STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. M-100, SUB 158
DOCKET NO. E-2, SUB 1228
DOCKET NO. E-7, SUB 1236
DOCKET NO. E-22, SUB 583
DOCKET NO. G-5, SUB 617
DOCKET NO. G-9, SUB 767

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Necessary and Appropriate Responses to the Novel Coronavirus COVID-19	) ORDER LIFTING DISCONNECTION) MORATORIUM AND ALLOWING) COLLECTION OF ARREARAGES) PURSUANT TO SPECIAL REPAYMENT) PLANS

BY THE COMMISSION: On March 10, 2020, Governor Roy Cooper issued Executive Order (EO) No. 116 declaring a State of Emergency in North Carolina to prevent the spread of the novel coronavirus. The EO stated it was effective immediately and "shall remain in effect until rescinded." EO No. 116 at § 25. To date, EO No. 116 remains in effect.

On March 16, 2020, Virginia Electric and Power Company, Inc., d/b/a Dominion Energy North Carolina (DENC) and Public Service Company of North Carolina, Inc. (PSNC, collectively the Dominion Utilities), filed a letter in Dockets Nos. E-22, Sub 583 and G-5, Sub 617 requesting expedited Commission approval to (1) suspend disconnection of electric and gas service of residential customers who are unable to pay their bills, (2) waive any late-payment charges incurred by a residential or commercial customer, (3) allow reconnection of customers who have recently been disconnected without assessment of a reconnection fee, and (4) use flexibility in applying other requirements for restoration of electric and gas services, including the guidelines for re-establishment of credit. Finally, the Dominion Utilities stated that "[a]s long as the State of Emergency exists in North Carolina the [Dominion Utilities'] actions referenced above will remain in force and effect or unless otherwise ordered by the Commission." Dominion Energy's Customer Response to COVID-19 and Request for Expedited Approval for the Companies to Waive Late-Payment and Reconnect Fees for its Customers at 2.

On March 18, 2020, the Commission issued an Order Granting Temporary Waivers of Specific Provisions of Commission Rules in Dockets Nos. E-22, Sub 583 and G-5, Sub 617 (Dominion Waiver Order) effective March 16, 2020, granting the Dominion Utilities the relief requested in their March 16, 2020 letter, including approving the requested suspension of residential customer electric and natural gas disconnections and

the requested waivers of Commission rules, including waiver of late payment charges incurred by residential or commercial customers. The Dominion Waiver Order further authorized the Dominion Utilities to continue such suspensions and waivers, including the waiver of late payment charges, until the COVID-19 State of Emergency is declared to be over, or until otherwise ordered by the Commission.

On March 19, 2020, in response to EO No. 116, the Commission issued an Order Suspending Utility Disconnections for Nonpayment, Allowing Reconnection, and Waiving Certain Fees in Docket No. M-100, Sub 158 (Public Utility Waiver Order). The Public Utility Waiver Order required that "until the end of the State of Emergency or until further orders of the Commission," all jurisdictional electric, natural gas, water, and wastewater public utilities immediately (1) cease customer disconnections for nonpayment of bills (Disconnection Moratorium), (2) waive the application of late fees for past due or delinquent payments (Late Fee Moratorium), and (3) provide appropriate notice to customers of these changes. Public Utility Waiver Order at 2. The Commission further suspended individual regulations and tariff provisions that prevent or condition reconnections of disconnected customers. Further, the Commission ordered:

> At the end of the State of Emergency, customers having arrearages accrued during the State of Emergency shall be provided the opportunity to make a reasonable payment arrangement over no less than a six month period and shall not be charged any late fees for late payment for arrearages accrued during the State of Emergency.

