

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO ALLEGED)	
VIOLATIONS OF KRS 278.160, 807 KAR 5:006;)	
AND COMMISSION ORDERS BY SALT RIVER)	
ELECTRIC COOPERATIVE CORP., SALT RIVER)	
ELECTRIC COOPERATIVE CORP.'S BOARD OF)	
DIRECTORS: JIMMY LONGMIRE, CHAIRMAN;)	CASE NO.
A.C. "HAPPY" CAHOE, VICE CHAIRMAN; LINDA)	2020-00347
WEST, SECRETARY; GAYLE TROUTMAN,)	
TREASURER; DARRELL TINGLE, DIRECTOR;)	
AND GARRY MANN, AND SALT RIVER ELECTRIC)	
COOPERATIVE CORP.'S PRESIDENT AND)	
CHIEF EXECUTIVE OFFICER, TIM SHARP)	

ORDER

The Commission, on its own motion and pursuant to KRS 278.260, establishes this proceeding to conduct a formal investigation into Salt River Electric Cooperative Corp.'s (Salt River Electric), and, in their individual capacities, the members of Salt River Electric's Board's, Jimmy Longmire, A.C. "Happy" Cahoe, Linda West, Gayle Troutman, Darrell Tingle, and Garry Mann, and Tim Sharp, President and CEO for possible violations of (1) the Commission's Orders in Case No. 2020-00085¹ entered on September 21, 2020, and September 30, 2020; (2) Salt River Electric's tariff provisions governing disconnection procedures; (3) and 807 KAR 5:006, Section 15(f). These alleged violations arise out of recent and planned disconnections of Salt River Electric member's electric service for nonpayment for arrearages accrued during the COVID-19 pandemic.

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020).

Salt River Energy is a nonprofit, member-owned rural electric cooperative corporation organized under KRS Chapter and is subject to the Commission's jurisdiction pursuant to KRS 278.010(a), KRS 278.040, and KRS 279.210(1).² Salt River Energy is engaged in the distribution and sale of electric energy to 52,831 customers in Anderson, Bullitt, Jefferson, Larue, Marion, Mercer, Nelson, Shelby, Spencer, and Washington counties, Kentucky.³

On March 16, 2020, the Commission, in Case No. 2020-00085, in response to the state of emergency caused by COVID-19, entered an Order⁴ that, *inter alia*, temporarily suspended all disconnections for nonpayment. On September 21, 2020, the Commission entered an Order that provided guidance on lifting the moratorium on disconnections for prepay and postpay customers of jurisdictional utilities.⁵ The Commission, regarding post-pay customers, ordered:

1. By default for all affected customers, create payment plans for all accumulated arrearages from service rendered on or after March 16, 2020, and before October 1, 2020, to the extent that past due balances exist. The term of the default payment plans shall be no less than six months and no longer than two years. Six months reflects the approximate length of time the Commission's moratorium on disconnections will have been in place until the entry of this Order. Regardless of the length of the payment plan, default payment plans shall only require the customer to pay a fixed,

² KRS 279.210(1) provides: Every corporation formed under KRS 279.010 to 279.220 shall be subject to the general supervision of the Public Service Commission, and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.990.

³ Annual Report of Salt River Electric Cooperative Corp. to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2019, at 44 and 52.

⁴ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020).

⁵ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Sept 21, 2020) (September 21, 2020 Order). A copy of the Order is attached as Appendix A to this Order.

equal installment over the term of the plan. For instance, with an arrearage of \$36.00, using a payment plan of six months in duration, the monthly charge for the payment plan would be \$6.00.

2. Take all reasonable efforts to contact the customers who have received default payment plans. Utility contact and communication with customers is necessary for utilities to convey information regarding customer arrearages, ways to pay, avenues for assistance, and the details of payment plans.

3. If customers request alternatives to the default payment plan ordered by the Commission, work with customers on payment plans that accommodate customer circumstances while balancing the concern of the utility, including its income and cash flow.

4. Consider customers with arrearages subject to a payment plan “on-time” for all purposes, except those explicitly exempted herein, as long as they timely pay their bill for current service *and* the amount required under the default or an alternative, agreed-upon payment plan.⁶ (Italics in the original.)

The September 21, 2020 Order also explained that a customer that was no longer considered “on time” could be subject to disconnection beginning on October 20, 2020. The Commission specifically noted that utilities were to follow their tariffed procedures for disconnections:

At no time though will a utility be permitted to deviate from their tariffs, particularly regarding disconnections, unless permitted herein or by a subsequent Commission Order. When a customer is no longer considered “on time” regarding arrearage amounts accumulated between March 16, 2020, and October 1, 2020, utilities shall follow their tariffed procedures for disconnection should they choose to disconnect the customer.⁷ (Emphasis added.)

⁶ September 21, 2020 Order at 7–8.

⁷ *Id.* at 8.

Thus, even though a customer may not be considered “on time” on or after October 20, 2020, a utility, before disconnecting that customer, must comply with the utility’s disconnection procedures in its tariff as well as applicable Commission regulations and statutes. Moreover, customers are to be automatically placed on a default payment plan of no less than six months if no other agreement was reached between the customer and the utility. The Commission also exhorted the utilities to make extraordinary efforts to contact their customers with arrearages in order to inform them of payment plans.

Regarding prepay customers with arrearages, the Commission found that, “utilities are permitted to **either** offer payment plans for any arrearage accumulated between March 16, 2020, and October 1, 2020, **or** use the current sharing/splitting percentages in their prepay tariffs to allocate payments between current and past due amounts.”⁸ (Emphasis added.)

