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June 5, 2020

BY ELECTRONIC FILING

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

**Re: *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte:
Temporary Suspension of Tariff Requirements.***
Case No. PUR-2020-00048

Dear Mr. Peck:

Please accept for electronic filing in the above-styled matter the attached Comments 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

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00048

Ex Parte: Temporary Suspension of Tariff Requirements

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

Pursuant to the State Corporation Commission’s (“Commission”) Order Seeking Comment on Suspension of Service Disconnections issued May 26, 2020, the Office of Attorney General’s Division of Consumer Counsel (“Consumer Counsel”) respectfully submits the below Comments to Order Seeking Comment on Suspension of Service Disconnections.

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 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 was to remain in effect through June 10, 2020, absent further action. In the interim period, the Governor issued Executive Orders 53 and 55 – together representing a

“Stay at Home Order” generally requiring all Virginians to remain in their place of residence, subject to various exceptions, through June 10, 2020.

On March 13, 2020, Consumer Counsel filed a 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.” On April 9, 2020, the Commission entered an Order extending the suspension of service disconnections through June 15, 2020 (“Order Extending Suspension”), recognizing the “unprecedented public health crisis now faced by our country and the Commonwealth”¹

Since issuing the Order Extending Suspension, the Governor issued Executive Order 61, which eases the temporary restrictions put in place in response to COVID-19. Executive Order 61 seeks to “set the path forward.” The “path forward” is not “business as usual[]” but intends to allow the public to “make necessary ventures outside” in a safe manner but continues certain restrictions on the economy. Executive Order 61 is in place for an indefinite period of time. In addition, on

¹ Order Extending Suspension at 2.

May 26, 2020, the Governor amended Executive Order 51 to extend the state of the emergency declaration indefinitely; the state of emergency remains in effect “until amended or rescinded by further executive order.”

The Commission’s May 26 Order Seeking Comment on Suspension of Service Disconnections, while recognizing “the hardships faced by many Virginians as a result of jobs lost due to the COVID-19 catastrophe,” appears premised around a concern “that a moratorium on all service disconnections due to unpaid bills is not sustainable on an unlimited basis in the absence of programs to ensure that the growing costs of unpaid bills are not unfairly shifted to other customers.”² The Commission has requested that commenters address three issues before taking any further action on the moratorium of service disconnections. Consumer Counsel addresses these issues below.

COMMENTS

Utilities are generally provided with the opportunity to recover costs plus a fair rate of return through its rates charged to customers. Like all other businesses affected by the current COVID-19 emergency, if customers are unable to pay their bill for utility services, the utility will lose revenue.³ Unlike some other businesses affected by the current COVID-19 emergency, public utilities provide vital services.

Consumer Counsel has acknowledged that it has not requested – nor has the Commission granted – “free power” for any individual customer during the state of emergency. Rather, Consumer Counsel has prudently sought to ensure that vital utility services are not disconnected

² Order Seeking Comment on Suspension of Service Disconnections at 2.

³ For those utilities that have equity shareholders and subject to true cost-of-service ratemaking, this may mean reduced profits as is also the case for many businesses in Commonwealth. This is not true for any utility revenues that are recovered through a rate adjustment clause providing for “timely and current” cost recovery. Any amount of lost revenue associated with the COVID-19 emergency that is subject to such a rate adjustment clause traditionally is “trued-up” by the Commission to provide recovery for any under-recoveries.

during this immediate time of crisis. This is not the same as recognizing that other customers *must* ultimately bear the full brunt of unpaid utility bills. The extent of associated revenue reductions associated with the COVID-19 emergency (if any) is unknown at this time. It is not clear in the current record if such revenue reductions (if any) have resulted in utilities recovering revenues insufficient to meet their costs plus any relevant fair rate of return. It is further not clear from the record if there have been any reductions to a utility's cost of service that may be used to offset any such revenue reductions. Consumer Counsel does not prejudge these important issues and anticipates that the ratemaking impact of the moratorium will be ripe for Commission consideration in future utility-specific rate cases.

a. Should the mandatory moratorium on utility service disconnections currently in place be extended beyond June 15, 2020? If so, for how long?