Id. Finally, the Commission expressly held that "[n]o provision in this Order shall be construed as relieving a customer of their obligation to pay bills for receipt of any utility service covered by this Order." *Id.*

Also on March 19, 2020, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (Piedmont, collectively the Duke Utilities), filed a letter in Docket Nos. E-2, Sub 1228, E-7, Sub 1236, and G-9, Sub 767 requesting Commission approval to (1) suspend as of March 13, 2020, the disconnection of electric and natural gas service to the Duke Utilities' residential and non-residential customers who are unable to pay their bills, (2) waive for both residential and non-residential customers the application of late payment charges provided for in the Commission's rules and the Duke Utilities' rate schedules, (3) allow reconnection of residential and non-residential customers who had recently been disconnected, without assessment of a reconnection fee, (4) waive for both residential and non-residential customers the application of fees for checks returned due to insufficient funds, (5) waive for residential customers the transaction fees associated with the payment of electric and gas bills by credit card or debit card, and (6) use flexibility in applying other requirements for restoration of electric and gas services, including the guidelines for re-establishment of credit pursuant to Commission Rules R12-2 and R12-3.

On March 20, 2020, the Commission issued an Order Granting Additional Temporary Waivers of Specific Provisions of Commission Rules in Docket Nos. E-2,

Sub 1228, E-7, Sub 1236, and G-9, Sub 767 (Duke Waiver Order) granting the Duke Utilities the relief requested in their March 19, 2020 letter that was in addition to the directives of the Public Utility Waiver Order, including but not limited to suspending disconnections of residential and non-residential customers effective March 13, 2020, and waiving late fees for both residential and non-residential customers. Further, the Duke Waiver Order stated:

> Based on the foregoing, the Commission finds and concludes that the provisions of the Commission's [Public Utility] Waiver Order shall apply to DEC, DEP and Piedmont, except as otherwise modified in this Order.

Duke Waiver Order at 2. There were no provisions in the Duke Waiver Order modifying the Public Utility Waiver Order with respect to the Duke Utilities except those approving the relief requested by them that was in addition to the directives of the Public Utility Waiver Order.

On March 31, 2020, Governor Cooper issued EO No. 124, in which he noted that the Commission had issued the Public Utility Waiver Order but that it applied to only some of the utilities providing service in the State. Therefore, Governor Cooper determined that it was "in the best interest of the people of North Carolina to enact, for all utilities, prohibitions and restrictions similar to and consistent with, the Commission's March 19, 2020 Order." EO No. 124 at 2 [pages unnumbered]. Executive Order No. 124 defined "Utility Service Providers" to include, among others, municipalities, cooperatives, and investor-owned utilities that provide electric, natural gas, water, or wastewater services to end-use residential customers. *Id*. at § 1(A)(1)-(2). In addition, EO No. 124 stated:

> The restrictions placed on Utility Service Providers by this Section should, in cases of any ambiguity, be interpreted to be consistent with the restrictions imposed upon certain Utility Service Providers by the North Carolina Utilities Commission in its March 19, 2020 Order Suspending Utility Disconnections for Nonpayment, Allowing Reconnection, and Waiving Certain Fees, Docket M-2 [sic], Sub 158.

Id. at § 1(A)(3).

In addition, Section 1(C) of EO No. 124 stated:

> [P]rovided, however, that Utility Service Providers subject to the Utilities Commission's March 19, 2020 Order shall remain subject to the terms of that order after the terms of this Executive Order expires.

In pertinent part, EO No. 124 suspended disconnections of residential customers based on nonpayment, prohibited fees, charges, penalties, and interest on arrearages accumulated while EO No. 124 is in effect and directed that Utility Service Providers give customers an opportunity to make reasonable payment arrangements of at least six months in duration to pay off arrearages that accumulate during the effective period

of EO No. 124. Further, EO No. 124 stated that the moratorium on disconnections would expire in 60 days unless suspended or rescinded by a subsequent EO. *Id*. at § 1(G). Finally, in pertinent part, EO No. 124 required public utilities to report implementation information weekly to the Commission. *Id.* at § 1(J).