On October 21, 2020, the Commission received notice that Salt River Electric had begun disconnection of its members. Employees of the Commission contacted Salt River Electric to inquire as to whether Salt River Electric had begun disconnections. In an email dated October 21, 2020, sent from Phyllis Oliver, Manager of Office Services for Salt River Electric to Rosemary Tutt, Branch Manager of the Office of the Consumer Services Branch for the Commission, Ms. Oliver confirmed that Salt River Electric has already disconnected several of its prepay members and planned to begin disconnections of its postpay members beginning October 27, 2020.⁹

⁸ September 21, 2020 Order at 11.

⁹ Ms. Tutt’s affidavit, in which a copy of the email is included, is attached as Appendix B.

As discussed above, the Commission established guidelines for disconnecting utility customers that had accumulated arrearages due to the COVID-19 pandemic. In addition to those guidelines, a utility must conform to its tariff and 807 KAR 5:006, Section 15(f), when seeking to disconnect these customers.

Commission regulation 807 KAR 5:006, Section 15(f), governs disconnection procedures for gas and electric utilities. Specifically, 807 KAR, Section 15(f)(1)(a), provides that: “Each electric or gas utility proposing to terminate customer service for nonpayment shall mail or otherwise deliver to that customer ten (10) days' written notice of intent to terminate.” Commission regulation 807 KAR 5:006 Section 15(f)(1)(b) provides that: “Service **shall not, for any reason, be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill.**” (Emphasis added.)

Salt River Electric's tariff on file with the Commission mimics the requirements in 807 KAR 5:006, Section 15, regarding disconnection for nonpayment of postpay customers. Salt River Electric's tariff provides:

However, the Cooperative shall not discontinue service to any member for non- payment of bills (including late charges) without first having made reasonable effort to induce the member to pay same. The customer **shall be given at least 10 days written notice, but the cut-off shall not be effective for 27 days after the mailing date of the original bill.**¹⁰ (Emphasis added.)

Incorporating Salt River Electric's tariff provision and the requirements of the September 21, 2020 Order for disconnections of post pay members, a utility would have to, based upon the October billing cycle, render a bill for electric service consumed **after** October 1, 2020, and include in that bill the payment for the partial payment plan either

¹⁰ Salt River Electric's Tariff, P.S.C. No. 12, 1st Revised Sheet No. 43.

agreed to by the customer **or**, if there was no agreement on a payment plan, the amount due under the default six-month payment plan. Unless Salt River Electric's billing cycle ended on October 2, 2020, Salt River Electric mailed its bills that day, and postpay members failed to pay both the current bill for service rendered after October 1, 2020, and the payment under the partial payment plan, the conceivably earliest date Salt River Electric could begin disconnections of its postpay members would be September 29, 2020.

Regarding prepay customers, as discussed above, the Commission required that Salt River Electric either enter a payment plan with a member that had an arrearage or use the prepay splitting mechanism in the utility's tariff to apply payments to arrearages. Salt River Electric's tariff provides a 70/30 split, where 70 percent of a payment is applied to new purchases and 30 percent is applied to the arrearage.¹¹ The Commission required that the payment plan in lieu of the tariff splitting mechanism be provided for a minimum of one year, and for no more than two years.¹² Unless a customer refuses to make any payment on a prepay account, it is difficult to discern a situation in which Salt River Electric would already be disconnecting prepay customers.

KRS 278.160 codifies the "filed rate doctrine." It requires a utility to file with the Commission, 'schedules showing all rates and conditions for service established by it and collected or enforced.' It further states that:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered than that prescribed in its filed schedules, and no person shall receive any service for any utility for

¹¹ Salt River Electric's Tariff, P.S.C. No. 12, 2nd Original Sheet No. 81B.

¹² September 21, 2020 Order at 11.

compensation greater or less than that prescribed in such schedule.

The Kentucky Court of Appeals has described the filed rate doctrine as:

[T]he proposition that when the legislature has established a comprehensive ratemaking scheme, the filed rate defines the legal relationship between the regulated utility and its customer with respect to the rate that the customer is obligated to pay and that the utility is authorized to collect.... While the doctrine has not been applied by name in Kentucky, its underlying principles are incorporated and recognized in both our statutory and our case law.¹³

A utility's failure to abide by its tariff regarding disconnections, whether prepay or postpay, is a *de facto* violation KRS 278.160.

Based on the above, the Commission finds that this proceeding should be initiated to investigate possible violations of Salt River Electric's tariff, Commission Orders in Case No. 2020-00085, and 807 KAR 5:006, Section 15. Should the Commission find that Salt River Electric has committed any such violations, the Commission may impose penalties pursuant to KRS 278.990,¹⁴ and take any further action deemed necessary pursuant to KRS 278.270 and KRS 278.280. The Commission further finds it is in the public interest that an in-person hearing be held in this matter. The Commission also finds that Salt River Electric should cease all disconnections for nonpayment until further Order of the Commission.

¹³ *Cincinnati Bell Telephone Co. v. Kentucky Public Service Com'n*, 223 S.W.3d 829, 837 (Ky. App. 2007) (internal citations omitted).

¹⁴ KRS 278.990 provides that the Commission may penalize a utility or any employee, agent, or officer of a utility, for violating any provision of KRS Chapter 278, Commission Regulations, or Commission Orders.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. This proceeding is initiated to investigate and examine Salt River Electric and, individually, Salt River Electric's Board's, and Executive Officers's possible violations of: the Commission's Orders in Case No. 2020-00085¹⁵ entered on September 21, 2020, and September 30, 2020; Salt River Electric's tariff provisions governing disconnection procedures; and 807 KAR 5:006, Section 15(f).

2. Salt River Electric, Jimmy Longmire, A.C. "Happy" Cahoe, Linda West, Gayle Troutman, Darrell Tingle, Garry Mann, and Tim Sharp are made parties to this proceeding.

3. The electronic filing procedures set forth in 807 KAR 5:001, Section 8, shall be used in the processing of this matter.

