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HOUSE DEMOCRATIC POLICY COMMITTEE

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**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA

**HOUSE DEMOCRATIC POLICY COMMITTEE HEARING**

**Topic: Utility Shutoffs**

**G-50 Irvis Office Building – Harrisburg, PA**

**October 26, 2020**

**AGENDA**

2:00 p.m. Welcome and Opening Remarks

2:10 p.m. Panel One:

- Tanya McCloskey  
Acting Pennsylvania Consumer Advocate
- Elizabeth Marx  
Executive Director, Pennsylvania Utility Law Project

2:30 p.m. *Questions & Answers*

2:50 p.m. Gladys Brown Dutrieuille  
Chairman, Pennsylvania Utility Commission

3:00 p.m. *Questions & Answers*

3:20 p.m. Panel Two:

- Terry Fitzpatrick  
President and CEO, Energy Association of Pennsylvania
- Jennie Shade  
Director of Government Relations, Pennsylvania Municipal Authorities Association

3:40 p.m. *Questions & Answers*

4:00 p.m. Closing Remarks

**BEFORE THE PENNSYLVANIA  
HOUSE DEMOCRATIC POLICY COMMITTEE**

**Testimony Of**

**TANYA J. McCLOSKEY  
ACTING CONSUMER ADVOCATE**

**Public Hearing On:  
Utility Terminations**

**Harrisburg, Pennsylvania  
October 26, 2020**

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**Chairman Sturla, Representative Schweyer,  
and Members of the House Democratic Policy Committee**

Thank you for inviting me to testify today regarding utility terminations in this time of the COVID-19 pandemic. My name is Tanya McCloskey and I am the Acting Consumer Advocate for the Office of Consumer Advocate. Let me first introduce the Members of the Committee to the Pennsylvania Office of Consumer Advocate (OCA). The OCA was established by the General Assembly in 1976 to fill a gap that had long existed in the representation of utility consumers – particularly residential consumers – before the Pennsylvania Public Utility Commission (PUC) and other state and federal agencies and courts that regulate the activities of Pennsylvania’s public utilities. Traditionally, utilities have always been well-represented at the PUC by lawyers and expert witnesses who could advocate for utility investors in matters such as rate increase requests for utility services. Our Office was created so that the consumers who have to pay those utility bills would be represented by professional attorneys and experts who could advocate for the consumer interest.<sup>1</sup>

I commend the Committee for considering the topic of utility terminations during this critical time. Utility service is essential to the health and safety of all residents and businesses in the Commonwealth. It is particularly essential to homeowners and renters in maintaining a safe and habitable place to live. Next to the mortgage or the rent, the utility bill is one of the most

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<sup>1</sup> In addition to our litigation activities, the OCA helps to educate consumers on matters involving their utility services. The Consumer Liaison and other members of the OCA staff help to plan and participate in consumer presentations, roundtables, and forums across the Commonwealth to help educate consumers about changes in the utility industry and to advise them about cases that affect them. The OCA has an active social media presence to provide consumers with helpful information about their utility service and we have a small staff of consumer service representatives who can assist individual consumers with utility problems. The OCA also serves as a resource to members of the General Assembly by responding to constituent concerns and by providing our views on how proposed legislation would affect the interests of Pennsylvania consumers.

important bills that a household faces. In a survey by the National Energy Assistance Directors' Association conducted in 2018 that included Pennsylvania, it was found that in order to pay the utility bill, 36% of LIHEAP (Low Income Home Energy Assistance Program) recipients went without food for at least one day, 41% went without medical or dental care, 31% did not fill a prescription or took less than prescribed and 25% kept their home at a temperature that was unsafe or unhealthy.<sup>2</sup> Customers go to great lengths to pay their utility bills as they recognize the importance of maintaining utility service.

The impact of the loss of utility service cannot be overstated. The loss of electric or natural gas service has led to fatal fires in Pennsylvania as families try to use candles for light or alternative, unsafe sources of heating. The loss of water and wastewater service compromises necessary sanitation and cleanliness. These impacts are greatly heightened during this pandemic where a critical part of slowing the spread of the pandemic is to have citizens stay at home as much as possible for health, safety, school, and work. Homes can quickly become uninhabitable from the loss of utility service, and the loss of utility service can place renters in violation of lease agreements that could lead to eviction. When this occurs, families are often forced to seek shelter with family and friends resulting in crowded living arrangements, to move into congregate emergency shelters, or to be homeless.

Utility arrearages can also have long term negative impacts on customers, even without a termination of utility service. Several of our utilities report late utility payments to the credit reporting agencies which can negatively impact a customer's credit score. A lowered credit score can have negative impacts for years to come on customers, greatly impacting things such as the ability to secure housing, either through rental or ownership, the ability to secure loans at

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<sup>2</sup> 2018 National Energy Assistance Survey, Summary Report, National Energy Assistance Directors' Association, December 2018. (<https://neada.org/program-policy-reports/liheapsurvey/>)

reasonable rates, if at all, for necessary transportation to work, necessary repairs to homes and apartments, or just obtaining the necessities of daily living. For municipal utility debt, the municipality is often able to place a lien on the property for the amount of the arrearage, which can jeopardize homeownership. The PUC regulates two large municipal entities – the Philadelphia Gas Works and the Pittsburgh Water and Sewer Authority – that have this authority as municipal entities.

Despite customers' recognition of the importance of keeping current on their utility bills, we know that it has become even more challenging for customers during this pandemic to pay those utility bills. While my Office does not have complete information from the utilities, some public reporting of information to the Public Utility Commission reveals that it is becoming harder and harder for households to keep current on their utility bills. From information provided to the Commission in October of 2020, there were approximately 862,000 electric and natural gas customers eligible for termination at the end of September, up from the 800,000 electric and natural gas customers eligible for termination in June of this year.<sup>3</sup> In addition, recent information provided to the Commission indicated that there were approximately 78,000 regulated water/wastewater customers eligible for termination as of September 30, 2020 an increase of 28,000 customers over the summer months.<sup>4</sup>

I want to pause for a moment and emphasize the point that these numbers only represent customers whose service is regulated by the Public Utility Commission. For water/wastewater customers in particular, the great majority of customers do not receive service from a PUC-

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<sup>3</sup> See, COVID-19 Customer Service, Billing, and Public Outreach Provisions Request for Utility Information, PUC Docket M-2020-3020055.

<sup>4</sup> See, Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Comments of National Association of Water Companies (Pennsylvania), <http://www.puc.state.pa.us/pcdocs/1673583.pdf>

regulated entity but are served by municipal water/wastewater entities or municipal authorities. I do not have information on how many customers of municipal entities or authorities, or rural electric cooperatives serving electric customers, may be facing termination. Recent press reports, however, indicate that some of the municipal entities have resumed termination of water service.

While the data on termination and arrearages varies by utility, recent data provided to the Commission about arrearages for PUC-regulated electric and natural gas utilities showed that for the March, 2020 to September 30, 2020 time frame, the dollars in arrears increased for electric residential customers by about 44%, gas residential customers by 31%, non-residential electric customers by 38%, and non-residential gas customers by about 42% compared to the same time period a year ago.<sup>5</sup> For most utilities, customers were deeper in debt than they were a year ago, that is, the average amount of the arrearage had increased making it more difficult for a customer to pay off the debt.

It does not appear that the economic circumstances for households and businesses will improve very soon. Unemployment remains high, at about 8.1% across Pennsylvania, far in excess of the unemployment rate before the pandemic.<sup>6</sup> Based on U.S. Census Bureau Household Pulse Survey, by the week ending October 12<sup>th</sup>, nearly 50% of Pennsylvania households reported a loss of at least some employment income since March 13<sup>th</sup>.<sup>7</sup> The Household Pulse Survey also found that more than 23.6% of Pennsylvania's workforce expected

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<sup>5</sup> See, Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Energy Association of Pennsylvania Comments, <http://www.puc.state.pa.us/pcdocs/1673734.pdf>

<sup>6</sup> U.S. Bureau of Labor Statistics, Economy at a Glance-Pennsylvania, <https://www.bls.gov/eag/eag.pa.htm>

<sup>7</sup> U.S. Census Bureau, Measuring Household Experiences during the Coronavirus Pandemic Household Pulse Survey, 2020, <https://www.census.gov/programs-surveys/household-pulse-survey.html>

to suffer additional income loss during the upcoming four-week period (i.e., October 13 – November 9).<sup>8</sup>

The U.S. Census Bureau also surveyed small businesses beginning in May, 2020. By October 12<sup>th</sup>, more than 50% of Pennsylvania businesses said they would not return to normal operations for six months or expected to never return to the pre-pandemic level of operations.<sup>9</sup>

A recent national survey conducted by the Electric Power Research Institute (EPRI) confirmed that customers are concerned about being able to afford their electric bills during this time. About two-thirds of customers reported this concern, and approximately 20% of the survey respondents reported that their energy bills were higher because of the pandemic. The survey also found that more than 25% of the people who lost their jobs were planning to skip at least one utility payment.<sup>10</sup>

Without assistance for both regulated and non-regulated utility service providers, and a fair and comprehensive plan to address utility arrearages, the utility arrearage and termination issues will impact customers for years to come. It will be critical to obtain state and federal assistance to address utility arrearages. For this reason, I strongly support the use of a portion of the federal CARES Act funding for reducing utility arrearages, as has been proposed in recent Pennsylvania Bills. In my view, it will be critical for any state and federal assistance to be broadly based as our traditional definition of a low income household, that is, a household with

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<sup>8</sup> The U.S. Census Bureau survey also found that the lower a household's income, the greater the impact of the pandemic on the loss of income. Similarly, households categorized as being Black, Hispanic, or Asian were much more likely to have experienced an income loss and to expect additional income loss than are households headed by White and non-Hispanic persons.

