

**IN THIS ISSUE**

**A Model State Regulation for Deferred  
 Payment Arrangements**

**NOTE TO READERS**

**ON-LINE DELIVERY**

This document presents the bi-monthly electronic newsletter of Fisher, Sheehan & Colton: *FSC's Law and Economics Insights*. Previous issues of the newsletter can be obtained at FSC's World Wide Web site:

<http://www.fsconline.com/news/news.htm>

Fisher, Sheehan & Colton  
 Public Finance and General Economics  
 34 Warwick Road, Belmont, MA 02478  
 (voice) 617-484-0597 \*\*\* (fax) 617-484-0594  
 (e-mail) roger@fsconline.com

**THE DESIGN OF A WORKABLE DEFERRED  
 PAYMENT ARRANGEMENT**

Fisher, Sheehan and Colton (FSC) was recently asked to prepare an annotated model state utility commission regulation governing the offer of deferred payment plans. FSC's resulting regulation is not unique to low-income customers. It would apply to all residential utility customers.

Its Model DPA regulation is presented below:

-----  
**Deferred Payment Arrangements:  
 A Model State Commission Regulation**

**March 2011**  
 -----

*Section 1.*

- A. *No utility company shall terminate or refuse to restore service<sup>1</sup> to any gas or electric residential customer whose service has been or is subject to termination for a delinquent amount unless and until the company first offers<sup>2</sup> the customer an opportunity to enter into a reasonable deferred payment agreement.*
- B. *Whenever a residential customer advises the utility that the customer is presently unable to pay a total outstanding*

<sup>1</sup> This section applies to persons who are on-system ("disconnect") or off-system ("restore").

<sup>2</sup> This section makes the offer of a deferred payment arrangement (DPA) a prerequisite to a disconnection of service. It places a proactive duty on the utility, not merely a reactive or passive duty to "accept" a payment plan proffered by the customer.

*bill and/or deposit,<sup>3</sup> the utility shall offer the customer a reasonable deferred payment agreement, which takes into consideration the customer's financial circumstances.*

*Section 2. The customer has the option, when negotiating a deferred payment agreement, to include the current month's bill plus the reconnection charges, deposits, or other customer service fees, if any, in the total amount to be paid over the term of the deferred payment agreement.<sup>4</sup>*

*Section 3.*

- A. The utility shall not require a residential customer to pay, as a down-payment, more than the lesser<sup>5</sup> of \$200 or 25 percent of the total outstanding bill<sup>6</sup> due at the time the agreement(s) is made or executed.*
- B. Should a customer be a participant in an energy assistance or income-supplement program as identified in this section,<sup>7</sup> the utility shall not require the customer to pay, as a down-payment, more than 15 percent of the amount covered by the payment agreement, or the cost of one half of one month's average usage, whichever is greater.
  - a. The cost of one month's average usage shall be calculated by averaging the cost of service over the prior 12 months.**

<sup>3</sup> The customer need not ask for a DPA; he/she need only say that he/she is presently unable to pay the bill.

<sup>4</sup> While Section 1(B) refers intentionally to the "total outstanding bill," this section makes explicit that *everything that is owing* is subject to the DPA.

<sup>5</sup> It is not "either-or" here. It is the *lesser* of the two stated amounts.

<sup>6</sup> Note how this section precludes the utility from requiring payment of certain fees "up front." So, it is not a down-payment plus a reconnect fee (or some other fee). The DPA applies to the "total outstanding bill."

<sup>7</sup> The section still leaves the potential problem of a utility engaging in willful blindness ("how were we to know?") about a customer's participation in one of these programs.