4. No later than 11:59 Eastern Daylight Time October 23, 2020, Salt River Electric shall file with the Commission:

a. Responses to the allegations that Salt River Electric has violated its tariff procedures for disconnections;

b. Responses to the allegations that Salt River Electric violated 807 KAR 5:006;

c. Responses to the allegations that Salt River Electric violated the Commission's Orders entered in Case No. 2020-00085.

¹⁵ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020).

d. Thorough descriptions of Salt River Electric's attempts to contact its members regarding partial payment plans, as well as detailed descriptions of Salt River Electric's efforts to notify its customers of the availability of payment plans.

5. Salt River Electric, by counsel, shall enter an appearance in this proceeding. The entry of appearance shall include the name, address, telephone number, fax number, and electronic mail address of counsel.

6. Pursuant to 807 KAR 5:001, Section 8(9), Salt River Electric, by counsel, shall file a written statement with the Commission that:

a. Certifies that it, possesses the facilities to receive electronic transmissions; and

b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

7. A hearing in this matter shall be held on October 26, 2020, at 1 p.m. Eastern Daylight, in the Richard Raff Hearing Room (Hearing Room 1) at the offices of the Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky.

8. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video transcript shall be made of the hearing.

9. Salt River Electric, until further Order of the Commission, shall immediately cease all disconnections for nonpayment.

10. The Commission directs Salt River Electric to the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085¹⁶ regarding filings with the

¹⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6. Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 24, 2020), Order at 1–3.

Commission. The Commission expects the original documents to be filed with the Commission within 30 days of the lifting of the current state of emergency. All responses in paper medium shall be appropriately bound, tabbed, and indexed. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

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By the Commission

ENTERED
OCT 22 2020
KENTUCKY PUBLIC SERVICE COMMISSION

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ATTEST:



Deputy Executive Director

Case No. 2020-00347

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00347 DATED **OCT 22 2020**

TWENTY-ONE PAGES TO FOLLOW

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC EMERGENCY DOCKET RELATED) CASE NO.
TO THE NOVEL CORONAVIRUS COVID-19) 2020-00085

ORDER

On March 16, 2020, the Commission established this docket in response to a state of emergency brought on by the pandemic of the novel coronavirus, COVID-19. The Commission's Order entered on March 16, 2020 (March 16, 2020 Order), *inter alia*, directed utilities to temporarily cease disconnections for nonpayment, waive all late payment charges, and urged utilities to offer lenient payment plans for current unpaid balances.¹ The Commission made clear, however, that customers are not relieved of their obligation to pay for the services that they receive.² The March 16, 2020 Order also temporarily relieved utilities from several regulatory requirements, such as filing certain reports,³ and directed utilities to request relief from the Commission if a utility's tariff interfered with efforts to address the pandemic.⁴

Approximately six months have passed since the Governor's declaration of a state of emergency⁵ and the entry of the March 16, 2020 Order, and the Commission now finds

¹ Order at 3–5 (Ky. PSC Mar. 16, 2020).

² March 16, 2020 Order at 5.

³ *Id.* at 6–7.

⁴ *Id.* at 8.

⁵ See Executive Order 2020-215.

that circumstances dictate modifications of its previous actions and Orders in this docket, including the moratorium on disconnections for nonpayment. We take these initial steps cautiously and will closely monitor the effects of our actions and the ongoing pandemic.

Although the initial closing of schools and businesses, and resulting effect of most being at home, has passed, a substantial number of Kentuckians are still at home, whether for work or school or out of necessity.⁶ The Commission's March 16, 2020 Order primarily focused on continuity of service, ensuring people had access to safe and clean premises, rather than a direct response to historic unemployment and business closures. In light of the unabated viral pandemic, concerns around health and safety nevertheless persist. Many schools are following the Governor's recommendation to conduct virtual education in lieu of in-person instruction. Although many businesses have or may soon reopen, a historic number of individuals are nevertheless, for a variety of reasons, confined primarily to their homes.

In order to assess the impact of COVID-19 and the March 16, 2020 Order on utilities and their customers, the Commission conducted discovery on a number of items.⁷

⁶ For example, the Governor has requested that public schools delay in-person classes until at least September 28, 2020. <https://www.courier-journal.com/story/news/education/2020/08/10/beshear-kentucky-school-superintendents-talk-covid-19-updates/3324357001/> (Last visited Sept. 7, 2020).

⁷ Commission Staff's Initial Request For Information to Duke Energy Kentucky, Inc., Kentucky Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Columbia Gas of Kentucky, Inc., Atmos Energy Corporation, Delta Natural Gas Company, Inc., and Kentucky-American Water Company (Ky. PSC June 23, 2020); Commission Staff's Initial Request for Information to Each of East Kentucky Power Cooperative, Inc.'s Member Cooperatives and Big Rivers Electric Corporation's Member Cooperatives (Ky. PSC June 23, 2020); and Commission Staff's Initial Request for Information to Warren County Water District, Butler County Water System, Simpson County Water District, Oldham County Water District, Ohio County Water District, Northern Kentucky Water District, Boone County Water District, Hardin County Water District #1, Hardin County Water District #2, Mountain Water District, South Hopkins Water District, McCreary County Water District, Wood Creek Water District, Hyden-Leslie County Water District, Henderson County Water District, Cannonsburg Water District, Green River Valley Water District, Muhlenberg County Water District #3, and Grayson County Water District (Ky. PSC June 23, 2020).

