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Essential news for NMPP Energy members

Essent

NEWSLETTER

Colorado Municipal Power Pool • Municipal Energy Agency of Nebraska • Public Alliance for Community Energy • National Power Grid Agency

INSIDE

Protection from unpaid bills: Is your utility protected from unpaid bills due to bankruptcy?.....Page 4

Small utilities in U.S. under heaviest stress

Compliance, cyber security, digital transition all major factors

Being on the American Public Power Association board of directors the past several years and now serving as the chair for 2013-14, I've had the privilege of gaining a national perspective regarding public power.

I'd like to use this space periodically during my time as APPA chair to share some of the topics, issues and challenges regarding public power and natural gas on a national level.



By Gary Stauffer

Executive Director Notes

We're experiencing this in our own shop as well. We've had to add staff to handle the increased compliance, regulatory and operational complexities in the regional footprints where our wholesale utility (MEAN) operates. The business of moving power to where it's needed has always been a complex job. It is even more complex now.

Another stressor to public power utilities, especially small utilities, is the transition to a digital distribution system that requires more data retention, dissemination and management. Let's face it – public power customers are spoiled. Public power does such a good job of delivering its product 24 hours a day, 365 days a year – year after year – that customers don't know what it's like not to have reliable electricity.

Public power is so consistently good, its customers just expect it to be there. It's that combination of customer high expectation and a transitioning distribution system that has small utilities under tremendous stress.

Cyber security: a big threat to small utilities

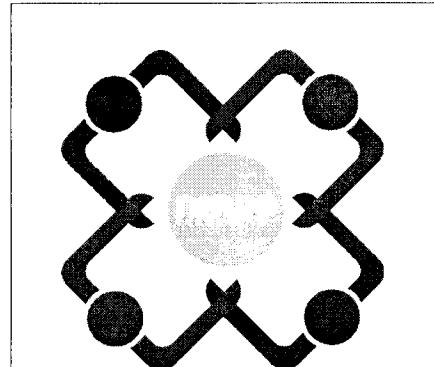
Transitioning to a digital distribution system feeds in to a third major stressor, particularly to small

Smallest utilities feeling the most stress across U.S.

As a nation, we take electricity for granted — until the power goes out, then we realize how much we depend on it. Regional blackouts the past decade sounded the alarm at the federal level regarding grid reliability. This led to significant increases in compliance and regulatory measures for utilities across the country. As with any type of significant change, the smallest entities with the fewest resources tend to be hit hardest. Small distribution systems in particular across the U.S. are under tremendous stress caused by the increased compliance and regulatory obligations.

See 'SMALL UTILITIES' on page 6

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Best-Selling Author James Bradley to speak at Annual Conference...

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Strategies can protect utilities from unpaid bills after declared bankruptcy

Editor's note: This article is broken into two parts, with the second part being published in the February Essent newsletter.

By **Gilbert L. Hamberg**

Since Section 366 of the U.S. Bankruptcy Code became effective in 1978, most utilities now know that when non-residential customers with material monthly invoices file for Chapter 11, they should demand assurance of payment in an enumerated form set forth in Section 366(c)(1)(A); e.g., a cash security deposit or a prepayment. The most popular form is a security deposit, as provided under local rules, regulations, tariff provisions, or ordinances ("local laws"): typically, twice the average or highest monthly invoice.

Where many electric utilities, especially smaller ones; e.g., municipal or rural electric, may be failing is not demanding security deposits or alternatives from non-residential customers with material monthly invoices – before and after they file for bankruptcy. With monthly billing cycles, the actual financial risk of loss to a utility can be 60 days or more – factoring in 30 days of charges, reading the meter, mailing the invoice, the gap until the due date, issuing a default notice, expiration of the cure period, and ultimate termination.

Prudent municipal electric utilities should not sell to non-debtor, non-residential customers on a 100 percent unsecured basis. These customers will argue that either they are "good" for the amounts of the monthly invoices, so they should not be required to post a deposit, or that they do not have the financial ability to post a two-month deposit. The solution: create alternate billing options – requiring the customer to select one alternative for being reasonably secured.

