Innovative State Actions on Residential Utility Bill Payment Protections During COVID-19 & Beyond

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Voluntary and mandatory moratoriums on utility shut-offs adopted in response to the COVID-19 pandemic have expired or will soon expire in states across the country. Utility regulators and other policymakers must act now to require more flexible and generous utility bill payment practices in order to avoid a tidal wave of terminations of essential utility service. Even before the emergence of COVID-19, about one-third of the U.S. population faced serious difficulties in paying utility bills. The COVID-19 crisis has exacerbated the problem with essential utility service today even less affordable for millions of utility customers. Arrearages of utility customers have skyrocketed amidst unprecedented job losses.

The Center on Budget and Policy Priorities reports that the economic downturn resulting from COVID-19 has left millions of people struggling to put food on the table and afford housing costs. The economic shutdown has disproportionately impacted low-income persons, and in particular, Black and brown communities.

California, Illinois, and Massachusetts have recently risen to these challenges by adopting significant new consumer protections and initiatives that will help consumers stay connected to utility service in these challenging times and beyond. Their groundbreaking work can serve as models for other states, and should inspire policymakers around the country to re-think the current punitive approach to utility payment practices that result in hundreds of thousands of utility service disconnections each year.

California

On June 11, 2020, the California Public Utility Commission (CPUC) voted unanimously to adopt a Phase I decision (D.20-06-003) in CPUC Rulemaking 18-07-005, which created a new suite of consumer protections. Although the rulemaking started before the emergence of the COVID-19 pandemic, the issues addressed in the proceeding mirror the circumstances that residential utility consumers will face once utility shut-off moratoriums are lifted. The Phase I decision provides permanent, progressive, pro-consumer credit and collection rules, as well as policies the state's four largest utility companies must follow to reduce disconnection rates for nonpayment. The proceeding followed the passage of California Senate Bill 598, which requires the CPUC to develop rules, policies, or regulations to reduce the statewide disconnection rate of gas and electric customers by January 1, 2024.

Importantly, in April 2020, the CPUC extended a COVID-19 shut-off moratorium until April 16, 2021 through its approval of Resolution M-4842. Utilities will thus have several months to revise their procedures so that they can implement the robust suite of customer protections before the shut-off moratoriums are lifted.

The Phase I Decision makes permanent, with some modifications, interim rules that were previously adopted in D.18-12-013, including:

- Setting caps on the disconnection rate of the four large electric and natural gas investor-owned utilities (IOUs).
- Protecting "medical baseline" (seriously ill) customers from disconnection for nonpayment as long as they agree to a 12-month payment plan.
- Protecting low-income customers from disconnection for nonpayment until the utility offers to enroll eligible customers in all applicable benefit programs administered by the utility (customers must enroll within two billing cycles). Prior to a disconnection, the utilities have a duty to ask customers if they are interested in hearing about the applicable benefit programs.
- Requiring the utility to offer residential customers a 12-month deferred payment arrangement (DPA) before disconnecting for non-payment.
- Prohibiting disconnection for non-payment of a customer who has received a payment pledge from the Low Income Home Energy Affordability Program (LIHEAP)
- Prohibiting disconnections for non-payment during extreme weather (temperatures above 100 degrees or below 32 degrees).

In addition, the Phase I decision:

