

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 16, 2021

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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400 North Street  
Harrisburg, PA 17120

Re: Public Utility Service Termination Moratorium  
Proclamation of Disaster Emergency –  
COVID-19 Emergency Order  
Docket No. M-2020-3019244

Dear Secretary Chiavetta:

Attached for electronic filing are the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: PUC Secretary Rosemary Chiavetta (**email only**)  
Bureau of Technical Utility Services (**email only**)  
Bureau of Consumer Services (**email only**)  
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Certificate of Service

\*303978

CERTIFICATE OF SERVICE

Re: Public Utility Service Termination Moratorium :  
Proclamation of Disaster Emergency – COVID-19 : Docket No. M-2020-3019244  
Emergency Order :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16<sup>th</sup> day of February 2021.

**SERVICE BY E-MAIL ONLY**

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Dated: February 16, 2021  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Service Termination Moratorium :  
Proclamation of Disaster Emergency – COVID-19 : Docket No. M-2020-3019244  
Emergency Order :

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COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: February 16, 2021

## Table of Contents

I. INTRODUCTION.....	1
II. COMMENTS .....	5
A. The COVID-19 Pandemic Continues to Imperil the Health And Safety of Pennsylvania Citizens As Well As The Economy Warranting The Continuation Of The Protections In The October 8 <sup>th</sup> Order. ....	5
B. Additional Protections Are Needed To Supplement The October 8 <sup>th</sup> Order. ....	8
C. Further Steps Will Be Needed To Address The Arrearage Issues.....	10
III. CONCLUSION .....	12
Appendix A: Data Collection	
Appendix B: OCA Proposed COVID-19 Relief Plan Critical Elements	

## I. INTRODUCTION

The OCA appreciates this opportunity to provide further input on the protections established for consumers during this pandemic by the Pennsylvania Public Utility Commission (Commission) in its Order of October 8, 2020 modifying its March 13<sup>th</sup> Emergency Order establishing a prohibition on the termination of utility service. At this time, the OCA submits that the protections put in place by the Commission's October 8<sup>th</sup> Order should be continued, and supplemented with some additional measures and protections as discussed in these Comments. The situation related to the pandemic since October 2020 has not substantially improved and the economic impact remains significant. Allowing terminations to resume for customers with incomes below 300% of the Federal Poverty Level (FPL) would not be in the public interest at this time and would not protect the health and safety of our residents or communities as this pandemic continues.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (Disaster Proclamation) in relation to the COVID-19 pandemic that was sweeping across the Nation and the world.<sup>1</sup> On March 13, 2020, pursuant to the Governor's Disaster Proclamation and Section 1501 of the Public Utility Code, Chairman Gladys Brown Dutrieuille issued an Emergency Order (March 13 Emergency Order or Emergency Order) establishing a moratorium on service terminations for all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction to coincide with the duration of the Governor's Disaster Proclamation.<sup>2</sup> The Emergency Order also encouraged the reconnection of service for

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<sup>1</sup> See Proclamation of Disaster Emergency, (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>

<sup>2</sup> See Emergency Order, Docket No. M-2020-3019244, Statement of Chairman Gladys Brown Dutrieuille (March 13, 2020)

those customers who could be safely restored for the duration of the Disaster Proclamation and March 13 Emergency Order or a time otherwise set forth by the Commission.<sup>3</sup> On June 4, 2020, the Proclamation of Disaster Emergency was extended by the Governor for an additional 90 days until September 2, 2020<sup>4</sup> and by its terms, the Commission's Emergency Order was also extended. The Governor's extension of the Proclamation of Disaster Emergency also extended the moratorium on evictions so that Pennsylvania residents could remain in their homes during this difficult time. The Governor further extended the Disaster Proclamation on August 31, 2020 and November 24, 2020. The Disaster Proclamation remains in effect as of the time of filing these Comments.

