

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 16, 2020

IN RE:)
)
EMERGENCY PETITION OF THE CONSUMER) **DOCKET NO.**
ADVOCATE UNIT OF THE FINANCIAL DIVISION) **20-00047**
OF THE OFFICE OF THE TENNESSEE ATTORNEY)
GENERAL)

**ORDER LIFTING SUSPENSION OF DISCONNECTIONS OF SERVICE
FOR LACK OF PAYMENT WITH CONDITIONS, EFFECTIVE ON AUGUST 29, 2020**

This matter came before Chairman Kenneth C. Hill, Commissioner David F. Jones, and Commissioner John Hie of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during the regularly scheduled Commission Conference convened on August 10, 2020, to consider the appropriate transition for an end to the suspension of cut offs of utility service for nonpayment.¹

The suspension of service disconnections, or cut offs, was first ordered on March 27, 2020 after the Commission granted the *Emergency Petition to Suspend Service Disconnections* filed on March 24, 2020, by the Consumer Advocate Unit of the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”).² The Commission’s suspension was set to run for the duration of Governor Bill Lee’s declaration of emergency first issued on

¹ Due to the ongoing state of public health emergency declared nationally, and by Tennessee Governor Bill Lee on March 12, 2020, which places limitations on public gatherings and meetings in order to prevent the spread of the Coronavirus Disease 2019 (COVID-19), the Commission convened the Special Conference electronically, without a physical quorum. In so doing, the Commission relied on Governor Lee’s Executive Order No. 16, and affirmed that such action was necessary in order to conduct the essential business of the agency and to protect the health, safety, and welfare of Tennesseans.

² *Order Requiring All Jurisdictional Utilities to Suspend Actions to Disconnect Service for Lack of Payment During the State of Public Health Emergency* (March 31, 2020).

March 12, 2020. On June 29, 2020, the Commission extended the suspension until its next Commission Conference scheduled for August 10, 2020, at which time the Commission would further consider the matter. This action was ordered independent of whether Governor Lee's declaration of emergency was extended beyond June 30, 2020.

In summary, during the hearing on August 10, 2020, the Commission ordered that the suspension of service cut offs for lack of payment are to be lifted beginning on August 29, 2020. In lifting the suspension, the Commission further required that written notice be provided to customers, payment plans be offered to assist past due customers to retain service, and the public utilities to provide updates on a monthly rather than on a weekly basis.

BACKGROUND

In response to the spread of the COVID-19 pandemic to Tennessee and several protective measures taken to protect the health of the public, the Commission took action to evaluate and determine the impact on regulated public utilities and their customers. By March 16, 2020, the Commission had heard from its largest regulated utilities a commitment to suspend disconnections for non-payment and other measures aimed at maintaining essential utility services for customers. That day, the Commission issued a *Public Notice of Utility Actions to Assist Customers During the Coronavirus COVID-19 Public Health Emergency* commending those utilities that had already taken swift action and encouraging the agency's other jurisdictional utilities to do the same.³

On March 19, 2020, the agency issued an *Ongoing Request for Information Related to Measures Taken During Coronavirus COVID-19 Public Health Emergency* to its gas, electric,

³ *Public Notice of Utility Actions to Assist Customers During the Coronavirus COVID-19 Public Health Emergency* (March 16, 2020). Also, on March 16, 2020, the agency issued a notice informing its regulated community, including attorney representatives, of a new streamlined procedure for filings to be made with the docket room.

water, and wastewater jurisdictional utilities. The *Request for Information* acknowledged the voluntary measures and continued communications by certain utilities and, further, instituted a mandatory, indefinite reporting schedule to inform the Commission of each utility's efforts taken in response to the COVID-19 emergency while maintaining safe and reliable utility service.⁴

On March 23, 2020, the Commission issued a *Public Notice of the Voluntary Suspension of Service Disconnections for Non-Payment by TPUC-Regulated Utilities During the Coronavirus COVID-19 Public Health Emergency*, naming the utilities that had informed the Commission of a commitment to, among other things, suspend service disconnections for non-payment during the declared emergency.⁵ By March 27, 2020, the bulk of the public utilities under the Commission's jurisdictions had indicated agreement with suspending service disconnections, and the Commission was awaiting a response from a few of its smaller utilities.⁶

On March 24, 2020, the Consumer Advocate filed the *Emergency Petition to Suspend Service Disconnections* ("*Emergency Petition*"), which requested that the Commission issue an order prohibiting all public utilities from disconnecting service for non-payment until the state of emergency in Tennessee expires or is cancelled. During a Special Commission Conference convened electronically on March 27, 2020, the Commission unanimously granted the *Emergency Petition* and ordered all public utilities under its jurisdiction to suspend disconnections of service for nonpayment for the duration of Governor Bill Lee's declaration of emergency, including any extensions thereof.⁷ In addition, the Commission ordered the

⁴ *Ongoing Request for Information Related to Measures Taken During Coronavirus COVID-19 Public Health Emergency* (March 19, 2020).