<sup>9</sup> U.S. Census Bureau, Small Business Pulse Survey, <https://www.census.gov/data/experimental-data-products/small-business-pulse-survey.html>

<sup>10</sup> Omar Siddiqui and Min Long, Impact of COVID-19 on Consumer Energy Use & Outlook: Results of EPRI National Survey (April 29, 2020), [http://mydocs.epri.com/Docs/public/covid19/COVID-19\\_survey\\_report.pdf](http://mydocs.epri.com/Docs/public/covid19/COVID-19_survey_report.pdf). pages 4, 7, and 12.

an income at or below 150% of the Federal Poverty Level, does not capture many of the struggling families in Pennsylvania. For much of Pennsylvania, a sustainable income for a household is nearly 250% of FPL. One in four Pennsylvania households, over 846,000 households, lack the necessary income for self-sufficiency.<sup>11</sup> For a household of 3 (including 2 adults and one school age child) in Philadelphia County, the household would need a gross annual income of \$53,820 for sustainability. For the same household in Allegheny County, the household would need a gross annual income of \$46,366.<sup>12</sup> Households below these income levels are not considered self-sufficient, yet many of them do not qualify for additional assistance such as LIHEAP, utility Customer Assistance Programs or utility Hardship Funds.

Existing state and federal assistance alone is not likely to return arrearages to pre-pandemic levels or to enable many Pennsylvanians to retain essential utility service. I must stress, though, that the burden of the COVID-19 pandemic cannot fall solely on customers of the utility, whether residential, small business, large commercial or industrial. All consumers are greatly affected by this pandemic, whether through loss of income, increased utility bills due to work and school conducted from home, or health issues that have increased the expenses of daily living. It must be recognized that the proper balancing of interests in setting just and reasonable rates may require a close scrutiny of any request for a rate increase or cost recovery, and a sharing of this burden between utility shareholders and consumers. A fair and equitable sharing of the burden, along with a comprehensive plan for addressing utility arrearages would be in the public interest.

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<sup>11</sup> [https://pathwayspa.org/wp-content/uploads/2020/01/PA2019\\_OverlookedUndercounted\\_Web.pdf](https://pathwayspa.org/wp-content/uploads/2020/01/PA2019_OverlookedUndercounted_Web.pdf)

<sup>12</sup> <https://pathwayspa.org/2020standard/standardbycounty/>

In recent Comments filed with the Pennsylvania Public Utility Commission, my Office laid out the critical elements of a comprehensive plan for beginning the work to address utility arrearages. I have included a link to these comments, filed at Docket No. M-2020-3019244, in the footnote below, and I have included a list of the OCA's key recommendations in Appendix A attached hereto.<sup>13</sup> In those comments, the OCA argued that now was not the time to lift the moratorium on terminations of utility service for any utility customer. I recognize that the Commission has now taken steps to partially lift the termination moratorium for some customers and to provide additional consumer protections as customers try to work through the mounting arrearages. I would still urge utilities to first pursue appropriate collections efforts and utilize the threat of termination, and termination, as a last resort. We are still in very difficult times both in regard to our health and safety, as well as to our economic future. Termination of essential utility service could make matters worse for many of our citizens and businesses.

I would note that some of the additional protections included in the Commission's Order were recommended by the OCA. But I am still concerned that the additional protections provided in the Commission's Order may not be sufficient in the long term, and may end in March of 2021 when the Commission's Order will end, if not further extended.

One key element that was not adopted by the Commission was a directive for each utility to establish a special COVID-19 relief plan aimed at customers who have gone into arrears since March of 2020. I view this as a critical program since many customers who have recently fallen into arrears do not qualify for the traditional utility customer assistance programs. Additionally, many of the traditional customer assistance programs could become overwhelmed, both in participation and cost, with attempting to address the near term issues related to COVID-19. My

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<sup>13</sup> Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Comments of the Office of Consumer Advocate, <http://www.puc.state.pa.us/pcdocs/1673691.pdf>

Office recently entered into a settlement with UGI Gas Corporation that established a special COVID-19 relief plan and addressed the mitigation of the cost impact on customers. I would point to this approach as a sound model, and would commend UGI Gas for its willingness to address these matters in a fair and balanced manner. I would strongly recommend that all utilities look to this model and work to address their customers' immediate needs in a balanced way. I have included a link to this settlement in the footnote below.<sup>14</sup>

Another key point that I would make is the need for more attention to the issue of water affordability, and the need for water and wastewater companies to further develop and expand their customer assistance programs. Water and wastewater rates have been the fastest growing of our utility rates in Pennsylvania. Even before COVID-19, water affordability was becoming a concern for Pennsylvania consumers. It is time that we fully consider water and wastewater affordability and establish robust programs to assist customers in maintaining essential water and wastewater service.

In light of the pandemic, it may also be important to re-examine some of the limitations imposed by Chapter 14, particularly the limitations on the Commission's discretion in addressing critical consumer protections for essential service in a variety of circumstances. In both the Commission's Order partially lifting the termination moratorium and the OCA's recommendations to the Commission, modifications to Chapter 14 limitations were found to be necessary. This is likely a longer discussion that will need to happen as we work our way out of the pandemic, but the pandemic has clearly highlighted the concerns with the limitations placed upon the Commission by Chapter 14.

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<sup>14</sup> UGI Approved Settlement, <https://www.puc.pa.gov/press-release/2020/puc-approves-lower-rate-increase-than-requested-by-ugi-utilities-inc-gas-division>

Before closing, I would be remiss if I did not acknowledge the voluntary actions of many of our utilities, such as waiving late payment and reconnection fees, waiving deposits, extending payment arrangement time frames, offering payment arrangements to small business customers, simplifying the enrollment and certification requirements for assistance programs, expanding the eligibility criteria for Hardship Fund assistance, and providing additional shareholder contributions to the Hardship Funds. These voluntary actions are commendable and have assisted many consumers. Many of these voluntary actions were key recommendations of the OCA for additional consumer protections. I do believe that the Commission took the right steps in issuing its Order to require many of these actions for all utilities. The Commission's action will ensure that all consumers are treated fairly and equitably across the Commonwealth. If the Commission finds it is without authority to continue these protections, I would respectfully urge the General Assembly to consider providing such authority to the Commission.

Thank you again for having me here today to provide information on this important topic. I look forward to continuing to work on these important issues.

## APPENDIX A

- Implementing a special COVID-19 relief plan for all customers who have fallen into arrears since March, 2020
- Adverse credit reporting should be prohibited at this time.
- Terminations should not resume until the Commission and the utilities have adequate staffing to address the increased Call Center volume and complaint volume that is likely to occur.
- The Commission should require at least a 20 day notice, and possibly a 30 day notice, prior to termination. (Section 1406(b)(1)(i) and 52 Pa. Code Section 56.91)
- The Commission should require in-person personal contact with the customer or responsible adult on the day of termination before any termination and should require posting of a 48-hour notice if no contact is made regardless of the time of year. (Section 1406(b)(1)(iii) and (iv) and 52 Pa. Code Sections 56.94, 56.95)
- The Commission should authorize an additional payment arrangement for a customer who has defaulted on a payment arrangement. (Section 1405 (d))
- For customers with incomes up to 250% of FPL (based on the customer's current 30 day income annualized), utilities should be required to offer the maximum payment arrangement time period specified in Section 1405(b). (Section 1405(b)(1) and (2))
- For customers with incomes between 250% - 300% of FPL, the payment time frame should be for a minimum of 24 months. (Section 1405(b)(3))
- For customers with income over 300% of the FPL, payment arrangement time frame should be for a minimum of 12 months. (Section 1405(b)(4))
- Waiver of all late payment fees, deposit requirements and reconnection fees should be required.
- Additional medical certificates should be available to customers who may have already exhausted them, the time frame for securing the medical certificate should be extended, and verification requirements should be streamlined. ((52 Pa. Code Sections 56.112, 56.113 and 56.114)
- Water and wastewater utilities should expand assistance programs and participate in and donate to, Hardship Funds so that their customers can benefit from grants.

