

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. In that Order the Commission, *inter alia*, temporarily suspended all disconnections for nonpayment. On September 21, 2020, the Commission entered an Order that established guidelines on lifting the moratorium on disconnections for prepay and postpay customers of jurisdictional utilities. The Commission issued an Order on September 30, 2020, that provided additional guidance on how to address disconnections. It has come to the attention of the Commission that some utilities may not be following the guidelines established in the September 21, 2020 and September 30, 2020 Orders. The Commission, regarding postpay customers, ordered that:

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.

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

3. If customers requested 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. Customers with arrearages subject to a payment plan are considered “on-time” for all purposes, 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.¹ (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.² (Emphasis added.)

To be clear, 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 – a utility should not have started disconnections on October 20, 2020. Put simply, a utility could begin its **disconnection procedures**, according to its tariff and the

¹ September 21, 2020 Order at 7–8.

² *Id.* at 8.

restrictions in 807 KAR 5:006, Section 15(f), on and after October 20, 2020. Moreover, customers were 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.

For example, an electric utility, between September 21, 2020, and October 20, 2020, should have made every effort to contact its customers with arrearages, accrued between March 16, 2020, and October 1, 2020, to place those customers on a payment plan that was no shorter than 6 months and no longer than 24 months. In the event that the utility could not get a customer's agreement to a payment plan, that customer must still have been placed on, at least, a six-month payment plan.³ The electric utility, using its normal billing cycle, would have to render a bill that included the payment for the payment plan and for service rendered up to October 1, 2020. Only when the customer is late on that bill may the utility proceed with its disconnection procedures, and, unless an electric utility's tariff differs from 807 KAR 5:006, Section 15(f)(1)(B), which provides that "[s]ervice shall not, for any reason, be terminated before twenty-seven (27) days after the mailing date of the original unpaid bill." Thus, assuming that an electric utility's billing cycle ended on October 2, 2020, and bills were mailed on that day, the earliest possible date that an electric utility may disconnect service is October 29, 2020. The earliest possible date for water and sewer companies was October 22, 2020.⁴

Recognizing that this could cause some confusion, Duke Energy Kentucky, Inc. (Duke Kentucky) requested permission to include in its default payment plans bills

³ Six months is the **minimum** length for a payment plan and does not restrict a utility from defaulting to a longer term payment plan. For example, Kentucky Utilities Company and Louisville Gas and Electric Company, if no other agreement is reached, will place their customers on a default 12-month payment plan.

⁴ 807 KAR 5:006, Section 15(f)(2)(b), provides for water, sewer, and telephone utilities: "Service shall not, for any reason, be terminated before twenty (20) days after the mailing date of the original unpaid bill."

accrued between October 1, 2020, and the end of Duke Kentucky's billing cycle. As discussed in the September 30, 2020 Order approving Duke Kentucky's proposal, Duke Kentucky proposed to include arrearages incurred prior to March 16, 2020, as well as using its October billing cycle, to calculate the balance subject to a payment plan. The Commission approved Duke Kentucky's plan, provided that the minimum length of the payment plan for seven months plus however many months over which the pre-March 16, 2020 arrearages were accrued.⁵ The Commission explicitly extended this waiver from the September 21, 2020 Order to **all** utilities.⁶ This is a fair and equitable solution that utilities could adopt if they believe that it would resolve confusion regarding 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."⁷ (Emphasis added.) 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. Unless a customer refuses to make **any** payment on a prepay account, it is difficult to discern a situation in which a utility should be disconnecting prepay customers on the day that the moratorium on disconnections was lifted.

⁵ September 30, 2020 Order at 4–5.

⁶ *Id.* at 5.

⁷ September 21, 2020 Order at 11.

The Commission also notes some confusion exists regarding disconnections and the Governor's October 19, 2020 Executive Order in which the Governor rescinded, beginning November 6, 2020, the moratorium on utility disconnections for nonpayment. Representatives for utilities have contacted the Commission inquiring of the Executive Order's effect on the Commission's Orders in the matter. Paragraph 13 of the Executive Order provided that:

Nothing in this Order is intended to supersede the orders of the Kentucky Public Service Commission for utilities under its jurisdiction. The Kentucky Public Service Commission's orders continue in full effect until rescinded or modified by the Kentucky Public Service Commission.⁸

The Executive Order clearly had no effect on the Commission's Orders.

Although the moratorium on disconnections has been lifted, utilities should proceed cautiously with disconnections and ensure that any disconnections do not violate (1) the Commission's Orders in this proceeding; (2) applicable statutes and regulations; and (3) the utilities' tariffs. The Commission reminds all utilities under its jurisdiction that KRS 278.990 empowers the Commission to not only penalize a utility if it violates a Commission Order, tariff, regulation, or statute, but also penalize "[a]ny officer, agent, employee of a utility"⁹ Therefore, the Commission advises utilities to seek Commission guidance, either formally from the Commission or informally from Commission Staff, if there is any question whether a disconnection complies with the law.

⁸ Executive Order 2020-881. A copy of the Executive Order can be viewed at: https://governor.ky.gov/attachments/20201019_Executive-Order_2020-881_Uilities.pdf (Last visited Oct. 26, 2020).

⁹ KRS 278.990(1).

IT IS THEREFORE ORDERED that:

1. The Commission's September 21, 2020 Order is clarified consistent with the discussion above; and

2. The Commission retains the right to modify, alter, or retract any portion of this Order, or any Order in this proceeding, at any time.

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By the Commission



ATTEST:



Deputy Executive Director

Case No. 2020-00085