⁵ *Public Notice of the Voluntary Suspension of Service Disconnections for Non-Payment by TPUC-Regulated Utilities During the Coronavirus COVID-19 Public Health Emergency* (March 23, 2020).

⁶ See Responses posted on the Commission's website at: <https://www.tn.gov/tpuc/agency/tpuc-covid-19-information.html>.

⁷ *Order Requiring All Jurisdictional Utilities to Suspend Actions to Disconnect Service for Lack of Payment During the State of Public Health Emergency* (March 31, 2020).

restoration of utility service of any customer that was disconnected on March 12, 2020 or thereafter. The Commission further required utilities to continue providing weekly status reports, as previously required in the Commission’s *Ongoing Request* issued March 19, 2020. Finally, the Commission ordered each utility to submit a report within thirty (30) days of the order describing “any temporary grace period, payment plan, and other options that will be implemented or will continue following the expiration or lifting of the public health emergency declaration.”⁸

Since that time, the Commission has been monitoring the filings made in the docket by regulated public utilities and the Consumer Advocate. With the approach of the potential expiration of Governor Bill Lee’s declaration of emergency on June 30, 2020, the Commission convened a Special Conference on June 29, 2020 to consider what additional measures may be appropriate upon the expiration of the declaration of emergency.⁹

On June 29, 2020, the Commission acknowledged that a suspension of cut offs for lack of payment is not a long-term solution. Given the circumstances of the public health emergency, in this state, and the country, this may be the status quo or “new” normal for quite some time.¹⁰ The Commission determined that before it could move toward a transition and lift the suspension of cut offs, there was a need for more information and data. Moreover, when the Commission first ordered the suspension of cut offs and tied the length of the suspension to Governor Bill Lee’s declaration of a state of emergency order, it recognized then that there would be a need for transitional measures before cut offs could be reauthorized. The Commission determined that whether the Governor’s state of emergency expires or is extended, there is a need to transition

⁸ *Id.* at 12.

⁹ *Notice of Special Commission Conference* (June 22, 2020).

¹⁰ *Order Requiring All Jurisdictional Utilities to Continue to Suspend Disconnections of Service for Lack of Payment*, pp. 6-7 (July 20, 2020).

from a suspension of service disconnections to a period approaching normalcy for both customers and utilities.¹¹

The Commission ordered the suspension to continue through the Commission's next regularly scheduled conference, which was anticipated to be held on August 10, 2020. Interested parties and every jurisdictional public utility that provides natural gas, electric, water, or wastewater service were invited to file comments no later than the close of business on July 15, 2020, including proposed measures to facilitate a reasonable and balanced transition for lifting the utility service cut off suspension. The Commission Staff was directed to obtain relevant information from jurisdictional public utilities to assist the Commission in its evaluation of the impact of the suspension of cut offs.¹²

COMMENTS AND DATA RESPONSES AFTER THE HEARING OF JUNE 29, 2020

On June 30, 2020, Commission Staff sent a data request to all regulated utilities under the Commission's jurisdiction requesting additional information related to delinquent accounts and responses as to when the moratorium should be lifted. The Commission Staff sought suggestions as to the process to be utilized to commence disconnections for nonpayment, and programs, arrangements, or payment programs, if any, to permit customers to maintain their service while paying past due balances. Further, responses were sought regarding methods, if any, to be utilized for the collection of lost revenues and COVID-19 related expenses.

