



October 29, 2020

The Honorable Ralph S. Northam  
Office of the Governor  
Patrick Henry Building, Third Floor  
1111 East Broad Street  
Richmond, Virginia 23219

**RE: Requested Amendments to Item 4-14 #1c and Item 479.10 #2c regarding  
Utility Disconnect Moratorium and Coronavirus Relief Funds**

Dear Governor Northam:

The undersigned local government and related municipal water and wastewater utility organizations write to request certain amendments to the above referenced budget items regarding the proposed utility disconnect moratorium, debt repayment plans, and use of Coronavirus Relief Funds.

The purpose of these requested amendments is three-fold: (i) to clarify the intent of certain provisions, (ii) to ensure that the Items' intent are executable by water and wastewater utilities in the most efficient way possible, and (iii) protect our customers who have suffered from the terrible effects of the pandemic.

We have recently assembled a diverse workgroup of municipal government and utility representatives to review Item 4-14 #1c and Item 479.10 #2c. The workgroup assessed the amendments' clarity and ease of execution as well as the impacts of COVID-19 on the financial implications to municipal utilities as accounts receivable arrearages have grown since March 1.)

The following are our recommendations to clarify budget language, to ensure that municipal utilities can efficiently carry out what is required, and to protect all customers.

**Item 4-14 #1c (Disconnection Moratorium & Repayment Plans)**

**Paragraph 7.b. (Relationship between Universal Prohibition and Individual Utility Relief)** – There is significant municipal utility concern about the utility revenue loss and cost-

shifting to other customers that is expected to occur when the budget language allows residential customers to decline to pay their utility bills for whatever reason or no reason and the utility is prohibited from disconnecting service and, similarly, when Repayment Plan amortization is as long as 24 months in the customer's sole discretion. We support the existing provision in paragraph 7.f. whereby a municipal utility may obtain relief from the disconnection prohibition when accounts receivable arrearages exceed a defined threshold. However, we are concerned that the phrase "universal prohibition" in paragraph 7.b. might be interpreted to limit that high arrearage-based relief by continuing paragraph 7.b. in effect even for municipal utilities experiencing high arrearages. *Recommendation: "All utilities within 60 days after the enactment of this act must offer customers a Repayment Plan for past due accounts while the ~~universal~~ prohibition on service disconnections is in effect that includes, at minimum, the following provisions..."*

**Paragraph 7.b.2. (2-Year Repayment Deferral at Customer's Sole Discretion) –**

There is also significant municipal utility concern with eliminating the utility's role in setting the amortization period for a repayment plan and instead granting the customer sole discretion to choose any period up to 24 months "that the customer determines is affordable for them." Coupled with the paragraph 7.a. disconnection prohibition, this would allow, if not encourage, customers to extend repayment for an inordinately long period (24 months), when municipal water and wastewater repayment plans are more commonly on the order of a just a few months in normal times. This eight-fold increase risks shifting costs significantly to other customers for two years and even permanently in many cases (e.g., when a customer moves from one locality to another during the repayment period and ceases repayments). The terms of the repayment should be jointly reached to safeguard all parties. *Recommendation: "The Repayment Plan shall amortize the repayment of a customer's utility debt over a minimum period of 6 months and up to 24 months for each utility. The utility will work with the customer to establish a Repayment Plan that meets the requirements of this clause 7.b. ~~and that the customer determines is sustainable and affordable for them.~~"*

**Paragraph 7.c. (Violation of Repayment Plan by Customer) –** The legislation is silent on the implications of a customer violating a Repayment Plan once such a plan has been agreed upon and executed. Coupled with the disconnection prohibition, actual repayment would essentially be voluntary and unenforceable unless violation of the agreed Repayment Plan is grounds for disconnection. The legislation should be clarified by amending paragraph 7.c. to provide that violation of a Repayment Plan is grounds for disconnection of service in the absence of a modification of the plan, which is what the utility would typically allow for a cooperative customer who encounters difficulty complying with terms of an established repayment plan. *Recommendation: "Nothing herein shall limit or prevent the utilities or the residential customers from applying or seeking debt relief or mitigation from any available resource, from entering into another payment plan offered by the utility, or from renegotiating the terms of the Repayment Plan, provided, however, that the utility may discontinue service in the event of noncompliance with an established Repayment Plan or a renegotiated plan."*