The utilities were chosen to allow the Commission to review how a variety of types of utilities were functioning. The Commission believes the utilities (and their respective customers) chosen for the discovery are reflective of the utilities regulated by the Commission that provide gas, water, electric, and sewer service and provide a reasonable data set from which to make decisions moving forward.⁸

The results of the Commission's discovery were mixed. There seems to exist a significant dichotomy between two distinct groups of utility customers for nearly every utility that provided information. On the whole, it appears that the on-time payment rates for customers, that is, the percentage of customers who pay on time each month, has changed little, and in some instances increased, as compared to multiple periods preceding the outbreak of COVID-19 in Kentucky. Considering all utilities surveyed were unable to assess the late fees that nearly all of them ordinarily charge and were unable to disconnect for nonpayment, this result was unanticipated and indicates that late fees may have little impact on the timeliness of at least residential utility payments. Generally, the same percentage of customers who have always paid on time continued to do so during the first half of 2020. Simply put, the Commission finds that the evidence indicates that late fees have little discernible effect on the timeliness of residential customer payments for utility service. At best, late fees should represent the cost of a utility's short-term financing of arrearages, but even then, they are not currently calculated based on actual costs or the time value of money. The "on-time" group represents anywhere from 65 percent of a utility's customer base to 90 percent. The remainder of customers,

⁸ The Commission Staff's requests for information were served on Kentucky's eight largest nontelecommunications investor-owned utilities, all 19 rural electric cooperatives; and 19 water districts and associations.

whether they are designated as prepay or postpay, are seemingly indifferent, either in perception or by necessity, to fees for late payments for utility service.

Nevertheless, it appears from the evidence in this matter that the behavior of the minority of customers in each system that do not pay on time, either by design or necessity, regardless of the assessment of late payments, is impacted by the prospect or action of disconnection. Evidence provided in response to the Commission indicates that for some systems, nearly the entirety of customers who have not paid on time have some sort of arrearage that has accrued since mid-March 2020. Accordingly, the Commission, based on the evidence, finds that a minority of utility customers, but nevertheless a significant number, are influenced by the prospect or reality of utility service disconnection insofar as they eventually pay, albeit late.

A meaningful portion of this group of customers represents the outer bound of utility payment assistance needed within each system. Take, for instance, the rules in place for Low Income Home Energy Assistance Program (LIHEAP) assistance, which requires that a customer be “late” or have received a notice of termination in order to qualify.⁹ The late fee applicable to the service is still added to a bill that many of these “late” customers cannot pay and will not be able to pay at all until the initial bill is actually late. Only then can the customer request and receive assistance, so that the late fee is included in the amount of assistance provided, thereby reducing the amount of assistance available to other customers.

⁹ See 921 KAR 4:116, Section 3(4)(b) (indicating that a utility customer is eligible for the crisis component of LIHEAP assistance if they have received a past due or disconnection notice); see *also* 921 KAR 4:116E (an emergency regulation promulgated in response to additional funding provided in the Coronavirus Aid, Relief, and Economic Security (CARES) Act that expanded eligibility for LIHEAP assistance); and 807 KAR 5:006, Section 15(3)(a)-(d) (Commission rules extending the termination date for 30 days for certain customers that apply for LIHEAP assistance).

Based on its review of data request responses filed in this matter, the Commission finds that the number of customers in arrearage and the amount they owe is increasing, but as of the end of June 2020, neither of these totals were materially in excess of historical averages. Such a conclusion regarding the totality of responses does not change the fact that this is not necessarily the case for every utility. For instance, as of June 20, 2020, Hyden-Leslie County Water District had 323 customers subject to disconnection but for the Commission's moratorium, while in 2019 the utility only disconnected 242 customers.¹⁰ Nevertheless, the range of late payment notices issued by the utility each month, the utility action immediately preceding a disconnection, was between 325 and 457, all more than the total that would be subject to disconnection midyear 2020.¹¹ Although the average total bill¹² is increasing during the pandemic, these amounts are not materially different from past years. This data indicates a relatively minor impact to utility income statements. These figures do not indicate that there are not customers struggling to pay their bills though. In fact, the data merely reflects that the need for utility assistance frequently outpaces supply. Although the availability of payment assistance has consistently been a problem, including the lack of funding or programs to assist customers with water or sewer bills, the pandemic merely exacerbated the issue. Given the changed circumstances regarding the pandemic, including the movement from Governor Beshear's "*Healthy at Home*"¹³ initiative to his "*Healthy at*

¹⁰ Response of Hyden-Leslie County Water District to Commission Staff's Initial Request for Information (filed July 23, 2020), Response to Question No. 8.

¹¹ *Id.*, Response to Question No. 10.

¹² Total bill is defined in this context as the bill for current service plus arrearages and fees.

¹³ Executive Order No. 2020-257

*Work*¹⁴ program, the accumulation of arrearages for both customers and utilities, and the need for certainty prior to the winter, the Commission finds that modifications to its Orders in this matter are necessary.

Regardless of the Commission's modifications herein, the reality is that the Commonwealth is still dealing with a viral pandemic that requires all of us, including utilities, to prioritize the health and safety of our communities. Utilities in the Commonwealth have considerable experience operating in a safe manner. Now though, it is more important than ever to maintain healthy and safe conditions through the provision of utility service. Although the Commission finds it necessary to modify its previous Orders in this docket, it stresses that the continued health and safety of Kentuckians, including the ability to occupy their dwellings, is paramount.

Based on the foregoing, the Commission lifts its moratorium on utility disconnects for nonpayment beginning October 20, 2020, with the following caveats and conditions. Although utilities under the Commission's jurisdiction may choose to disconnect for nonpayment of service, subject to the conditions herein, nothing in this Order should be construed as requiring utilities to do so. As the Commission noted in its March 16, 2020 Order in this matter, a number of utilities chose to voluntarily suspend disconnections for nonpayment. Those and other utilities maintain their ability to continue to do so after October 20, 2020, on a voluntary basis. Although the Commission's moratorium on disconnections for nonpayment will be lifted beginning October 20, 2020, according to the conditions required in this Order, the Commission finds good cause to continue its moratorium on the assessment of late payment charges for residential customers only

¹⁴ Executive Order No. 2020-323

until December 31, 2020. Even though utilities will be unable to assess late fees on bills rendered for service through the end of this year, they should continue to track the “lost revenue” they would have otherwise collected from late fees. Furthermore, the Commission finds that late fees shall not be assessed on any past due residential amounts accrued between March 16, 2020, and December 31, 2020, following the December 31, 2020 deadline.

