

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
on its Own Motion:)	
)	Docket No. 20-0309
)	
In the Matter of Moratorium on Disconnection)	
of Utility Services during the Public Health)	
Emergency Declared on March 9, 2020)	
pursuant to Sections 4 and 7 of the)	
Illinois Emergency Management Agency Act)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
VERIFIED RESPONSE TO COMMUNITY ORGANIZING AND FAMILY ISSUES' /
ALLEN CHERRY'S EMERGENCY MOTION TO EXTEND THE MORATORIUM ON
UTILITY SHUT-OFFS AND OTHER RELIEF

NOW COMES the Staff of the Illinois Commerce Commission (Staff), by and through its undersigned counsel, and pursuant to Rule of Practice 200.190, and in response to Community Organizing And Family Issues' / Allen Cherry's Motion to Extend The Moratorium on Utility Shut-Offs and Other Relief, states as follows:

1. On March 9, 2020, Governor JB Pritzker issued a Declaration under Sections 4 and 7 of the Illinois Emergency Management Agency Act (IEMA Act), finding that as a result of the global COVID-19 epidemic and the presence of COVID-19 cases in Illinois, a public health emergency exists in the State of Illinois within the meaning of Section 4 of the IEMA Act, and declaring all 102 counties within the State to be disaster areas within the meaning of Section 7 of the IEMA Act.

2. The public health emergency was to remain in effect through and including April 30, 2020. On April 30, 2020, Governor Pritzker issued a Proclamation which had the effect of extending the public health emergency through and including May 30, 2020. On

May 29, 2020, Governor Pritzker issued a Proclamation which had the effect of extending the public health emergency through and including June 28, 2020.

3. On March 18, 2020, the Commission entered its Emergency Interim Order, which directed Illinois gas, water, sewer and electric distribution utilities to immediately cease disconnections of utility services during the public health emergency to ensure the health and safety of the State's utility customers, and to cease giving notice of disconnection of utility service. In the Emergency Interim Order, the Commission directed gas, water, sewer and electric distribution utilities to cease disconnecting customers for non-payment and imposing late-payment fees or penalties, until May 1, 2020 or until the Governor announces the end of the COVID-19 state of emergency, if the state of emergency continues past May 1, 2020. Emergency Interim Order, 4-5, 7. In so ordering, the Commission determined that "[a]ccess to essential utility service will be necessary to slow the spread of the [COVID-19 infection] and to protect public health." Id., 4.

4. The Commission also directed each utility to implement "revised and more flexible ... credit and collections procedures ... to ensure that customers remain connected to essential utility services when the emergency status ends." Emergency Interim Order, 4, 7. The Commission directed that such procedures be "more flexible ... than the minimum standards outlined in Part 280 [fn] of the Commission's Rules[.]" and that such procedures "remain in effect for a period of no less than six (6) months." Id., 4 (footnote omitted). The Commission directed each utility to "file a response to [the Emergency Interim Order], identifying: (a) whether it will voluntarily cease disconnections for non-payment, and suspend the imposition of late payment fees or penalties, ... ; and

(b) the proposed flexible credit and collections procedures, as described above[.]”¹
Emergency Interim Order, 7.

5. On March 20, 2020, a duly appointed Administrative Law Judge (ALJ) directed that utility responses to the Emergency Interim Order were due within seven (7) business days. Notice of ALJ Ruling (March 20, 2020). The ALJ set the matter over for a prehearing conference on April 2, 2020.

6. On March 27, 2020, the following utilities filed the required responses: Commonwealth Edison Company (ComEd), The Peoples Gas, Light and Coke Company and North Shore Gas Company (jointly, PGL / NS), the MidAmerican Energy Company (MidAmerican), the Consumers Gas Company (Consumers), the Illinois Gas Company (IGC), Aqua Illinois, Inc. (Aqua), the Northern Illinois Gas Company d/b/a Nicor Gas Company (Nicor Gas), the Mt. Carmel Public Utility Co. (Mt. Carmel), Utility Services of Illinois, Inc. (USI), the Illinois-American Water Company (Illinois-American or IAWC), Liberty Utilities (Midstates Natural Gas) Corp. (Liberty), and the Ameren Illinois Company d/b/a Ameren Illinois (Ameren Illinois). On April 8, 2020, Rockwell Utilities, LLC (Rockwell) joined as a respondent to the Emergency Interim Order and filed its Response and plan. Each utility responding stated on the record in this proceeding that it has ceased both disconnections and the sending of notices of disconnection for the duration of the public health emergency.