- b. The income supplement or energy assistance programs that qualify a customer for this down-payment include:
  - i. EUSP;*
  - ii. USPP;*
  - iii. LIHEAP;*
  - iv. Public or assisted housing;<sup>8</sup>*
  - v. SSI;*
  - vi. SNAP (formerly Food Stamps);*
  - vii. TANF;*
  - viii. Telephone lifeline;*
  - ix. PAAD (Pharmaceutical Assistance for the Aged and Disabled);*
  - x. WIC*
  - xi. Medicaid*
  - xii. Free or reduced school lunch/school breakfast*
  - xiii. Head Start*
  - xiv. Dependency and Indemnity Compensation (DIC) for Surviving Spouse or Parents of Veterans.*
  - xv. Other programs as may from time to time be recognized by the commission.**

*Section 4. Upon request, there shall be no disconnection of service for 30 days from the date of the request to allow the customer time to obtain assistance and to negotiate a deferred payment agreement.<sup>9</sup> The utility shall notify the customer that this postponement is available if requested.<sup>10</sup>*

<sup>8</sup> "Assisted housing" is quite broad. It is generally Section 8, but can cover Low-Income Housing Tax Credits, HOME, and a variety of HUD programs.

<sup>9</sup> This is not limited to low-income. Indeed, the non-low-income may need the longer period more than the low-income because the sources of assistance may not be quite so available or, if available, not so evident.

<sup>10</sup> The customer has to request it, but this states that the utility has to at least notify the customer that the delay is there-for-the-asking. Otherwise, how would a customer

Section 5.

- A. *The deferred payment agreement shall reflect the specific circumstances of the particular case and shall be determined by both the utility company and the customer receiving residential utility service.<sup>11</sup>*
- i. *A deferred payment agreement must provide for installments as low as \$10 per month and no downpayment, when the customer or applicant demonstrates financial need for such terms, but need not provide for monthly installments of less than \$10.<sup>12</sup>*
- ii. *The first customer payment on a deferred payment agreement may be delayed until the third bill after the payment agreement is entered into, provided that the customer pays current bills as they become due.<sup>13</sup>*
- iii. *A payment agreement may provide for any size or no downpayment, and installments on any schedule over any period of time if mutually agreed to by the parties.<sup>14</sup>*

---

ever know to request such a postponement?

<sup>11</sup> This section disallows the use of standardized plans. It requires DPAs to “reflect the specific circumstances of the particular case.”

<sup>12</sup> The floor here is important. No-one (unless low-income as later provided) can pay less than \$10 a month toward their arrears.

<sup>13</sup> This section is based on the typical mortgage foreclosure workout, which allows for the deferred payment of the past-due amount for some period of time until the immediate financial crisis has been resolved. If someone is in financial distress, it may sometimes be the most reasonable thing to do for a utility to say: “okay, let’s let you get back on your feet, and then start paying your arrears off, so long as you at least stay current.” Note that a separate section requires a utility to offer a budget billing plan (if otherwise available to residential customers generally). So, at most, a customer would need to pay the budget billing amount for the first couple of months.

<sup>14</sup> This makes explicit that the utility and the customer can

- B. *A utility must develop written deferred payment agreement procedures and forms for evaluating the financial need of a customer or applicant,<sup>15</sup> for assuring the confidential handling of such information, for arriving at fair and reasonable payment terms, and for training its personnel, which procedures shall be filed with the Office of public advocate and with the state Public Utility Commission.*
- C. *The Commission or its authorized designee may order a utility to offer a payment agreement in accordance with this section where the parties have been unable to reach agreement or<sup>16</sup> where an agreement is necessary for the fair and equitable resolution of a dispute.<sup>17</sup>*
- D. *If a utility believes that a customer or applicant is not eligible for a payment agreement because he or she has the resources to pay the bill, the utility may seek a determination from the Commission or its designee, in accordance with the following procedures:<sup>18</sup>*
- i. *The utility must notify the customer or applicant and the commission or its designee in*

---

agree to anything. So, for example, someone can negotiate that they not make August payments (if they need back-to-school money).

<sup>15</sup> The utility needs to document how it will consider a customer’s financial circumstances.

<sup>16</sup> Note the “or” here. It is not simply that the customer and utility may not reach an agreement. But, consistent with what we provide below (that a DPA that appears to have been “agreed to” by the customer can be challenged at the time the first payment comes due), this says that the commission can adjust the plan if fairness and equity dictate. Note the process provided below.