Between the date of entry of this Order and October 20, 2020, **with regard to residential customers with postpay accounts**, utilities shall:

1. By default for all affected customers, create payment plans for all accumulated arrearages from service rendered on or after March 16, 2020, and before October 1, 2020, to the extent that past due balances exist. The term of the default payment plans shall be no less than six months and no longer than two years. Six months reflects the approximate length of time the Commission’s moratorium on disconnections will have been in place until the entry of this Order. Regardless of the length of the payment plan, default payment plans shall only require the customer to pay a fixed, equal installment over the term of the plan. For instance, with an arrearage of \$36.00, using a payment plan of six months in duration, the monthly charge for the payment plan would be \$6.00.
2. Take all reasonable efforts to contact the customers who have received default payment plans. Utility contact and communication with customers is necessary for utilities to convey information regarding customer arrearages, ways to pay, avenues for assistance, and the details of payment plans.

3. If customers request alternatives to the default payment plan ordered by the Commission, work with customers on payment plans that accommodate customer circumstances while balancing the concern of the utility, including its income and cash flow.
4. Consider customers with arrearages subject to a payment plan “on-time” for all purposes, except those explicitly exempted herein, as long as they timely pay their bill for current service *and* the amount required under the default or an alternative, agreed-upon payment plan.

If a customer fails to maintain an “on-time” status with regard to current service and a default or agreed-upon payment plan, the customer may be subject to disconnection beginning on October 20, 2020. Utilities are not required, but are encouraged, to offer subsequent payment plans to customers who have an initial payment plan for arrearages accumulated between March 16, 2020, and October 1, 2020, and are unable to maintain an “on-time” status as explained above. At no time though will a utility be permitted to deviate from their tariffs, particularly regarding disconnections, unless permitted herein or by a subsequent Commission Order. When a customer is no longer considered “on-time” regarding arrearage amounts accumulated between March 16, 2020, and October 1, 2020, utilities shall follow their tariffed procedures for disconnection should they choose to disconnect the customer.

Understanding that some assistance programs require customers to be late or subject to disconnection in order to qualify for utility assistance, the Commission makes an explicit finding that any customer with an agreed-upon or default payment plan for the next two years is late and subject to disconnection for assistance program purposes only.

But for the Commission's Orders in this matter, those customers would be late and would be subject to utility disconnection. To make a finding otherwise would create the most perverse instance: If customers have to fail to pay in order to receive assistance, but failing to pay will subject them to disconnection and terminate the opportunity to maintain their fair payment plans, assistance itself is of little help. Finding that those with payment plans are late or subject to disconnection for assistance purposes in order for them to receive the assistance required to maintain their "on-time" status is the only path that makes logical sense.

During the rest of the pandemic, communication between utilities and their customers is of utmost importance. Based on responses to data requests filed in this matter, the Commission is concerned with the number of utilities that have not kept communicating with customers during the pandemic. Utilities must be diligent in communicating options to customers during these unprecedented times, especially between the time of entry of this Order and October 20, 2020.

When communicating with customers, utilities should use all safe avenues available to them in order to communicate payment options and important dates to their customers. The Commission expects and prefers that confirmation of payment plans be in writing or electronically recorded;¹⁵ however, an electronic signature or an email confirming customer understanding of default payment plans or agreement to agreed-upon plans will suffice given the unprecedented circumstances. If, because of safety concerns, a utility is unable to establish a written record, the utility may confirm a default payment plan or establish an agreed-upon payment plan by phone, in which case the

¹⁵ This is consistent with the requirements of 807 KAR 5:006, Section 14(2).

utility shall keep meticulous records describing all communications. Utilities must also keep detailed records describing their attempts to communicate with customers with past due accounts or who will otherwise be subject to disconnection. Similar to the requirements in 807 KAR 5:006, Section 10(2), these records should reflect the customer's name and address, the dates and nature of the communication, and the agreed-upon payment plan (if any). Upon request by the Commission, these records shall be timely made available for review.

In an attempt to provide additional incentive for utilities to offer longer-term payment plans, any utility, but particularly investor-owned utilities, are expressly permitted, but not required, to apply and defer carrying charges in order to finance the arrearage payment plans for arrearages accumulated on or after March 16, 2020, until October 1, 2020. The carrying charges, if a utility chooses to apply them, shall be applied to arrearages beginning on the date the payment plan is instituted and end the day the arrearage is either paid in full or the agreement is terminated by failure to maintain an on-time status. Carrying charges may be applied to payment plans for customers of any class, including residential, commercial or industrial customers, so long as the payment plan is for arrearages accumulated on or after March 16, 2020 and before October 1, 2020. Utilities may apply these carrying charges to arrearage amounts for payment plans up to two years in length. The rate applied to these arrearages shall be no more than each utility's weighted average long-term debt rate. Although applied to the arrearage, carrying costs will not be charged to the customer. Rather, the Commission finds the financing costs, should a utility choose to apply them, are approved for deferral accounting to be recovered in a subsequent matter. The regulatory asset itself will not

accrue carrying charges, but the Commission will allow it to be recovered either via rate base or as part of capitalization in later proceedings, not just amortized.