7. On March 30, 2020, the ALJ issued an order which, among other things, directed the Staff and any intervenors to submit responses, if any, to utility plans by April

¹ Any utility that considered itself unable to comply was ordered to “show cause why it is unable to issue said moratorium and revised credit and collections procedure[.]” Emergency Interim Order, 7. No utility elected to do so.

6, 2020. Notice of ALJ Ruling (March 30, 2020). The Attorney General (AG) and the City of Chicago (City) filed appearances and the not-for-profit entity Community Organizing and Family Issues (COFI), the Citizens Utility Board (“CUB”) and Allen Cherry either submitted notices of intervention or were granted leave to intervene. On April 2, 2020, a pre-hearing conference was convened, in the course of which the ALJ also set a schedule for further proceedings with respect to determining the utilities’ compliance with the Emergency Interim Order. Notice of Continuance and Notice of Schedule (April 3, 2020).

8. On April 6, 2020, Staff, the AG, CUB, Allen Cherry and COFI filed Responses. On April 10, 2020, Staff, ComEd, NSG-PGL, MidAmerican, Mt. Carmel, IGC, Liberty, Aqua, IAWC, USI, Ameren Illinois, the City, COFI, Nicor Gas, and the AG submitted Replies to other parties’ April 6 Responses. On April 15, 2020, Archer-Daniels-Midland Company and Caterpillar Inc., as members of the Illinois Industrial Energy Consumers (IIEC), and the Legal Aid Society of Metropolitan Family Services (Legal Aid) were granted leave to intervene.

9. On April 20, 2020, the ALJs, of whom two were now assigned, issued a Proposed Order.

10. In April of this year, the parties commenced negotiations to determine whether a negotiated settlement might be reached. These negotiations took place over a two-month period and involved detailed discussions of various proposals from the standpoint of effectiveness, feasibility, lawfulness, and cost recovery, among other issues. The negotiations were conducted by all parties in good faith, and at arms’-length.

11. Two Stipulations resulted from these negotiations. The parties to the first Stipulation included the Large Utility Group, including consisting of ComEd, Nicor, the

NSG-PGL, Ameren Illinois, Aqua, USI and Illinois-American; the Joint Consumer Parties, consisting of the AG, CUB, the City, COFI, Legal Aid and Mr. Cherry; and Staff. The parties to the second included Small Utility Group, consisting of Consumers Gas, IGC, Liberty, MEC, and Mt. Carmel; the Joint Consumer Parties, consisting of the AG, CUB, COFI, Legal Aid and Mr. Cherry; and Staff. The Illinois Industrial Energy Consumers did not oppose either Stipulation. See Commission Order (June 18, 2020; Appendices 1 and 2).

12. The terms of each Stipulation require the utility parties to it to adopt certain more flexible credit and collection procedures. Id. Significantly for purposes of this Response, the terms of each Stipulation call for a moratorium on residential service disconnections and imposition of late payment charges to remain in effect through a date indexed to the State moving into Phase 4 of the Restore Illinois Plan. See Motion, ¶3 (“Because all regions of the State moved to Phase 4 of the Governor’s Restore Illinois reopening plan on June 26, 2020, the moratorium on disconnections lifted on July 26, 2020.”)

