

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of Addressing the COVID-19)
Pandemic in the State of Kansas.) Docket No. 20-GIMX-393-MIS

**ORDER CONCERNING KANSAS JURISDICTIONAL UTILITIES FOLLOWING
EXPIRATION OF PROHIBITION OF DISCONNECTS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed the public record, the Commission makes the following findings:

1. On March 11, 2020, the World Health Organization (WHO) declared the COVID-19 virus a pandemic. On March 12, 2020, Governor Kelly issued an emergency declaration for the State of Kansas in response to COVID-19, authorizing the use of state resources and personnel to assist with response and recovery operations in affected counties. On March 13, 2020, President Trump declared the COVID-19 pandemic a national emergency.

2. As a result of the actions by the WHO, Governor Kelly, and the President of the United States, on March 16, 2020, the Commission issued an Emergency Order Suspending Disconnects through April 15, 2020, pursuant to K.S.A. 77-536(b) to prevent or avoid the immediate danger to the public health, safety or welfare, and directs all public utilities under the Commission's authority to suspend the practice of disconnecting service for non-payment while customers and communities are experiencing potential hardship from the COVID-19 virus.

3. On March 17, 2020, Governor Kelly issued Executive Order 20-05, prohibiting utility and internet disconnects until May 1, 2020. Executive Order 20-05 covered utilities that are not subject to the Commission's jurisdiction.

4. On April 14, 2020, the Commission issued a Second Emergency Order Suspending Disconnects through May 15, 2020, and provided the Commission may extend the suspension period in a subsequent order pursuant to its emergency powers under K.S.A. 77-536.¹

5. On April 30, 2020, Governor Kelly issued Executive Order 20-28, extending Executive Order 20-05 temporarily prohibiting utility disconnects until May 31, 2020.

6. Since the threat of the COVID-19 pandemic remains, and in recognition of Executive Order 20-28, on May 5, 2020, the Commission issued a Third Emergency Order Suspending Disconnects until May 31, 2020.

7. On May 6, 2020, Commission Staff (Staff) filed Notice of Filing of Commission Staff's Report and Recommendation recommending establishing baseline customer protections for residential and small commercial customers of all electric, natural gas, and water utilities, before the expiration of our disconnect order and the resumption of disconnection and collection activities, including: (1) offering a payment plan up to 12-months and (2) the waiver of any late fees for any residential or small commercial customer unable to pay their bill during the period that disconnections were prohibited.²

8. Once disconnection and collection activities resume, Staff recommends extending these baseline protections for the remainder of 2020, for any residential or small commercial customer that has experienced negative financial impact during the COVID-19 pandemic, and with the likelihood of an additional extension if the COVID-19 pandemic stretches into 2021.³

¹ Second Emergency Order Suspending Disconnects, Apr. 14, 2020, ¶ 3.

² Staff Report and Recommendation, May 6, 2020, p. 1.

³ *Id.*

9. Staff recommends allowing all jurisdictional electric, natural gas, and water utilities to defer any extraordinary bad debt expenses and foregone fee revenue that may arise from these customer protections into a regulatory asset, for accounting purposes only.⁴ Staff suggests deferring the amortization period until the utility's next rate case or alternative rate recovery filing and seeking a Commission ruling on its suggestion before the disconnect ban expires.⁵

10. On May 15, 2020, three gas utilities⁶ filed comments in response to Staff's Report and Recommendation. Black Hills Kansas Gas Utility Company, LLC (Black Hills) filed its Comments to Staff's Report and Recommendation, expressing its appreciation for Staff's efforts to formalize protections for utility customers and utilities, but wants to ensure a better understanding of the proposed requirements.⁷ Black Hills reminds the Commission that it voluntarily suspended nonpayment disconnections for our customers effective March 16, 2020, and is currently offering payment arrangements of up to 12 months for its customers.⁸ Black Hills voiced its concerns that it could be administratively burdensome to assess, validate, and document whether a customer's inability to pay is attributable to COVID-19.⁹ Black Hills recommends not requiring the customer to demonstrate or the utility to verify that a customer's inability to pay is due to COVID-19.¹⁰

11. Atmos echoed Black Hills' concern that customers should not have to prove their inability to pay is due on COVID-19.¹¹ In addition, Atmos suggests: (1) only allowing a residential or small commercial customer to ask to be placed on a COVID-19 Payment Plan one time in 2020;¹²

⁴ *Id.*

⁵ *Id.*

⁶ Black Hills Kansas Gas Utility Company, LLC (Black Hills), Atmos Energy Corporation (Atmos), Kansas Gas Service, a Division of ONE Gas, Inc. (Kansas Gas).