The existing mandatory moratorium on utility service disconnections ordered by the Commission *ex parte* should be extended beyond June 15, 2020. As discussed above, Executive Order 51, while originally having an expiration date of June 10, 2020, has been amended to run indefinitely. Thus, it is unknown when the current state of emergency associated with COVID-19 will expire. The Virginia economy is only in the early stages of reopening following the stay at home measures put in place in response to the public health crisis. The existing moratorium should be extended to a point in the future after Virginia's economy has had an opportunity to resume, allowing impacted citizens an opportunity to regain some financial footing. This has not yet happened.

- b. If the commenter advocates extending the mandatory moratorium on service disconnections indefinitely or for a significant period beyond June 15, please identify the programs and mechanisms, public or private, that will provide sufficient funding to ensure that the costs of unpaid utility bills are defrayed and will not result in even higher costs on other utility customers.**

There are not enough facts currently in the record to know with any degree of certainty the revenue impact that may (if at all) be associated with the COVID-19 emergency and unpaid utility bills. This type of inquiry is fact-specific and will be unique to each utility that is under the Commission's jurisdiction. Without having evidence in the record as to a reasonable estimate of COVID-19's impact on utility revenues, it is impossible to say what would or could constitute sufficient funding to defray any such revenue reductions.

Understanding the non-uniform nature of the issue, in theory there are several possible mechanisms that could be used to defray the impact to customers of any COVID-19 related costs. First, for certain utilities, emergency rate reductions could be implemented for customers of any utility for which there is evidence of excessive revenues.⁴ Such rate reductions would help ameliorate any cost-shifting associated with increased rates associated with unpaid bills. Second, for investor-owned utilities, it is possible that utility management could simply share the financial burden with shareholders, as other businesses impacted by the pandemic have had to do. Third, for some utilities, there is the possibility of federally funded government loan programs that include

⁴ See Va. Code § 56-242. Unfortunately, § 56-585.1 could be read to limit the Commission's authority to exercise the ratepayer protections of § 56-242 for the Commonwealth's two largest electric utilities, Appalachian Power Company and Virginia Electric and Power Company. While the General Assembly has explicitly left in place the authority for these two utilities to request emergency rate increases under § 56-245, it did not explicitly leave in place the Commission's authority to order emergency rate decreases under § 56-242.

terms of forgiveness.⁵ These type of funds help offset any revenue reductions associated with unpaid bills.

Finally, Consumer Counsel recognizes that the Commission has allowed utilities to track COVID-19 pandemic-related expenses,⁶ which could have future ratemaking implications. The Commission should also do the same for any COVID-19 pandemic-related reductions to the cost of service. If utilities are allowed to “color” such expenses, then the same should be done for any associated cost savings.

A utility’s cost of service has traditionally included a level of revenue associated with unpaid bills to calculate rates charged to all customers. In theory, the amount of this type of expense associated with unpaid bills will increase during this emergency. But the negative impact on a utility’s overall revenues would happen regardless of whether there is a mandatory or voluntary moratorium on service disconnections (or other measures intended to reduce or avoid service disconnections).

For any utility that faces the immediate “danger” of no longer being able to provide “vital services to all customers” due to insufficient revenues, the General Assembly has enacted § 56-245⁷

⁵ See e.g., *Application of Central Virginia Electric Cooperative, For approval of financing pursuant to Title 56 Chapter 3 of the Virginia Code*, SCC Case No. PUR-2020-00091, Order Granting Authority (May 21, 2020) (authorizing borrowing up to \$2.6 million under the Paycheck Protection Program which if used to meet program criteria are eligible to be forgiven).