- Streamlining and simplification of all income verification and documentation requirements.
- Developing and allowing website application for all programs and payment arrangements.
- Streamlining the process to connect customers with energy efficiency and water conservation programs, as well as better coordination of the programs and making such programs broadly available is necessary.
- Small Business and Commercial Programs providing similar flexible payment arrangements, waiver of fees, and flexible reconnection policies will be needed.
- Encouraging further shareholder contributions to the Hardship Funds and expanding Hardship Fund eligibility to at least 250% of the Federal Poverty Level if not 300% of FPL.

**BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES**

**House Democratic Policy Committee**

## **Utility Shutoffs**

**Testimony of Elizabeth R. Marx, Executive Director, Pennsylvania Utility Law Project**

*On behalf of our Low Income Clients*

October 26, 2020



Good afternoon, Chairman Sturla and members of the Committee. My name is Elizabeth Marx, I am the Executive Director of the Pennsylvania Utility Law Project (PULP). Thank you for the invitation to testify before you this afternoon.

PULP is a statewide specialty legal services project within the Pennsylvania Legal Aid Network, dedicated to ensuring that low income consumers are able to maintain safe and affordable energy, water, wastewater, and communication services to their home.

COVID-19 has had and continues to have an unprecedented impact on the health, safety, and economic security of Pennsylvanians in every corner of our state. But what is perhaps less often recognized is the fact that the economic impact of the pandemic has fallen most profoundly on low income communities, as low wage workers - especially women and people of color – have experienced disproportionately high levels of unemployment and reduced hours.<sup>i</sup>

At the same time, utility costs and other basic living expenses have increased as families spend more time at home – squeezing low income families from both sides. Through spring and summer, water and electric usage experienced the most notable increase. But as we enter the cold weather months, heating costs – already unaffordable in a “good” year – will also increase. The increase in basic living expenses will fall hardest on low income families, as well as those with fixed income such as retired Seniors, veterans, and individuals with a disability.

Many of these same households – low income families, people of color, Seniors, and individuals with a disability – are also more likely to contract COVID-19 and experience more profound health impacts as a result.<sup>ii</sup>

**Utility unaffordability has posed a palpable threat to the economic wellbeing of Pennsylvanians for many years, but is greatly exacerbated by the pandemic.**

To put utility unaffordability into perspective: In 2019, low income households paid between 9-31% of their income on energy costs alone<sup>iii</sup> – leaving very little left to pay for rent, food, transportation, child care, clothing, medicine, and medical care. Even with assistance through programs such as the Customer Assistance Programs - or CAPs - operated by regulated gas and electric utilities, low income households still face disproportionately high energy burdens - with many of the poorest CAP customers facing charges in excess of 12-14% or more of their income for energy costs alone.<sup>iv</sup> While the Commission revised its policy to reduce CAP energy burdens last year, implementation of that reduction has been met with a number of legal hurdles and lengthy administrative delays.

In addition to energy unaffordability, water unaffordability is also increasingly problematic across the Commonwealth, as rates for service have risen precipitously to meet the ever-increasing need for costly infrastructure investment and upgrades.<sup>v</sup>

With the increased economic instability caused by the pandemic, together with dramatically increased usage in the home, we are now facing a perfect storm as we enter winter, and the numbers are staggering:

- **At least 800,000 regulated gas, electric, and water residential customers were eligible for termination by June, 2020.<sup>vi</sup> By the end of September, that number was nearly 970,000.<sup>vii</sup>**
- **As reported to the PUC on October 15, year over year arrearage levels for regulated gas, electric and water customers have increased by roughly 67% - from \$433 to \$721 million.<sup>viii</sup>**

Keep in mind that these figures do not include Pennsylvania's unregulated utility customers or those who rely on deliverable fuels. There is little data available to show the scope of debt at unregulated utilities; however, the data which is available is instructive:

- The Philadelphia Water Department recently reported that, as of June 1, 2020, 62,000 accounts were eligible for termination, compared to 34,000 at the end of June 2019.<sup>ix</sup>
- The Chester Water Authority shared data indicating that residential arrears increased 60% from February to June 2020.<sup>x</sup>

I can say with certainty that these figures are relatively consistent for small, medium, and large municipal utilities across the state – especially in areas with high concentrations of poverty.

It is worth noting here that excessive pricing in the residential competitive electric and natural gas markets has undeniably contributed to the problem. Data obtained through the course of ongoing litigation shows that residential customers are persistently charged prices for electric service that far exceed the price to compare. While I cannot go into specific detail at this time given the pending status of litigation before the PUC, I encourage the legislature to further investigate the impact of competitive market pricing on the current utility debt crisis.

### **Mounting utility debt poses an acute threat to the health, safety, and wellbeing of individuals, families, and the community at large.**

Lack of stable utility services to a home exacerbates negative health outcomes, interrupts family unity, interferes with child learning and development, and has a long-term impact on consumer credit – making it more difficult for an individual to connect to utility service in the future. These impacts are particularly acute through the pandemic.

The loss of utility service also has an immediate destabilizing impact on housing, and is often the catalyst for eviction and foreclosure proceedings and homelessness.<sup>xi</sup> Maintenance of utility service to a leased property is a standard term in most lease agreements – including for both public and private housing. Thus, loss of utility service can lead to an immediate eviction, *notwithstanding the current federal moratorium on evictions imposed by the CDC.*<sup>xii</sup> In fact, the

very existence of unpaid utility debt can make a family ineligible for both public and private housing, resulting in long-term housing instability.<sup>xiii</sup>

Utility debt also poses a unique threat to homeownership for municipal utility customers, as unpaid debt can result in lien attachments which can encumber the property, prevent refinancing, damage credit, and ultimately result in foreclosure.

Finally, but critically, the loss of water and wastewater service also poses unique threats to homeowners, tenants, and the broader community, as it prevents proper sanitization and can result in the immediate condemnation of properties – leading to increased blight and further erosion of the tax base in communities with concentrated poverty. Ironically, this result has a further destabilizing impact on the financial stability of the municipal utility.<sup>xiv</sup>

### **Pennsylvania needs a statewide plan to equitably address this unprecedented utility debt crisis, and avoid these far-ranging impacts which are likely to occur.**

Rather than a patchwork approach to recovery, it is critical that we have statewide policies and procedures in place to ensure that a household’s ability to access critical relief is not contingent on their zip code.

We believe that an equitable, statewide plan to address the unprecedented utility debt crisis should include the following:

- (1) Ongoing Prohibition on Termination
- (2) Increase Available Resources
- (3) Improve Debt Collections Policies and Consumer Protections
- (4) Enhance Universal Service Programming
- (5) Establish Equitable Cost Recovery of Pandemic Related Utility Costs

I will address each of these imperative protections in turn.

#### **(1) Protect Economically Vulnerable Consumers from Termination**

As we enter a very long, dark winter at home, it is absolutely critical that Pennsylvania families remain protected from the loss of heat, electricity, water, wastewater, and telecommunication services.

Unfortunately, several unregulated utilities across the state have already begun to terminate customers for nonpayment. And on October 13, the PUC issued an Order allowing terminations for nonpayment to proceed for residential and business customers on November 9, 2020.<sup>xv</sup>

In an attempt to protect economically vulnerable consumers from the loss of service, the Commission established a new class of “protected customers” – further prohibiting termination

until March 31, 2021 for residential consumers with income at or below 300% of the federal poverty level who apply for “all Available Assistance programs” and who seek a payment arrangement from their utility for any remaining balance.<sup>xvi</sup>

The Commission’s October 13 Order also requires utilities to send a pre-termination notice to consumers at least 10 days before termination advising that they are behind and may soon face termination.<sup>xvii</sup>

We recognize the good intent of the Commission to protect vulnerable consumers while collecting from those who can otherwise afford to pay. That said, we have serious concerns for how these protections and notices will be implemented, and what requirements utilities will impose on consumers who seek this additional protection from termination.

Rather than place the onus on consumers to submit proof that they should be protected from termination, we believe the onus should instead be on utilities to improve outreach, strengthen and expand the reach of assistance programs, and advance proposals to equitably resolve debts through a mix of long-term payment arrangements and debt forgiveness.