On August 10, 2020, Chairman Brown Dutrieuille issued a Secretarial Letter requesting comments regarding lifting the moratorium on utility service terminations that had been imposed by the March 13<sup>th</sup> Emergency Order. The Secretarial Letter stated:

It is time to reconsider the March 13th Emergency Order. Maintaining a total moratorium for a time-period that is too lengthy may only work to accelerate the accrual of arrearages for many utility customers and place them at increased risk of default and termination in the future, when large bills inevitably become due.

Secretarial Letter at 1.

In accordance with the Secretarial Letter, the OCA filed Comments on August 18, 2020. In its Comments, the OCA urged the Commission to maintain the termination moratorium. The OCA pointed out that the situation surrounding the COVID-19 pandemic is unprecedented, and although all Pennsylvania counties were beginning to manage the safe reopening of businesses,

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<sup>3</sup> On March 16, 2020, the Commission issued a second Emergency Order that prohibited door-to-door, public events and in-person sales and marketing of energy supply services in Pennsylvania. On March 20, 2020, the Commission issued a third Emergency Order that authorized the suspension of regulatory and statutory deadlines.

<sup>4</sup> See Renewal of Proclamation of Disaster Emergency, (June 4, 2020) <https://www.governor.pa.gov/newsroom/gov-wolf-renews-covid-19-disaster-declaration-for-state-response-and-recovery-stay-at-home-order-ends-june-4/>

schools and communities in August of 2020, the situation remained uncertain. The OCA further noted in its Comments, that many citizens, especially senior citizens and those with underlying health conditions, needed to remain sheltered in their homes for their safety, and many families needed to spend portions, or all, of each school week in remote learning. While the OCA urged that the termination moratorium continue, the OCA also offered a number of recommendations and steps that could and should be taken to prepare for a safe end to the termination moratorium when the health, safety and economic circumstances of Pennsylvania's residences and businesses improved.

On October 8, 2020, the Commission entered an Order modifying its March 13<sup>th</sup> Emergency Order (October 8<sup>th</sup> Order). In the October 8<sup>th</sup> Order, the Commission determined to move away from the absolute moratorium on terminations provided in its March 13<sup>th</sup> Emergency Order and allow limited terminations to begin while providing additional consumer protections.

The Commission stated:

Moving from an absolute moratorium to a less restrictive phase, while still acknowledging that the pandemic and its economic effects have not disappeared, requires us to put in place a mix of holistic, short-term and long-term solutions to offer customers protections and ensure the payment of bills from customers that are able to pay. Our goal is to put customer protections in place that can work for the short term. It is unknown, however, how long we are going to have to live with this pandemic or its economic consequences. For these reasons, we must also convene a stakeholder process to consider whether longer term options may be needed, and whether the actions herein are serving the public interest.

Order at 3.

The Commission's October 8<sup>th</sup> Order allowed for terminations to resume effective November 9, 2020 for residential customers with incomes above 300% of the Federal Poverty Level (FPL) and for small business customers. Prior to terminating a customer, each utility was required to send a communication ("pre-termination notice") to customers with unpaid balances

that put them at risk of termination at least ten days before sending the standard termination notice. The Commission's Order also provides protection from termination for residential customers with incomes below 300% of FPL who apply for all Assistance Programs for which the customer is eligible and request a payment arrangement from the utility, if appropriate ("protected customers"). The Commission established other important consumer protections, including the waiver of all connection, reconnection, deposit and late payment fees for protected customers; an expansion of the medical certificate requirements; flexible income verification processes; and data reporting. The Commission also provided protections for small businesses, including the offering of a payment arrangement of no less than eighteen months for small business customers.

The OCA appreciates the Commission's proactive measures to protect consumers during this unprecedented time. The Commission's quick action to prevent terminations that could have exacerbated the health and economic crisis that Pennsylvania was facing was critical in ensuring the health and safety of all citizens and businesses. The Commission's measured approach in the October 8<sup>th</sup> Order ensured that the most vulnerable households were able to retain service during the winter period, and if possible, begin to address their arrearages while providing the utilities the ability to address termination if necessary.

