

**Virginia State Corporation Commission
eFiling CASE Document Cover Sheet**

2020410159

Case Number (if already assigned) PUR-2020-00049

Case Name (if known) Petition of Office of Attorney General, Division of
Consumer Counsel
For emergency order to suspend utility service
disconnections during
State of Emergency

Document Type REPY

Document Description Summary OAG Reply

Total Number of Pages 13

Submission ID 18422

eFiling Date Stamp 4/6/2020 4:26:29PM



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Mark R. Herring
Attorney General

April 6, 2020

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

BY ELECTRONIC FILING

Joel H. Peck, Clerk
c/o Document Control Center
State Corporation Commission
1300 East Main Street
Richmond, Virginia 23219

Re: *Petition of Office of Attorney General, Division of Consumer Counsel*
For emergency order to suspend utility service disconnections during
State of Emergency
Case No. PUR-2020-00049

Dear Mr. Peck:

Please accept for electronic filing in the above-styled matter the attached Reply of the Office of the Attorney General's Division of Consumer Counsel.

Yours truly,

/s/ C. Mitch Burton Jr.

C. Mitch Burton Jr.
Assistant Attorney General

Enclosure

cc: Service List

200410159

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF

OFFICE OF THE ATTORNEY GENERAL,
DIVISION OF CONSUMER COUNSEL

CASE NO. PUR-2020-00049

For emergency order to suspend utility service disconnections
during State of Emergency

**REPLY OF THE
OFFICE OF THE ATTORNEY GENERAL,
DIVISION OF CONSUMER COUNSEL**

Pursuant to the State Corporation Commission’s (“Commission”) Order Permitting Response to Petition issued March 16, 2020, the Office of Attorney General’s Division of Consumer Counsel (“Consumer Counsel”) respectfully submits the below Reply to Responses filed to its Petition for an emergency order to suspend utility service disconnections during State of Emergency.

BACKGROUND

On March 12, 2020, Virginia Governor Ralph Northam issued Executive Order 51, a Declaration of a State of Emergency Due to the Novel Coronavirus (COVID-19). The stated purpose of the Declaration was “to continue to prepare and coordinate our response to the potential spread of COVID-19, a communicable disease of public health threat.” In support of the Declaration, the Governor has directed “state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.” The Governor’s Declaration of the State of Emergency was made

effective March 12, 2020, and will remain in effect through June 10, 2020, absent further action.

Since that time, the Governor has issued Executive Orders 53 and 55 – together representing a “Stay at Home Order” generally requiring all Virginian’s to remain in their place of residence, subject to various exceptions, through June 10, 2020.

On March 13, 2020, Consumer Counsel filed its Petition with the Commission respectfully requesting that the Commission: (i) enter promptly an emergency order prohibiting any public utility furnishing in Virginia power, heat, light, or water from disconnecting or terminating service for reason of non-payment to run concurrently with Executive Order 51, or for such additional period as the Commission finds appropriate; (ii) suspend the applicability of late payment charges allowing public utilities to charge up to one and one-half percent per month on any customer charges not timely paid; and (iii) provide for any other relief deemed necessary.

On March 16, 2020 (the next business day), the Commission entered an Order Suspending Disconnection of Service and Suspending Tariff Provisions Regarding Utility Disconnections of Service (“Suspension Order”), which was docketed in Case No. PUR-2020-00048. The *Ex Parte* Suspension Order requires that each “jurisdictional electric, gas, water or sewer utility identified in the attachment to this Order to suspend disconnection of service to any customer, pending further orders of the Commission.” It was by separate order, docketed in Case No. PUR-2020-00049, that the Commission entered its order allowing for responses to Consumer Counsel’s Petition.