⁷ Comments to Staff's Report and Recommendation, May 15, 2020, ¶ 5.

⁸ *Id.*

⁹ *Id.*, ¶ 5b.

¹⁰ *Id.*

¹¹ Atmos Energy Corporation's Response to Staff's Report and Recommendation, May 15, 2020, ¶ 2.

¹² *Id.*, ¶ 2b.

(2) the utility should not be obligated to offer another COVID-19 Payment Plan if the customer fails to make a required payment under the COVID-19 Payment Plan;¹³ (3) when requesting the COVID-19 Payment Plan, the customer agrees to pay whatever arrearages is owed as of the date of the request over a 12-month period by making a 1/12th payment each month in addition to paying its current bill; and if the residential customer has an existing Cold Weather Rule (CWR) Payment Plan in place, the COVID-19 Payment Plan will replace the CWR Payment Plan by rolling the remaining amounts owed under the CWR Payment Plan into the COVID-19 Payment Plan;¹⁴ (4) the COVID-19 Payment Plan will have no impact on the 2020 -2021 CWR period;¹⁵ (5) A utility should have the option to replace its “knock and collect” process under its tariffs with a text and virtual payment process to allow for social distancing and customer/employee safety and protection while the COVID-19 Payment Plan is in effect;¹⁶ (6) the time requirement to reconnect customers should be waived as part of approval of the COVID 19 Payment Plan.¹⁷

12. Kansas Gas’s comments were substantially the same as Atmos’s, but Kansas Gas also suggests allowing utilities to require a customer to demonstrate they applied for assistance, such as LIHEAP before the customer is entitled to a COVID-19 Payment Plan.¹⁸ Since the deadline to file for LIHEAP are fast approaching, the Commission believes requiring customers to demonstrate they applied for assistance before being eligible for a COVID-19 Payment Plan would unfairly bar many otherwise eligible customers from getting much needed relief with their utility bills. The Commission finds it would not be in the public interest to require customers to demonstrate they

¹³ *Id.*, ¶ 2c.

¹⁴ *Id.*, ¶ 2c.

¹⁵ *Id.*, ¶ 2d.

¹⁶ *Id.*, ¶ 2e.

¹⁷ *Id.*, ¶ 2f.

¹⁸ Kansas Gas Service's Response to Staff's Report and Recommendation, May 15, 2020, ¶ 8

applied for assistance before pursuing a COVID-19 Payment Plan, and therefore, rejects Kansas Gas's suggestion.

13. Also on May 15, 2020, Empire District Electric Company (Liberty-Empire) filed its Response to Staff's Report and Recommendation. Liberty-Empire's comments are materially the same as those of Atmos.

14. On May 19, 2020, Staff filed its Reply to the Utilities' Comments, explaining in time of great economic uncertainty, it would be in the public interest to allow customers two opportunities for a payment plan, rather than the one opportunity proposed by Atmos.¹⁹ While Staff understands Atmos's desire to combine a CWR payment plan with a COVID-19 payment plan, the resulting monthly payment is likely to be larger, thereby creating a potentially greater strain on a customers' monthly budget.²⁰ Staff believes any discussions on a waiving the "knock and collect" is appropriately addressed in a company-specific waiver docket, rather than this general investigation.²¹ Similarly, Staff believes Atmos's request for a waiver of the time requirement to make reconnections should be addressed through specific requests for waivers in separate pending dockets.²²

15. Staff opposes Kansas Gas's request that the Commission authorize recovery of the COVID-19 related bad debt and late fees through the COOR/ACA because the request is premature until a utility files an application demonstrating extraordinary need for such recovery.²³

16. Staff has remained in regular communication with the Commission's jurisdictional electric, gas, and water companies since the onset of the COVID-19 pandemic to determine financial, operational, and customer impacts, as well as the utilities' mitigation efforts.²⁴ Several utilities have

¹⁹ Commission Staff's Reply to the Responses to Staff's Report and Recommendation, May 19, ¶ 7.

²⁰ *Id.*

²¹ *Id.*, ¶ 8.

²² *Id.*, ¶ 9.

²³ *Id.*, ¶¶ 14-15.

