

**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) )

**THE DELAWARE PUBLIC SERVICE COMMISSION STAFF’S MOTION FOR  
ORDER AUTHORIZING ESTABLISHMENT OF A REGULATORY ASSET  
FOR COVID-19-RELATED INCREMENTAL COSTS**

Pursuant to 26 *Del. Admin. C.* § 1001.2.7, the Delaware Public Service Commission Staff (“Staff”) respectfully moves the Delaware Public Service Commission (“Commission”) for an order, in the form attached hereto, authorizing Commission-regulated public utilities to establish a regulatory asset for COVID-19-related incremental costs, and in support thereof states:

**INTRODUCTION**

1. On March 12, 2020, Governor John C. Carney issued an Executive Order<sup>1</sup> 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.

2. On March 16, 2020, Governor Carney issued a Sixth Modification to the Executive Order (the “Sixth Modification”), recognizing that the provision of certain public utility services may require public utility companies to personally visit premises and interact with customers, which would interfere with the social distancing mandates. The Sixth Modification prohibits “Residential Service Providers”<sup>2</sup> from terminating residential services and assessing fees for untimely payments during the state of emergency period for COVID-19.

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<sup>1</sup> Governor Carney’s Declaration 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 Thirteen Modifications thereto are *available at* <https://governor.delaware.gov/health-soe/state-of-emergency/> (last visited April 30, 2020).

<sup>2</sup> 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 . . . .” *See* Sixth Modification, at § D.1.

3. The Sixth Modification further 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.”<sup>3</sup>

4. On April 20, 2020, Staff conducted a teleconference with the Delaware Division of the Public Advocate and representatives from Delaware Public Utilities<sup>4</sup> to discuss requesting this Commission’s approval for Commission-regulated public utilities to establish a regulatory asset for COVID-19-related incremental costs.

### **STATUORY AUTHORITY**

5. Pursuant to 26 *Del. C.* § 201(a), “[t]he Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title.” A public utility (“Utility” or “Utilities”) is defined, in relevant part, as “[e]very individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a “cooperative”), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this State[.]”

### **ARGUMENT**

6. The Commission’s statutory and regulatory authority over Utilities includes the 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

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<sup>3</sup> See Sixth Modification, § D.

<sup>4</sup> The following entities participated in the April 20, 2020 teleconference: Artesian Water Company, Inc.; Chesapeake Utilities Corporation; Delmarva Power & Light Company, Inc.; Suez Water Delaware, Inc.; and Tidewater Utilities, Inc.

period concerning the COVID-19 pandemic. There currently exists the potential for significant financial implications, both costs incurred and offsets, that compliance with these emergency orders may have on Utilities. The current catastrophic health emergency is outside the control of the Utilities.

7. To minimize potentially adverse financial impacts on Utilities, the Commission should authorize 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, which will offer Utilities the ability to seek recovery of those costs; provided however, that each Utility must record and maintain details of any and all assistance or benefit received, regardless of form, in connection with COVID-19 that could offset any COVID-19-related expenses. And, a Utility's regulatory asset account established to capture and track COVID-19-related incremental costs should strictly be confined to starting on March 12, 2020 and ending on the date on which Governor Carney issues an order, declaration, proclamation, or similar announcement that the state of emergency is no longer in effect (the "Time Period").

8. Further, the Commission should evaluate any COVID-19 regulatory asset account in *future 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. Specifically, any determination of any COVID-19 regulatory asset account must not be included, in whole or in part, in any rate case now pending nor before the expiration of six months following the end of the Time Period. This is imperative because these incremental expenses are not fully known and certain at this time.

**WHEREFORE**, Staff requests the Commission authorize Utilities to establish a regulatory asset for COVID-19-related incremental costs in accordance with the express terms set forth in the form of Order attached hereto.

Dated: May 4, 2020

Respectfully submitted,

/s/ Thomas D. Walsh

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2020, I caused THE DELAWARE PUBLIC SERVICE COMMISSION STAFF’S MOTION FOR ORDER AUTHORIZING ESTABLISHMENT OF A REGULATORY ASSET to be served on the following persons via electronic mail and filed with the Delaware Public Service Commission using Delafile.

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Dated: May 4, 2020

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