

## Utility Payment Plan Recommendations

7/31/2020

### **Background**

Due to the COVID-19 pandemic, Governor Holcomb through executive order has prohibited utilities from disconnecting services to customers through at least August 14<sup>th</sup>. Many utilities are experiencing an increase in the number of customers who are not paying on time, and without the ability to disconnect service, some customers have accrued several months of unpaid charges. The shutoff moratorium does not erase a customer's obligation to pay for utility services, but it will likely be impossible for many customers to immediately pay off their unpaid balances after the moratorium is lifted.

### **Purpose**

Utilities should be planning now for the moratorium to be lifted, including how best to deal with the delinquencies that have accumulated during the moratorium. Utilities subject to the jurisdiction of the Indiana Utility Regulatory Commission (IURC) are required to offer payment plans to their customers of at least 6 months, and the Governor's executive order strongly encourages (but does not require) non-regulated utilities<sup>1</sup> to do the same.

This document is designed to provide a set of recommendations generated by financial advisors, municipal attorneys, and municipal officials to restore the financial health of municipal utilities while ensuring that collection techniques are not unnecessarily punitive to customers who have been financially impacted by the COVID-19 pandemic. These are recommendations only, and you will need to consult with your city or town attorney on any action steps.

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<sup>1</sup> Municipal waste water utilities are not subject to the IURC's jurisdiction, and the vast majority of Indiana's municipally-owned water, gas and electric utilities are not subject to the jurisdiction of the IURC: [Withdrawn Municipal Water Utilities](#); [Withdrawn Municipal Electric Utilities](#); [Withdrawn Municipal Gas Utilities](#)

## Financial Considerations

Some utilities will have only a few delinquencies with limited revenue losses. Other utilities have seen dramatic increases in delinquencies that are already causing cash flow problems. By understanding the needs of your utilities, you can decide which, if any, of the following techniques would be most helpful to the financial health of your utility.

Some outstanding bills will always be uncollectable if the utility goes through the normal disconnection process. The goal of these techniques is to collect a higher portion of the outstanding bills by providing flexible incentives and options for customers.

## Model Payment Plans

### *Payment Plans that Waive Penalties*

This option is best tailored for utilities with a manageable number of delinquencies. It gives a financial incentive to pay off the delinquent utility bills faster while providing options to pay off the delinquent bills over the course of a year.

If a utility customer has delinquent utility bills and penalties accrued during the shutoff moratorium, they may pay those back over:

- 3 months, waiving all accrued penalties
- 6 months, waiving 50% of accrued penalties
- 9 months, waiving 25% of accrued penalties
- 12 months, paying all accrued penalties

If a ratepayer fails to meet the obligations on their 3, 6, or 9 month payment plan, they will automatically be placed in the 12 month payment plan. Only if the customer is unable to make the payments on the 12 month payment plan would they be placed back on the disconnect list.

You or your financial advisor could create a standard Excel template to show customers what their monthly payment would be in each plan, along with the final total paid under each.

In order to waive penalties, official action should be taken by your board of public works, water board, common council, etc.

### *Payment Plans if Penalties have already been Waived*

Many communities took action early into the pandemic to waive penalties for late utility bills through the duration of the emergency. If penalties have already been waived, there is not the same incentive to enter into the shortest payment plan to avoid paying the accrued penalties like the above model suggests.

However, there is still the incentive to avoid disconnection and having to pay for a reconnection fee, etc. To add penalties into a longer-term payment plan or otherwise try to offer financial incentives to pay the charges off quickly, you should go through the process to adjust the rate ordinance.

To proceed with a standard payment plan, this should still be adopted by your board of public works, water board, common council, etc. The Governor's executive order encourages non-regulated utilities to offer payment plans of at least six months.

### *Addressing Cash Flow Issues*

If your utility has such significant losses due to COVID-19 that it is creating issues with operational cash flows, your community may want to consider the following options:

1. A temporary loan under Indiana Code 36-1-8-4 to the utility operating fund. Please consult the statute and the State Board of Accounts memorandum dated April 9, 2020 titled [\*Temporary Transfer of Funds\*](#) for specific information regarding the required ordinance, extension of the prescribed period of the loan, accounting procedures and entries.

2. Payment of utility expenses from the General Fund, Riverboat Fund, Rainy Day Fund (if permitted by the establishing ordinance), or other fund that may be used for any lawful purpose like CCD or EDIT funds. Sufficient appropriation must be available to pay these expenses.
3. A loan from the cash reserve fund under IC 8-1.5-3-11.

These options will ameliorate the cash flow issues in the utility. However, these options may negatively affect the cash flow of other funds. If you choose to explore these options, be sure to consult your financial advisor and bond attorney to ensure that other essential operations and bond obligations are not impaired by this shift in funds. These options will also require official action by your board of public works, water board, common council, etc.

## **Other Considerations**

### *Standardizing Plans*

Strong consideration should be given to ensuring that payment plans are standardized and that alternative arrangements are not made based on an individual customer's circumstances.

### *Landlord Accountability*

With the passage of HEA 1165 in the 2020 legislative session, landlords can no longer be required to bear financial responsibility for the delinquent utility bills of their tenants. This means that utilities recovering delinquent bills can only collect from the tenants.

### *Sewer Liens*

The language in Governor Holcomb's executive orders speaks specifically to discontinuing utility services<sup>2</sup>. The orders are silent on whether utilities may

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<sup>2</sup> [EO 20-05 \(continued below\)](#)

still file sewer liens – so it appears that you are not prohibited from doing so. In light of the pandemic and some of the other related executive orders (e.g. the moratorium on evictions and foreclosures), you may want to consider whether these unpaid charges may also be worked out through a payment plan.

*Encouraging Customers to Seek All Available Financial Assistance*

Customers should be given information about any organizations in your community that may be offering financial assistance for utility services (e.g. the Community Foundation or other local not-for-profits). It may also be helpful to refer customers to the township trustee for emergency assistance – especially before their services are disconnected if they cannot meet the obligations of a payment plan.

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5. Essential Services

- A. Providers of gas and electric utilities, broadband, telecommunication, water and wastewater services are prohibited from discontinuing service to any customer in the state as these services are essential to Hoosiers and Hoosier businesses particularly during this state of public health emergency.

[EO 20-33](#)

*Non-regulated Utility Companies:* The prohibition on discontinuing utility services as provided for in Executive Order 20-05 and extended to June 30, 2020, in Executive Order 20-28 is further extended until August 14, 2020. Utility companies, municipalities and customers are encouraged to work together to establish reasonable payment plans for past due accounts. Utility companies are strongly encouraged to offer payment plans of at least six months to all customers. Customers and utilities should set up payment arrangements as soon as possible to avoid later discontinuation of utility service.