Offering payment options to customers while keeping the utility fully secured

Editor's note: *This is the second of a two-part series discussing strategies to protect utilities from unpaid bills after a non-residential customer declares for bankruptcy. This article discusses the various payment options utilities can establish for non-residential customers that includes a security deposit.*

By Gilbert L. Hamberg

Last month's article focused on a four-part strategy and process to assist utilities from avoiding being on the hook for large, unpaid bills by non-residential customers that declare bankruptcy. I want to now focus on implimenting one of three payment options for non-residential customers.

A prudent utility should offer payment options for each non-residential customer to choose. Under each option, the utility is secured for the number of days in the billing cycle. Under a phase-in plan, at the end of the final year of the phase-in, every non-residential customer over a set amount each month no longer is 100 percent unsecured. Ideally, the options should be phased in for all non-residential customers and ultimately, all customers.

Here are three payment options to consider:

Option I

Option I is normal, monthly billing. The customer pays a cash security deposit, calculated at the formula of twice the highest monthly bill.

To improve cash flow, reduce the size of bad debt expenses and reduce cash working capital requirements, you should revise the Local Laws to reduce the length of a monthly billing cycle. For example, if after meter reading, it takes five days to mail invoices, then reduce that delay to three days.

If the period to pay the invoice is 15 days, then reduce that to 12 days. If it takes three days to send a default notice when the due date passes without payment, then reduce that to two days. When analyzing monthly billing cycles, utilities are surprised to realize that the billing delay actually exceeds 60 days. Each day shaved off the billing cycle helps.

Options II and III

Options II and III are alternative billing

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practices/procedures. In re Penn Central Transp. Co., 407 F.2d 100, 104 (3rd Cir. 1972), established precedent for these alternatives (Third Circuit explored payment options, other than normal monthly billing, with a two month security deposit; e.g., weekly; semi-monthly; or advance payments; "consider feasible expedients for shortening the interval between an appellant's supplying of energy and the trustee's paying for it.").

Section 366(c)(1) (A) reflects such billing options by providing for prepayment or any other form mutually agreeable between the debtor and the utility. Such options really do work in Chapter 11 cases. Non-residential, debtor customers, who may have been delinquent pre-petition in paying monthly utility invoices, ironically do comply with such alternative billing arrangements timely and fully post-petition.

Under Option II, the customer pays on the 15th day, an estimated amount of 50 percent of the total monthly bill, followed by a meter reading, sending of an actual bill, payment on the 30th day of the remaining 50 percent, plus or minus the underpayment or overpayment, as reflected in the actual meter reading. All payments are made by wire transfer; the utility sends invoices, reconciliation statements, and default notices by email; and the grace period in a default notice is reduced to five days. Under such an arrangement, the deposit can be reduced to about 25 days. This option would be attractive to the customer who complains about insufficient funds to post a full deposit.

Under Option III, the customer pays on the 25th day the estimated amount of the next month's invoice. During the next month, the meter is read,

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Nebraska suing EPA over new power plant standards

Attorney General Jon Bruning in January announced Nebraska is filing suit in U.S. District Court for the District of Nebraska challenging the Environmental Protection Agency's (EPA) greenhouse gas standards for new power plants.

"The impossible standards imposed by the EPA will ensure no new power plants are built in Nebraska," Bruning said in a news release. "This federal agency continues to overstep its authority at the detriment of Nebraska businesses."

Bruning's challenge comes under the Energy Policy Act of 2005 which prohibits the EPA from considering federally-funded projects when determining the appropriate form of control technology.

Contrary to the Act, the EPA proposed greenhouse gas standards based on three inoperable coal plants which have received more than $2.5 billion in federal subsidies, stated the release.

According to the release the EPA referenced the inoperable plants as evidence to support carbon capture and storage technology should be the standard for all new coal plants.

APGA hires director of government affairs

The American Public Gas Association (APGA) announced in January its hiring of Dan Lapato as director of government affairs.

His primary areas of focus will be on legislative and regulatory advocacy efforts related to codes and standards, energy efficiency and climate change. Lapato will also serve as the staff liaison for the APGA Codes & Standards Committee.

Prior to joining APGA, Lapato served as the deputy director for the Pennsylvania Department of Environmental Protection (DEP), Office of External Affairs.

Lapato brings an abundance of experience in environmental policy and the energy industry, especially with natural gas. He can be reached by email at dlapato@apga.org or by phone at (202) 464-2742.

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and the utility emails the invoice plus a reconciliation statement, reflecting any underpayment or overpayment to be added or subtracted from the next month's advance payment. Again, all payments are made by wire transfer; and the grace period in a default notice, sent via email, is reduced to five days. The deposit can be reduced to five days. Another option is advance payment on a weekly basis, with the same kinds of logistics, but a higher security deposit.

Under each option, the customer posts a deposit equal to the number of days in the applicable billing cycle, representing the utility's risk of loss. Adjusting the amount of deposit by historical charges keeps things fair – to both the utility and the customer. Finally, the utility and customer have to negotiate and execute an agreement, which implements the specifics of the alternative billing arrangement satisfactory to both.

Conclusion

Enacting and implementing these recommendations benefits the utility and its customers. They end up not absorbing, through higher rates, the bills not paid by the larger, non-residential customers. Even they will realize that they too will not have to pay the costs of another large customer failing to pay. Reducing bad debt expenses and cash working capital requirements and improving cash flow are admirable goals. Be the first utility in your area to not have to worry about losses when customers fail to pay their bills.

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