

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**July 20, 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** )

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**ORDER REQUIRING ALL JURISDICTIONAL UTILITIES  
TO CONTINUE TO SUSPEND DISCONNECTIONS OF SERVICE  
FOR LACK OF PAYMENT**

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This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during an *en banc* Special Commission Conference convened on June 29, 2020, to hear comments and consider the appropriate transition for an end to the suspension of cut-offs of utility service for lack of payment.<sup>1</sup>

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

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<sup>1</sup> 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.

of the Tennessee Attorney General (“Consumer Advocate”).<sup>2</sup> The Commission’s suspension was set to run for the duration of Governor Bill Lee’s declaration of emergency first issued on March 12, 2020.

In summary, following the hearing on June 29, 2020, the Commission ordered the continuation of its initial order through its next regularly scheduled Commission conference on August 10, 2020. As such, public utilities under its jurisdiction are to continue to suspend cut-offs of utility service for lack of payment and file weekly status updates. Further, the Commission requested specific information from utilities, which would be send in the form of a data request, and public comments related to a transition following the lifting of the suspension.

## **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 of their 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.<sup>3</sup>

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<sup>2</sup> *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).

<sup>3</sup> *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.

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, 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 COVID19 emergency while maintaining safe and reliable utility service.<sup>4</sup>

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 already informed the Commission of their commitment to, among other things, suspending service disconnections for non-payment during the declared emergency.<sup>5</sup> 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 the smaller utilities.<sup>6</sup>

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. At a Special Conference convened electronically on March 27, 2020, for the purpose of considering the *Emergency Petition*, the Commission unanimously granted the *Emergency Petition* and ordered all public utilities under

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

<sup>5</sup> *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).

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

its jurisdiction to suspend disconnections of service for nonpayment for the duration of Governor Bill Lee’s declaration of emergency, including any extensions thereof.<sup>7</sup> In addition, the Commission ordered the 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.”<sup>8</sup>

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 on June 29, 2020 to consider what additional measures may be appropriate upon the expiration of the declaration of emergency.<sup>9</sup>

## **THE HEARING**

On June 22, 2020, the Commission issued a Notice of Special Commission Conference, and on June 29, 2020 the Commission convened *en banc*. Pursuant to Executive Order Nos. 16 and 34, the Commission convened the Special 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, and the hearing was recorded and made available on the

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<sup>7</sup> *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).

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Notice of Special Commission Conference* (June 22, 2020).

Commission’s website.<sup>10</sup> 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 – Karen Stachowski., Esq. Financial Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219

During the Special Conference, the Consumer Advocate provided a summary of its comments that had been previously filed in the docket. Additionally, the following parties made comments: William Castle on behalf of Kingsport Power Company, d/b/a AEP Appalachian Power; H. LaDon Baltimore, Esq. on behalf of Navitas TN NG, LLC.; and Melvin Malone, Esq. on behalf of Tennessee American Water Company. Opportunity for public comment was offered, but no other member of the public sought recognition.

## **FINDINGS AND CONCLUSIONS**

During the Special Commission Conference convened telephonically via WebEx on June 29, 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.<sup>11</sup>

Tenn. Code Ann. § 65-4-106 states that “any doubt as to the existence or extent of a power

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<sup>10</sup> *Id.*

<sup>11</sup> Tenn. Code Ann. § 65-4-104 (2017).

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.”<sup>12</sup> 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.”<sup>13</sup>

The Commission appreciates the work and cooperation of the state’s regulated public utilities during this unprecedented public health crisis. As the State of Tennessee takes steps to safely reopen businesses of all kinds, the Commission, regulated public utilities, and customers must begin to look forward to the immediate future and recognize that our way of life, our economy, and our employment are not going to simply return to normal. Challenges remain for Tennessee customers and businesses, both of which rely on continued regulated public utility services. Many utilities have made concessions and proposals in the docket filings for the benefit of affected customers. The reports provided by utilities and the record in general indicate a degree of uncertainty, along with an acknowledgement that a suspension of service disconnections for lack of payment is not a long-term solution.

Nevertheless, the current situation in our state, and the country, may be the status quo or “new” normal for quite some time. When the Commission first ordered the suspension of cut-offs and tied the length of the suspension directly 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. Governor Lee’s declaration of emergency expires on June 30<sup>th</sup>,

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<sup>12</sup> Tenn. Code Ann. § 65-4-106 (2017).

<sup>13</sup> *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).

2020.<sup>14</sup> Whether it expires or is extended, the Commission found that there is a need to transition from a suspension of service disconnections to a period approaching normalcy for both customers and utilities.

Before the Commission can move toward a transition and lift the suspension of cut-offs, there is a need for more information and data. The agency recognized that there can be no one-size-fits-all policy that can take into consideration all facets of a public utility's operations and the challenges faced by the utility's customers. Further, 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. However, there must be a transitional phase to allow customers to catch up on any outstanding balance. As such, the Commission voted unanimously to continue its initial order through August 10, 2020, the date of its next regularly scheduled conference.

In so doing, it ordered those regulated utilities under the Commission's jurisdiction to continue to observe the suspension of service disconnections for non-payment. In the event the Commission Conference is rescheduled, the suspension shall continue in effect until the Commission next meets for a conference. As was provided in the previous Commission order suspending cut-offs, a customer's utility service may be suspended for purposes of safety, emergency maintenance, or otherwise routine maintenance in which service is not disrupted unreasonably.

Also, utilities shall continue to file weekly reporting requirements from the Commission's initial suspension order. Regulated public utilities and other affected parties may file comments regarding the impact of the suspension and submit any individually tailored transitional proposals by July 15, 2020. Transitional proposals should include payment plans

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<sup>14</sup> Following the Commission's deliberations, Governor Bill Lee issued Executive Order No. 50 on June 29, 2020, which extended the COVID-19 state of emergency until August 29, 2020.

intended to prevent cut-off of service while not endangering the ability of a utility to provide safe and reliable service to the communities they serve. The Commission further directed the staff of the Commission to obtain relevant information from jurisdictional public utilities to assist the Commission in its evaluation of the impact of the suspension of cut-offs and to inform the Commission on what policies and procedures may be appropriate once the suspension is lifted. Finally, it must be noted that the Commission is empowered and charged to act in the event of a change in circumstances.

**IT IS THEREFORE ORDERED THAT:**

1. Every public utility regulated by the Tennessee Public Utility Commission shall continue to be prohibited from disconnecting natural gas, electric, water, or wastewater service to any customer for reason of non-payment. This prohibition shall continue through the Commission's next regularly scheduled conference, which is anticipated to be held on August 10, 2020.

2. Every jurisdictional public utility that provides natural gas, electric, water, or wastewater service shall continue to submit weekly status reports to the Commission, as previously required in the Commission's *Ongoing Request* issued March 19, 2020.

3. Interested parties and every jurisdictional public utility that provides natural gas, electric, water, or wastewater service may file comments and any proposed proposal or measures to facilitate a reasonable and balanced transition for the lifting of the utility service cut-off suspension with the Commission no later than the close of business on July 15, 2020.

4. The Commission Staff shall obtain relevant information from jurisdictional public utilities to assist the Commission in its evaluation of the impact of the suspension of cut-offs.

5. 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.

6. 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.

**Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie concur with this decision.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**