Substantial additional challenges lie ahead – both in the next few weeks as we work to ensure that “protected customers” are shielded from the loss of service and over the next five months as we work to ensure that appropriate consumer protections are in place to address the staggering buildup of arrears. If the legislature does not rise to this challenge with additional resources and strengthened consumer protections, we will see a catastrophic loss of utility service this Spring, when terminations are set to resume for all residential consumers statewide.

Ultimately, until there is a comprehensive plan to address the build up of arrears in an equitable and just manner, the protection against terminations must continue for all those who cannot afford to pay.

## **(2) Increase Resources for Utility Assistance**

We strongly support efforts to appropriate additional CARES Act funding to provide critical debt relief to low- and moderate-income consumers.

To ensure equitable distribution across Pennsylvania, it will be critical for resources to be apportioned in a manner that does not allow all resources to go to a few of the largest utility providers – *and which ensures the availability of adequate assistance to water and wastewater customers, for which there are few if any programs already available.*

Care should be taken to simplify the design of an assistance program to ensure that smaller municipal utilities are able to participate in the program, keeping in mind that smaller utilities often rely on volunteer boards and have few paid staff.

Resources should be conditioned on adherence to other important provisions, including requirements for utilities to further suspend terminations – especially for vulnerable consumers, such as those with a medical condition – and to enter reasonable payment arrangements for any remaining consumer debts not covered by an allocation of federal or state funding.

Given the existing patchwork of utility assistance program infrastructure, and the varied regulatory landscape, additional funds may be best delivered through various agencies – rather than a single agency. PULP has substantial expertise on with effective universal service program design, and would be happy to provide additional input into how programs could be structured and implemented in a short timeframe to deliver critical relief without unnecessary barriers.

Finally, I note that in addition to direct bill assistance, we recommend that the legislature also consider investing additional resources to support the Weatherization Assistance Program and other comprehensive low-income energy efficiency programming. Additional funds should be targeted to fill gaps in existing programs to provide critical health and safety upgrades in the home – like remediation of mold and structural issues that prevent proper weatherization of the home and exacerbate health conditions that have contributed to the disproportionate health impacts of COVID-19 in communities of color.<sup>xviii</sup> Weatherization provides a multitude of long-term benefits to low income consumers, including substantial reductions in household energy usage, improvements to home health and safety, and local workforce development.

### **(3) Strengthen Debt Collection Policies and Consumer Protections**

The available tools in the tool box for utility consumer debt collection policies and consumer protections are inadequate to meet the demands of the current debt crisis. I will address the challenges for regulated and unregulated utilities separately, as there are separate challenges to ensure that Pennsylvanians are able to connect and maintain affordable utility services.

#### ***Regulated Utilities***

Chapter 14, which currently governs residential billing, collections, and termination standards, was adopted at the end of 2004. Since its adoption, the law has proven to have an unintended yet substantial punitive effect – imposing debt collection standards which punish consumers who cannot afford to pay.

Attached to my testimony are two charts which show residential and low-income termination rates since 2001. As these charts show, average termination rates for residential customers noticeably increased after Chapter 14 adoption – increasing from 2-3% to 3-5%.

For low income customers, the increase in termination rates since adoption of Chapter 14 has been far more pronounced - reaching a high of 22.6% in 2008 (coinciding with the Great Recession), and 18.6% in 2014 (coinciding with the Polar Vortex). Since these significant economic

events, low income electric termination rates have largely settled into a new normal of between 14-15% under Chapter 14 - up from 6-8% average termination rates pre-Chapter 14. Gas termination rates have followed similar yet less pronounced patterns – settling at a new normal of 10-12% - up from 8-9% pre-Chapter 14.

**The spike in electric termination rates during the Great Recession in 2008 and the Polar Vortex in 2014 are particularly foreboding, and show that Chapter 14 is ineffective at shielding vulnerable low income customers from substantial economic harm.**

During the Great Recession, *more than one in five low income electric customers were involuntarily terminated*. By many estimations, the economic challenges we are facing today are many times worse than the prior recession.

Critical reforms to Chapter 14 are needed now to provide the Commission with the necessary oversight and authority to protect vulnerable consumers from harm. Some of the most pressing reforms necessary to address the utility debt crisis head on include:

- ***Allow the Commission to Issue Additional, Flexible Payment Arrangements***

The Commission is currently prohibited from providing more than one payment arrangement, and must follow stringent guidelines in issuing a payment arrangement based on household income alone – regardless of other critical factors which may impact the ability of the customer to pay.

Payment arrangement standards should be flexible to account for a household’s actual ability to pay, and should allow consumers to access an additional or longer PUC-issued payment arrangement if they fall behind. At the very least, any payment arrangement issued prior to or during the pandemic should not count against the consumer.

- ***Permit Customers Enrolled in CAP to Access Payment Arrangements***

Section 1405(c) prohibits the Commission from issuing a payment arrangement to customers enrolled in a gas or electric utilities’ Customer Assistance Program. As noted at the outset of my testimony, CAP customers often receive unaffordable bills – sometimes exceeding 17% of household income. It is difficult under normal circumstances for many CAP customers to keep up. But these are not normal circumstances. It is critical that all consumers – including those enrolled in CAP – be afforded a reasonable opportunity to catch up with missed bills.

- ***Improve Protections for Medically Vulnerable Consumers***

Under Chapter 14, which largely defers to the Commission’s regulations, medically vulnerable consumers cannot be terminated if they obtain a medical certificate. But the

process for obtaining a medical certificate is onerous even in relatively good times, requiring submission of a signed written document every 30 days even if the consumer's condition is chronic. Each visit to the doctor most often requires an available appointment, time off work, money for a co-pay, child care, and transportation costs. Likewise, for the most part, the protection may only be renewed twice, for a total of 90 days' protection from termination. This is hardly adequate time for those facing acute medical conditions to both attend to their immediate health needs and come up with the money to avoid termination.

In light of the pandemic, it is especially critical that households impacted by COVID-19 be able to maintain service to their home without being required to travel to a doctor's office to obtain a written document to prevent the termination of utility service to their home.

We recommend adoption of a 6-month medical certificate period for those with a chronic illness, as determined by their medical provider. Additionally, utilities should be required to accept medical certificates over the phone – rather than requiring a written certificate.

- ***Enhance Post-Moratorium Termination Procedures***

Currently, Chapter 14 provides a standard 10-day notice period. In normal times, this is a very quick turn-around – often leaving insufficient time for households to find additional resources or apply for assistance. But of course, these are not normal times.

We urge the legislature to require utilities to provide enhanced notice of termination following expiration of the current emergency moratorium, which lists a variety of utility and housing-related assistance programs available in the utilities' service territory. In turn, utilities should be prohibited from terminating service while an application for assistance is pending.

### ***Unregulated Utilities***

Substantial reforms are also necessary to address the lack of standardized consumer protections for unregulated utility consumers. We urge the legislature to consider adopting consumer protections for unregulated utilities consistent with the consumer protections available to regulated utility consumers. This should include standardized termination notices, payment arrangement standards, winter protections, protections for medically vulnerable consumers, protections for victims of domestic violence, and a clear process for disputing a utility bill.

## **(4) Enhance Universal Service Programming**

There are a number of critical gaps in existing universal service programs that must be addressed to ensure that service is affordable to those facing profound economic hardship as a result of the pandemic. Many of these gaps can and should be driven by the Commission – which has the nuanced policy expertise and the necessary authority to make appropriate adjustments to individual universal service programs.

That said, there is a critical gap in the availability of assistance programs for regulated and unregulated water and wastewater utilities, as well as unregulated rural electric cooperatives and deliverable fuel vendors.

The legislature should act to require the creation of comprehensive utility assistance programming, modeled after the regulated gas and electric Customer Assistance Programs. CAPs provide both a discounted bill, based on a household’s ability to pay, as well as the opportunity for debt forgiveness over time (most often 1/36<sup>th</sup> for each payment). This combination of benefits has proven to be an effective low-income debt management tool to improve bill payment behavior and limit further accrual of arrears.

### **(5) Establish Equitable Cost Recovery of Pandemic Related Expenses**

It should not be a foregone conclusion that residential ratepayers – and specifically, low income ratepayers – will shoulder the entire financial burden created by the massive job losses and economic devastation caused by the pandemic. It is critical for the legislature to establish parameters for how utilities may recover costs associated with the pandemic to ensure that costs are recovered in a just, reasonable, and equitable manner. Such a plan should include cost-sharing across the rate base and with utilities.

