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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 12, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION CASE NO. PUR-2020-00048

Ex Parte: Temporary Suspension of Tariff Requirements

ORDER ON SUSPENSION OF SERVICE DISCONNECTIONS

Earlier this year we established *sua sponte* this docket to respond to the unprecedented socioeconomic crisis inflicted on the United States and the Commonwealth of Virginia by the coronavirus (COVID-19). On March 16, 2020, we ordered an immediate moratorium on service disconnections for unpaid bills caused by the COVID-19 crisis by jurisdictional electricity, natural gas, water, and sewer utilities.[1] This moratorium provided immediate protection to both residential and business customers and was initially put in place to run 60 days, to May 15, 2020. On April 9, 2020, we issued a second order extending this moratorium for an additional 30 days, to run to June 15, 2020.[2]

Given the magnitude of this issue and its impact on Virginia's economy and people, on May 26, 2020, we issued a third order,[3] inviting members of the public, persons holding important positions of public office in Virginia, utilities and other interested persons to comment

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[1] *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: Temporary Suspension of Tariff Requirements,* Case No. PUR-2020-00048, Order Suspending Disconnection of Service and Suspending Tariff Provisions Regarding Utility Disconnections of Service (Mar. 16, 2020).

[2] *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: Temporary Suspension of Tariff Requirements,* Case No. PUR-2020-00048, Order Extending Suspension of Service Disconnections (Apr. 9, 2020).

[3] *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: Temporary Suspension of Tariff Requirements,* Case No. PUR-2020-00048, Order Seeking Comment on Suspension of Service Disconnections (May 26, 2020).

on whether the mandatory moratorium on service disconnections should be extended beyond June 15, 2020. In that order seeking comment, we noted the following:

> While we recognize the hardships faced by many Virginians as a result of jobs lost due to the COVID-19 catastrophe, the reality is 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. These growing costs eventually become unsustainable, making it virtually impossible for customers ever to repay and potentially affecting the utilities themselves, especially smaller utilities and cooperatives which have little or no access to investor equity capital.[4]

While not limiting the relevant topics that commenters were free to address, we asked all commenters to address three specific questions:

> a. Should the mandatory moratorium on utility service disconnections currently in place be extended beyond June 15, 2020? If so, for how long?
>
> 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.
>
> 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?[5]

The Commission received over 300 comments in this matter.[6] We sincerely appreciate the time and effort that all commenters put in to responding to the Commission's request, and

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[4] *Id.* at 2 (footnote omitted).

[5] *Id.* at 3.

[6] For example, the Commission notes that this included comments from the Governor of Virginia and from 58 members of the Virginia General Assembly. The public record in this case lists, and provides copies of, all comments received in this matter.

these comments have been fully considered in establishing the additional requirements set forth herein.

Some commenters urged that the mandatory moratorium not be extended, but instead advocated conversion to a voluntary arrangement in which utilities can either extend their own moratorium[7] or design solutions on a case-by-case basis to assist individual customers to avoid cut-offs.[8]

Some commenters agreed, or did not take issue with, our statement 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."[9]

Some commenters who favored a significantly longer extension of our ban on service disconnections for unpaid bills averred that the magnitude of the cost-shifting impact on other customers is uncertain or will not be determined until a future rate case in which other issues will be considered, such as a utility's earnings.[10]

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[7] Virginia Electric and Power Company's Comments at 2.

[8] Aqua Virginia, Inc.'s ("Aqua") Comments at 1-2; Washington Gas Light Company's ("WGL") Comments at 3; Virginia, Maryland and Delaware Association of Electric Cooperatives' ("VMDAEC") Comments at 2; Virginia Natural Gas, Inc.'s Comments at 3.

[9] *See, e.g.,* VMDAEC's Comments at 2; Aqua Comments at 1.