With regard to residential customers who have prepay accounts but have fallen into arrears (i.e., their account is active but currently negative), utilities are permitted to either offer payment plans for any arrearage accumulated between March 16, 2020, and October 1, 2020, or use the current sharing/splitting percentages in their prepay tariffs to allocate payments between current and past due amounts.¹⁶ If the utility chooses to offer payment plans for the arrearages accumulated between March 16, 2020, and October 1, 2020, for prepay customers, those payment plans shall be for no less than one year and no longer than two years. Similar to the postpay residential payment programs, utilities may not offer consumers payment plans that require the customer to pay more than a fixed, equal installment over the term of the plan. In addition to having the opportunity to offer payment plans to prepay customers for arrearages owed, utilities that have prepay programs may also offer plans to customers who have amassed arrearages with prepay accounts between March 16, 2020, and October 1, 2020, using their current offering to split future payments according to the terms of their tariffs. Deviations or modifications to the tariff provisions may be sought in this matter by verified application or motion.

Industrial, public, and commercial accounts, and their associated arrearages, are materially different from those of residential customers. During the pandemic, businesses across the nation have been afforded the opportunity to participate in the Paycheck

¹⁶ For example, Big Sandy Rural Electric Cooperative Corporation's prepay metering tariff provides for a 70/30 percent split, with 70 percent of the payment applied to the daily usage account and 30 percent to the unpaid debt. Big Sandy Rural Electric Cooperative Corporation's Tariff Prepay Metering Program, Sheet No. 2.

Protection Plan,¹⁷ whereby those receiving loans can apply those amounts to utility bills for certain periods and those amounts will ultimately be forgiven. Further, because industrial and commercial customers have access to financing options that residential customers do not, the Commission will not extend the payment plan requirement nor the prohibition against assessing late fees to nonresidential customers. As of October 20, 2020, a moratorium no longer exists on disconnection for nonpayment or the assessment of late charges for nonresidential accounts. The Commission still urges utilities to establish nondiscriminatory payment plans and extend leniency, if necessary or advisable, for these customers or otherwise work with them to address any past due amounts.

The Commission is concerned about some utilities' accrual of bad debt expense and their write-off practices. Although a change in circumstances may necessitate changes in how utilities accrue or estimate bad debt expense, the Commission will defer passing judgment on those impacts on rates until a utility's next rate case or another appropriate matter. The Commission is sincerely concerned with smaller utilities' processes for writing off bad debt, where it is apparent from data request responses that many utilities merely give up on amounts owed and make little attempt to recover the monies. Additionally, the Commission is concerned by the degree at which jurisdictional utilities depend on late payment fees and nonrecurring charges to meet their income requirements. As noted before, late payment fees are merely used to incentivize on-time payment, and nonrecurring charges are supported as being merely cost-based. The Commission will likely address these concerns in a subsequent forum. Finally, based on

¹⁷ S.3548, Pub. Law 116-136

its experience during this pandemic, the Commission is concerned with the number of utilities subject to its jurisdiction that use the prospect of disconnecting service as their primary tool to ensure that customers timely pay. The Commission notes, however, the prospect or reality of disconnection should be the final action a utility takes regarding customer nonpayment. Disconnection of utility service is a drastic and life-altering circumstance and should not be treated so lightly.

It is undisputed that water and sewer service, even above electric and gas service, is necessary for customers to maintain the sanitary and healthy conditions required to combat a viral pandemic. Because of the economic climate in Kentucky, which only recently recovered from historic levels of unemployment and still maintains an unemployment rate higher than before the pandemic,¹⁸ many customers will struggle to pay their current bills as well as their past due accounts. In an attempt to avoid the mass disconnection of water and sanitary sewer service, thus exacerbating the current state of emergency and public health crisis, we plead for organized, robust utility financial assistance. Whether it is a state earmark of federal COVID-19-related assistance, use of local funds received via community development block grant (CDBG) offerings, or direct federal assistance, what is clear is that the demand exists for significant funding to assist with water and sewer bills across the Commonwealth.

As important as electric and gas services are, heating and cooling programs exist for assistance with these services, including LIHEAP. As a result of continued federal assistance, the Commonwealth's LIHEAP programs received historic funding amounts

¹⁸ The unemployment rate in February 2020 was 4.4 percent, in April 2020 it was 16.2 percent, and it was 6.2 percent at the end of July 2020. <https://fred.stlouisfed.org/series/KYURN> (Last visited Sept. 7, 2020).

during this pandemic to help offset electric bills for our most vulnerable. Also, as a result of a mild winter, there were leftover LIHEAP funds and Community Action Kentucky (CAK) administered an increasingly-rare cooling program with LIHEAP money as well.¹⁹

Unlike the LIHEAP program for electric and gas bills, however, organized water and sewer assistance, particularly from the federal government, does not exist. As previously mentioned in this Order, the need for utility assistance, but particularly for water and sewer assistance, has been growing for decades. This pandemic has merely exacerbated the demand for such assistance. Given the levels of arrearages, late payments, and struggling communities, the Commission urges stakeholders to endeavor to find creative solutions to ensure the continuity of water and sewer services. For example, funds from CDBGs provided to respond to COVID-19 (CDBG-CV) could be earmarked, upon being allocated to local governments, for water and sewer needs brought on by the viral pandemic. The Commission conservatively calculates that the demand and need for water and sewer assistance exceeds \$15 million today. That need will certainly increase over the coming months. Coupled with the unmet need of customers' gas and electric demands, the Commission calculates that as of the date of entry of this Order, Kentucky consumers require at least \$75 million to ensure continuity of utility service. This need however follows a relatively mild winter and summer, and with winter approaching, the demand for utility assistance to protect Kentuckians from disconnection during an unprecedented global viral pandemic will likely be at least \$150 million before the end of 2020. Kentucky residential consumers spend nearly \$3 billion

¹⁹ <https://www.capky.org/home-page/community-action-agencies-accepting-applications-for-liheap-summer-cooling/> (Last visited Sept. 7, 2020).

on electricity alone each year.²⁰ The amount of assistance available now, and historically, represents a relative pittance when compared to the Commonwealth's need. The Commission acknowledged and attempted to address within its limited power, the growing demand for utility assistance when it investigated and modified Home Energy Assistance (HEA) programs subject to its jurisdiction within the last year.²¹ The Commission's ability to address this growing demand for assistance is limited though, and as such, it seeks additional help in addressing this growing concern.