**Paragraph 7.h. (Feasibility of Reporting Elements for Municipal Utilities) –** Aspects of the required reporting elements, particularly those at (d), (e) and (f), would be difficult to

implement within the tight two-week timeframe provided during the last two weeks of the calendar year (December 31 report by Commission on Local Government using municipal utility data for the period ending mid-month at December 16). This is likely to require significant manual work because existing billing systems may be incapable of producing the required reports or may require reprogramming to do so. For smaller utilities especially, this manual work is expected to be a staffing challenge. The timing falls during a traditional holiday and vacation season. Most utilities' accounting systems report billing and collection on a calendar month basis rather than mid-month. Recommendation: Delete (d), (e) and (f), and set the end date for the covered period as November 30.

### **Item 479.10 #2c (Coronavirus Relief Funds)**

#### **Paragraph 5.a. (Relationship between Disconnection Moratorium and Relief Funds)**

– Paragraph 7.f. of Item 4-14 #1c allows a municipal utility to obtain an exemption from the disconnection moratorium when its accounts receivable arrearages exceed a defined threshold. This relief exists to protect municipal utilities facing the worst financial impacts of an ongoing disconnection moratorium. In Item 479.10, the budget provides a \$100 million pool of Coronavirus Relief Funds for direct utility customer assistance. We are concerned the phrase in paragraph 5.a. that “utilities must be subject to the utility disconnection moratorium established in Item 4-14 clause 7.a. of this act” could create confusion over Coronavirus Relief Fund eligibility, when the municipal utility originally “subject to” the moratorium later secures an exemption from it on account of high customer arrearages. We believe the intent is to provide assistance in the neediest situations facing customers and utilities. Recommendation: “*In order to be eligible for the funds provided in this paragraph, utilities must be ~~subject to~~ identified in the utility disconnection moratorium established in Item 4-14, clause 7.a. of this act.*” Alternatively, this sentence could simply be deleted as being redundant of the list of eligible utilities identified in paragraph 5.c.

**Paragraphs 5.a. and 5.b. (Timeframe for Eligibility Determinations)** – It would assist utilities with timely preparation of Coronavirus Relief Fund application data to have an advance understanding of the timeframe for determining eligibility. We also believe that the SCC and DHCD should immediately contact all utilities to identify the information needed to jump start the allocation of CARES Act funds. Recommendation (Para. 5.a.): “*The appropriation in this item includes \$100,000,000 the first year from the Coronavirus Relief Funds cited in paragraph B.2. above to be used to help provide direct assistance to customers with accounts over 30 days in arrears as of October 31, 2020.*” Further Recommendation (Para. 5.b.): “*While utilities may require attestation of such hardship, it may be implied that arrearages accrued over 30 days for customer nonpayment of bills, for which federal relief funds shall be used for direct subsidy payments on behalf of customers pursuant to Item 4-14, paragraph d. of this act., were incurred as a financial hardship created by the pandemic; however, in no case shall relief funds be applied to bills for service provided prior to March 1, 2020.*”

**Conclusion**

Virginia's municipal utilities have, under existing law, entered into voluntary utility disconnect moratoria and have been working each day with customers experiencing hardship to establish mutually agreeable debt payment plans. Municipal utilities want to continue working with customers who are experiencing COVID pandemic-related economic hardships while balancing obligations to other customers, continuing to maintain and construct infrastructure, and meeting obligations to bondholders.

The amendments recommended herein will help ensure that Virginia's municipal utilities can meet the Administration's goals in the most efficient and practicable way possible.

Should you or others have questions or desire additional information, please let any of us know. Suggested points of contact for our group are Chris Pomeroy at (804) 874-1028 (c) and [chris@aqualaw.com](mailto:chris@aqualaw.com) and Preston Bryant at (804) 381-1214 and [pbryant@mwcllc.com](mailto:pbryant@mwcllc.com).

Sincerely,

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