⁶ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Authority to create Regulatory Asset*, SCC Case No. PUR-2020-00074, Order at 3 (Apr. 29, 2020) (“All natural gas, electric, water and sewer utilities subject to regulation by the Commission may record deferral of the above-referenced expenses on their books, subject to the provisions of the Financial Accounting Standards Board’s Accounting Standards Codification 980. The Commission emphasizes that this Order is solely for accounting purposes and has no ratemaking impact. Such expenses may be addressed in future ratemaking proceedings to the extent relevant thereto.”).

⁷ Va. Code § 56-245 (“Whenever the Commission, upon petition of any public utility, is of the opinion and so finds, after an examination of the reports, annual or otherwise, filed with the Commission by such public utility, together with any other facts or information which the Commission may acquire or receive from an investigation of the books, records or papers, or from an inspection of the property of such public utility, or upon evidence introduced by such public utility, that an emergency exists, and that the public utility has made a preliminary showing of all the elements of § 56-235.2 sufficient to demonstrate a reasonable probability that the increase will be justified upon full investigation and hearing and is of the opinion and so finds that a hearing to determine all of the issues involved in the final determination of the rates or service will require more than ninety days of elapsed time, the Commission

to allow for emergency rate relief. In addition, the Commission's *Ex Parte* Suspension Order permitted certain utilities to "seek an expeditious waiver of" the moratorium on service disconnections for non-residential customers, if individual factual circumstances support such a waiver.⁸ Any utility subject to the continuation of the current moratorium could be permitted to seek a waiver in the event that factual circumstances are presented to support such a waiver.

- c. **Should the mandatory moratorium on service disconnections be replaced on June 15 (or some specific later date) with voluntary measures by utilities to reduce or avoid service disconnections, including as examples and without limitation, offering extended payment plans with no late fees and/or waivers of reconnection charges?**

Consumer Counsel assumes that prudently incurred costs – whether voluntarily incurred or mandatorily incurred – are recoverable from customers as part of a utility's cost of service. The cost-shifting described by the Commission⁹ does not hinge on whether the moratorium on service disconnections is mandatory or voluntary. Thus, the potential impact to other customers of costs associated with voluntary measures to reduce or avoid service disconnections is the same had those measures been mandatory.

Consumer Counsel respectfully disagrees that it is the moratorium *per se* that is unsustainable. Consumer Counsel would agree that a moratorium that leads to unlimited increases in amounts associated with unpaid bills – with or without an offsetting increase in rates – is not sustainable on an unlimited basis. In a vacuum, if increased levels of expense are prudently incurred to avoid service disconnections, then a utility will have a corresponding need for an

may, in case of such emergency, enter a temporary order fixing a temporary schedule of rates, which order shall be forthwith binding upon such utility and its customers . . .").

⁸ Suspension Order at 3 n.2.

⁹ Order Seeking Comment on Suspension of Service Disconnections at 2.

increased revenue requirement to recover its costs. The issue that the Commission raises with respect to cost-shifting will remain whether measures are voluntary or mandatory.¹⁰

Transitioning from a mandatory to a voluntary posture will give utilities discretion to decide the circumstances that merit relief, and those circumstances that do not merit relief. It is also unlikely that voluntary measures will be uniform for any one type of utility service across the jurisdictional utilities, which could lead to customer confusion. It is important that any voluntary measures not be applied arbitrarily. In the event that the Commission transitions to a voluntary posture, the Commission will need to be diligent in monitoring utility practices in this regard, and be available to review any suspension-related issues not resolved to a customer's satisfaction.

Respectfully submitted,

DIVISION OF CONSUMER COUNSEL
OFFICE OF THE ATTORNEY GENERAL

/s/ C. Mitch Burton Jr.

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¹⁰ That is unless it were later determined that such voluntary measures are not recoverable as a cost of service. That would be an issue for a future rate case.

Richmond, Virginia 23219
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June 5, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2020, a true copy of the foregoing was served by electronic mail to:

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/s/ C. Mitch Burton Jr.

Counsel