

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

March 31, 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 REQUIRING ALL JURISDICTIONAL UTILITIES
TO SUSPEND ACTIONS TO DISCONNECT SERVICE FOR LACK OF PAYMENT
DURING THE STATE OF PUBLIC HEALTH EMERGENCY**

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 to hear and consider 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”).¹

In summary, following the hearing, the Commission granted the relief requested and ordered all natural gas, electric, water, and wastewater, public utilities under its jurisdiction to immediately suspend the disconnection of service for non-payment until the state of emergency

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.

in Tennessee expires or is formally lifted.² Further, any customer of a regulated natural gas, electric, water, or wastewater public utility whose service was disconnected for lack of payment on or after March 12, 2020, shall be reconnected at no charge. All regulated public utilities shall continue to submit weekly status reports as well as, within thirty (30) days of this order, submit a report that discusses the temporary practices, repayment plans, and/or grace periods to be put in place in the immediate aftermath following the expiration or lifting of the emergency declaration. Finally, the Commission finds, consistent with the recommendation of the U.S. Homeland Security Cybersecurity and Infrastructure Security Agency Memorandum, issued March 19, 2020, that utility workers in the energy, water, wastewater, and telecommunications industries are essential critical infrastructure personnel responsible for ensuring the safety, reliability, and continuity of our vital utility systems and services.³

BACKGROUND

Amid reports of a global pandemic outbreak originating from China and sweeping through Asia, the Middle East, and Europe, the first diagnosed case of the Novel Coronavirus Disease 2019 (COVID-19) in the United States was announced mid-January in the state of Washington. On March 5, 2020, it was publicized that COVID-19 had arrived in Tennessee when the first case of the virus was diagnosed in Williamson County, Tennessee. As the number of confirmed cases of the virus began increasing exponentially daily, recognizing the serious threat to health and welfare of Tennesseans, Tennessee Governor Bill Lee declared a state of

² For the general understanding of the public, the Commission's jurisdiction does not extend to utility services provided by cities, counties, or municipalities, such as Nashville Electric Service, or to utility districts and cooperative entities. A list of public utilities this *Order* applies to is attached at Exhibit A.

³ U.S. Homeland Security Cybersecurity and Infrastructure Security Agency Memorandum (March 19, 2020).

public health emergency and, on March 12, 2020, issued the first of several Executive Orders to facilitate efforts to stop and contain the spread of the virus.

In the days since, schools across the state have closed or have transitioned to online, many retail businesses have been temporarily closed, and government and business employees that can work from home have been ordered to continue to do so. Citizens have been advised to practice social distancing and self-isolation to avoid possible exposure, and also quarantine when they suspect they have been exposed to someone who is infected. The institution of effective measures needed to contain this deadly threat to the public health has economic consequences on all fronts. As such, many of our most vulnerable households are without work and have little or no income. Businesses, small and large, depend upon basic utility services even as they face potential supply chain problems, a lack of cash-flow, and employees that are unavailable to work. In these challenging times, maintaining safe, reliable, and reasonably priced utility service must remain a priority.

These circumstances prompted swift action by the Commission, and certain regulated utilities, to protect the safety and welfare of Tennessee households and businesses served by its regulated public utilities. By March 16, 2020, the Commission had heard from its largest regulated utilities of their commitment to suspend disconnections for nonpayment and other measures aimed to maintain 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.⁴

⁴ *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.⁵

On March 22, 2020, the Commission issued a *Public Notice of 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 nonpayment during the declared emergency.⁶ These utilities included: Atmos Energy Corporation, Chattanooga Gas Company, Counce Natural Gas Company, Piedmont Natural Gas Company, Tennessee-American Water Company, Tennessee Wastewater Systems, Inc., and Tennessee Water Service. Further, the Commission called on all its jurisdictional utilities to “at a minimum, commit to voluntarily suspending disconnections for nonpayment.”⁷ At the time of the hearing in this matter, 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.⁸

⁵ *Ongoing Request for Information Related to Measures Taken During Coronavirus COVID-19 Public Health Emergency* (March 19, 2020).