[10] Environmental Advocates' Comments at 3; Office of the Attorney General, Division of Consumer Counsel's ("Consumer Counsel") Comments at 4; Letter Signed by 58 Members of the Virginia General Assembly Sent from the Office of Delegate Jerrauld "Jay" Jones ("Legislator Comments") at 1.

Some commenters asserted that unpaid bills are not costs of the utility that will be shifted to other customers unless these bills are never repaid, thus utilities should be required to set up extended repayment plans so that customers can eventually pay arrearages.[11]

Some utility commenters said that a "one-size-fits-all" approach is no longer appropriate, especially since several Virginia utilities serve customers across multiple state jurisdictions, each with different rules, policies and timetables regarding utility service disconnections during the COVID-19 crisis. For example, Washington Gas Light Company ("WGL") serves customers in Virginia, Maryland and the District of Columbia, each with different rules and timetables, creating challenges and potential confusion as WGL's service personnel attempt to work with customers on options for maintaining service.[12] At the other geographic end of the Commonwealth, Powell Valley Electric Cooperative serves customers in both Virginia and Tennessee, where power supply is provided by the Tennessee Valley Authority, a federal authority.[13] Appalachian Power Company serves customers in both Virginia and West Virginia.[14]

Further, a "one-size-fits-all" approach may be problematic in the longer term in that Virginia's utilities vary greatly in size and financial strength, ranging from very large, deeply

[11] Environmental Advocates' Comments at 2; Appalachian Voices' Comments at 5; Virginia Poverty Law Center's ("VPLC") Comments at 3.

[12] WGL's Comments at 4, n.5 ("On May 29,2020, the Governor of Maryland extended this date to July 1, 2020 for Maryland utilities; in the District, the current moratorium is effective up to June 23, 2020.").

[13] VMDAEC's Comments at n.1; *see also In Re: Emergency Petition of the Consumer Advocate Unit of the Financial Division of the Tennessee Attorney General*, Docket No. 20-00047, Order Requiring All Jurisdictional Utilities to Suspend Actions to Disconnect Service for Lack of Payment During the State of Public Health Emergency (Mar. 31, 2020). Tennessee reportedly implemented a mandatory moratorium on disconnections. *See* https://www.naruc.org/compilation-of-covid-19-news-resources/map-of-disconnection-moratoria.

[14] West Virginia reportedly implemented a voluntary moratorium on disconnections. *See* https://www.naruc.org/compilation-of-covid-19-news-resources/map-of-disconnection-moratoria.

capitalized electricity and gas utilities owned by publicly-held holding companies with access to global capital markets to small, thinly capitalized rural water companies and member-owned electricity cooperatives which have little to no access to equity capital at all. The VMDAEC reiterated their earlier comments that cooperatives, as member-owned utilities with no stockholders, must shift the costs of unpaid bills to other paying customers.[15] With no access to equity capital, a shortfall of revenues from customer payments eventually threatens the ability of an electric cooperative even to operate.[16] The VMDAEC asks for the mandatory moratorium to be allowed to expire on June 15, 2020, after which they will work with customers on a case-by-case basis to avoid service disconnections and assist customers with paying bills in arrears to avoid shut-offs.[17]

Several commenters asserted that it is essential to collect and monitor data relevant to the issues involved herein in order to fashion necessary solutions.[18]

NOW THE COMMISSION, upon consideration of this matter, and taking into account the comments received herein as well as our previous orders in this docket, issues the following ruling.

Initially, we note actions and events that have taken place since our original order of March 16, 2020 imposing a moratorium on utility service cut-offs. Of particular importance, the Governor of Virginia has issued orders relaxing earlier restrictions imposed on business and

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[15] VMDAEC's Comments at 2-3 ("[A]s member-owned utilities, there are no separate shareholders which could be called upon to bear losses associated with uncollectible debt; all remaining Cooperative ratepayers are and will be affected by these losses.").

[16] *Id.* at 3.

[17] *Id.* at 5.