On May 30, 2020, Governor Cooper issued EO No. 142, which extended the May 30, 2020 expiration date of EO No. 124 to midnight on July 29, 2020. In addition, EO No. 142 clarified that no late fees should be imposed on arrearages accumulated during the effective period of EO No. 142, that if a Utility Service Provider and a customer are unable to agree on the duration of the extended repayment arrangement on arrearages the default repayment period will be six months, and that the payoff period for arrearages should be calculated from the date EO No. 142 expires. EO No. 142 at § 2(C). Further, EO No. 142 stated that "Utility Service Providers subject to the Utilities Commission's March 19, 2020 Order shall remain subject to the terms of any Utilities Commission order that may be in effect after this Executive Order expires." *Id*. Finally, in pertinent part, EO No. 142 required public utilities to continue to report implementation information to the Commission on a monthly basis. *Id.* at § 2(E).

On July 10, 2020, the Duke Utilities filed their Petition for Clarification of the Expiration of the Commission's Waiver Orders[1] (Petition), which states:

> [T]he duration of the Waiver Orders is not expressly defined, although it appears to be linked to the duration of the State of Emergency. The expiration of the State of Emergency, however, is also currently undefined. In contrast, Executive Order No. 142 clearly defined an expiration date — July 29, 2020. . . . This leaves the customers of DEC, DEP, and Piedmont uncertain on when the [Duke Utilities] might transition to more normal operations, including resumption of delinquency procedures and certain fees.

Petition at 4-5. The Duke Utilities request that the Commission clarify the expiration date of its previous Waiver Orders concerning the suspension of disconnections of utility service for nonpayment, which orders were issued to address the adverse health and economic impacts experienced by utility customers as a result of the spread of the coronavirus. The Duke Utilities further posit that coordinating the expiration of the Commission's Waiver Orders with the expected July 29, 2020 expiration of EO No. 142 would reduce customer confusion and place all North Carolina utility customers on similar footing.

In addition, the Duke Utilities state that if the Commission's Waiver Orders expire at the same time as EO No.142 they will not immediately begin disconnections for nonpayment and, instead, will voluntarily establish a transition period of one billing cycle (30 days) after expiration before reinstating their billing and payment policies, and before

[1] Hereinafter, the term "Waiver Orders" shall be construed to include the Dominion, Public Utility, and Duke Waiver Orders.

reinstating reconnection and returned check fees. Finally, the Duke Utilities state that they intend to suspend fees for credit card or debit card transactions by residential customers for an additional two months after "the moratorium is lifted."

DISCUSSION AND CONCLUSIONS

The Duke Utilities contend that "[t]he duration of the Waiver Orders is not expressly defined." Petition at 4. However, the Public Utility Waiver Order stated that its directives apply "until the end of the State of Emergency or until further orders of the Commission," and the Duke Waiver Order expressly applied the provisions of the Public Utility Waiver Order to the Duke Utilities. In addition, EO No. 124 stated that in the event of an ambiguity with the Public Utility Waiver Order the provisions of the Public Utility Waiver Order govern. Similarly, EO No. 142 stated that Utility Service Providers subject to the Public Utility Order, "shall remain subject to the terms of any Utilities Commission order that may be in effect after this Executive Order expires." EO No. 142 at § 2(C).

Based on the above comparison of the provisions of the Executive Orders and the Commission's Waiver Orders, there is no ambiguity about the duration of the Waiver Orders. Executive Order No. 116 established a State of Emergency "until rescinded." *Id.* at § 25. The Waiver Orders expressly state that the duration of the restrictions provided for therein is "until the end of the State of Emergency or until further orders of the Commission." *See, e.g.,* Public Utility Waiver Order at 2. The Governor has not declared the State of Emergency to be over or placed any deadline on the State of Emergency. Likewise, until now, the Commission has not issued a further order ending the restrictions or establishing a deadline by which the restrictions will end. As a result, absent the end of the State of Emergency or the Commission's issuance of an order ending the restrictions, those restrictions could continue in effect indefinitely until the State of Emergency is declared over by the Governor or until the Commission issues an order ending the restrictions.