Consumer Counsel is aware of eight responses or comments filed as a Response to its Petition. In addition, Consumer Counsel is aware that jurisdictional utilities subject to the Suspension Order issued independent communications related to disconnections during the State of Emergency.¹ Consumer Counsel appreciates that the comments and responses are largely

¹ *E.g.*, Kentucky Utilities d/b/a Old Dominion Power, LG&E, KU and ODP expand suspension of disconnects to business customers, <https://lge-ku.com/newsroom/press-releases/2020/03/17/lge-ku-and-odp-expand-suspension->

supportive of efforts to protect the public by suspending disconnections during the State of Emergency. In addition, some respondents have voluntarily agreed to reconnect customers that had been previously disconnected for non-payment before the State of Emergency. Consumer Counsel highlights the details of the various responses and comments below.

Virginia Natural Gas (“VNG”) offers that it “will continue this suspension of disconnections through the duration of the Governor’s emergency declaration.”² VNG further seeks to “waive all late payment charges occurring after declaration of the State of Emergency for customers financially unable to pay during the same timeframe, and requests necessary waivers of Section XI of its Terms and Conditions of Service in order to do so.”³

Columbia Gas of Virginia (“CVA”) has instituted an indefinite suspension to customer disconnections for nonpayment.⁴ The suspension applies to residential, commercial, and industrial customers. CVA states that it has “suspended late payment charges for its customers

disconnects-business-customers (“To help ease some of the challenges faced by businesses across their service territories, LG&E, KU and ODP are suspending disconnects and waiving new late fees for all business customers until at least May 1. The move by the utilities further applies assistance efforts that began Monday, as it was announced LG&E, KU and ODP are temporarily suspending disconnects and waiving late fees for residential customers who may have difficulty paying their bill during this time. The utilities’ vice president of Customer Services, Eileen Saunders, says the hope is that the expansion of the policy will both assist all customers in managing through this difficult time and help, in small part, to protect the local economy from the impact of the ongoing crisis.”);

Washington Gas Light, *Washington Gas Update on Coronavirus*, <https://www.washingtongas.com/media-center/coronavirus> (“At Washington Gas, we recognize the stress and strain that the Coronavirus (COVID-19) pandemic is presenting to our community and to our country. All of us are feeling the impact of this unprecedented public health situation. I want to assure you that Washington Gas recognizes the essential role natural gas plays in the daily lives of our customers. During these challenging times, we want to remove any added stress that comes with this uncertainty. That’s why we are suspending disconnections and waiving late fees on customer bills until we get past this crisis.”);

Massanutton Public Service Corporation (Corix), *COVID-19: Corix announces suspension of water and energy shutoffs*, <https://www.corix.com/about-corix/news/2020/2020/03/10/corix-announces-suspension-of-water-shutoffs> (“Corix will be suspending water and energy service shutoffs for delinquent payments in all its U.S. and Canadian business units, except in Alaska, effective immediately. Additionally, the company will begin reconnecting service to those customers who are currently not receiving water or energy service due to lack of payment on delinquent accounts.”).

² VNG’s Response to Attorney General’s Emergency Petition at 1.

³ *Id.* at 2.

⁴ Response of CVA at 1.

through May 1, 2020[,]” which is also applicable to residential, commercial, and industrial customers.⁵

Virginia-American Water Company (“VAWC”) has “halted all customer shutoffs”⁶ and has “mov[ed] towards restoring service to customers whose service was previously shutoff.”⁷ VAWC “has already suspended the imposition of late payment fees as requested by the Attorney General and will continue to do so until further notice or until such time determined by an order of the Commission.”⁸

Virginia Electric and Power Company (“VEPCO”) has committed to “suspending service disconnections through June 10, 2020 (the period of the Governor’s emergency declaration), and will reevaluate at that time whether an additional suspension period is appropriate.”⁹ The Company supports “waiver of late payment fees during the same period and requests necessary waivers of Section XII of its Terms and Conditions in order to do so.”¹⁰ In addition, “to facilitate customers’ ability to receive electric service during this critical period, the Company additionally seeks a waiver of Section XVII (A) of the Company’s Terms and Conditions to enable it to reconnect a limited category of residential customers previously disconnected for non-payment and of Section XVII (D) to waive associated reconnection fees.”¹¹

Appalachian Power Company (“APCo”) responded that it has “voluntarily suspended all service disconnections for non-payment during the State of Emergency announced by the

⁵ *Id.*

⁶ VAWC’s Response to the Attorney General’s Emergency Petition at 1

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ VEPCO’s Response to Attorney General’s Emergency Petition and Request for Additional Waiver at 2.

