

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Inquiry of the Department of Public Utilities into)	
Establishing Policies and Practices for Electric and Gas)	
Companies Regarding Customer Assistance and)	D.P.U. 20-58
Ratemaking Measures in Connection to the)	
State of Emergency Regarding the Novel)	
Coronavirus (COVID-19).)	
)	

FOURTH UPDATED REPORT OF THE CUSTOMER ASSISTANCE WORKING GROUP

I. INTRODUCTION

On May 11, 2020, the Department of Public Utilities (“Department”) issued a Notice of Inquiry (“NOI”) to establish policies and practices regarding customer assistance and ratemaking measures for electric and gas companies in response to the effects of the novel coronavirus (“COVID-19”) pandemic. The NOI established a Customer Assistance and Ratemaking Working Group¹ (“Working Group”) to assist the Department in establishing appropriate policies and practices. The Department docketed this matter D.P.U. 20-58.

The Department directed the Working Group to address the Department’s priority to establish customer assistance policies and practices and file a report with consensus recommendations by May 29, 2020 (NOI at 5). The Department also sought a consensus

¹ The Department included the following organizations in the Working Group: Fitchburg Gas and Electric Light Company d/b/a Unital (“Unital”), Massachusetts Electric Company and Nantucket Electric Company, Boston Gas Company and Colonial Gas Company, each d/b/a National Grid (“National Grid”), and NSTAR Gas Company and NSTAR Electric Company, each d/b/a Eversource Energy (“Eversource”), Bay State Gas Company d/b/a Columbia Gas of Massachusetts (“CMA”), Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty (“Liberty”), The Berkshire Gas Company (“Berkshire Gas”)(collectively, “Distribution Companies”), the Office of the Attorney General (“AGO” or “Attorney General”, the Department of Energy Resources (“DOER”), the National Consumer Law Center (“NCLC”), the Low-Income Energy Affordability Network (“LEAN”) and the Associated Industries of Massachusetts (“AIM”).

ratemaking proposal that would both support the Working Group’s customer assistance initiatives and maintain the financial integrity of the utilities in light of the COVID-19 pandemic (*id.* at 10).

On May 29, 2020, the Working Group filed a consensus customer assistance report (“First Report”) with several recommendations and open items to continue discussing as a working group. On June 26, 2020, the Department issued D.P.U. 20-58-A approving the Working Group’s customer outreach component of the First Report. Further, the Order directed the Working Group to continue discussing open items and to provide the Department with “periodic reports that identify such information as additional details, specific timelines, revisions, and any new approaches, including plans to progress to a new phase of the four-phase general plan at least ten business days prior to each progression” (D.P.U. 20-58-A at 8). The Department directed the Working Group to file its first updated report by July 30, 2020 and updated reports at two-week intervals thereafter (*id.* at 8). The distribution company members of the Working Group filed the first updated report on August 4, 2020.

On July 31, 2020, the Department issued D.P.U. 20-58-B approving the Working Group’s proposals related to the extended payment plans and waiver of late fees, extended plan under available arrearage management plans (“AMPs”), and continuation of the Shut-Off Moratorium detailed in the First Report (D.P.U. 20-58-B at 13). The Department directed the Working Group to provide updates on several items in its next updated report. The Working Group addressed several of those items in its Update to the Report filed on August 21, 2020 (“Second Update”). In addition to the directives addressed in the Second Update, the Working Group continued to work to address the Department’s directive to update the Department on eligibility criteria for extended payment plans to residential and small commercial customers and for payment plans to large commercial and industrial (“C&I”) customers (D.P.U. 20-58-B at 17-18). The Working Group will

continue to discuss the timing of residential shut-off notices. The Working Group² addresses eligibility criteria for payment plans below.

II. ELIGIBILITY CRITERIA FOR PAYMENT PLANS

A. Eligibility for Extended Residential and Small Commercial Plans

In the First Report, the Working Group did not recommend extending payment plans for durations up to 18 months (First Report at 8). For most residential and small commercial customers, the Working Group supported 12-month payment plans. Based on the Distribution Companies' experience, shorter 12-month term payment plans with manageable monthly payment amounts increase the likelihood of a customer paying off the balance (*id.* at 9). The Distribution Companies stated they would offer extended payment plans up to 18 months on a case-by-case basis based on a customer's ability to pay. The Working Group stated it would continue to discuss eligibility criteria for 18-month payment plans (*id.* at 9, n. 6). The Department directed the Working Group to update the Department on the eligibility criteria for residential and small commercial customers (D.P.U. 20-58-B at 17-18).

