe. Realizing the worst initial fears, job loss has been staggering and business closures continue at an alarming rate.

¹ GOV. BILL LEE ISSUES EXECUTIVE ORDER DECLARING STATE OF EMERGENCY IN RESPONSE TO COVID-19 (March 12, 2020) (publicly available at <https://www.tn.gov/governor/news/2020/3/12/gov--bill-lee-issues-executive-order-declaring-state-of-emergency-in-response-to-covid-19.html>).

² *Executive Order No. 14* (March 12, 2020) (publicly available at <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee14.pdf>).

³ NARUC STATEMENT ON COVID-19, Contact: Regina L. Davis (March 18, 2020) (publicly available at <https://www.naruc.org/about-naruc/press-releases/naruc-statement-on-covid19/>).

⁴ *Id.*

6. The Consumer Advocate contends that it is not appropriate to lift the moratorium at this time. Positive COVID-19 test results are rising rapidly in Tennessee. The continued spread of the virus has greatly diminished economic activity within the state resulting in continued high levels of unemployment. There is significant debate concerning school re-openings this fall which has a cascading impact on the economy and employment levels. Tennessee is still suffering mightily from this health and economic crisis.

7. The Consumer Advocate also understands that a moratorium on service disconnections should not be extended indefinitely and that there are implications for the utilities and their customers from such extraordinary treatment. Therefore, we recommend an extension of the moratorium on service disconnections for non-payment through the later of September 30, 2020 or thirty days after Governor Lee terminates the state of emergency in Tennessee. At that time, the Commission should be able to reassess if and to what extent the moratorium should be continued or phased out.

8. The Consumer Advocate believes that late fees may be imposed on delinquent accounts, but this should be capped at 10% of the outstanding bill. In other words, late fees should be assessed at the lower of the provisions set forth in the company's tariff or 10% per year (when considering arrearage plans) of the outstanding bill before application of late fees. Excessive late fees burden delinquent customers' ability to retain essential services and any fees in excess of 10% are in excess of the true financial costs to the company associated with the delinquency.

9. Arrearage plans should be adopted for a minimum repayment period of twelve months. Late fees may be added to such plans at an annual rate of 10% spread over the course of the year such that the fees are only applied to outstanding balances. If a customer were to repay their bill prior to the end of the twelve-month arrearage period, the assessed late fees would be less than the 10% annual rate since they did not owe the outstanding balance for a full year.

10. The Consumer Advocate believes it is also important to address other COVID-19 issues that were raised by Tennessee-American Water Company in its June 26, 2020 *Comments on Post-Emergency Declaration Measures*, filed in this Docket⁵, as well as the impact COVID-19 may have concerning the ongoing Docket Nos. 18-00112 (Atmos Energy Corporation's Annual Review of Rates Mechanism docket) and 19-00047 (Chattanooga Gas Company's Annual Review of Rates Mechanism docket). We believe it may be appropriate to defer certain COVID-19 related costs under certain circumstances. Such costs may include incremental bad debt expense, the costs to acquire appropriate and necessary personal protection equipment for employees, and other COVID-19 related costs. However, this should not be viewed as an open-ended opportunity to enhance earnings through deferral of cost increases. Utilities will also benefit from COVID-19 cost reductions in certain areas of its operations, including corporate travel costs, corporate cost allocation savings, the possible delay of discretionary capital projects, and financial savings available from the issuance of low-cost debt or increases in short-term borrowings. To the extent these cost savings exist, they must be netted against any regulatory asset established pursuant to a Commission order. The recognition of cost savings associated with COVID-19 is essential to ensure a symmetrical regulatory approach to this highly unusual event. Symmetrical recognition of impacts of a given event are at the core of regulatory principles adopted by regulators in setting rates. Any net cost increases resulting from this approach should be deferred only to the extent the Company is not in an excess-earnings situation.

