NATIONAL GOVERNORS ASSOCIATION

Memorandum on State Utility Disconnection Moratoriums and Utility Affordability

Background

Financial Impacts on Utilities and Utility Customers
As a result of the COVID-19 pandemic and its economic effect, unemployment across the United States reached unprecedented levels, peaking at 14.8 percent in April 2020 before decreasing to a still-elevated 6.0 percent nationally as of March 2021.[1] As a result of this increase in unemployment and resulting wage loss, many households found themselves unable to pay energy, water and telecommunications utility bills, resulting in potentially high utility debt and financial impacts to utilities. Estimates of financial impacts to utilities include:

- $32 billion in electric and gas utility bill arrearages at the end of 2020, with as many as 20 percent of households behind on utility payments[2]
- $13.9 billion in aggregate financial impact to drinking water utilities[i, 3]
- $12.5 billion in revenue losses to wastewater utilities[4]

Governors, state legislatures and utility regulators in 34 states responded by issuing moratoria on utility disconnections and fees on late bill collection, providing temporary relief for households. Further, many utilities voluntarily adopted temporary restrictions on customer disconnection and collection of arrearages resulting from the pandemic. As these protections expire, mounting arrearages continue, saddling many utility customers with debt and threatening the financial stability of utilities, particularly small energy and water utilities.[ii] As we near the end of the pandemic, many of these protections have ended as states move to ramp up recovery efforts.

While disconnection moratoria offered temporary relief from utility bills for customers, Governors and utility regulators will ultimately need to determine how to address accrued bill arrearages, whether by authorizing utility cost recovery of accrued debt through rate adjustment mechanisms, allowing utilities to collect unpaid bills from customers, implementing payment plans, offering

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[i] The financial impact estimate includes the impacts of eliminating disconnections for non-payment, increased delinquencies because of high unemployment rates, reductions in non-residential water demands and lower customer growth offset by a small increase in revenue from increased residential use.
[ii] In the U.S., 27 percent of electric customers are served by municipal power companies and rural electric cooperatives and 88 percent of households are served by public drinking water systems. Many of these utilities are smaller, with few staff and little ability to weather a significant decrease in revenue when compared to larger investor-owned utilities. Further, many of these are not rate-regulated by state utility commissions, potentially limiting state authority to intervene.

financial assistance to utilities and customers, or other means. This will involve balancing the need for customer bill relief with saddling utilities, in particular rural cooperatives and small energy and water utilities, with additional debt.

This memo identifies the range of solutions Governors can deploy to address utility affordability and bill arrearages as the COVID-19 pandemic and resultant economic impacts continue. These solutions were gathered through an *Experts Roundtable on Utility Disconnection Moratoriums* hosted by the NGA Center for Best Practices December 2-3, 2020 along with additional literature review and conversations with experts.

Policy and Regulatory Actions to Address Bill Arrearages and Utility Affordability

The following sections address many of the tools and strategies Governors can employ to address utility affordability and accrued arrearages through the pandemic and beyond. Solutions described include:

- Adopt or Extend Temporary Moratoria on Utility Disconnections and Late Fees
- Provide Bill Assistance or Payment Plans to Help Customers Pay Bills
- Work with Utility Regulators to Determine Cost Recovery, Customer Repayment, or Other Actions to Address COVID-19 Costs
- Bolster Customer Engagement and Outreach about Available Resources

Adopt or Extend Temporary Moratoria on Utility Disconnections and Late Fees

To ensure continuity of utility service, 34 states and the District of Columbia instituted mandatory moratoriums on utility disconnections and fees on unpaid bill collections, with details and covered utility sectors varying by state. In addition, seventeen states implemented voluntary moratoria, coordinating with utilities to help protect customers, however, adoption varied by utility.[5] Further, multiple utility sectors, including investor-owned electric utilities, natural gas utilities, and many telecommunications utilities voluntarily and temporarily stopped customer disconnections due to nonpayment. Many of these moratoria have since expired, with 13 remaining active.[iii,6] Thirty-five states and the District of Columbia had annual winter disconnection moratoria that are either seasonal, operating during November through March, or temperature-dependent, kicking in at a certain temperature.[7]

Disconnection moratoria have differed from state to state, typically covering a combination of electric, gas, water, wastewater and/or telecommunications utilities. These have been initiated through a mix of executive, regulatory and/or legislative action. Where moratoria are established by executive or legislative action, public utility commissioners may need to add additional provisions or open dockets to determine how costs may be recovered, repayment plans may be structured, or customers can be further protected from adverse impacts.