1. Distribution Companies' Proposal

As stated above, in the Distribution Companies' experience shorter-term payment plans of 12 months are more likely to be successful. As a result, the Distribution Companies propose to offer extended payment plans between 12 months and 18 months only if a shorter payment plan would result in unmanageable monthly payment amounts for a customer.³ The determination of

² Please note that the Fourth Update is substantially the product of active discussion between the distribution companies and the Office of the Attorney General. Although the full Working Group was involved in conversations on these topics, DOER, NCLC, LEAN and AIM were provided the final version of the Fourth Report with short notice this afternoon and did not have a meaningful opportunity to comment on the Fourth Report. Accordingly, the distribution companies welcome any comments these organizations may wish to offer independent of the report, at their convenience.

³ As stated in the First Report, the Distribution Companies will encourage those customers who qualify for the low-income discount rate to participate in the AMP rather than a deferred payment plan (First Report at 8).

whether monthly payment amounts are unmanageable will be based on feedback from the customer. Therefore, if the customer communicates to a Distribution Company that it will be unable to make the monthly payment amounts on a payment plan of up to 12 months, the Distribution Companies will offer an extended payment plan of up to 18 months.⁴ The flexibility to extend a payment plan up to 18 months, if needed, provides the Distribution Companies the ability to address each customer's particular financial circumstances, based on a customer's feedback of its ability to pay.

2. AGO's Response

The AGO agrees with the Distribution Companies' proposal described above, subject to the AGO's understanding that the Distribution Companies will use self-certification as their criteria for extended payment plan eligibility. Specifically, it is the AGO's understanding from the latest Working Group discussion that customers who provide a verbal self-certification that they cannot make payments under a 12-month plan due to financial hardship are eligible for an extended payment plan of up to 18 months. The AGO further understands that, absent obvious indications of fraud, the Distribution Companies will not deny an extended payment plan to any residential or small C&I customer who provides any such self-certification. The AGO agrees that self-certification is the least onerous, consistent method for determining extended payment plan eligibility and reasonable under these difficult circumstances. The AGO appreciates the Distribution Companies' clarification that they will encourage customers who cannot make payments to cure their arrears under a 12-month payment plan—but who qualify for AMP—to enroll in AMP. Placing low-income customers on a shorter plan that includes arrearage

⁴ For Berkshire Gas, all payment plans are level installment payment plans in which the future projected bills are considered in the calculation of the monthly payment amount. If a shorter term payment plan includes projected bills for higher seasonal bill periods (winter heating), a longer plan will typically provide a more affordable payment amount which increases the success rate for completing the payment agreement to resolving the arrearage.

forgiveness, rather than an extended payment plan, better accommodates the financial hardships these customers currently face.

B. Eligibility for Large C&I Customers

In the First Report, the Distribution Companies stated payment plans would be offered to large C&I customers on a case-by-cases basis with the terms of such payment plans generally being less than six months (First Report at 9-10). The Working Group stated it would continue to discuss eligibility criteria for offering payment plans to large C&I customers (*id.* at 10, n. 7). In D.P.U. 20-58-B, the Department directed the Working Group to update the Department on the eligibility criteria in its next updated report (D.P.U. 20-58-B at 18).

Generally, large C&I customers have greater access to financial resources to pay energy bills than residential and small commercial customers. However, the Distribution Companies anticipate that many larger C&I customers may continue to face financial challenges due to the COVID-19 pandemic. As a result, on a case-by-case basis, the Distribution Companies propose to offer payment plans to those large C&I customers that need assistance. The Working Group has not come to a consensus on the proposal.⁵ The Distribution Companies' current proposal and stakeholder responses to that proposal are below.

1. Distribution Companies' Proposal

The Distribution Companies propose that, if a large C&I customer is currently in arrears on its electric or gas bill and, therefore, indicates it is experiencing financial hardship, a distribution company's customer service representative will engage with the customer to determine whether a payment plan would assist the customer with its ability to pay its bills and satisfy all or part of the

⁵ Although the Working Group has not come to consensus on eligibility criteria for Large C&I customers, the Working Group agrees the evolving nature of the COVID-19 pandemic may necessitate future review and edits to the eligibility criteria.

arrears balance. The customer service representative will inquire into the reasons that led to the customer falling into an arrears situation to explore whether there is a reasonable basis for offering the customer a payment plan.

