

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE STATE OF)
EMERGENCY FOR THE STATE OF DELAWARE)
DUE TO A PUBLIC HEALTH THREAT) PSC DOCKET NO. 20-0286
(OPENED APRIL 27, 2020))

ORDER NO. 9588

AND NOW, this 13th day of May 2020, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, on March 12, 2020, Governor John C. Carney issued an Executive Order¹ declaring a state of emergency for the State of Delaware due to a public health threat as necessary to control and prevent the spread of COVID-19 within the State. Recognizing that the provision of certain public utility services may require utility companies to personally visit the premises and interact with customers, which would interfere with the social distancing mandates, Governor Carney issued a Sixth Modification to the Executive Order (“Sixth Modification”) on March 24, 2020, prohibiting the termination of residential services and late fees for untimely payments during the state of emergency period for COVID-19;² and

WHEREAS, the Sixth Modification states, in pertinent part, the “[C]ommission has the authority to enforce and carry out this Section D against all Residential Service Providers utilizing its penalty authority under § 217 of Title 26 of the Delaware Code[;]”³ and

¹ Governor Carney’s Declaration Of A State Of Emergency For The State Of Delaware Due To A Public Health Threat, (March 12, 2020) (“Executive Order”). The Executive Order and the Fourteen Modifications thereto are available at <https://governor.delaware.gov/health-soe/state-of-emergency/> (last visited May 1, 2020).

² See Sixth Modification at § D.

³ The Sixth Modification defines “Residential Service Providers,” in relevant part, as “[an] electric, natural gas, propane, telegraph, telephone, water, wastewater, cable television, or internet service provider” *Id.* at § D.1.

WHEREAS, on May 5, 2020, Commission Staff (“Staff”) filed its Motion For Order Authorizing Establishment Of A Regulatory Asset For COVID-19-Related Incremental Costs (“Motion), stating that creation of the regulatory asset account will assist Commission-regulated utilities (“Utilities”)⁴ which might later seek recovery of such incurred costs; and

WHEREAS, this Commission finds that proper notice was provided to all Utilities and the Delaware Division of the Public Advocate (“DPA”); and

WHEREAS, on May 13, 2020, the Commission considered Staff’s Motion and the statements of each party electing to present argument; and

WHEREAS, this Commission has responsibility to ensure that Utilities comply with Governor Carney’s Executive Order, including any and all Modifications previously or hereafter enacted, during the current state of emergency period pertaining to the COVID-19 pandemic; and

WHEREAS, this Commission acknowledges the potential for significant financial implications, both costs incurred and offsets, that compliance with these emergency orders may have on Utilities; and

WHEREAS, the Commission authorizes, in accordance with the terms of this Order, Utilities to create a regulatory asset to record the incremental costs related to COVID-19 incurred to ensure that Delaware residents have essential utility services; and

WHEREAS, creation of the regulatory asset for COVID-19-related costs offers Utilities the ability to seek recovery of those costs in accordance with the terms set forth herein; and

⁴ As stated herein, “Utilities” or “Utility” means “Public utility” as defined in 26 *Del. C.* § 102(2) and subject to this Commission’s exclusive original supervision and regulation under 26 *Del. C.* § 201.

WHEREAS, the Commission finds that authorizing a Utility to create a regulatory asset of COVID-19-related costs is appropriate because the current catastrophic health emergency is outside the control of the Utilities and is a non-recurring event;⁵ and

WHEREAS, the Commission finds in order for costs to be eligible for inclusion in a Utility's COVID-19 designated regulatory asset, the Utility shall record and maintain details, in the manner provided herein, of any and all assistance or benefit received, regardless of form and whether contingent or unmatured, including but not limited to suspension of disconnections or other activities, and any income received pursuant to the U.S. Department of Treasury's administration of S.3548 (the "CARES Act") or any similar future federal funds in connection with COVID-19 that could offset any COVID-19-related costs;

NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS, IT IS ORDERED THAT:

1. Utilities are hereby authorized to establish, in compliance with the terms of this Order, a regulatory asset account to capture and track COVID-19-related incremental costs during the period starting March 24, 2020 and ending 30 days after which Governor Carney issues an order, declaration, proclamation, or similar announcement that the state of emergency is no longer in effect (the "Time Period").

5. Each Utility which establishes a regulatory account pursuant to this Order is directed to file quarterly reports of the costs incurred and offsets, together with the verification of an authorized representative. The first quarterly report shall be filed in this Docket on August 1, 2020. For the period ending June 30, 2020, and each subsequent quarterly report shall be filed no later than 30 days after the end of the calendar quarter. Both Staff and DPA are authorized to

⁵ This Order permits inclusion in the Utility's regulatory asset account costs associated with both residential and non-residential customers.

submit to any Utility a request for further information in connection with the Utility's quarterly reports, and the Utility shall serve and file in this Docket verified responses within 20 days following receipt of such requests

3. The Commission will evaluate the COVID-19 regulatory asset account in future rate case proceedings to determine whether the costs are recoverable, the appropriate period of recovery for any approved amount of the regulatory asset, any amount of carrying costs thereon, any savings attributable to suspension of disconnects or other activities, and other related matters. However, because these incremental costs are not fully known and certain at this time, Utilities are prohibited from including, in whole or in part, a COVID-19 regulatory asset account in any rate case now pending nor before the expiration of six months following the end of the Time Period as defined in Paragraph 1.

4. If, due to the current state of emergency, a Utility finds it necessary to further deviate from its tariff, any applicable statute, regulation, or Commission rules, the Utility shall file its request to deviate in this Docket.

5. Requests for additional Commission actions related to the state of emergency shall be filed in this Docket.

6. All Utilities are made parties to this Docket.

7. The Commission reserves the jurisdiction and authority to enter such other or further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chairman

/s/ Joann T. Conaway
Commissioner

/s/ Harold B. Gray
Commissioner

/s/ Manubhai C. Karia
Commissioner

/s/ K. F. Drexler
Commissioner

ATTEST:

Donna Anderson
Secretary