⁶ *Public Notice of Voluntary Suspension of Service Disconnections for Non-Payment by TPUC-Regulated Utilities During the Coronavirus COVID-19 Public Health Emergency* (March 22, 2020).

⁷ *Id.*

⁸ See Responses posted on the Commission's website at: <https://www.tn.gov/tpuc/agency/tpuc-covid-19-information.html>.

With the filing of the *Emergency Petition* on March 24, 2020, the Consumer Advocate asked the Commission to issue an order prohibiting all public utilities from disconnecting service for nonpayment until the state of emergency in Tennessee expires or is cancelled.⁹ In its *Emergency Petition*, the Consumer Advocate highlights a statement issued by the National Association of Regulatory Utility Commissions (NARUC) encouraging action by utility regulators to ensure delivery of safe, reliable service to consumers in a manner that protects the safety of the public and utility personnel, and recognizing the action of certain states to place a moratorium on service disconnections during the pandemic.¹⁰

Further, the Consumer Advocate notes actions taken by utility regulators in two neighboring states during the COVID-19 pandemic. Specifically, the Consumer Advocate points to the March 16, 2020 orders issued by the Kentucky Public Service Commission, which suspends utility service disconnections for nonpayment,¹¹ and by the Virginia State Corporation Commission mandating a sixty (60) day moratorium on service disconnections for customers or businesses¹² who may be financially impacted by the COVID-19 pandemic.¹³ The Consumer Advocate asserts that it would be unfair that only some consumers would benefit through “the good-natured acts of their public utilities who have voluntarily undertaken consumer relief

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ *In the Matter of: Electronic Emergency Docket Related to the Novel Coronavirus COVID-19*, Ky. Pub. Serv. Comm. Case No. 2020-00085, *Order* (March 16, 2020).

¹² *Ex Parte: Temporary Suspension of Tariff Requirements*, Va. State Corp. Comm. Case No. PUR-2020-00048, *Order Suspending Disconnection of Service and Suspending Tariff Provisions Regarding Utility Disconnections of Service* (March 16, 2020).

¹³ *Emergency Petition* at p. 3.

efforts” and would not be in the public interest for other consumers to be left without similar relief.¹⁴

THE HEARING

On March 25, 2020, the Commission issued a Notice of Special Commission Conference, and on March 27, 2020, the Commission convened *en banc* to hear and consider the *Emergency Petition*. Pursuant to Executive Order No. 16, issued by Governor Bill Lee on March 20, 2020, 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 Commission’s website.¹⁵ Among many other callers, the petitioner appeared and was available during the hearing:

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

The Consumer Advocate presented its *Emergency Petition* and answered the questions from the Commissioners. Several opportunities for public comment were provided during the hearing. The following individuals gave public comment: Levoy Knowles, Executive Director of the Tennessee Broadband Association, indicated his members had taken the Federal Communication Commission's Ppledge not to disconnect, a measure similar to the relief requested in the *Emergency Petition*. Henry Walker, Esq., who represents several small regulated public utilities was supportive of the *Emergency Petition*, but urged the Commission to

¹⁴ *Id.* at 4.

¹⁵ *Notice of Special Commission Conference Held Electronically Via WebEx*, March 24, 2020; The *Notice* provided four different phone numbers that could be called with one universal access code to allow interested parties and the public the opportunity to listen live and, during the public comment period, to participate.

address the specific duration of any action ordered and allow smaller utilities the ability to raise issues with the Commission should there be a serious financial impact resulting from approval of the *Emergency Petition*.

FINDINGS AND CONCLUSIONS

During the Special Commission Conference convened telephonically via WebEx on March 27, 2020, the Commissioners considered the *Emergency Petition* and 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

¹⁶ Tenn. Code Ann. § 65-4-104 (2017).