13. The Commission accepted and approved each Stipulation in an Order dated June 18, 2020. See Final Order (June 18, 2020). COFI and Mr. Cherry are parties to, and signatories of, each Stipulation. See Final Order (June 18, 2020; Appendices 1 and 2). The Large Utility Stipulation provides that “Stipulation Parties will support this Stipulation and urge its acceptance by the Commission, including, but not limited to, in their testimony, pleadings, and other legal briefs filed in this Proceeding, and on any rehearing or appeal of the Commission’s Order in this Proceeding.” Final Order (June 18, 2020; Appendix 1, ¶26). It further provides that Stipulation Parties will not oppose, via rehearing,

appeal, or otherwise, the Commission's Order adopting this Stipulation." *Id.*, ¶27. The Small Utility Group Stipulation contains identical provisions. Final Order (June 18, 2020; Appendix 2, ¶¶25, 27). The Commission's Order approving each of the Stipulations was final and subject to rehearing. Final Order at 5 (June 18, 2020).

14. On October 14, 2020, after the close of business, COFI and Mr. Cherry filed their Motion, requesting that the Commission enter an Order imposing a moratorium on utilities disconnecting residential customers' service and imposition of fees for late or non-payment, for a period through and including March 31, 2021. *See, generally, Motion.*

15. As Movants concede, the entire State moved into Phase 4 of the Restore Illinois plan on June 26, 2020, which – by the terms of each Stipulation – resulted in the moratorium on disconnections being lifted on July 26, 2020. Motion, ¶3.

16. In support of their Motion, which they appear to concede is in clear derogation of both Stipulations, *see Motion*, ¶3, the Movants assert that circumstances have changed such that the Commission should re-impose a moratorium. The Movants' assertions need not be described in detail, except to state that they are fact-intensive. *See Motion*, ¶¶6-13, 16-17. Additional assertions are conclusory. *Id.*, ¶¶14-15.

17. The only legal authority cited by the Movants is Section 8-505 of the Public Utilities Act, which, they argue, affords the Commission broad powers to impose the relief they seek. Motion, ¶19. Movants do not request a hearing, except "to determine how many customers have been disconnected and reconnected to date, since the end of the voluntary moratorium that was in place, and what steps should be taken to immediately reconnect those customers who remain disconnected." *Id.*, ¶22.

18. In sum, then, what Movants seek is the Commission to ignore the terms of Stipulations that it has already approved – and to which Movants themselves were parties and signatories – and order a six-month² renewal of the moratorium on residential service disconnection and imposition of late payment charges. Movants request that the Commission do so without a hearing, based on an Emergency Motion to which other parties have had less than two days to respond. The Commission cannot and should not do so, and should deny the Motion, at least as the Motion is currently before it.

19. First, as noted, the Commission’s June 18, 2020 Order was final and appealable, and no Applications for Rehearing of the Order were filed, nor were appeals taken from it. The Order by its terms closed the docket, since it found that “Staff may request that the Commission reopen this docket” if Staff determines that any utility has failed to comply with the applicable Stipulation. Final Order at 5 (June 18, 2020). That being the case, the Movants have a choice of (a) requesting that the Commission reopen the matter on its own motion, pursuant to Rule of Practice 200.900; or (b) after expiration of two years, seek modification of the Order under Section 10-113 of the Act. Movants have done neither and their Motion is thus facially and fatally defective. It should be denied for that reason alone.

² Movants attempt to characterize the requested moratorium as “a short reprieve from disconnection anxiety” until December 1, 2020 when, according to Movants, Section 8-205 of the Act prohibits utility disconnections until March 31, 2021. Motion, ¶20. In fact, Section 8-205 does no such thing. First, it applies only to gas and electric utilities, and provides that such utilities may not terminate service where the temperature falls below a certain level and the gas or electric service is used to provide heat. 220 ILCS 5/8-205(a). Section 8-206 provides that a gas or electric utility cannot disconnect service between December 1 and March 31 where the gas or electric service is used to provide heat, unless the utility satisfies certain conditions. 220 ILCS 5/8-206. Staff understands that some utilities may have a practice of suspending disconnections between December 1 and March 31, but they are not required by statute to do so, and water utilities are not subject to either section.