Although the responses and comments of the utilities vary, they generally agreed that the moratorium should be lifted within the next month. The Consumer Advocate filed comments and submitted that it is premature to lift the suspension of cut offs, and that the suspension of cut

¹¹ *Id.*

¹² *Id.* at 8.

offs should be extended through September 30, 2020 or thirty days after the end of the Governor Lee's state of emergency declaration.¹³

The utilities and the Consumer Advocate agreed in principal, however, that once the moratorium is lifted, customers should be given ample advance notice of the disconnection process for nonpayment, including when it will begin and a complete description of the terms of disconnection. Moreover, the commenters generally agreed that there should be some grace period (e.g., thirty days) given to customers subsequent to this notice before the disconnection process is initiated and that customers should be given the option of payment plans for past due amounts in order to help ease the financial impact. Payment plans submitted by utilities generally contain payment options ranging from three to twelve months. The Consumer Advocate recommends mandatory requirements for minimum payment periods of twelve months and a 10% cap on late fees.¹⁴

With respect to future ratemaking issues related to lost revenues and COVID-19 related expenses, various utilities have taken a similar stance in asserting that recovery can take place within their respective fuel recovery and alternative ratemaking mechanisms ("ARMS"), or in the alternative, lost revenues and related costs could be placed in a deferred regulatory account for future recovery. The Consumer Advocate recommended a procedure modeled after the 2017 Tax Cuts and Jobs Act dockets, with the Commission opening a generic docket for most utilities and individual dockets for larger utilities to address the issue of recovery.¹⁵

¹³ *Consumer Advocate's Comments Concerning Ongoing Utility Issues Stemming From COVID-19 Pandemic and State of Emergency*, p. 3 (July 15, 2020).

¹⁴ *Id.*

¹⁵ *Id.* at 5-6.

THE HEARING

On July 31, 2020, the Commission issued a Notice of Electronic Commission Conference and an additional notice providing the electronic access code on August 6, 2020. On August 10, 2020, pursuant to Executive Order No. 50, the Commission convened its regularly scheduled Commission Conference electronically, without a physical quorum. Reasonable efforts were made by the Commission to allow interested parties and the public to access the proceedings;. Also, the hearing was transcribed and a summary will be made available on the Commission's website. Among many other callers, the Consumer Advocate, the party that filed the original *Emergency Petition*, appeared and was available during the hearing:

The Consumer Advocate Unit – Daniel P. Whitaker, III, Esq. Financial Division
of the Office of the Tennessee Attorney General and Reporter, Post Office Box
20207, Nashville, Tennessee, 37219

During the hearing, the Consumer Advocate provided a summary of its comments that had been previously filed in the docket. Opportunity for public comment was offered, but no member of the public sought recognition.

FINDINGS AND CONCLUSIONS

During the regularly scheduled Commission Conference convened electronically via WebEx on August 10, 2020, the Commissioners made the following findings and conclusions:

The Commission has the regulatory authority to issue an order requiring action by utilities subject to its regulation needed to protect the public health, safety, and welfare. Under Tenn. Code Ann. §§ 65-4-104 and 106 and supported by case law interpreting these code sections, the Commission is delegated broad powers over matters involving public utilities. Tenn. Code Ann. § 65-4-104(a) provides:

The [C]ommission has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over the property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.¹⁶

Tenn. Code Ann. § 65-4-106 states that “any doubt as to the existence or extent of a power conferred on the commission by this chapter or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the commission may effectively govern and control the public utilities placed under its jurisdiction by this chapter.”¹⁷ The Tennessee courts have consistently acknowledged these statutes and stated that therein the General Assembly has “signaled its clear intent to vest in the [Commission] practically plenary authority over the utilities within its jurisdiction.”¹⁸

The Commission considered it reasonable and appropriate to issue the moratorium on disconnections at the outset of the declared public health emergency. Doing so ensured that many Tennesseans continued to have essential public utilities services even in the face of sudden and unexpected economic hardship caused by the outbreak of COVID-19. But the long-term suspension of disconnections for nonpayment was not envisioned nor is the indefinite continuation of this policy viable for utilities or customers.

Indeed, a lengthy moratorium on disconnections may do more harm than good. While customers have had the benefit of several months to address their immediate financial concerns, the continuation of this practice may cause past-due balances for some to grow to seemingly insurmountable amounts. Lifting the moratorium now, while also requiring utilities to offer reasonable payment arrangements to customers who are unable to pay their outstanding balance, will encourage delinquent customers to begin to address any financial obligations to the utility

¹⁶ Tenn. Code Ann. § 65-4-104 (2017).

¹⁷ Tenn. Code Ann. § 65-4-106 (2017).

¹⁸ *Patterson v. City of Chattanooga*, 241 S.W.2d 291, 295 (1951). See also *Tennessee Cable Television Ass’n. v. Tennessee Pub. Serv. Comm’n*, 844 S.W.2d 151, 159 (Tenn. Ct. App. 1992).

before balances may become insurmountable. In addition, lifting the moratorium in such a way that utilities can either collect overdue amounts or receive payments toward delinquent accounts will help stem the financial hardships faced by continuing to provide service without payment.