¹⁰ *Id.*

¹¹ *Id.*

Governor.”¹² APCo further represented that it “stands ready to implement any additional Commission directives in order to reasonably minimize hardships on its customers.”¹³

The Virginia, Maryland, and Delaware Association of Electric Cooperatives (“Association”) responded on behalf of the Virginia Electric Cooperatives (“Cooperatives”).¹⁴ The Cooperatives express a desire to “be helpful” in slowing the spread of COVID-19, but are concerned that “the breadth and scope of the Petition will cause unintended negative consequences on the Cooperatives and our member-consumers, which [it] would like to bring to the attention of the Commission.”¹⁵ Most urgently, the Cooperatives seek to limit any mandatory suspension to only residential customers – to the exclusion of other classes of customers, including small businesses.¹⁶ The Cooperatives cite a concern that “the impairment of cash flows for the Cooperatives will put the Cooperatives’ businesses at risk, and thus harm their abilities to keep the lights on for residential and small commercial customers during the pendency of the emergency.”¹⁷ The Cooperatives write that “[n]o Cooperative will be able to bear an ‘electric bill holiday[]’”¹⁸ and that, as of March 17, 2020, three phone calls were placed from customers “inquiring how long they will be allowed to get ‘free power.’”¹⁹ The

¹² APCo’s Response at 1.

¹³ *Id.*

¹⁴ The Virginia Electric Cooperatives are A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, which are all regulated as to rates and to service by this Commission, , and Powell Valley Electric Cooperative, a TVA supplied distribution cooperative whose service is subject to regulation by the Commission.

¹⁵ Response of Cooperatives at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

Cooperatives raised additional issues with respect to disconnections for safety reasons and the impact that the Suspension Order has on prepaid electric service customers.²⁰

Finally, two sets of comments were filed by non-utilities in response to the Petition. United States Senators Mark R. Warner and Tim Kaine filed joint comments on March 19, 2020 “applaud[ing] the Commission for its recent order directing regulated electric, natural gas, and water companies in Virginia to suspend service disconnections due to non-payment for at least 60 days in response to the COVID-19 outbreak.” Consistent with the Petition, the U.S. Senators “respectfully request that the Commission promptly issue an order suspending the ability of any public utility in Virginia to charge late fees through the duration of Virginia’s state of emergency.”

The Virginia Poverty Law Center (“VPLC”) filed comments on March 30, 2020 “thank[ing] the Commission for . . . suspending public utility service disconnections for nonpayment for a 60-day period.” The VPLC supports the Petition’s request for a temporary suspension of late fees,²¹ requests extended repayment periods,²² raises the prospect of emergency rate reductions,²³ seeks protection for prepaid tariff customers,²⁴ and urges the Commission to engage in consistent communication with non-jurisdictional municipal utilities.²⁵

The below chart summarizes Consumer Counsel’s understanding of positions.

²⁰ *Id.* at 4.

²¹ Comments of VPLC at 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2-3.

Respondent/ Commenter	Supports suspension disconnection – Residential	Supports suspension of disconnection – All Customers	Supports waiver of late payment fees	Supports reconnection (non-payment)
Virginia Natural Gas	✓	✓	✓	?
Columbia Gas of Virginia	✓	✓	✓	?
Virginia- American Water	✓	✓	✓	✓
Virginia Electric and Power Company	✓	✓	✓	✓
Appalachian Power Company	✓	✓	?	?
Virginia Electric Cooperatives	✓	✗	?	?
U.S. Senators Mark R. Warner and Tim Kaine	✓	✓	✓	?
Virginia Poverty Law Center	✓	✓	✓	?