[iii] The states with active COVID-19 utility disconnection moratoria as of March 2021 are Arkansas, California, Hawaii, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Oregon, Texas, Vermont, Virginia, and Washington

Below are a few examples detailing how moratoriums have varied:

- Through Executive Order 190, **New Jersey** Governor Phil Murphy issued a moratorium on residential disconnections and late fee collections for residential electric, natural gas and water utilities due to nonpayment. This order further required that residential service be reconnected for any customer that was disconnected "due to nonpayment after the [state's] social distance measures went into effect." Cable and telecommunications customers at risk of disconnection were required to be enrolled in an interest free payment plan of at least 12 monthly installments, once the provider verified that no school-aged children were in the household. If the household had school-aged children, disconnection of these services was prohibited.[8]

- In **Arkansas**, the state public service commission first ordered utility disconnection suspensions of all customer classes and tied its end date to the end of NGA Vice Chair Governor Asa Hutchinson's emergency declaration. The Governor has since extended the state of emergency through executive action, further extending the state's utility disconnection moratorium.[9] The Arkansas Public Service Commission announced that they plan to lift the disconnection moratorium on May 3, 2021. In the meantime, they require utilities to proactively communicate with customers about repayment options and offer delayed payment agreement plans.[10]

- **Arizona** Governor Doug Ducey organized an agreement with the state's investor-owned utilities and six electric cooperatives to suspend shutoffs, collection of late fees, and work to establish repayment plans.[11] This agreement, which was voluntary and nonbinding, was used by 16 states and territories.[12]

- **South Carolina** Governor Henry McMaster requested that utilities refrain from disconnecting customer utility service due to the pandemic and issued a letter to the Office of Regulatory Service directing them to formally carry out and communicate this request. The Office of Regulatory Service subsequently requested regulatory waivers from the Public Service Commission of South Carolina to allow cessation of disconnections to take effect.[13]

- In **Kentucky**, utility disconnections and late fee penalties were initially suspended through a Public Service Commission order. Governor Andy Beshear extended this moratorium with Executive Order 2020-323.[14] While Executive Order 2020-881 rescinded the moratorium on disconnections, it kept the moratorium on late bill fees through the end of the calendar year, directed utilities to offer payment programs for customers, and allocated $15 million of Federal Coronavirus Relief Funds for a Team Kentucky utility bill relief fund.[15]

Provide Bill Assistance or Payment Plans to Help Customers Pay Bills

Federal Utility Bill Assistance Programs

A common solution to address utility bill affordability is through direct financial assistance to offset bills for low-income households. Funding for energy bill assistance has historically been covered by the federal Low-Income Heating and Energy Assistance Program (LIHEAP). States receive a formulaic allotment of LIHEAP funding annually. Prior to the pandemic, the income of a typical household receiving LIHEAP funding was 17 percent below federal poverty standards.[16] However, the program required stimulus assistance to reach more families in 2020, as 15 to 20 percent of residential customers are now 60 days or more behind on energy bills. [17,18] While LIHEAP provides considerable benefits to eligible households, it does have some scope limitations and there are some households that meet eligibility requirements yet do not pursue funding, potentially due to a lack of awareness of the program.[19]

Federal Stimulus Programs Providing Utility Bill Relief

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136) was signed into law. The bill primarily distributed funds to help Americans, businesses and state and local governments deal with the early stages of the coronavirus outbreak. Included in these funding provisions was an additional $900 million for the federal LIHEAP program. The act also funded programs through the Small Business Administration to protect eligible businesses. One of these programs, the Paycheck Protection Program, assisted eligible utilities, such as municipal utilities and cooperatives, to pay certain expenses. Some states, typically through legislative action, also directed CARES Act funding towards helping residents pay their water bills.