At a time when individuals and business across the Commonwealth are struggling profoundly to afford basic human needs, it is unconscionable that utilities would not also share in that burden.

\* \* \* \* \*

Ultimately, our collective action to address the pending utility debt crisis will write our future, and will determine whether Pennsylvania emerges as a healthier, more vibrant community. Without substantial resources and bold policy solutions, we are likely to see unprecedented spikes in termination rates – resulting in a staggering ripple effect on housing stability, community health, and economic wellbeing. Failure to take decisive steps to address the impending utility debt crisis in a just and equitable manner can and will exacerbate disproportionate impacts of the pandemic on low income communities and communities of color – having lasting impacts on the ability of these households to regain economic footing.

This concludes my remarks to today. Thank you, once again, for the invitation to testify before you regarding the pending utility debt crisis and possible avenues for addressing the crisis head-on. I am happy to answer any questions you may have, and note that my team and I stand ready to assist as we move into the next phase of our recovery.

<sup>i</sup> See Parker, Kim, About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19, Pew Research Center (April 21, 2020), available at <https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/>; Keystone Research Ctr & Pa. Budget & Policy Center, The State of Working in Pennsylvania 2020 (Sept. 2020), [https://krc-pbpc.org/wp-content/uploads/SWP\\_2020.pdf](https://krc-pbpc.org/wp-content/uploads/SWP_2020.pdf)

<sup>ii</sup> CDC, Health Equity Considerations and Racial and Ethnic Minority Groups (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

<sup>iii</sup> See Roger Colton, Pennsylvania Home Energy Affordability Gap: 2019 (April 2020), [http://www.homeenergyaffordabilitygap.com/03a\\_affordabilityData.html](http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html).

<sup>iv</sup> See 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599, at 16, 27-28 (Nov. 5, 2019).

<sup>v</sup> Nina Lakhani, Millions of Americans Can't Afford Water as Bills Rise 80% in a Decade, the Guardian (June 23, 2020), <https://www.theguardian.com/us-news/2020/jun/23/millions-of-americans-cant-afford-water-bills-rise>.

<sup>vi</sup> Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Comments of the Energy Association of Pennsylvania, <http://www.puc.state.pa.us/pcdocs/1673734.pdf>

<sup>vii</sup> Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Responses of Electric, Gas, and Water Utilities to the PUC's Request for Data (filed October 15, 2020):

<b>RESIDENTIAL</b>	<b>2019 Terminations</b>	<b>2019 Arrears</b>	<b>2020 Terminations</b>	<b>2020 Res. Arrears</b>	<b>% Increase - Arrears</b>	<b>% Increase - Terminations</b>
Valley Energy	371	\$ 30,600.68	521	\$ 137,337.12	349%	40%
Citizens' Electric	188	\$ 49,141.40	448	\$ 136,925.04	179%	138%
UGI Gas	65,417	\$ 28,553,655.00	66,770	\$ 40,369,851.00	41%	2%
UGI Electric	6,533	\$ 4,351,202.00	6,486	\$ 5,481,165.00	26%	-1%
Wellsboro Electric	203	\$ 96,240.00	344	\$ 197,837.00	106%	69%
Columbia	62,036	\$ 13,429,366.00	67,820	\$ 24,168,137.00	80%	9%
NFG	20,322	\$ 7,405,073.00	21,497	\$ 11,388,311.00	54%	6%
PWSA	8,354	\$ 888,046.90	12,937	\$ 1,267,095.21	43%	55%
Columbia Water	481	\$ 29,516.00	563	\$ 83,004.00	181%	17%
PPL	99,268	\$ 82,148,557.00	118,978	\$ 136,004,028.00	66%	20%
Aqua	26,601	\$ 3,730,536.19	28,330	\$ 8,297,381.03	122%	6%
Suez - Bethel	58	\$ 5,535.00	127	\$ 19,823.00	258%	119%
Pa. American Water	32,430	\$ 22,771,615.00	52,724	\$ 31,680,288.00	39%	63%
PGW	119,563	\$ 38,996,781.77	147,117	\$ 76,634,065.44	97%	23%
MetEd	43,974	\$ 34,208,165.00	46,578	\$ 51,025,193.00	49%	6%
Penelec	44,474	\$ 37,432,120.00	48,275	\$ 56,207,197.00	50%	9%
Penn Power	10,405	\$ 9,323,559.00	11,363	\$ 13,741,380.00	47%	9%
West Penn Power	47,126	\$ 42,014,533.00	48,712	\$ 59,903,494.00	43%	3%
PECO	90,738	\$ 45,901,448.00	135,171	\$ 116,132,994.00	153%	49%
Suez	7,593	\$ 682,438.00	7,194	\$ 1,239,275.00	82%	-5%
Peoples	22,843	\$ 29,432,425.00	40,565	\$ 30,078,968.00	2%	78%

Duquesne	92,992	\$ 30,845,660.00	102,402	\$ 55,956,873.00	81%	10%
York Water	2,836	\$ 315,045.14	4,891	\$ 930,706.91	195%	72%
TOTAL	804806	\$ 432,641,259.08	969813	\$ 721,081,328.75	67%	21%

viii Id.

ix Philadelphia Water Dep't, Report to City Council at 39 (June 9, 2020) (copy available upon request).

x Data available upon request.

xi See Nat'l Energy Assistance Directors' Ass'n, 2018 National Energy Assistance Survey Final Report (Dec. 2018), <http://neada.org/wp-content/uploads/2015/03/liheapsurvey2018.pdf> (households who did not have enough money for energy bills used unsafe heating sources, kept their homes at temperature they felt were unsafe or unhealthy, took out high-cost payday loans, experienced homelessness, and went without food or medical care).

xii The CDC moratorium on evictions only applies to the non-payment of rent. If a family has been able to keep up with rent, but their utility service is terminated due to unpaid utility debt, they may still be evicted. See CDC, Declaration Form – Halt in Evictions to Prevent Further Spread of COVID-19, OMB Control No. 0920-1302, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

xiii See Dep't of Housing and Urban Development (HUD), Public Housing Occupancy Guidebook, Utilities, available at: [https://www.hud.gov/sites/dfiles/PIH/documents/PHOG\\_Utilities\\_FINAL.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHOG_Utilities_FINAL.pdf). Utility debt is examined as part of public housing determinations and is often used as a reason to deny applications for public housing assistance. Id. Likewise, private housing providers often require applicants to secure service in their name as a condition of the lease.

xiv See Financial Impact of Blight on the Tri-COG Communities (Sept. 2013), [https://y2h.094.myftpupload.com/wp-content/uploads/2014/01/FinancialImpactofBlightonTriCG\\_FullReport.pdf](https://y2h.094.myftpupload.com/wp-content/uploads/2014/01/FinancialImpactofBlightonTriCG_FullReport.pdf).

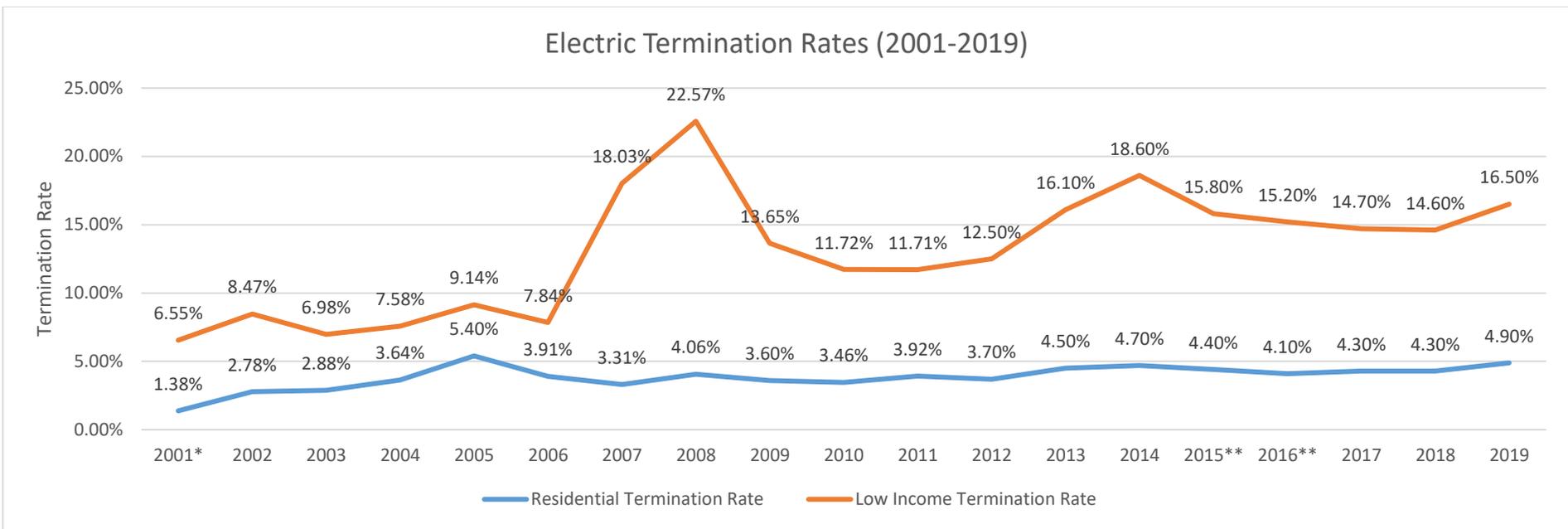
xv Public Utility Service Termination Moratorium – Modification of March 13<sup>th</sup> Emergency Order, Order, PUC Docket M-2020-3019244 (order entered Oct. 13, 2020).