RESPONSE

Consistent with Consumer Counsel’s Petition, and the Commission’s *Ex Parte* Suspension Order in PUR-2020-00048, the responses and comments generally support and recognize the importance of suspending disconnections for reasons of non-payment during the State of Emergency. Consumer Counsel appreciates the Commission’s prompt action in PUR-2020-00048, and the voluntary actions by public utilities to help their customers during this emergency.²⁶

Consumer Counsel below replies to select issues discussed in the responses to the Petition.

²⁶ These actions suspending service disconnections for non-payment during the COVID-19 crisis are consistent with measure taking by regulators around the country. See National Association of Regulatory Utility Commissioners, *State Response Tracker*, <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

The filed comments and responses confirm that the temporary suspension of service disconnections for reason of non-payment is needed to minimize adverse impacts on the public health and safety during this period of health and financial crisis. Consumer Counsel notes that several utilities, in addition to noting voluntary suspension of disconnections, have offered to reconnect customers that, prior the State of Emergency, had been disconnected for non-payment, and have sought to waive any associated reconnection fees. Consumer Counsel supports such reconnections during the State of Emergency, which are consistent with the goals of Consumer Counsel's Petition. To the extent necessary, Consumer Counsel respectfully requests that the Commission order all jurisdictional utilities to do the same.²⁷

Several responses support Consumer Counsel's request for the suspension of late payment fees during the State of Emergency. Indeed, this action would "ease the burden on Virginians"²⁸ experiencing financial strain during this emergency that is negatively impacting the economy.²⁹ Many responding utilities have affirmatively offered to suspend late payment fees for various periods of time. It is impossible today for any party to predict correctly the exact financial toll this emergency will have on Virginians – or the extent of time that will be required to resume normal economic activity. The financial impact of the emergency likely will extend well beyond the immediate public health crisis. As of now, Consumer Counsel recommends a moratorium on the assessment and accumulation of late payment fees through the stated date of the State of Emergency – June 10, 2020. The Commission, however, should not foreclose the possible

²⁷ Consumer Counsel supports any necessary waivers to tariff provisions in order to avoid reconnection fees.

²⁸ Comments of U.S. Senators Mark Warner and Tim Kaine.

²⁹ *See, e.g.*, Comments of VPLC at 1 ("In the last week, the U.S. Department of Labor reported the largest increase in unemployment insurance claims in history, while the Chairman of the Federal Reserve has speculated that the country may already be in a recession.").

extension of a moratorium on late payment fees until the extent of the health emergency – and its impact on the economy – is better understood.

The suspension of disconnections for reason of non-payment for *all* customer classes is almost unanimously supported by parties filing comments and responses. The Cooperatives seek to limit this protection to only residential customers in an effort to protect cash flows from business customers that elect to take an “electric bill holiday” during the emergency. To be clear, Consumer Counsel has not requested – and the Commission has not ordered – a suspension of utility bill payments during the pending State of Emergency. Further, Consumer Counsel has not requested – and the Commission has not ordered – that any uncollected bill balances be foregone or that customers be provided “free power.”³⁰ Consumer Counsel has prudently sought to ensure that vital utility services are not disconnected during this unprecedented time of crisis. Of course, no business – whether an electric cooperative, investor-owned gas utility, local pharmacy, or grocery – could continue operations indefinitely if it did not receive payment for services and goods rendered. But during the immediate time of this emergency, the public interest requires that basic needs such as power, heat, and water go uninterrupted for all customers, including small businesses. Consumer Counsel trusts that each electric cooperative is best positioned to communicate effectively with its own customers – its member-owners – the importance of cash flows for continued operations and what the Suspension Order means.³¹

³⁰ It is unclear from the Cooperatives’ Response whether inquiries related to “free power” were from business customers or residential customers.