Too often, utilities sell to large customers without security, then later file for bankruptcy, leaving utilities to face large, unpaid bills. Sometimes, they recover these large pre-petition claims in the bankruptcy, but frequently, they do not. When they do not, the unpaid claims are passed through as bad debt expenses, to be paid by the remaining customers in the form of higher rates.

The Gilbert Hamberg Law Office is part of NMPP Energy's Champions Program. A complete listing of Champions businesses is on page 7.

These businesses support the organizations of NMPP Energy.

Remember the classic tenant of utility regulation: a utility has to treat all customers in pre-designated rate classes the same – per the local laws. Any residential customer pays the same rate as any other residential customer, which price may be different than the price paid by commercial or industrial customers. But within each designated class, each customer is treated the same. And so, terms offered to industrial customer XYZ or ABC, which have similar electrical characteristics, should be the same.

Four-Step Strategy

To effectuate this solution, a prudent utility should consider implementing the following four-step strategy:

1) Evaluate and consider improvements to current practices. Examples include:

- Do your local laws provide that after a non-residential customer pays 10 of 12 monthly invoices timely and fully, you have to refund the security deposit? If so, then rescind such a rule. What good does a returned deposit provide when the customer files for bankruptcy in year four? You should require payment of the maximum amount of deposit — so long as the account is active.

- Do your local laws provide for payment of interest on deposits at a rate greater than that paid by your local banks on checking accounts? If so, then amend such a law.

- Do you review semi-annually (or even better, monthly) whether the amount of the deposit or commercial equivalent is equal to current charges in the billing cycle, and if not, then adjust the deposit up or down? If when the customer signed up

See BANKRUPTCY on page 5

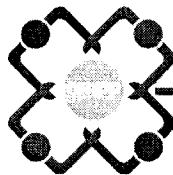
‘Flags of our Fathers’ author to speak

New York Times best-selling Author James Bradley will speak at the NMPP Energy Annual Meeting and Conference in West Point, Neb., March 31-April 2, 2014.

Bradley's presentation "Achieving the Impossible" will be on Wednesday, April 2, the final day of the conference.

"We strive to have quality speakers with substance at the NMPP Energy conference so attendees can take away something valuable and useful," said Gary Stauffer. "I've seen James Bradley's presentation and have no doubt attendees will enjoy his presentation."

Bradley's book "Flags of Our Fathers" was published in 2000 and it quickly became the New York Times No. 1 best-selling



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book. "Flags of Our Fathers" is about the six boys who raised the American flag on Iwo Jima. The photograph is the most reproduced in photographic history. One of the soldiers in the photograph is Bradley's father, John Bradley.

Bradley also wrote "Fly Boys" in 2003 and released the critically acclaimed "The Imperial Cruise" in 2009.



James Bradley

Bankruptcy

Continued from page 4

to receive your electricity, the estimated highest monthly invoice was \$10,000, and if in the past month, the actual invoice was \$20,000, then do you require the customer to increase the deposit to \$40,000?

2) Revise your local laws with the identified improvements.

3) Enact the newly revised local laws.

4) Implement the revised local laws.

This process may take several years. For example, in year one, you might focus upon securing all non-residential accounts over a \$X thousand per month (the largest). This might consist of 10 customers. In year two, effectuate the revised local laws for customers over \$Y thousand per month. This might apply to 20 customers. And so on – until after year three or four from the effective date of the revised local laws, all non-residential customers (over a pre-determined monthly amount) are secured for the number of days you are at risk in a

billing cycle.

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.

In the February Essent newsletter, I will focus on the different payment options for non-residential customers.

Gilbert L. Hamberg is a sole practitioner in Yardley, Pa. He represents U.S. utilities when their customers file for bankruptcy. He is a frequent lecturer at utility conferences about how utilities should protect themselves before and when their customers file for bankruptcy. Email: ghamberg_3@msn.com; Web: www.GilbertLHamberg.com.