- Eliminates service deposits.
- Eliminates reconnection fees.
- Enhances medical baseline protections (a rate program for seriously ill individuals whose condition requires additional utility service) to ease enrollment and add physician's assistants to the list of medical professionals who can certify that a person qualifies.
- Allows a household to avoid a disconnection or be reconnected within 24 hours by paying 20% of past-due balances, and authorizes gas field representatives to collect this payment or contact customers to arrange for it.
- Creates arrearage management programs (AMPs) for the four large investor-owned utilities (IOUs). Customers who are in either the California Alternate Rates for Energy (CARE) discount or Family Electric Rate Assistance (FERA) program, and who owe $500 or more on their bills will be automatically enrolled in the AMP payment plan. Once enrolled in the AMP, the program will forgive 1/12 of a customer's arrearage after each on-time payment of the current bill. After 12 on-time payments, the customer's debt will be fully forgiven. Customers can miss up to two non-sequential payments if the customer makes up the payment on the next billing due date with an on-time payment of both the current bill and the past bill(s). If a customer drops out of the plan before reaching 12 on-time payments, there is no reinstatement of the debt that has already been forgiven.
- Creates new Percentage of Income Payment Plan (PIPP) pilots for the 10 California zip codes with the highest disconnection rates. The program will cap the amount the customer has to pay as a percentage of the customer's income. Customers with arrearages prior to entering the program will receive arrearage forgiveness after twelve on-time payments. (The PIPP pilots are separate from the AMPs described above.).
- Creates a baseline 12-month DPA rule. If a customer is currently in a payment plan, the payment plan can be extended to 12 months if the customer so desires.

- Requires utilities to ensure that eligible customers are enrolled in all assistance programs, such as CARE and FERA, prior to disconnection.
- Streamlines the process by which LIHEAP pledges to pay utility bills, across the four large IOUs, with LIHEAP providers able to verify participation over the phone and assist households in enrolling in the CARE program.
- Establishes a CPUC Enforcement Branch citation program designed to ensure compliance with the rules outlined in the decision.
- Requires utilities to report on compliance with the disconnection cap for the previous year within 120 days of the start of the calendar year, starting in 2022.

Illinois

On June 18, 2020, the Illinois Commerce Commission (ICC), which regulates utilities in the state, adopted consumer protections designed to assist financially struggling residential customers of investor-owned electric, gas, and water utilities once the Commission-issued shut-off moratorium ends.

The proceeding, ICC Docket No. 20-0309, began with the ICC's issuance of an Emergency Interim Order on March 18, 2020 that, among other actions, imposed a moratorium on investor-owned utility shut offs and suspended late fees and penalties due to a customer's inability to pay. The Order also required the investor-owned utilities to file more flexible credit and collections procedures, to be in effect for no less than six months, for the Commission's consideration and approval.

The utilities then filed their plans and entered negotiations with consumer advocates and ICC staff. The result was an agreement on a host of post-moratorium customer protections and utility obligations and for the utilities to recover certain costs related to the moratorium and the pandemic. The agreement, approved in the ICC's June Order, includes:

- Reconnection of previously disconnected customers. The utilities agreed to reconnect, without imposing fees, customers previously disconnected for non-payment up to one year prior to the start of the moratorium and who remained disconnected during the moratorium.
- Extension of the moratorium on disconnections until the earlier of: 1) the day on which all Restore Illinois Health Regions have moved to Phase 4 (Revitalization) under Governor Pritzker's May 5, 2020 Restore Illinois plan (Plan); or (2), in the absence of a Commission determination to the contrary, August 1, 2020, with the Commission retaining authority to extend the moratorium if any region of the state did not move to Phase 4, plus a 30-day grace period. Since the issuance of the Order, two of the four large, investor-owned electric and gas utilities voluntarily agreed to extend the moratorium to October 1, 2020. The two other large IOUs extended the moratorium until September 10, 2020. In a recent letter to the State's investor-owned utilities, the Commission requested the utilities extend the moratoriums until March 31, 2021.
- Debt forgiveness totaling $48 million for customers already enrolled in or eligible for LIHEAP (those at less than 200% of the Federal Poverty Level), with carve-out funding by each utility for undocumented persons. Grant amounts range from $300 to $500 for each of the state's large utilities.
- Provision of 24-month deferred payment arrangements (DPAs), with no down payments for customers claiming financial hardship and no income documentation required. DPAs of 18

months are also available for other residential customers who do not claim financial hardship. A second-chance DPA of the same length will be offered for all customers who default on DPAs.

- Waiver of deposit and late fee requirements for self-certified financial hardship customers (no financial documentation needed).
- A moratorium on credit reporting.
- Reporting of disconnections, late fees, DPAs, deposits, and other data by zip code to ensure that regulators and consumer advocates can monitor disconnection and other credit and collection practices for disproportionate impacts in communities of color.
- An agreement by gas and electric utilities to engage with stakeholders in a discussion on how to more permanently improve the affordability of utility service for low income customers.