[18] Environmental Advocates' Comments at 3-4; Consumer Counsel's Comments at 6-7; Legislator Comments at 1-2; Appalachian Voices' Comments at 2; VPLC's Comments at 2-3.

social activities related to the spread of the COVID-19 virus.[19] These gubernatorial orders reflect on data indicating progress on the public health front, and we certainly hope these relaxations of restrictions on business activities will begin to restore economic health to the many businesses in Virginia that have been hurt, large and small, as well as restoring jobs to the many Virginians who lost their jobs due to the COVID-19 crisis.[20]

In other significant events subsequent to our original service disconnection order, the United States Congress passed several measures to help those impacted by the COVID-19 crisis, including the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[21]

Rate Impact

Some commenters questioned whether unpaid bills would actually result in cost-shifting to other customers, generally arguing that rates cannot be increased until a future rate case in which many other factors are weighed, including a utility's earnings.[22]

It is true that in a rate case many accounting items are weighed, including a utility's earnings or losses, before finally determining whether any rate changes are required. Yet under

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[19] *See* Executive Order No. 61, Phase One Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19), issued May 8, 2020, by Governor Ralph S. Northam. *See also* Executive Order No. 65, Phase Two Easing of Certain Restrictions Due to Novel Coronavirus (COVID-19), issued June 2, 2020, by Governor Ralph S. Northam. In addition, at the request of the Governor, the Supreme Court of Virginia recently issued an order suspending all eviction proceedings through June 28, 2020, while the Governor implements a rent relief program in the Commonwealth. *See In Re: Fifth Order Modifying and Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency*, Supreme Court of Virginia (June 8, 2020).

[20] On June 5, 2020, the deadline for comments to our Order Seeking Comments, the United States Bureau of Labor Statistics announced that the national unemployment rate fell in May and 2.5 million jobs were added, welcome news following two months of devastating job losses. *See, e.g.*, "U.S. Unemployment Rate Fell to 13.3% in May; Payrolls rose by 2.5 million, suggesting jobs are returning," *Wall Street Journal*, June 6, 2020, pg. 1, *www.wsj.com*.

[21] Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). Among its many provisions, the CARES Act increased cash payments and extended eligibility for unemployment benefits to those laid off during the COVID-19 crisis, provided for direct cash payments to individuals and families based on taxable income, and provided loans to businesses to avoid layoffs and maintain payrolls.

[22] Environmental Advocates' Comments at 2; Consumer Counsel's Comments at 4.

standard regulatory principles, a utility may recover from customers in rates the costs of unpaid bills, as long as such costs meet the "reasonable and prudent" standard. While we will not, of course, prejudge any specific claim for cost recovery in a future rate case, it is entirely foreseeable that an argument would be made in support of cost recovery that it was clearly "reasonable and prudent" for a utility to incur costs by complying with a state-imposed mandatory ban on service shut-offs that required utilities to continue providing service to non-paying customers.

Further, while a utility with substantial "over-earnings" is in a much better position to bear the short-term cash flow impact of such costs than, for example, small utilities or electricity cooperatives with no stockholders, even if a utility has "over-earnings," costs related to uncollected bills will still be shifted to other customers because these costs will *reduce* the utility's over-earnings, thus reducing potential *refunds* to customers or reducing or removing entirely the potential for rate *decreases*. And for utilities that do not have "over-earnings" these costs could be argued to justify rate *increases*.