¹⁷ Tenn. Code Ann. § 65-4-106 (2017).

utilities within its jurisdiction.”¹⁸

The *Emergency Petition* filed by the Consumer Advocate Unit pressed the Commission to act quickly to prohibit the agency’s jurisdictional utilities from disconnecting service during the state of public emergency issued by Governor Lee. It should be readily apparent to all, that the pandemic virus outbreak and resulting state of public health emergency is a difficult and serious situation, which has created much stress and uncertainty in the daily life of every Tennessean and one that has significant potential to strain the financial resources of private citizens and businesses alike. This is a truly exceptional time that we are living through; one that is unprecedented in impact and response in recent modern America.

Utility services are essential-to-life services; and crucial to the public’s health, safety, and welfare. The Commission has confidence in the utilities under its jurisdiction to recognize the magnitude of the current situation and act appropriately to mitigate the impact on its employees, customers, and communities. Many utilities under the Commission’s jurisdiction, in fact, acted swiftly to inform the agency of measures they had or were voluntarily committed to taking to assist their customers and communities and to ensure continued safe and reliable service during this time. Such actions include not only the suspension of service disconnections for nonpayment, but also waiving reconnection fees and late charges, offering payment plans, and other financial assistance. Moreover, the Commission has received no complaints related to disconnection involving any one of its regulated utilities since the start of the state of emergency.

The Commission appreciates and thanks these utilities and their employees for all their hard work and round-the-clock efforts to keep the power on and water flowing. Their work is truly essential, especially during this time. On this point, the Commission is in agreement with

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).

the U.S. Homeland Security Cybersecurity and Infrastructure Security Agency March 19, 2020 Memorandum that recommends that states designate or formally acknowledge that utility workers in the energy, water, wastewater, and telecommunications industries are essential critical infrastructure personnel responsible for ensuring the safety, reliability, and continuity of our vital utility systems and services.

Nonetheless, to ensure that none of the Tennesseans receiving natural gas, electric, water, and wastewater utility services from a utility under the Commission's jurisdiction are without continued access to service during the state of public health emergency declared by Governor Bill Lee, the Consumer Advocate's request for an order prohibiting disconnection of service for nonpayment was granted by unanimous vote of the Commission. As such, the Commission mandated that all natural gas, electric, water, and wastewater private investor-owned utilities under its regulatory jurisdiction immediately suspend all service disconnections for nonpayment. This suspension shall run through the length of the Governor's declaration, including any extensions. The Commission further required its utilities to reconnect at no charge any customers who may have been disconnected from service for nonpayment since Governor Lee's declaration of a public health emergency on March 12, 2020.

To be clear, the Commission's order does not impact service disconnections for purposes of safety, such as a natural gas leak or other hazard to a customer or the public, nor does it apply to service disconnections or disruptions for routine maintenance or emergency repairs necessary to maintain safe and reliable public utility service. In such instances, all utilities should continue to place safety first and not disrupt service unreasonably with the goal to restore safe and reliable service as quickly as possible.

Moreover, this Order does not relieve customers of their obligations to pay for the utility services they receive, and all customers should, as they are able, continue to keep their accounts current. Rather, this action is intended to help and protect customers that need financial assistance under the circumstances and those who are at an increased risk of contracting the virus to maintain access to utility services. Nevertheless, this Order does not authorize a public utility to attempt to distinguish or decide between those in financial distress due to the COVID-19 virus and those who are not.

It is important that the Commission take an extended view of this situation and consider the potential aftermath of the public health emergency. Once the Governor lifts the emergency declaration, the economic consequences may have lingering impact on households and businesses. As such, the Commission recognizes that there may be a need for an additional grace period for shutoffs to allow customers time to catch up on past due balances and work with utilities on repayment plans. Therefore, as the Commission continues to closely monitor this situation, it will act as necessary through guidance or directive. In addition, the weekly utility status reports, previously required in the Commission's *Ongoing Request* issued March 19, 2020, shall continue in conjunction with this Order. Further, all regulated public utilities are required to submit, within thirty (30) days of this order, a report that discusses the temporary practices, repayment plans, and/or grace periods to be put in place in the immediate aftermath following the expiration or lifting of the emergency declaration.