The coronavirus pandemic presents an unprecedented State of Emergency for the Commission, the public utilities it regulates, and the ratepaying public it serves. The Commission has previously noted that, with regard to the pandemic, "[u]ncertainties remain as to how long the State of Emergency will last and how soon North Carolina's economy will return to a normal level of operation once the emergency is over." Order Dismissing Petition, *Petition for Expedited Approval of Temporary Adjustments to Electricity Billing Demand Charges*, Nos. E-2, Sub 1249, E-7, Sub 1237, and E-22, Sub 585 (N.C.U.C. May 19, 2020). As stated in EO No. 142,

> utility services are essential to the continued health and safety of residential utility customers, to the ability of workers and employers to engage in teleworking, and to the continued economic viability of business utility customers, even as the economic effects of the pandemic threaten customers' ability to pay for those utility services.

EO No. 142 at 3 [pages unnumbered].

The Commission has monitored and continues diligently to monitor the reports submitted by utilities pursuant to EO Nos.124 and 142 and finds that, as North Carolinians have fallen behind and continue to fall behind on their electric, natural gas, water, and wastewater bills, utilities could face financial hardship. When the Commission entered the Public Utility, Dominion, and Duke Waiver Orders, it was not anticipated that the State of Emergency would extend into or beyond summer. Unfortunately, more than a month into summer, there is no objective or factual indication that the State of Emergency stemming from the coronavirus pandemic is near an end. Thus, the Commission is concerned that the accumulation of significant unpaid utility charges over a continuing and most-likely extended period of time into the future will put both customers and utilities in financial positions where it may be difficult or in some cases even impossible for customers to repay and utilities to recoup the revenues uncollected during the State of Emergency. The growing unpaid charges could potentially, contrary to the public interest, place continuation of utility service in some areas in jeopardy. Accordingly, pursuant to N.C. Gen. Stat. § 62-32 and the Commission's general supervisory powers over the rates charged and services rendered by public utilities in this state, the Commission finds good cause to modify and supplement its Waiver Orders as set forth in the ordering paragraphs below.

The Commission further recognizes these are unprecedented times and strongly urges public utilities to be flexible in working with all customers during and after the State of Emergency, particularly those customers most vulnerable to COVID-19-related hardship, and to weigh the financial needs of continued operation with both the welfare of individual customers and the necessity of utility service to the protection of public health from the spread of the coronavirus. In addition, nothing herein should be construed to end the suspension of any and all regulations and provisions of individual utility tariffs on file that prevent or condition reconnection of disconnected customers as provided in the Waiver Orders, unless otherwise explicitly stated.

Finally, customers who believe that their utility providers are not fairly implementing the provisions of this Order may seek the Public Staff's assistance with their concerns and, if need be, file a complaint with the Commission under N.C.G.S. § 62-73.

IT IS, THEREFORE, ORDERED as follows:

1. That after appropriate customer notice in accordance with Commission rules, all jurisdictional electric, natural gas, water, and wastewater public utilities may resume customer disconnections due to nonpayment for bills first rendered on or after September 1, 2020;

2. That the Late Fee Moratorium shall continue in effect as to all jurisdictional electric, natural gas, water, and wastewater public utilities, including resellers,[2] through the end of the State of Emergency or until further order of the Commission;

3. That, in accordance with Commission rules and only for bills first rendered on or after September 1, 2020, the Duke Utilities may reinstate (a) fees for checks returned due to insufficient funds and (b) transaction fees associated with the payment of electric and gas bills by credit card or debit card for residential customers;