xvi Public Utility Service Termination Moratorium – Modification of March 13<sup>th</sup> Emergency Order, Order, PUC Docket M-2020-3019244 (order entered Oct. 13, 2020).

xvii Public Utility Service Termination Moratorium – Modification of March 13<sup>th</sup> Emergency Order, Order, PUC Docket M-2020-3019244 (order entered Oct. 13, 2020).

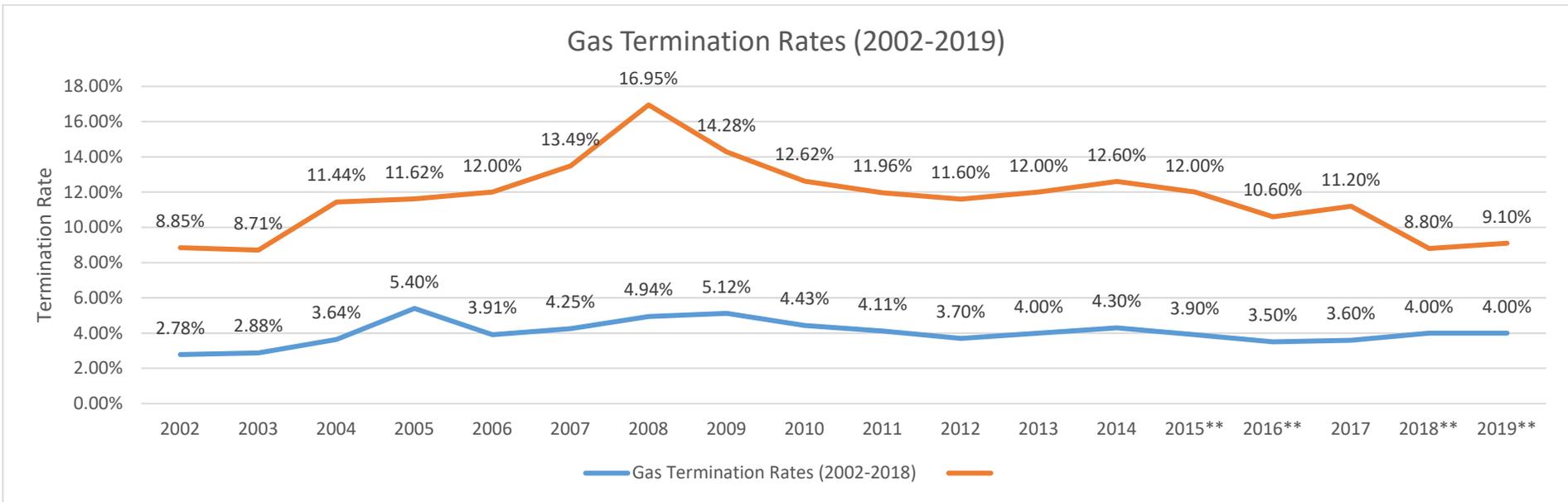
xviii CDC, Health Equity Considerations and Racial and Ethnic Minority Groups (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

### Electric Termination Rates (2001-2019)



\*\*DLC performed limited credit and collection activities in 2015 and 2016 due to system conversion and Peoples-Equitable performed limited credit and collection activities in 2015 and 2016 due to a system conversion.

### Gas Termination Rates (2002-2019)



\*\*Peoples and NFG performed limited credit and collections activities in 2015 and 2016 due to a system conversion.

\*\*UGI performed limited credit and collections activities in 2018 and 2019 due to a system conversion.

Prepared Testimony of

*Gladys Brown Dutrieuille*

Chairman, Pennsylvania Public Utility Commission

*before the*

Pennsylvania House Democratic Policy Committee

October 26, 2020



Pennsylvania Public Utility Commission

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Good afternoon, Chairman Sturla, Representative Schweyer, and other members of the House Democratic Policy Committee.

I am Gladys Brown Dutrieuille, Chairman of the Pennsylvania Public Utility Commission.

On behalf of the Commission, I thank you for the invitation to testify today regarding issues related to service terminations by public utilities. As part of that discussion, I will explore how the COVID-19 pandemic has impacted the Commission, the utilities we regulate, and the consumers and businesses those utilities serve – along with an overview of steps taken by the PUC to enhance safeguards for households and small businesses struggling with the health and financial impacts of this global crisis.

I note that under the ethics rules of *ex parte* communication, I will focus my remarks in a general manner, to avoid prejudging any pending litigated proceedings at the Commission related to this topic.

### **PUC COVID-19 Actions**

To provide background and context for today’s discussion, the Commission acted quickly to issue an Emergency Order ([March 13, 2020 PUC Emergency Order](#)) establishing a prohibition on the termination of public utility service and directing the reconnection of service to customers previously terminated, to the extent it could be done safely.

Following discussion about “next steps” for the termination moratorium at several PUC public meetings during the late-Summer and Fall – along with a period where public comment was encouraged – my colleagues and I acted earlier this month to transition from an absolute moratorium to a less restrictive phase, while still acknowledging that the pandemic and its economic effects have not disappeared. As I stated during that October 8<sup>th</sup> public meeting, the moratorium on all utility service terminations was the right decision for the Commission to make in March, but the moratorium cannot be the sole solution for assisting vulnerable utility customers.

As we progressed to this “second phase” concerning utility service, we enacted a series of holistic solutions intended to offer customers protections and ensure the payment of bills from customers that are able to pay. These most recent PUC consumer safeguards modified the

earlier emergency order suspending all public utility terminations, and will remain in effect no later than March 31, 2021, unless the Governor’s Emergency Proclamation is rescinded before that date or the Commission establishes a different timeframe.

The newly enhanced PUC safeguards are focused on those residential households hardest hit by the economic downturn triggered by COVID-19, along with aid for small businesses, including:

- **No Terminations for “Protected Customers”** – Utilities shall not terminate service for residential customers with incomes within 300% of the Federal Poverty Income Guidelines (FPIG), unless otherwise authorized by the Commission. These “protected customers” must apply for all available assistance programs and must request a payment arrangement from the utility, if appropriate.
- **Special Outreach to Customers At-Risk of Termination** – Utilities must reach out to individual residential and commercial customers whose unpaid balances put them at-risk of termination after the PUC moratorium is lifted, detailing their options for addressing any overdue balances and a general time range for possible termination. This communication must be sent to customers at least 10 days prior to the traditional 10-day termination notice.
- **Payment Arrangements for Small Businesses** – Utilities shall offer a payment arrangement for a period of no less than 18 months to small business customers, as defined by a utility’s tariff. A small business customer who remains current on its payment arrangement and current bill shall not be terminated.
- **Waiver of Connection/Reconnection Fees** – Utilities shall waive all connection, reconnection, and deposit fees for protected customers.
- **No Late Payment Charges** – Late payment charges are waived for protected customers.
- **Additional Medical Certificates** – Two additional medical certificates shall be accepted by utilities for eligible customers who have exhausted the number otherwise available, with an additional seven days for medical professionals to return medical certificates to the utility.

- **Flexible Income Verification** – Utilities and the PUC’s Bureau of Consumer Services can utilize flexible methods to verify customer income for assistance programs, payment plans and qualification as a protected customer – such as over-the-phone or email.

With these enhanced safeguards in place for struggling households and small businesses, the PUC’s emergency moratorium on all other utility terminations will be lifted, effective November 9, 2020.

### **Scope of PUC Jurisdiction**

It is important to note that these newly enhanced PUC safeguards – along with the previous termination moratorium – apply to all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission’s jurisdiction.