⁵ Tennessee-American Water Company argues that "it is both appropriate and prudent that the unique and unanticipated financial impacts of this pandemic be tracked and recovered." *Comments*, at 4. This is an overstatement by the Company. Rather, not all costs should be recoverable from ratepayers, and like essentially every other company in the competitive marketplace, it may be a reasonable outcome that utility companies share the burden with consumers related to financial blowback stemming from the pandemic.

11. When establishing utility rates, the utility is granted an authorized return on equity. This measure includes a risk-premium designed to compensate utility investors for risk they assume. The risk premium is substantial as 30-year treasury rates, commonly used as the benchmark risk-free rate of return is 1.292%⁶, while recently authorized returns on equity are 9.8%, resulting in a risk premium of approximately 850 basis points. Thus, utility investors are being compensated to assume some risk from operations.

12. At the inception of the mechanisms, the existing Annual Review of Rates (“ARM”) plans of Chattanooga Gas Company and Atmos Energy Corporation could not envision or included a plan to address a pandemic such as the one the COVID-19 virus has created. The widespread impact of COVID-19 is a one-off event that cannot simply be mathematically rolled through these two ARM mechanisms within 2020 operating results (which would result in virtually all risk for such an event to be carried by utility ratepayers).

13. The current epidemic has caused a shuttering of many businesses and at least temporary shutdowns of some larger industrial customers. Utilities should not be permitted to shift this revenue loss onto its remaining customer basis in the short run. Instead, the investors should bear the risk of revenue loss⁷ associated with COVID-19.⁸ Simply computing the revenue deficiency based upon actual 2020 revenues would result in ratepayers being charged for natural gas that other customers did not use. Instead, this risk should be incurred by utility shareholders – after all, they are being compensated for assuming risk.

⁶ U.S. 30 Year Treasury, Real Time Quote, Exchange; CNBC Markets (publicly available at <https://www.cnbc.com/quotes/?symbol=US30Y>) (accessed July 14, 2020).

⁷ Certainly when the companies offered cost of capital testimony in their previous rate cases, the witnesses responsible for this subject included investor risk as a component in order to argue for a higher return on equity.

⁸ Such an approach has already been adopted by the Indiana Utility Regulatory Commission (*see* Indiana Regulators Rule Utilities Can’t Charge Consumers for Lost Revenue During Pandemic, John Russell, IBJ (June 29, 2020) (publicly available at <https://www.ibj.com/articles/indiana-regulators-shoot-down-request-by-utilities-to-charge-customers-for-electricity-they-didnt-use>).

14. To the extent that utility companies request regulatory treatment that recognizes lost revenue or other issues stemming from the COVID-19 pandemic, this Commission has recently provided a format that allows for such a review. In the wake of the 2017 Tax Cuts and Jobs Act (“TCJA”), this Commission opened a generic docket, styled as Docket No. 18-00001, to address issues stemming from the TCJA. The Commission then opened individual dockets for the larger utilities in Tennessee. Utilities were then able to make proposals concerning appropriate regulatory treatment, and the Commission then considered those proposals in a timely fashion. Like the TCJA, changes in utility tariffs or regulatory treatment should be examined carefully by this Commission and in a setting that allows representatives for consumers to also offer proposals. Therefore, to the extent this Commission may consider regulatory treatment for items including, but not limited to, lost revenue, the Consumer Advocate requests that TPUC open a generic docket to evaluate proposals and consider then opening separate dockets for the five large utilities – Atmos Energy Corporation, Chattanooga Gas Company, Tennessee-American Water Company, Piedmont Natural Gas Company, and Kingsport Power Company.

Wherefore, the Consumer Advocate requests TPUC consider these *Comments Concerning Ongoing Utility Issues Stemming from the COVID-19 Pandemic and the State of Emergency*, extend the moratorium on service disconnections for nonpayment of customer bills, and consider opening a generic docket with accompanying individual dockets for proposals related to ratemaking treatment of COVID-19 costs.

RESPECTFULLY SUBMITTED,

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Attorney General and Reporter
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Daniel P. Whitaker III by permission (KHS)

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