<sup>17</sup> This makes explicit the Pennsylvania model. If a customer is dissatisfied, the commission may step in and make the decision. Pennsylvania tracks not only how many DPAs are ordered by the commission, but how many times the customer “wins” and how many times the utility offer is upheld.

<sup>18</sup> If the regulation gives the right to customers to appeal to the commission, it seems equitable to give the corresponding right to the utility to appeal to the commission for a determination that no DPA is needed.

- writing of the reason for its belief;
- ii. The utility must give the customer or applicant written notice summarizing the procedures under this paragraph in clear and understandable language;
  - iii. The commission or its designee will forthwith make a determination as to whether the customer or applicant has the resources available to pay the bill; and
  - iv. Until such a determination is made by the commission or its designee, the utility must postpone any termination, disconnection or suspension activity, restore service or provide service, as applicable, as long as the customer or applicant pays current bills, and a down-payment and monthly installments in such amounts established by the commission or its designee.<sup>19</sup>

Section 6.

- A. The utility shall provide a written payment agreement form in clear and understandable language and format at the time of the initial agreement on a deferred payment arrangement. The written payment agreement form shall contain the following information:
  - i. that the utility is required to offer a payment agreement that the customer or applicant is able to pay,<sup>20</sup> considering his or her financial circumstances,<sup>21</sup>

<sup>19</sup> This is the New York procedure. The New York process does not seem to provide a step under which the customer has the right to respond to the utility's statement of the "reason for its belief" that a customer has the resources to pay his/her entire bill. Perhaps it should.

<sup>20</sup> Note this consistent theme. The utility is required to offer a reasonable payment plan. The customer should not have

- ii. that if the customer or applicant demonstrates financial need, alternate terms will be available, a down payment may not be required and installments may be as low as \$10 per month above current bills; and
  - iii. that the agreement should not be signed if the customer or applicant is unable to pay its terms.
- B. The utility shall provide a written notice to accompany the first bill on which a payment agreement payment is due setting forth the terms of the payment arrangement with the following language: "IMPORTANT NOTICE: If you cannot pay your current bill plus the dollar amount which you have agreed to pay toward your past-due bill, you must within ten days after receiving this notice sign and mail this form to the state Public Utility Commission,

---

(insert address)."<sup>22</sup>

Section 7. If a utility has a budget billing or equal payment plan available, it shall offer the customer<sup>23</sup> the option of: (1) agreeing to pay

---

to turn down multiple offers before they get to a reasonable offer. Moreover, starting a "negotiation" with the statement: "tell me how much you can pay" would not be the "offer" of a reasonable DPA.

<sup>21</sup> A utility must consider a customer's financial circumstances. Note that this differs from the traditional "ability to pay" (which too often is translated as synonymous with "income"). Here, too, a utility who starts with the question "tell me how much you can pay" would not comply with the requirement to consider the customer's financial circumstances.

<sup>22</sup> This is the section that recognizes that a customer may not recognize the burden to which he/she has agreed in the abstract until it comes time to pay the first bill. The customer should not be placed in the situation of "object now or forever hold your peace" at the time the DPA is first discussed. The time of the first payment should be a second opportunity to say "wait a minute, this isn't going to work."

<sup>23</sup> Language imposing an obligation on the utility to "offer" an action-step appears here again. The utility must "offer" to put the customer on budget billing. There cannot be

monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or (2) agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.<sup>24</sup>

*Section 8. A customer shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of, the outstanding balance due under a deferred payment agreement at any time during the term of the agreement.*<sup>25</sup>

*Section 9. A utility shall not charge a fee for entering into a deferred payment agreement, including any interest charge or late payment charge on payment plan payments that have not yet become past-due pursuant to an agreement.*<sup>26</sup>

*Section 10. A utility shall renegotiate and/or amend the deferred payment agreement of a residential customer if said customer demonstrates that his or her financial circumstances have changed significantly.*<sup>27</sup>

---

willful blindness on the part of the utility (“how were we to know that the customer might want budget billing?”).