As far as timing, it is true that any specific change to rates will not be determined until a rate case at some point in the future. We note that several utilities already have regular rate cases pending and more are expected.[23] Virginia law also allows utilities to seek immediate rate

[23] *See Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUR-2018-00175, Doc. Con. Cen. No. 181110164, Application (Nov. 2, 2018); *Application of Massanutten Public Service Corporation, For an expedited increase in rates*, Case No. PUR-2020-00039, Doc. Con. Cen. No. 200320074, Application (Mar. 11, 2020); *Application of Virginia Natural Gas, For a general rate increase and for authority to revise the terms and conditions applicable to natural gas service*, Case No. PUR-2020-00095, Doc. Con. Cen. No. 200610137, Application (June 1, 2020); *Application of Appalachian Power Company, For a 2020 Triennial Review of the Rates, Terms and Conditions for the Provision of Generation, Distribution and Transmission Services Pursuant to § 56-585.1 A of the Code of Virginia,* Case No. PUR-2020-00015, Doc. Con. Cen. No. 200340029, Application (Mar. 31, 2020).

increases through emergency rate cases if circumstances warrant.[24] As observed by Consumer Counsel, "prudently incurred costs – whether voluntarily incurred or mandatorily incurred – are recoverable from customers as part of a utility's cost of service," and "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."[25]

Legislators' Letter

As referenced above, we received a letter signed by 58 members of the General Assembly. The legislators stated:

> Given the unprecedented nature and breadth of this crisis, it is our considered opinion that the above issues raised by the Commission will require legislative action. We are currently evaluating novel legislative options that could mitigate the financial hardship faced by our constituents as well as those of Virginia's public service companies, recognizing as the Commission notes, the significant variance between the types of utilities serving Virginian customers.[26]

We welcome the expression by these legislators that the unprecedented nature of the COVID-19 crisis and its repercussions on utility customers and utilities calls for solutions that go beyond what utility regulation alone can provide. The legislators raise the prospect of an emergency special session of the General Assembly to consider the COVID-19 crisis and its impact on issues such as the ones pertinent herein. As described below, we will extend the current moratorium to allow time for the General Assembly to meet in special session to address the COVID-19 crisis in a more comprehensive manner. At least one commenter offered a constructive suggestion as to possible legislation to mitigate the impact of the COVID-19 crisis

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[24] *See* Code § 56-245.

[25] Consumer Counsel's Comments at 7.

[26] Legislator Comments at 1.

on customers. Appalachian Voices states that half of the funds available to Virginia under the recent federal CARES Act can be used for utility bill payment assistance. State legislation would be required to use the CARES Act funds in this manner.[27]

We also welcome the legislators' recognition that Virginia's utilities vary significantly in size, territories, and financial structures and resources. This great diversity in Virginia's electricity, natural gas, water and sewer utilities argues for transitioning away from a "one-size-fits-all" rule to one that acknowledges these many different types of utilities.[28]

Extension

Despite the positive developments cited above, we do not minimize the continuing hardships faced by many Virginians due to the economic devastation caused by the COVID-19 crisis, nor do we presume to predict when our economic situation will return to the low unemployment rates just before the COVID-19 pandemic hit the United States.

Our purpose since our original order of March 16th imposing a moratorium on service shut-offs has been to protect Virginia's utility customers who, through no fault of their own, have been the victims of the devastating economic consequences of the COVID-19 pandemic, while recognizing that an unlimited moratorium is not sustainable without government actions to protect other customers from cost-shifting.

While there are some signs of economic recovery, hundreds of thousands of Virginians are still suffering from lost jobs and income caused by the crisis. Accordingly, we extend the moratorium on utility shut-offs to August 31, 2020.

[27] Appalachian Voices' Comments at 7.

[28] Other commenters also recognized this variety in utilities and the need for individual utility approaches. *See, e.g.*, VPLC's Comments at 3.

This additional extension will give the General Assembly and Governor time to address the economic repercussions of the COVID-19 crisis on utility customers, an effort alluded to in the letter referenced above from the 58 General Assembly members as well as several other commenters. We emphasize that utility regulation alone cannot adequately address what is a much broader socioeconomic catastrophe.