²⁴ Staff Report and Recommendation, p. 2.

informed Staff that they plan to offer customers the opportunity to repay their arrearages over a period up to 12-months, similar to the protection available under the Cold Weather Rule (CWR).²⁵ Other utilities have expressed their intent to continue waiving late fees and disconnects through June 1, 2020.²⁶

17. Beyond the CWR, the Commission's Billing Standards require jurisdictional utilities to offer eligible residential customers²⁷ the ability to repay their arrearage balances over a 12-month period. While helpful, the Billing Standards only apply to residential customers, with no outstanding overdue balance.²⁸ If a residential customer's bills becomes delinquent, under the Commission's Billing Standards, the customer is charged a 2% late payment charge on the unpaid balance. Nonresidential customers can receive an additional 14 days to pay their bill in return for a 1% late payment charge.²⁹ Several Kansas utilities have decided to waive late fees for residential and small commercial customers during the COVID-19 pandemic.

18. In the 20-GIMG-423-ACT Docket (20-423 Docket), Gas Utilities³⁰ filed a Joint Application seeking an accounting authority order (AAO), authorizing them to accumulate and defer for recovery in their next rate case filings certain costs incurred and revenues lost related to COVID-19, plus associated carrying costs beginning March 1, 2020.³¹ The Gas Utilities face unanticipated, extraordinary costs related to the COVID-19 pandemic, which are not currently included in their base

²⁵ *Id.*

²⁶ *Id.* Under the CWR, utility companies are required to offer a 12-month payment plan for residential customers to maintain or reestablish service, provided the customer agrees to pay 1/12th of the total amount owed, 1/12th of the current bill, the full amount of any disconnection or reconnection fee, plus any applicable deposit to the utility; with the remaining balance to be paid in equal payments over the next 11 months.

²⁷ To be eligible, residential customers must have repaid any balances from any previous payment plan. *Id.*, pp. 2-3.

²⁸ *Id.*, p. 3.

²⁹ *Id.*

³⁰ Black Hills Kansas Gas Utility Company, LLC; Kansas Gas Service, a Division of ONE Gas, Inc.; and Atmos Energy Corporation.

³¹ *Id.*, pp. 2-3.

rates.³² Some of those costs, such as bad debt expense, waiver of late payment fees and reconnection charges result from the suspension of disconnecting service for non-payment mandated by the Commission and the State of Kansas.³³ They also are experienced lost revenues due to statewide Stay at Home orders. The AAO sought by the Gas Utilities would permit them to identify, track, document, accumulate in a proper and separate account or sub-account and defer their actual reasonable and prudently incurred costs related to the COVID-19 virus and lost revenues, plus carrying costs, to request recovery of said costs and lost revenues in their next respective general rate case filing.³⁴ The Gas Utilities agree to maintain supporting documentation, subject to review and determination of the amount to be recovered in their next rate cases, file an annual report that provides costs incurred and revenues lost due to COVID-19, and determine an appropriate amortization period and the amount of carrying costs.³⁵

19. Both Evergy and the Empire District Electric Company (Liberty-Empire) also filed Applications³⁶ for an AAO that would authorize them to accumulate and defer for recovery in their next rate case filings certain costs incurred and revenues lost related to the COVID-19 virus, plus associated carrying costs beginning March 1, 2020. Liberty-Empire's Application is effectively the same as the Gas Utilities' Application.³⁷ Staff expects Evergy Kansas Central, Inc. (formerly Westar) and Evergy Metro, Inc. (Evergy Kansas Metro, formerly KCPL) to file a similar Application within the next few weeks.³⁸

20. The Commission agrees that it is in the public interest for the Commission to ensure that certain customer protections are in place before the Commission's Third Emergency Order

³² *Id.*, p. 4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Docket No. 20-EKME-454-ACT (Evergy); Docket No. 20-EPDE-427-ACT (Liberty Empire).

³⁷ Staff Report and Recommendation, p. 4.

³⁸ *Id.*

Suspending Disconnects expires on May 31, 2020. Therefore, the Commission adopts Staff's recommendations to require all jurisdictional natural gas, electric, and water utilities to: (1) offer residential and small commercial customers a payment plan of up to 12-months to pay off any arrearage balances accumulated during the pendency of the Commission's prohibition on disconnections;³⁹ and (2) waive late fees for these customers.⁴⁰

21. Once disconnection and collection activities resume, Staff recommends requiring utilities to offer these basic customer protections (12-month payout plans and waived late fees) for any residential or small commercial customer that has experienced negative financial impact during the COVID-19 pandemic through 2020, with a likely extension into 2021.⁴¹ The Commission agrees, and therefore orders the jurisdictional utilities to offer 12-month payout plans and waive late fees for any residential or small commercial customer that has experienced negative financial impact during the COVID-19 pandemic through 2020. The Commission directs Staff to file a report and recommendation if it believes these customer protections should be extended beyond the end of 2020.