Most of Pennsylvania's utilities continued to refrain from terminating customers under the October 8<sup>th</sup> Order and have done so through the winter heating season. The OCA welcomes these actions by utilities to protect the health and safety of our residents and communities. The impact of a loss of essential utility service cannot be overstated, particularly in the midst of a pandemic when such service is necessary for sanitation and for making our homes habitable when many citizens must remain at home for health, safety, school and work.

As noted above, the OCA submits that the protections put in place by the Commission's October 8<sup>th</sup> Order should be continued, and supplemented with some additional measures and protections for a period of time. Allowing terminations to resume for "protected customers" with incomes below 300% of the FPL would not be in the public interest and would not protect the health and safety of our residents or communities as this pandemic continues.

## II. COMMENTS

### A. The COVID-19 Pandemic Continues to Imperil the Health And Safety of Pennsylvania Citizens As Well As The Economy Warranting The Continuation Of The Protections In The October 8<sup>th</sup> Order.

In December 2020, January 2021 and now into February 2021, following the entry of the Commission's October 8<sup>th</sup> Order, the situation related to COVID-19 worsened in Pennsylvania and across the nation as COVID-19 infections and hospitalizations increased.<sup>5</sup> The careful reopening of Pennsylvania's businesses and economy that was underway in October of 2020 was scaled back in response to these surging infections.<sup>6</sup> Despite the initial stages of the vaccine roll out in Pennsylvania now being underway, safety precautions continue to be necessary and remain especially important for senior citizens and others with underlying health conditions. Schools and work have not fully reopened necessitating the continued use of remote learning and remote working in the home.

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<sup>5</sup> <https://www.governor.pa.gov/newsroom/pennsylvania-covid-19-early-warning-monitoring-dashboard-update-for-jan-29-feb-4-case-increases-at-20204-percent-positivity-at-8-6-and-59-counties-with-substantial-transmission/>

<sup>6</sup> See, Governor's Order of November 27, 2020 at <https://www.governor.pa.gov/wp-content/uploads/2020/11/20201123-TWW-mitigation-enforcement-immunity-order.pdf> and Governor's Order of December 12, 2020 at <https://www.governor.pa.gov/wp-content/uploads/2020/12/20201210-TWW-Limited-Time-Mitigation-Order.pdf>

The economic circumstances have also not significantly improved. Unemployment remains higher than before the pandemic, at 6.7% across Pennsylvania. To keep this number in perspective, in 2018, Pennsylvania had a workforce of approximately 6,576,000 people,<sup>7</sup> and in the time period between March and July 2020, approximately 2.29 million people had filed initial unemployment claims. That is approximately 35% of the Pennsylvania workforce. The U.S. Census Bureau has been conducting weekly surveys of households since April 23, 2020. In the first week, 46.9% of Pennsylvania households reported a loss of at least some employment income since March 13, 2020. By the twelfth week of the survey (the week ending July 21), that had risen to about 50% of households, and the percentage of households that have lost some employment income remains at that level.<sup>8</sup> The Household Pulse Survey also found that nearly one-fourth (24.7%) of Pennsylvania's workforce expected to suffer additional income loss during the upcoming four-week period (*i.e.*, February 8, 2021 to March 8, 2021).<sup>9</sup>

The U.S. Census Bureau also surveyed small businesses beginning in May, 2020. By the end of June, more than 50% of Pennsylvania businesses said they would not return to normal operations for six months or expected to never return to the pre-pandemic level of operations.<sup>10</sup> The latest survey results collected from January 4, 2021 to January 10, 2021 show 44.3% of small

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<sup>7</sup> U.S. Census Bureau, 2018 American Community Survey, Table S2301: Employment Status.

<sup>8</sup> <https://www.census.gov/data/tables/2020/demo/hhp/hhp12.html#tables>

<sup>9</sup> The U.S. Census Bureau survey also found that the lower a household's income, the greater the impact of the pandemic on the loss of income. Similarly, households categorized as being Black, Hispanic, or Asian were much more likely to have experienced an income loss and to expect additional income loss than are households headed by White and non-Hispanic persons.