4. That no sooner than September 1, 2020, all jurisdictional electric, natural gas, water, and wastewater public utilities may proceed with the collection of past due or delinquent amounts (arrearages) accrued up to and including Monday, August 31, 2020, subject to the following conditions:

a. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall offer customers a plan of no fewer than 12 months, unless the customer consents to a shorter repayment period, starting no sooner than September 1, 2020, to repay the arrearages accrued through August 31, 2020 (Special Repayment Plan). Further, any Special Repayment Plan shall also include the customer's arrearages predating the State of Emergency;

b. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall offer customers at least one Special Repayment Plan option based on equal, fixed monthly installments payable over no fewer than 12 months, unless the customer consents to a shorter repayment period. Other Special Repayment Plan options, such as a pre-agreed fixed percentage of each monthly bill added to current charges, may be offered to customers. Utilities are encouraged to offer additional options to best accommodate customers' needs and financial situations, provided that in all cases any additional or alternative Special Repayment Plan option shall be structured in a manner that will allow the customer no fewer than 12 months for repayment of the arrearages from the beginning of the Special Repayment Plan period, unless the customer consents to a shorter repayment period;

c. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall allow a customer who is in compliance with an established Special Repayment Plan to transfer his/her/its account, including the established Special Repayment Plan terms, to a new service location;

d. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall not use disconnections or any legal process to collect

[2] To be clear, the provisions of this Order are not intended to apply to electric, natural gas, water, and wastewater resellers except where explicitly stated.

arrearages from a customer who is in compliance with an established Special Repayment Plan;

e. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall not report a customer to any credit reporting agency if and for as long as that customer is in compliance with an established Special Repayment Plan; and

f. That all jurisdictional electric, natural gas, water, and wastewater public utilities shall not directly or indirectly encourage or solicit a customer to use a credit card or other form of third-party financing or third-party extension of credit other than a Special Repayment Plan as specified herein, as a means of paying arrearages; provided, however, that a utility may accept from a customer such alternative means of repayment initiated at the customer's option and according to the utility's existing policies with respect to the acceptance of such alternative means of payment;

5. That except for the fees expressly waived herein, no provision in this Order shall be construed as relieving a customer of the obligation to pay bills for receipt of any utility service covered by this Order;

6. That any rule, regulation, or tariff prohibiting a jurisdictional electric, natural gas, water, or wastewater public utility from exercising discretion to continue the Disconnection Moratorium at its own election or being otherwise lenient with its customers during the State of Emergency is hereby waived;

7. That nothing in this Order shall preclude jurisdictional electric, natural gas, water, and wastewater public utilities from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to the health of the individual customer, members of the customer's household, or to public health;

8. That in exercising the discretion and leniency provided for herein and in accordance with N.C.G.S. § 62-140, public utilities shall ensure that similarly situated customers receive equal treatment;

9. That public utilities shall make every reasonable effort to publicize and make their customers aware of available financial support, including but not limited to the federal Low Income Home Energy Assistance Program (LIHEAP) and North Carolina Department of Health and Human Services' Crisis Intervention Program;

10. That consistent with the requirements of EO No. 124 § 1(J) as amended by EO No. 142 § 2(E), public utilities shall continue to report implementation information monthly to the Commission until further order;

11. That all jurisdictional electric, natural gas, water, and wastewater public utilities, including resellers, shall reasonably inform their customers of the terms of this Order in conjunction with their next regularly scheduled billing process providing notice of this Order's content. This notice may take the form of an insert or clear language prominently marked on a bill or electronic billing statement, if the customer has chosen not receive a paper bill. Also, all jurisdictional electric, natural gas, water, and wastewater public utilities shall state whether the public utility intends to resume disconnections or, as permitted by Paragraph No. 6 above, voluntarily continue the Disconnection Moratorium. Further, if a public utility subject to this Order maintains a website and/or web-based payment portal, such public utility shall provide notice of this Order's content on such website. Finally, each jurisdictional electric, natural gas, water, and wastewater public utility, including resellers, subject to this Order shall provide notice of this Order's content by posting the notice physically where the company does business with its customers and at any other locations where payments are received; and

12. That this Order is effective on the date issued, and the Chief Clerk shall serve this Order by electronic mail on all electric, natural gas, water, and wastewater public utilities, including resellers, subject to the Commission's jurisdiction.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of July, 2020.

NORTH CAROLINA UTILITIES COMMISSION

Kimberley A. Campbell, Chief Clerk