20. Second, while assuring the Commission that Section 8-505 of the Act affords it broad powers to grant the relief Movants seek and in the summary manner in which they seeks it, Movants ignore the fact that – as the Commission acknowledged in its March 18, 2020 Emergency Order – its power to grant emergency relief derives from Section 8-508 of the Act. 220 ILCS 5/8-508; see *also* Emergency Order at 3 (March 18, 2020). As the Commission noted:

[T]he Commission is authorized to, among other things “regulate the furnishing of service ... whenever and to the extent such action is required by the convenience and necessity of the public ... by reason of a catastrophe ... [or] emergency[.]” 220 ILCS 5/8-508. In an emergency, the Commission is authorized to accomplish this by “an interim order, effective for a period not exceeding 15 days, ... without a hearing if the circumstances do not reasonably permit the holding of a hearing.” *Id.*

Id.

21. Accordingly, as the Commission acknowledges, its emergency authority – established by Section 8-508 rather than Section 8-505 – permits it to enter an Interim Order effective for a short period of time in the event that “circumstances do not reasonably permit the holding of a hearing.” 220 ILCS 5/8-508. This is exactly what the Emergency Interim Order does – grant relief for a limited period and set the matter over for hearing. See Emergency Interim Order, Findings (8)-(10).

22. Accordingly, the relief Movants seek cannot be granted without a hearing. Nonetheless, the only hearing Movants request is a status hearing in which utilities will report data related to disconnections. However – as was not the case on and shortly after March 18, 2020 – circumstances now clearly allow for a hearing. Since March 18, the Commission has conducted a number of open meetings, at least one contested evidentiary hearing, (see Transcript of Hearing, Docket No. 19-0271), and at least two

oral arguments (see Transcripts of Oral Argument, Docket Nos. 18-1624 and 19-1121) remotely using WebEx technology. As noted, Movants base their requests for relief upon a great many factual assertions, and assumptions regarding how customers are behaving. Accordingly, a hearing, quite apart from being required by law, is proper under the circumstances.

23. Third, and related, the Commission's Final Order approving the Stipulations authorized utilities to file tariffs implementing the terms of the Stipulations on less than 45 days' notice. Final Order at 5 (June 18, 2020). On information and belief, a number of utilities have done so. It is axiomatic that an approved tariff is a law rather than a contract and has the force and effect of statute. Sheffler v. Commonwealth Edison Co., 2011 IL 110166, ¶¶28. Accordingly, summarily requiring a moratorium would require the utilities to violate their tariffs.

24. Fourth, as the Commission is aware, the utilities have, at the Commission's and Staff's request, voluntarily extended the moratorium with respect to certain customers; Movants concede as much. Motion, ¶¶4-5. More specifically, Nicor Gas and Liberty Utilities have agreed to extend the moratorium on disconnections for all residential customers until March 31, 2021; Ameren Illinois, Aqua Illinois, Illinois American Water, Commonwealth Edison, Peoples Gas and North Shore Gas, and Utility Services of Illinois have all agreed to extend the moratorium until March 31, 2021 for all residential customers who either are LIHEAP-eligible or who self-certify financial hardship, and Mid-American has agreed to extend the moratorium until March 31, 2021 for all residential customers who are LIHEAP-eligible. See Commerce Commission Press Release, "State Regulated Utility Moratorium Extended through Winter 2021 for Eligible Customers"

(September 22, 2020); see also Final Order, Appendix 1, Section 8(b)(i) and *passim*; Appendix 2, Section 13(g) and *passim*. Accordingly, almost every regulated gas, electric, water, and sewer utility customer in the State (those of Nicor, ComEd, Ameren, Peoples / North Shore, Aqua and Illinois-American) can avert disconnection by self-certifying financial hardship, and customers who self-certify financial hardship can also obtain deferred payment arrangements on favorable terms. Final Order, Appendices 1 and 2, generally. In short, it is not clear that a need exists for the relief sought by Movants.

25. Finally, there is the matter of the two Commission-approved Stipulations, to which each Movant is a party and signatory. It appears to Staff that Joint Movants are acting in derogation of these Stipulations. The Staff, which is also a signatory to these Stipulations, is not inclined to act on this, but cannot speak for any other party.

WHEREFORE, the Staff of Illinois Commerce Commission requests that the Commission enter an Order consistent with the arguments set forth herein.

Respectfully Submitted,

/s/

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