<sup>10</sup> U.S. Census Bureau, Small Business Pulse Survey, <https://www.census.gov/data/experimental-data-products/small-business-pulse-survey.html>

businesses reporting they have experienced moderate negative effects due to the Coronavirus Pandemic, and 30.7% reporting they have experienced large negative effects.<sup>11</sup>

The OCA would also note that while the federal government provided a wide array of assistance to citizens and businesses in the early stages of the pandemic, much of that aid has been reduced or ended, leaving consumers with fewer avenues of available assistance. Most critically, the \$600 monthly supplement to unemployment benefits has expired and the subsequent \$300 supplement to unemployment benefits will be ending on March 14, 2021.<sup>12</sup> In addition, the special LIHEAP Recovery Program ended on August 31, 2020.<sup>13</sup> As to the current LIHEAP season, it is only scheduled to remain open until April 9, 2021. Some additional funding has recently been made available through Act 1 of 2021 (formerly Senate Bill 109) for the Emergency Rental and Utility Assistance Program, but that program is not operational at the time of the writing of these comments. While additional funding may be forthcoming from federal or state initiatives, it is not certain and it may not be available in the near term when terminations are allowed to resume under the October 8<sup>th</sup> Order.

The data provided to the Commission also shows that customers continue to struggle to be able to pay their utility bills. From the data reported to the Commission, it appears that arrearages have grown by nearly 100% between December 2019 and December 2020 for residential and commercial water customers, 89% for residential and commercial electric customers and 45% for residential and commercial gas customers from reporting utilities.

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<sup>11</sup> U.S. Census Bureau, Small Business Pulse Survey, <https://www.census.gov/data/experimental-data-products/small-business-pulse-survey.html>

<sup>12</sup> <https://blog.dol.gov/2021/01/11/unemployment-benefits-answering-common-questions#:~:text=The%20PUA%20program%20is%20extended%20to%20March%2014%2C%202021.&text=If%20you%20receive%20PEUC%20during,which%20PEUC%20benefits%20are%20payable.>

<sup>13</sup> The LIHEAP Recovery Program ended on August 31, 2020 with a surplus of over \$15 million.

One thing remains clear, from both a health and safety perspective as well as an economic perspective, the situation remains tenuous in Pennsylvania and will likely be so for some time to come. The measured protections that the Commission put in place in its October 8<sup>th</sup> Order, including the restriction on terminations for protected customers with incomes below 300% of FPL, are still necessary and should remain in effect. The protections should be extended, and supplemented as set forth herein, given the continuing pandemic affecting Pennsylvania and its residents.

B. Additional Protections Are Needed To Supplement The October 8<sup>th</sup> Order.

As the Commission considers the potential for longer term protections for consumers, the OCA submits that further protections may be necessary now to assist and protect consumers in addressing arrearages under the October 8<sup>th</sup> Order as well as in the long term. The OCA recommends that the Commission continue the protections in the October 8<sup>th</sup> Order and supplement those protections by explicitly requiring the following:

- For protected customers with incomes below 250% of FPL, require the utility to offer a payment arrangement length at a minimum in accordance with Section 1405(b)(1) and (2) while allowing the customer to agree to or request a shorter payment arrangement and the utility to agree to a longer payment arrangement.
- For protected customers with incomes between 250% and 300% of FPL, require the utility to offer a payment arrangement length of a minimum of 24 months while allowing the customer to agree to or request a shorter payment arrangement and the utility to agree to a longer payment arrangement.
- For customers with incomes over 300% of FPL, require the utility to offer a minimum of 12 months while allowing the customer to agree to or request a shorter payment arrangement and the utility to agree to a longer payment arrangement.
- The Commission should authorize an additional payment arrangement for a customer who has defaulted on a payment arrangement.
- The Commission should require in-person personal contact with the customer or a responsible adult on the day of termination and should require the posting of a 48 hour notice if no contact is made regardless of the time of year.