At times, there can be some confusion regarding that point, especially regarding utility systems that are operated by municipalities, municipal authorities and/or cooperatives (such as rural electric cooperatives). These systems are generally outside the jurisdiction of the PUC, with the notable exception of the Philadelphia Gas Work and the Pittsburgh Water and Sewer Authority – both of which were placed under the Commission’s jurisdiction by the General Assembly.

### **Status of At-Risk Utility Customer Accounts**

Utility customers have been a central focus of the Commission throughout the pandemic, as exhibited by the termination moratorium and other related actions – including this month’s adoption of enhanced safeguards for income-qualified consumers and small businesses.

The most recent data reported to the Commission by regulated utilities for September 2020 details the following regarding the number of customers with arrearages and the total amount of those arrearages, compared to such figures from last year:

**Year over Year Comparison as of September**

	<b>2019 Customers in Arrears</b>	<b>2020 Customers in Arrears</b>	<b>% Change</b>	<b>\$ Owed 2019</b>	<b>\$ Owed 2020</b>	<b>% Change</b>
<b>Residential</b>	860,348	1,009,404	17%	380,911,563	637,837,948	67%
<b>Non-Residential</b>	74,226	89,212	20%	50,475,449	91,153,202	81%

**Additional Opportunities**

As we move forward in this ever-evolving situation, there is no “silver bullet” solution to the evolving health and financial impacts of the COVID-19 pandemic. But, there are additional opportunities to help our residents, businesses and communities move toward recovery.

Beyond the steps that have already been taken, the Commission reaches out annually to public utility leadership across the state as part of the PUC’s “Prepare Now” campaign. That initiative underscores the importance of identifying and assisting consumers struggling with the cost of cold-weather energy bills. As we continue to emphasize, the Commission-required safeguards – including this year’s new protections for income-qualified consumers and small businesses – are a **starting point** for assistance that public utilities can offer. Utilities in Pennsylvania have much more flexibility to make allowances for payment-troubled customers than the PUC does, and we encourage utilities, consumers, businesses, advocacy groups and all other concerned parties to work closely during this unprecedented time.

The Commission is also continuing to gather data and comments about this issue, with an eye toward possible future actions. As part of the motion I offered during the PUC’s public meeting on October 8<sup>th</sup>, utilities have been directed to provide monthly reports detailing the number of active residential and non-residential accounts that are at-risk of termination and/or have been the subject of other actions. And, the PUC staff has requested comments and proposals from interested parties regarding any revisions to the current consumer protections. All of this information will

help guide discussion about “next steps” as the Commission revisits COVID-related protections during the first quarter of 2021.

Additionally, the PUC annually encourages households across the state to take advantage of financial assistance available through LIHEAP – the Low Income Home Energy Assistance Program. LIHEAP is an important tool for helping Pennsylvania families stay warm and safe during the winter, and the PUC has a long history of supporting this important service. The new LIHEAP enrollment season begins on November 1<sup>st</sup>, and we encourage consumers to enroll in LIHEAP, and to explore other assistance programs available from their utilities and various non-profit groups. Combined, these many different resources help hundreds of thousands of households and families across the Commonwealth every year.

And finally – there is an opportunity for the General Assembly to have a notable impact on the economic challenges facing many households and businesses. I noted last month during testimony before the Pennsylvania House Commerce Committee, and in earlier correspondence sent to the General Assembly – the Commission continues to support the utilization of Federal Corona Virus Aid, Relief, and Economic Security Act (CARES) dollars to assist customers in arrears. And, we stand ready as a resource to provide any assistance and information necessary to assist this Committee and the Legislature as it seeks to implement policies that can best aid the Commonwealth’s recovery from this pandemic.

## **Conclusion**

I hope my testimony today has offered some clarity on the PUC’s role and perspective concerning this important topic.

We are committed to working with the Legislature and other stakeholders across the state to ensure that consumers’ interests are safeguarded, and the PUC stands ready as a resource for any further discussions about proposed legislation or other similar initiatives.

I appreciate the opportunity to testify today and would be happy to address any of your questions.

**Before the  
House Democratic Policy Committee**

**Hearing on Utility Shutoffs  
October 26, 2020**

**Testimony of  
Terrance J. Fitzpatrick, President and CEO  
Energy Association of Pennsylvania**

Good morning Chairman Sturla, Representative Schweyer, and members of the House Democratic Policy Committee. I am Terry Fitzpatrick, President and CEO of the Energy Association of Pennsylvania (“EAP” or “Association”), a trade association comprised of electric and natural gas utilities—also known as electric and natural gas distribution companies—operating in Pennsylvania.<sup>1</sup> EAP advocates for its members before the General Assembly and state agencies, assists its members by facilitating sharing of information and best practices, and provides educational opportunities for employees of its members and others through its operations and consumer services conferences. Thank you for the opportunity to provide testimony on utility shutoffs, which is a very important issue as the Commonwealth continues to face challenges arising from the coronavirus pandemic.

On March 13, 2020, shortly after the Governor declared an emergency as a result of the pandemic, the Public Utility Commission (“PUC”) issued an Emergency Order that placed a moratorium on all service terminations by regulated utilities for the duration of the Governor’s declaration of emergency “unless otherwise determined by the Commission.” When this Order was issued, most utilities had already voluntarily halted terminations. The Governor’s original emergency proclamation was for a period of ninety days, and the Governor has since extended

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<sup>1</sup> Citizens’ Electric Company; Columbia Gas of Pennsylvania, Inc.; Duquesne Light Company; Leatherstocking Gas Company, LLC; Metropolitan Edison Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Peoples Natural Gas Company LLC; Peoples Gas Company LLC; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities Inc.; Valley Energy Inc.; Wellsboro Electric Company; and West Penn Power Company.

it twice for additional periods of ninety days, so that the state of emergency will continue until at least November 30, 2020.

On May 13, 2020, the Commission took another action related to the pandemic and termination moratorium—it issued a Secretarial Letter that authorized utilities to create a “regulatory asset” for increased “uncollectibles” (i.e., bad debt) expense. This action preserved the right of utilities to request rate recovery of this added expense in future rate cases or filings, although it did not guarantee recovery. It also left open important questions regarding the period of time over which the expense might be recovered, and whether utilities could recover a return on the unamortized balance in order to compensate them for carrying this added expense on their books.

Roughly around the time the Governor first extended the emergency proclamation in early June, thereby extending the termination moratorium since the PUC had not taken action to rescind or modify it, utilities became concerned about the impact of indefinitely suspending the full collections process for all customers. Not only were total customer arrearages growing, but fewer customers than usual were contacting utilities to enroll in assistance programs and to seek payment arrangements. This situation was bad for the customers who were falling further behind on payments, because they were digging a hole that it would be difficult to climb out of. It was bad for the general body of utility ratepayers, who would later be asked to pay additional bad debt expense. And it was bad for utility shareholders, who faced the risk that utilities would not be permitted to fully recover this expense.

Accordingly, on July 10, 2020 EAP requested that the PUC permit utilities to resume the full collections process, including termination where warranted. In support, we cited the experience that fewer customers were signing up for assistance and payment arrangements, despite the greater need of customers to do so due to the job losses and reduced incomes

caused by the pandemic.<sup>2</sup> We also pointed out the extra efforts utilities were making—and would continue to make—to assist customers, including increased utility contributions to hardship funds, allowing longer periods than usual to pay back past due amounts, relaxing some requirements to ease enrollment in assistance programs, providing business customers with the opportunity to make payment arrangements, making enhanced efforts through media and other means to make customers aware of assistance options, and waiving late payment charges and other fees.

On July 16 and again on August 6, 2020, the PUC deadlocked 2-2 on whether to lift the moratorium. The sticking point was over the scope of extra customer protections that should be put in place if the moratorium were lifted. However, on October 8, 2020, the Commission adopted an Order modifying the moratorium, allowing some disconnections to resume effective November 9, 2020, and imposing a number of conditions applicable in “Phase 2” of the moratorium. The main conditions were requiring a special notice to customers at risk of termination at least 10 days before sending a standard termination notice, continuing to prohibit terminations of customers with income at or below 300% of federal poverty income guidelines if these customers apply for available assistance and request a payment arrangement, requiring utilities to offer a payment arrangement of at least 18 months for small business customers with past due bills and prohibiting terminations to those small business customers so long as they stay current with the payment arrangement, requiring utilities to waive late payment charges and some other fees, requiring utilities to accept two additional medical certificates (which bar termination) for customers who had exhausted the three available under existing regulations,

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<sup>2</sup> To support the point that many customers were not seeking assistance despite the economic dislocation caused by the pandemic, consider the example of the special LIHEAP Recovery (Crisis) Program created by the Pennsylvania Department of Human Services (DHS) in the summer of 2020. This program was funded in the amount of \$34.9 million through stimulus legislation passed by Congress. Despite the clear financial need of many customers, the program closed at the end of August with a \$15 million balance. We also note that in this summer program DHS allowed past due bills that might lead to termination to serve as evidence of a “crisis,” a policy that EAP believes should apply to the regular LIHEAP program in the winter months.

and requiring utilities to submit monthly reports with data related to terminations and the total amounts of customer arrearages. In addition, recognizing that these conditions would have a financial impact on utilities, the Commission authorized utilities to include incremental costs flowing from the order in a regulatory asset, thereby preserving utilities' rights to request recovery of these expenses in future rate cases or filings.