The following provisions will apply during the extension ordered herein:

1. Residential and small business customers (*i.e.*, customers not included in 2., below) in arrears due to the COVID-19 crisis remain responsible for payment but must be offered extended payment plans of up to 12 months. Utilities are authorized the flexibility to work with customers on a case-by-case basis to create extended payment plans for each customer, but no late fees or carrying charges can be added to the arrearage.

2. For large commercial customers,[29] these customers remain responsible for payment, but we authorize utilities the flexibility to work out, on a case-by-case basis, extended payment plans in lieu of cut-offs for such customers whose arrearages have been specifically caused by the economic impact of the COVID-19 crisis and not by other factors or business decisions. Before offering extended payment plans, utilities may require such large customers to make every effort to obtain access to the loans for businesses made available by the CARES Act or other federal or state lending programs for COVID-19 relief.

3. As noted in our prior order extending this moratorium, a utility may seek an expeditious waiver of the moratorium in the instant Order for specific non-residential customers, if the utility believes individual factual circumstances support such a waiver.

4. During this extension, no reconnection fees can be charged to eligible customers previously disconnected who seek to reconnect.

5. Utilities shall book amounts owed by a customer on an extended payment plan as accounts receivable and amounts owed shall not result in bad debt expenses as long as plan payments are current.

6. Utilities shall also collect and report the following data regarding accounts receivable resulting from the suspension of disconnections in this docket to

[29] For example, for electric utilities these are customers that take service under large general service or industrial rate schedules.

the Commission's Division of Utility Accounting and Finance on a monthly basis by customer class:[30]

a. The outstanding aged accounts receivable balances as of May 31, 2020, resulting from the suspension of service disconnections in this docket;

b. Associated collections from customers during each of the months of June, July, and August 2020;

c. Associated additions to aged accounts receivable balances during each of the months of June, July, and August 2020; and

d. The resulting aged accounts receivable balances, net of collections and additions, as of June 30, July 31, and August 31, 2020.

7. Utilities facing cash-flow problems due to unpaid bills that threaten the continuation of service to all customers or long-term financial harm to the utility may seek specific relief from the provisions of this order after making diligent efforts to obtain access to other sources of suitable working capital as may be available from governmental or private sources. We note at least four electric cooperatives have applied for temporary financial assistance from federal sources.[31]

8. To reiterate, our moratorium orders are not retroactive; they apply to arrearages that are the direct result of the COVID-19 crisis that afflicted our economy earlier this year and thus arose in billing periods beginning in February 2020.

9. Any tariff waivers necessary to carry out the directives herein are approved until further order of the Commission.

It is our fervent hope that the process of healing the economic damage caused by the COVID-19 crisis will continue. In particular, we hope that jobs and livelihoods will be fully restored to the many Virginians who have suffered job losses or reduced incomes, which

[30] If practicable, utilities should provide this information in an electronic format to accounting@scc.virginia.gov.

[31] *See, e.g., Petition of Shenandoah Valley Electric Cooperative*, Case No. PUR-2020-00108, Petition (June 1, 2020); *Application of Central Virginia Electric Cooperative*, Case No. PUR-2020-00091, Order Granting Authority (May 21, 2020); *Application of BARC Electric Cooperative*, Case No. PUR-2020-00088, Order Granting Authority (May 20, 2020); *Application of Northern Neck Electric Cooperative*, Case No. PUR-2020-00075, Order Granting Authority (April 23, 2020).

includes the many Virginia small businesses which have incurred devastating damage. While we have acted promptly throughout this crisis to protect customers unable to pay utility bills due to the COVID-19 crisis, the only truly sustainable solution is government action beyond utility regulation in the immediate short term and a restoration of economic health as soon as possible.

Accordingly, IT IS SO ORDERED, and this matter is CONTINUED.

A COPY hereof shall be sent electronically by the Clerk of the Commission to the utilities providing electricity, natural gas, water, and sewer services in the Commonwealth that are subject to regulation by the Commission as identified in the attached service list.

ATTACHMENT A

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ATTACHMENT A

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