The Commission respectfully requests that the Commonwealth earmark COVID-19 relief funds intended to be provided to local governments specifically for water and sewer service, whether through CDBG-CV or other avenues. Furthermore, to the extent monies are available, the Commission respectfully requests that the Commonwealth dedicate other federal CARES Act²² money, similar to the recently announced eviction fund,²³ with half of the amount provided dedicated to addressing water and sewer arrearages and the remainder available for any type of utility assistance. Based on its experience with the organization, the Commission preliminarily recommends funds not directly allocated to local governments be administered by CAK and its affiliates. CAK and the associated community action agencies across the state are already tasked with administering the Commission-jurisdictional HEA funds, LIHEAP, and the TEAM

²⁰ United States Energy Information Administration, Kentucky Electricity Profile 2018, <https://www.eia.gov/electricity/state/kentucky/> (Last Visited Sept. 16, 2020).

²¹ Case No. 2019-00366, *Electronic Investigation of Home Energy Assistance Programs Offered By Investor-Owned Utilities Pursuant to KRS 278.285(4)* (Ky. PSC May 4, 2020).

²² S.3548, Pub. Law 116-136.

²³ Executive Order 2020-700.

Kentucky Fund.²⁴ CAK's structure, reach, and experience would reduce inefficiencies and ensure statewide coverage while allowing funds be applied to jurisdictional utilities and nonjurisdictional providers, such as municipalities, alike. Nevertheless, any allocation of currently available funds will be inadequate to address the mounting need for utility assistance our Commonwealth has and had before the pandemic. As such, the Commission finds it necessary to serve this Order on Kentucky's federal Congressional delegation, in order to inform their decision-making during this state of emergency and during the next few years.

Since its inception, the Commission has endeavored to ensure adequate service at fair, just, and reasonable rates.²⁵ The Commission takes its statutory obligations seriously and has done its utmost to ensure that when a switch is flipped or a faucet is turned, the utility service flows. For many, regardless of the fact that rates are fair, just, and reasonable under Kentucky law, circumstances dictate that service is unavailable because of personalized impediments. As one Kentucky consumer recently wrote to the Commission regarding a possible increase in rates, "I get \$465.00 a month to live on. I would be better off dead. I am only existing, not living. My life should be better than this in a country so rich." Circumstances demand that we all take action to address the dilemmas facing our Commonwealth. Staring us in the face is the reality that without help, thousands of Kentuckians will be unable to pay utility bills during a viral pandemic and the corresponding economic downturn. Instituting the Commission's moratorium on disconnections was a necessary, albeit temporary act. Maintaining this moratorium

²⁴ Executive Order 2020-253.

²⁵ KRS 278.020 and KRS 278.030.

though is unsustainable in light of the eventual impact to utilities (in particular publicly owned utilities with already slim margins) that require adequate income to provide service. As such, permanent solutions are required. Therefore, the Commission implores Kentucky's Congressional delegation to review the need and lack of utility assistance in the Commonwealth, both during this current pandemic and moving forward. Thousands of Kentuckians' ability to keep their lights on or water running depends on their attention to this pressing issue.

The Commission's March 16, 2020 Order and its related effects will require additional Orders in this matter, including addressing waivers and deviations already granted, and issues regarding deferral accounting, sample meter testing and numerous other miscellaneous issues that will surely arise. The Commission will address those items in due time, but for now, its attention is focused on the matter at hand: ensuring availability of necessary utility service for Kentuckians at a time it is most needed. As noted in the Commission's March 16, 2020 Order, any questions, concerns, or relief may be addressed upon motion in this docket or informally through the electronic mail inbox of the Commission's Executive Director.²⁶ As in the March 16, 2020 Order establishing this proceeding, a utility should petition the Commission for relief from its tariff or Commission regulations or statutes that the utility believes would prevent the utility from achieving the dictates of this or any other related Order.

IT IS THEREFORE ORDERED that:

1. The Executive Director shall serve a copy of this Order upon The Kentucky Office of the Governor, Senator Rand Paul, Senator Mitch McConnell, Representative

²⁶ PSCED@ky.gov

James Comer, Representative Brett Guthrie, Representative John Yarmuth, Representative Thomas Massie, Representative Hal Rogers, and Representative Andy Barr.

2. Utilities shall create payment plans of arrearages of no less than six months and no longer than two years in duration for all customers who have accumulated arrearages from service rendered on or after March 16, 2020, and before October 1, 2020. Regardless of the length of the payment plan, default payment plans shall only require the customer to pay a fixed, equal installment over the term of the plan.

3. Utilities shall make all reasonable efforts to contact the customers who have received default payment plans.

4. Utilities shall, for customers that request alternative payment plans to the default payment plan ordered by the Commission, work with customers on payment plans that accommodate customer circumstances while balancing the concern of the utility, including its income and cash flow.

5. Utilities shall consider a customer with arrearages subject to a payment plan “on-time” for all purposes, except those explicitly exempted in this Order, as long they timely pay their bill for current service *and* the amount required under the default or alternative, agreed-upon payment plan.

6. A utility shall not be permitted to deviate from its tariffs, particularly regarding disconnections, unless permitted herein or by a subsequent Commission Order.