<sup>24</sup> This doesn’t say that a utility may require a customer entering a DPA to go on budget billing; but a utility must offer budget billing. (Note the difference later on when there are circumstances where a utility may require budget billing.)

<sup>25</sup> Some utilities say that you may not pre-pay a DPA installment. That if you overpay on your bill, the overpayment is applied to the *end* of the payment plan. What that does, of course, particularly with LIHEAP, is to reduce the length of the payment plan rather than using a LIHEAP payment (which may be greater than the monthly payment amount) to pay for current energy bill needs. Such a requirement (to apply overpayments only to the end of the DPA) may be contrary to federal law when applied to LIHEAP.

<sup>26</sup> A straightforward prohibition on late fees, so long as the payments on the DPA are current. If those payments are not current, the late fees can apply only to the DPA payments that are past-due. Note, also, that this proactively denies the right for a utility to impose a fee for negotiating a DPA.

<sup>27</sup> Renegotiation on a going-forward basis.

*Section 11. A utility shall not refuse to offer a customer a reasonable deferred payment agreement for the sole reason that the customer has previously entered into such an agreement, provided that the prior agreement was successfully completed.*<sup>28</sup>

*Section 12.*

- A. *If a customer defaults on a deferred payment agreement but has not yet had service discontinued by the utility, the utility shall permit such customer to be reinstated on the deferred payment agreement if the customer pays in full the amounts which should have been paid up to that date pursuant to the original payment agreement (including any amounts for current usage which have become past due).*<sup>29</sup> *The reinstatement of a previously defaulted deferred payment agreement shall not prevent the renegotiation of a deferred payment agreement.*
- B. *A utility shall offer a second payment agreement to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments<sup>30</sup> under the first*

---

<sup>28</sup> Once a customer completes a DPA, it is as though that DPA never existed. A utility may not say, for example, “no, you’ve already had your DPA for the year.” There is a policy reason for this. Assume someone is having difficulty paying their bill; they come in and say “please give me two months.” Without this section, that person may be precluded from coming in again if they need “two months.” So, what does that person do: they *don’t* come in as early as possible, but instead wait until their need reaches a crisis stage and it is harder to resolve. Denying multiple payment plans (when needed) isn’t even smart collections policy by the utility.

<sup>29</sup> The customer can “cure” a payment plan. But, if the customer needs to do so, they must arrange that cure before they get disconnected. There must be *some* consequences associated with waiting until the utility disconnects your service.

<sup>30</sup> The Iowa utilities at first argued that this rule meant that the two consecutive payments had to come out of customer resources (and could not include a LIHEAP payment). Not only was this in violation of the federal LIHEAP statute,

*payment agreement.<sup>31</sup> The second payment agreement shall be for the same term as or longer than the term of the first payment agreement. The customer shall be required to pay for current service in addition to the monthly payments under the second payment agreement and may be required to make the first payment up-front as a condition of entering into the second payment agreement. The utility may also require the customer to enter into a level payment plan to pay the current bill.<sup>32</sup> The utility may offer additional payment agreements to the customer. Nothing in this section shall preclude a utility and a residential customer from renegotiating the terms of an installment agreement in circumstances other than those referenced above.<sup>33</sup>*

-- END --

For more information on deferred payment arrangements, please write:

roger[at]fsconline.com

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which FSC has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.

---

but the utilities eventually conceded that they had no way to know whether a payment came from the customer's resources, the customer's in-laws, the customer's church, a Community Action Agency, a fuel fund, or somewhere else. So, this just means "two consecutive payments" toward a customer's account. Moreover, under the Iowa regulations regarding second payment plans, if a LIHEAP payment creates a credit on a bill that is the equivalent of two (or more) months of payment, that single LIHEAP payment meets the terms of this section.

<sup>31</sup> This whole section is the "Iowa second payment plan" regulation.

<sup>32</sup> Note that with the second payment plan, the utility may require a customer to enter into budget billing.

<sup>33</sup> This sentence makes clear that the section provides a minimum consumer protection. The utility and customer may negotiate third or fourth (or whatever number) of payment plans.