³¹ For example, Central Virginia Electric Cooperative has the following notice posted on its website:

CVEC recognizes that the impact of the economic slowdown related to slowing the spread of the virus could impact members. While we cannot waive electric bills, we can commit to helping members who need additional time to pay. Effective March 16, CVEC will suspend disconnects for nonpayment for residential and business accounts and will waive late fees until further notice. Please remember that CVEC is owned by you, our members, and is a not-for-profit electric provider and every member is responsible for paying for the

Consumer Counsel agrees that the suspension of disconnections need not extend to situations impacting safety or where a customer has affirmatively requested the disconnection of service for a reason other than an inability to pay. The Suspension Order applies to disconnections of service to any customer of jurisdictional utilities – including customers on prepaid tariffs.³² The disconnection of a customer on a prepaid tariff – for reason that such customer was unable to pay – would be punitive and contrary to the public health needs described in the Petition. To the extent that current billing and technology systems are not designed to prevent the disconnection of prepaid service during times of emergency – this is an issue that the Commission may desire to address in separate tariff proceedings.

WHEREFORE, for the reasons provided above, Consumer Counsel respectfully requests that the Commission: (i) extend the Suspension Order prohibiting any jurisdictional utility furnishing in Virginia power, heat, light, or water from disconnecting or terminating service for reason of non-payment for at least as long as the duration of the State of Emergency; (ii) require reconnection of service to any requesting customer disconnected due to non-payment prior to the Suspension Order; (iii) waive any tariff provisions limiting the ability of any utility to reconnect service to any customer disconnected due to non-payment prior to the Suspension Order; (iv) suspend the applicability of late payment charges allowing public utilities to charge up to one

electric service consumed in their home or business. Electric bills will not be forgiven at the end of the restriction on disconnects. We urge members to make payment arrangements so they do not fall behind on their accounts, as well as to allow CVEC to continue to pay our employees and suppliers.

Central Virginia Electric Cooperative, *COVID-19 Updates*, <https://www.myevec.com/community/covid-19-updates>.

³² Any petition for rehearing or reconsideration of the Suspension Order was due no later than 20 days after March 16, 2020. 5 Va. Admin. Code 5-20-220.

and one-half percent per month on any customer charges not timely paid,³³ and (v) provide for any other relief the Commission deems appropriate and necessary.

Respectfully submitted,

DIVISION OF CONSUMER COUNSEL
OFFICE OF THE ATTORNEY GENERAL

/s/ C. Mitch Burton Jr.

Mark R. Herring
Attorney General of Virginia

Samuel T. Towell
Deputy Attorney General

C. Meade Browder, Jr.
Senior Assistant Attorney General
mbrowder@oag.state.va.us

C. Mitch Burton, Jr.
Assistant Attorney General
cburtonjr@oag.state.va.us

COMMONWEALTH OF VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
202 N. Ninth Street
Richmond, Virginia 23219
(804) 786-2071

April 6, 2020

³³ 20 Va. Admin. Code 5-10-10.

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2020, a true copy of the foregoing was served by electronic mail to:

William H. Chambliss, Esquire
Office of General Counsel
State Corporation Commission
P. O. Box 1197
Richmond, Virginia 23218
william.chambliss@scc.virginia.gov

Joseph K. Reid, III, Esquire
Elaine S. Ryan, Esquire
Timothy D. Patterson, Esquire
McGuire Woods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
jreid@mcguirewoods.com
eryan@mcguirewoods.com
tpatterson@mcguirewoods.com

Paul E. Pfeffer, Esquire
Dominion Energy Services, Inc.
120 Tredegar- Street
Richmond, Virginia 23219
paul.e.pfeffer@dominionenergy.com

Elizabeth B. Wade, Esquire
Southern Company Gas
Ten Peachtree Place, NE
Atlanta, Georgia 30309
ewade@southernco.com

Samuel R. Brumberg, Esquire
Association Counsel
4201 Dominion Boulevard, Suite 101
Glen Allen, Virginia 23060
sbrumberg@vmdaec.com

T. Borden Ellis, Esquire
Assistant General Counsel
Bryan D. Stogdale, Esquire
Senior Counsel
NiSource Corporate Services Company
1809 Coyote Drive
Chester, Virginia 23836
TBellis@nisource.com

Timothy E. Biller, Esquire
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
tbiller@hunton.com

Noelle J. Coates, Esquire
American Electric Power Service
Corporation
1051 East Cary Street, Suite 1100
Richmond, Virginia 23219
njcoates@aep.com

/s/ C. Mitch Burton Jr.

Counsel