Many large C&I customers are assigned account executives at the distribution company who become familiar with the large C&I customer's business and needs. To determine whether a large C&I customer may be eligible for a payment plan, the customer service representative will converse with the large C&I customer to understand the specifics of their financial situation as it relates to their ability to pay their bills. In order to be offered a payment plan, the large C&I customer must be in arrears. To assess the situation, the customer service representative will be trained to listen for key themes and will discuss with the customer whether and how it has been financially negatively affected by the pandemic, including some of the following topics:

- Whether the company has been financially negatively affected by the pandemic;
- Whether the company has experienced a reduction in gross revenue or loss in production;
- Whether employees of the company have been furloughed. or may need to be furloughed if the business is not offered a payment plan;
- Whether the business is closed or operating at reduced capacity (i.e. whether the company will close or reduce capacity if not offered a payment plan), and
- Whether the business has exhausted other financial options to pay their utility arrears.

These topics have been agreed upon by the Distribution Companies and the Attorney General. The Distribution Companies and the Attorney General disagree, however, on whether each of these topics need to be address by each Distribution Company large C&I customer service

representative with each large C&I customer seeking a payment plan. While the above list is illustrative and not exhaustive, the customer service representative will look for a demonstration that the customer is experiencing some financial hardship through one or more of the above-described circumstances. The customer service representative will take notes on the conversation and the customer's stated reasons for its request for a payment plan. Based on this customer feedback, which will vary from customer to customer due to the unique nature of the large C&I group, the customer service representative or account executive may offer the customer a tailored payment plan that best suits a given customer's financial situation and needs.

In the Distribution Companies' experience, the need for payment plans for large C&I customers is anticipated to be rare. The table below breaks out the number of large C&I customers in arrears by Distribution Company:

	Berkshire	CMA	Eversource	Liberty	National Grid	Unitil
Approx. # of Large C&I Customers in arrears	4	143	178	5	452	4

Moreover, in the collective experience of the Distribution Companies a payment plan would be appropriate for only a subset of these customers. First, even though these customers are currently in arrears, as a group, in general large C&I customers have more flexibility and access to financial resources to remain current on their utility bills than either the residential or small commercial customer groups. Specifically, large C&I customers generally have access to equity, loans, or other financing options that are either unavailable to or impractical for smaller customers. As such, the Distribution Companies anticipate offering payment plans to large C&I customers only on rare occasions.

In addition, there is significant diversity among large C&I customers in terms of their size and type of industry or business, whether manufacturing, retail or service. Certain industries have sustained greater financial impacts as a result of the COVID-19 pandemic than other industries, such as hospitality businesses and colleges, requiring the distribution companies to evaluate each large C&I customer separately, based upon its specific circumstances. For these reasons, it is imperative that the Distribution Companies be permitted to address the need for payment plans for large C&I customers on a case by case basis to determine if assistance is warranted and for what duration. Accordingly, the Distribution Companies encourage the Department to adopt the Distribution Companies' flexible approach that addresses each customer's individual needs according to their specific financial circumstances to enable customers to remain current on their utility bills and pay down their arrears.

Lastly, the Distribution Companies particularly disagree with the AGO's proposal to impose a financing charge with a large C&I deferred payment arrangement. If a customer is in financial need and is struggling to pay its energy bills, a financing charge would be punitive and counterproductive to resolving that customer's financial struggles. The priority for the Distribution Companies would be to place the customer on a short duration payment plan to begin alleviating the customer's financial struggle, become current on its bills and avoid disconnection of service. Further, the Distribution Companies are concerned that assessing a "financing charge" will change the nature of a deferred payment plan into a loan, and would potentially subject the companies to banking regulations and federal bankruptcy laws applicable to lending institutions.

2. AGO's Response

The AGO agrees with the Distribution Companies that payment plans to large C&I customers should be the exception, rather than the default response, to large C&I customers that

have fallen in arrears, and further agrees that being in arrears should be the minimum requirement for participating in a large C&I payment plan. The AGO understands the Distribution Companies' proposal above to function as a screening process by which account executives or customer service representatives will assess a large C&I customer's need for a payment plan. The AGO also understands that, absent obvious indications of fraud, the account executive or customer service representative will accept the customer's representations about its financial health and the potential impact of not receiving a payment plan.

The Distribution Companies' listed screening topics appear reasonable. Those topics that focus on whether a payment plan is necessary to prevent further financial harm to the customer, which might result in additional furloughs or closing of the business, address the potential benefits of offering the payment plan. The account executive or customer service representative's inquiry into whether the customer has exhausted other forms of financing is particularly important. The payment plans will be, in effect, financing offered by the Distribution Companies. Customers that have easy access to financing from parent companies, affiliates, or other sources should not rely first on the Distribution Companies, and potentially other ratepayers, to cover their expenses.