In exchange for these protections, the utilities received cost recovery of the debt forgiveness program through an assumed 50% increase in net-charge offs (uncollectibles) from the 2019 calendar year, or an agreed-upon total capped amount, recovered in a rider tariff over a limited time period. The utilities also received, through the tariff, cost recovery for:

- (1) all direct COVID-19-related costs, netted with any cost savings and any benefits to utilities (tax-related or otherwise) attributable to federal legislation, including the Coronavirus Aid, Relief, and Economic Security (CARES) Act;
- (2) waived late fees (subject to a cap); and
- (3) actual foregone reconnection charges.

The new consumer protections are offered for about a six-month period, and represent a win-win for financially strapped consumers seeking assistance from unaffordable arrearages, and the utilities seeking more certainty on cost recovery issues.

Massachusetts

The Massachusetts Department of Public Utilities (DPU) opened an investigation in May, 2020, Docket No. 20-58, to solicit input from stakeholders about the need for post-moratorium policies to protect struggling consumers as well as recommendations for utility cost recovery. The DPU directed the convening of a working group to address the need for consumer assistance and invited the utility companies, the Attorney General, the Department of Energy Resources, the National Consumer Law Center, the Low-Income Energy Affordability Network, and others to participate. The parties submitted joint recommendations on May 29, 2020, and the DPU responded with an order on July 31, which includes the following protections for residential customers:

- Extending the residential disconnection moratorium until November 15. On that date, the winter moratorium for low-income Massachusetts consumers will begin and continue through at least March 15, 2021.
- Extending the length of payment plans for 12 months (up from 4 months before the COVID-19 crisis), with the possibility of extending to 18 months for “unique circumstances.” These extended payment plans will only be offered through late 2020 or early 2021.

- Expansion of the utility's Arrearage Management Program (AMP) until February of 2021, by allowing repeat enrollments, increasing the size of the arrearages that may be forgiven (this component may become permanent), introducing longer and more flexible payment terms, waiving any down payment requirements, and allowing applicants to show eligibility by identifying themselves as low-income consumers with another 60 days to submit documentation of financial eligibility.
- Additional outreach and notice to consumers regarding these (mostly temporary) changes, including a consumer-friendly summary of utility assistance programs for the DPU and state unemployment and welfare agencies to post on their agency websites. Parties are continuing to discuss appropriate utility communications with residential customers to be sent as the moratorium nears its end, including notices that are required before a customer can be disconnected from service.

Members of the working group will continue to meet to analyze remaining issues regarding customer communications and the utilities' ratemaking proposal for recovery of costs related to COVID-19.

The Benefits of More Flexible Credit and Collection Models

In each of these orders, state regulators acted proactively, while utility shut-off moratoriums were in place, to enact consumer protections with the goal of ensuring continued access to essential utility service for vulnerable populations. Each offers model provisions for regulators to adopt in their states. The twin goals of addressing both the unaffordability of utility service for millions of customers, significantly exacerbated by the pandemic, and the utility's interest in maintaining revenue streams, are served when credit and collection policies are revisited to reflect the needs of customers. These more flexible policies, too, recognize that public health and safety cannot be served – particularly during a pandemic – if persons lose their essential utility service and are unable to remain in their homes.

The coronavirus pandemic has confirmed and reinforced what National Consumer Law Center has always known – remaining connected to utility service is essential to maintain public health and safety. Access to utility service should not be forfeited because of a person's inability to afford that service. The regulatory compact that allows a utility to recover costs and a reasonable rate of return in exchange for serving all customers within a service territory must apply equally to customers who cannot afford utility service. The current pandemic and the economic fallout should be a stimulus for state legislatures and state utility commissioners to create and make permanent long-overdue consumer-oriented policies that recognize the societal inequities that have made utility service unaffordable for millions of low-income customers.

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