22. The Commission's Billing Standards require customers wishing to repay arrearages over 12-months to have paid all prior payment arrangements is complicated by the CWR period ending as the Commission issued its Emergency Order Suspending Disconnects. Therefore, Staff recommends that the Commission's Billing Standards requirement that customers wishing to repay arrearages over 12-months have paid all prior payment arrangements is suspended for customers affected by COVID-19 during the pendency of the pandemic.⁴² Additionally, Staff recommends extending these payment plans to small commercial customers.⁴³ The Commission agrees that these

³⁹ *Id.*, pp. 4-5.

⁴⁰ *Id.*, p. 5.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* The definition of small commercial customers should be found in each utility's tariff. *Id.*, fn 8.

customer protections will help provide a reasonable path forward for customers unable to pay their electric bills during the COVID-19 pandemic. The Commission also agrees with Black Hills' comment that it could be administratively burdensome to assess and validate whether a customer's inability to pay is attributable to COVID-19. Thus, the Commission will not require customers to demonstrate or the utilities to verify that a customer's inability to pay is due to COVID-19.

23. While these provisions will directly benefit customers who have been unable to pay their bills, they will indirectly benefit all customers by establishing safeguards that make it more likely delinquent accounts are paid off over a reasonable period, which results in less bad debt expenses to be recovered from ratepayers.⁴⁴

24. These customer protections should be the minimum customer protection offered. Several utilities have advised Staff that they plan to offer customer protections in excess of these minimums.⁴⁵ The Commission appreciates those efforts by the utilities and encourages them to continue offering additional customer protections.

25. Since these necessary customer protections will likely have negative financial implications for utilities, the Commission adopts Staff's recommendation to allow these deferrals for all electric, natural gas, and water utilities that request them. Because the COVID-19 pandemic was unforeseen, extraordinary, and outside the control of utility management, it meets the standards traditionally used to evaluate a utility request for an AAO or other extraordinary ratemaking accommodation.

26. The Commission agrees with Staff that it is in the public interest to allow customers two opportunities for a payment plan, and thus rejects Atmos's proposal to limit customers to one

⁴⁴ *Id.*, pp. 5-6.

⁴⁵ *Id.*, p. 6.

opportunity in 2020. The Commission also believes waiver of the “knock and collect” procedure or the time requirements for reconnections should be deferred to a company-specific waiver docket.

27. The Commission agrees with Staff that Kansas Gas’s request to recover the COVID-19 related bad debt and late fees through the COOR/ACA is premature and therefore, denies it at this time.

28. Due to the unprecedented economic impact of the COVID-19 pandemic, the Commission instructs utilities to waive the 1% to 2% late fee on unpaid balances.

29. The Commission also directs its Office of Public Affairs to include information on LIHEAP on the Commission’s website to make customers aware of the assistance program.

30. The Commission directs Staff to continue to monitor the impact of COVID-19 on customers and utilities during the pendency of the pandemic and make additional recommendations to the Commission as warranted.

THEREFORE, THE COMMISSION ORDERS:

A. Staff’s Report and Recommendation is adopted. All jurisdictional electric, natural gas, and water utilities are required to offer their residential and small commercial ratepayers a payment plan of up to 12-months to pay off any delinquent account balances that arose during the Commissions' prohibition on disconnections; and waive all late fees during the period of delinquency and repayment. These protections should continue through 2020 for any customer or small commercial customer that has experienced negative financial impact during the COVID-19 pandemic. These customer protections are the minimum a utility must offer.

B. If the COVID-19 pandemic stretches into 2021, Staff is directed to file a recommendation in this Docket recommending an extension of these protections.

C. All jurisdictional electric, natural gas, and water utilities may defer any extraordinary bad debt expenses and foregone fee revenue that may arise from these customer protections into a regulatory asset. These deferrals are for accounting purposes only. All justifications of the appropriateness of these costs for recovery, the application of any carrying charges, and the proper amortization period will be deferred until the utility's next rate case or alternative rate recovery filing.

D. Staff is directed to monitor the impact of COVID-19 on customers and their utility companies and make additional recommendations in this Docket as appropriate.

E. This Order is being served electronically.


F. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁴⁶

G. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 05/21/2020



Lynn M. Retz
Executive Director

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⁴⁶ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).