The OCA recognizes that these measures would be temporary modifications to certain Chapter 14 requirements and the Commission's Chapter 56 regulations. As set forth in the OCA's prior Comments, the Disaster Proclamation and the Commission's Emergency Order support these temporary modifications to address this public health crisis. See, OCA Comments at 12-13.

The OCA also submits that the Commission should require additional data reporting as it considers longer term measures. While some data is being collected under the October 8<sup>th</sup> Order, the data is not always comparable and it may be too aggregated to fully understand the needs of consumers. The OCA recommends that the Commission require more robust data collection and reporting on an on-going basis to understand the scope of the problem and the affected communities. For example, detailed information on arrearages distributed by income level and zip code will better assist in identifying customers in need of assistance and the programs available in the communities in which the customers reside. This information can be used when considering outreach efforts. Information on the utility's collection activities will assist in identifying best practices as well as in identifying collection efforts that are unsuccessful to better inform future processes. The OCA has attached as Appendix A, a list of information that the Commission should require to be collected and reported as the Commission and stakeholders develop the next steps.

Finally, the OCA continues to recommend that the Commission require all utilities to implement a COVID-19 Relief Plan directed toward customers who have found themselves in arrears since March 1, 2020. Such a program may be particularly necessary for customers who do not qualify for any other assistance programs but still struggle to pay their bills. The OCA recommends that this program be targeted at customers with incomes between 150% and 300% of the FPL, but that all customers would remain eligible to participate if it is the best program for the customer's situation. This additional assistance could greatly aid in any collection activities by

offering an incentive for customers to address their arrearages. The OCA has included in Appendix B, the outline of such a Plan that the OCA presented in its August 2020 Comments. The OCA would note that a plan similar in structure to this proposal was put in place by UGI Gas Company as a result of its most recent natural gas base rate case. *See, Pa. PUC v. UGI Gas*, Docket No. R-2019-3015162. The OCA commends UGI for this initiative and looks forward to seeing the results of the program.

As the OCA discussed in its August 2020 Comments, the protections that the OCA recommended, many of which were included in the Commission's October 8<sup>th</sup> Order, will need to be in place for some time. These protections will be particularly important to have in place when terminations resume. The economic effects of the pandemic are now estimated to last well after the health impact of the pandemic is controlled. For this reason, it is the OCA's view that the protections set forth in the October 8<sup>th</sup> Order, as supplemented in these Comments, should remain for a period of time even after terminations can resume for protected customers.

C. Further Steps Will Be Needed To Address The Arrearage Issues.

In addition to supplementing the October 8<sup>th</sup> Order as set forth above, the OCA would recommend several other steps to address the developing customer arrearages. Initially, the OCA urges the utilities to continue proactive outreach and collection efforts even if termination is not yet permitted for protected customers. While the "pre-termination notice" required under the October 8<sup>th</sup> Order is an important notice leading up to termination, customers should be contacted much earlier in the process before the level of arrearages becomes unmanageable and leads to potential termination. A proactive approach to reaching those in arrears that utilizes community based organizations, churches, schools, senior centers and many other community organizations will be necessary to address the scale of the issues we now face.

The OCA also continues to recommend that all available programs be coordinated to attempt to deliver assistance to consumers. Energy efficiency programs operated by our electric and natural gas utilities, and water conservation programs offered by our water utilities will be essential in reducing a customer's bill to a more manageable level. Especially as more work and school is conducted at home, customers could greatly benefit from targeted efficiency and conservation programs that address the new uses of their household.

It will also be critically important for all stakeholders to continue efforts to secure additional resources to assist utility consumers, whether from state or federal legislative efforts or through additional donations to Hardship Funds. The OCA would again state that the entire burden of addressing the arrearages occasioned by this pandemic cannot fall on the customers of the utility, whether residential, small business, commercial or industrial. All consumers are greatly affected by this pandemic, whether through the loss of income, loss of business, increased usage from work or school conducted at home, or health issues that have increased the expenses of daily living. Developing an equitable sharing of the burden of this pandemic should be a paramount consideration for the Commission. Consumers simply are not able to bear this burden alone.