The agency wants to do all that it can to avoid unnecessary confusion by the public. It is important the public understand that the Commission's regulatory jurisdiction extends only to private investor-owned public utilities. As such, the Commission has no authority or oversight of utility companies or utility services provided by any city or county, utility district, or cooperative

entity. The Commission further notes that telecommunications companies that have elected market-regulation under Tennessee Code Annotated § 65-5-109 are also not subject the agency's regulation as to the matters at issue here. Any order issued by this agency today only impacts those utilities subject to its jurisdiction and does not extend or apply to any other utility.

Finally, the actions ordered herein are the minimum requirements imposed on all regulated public utilities during the state's public health emergency. The Commission has been pleased and encouraged by the swift, voluntary response of many of its jurisdictional public utilities that went well beyond the mandates of this Order, including the waiver of the accrual of late fees, extensions of time, reconnections, financial assistance through payment plans and other programs, and waivers of other fees and charges implemented for the purpose of assisting their customers and communities. The Commission continues to encourage regulated public utilities to continue to be innovative in their efforts and good will beyond that ordered herein by the Commission whenever reasonable and practical.

This order shall continue in effect, at a minimum, until the public health emergency declared on March 12, 2020 expires or is terminated by Governor Lee; at which time the Commission shall consider whether further action is warranted.

IT IS THEREFORE ORDERED THAT:

1. Every public utility regulated by the Tennessee Public Utility Commission is prohibited from disconnecting natural gas, electric, water, or wastewater service to any customer for reason of nonpayment during the course of Governor Bill Lee's March 12, 2020 declaration of public health emergency related to the COVID-19 virus. This prohibition will continue, at a minimum, throughout the length of the state of Tennessee's public health emergency declaration, including any future extensions, until the declaration expires or is lifted.

2. Every natural gas, electric, water, or wastewater customer of a jurisdictional public utility who was disconnected for reason of nonpayment on or after March 12, 2020, shall be contacted by the disconnecting public utility and service shall be restored.

3. Every jurisdictional public utility that provides natural gas, electric, water, or wastewater service shall submit, within thirty days of this Order, a report 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.

4. 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.

5. This order shall continue in effect, at a minimum, until the public health emergency declared on March 12, 2020 expires or is terminated by Governor Lee; at which time the Commission shall consider whether further action is warranted.

6. As described in the U.S. Homeland Security Cybersecurity and Infrastructure Security Agency Memorandum, issued March 19, 2020, utility workers in the energy, water, wastewater, and telecommunications industries are essential critical infrastructure personnel in the state of Tennessee, responsible for ensuring the safety, reliability, and continuity of our vital utility systems and services.

7. 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.

8. 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:



Earl R. Taylor, Executive Director

EXHIBIT A

Tennessee Public Utility Commission List of Electric, Gas, Wastewater, and Water Utilities

Electric

Electric	Appalachian Power Company
Electric	Entergy Arkansas, LLC (Limited authority)
Electric	Kingsport Power Company

3

Gas

Gas	Atmos Energy Corporation
Gas	B&W Pipeline, LLC
Gas	Chattanooga Gas Company
Gas	Counce Natural Gas
Gas	General Gas Pipeline, LLC
Gas	Navitas TN NG, LLC.
Gas	Piedmont Natural Gas Co.
Gas	Renewco-Meadow Branch, LLC

8

Wastewater

Wastewater	Aqua Green Utility Inc.
Wastewater	Berry's Chapel Utility, Inc.
Wastewater	Cartwright Creek, LLC
Wastewater	Cumberland Basin Wastewater Systems, LLC
Wastewater	DSH & Associates, L.L.C.
Wastewater	Greenville Sewage, LLC
Wastewater	Integrated Resource Management, Inc.
Wastewater	Superior Wastewater Systems, LLC
Wastewater	Tennessee Wastewater Systems, Inc.

9

Water

Water	Condo Villas of Gatlinburg Association, Inc.
Water	Newport Resort Water System
Water	Tennessee Water Service, Inc.
Water	Tennessee-American Water Company

4

Water & Wastewater

Water & Wastewater	Aqua Utilities Company, Inc.
Water & Wastewater	Old Hickory Water, LLC
Water & Wastewater	Shiloh Falls Utilities, Inc.

3

27