The Commission appreciates the work our regulated public utilities have done throughout this unprecedented public health crisis. Based on filings in the record, utility response to this challenge has been impressive and encouraging, and the Commission thanks all for their cooperation. Yet, challenges remain for Tennessee customers and businesses who rely on continued regulated public utility services to live and work. Many utilities have made concessions and proposals in the docket filings for the benefit of affected customers. Nevertheless, the Commission recognizes that it will not be long before the winter months are upon us along with an attendant rise in heating bills. Now is the time to start to transition and encourage customers to catch up on any outstanding utility bills.

The Commission has recognized that a one-size-fits-all policy may not take into consideration all facets of a public utility's operations and the challenges faced by the utility's customers. Indeed, the Commission does not want to hamper the flexibility of a public utility to work with a customer on a longer-term basis to maintain utility service.

Based upon a review of the weekly updates, comments, and data responses filed in the docket, the panel unanimously concluded the Commission's moratorium on service disconnections for nonpayment will be lifted effective August 29, 2020. Although this date coincides with the expiration of Governor Lee's currently declared state of public health emergency, the Commission has determined that the moratorium should be lifted regardless of whether the Governor further extends the state of emergency.

As part of the lifting of the suspension, the hearing panel determined that customers must be provided with a minimum 30-day written notice of the utility's intent to resume its procedures for disconnection of service due to nonpayment of bills. The written notice shall provide the date on which the utility will resume its procedures for cut offs for nonpayment of services, which can begin no sooner than September 28, 2020, thirty (30) days after the moratorium is lifted. The written notice shall also provide customers with a description of the utility's cut off procedures, which it will follow in order to disconnect service for nonpayment. These procedures must be consistent with the utility's approved tariff and Commission Rule 1220-04-03-.19 for water utilities; Rule 1220-04-04-.19 for electric utilities; Rule 1220-04-05-.18 for gas utilities; and Rule 1220-04-13-.14 for wastewater utilities. The notice shall also advise customers that they should either pay their overdue balance or arrange to pay the overdue balance, in order to avoid losing service for nonpayment. The notice shall provide customers with the utility contact information that they can use to discuss their accounts and services with company representatives.

The hearing panel further concluded that prior to disconnecting service for nonpayment, all utilities must, upon the customer's request, offer payment arrangements that will allow the customer to maintain utility service while paying past-due amounts over a reasonable period of time. Utilities are encouraged to implement individual payment arrangements tailored to meet the needs of their respective customer base and specific customer circumstances.

The hearing panel found that all issues concerning potential recovery of COVID-19 related expenses and lost revenues shall be reserved and addressed within appropriate individual company dockets, either upon request of the company or order of the Commission. Finally, the hearing panel unanimously concluded that all utilities shall continue providing status reports on a

monthly basis, rather than weekly as ordered previously in this docket. The monthly status report shall be due the 15th of each month for the preceding month beginning in September and for each month thereafter until further notice. In addition to the information currently provided, the status report shall also include for the reporting period the aggregate number of customers disconnected for nonpayment of service by customer class; the aggregate number of customers who have entered a payment arrangement by customer class; the aggregate number and amount of delinquent customer accounts by customer class; and the aggregate number and amount of customer accounts written off to bad debt expense, or allowance for bad debt, by customer class.

IT IS THEREFORE ORDERED THAT:

1. The suspension of disconnections for non-payment, which has been in effect since March 2020, and applicable to all jurisdictional natural gas, electric, water, or wastewater service public utility regulated by the Tennessee Public Utility Commission is lifted effective August 29, 2020, subject to the following requirements or conditions:

2. After August 29, 2020, all public utilities are required to give customers a minimum 30-day written notice of their intent to resume their regular procedures for disconnection of service for nonpayment;

3. Every public utility shall work with customers who are unable to pay overdue amounts by offering, upon the customer's request, a payment plan that will allow the customer to maintain service while paying off past-due amounts over a reasonable time;

4. Every public utility that provides natural gas, electric, water, or wastewater service shall continue to submit status reports to the Commission, as previously required in the Commission's *Ongoing Request* issued March 19, 2020, on a monthly basis; and

5. All issues related to the utilities' potential recovery of costs related to the

COVID-19 public health emergency may be considered in future, individual docketed proceedings;

6. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

7. Any party aggrieved by the Commission's decision in this matter has the right to request judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Commissioner David F. Jones, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director