### III. CONCLUSION

Continuing the protections in the October 8<sup>th</sup> Order, including the termination restrictions for protected customers, is of critical importance to the health and safety of the Commonwealth. The OCA also recommends that the protections in the October 8<sup>th</sup> Order be supplemented as set forth in these Comments. The OCA again appreciates this opportunity to comment and looks forward to continuing to work on these matters with the Commission staff and interested stakeholders.

Respectfully submitted,

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Dated: February 16, 2021  
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## **APPENDIX A DATA COLLECTION**

The following data should be reported throughout the COVID-19 pandemic on a monthly basis:

- The amount of billed revenue for current service (2019, 2020, on-going)
- The amount of receipts actually collected (2019, 2020, on-going)
- The number of accounts in arrears (total and by income distribution) (2019, 2020, on-going)
- If possible, the distribution by zip code of accounts in arrears (2019, 2020, on-going)
- The dollars of arrears (both total and by vintage, i.e., 30-60 days, 60-90 days, 90+days) (2019, 2020, on-going)
- The average arrearage of customers (2019 and 2020)
- The number of payment arrangements entered into since March 2020
- The average length of payment arrangements (2019, 2020, on-going)
- The identification of the reason for arrearages as conveyed by the customer
- The number of failed payment arrangements (2019, 2020, on-going)
- The number of customers added to the Customer Assistance Program or the Water Assistance Program since March 2020
- The number and dollar value of accounts written off as uncollectible (2019 and 2020)
- The collection activity and processes being employed by the utility and any changes to those processes, including the time frame for initiating collection activity (2019, to present)
- The number of outbound collection calls (2019 and 2020)
- The number of inbound calls related to payment difficulties (2019 and 2020)
- The measures taken by the utility to reduce expenses, defer non-safety related or non-critical capital items, and the efforts to secure state or federal funding that may be available.

Once termination begins, additional data to be collected should include:

- The number of accounts sent a termination notice
- If possible, the distribution by zip code of the disconnection notices
- The number of accounts entering a payment arrangement following a termination notice
- If possible, the distribution by zip code of accounts entering payment arrangements following a termination notice
- The average length of the payment arrangements entered into after notice of termination
- The number of accounts disconnected for non-payment
- If possible, the distribution by zip code of accounts disconnected for non-payment
- The number of service restorations after disconnection for non-payment
- If possible, the distribution by zip code of the service restorations following disconnection by zip code
- The duration of the service disconnection in 5 day increments, *i.e.* 0-5 days, 6-10 days, 11-15 days, *etc.*

**Appendix B**  
**OCA PROPOSED COVID-19 RELIEF PLAN**  
**CRITICAL ELEMENTS**

**Eligibility:** The customer is not otherwise participating in CAP and either:

- Has one or more workers in the household receiving unemployment benefits after March 1, 2020;
- Has wage or salary income loss or reduction related to COVID-19 business disruption; or
- Has head of household over age 65 and has received a federal coronavirus relief check of \$1,200.

**Certification:** The customer can:

- Orally certify eligibility, with follow up documentation at a later time.
- Recertification of status periodically throughout the duration of the program.

**Benefits:**

- Waiver of all late payment fees.
- Freezing of arrearages that accrued since March 2020 at the time of enrollment from any collection activity or credit reporting.
- A write-off of a specific percentage or amount of the frozen arrears with the written off amount placed in the utilities' COVID-19 deferral account for future consideration in a base rate case. The write off could occur immediately or monthly with each in full payment.
- A minimal payment towards the arrearage each month until such time as the program ends or eligibility ends.
- Placement on budget billing.
- A payment arrangement of the remaining amount at the end of the program term, or loss of eligibility, that reflects the longer of the payment time frames specified in Section 1405(b) or two times the length of time associated with the accrual of the arrearage.