The AGO only has one disagreement with the Distribution Companies regarding its screening process, which is the Distribution Companies' refusal to commit to addressing all five of the above-listed topics with each large C&I customer that it screens for payment plan eligibility. The specific change that the AGO requests to the Distribution Companies' screening system is that they change their proposal to state "including **each** of the following topics:" rather than only committing to addressing "some of the following topics." By committing to addressing each of the listed topics as part of the screening process, the Distribution Companies will provide a relatively uniform screening process that will help mitigate the risk of any unintended discriminatory

treatment of similarly situated customers. Such unintended discriminatory treatment is a particular risk in relation to large C&I customers with whom account executives and customer service representatives often have close relationships.

The Distribution Companies claim that this commitment is too rigid. Yet, the topics listed above are just that—topics. They are not prescribed questions that must be read word-for-word or in any specific order. Each of these topics can naturally be worked into a conversation that focuses on the large C&I customer's financial health and need for a payment plan. This commitment is a small but important request from the AGO, especially for ensuring that the Distribution Companies inquire about the customer's access to other forms of financing. The AGO respectfully requests that the Department order that the Distribution Companies discuss each of the above-listed topics as part of their screening process for large C&I payment plans. The AGO does not object to the above-described screening process so long as it includes this commitment from the Distribution Companies.

Beyond this discrete disagreement about the screening process, the AGO believes that additional measures are necessary to protect other, more vulnerable ratepayers from costs associated with large C&I payment plans. Large C&I customers often have large bills, and ratepayers with fewer resources may ultimately be asked to bear the costs of large C&I payment plans. During its discussion with the Distribution Companies, the AGO proposed that the Distribution Companies incorporate financing charges into each large C&I payment plan that would cover any costs incurred by the Distribution Companies in extending these plans. Financing charges calculated to cover costs would allow large C&I payment plans to pay for themselves and alleviate any concerns about other ratepayers bearing additional costs. Moreover, these charges potentially would be lower than the current late-payment interest charges that some Distribution

Companies charge. *See Investigation Regarding Amendment of the Present Regulations 220 C.M.R. s. 26.00 et seq to Add Regulations Relating to Late Payment Charges*, D.P.U. 93-204, at 2 (1993) (noting that late-payment charges are based on “the costs associated with increased borrowing required to cover delinquent bills” *and* deterrence). The Distribution Companies rejected this proposal.⁶ Thus, the AGO remains concerned about who will bear the costs of these large C&I payment plans in the future.

Non-large C&I customers with fewer financial resources should not be burdened with the costs of these large C&I payment plans. Accordingly, the AGO respectfully requests that the Department address the ratemaking treatment for costs incurred from large C&I payment plans as part of its decision on the ratemaking proposals submitted in this docket. To the extent that the Department seeks comment on the specific issue of ratemaking treatment for costs incurred from large C&I payment plans, the AGO will supplement its previously-filed ratemaking comments if the Department so directs.

III. CONCLUSION

The members of the Working Group appreciate the Department’s inquiry into customer assistance matters related to COVID-19 and the opportunity to work collaboratively to produce

⁶ The Distribution Companies rejected the financing charge proposal as “punitive” and potentially subjecting them to banking regulations. Because the proposal explicitly sought charges that would cover the Distribution Companies’ incurred costs, it was not intended as a punitive measure or deterrence. Regarding the Distribution Companies’ concern about banking regulations, the AGO interprets that to mean they fear being subject to certain additional laws and regulations governing debtor-creditor relationships, not that they fear being subject to the same laws and regulations as a chartered bank. The Distribution Companies have not identified the specific regulations that would apply to them as a result of implementing financing charges for payment plans to other businesses—and that would not otherwise apply to their extension of credit to those businesses through payment plans with no financing charges. They also have not explained how a financing charge would be any less of a rate or charge prescribed by the Department than their late-payment charges and thereby subject them to some other regulatory scheme. *See Boston Edison Co. v. City of Boston*, 390 Mass. 772, 774–75, 777 n.6 (1984) (identifying late-payment charges as part of the administratively-set rate schedule).

this fourth updated report. The Working Group will continue to work collaboratively to address any remaining directives from the Department in subsequent updated reports.

Dated: October 16, 2020