7. A utility, with regard to residential customers who have prepay accounts but have fallen into arrears, shall be permitted to either offer payment plans for the arrearage

accumulated between March 16, 2020, and October 1, 2020, or use the current sharing/splitting percentages in their prepay tariff to allocate payments between current and past due amounts. If the utility chooses to offer payment plans for the arrearages accumulated between March 16, 2020, and October 1, 2020, for prepay customers, those payment plans shall be for no less than one year and no longer than two years and shall only require the customer to pay a fixed, equal installment over the term of the plan.

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By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of stylized, cursive letters, positioned above a horizontal line.

Acting Executive Director

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00347 DATED **OCT 22 2020**

FOUR PAGES TO FOLLOW

AFFIDAVIT

I, Rosemary B. Tutt, after first being duly sworn, state that:

1. I am employed by the Kentucky Public Service Commission as the Branch Manager for the Consumer Services Branch.
2. On October 21, 2020, the Kentucky Public Service Commission was made aware that Salt River Electric Cooperative Corp., had begun disconnections of electric service for non-payment, in apparent violation of Commission Orders and Regulations, and Salt River Electric Cooperative Corp.'s tariff.
3. On October 21, 2020, in response to inquiries I made to Salt River Electric Cooperative Corp. regarding disconnections for non-payment of arrearages accrued during the COVID-19 crisis, I received the attached correspondence from Phyllis Oliver, Manager of Office Services, Salt River Electric Cooperative Corp.
4. In the attached correspondence Phyllis Oliver states that Salt River Electric Cooperative Corp. had begun disconnections for nonpayment of prepay customers, and, beginning October 27, 2020, Salt River Electric Cooperative Corp., planned to begin disconnections for nonpayment for post-pay customers.

AFFIANT FURTHER SAYETH NAUGHT.

Rosemary B. Tutt
Rosemary B. Tutt

COMMONWEALTH OF KENTUCKY)

COUNTY OF FRANKLIN)

Subscribed and sworn to before me by Rosemary B. Tutt on this 22nd day of October, 2020

Stephanie Schweitzer
Notary Public, Ky. State at Large

My Commission Expires 1/14/23

Notary ID 614400

Tutt, Rosemary (PSC)

From: Phyllis Oliver <POLiver@srelectric.com>
Sent: Wednesday, October 21, 2020 4:34 PM
To: Tutt, Rosemary (PSC)
Cc: Tim Sharp
Subject: FW: Manual Calls to Subject to Disconnect Members
Attachments: Subject to Disc Letter.pdf

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Rosemary,

This is a copy of an email sent to our Service Reps on 10/5/20 along with the letter that was mailed. We began with over 3,000 post pay members and have less than 400 that have not responded to any of our attempts to work out an arrangement. We are only disconnecting members who have a 60 day or more balance.

All letters were mailed by close of business Thursday the 16th. Again, we will not begin disconnecting post pay members until Tuesday, Oct. 27th. We have been doing automatic calls and sending late notices as we normally would do in order to keep them abreast of their balances.

We disconnected our prepay members this morning. We began with 385 and have 69 that are off. We have transferred most all the negative balance into debt management if they did not get help from Community Action. Before disconnecting our prepay members we robo called as well as emailed them last week in an attempt to get an agreement set up. We began with over 600 and were down to 385 this morning.

If you need anything else, please give me a call.

It is always a pleasure talking to you!

Phyllis

From: Phyllis Oliver
Sent: Monday, October 5, 2020 9:53 AM
To: CS_Reps
Subject: Manual Calls to Subject to Disconnect Members

Good morning!

It is Monday the 5th and a very busy one at that!

Oct. 20th will be here before we know it and we need to call all our members that are "Subject to Disconnect" to see if we can work out a payment arrangement with them. I will be emailing you a page listing the phone number/account number/name and amount of members that you will need to try and call. Please don't stress out! **Day to day business comes first!** This list looks different to what you are used to, so if you have any questions about amounts, etc. please call Tanya ☺

1. Look up account number to make sure of the amount past due.

2. Call the member, make sure it is them you are speaking to and try to work out a payment arrangement with them. Also be ready to refer them to Community Action for assistance.
Nelson County-502-348-9596
Bullitt County-502-543-4077
Spencer County-502-477-8296
Washington County-859-336-7766
3. If you do not talk to them, check to see if they have an email address on file. If they do, please email them the attached letter.
4. In addition to emailing, please address a SR envelope and MAIL them the same letter while you have the address pulled up! ****You may want to print you off several copies to have handy to speed up this process.****
5. **PUT GOOD NOTES ON THEIR ACCOUNT!** as well as the list and return to me when you are finished.

This may seem redundant, but our Board of Directors has been assured that we will do EVERYTHING possible to contact our members who have fallen behind before we disconnect them.

Thank you for helping get our members back on track! Our goal is to have payment arrangements made so no one is disconnected.

If you have questions, comments or concerns, please let me know.

Phyllis



Phyllis Oliver
Manager of Office Services
Salt River Electric
502 350-1584 Direct Line
poliver@srelectric.com



SALT RIVER ELECTRIC

111 West Brashear Avenue • Bardstown, Kentucky 40004
(502) 348-3931 • (502) 955-9732 • Fax (502) 348-1993

10/1/20

Dear Member,

Effective Oct. 20th, the PSC has lifted the moratorium on disconnects for non-payment of your electric bill.

Our records indicate that your electric service will be disconnected on Oct. 20th if you have not made payment arrangements with our office.

We realize that many households have been adversely affected by the coronavirus and want to assure you that we will work with you to avoid any interruptions in your service.

We urge you to also contact your local Community Action Agency as they have monies available for qualified households.

Please call today to speak to a representative at 502-348-3931.

Sincerely,

Salt River Electric
Collections Department

*Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P. O. Box 609
Bardstown, KY 40004

*Salt River Electric Cooperative Corp
Salt River Electric Cooperative Corp.
111 West Brashear Avenue
P. O. Box 609
Bardstown, KY 40004