Phase 2 of the moratorium will last until March 31, 2021, unless the Governor rescinds the emergency proclamation in the interim or the Commission establishes a different time period. To enable the Commission to decide what policies should be in place at the end of Phase 2, the Order provides for parties to file comments in February 2021.

Taking stock of the current situation, the PUC will allow some disconnections to resume on November 9, 2020, subject to a number of conditions. However, this window will close to a large extent when the winter moratorium under existing regulations takes effect from December 1, 2020 until March 31, 2021. This moratorium applies to residential customers with income at or below 250% of federal poverty guidelines, although some utilities take the policy further and do not terminate any residential customers during the winter months.

Under the policies set out in the Commission's October 13, 2020 Order, utilities hope to place customers who have fallen behind on their bills on a more sustainable path by enrolling them in assistance programs and working out payment arrangements.<sup>3</sup> This will help these customers and also make the problem of total customer debt more manageable for the rest of the ratepayers. Termination of service is always the last option with respect to customers who fall behind on their bills. Utilities are fully cognizant of their statutory responsibility to provide "adequate, efficient, safe, and reasonable" service,<sup>4</sup> and of the Commission's role in assuring that utilities comply with that standard.

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<sup>3</sup> In addition to the taxpayer-funded LIHEAP program discussed elsewhere in this testimony, utilities administer ratepayer-funded "universal service" programs to assist low income customers. The total amount of assistance provided by these programs was \$383 million in 2018.

<sup>4</sup> 66 Pa.C.S. Sec. 1501

There are two things the General Assembly can do to help all utility customers, both those who have fallen behind on their bills and those who can pay their bills but may face higher bad debt expense in the future. First, we urge your support for legislation such as House Bill 2816 and Senate Bill 1307 which would allocate additional CARES Act funding to provide grants to low income customers, to customers with income slightly above current income guidelines, and to small business customers. EAP has been advocating this type of legislation since the summer and we support these bills, which would provide direct assistance to customers who have suffered economic harm due to the pandemic.

Second, we ask for your support in our effort to persuade the Department of Human Services (DHS) to establish guidelines for the Low Income Home Energy Assistance Program (LIHEAP) that would allow utility customers with past due bills to qualify for crisis grants. Under the usual DHS guidelines, these customers cannot qualify for crisis grants during the winter months because utilities are precluded from sending notices of termination during the winter moratorium. This policy has the perverse effect of disqualifying utility customers from receiving these grants, which makes it harder for these customers to climb out of debt, and which also hurts the general body of customers who may be asked to bear higher bad debt expense. These customers are also taxpayers who pay for this government program, and it is unfortunate that this policy works against their interests.

Thank you for your consideration, and I would be happy to answer questions.

**House Democratic Policy Committee  
Public Hearing on Utility Shutoffs**

**Testimony of:  
Jennie Shade, Director of Government Relations**

**October 26, 2020**

Good afternoon Chairman Sturla, Representative Schweyer and members of the House Democratic Policy Committee. Thank you for your invitation to provide testimony on the economic impact of COVID-19 on municipal authorities and their customers.

My name is Jennie Shade and I am testifying on behalf of the Pennsylvania Municipal Authorities Association (PMAA). PMAA represents over 700 municipal authorities across the Commonwealth, which collectively provide water, sewer, waste management and other services to more than six million of its citizens.

Following the onset of the pandemic and the issuance of Governor Wolf's Proclamation of Disaster Emergency, PMAA released a document to our members in March with the following guidance:

*As the COVID-19 (coronavirus) pandemic develops, the health and safety of municipal authority customers and their employees is PMAA's top priority as they provide essential services like drinking water, wastewater, trash disposal and other critical community services to homes and businesses across the Commonwealth. In an effort to mitigate impacts of COVID-19, PMAA encourages municipal authorities to initiate continuity of operations and preparedness response plans, as well as enact measures to assist anticipated economic impact on customers, including but not limited to the below guidance:*

- *Placing moratoriums on shutoffs*
- *Restoring service to previously shutoff customers*
- *Suspending or waiving late charges or fees*
- *Instituting payment assistance plans*

After the release of PMAA's guidance document, we surveyed our membership to determine how they are responding to the crisis. In doing so, we were happy to see that most of our members instituted procedures to assist their ratepayers with the adverse economic impacts many of them are facing due to the pandemic. Moreover, we found that PMAA members have been going one step further by restoring service to delinquent accounts as handwashing is crucial in containing the spread of the virus.

In establishing such measures, financial implications for our members continues to grow each day. Furthermore, the ability to maintain operations with the many restrictions imposed required municipal authorities to adjust employee work schedules, accommodate absenteeism, pay overtime, supply electronic equipment to support remote work provisions, provide personal protective equipment, install desk dividers, partition barriers, and sneeze shields, as well as suspend critical infrastructure projects required to protect public health and the environment.

In addition, business closures and shutdowns have significantly reduced commercial, industrial and institutional water consumption and use, which in many instances represents a large portion of our members' customer base and revenue. Also, it is important to note that commercial and residential water use, and in most cases, rates, are not the same. So, increases in residential water consumption will not likely offset revenue shortfalls from decreases in commercial water sales.

We, at PMAA, would like to take a moment to thank you for the work the Pennsylvania General Assembly has done thus far to address the pandemic and its many impacts. The state, the nation and the entire world have been left reeling from the effects and we look to you as elected officials for your assistance and help. Our members have been encouraged to see some of your recent proposals to provide COVID-19 funding relief to municipal authorities and their customers.

As the state legislature continues its work, PMAA strongly supports your efforts in addressing the recovery of municipal authority utilities as they operate under a "new normal" and continue to experience revenue loss during this ongoing crisis. As we work together through the pandemic, PMAA offers the following recommendations:

### **Ratepayer Assistance**

While our members work to assist customers, who are struggling financially via extending payment due dates, customizing payment plans, waiving late fees and penalties and offering customer assistance programs, attempting to cover costs and fund such programs is proving to be difficult at this time. Direct support for bill repayment will be crucial in maintaining quality of life for municipal authority ratepayers faced with escalating arrearages.

### **Municipal Authority Funding Relief**

Amid suspending shutoffs, restoring connections, waiving fees, assisting ratepayers who are unable to pay their bills, implementing costly operational changes, tabling critical infrastructure upgrades, and reductions in commercial and industrial water consumption, inevitably results in revenue loss to the municipal authority, revenue loss they will not be able to recover. Also, as COVID-19 restrictions continue and some businesses permanently close, revenue will only continue to decrease. Quantifying the total economic impact to PMAA members remains to be seen as the weeks and months ahead will surely bring about more change. However, providing direct support to municipal authorities now will help to capture revenue loss and mitigate costs that may ultimately have to be borne by our members' ratepayers. Of course, strategies to offset losses like raising rates will only place further burden on the customer and could be quite challenging to implement if economic conditions continue to worsen.

At PMAA's 78th annual conference held virtually in August; members agreed to and adopted the

below resolution as part of our 2021 advocacy platform:

***Resolution 2-21***

*RESOLVED, That PMAA urge the PA General Assembly and the U.S. Congress to provide financial relief to municipal authorities for revenue lost and additional expenses incurred due to the impact of the COVID-19 Pandemic, for reasons such as business closures, forgiveness of outstanding customer debt and provision of services without payment, and for expenses necessary to ensure the health and safety of authority employees to continue operations to their customers. Further, PMAA urges that taxpayer aid for accounts in default equal any financial impact of extending restrictions of shutoffs for non-payment.*

In conclusion, municipal authorities, like other utilities, are critical to ensuring public health and safety, especially during these most uncertain times. At PMAA, we have found that our members' response to the pandemic has been swift and vast, ensuring services continue safely and uninterrupted. We urge you as a member of the Pennsylvania General Assembly to help us maintain this level of service. Thank you for your continued public service in the face of COVID-19 and we sincerely hope that at some point in the not too distant future, we are able to put this deadly virus wholly in the past.

Again, thank you for the opportunity to testify today. I am happy to answer any questions.