On December 21, 2020, Congress passed an omnibus spending bill (Consolidated Appropriations Act, 2021) that provided additional COVID-19 stimulus funding to Americans, businesses and state and local governments. This includes $25 billion in utility and rental assistance to state and local governments. These funds can be used for payment of rent, utilities and home energy costs, as well as arrears in those areas. Additionally, the spending bill provided $3.75 billion for the 2021 LIHEAP program, which represents a $10 million increase over the 2020 appropriation.

The omnibus bill also created a new fund, the Low-Income Household Drinking Water and Wastewater Assistance Program to help low-income households pay for water and wastewater utilities. Prior to this bill, there were no federal low-income water assistance programs targeted at customers.[20] This program is similar to the LIHEAP program in administration and income eligibility, with $638 million in funds designated. Payments are required to go to utilities directly, but elements such as applications and state agency partners have yet to be determined. This program is also a temporary program developed in response to COVID-19, not an ongoing program like LIHEAP.[21] While the assistance for energy, water and other utilities are essential for recovery from the economic impacts of COVID-19, advocates warn that the funding will fall short of meeting the massive needs of this moment.

On March 10, 2021, the American Rescue Plan Act was signed into law, providing additional stimulus funding. Of note, the Paycheck Protection Program will receive $7.25 billion, LIHEAP will receive $4.5 billion, and the water assistance program will receive $500 million. Additionally, $350 billion will be made available to the states in the form of flexible state aid.

Customer Assistance Programs

In addition to federal funding, states can provide supplemental funding through Customer Assistance Programs (CAPs), using state funds or authorizing utilities to use ratepayer funds. Prior to COVID-19, utility funded CAPs were the primary mechanisms for water utilities to help struggling customers pay their bills. CAPs included bill discounts, flexible payment terms, lifeline rates, temporary assistance, or subsidized efficiency measures.[22] Many states have leveraged stimulus funding to supplement LIHEAP and/or provide additional customer assistance for non-energy utilities.

- **Kentucky,** in its Team Kentucky program to provide rental relief**,** dispersed funding for those 200 percent above the poverty line, $500 per household for water and wastewater utility bills, and $400 per household for electric and natural gas utility bills.[23]
- **West Virginia** implemented a program through the Governor's office using $25 million in CARES funds to help West Virginians experiencing economic hardship from the COVID-19 pandemic pay their electric, natural gas, water, and sewer bills, that covered unpaid utility bills from March 1 - July 31, 2021.[24]
- **New Mexico** used $5.3 million of its CARES Act allocation to provide energy assistance through utilities. Utilities would then credit households an additional $300 for those already receiving LIHEAP assistance in 2020 who are also one month behind on utility bills.[25]
- **Michigan** also sent $7 million to three gas and electric utilities to help 17,937 households with utility arrearages. The utilities agreed to waive 25 percent of costs, with the average household receiving $395.[26] Michigan also directed CARES act funding to municipal water utilities, allocating $20 million for water bill debts. Eligible customers receive up to $700 for water bills and $700 for wastewater bills.[27]

These bill assistance programs have become increasingly vital to providing safe drinking water during the pandemic to all communities. However, most states have not granted water utilities clear authority to fund CAPs through rate revenues and some states have expressly prohibited it.[28] In other states, the authority is unclear and policy or regulatory language strictly linking rates to the cost of providing service for individual customers or requiring rates to be non-discriminatory can open a rate funded CAP to a legal challenge. In states where authority is not clear, Governors can introduce unambiguous statutory language. For example, legislation in **Washington** clarified that rates can be used for CAPs.[29] In states that expressly prohibit using rates to fund CAPs, Governors can seek to fund a statewide program for water bill assistance or CAPs can be supported by foundation grants and voluntary bill round-up programs.

Percentage of Income Payment Plans

To limit burdens on utility customers, public utilities commissions can authorize or require regulated utilities to offer percentage of income payment plans (PIPP), which cap utility payments for eligible households at a percentage of income, with the balance recovered through rate increases or, in some cases, covered by the state. **Colorado**, **Illinois**, **Minnesota, New Hampshire**, **New Jersey**, **Ohio,** and **Pennsylvania** have offered these programs for some energy customers.[30] Eligibility and terms may vary by state, but as an example, participating Ohio customers pay a monthly percentage of income no higher than 6 percent of household income if heating with gas and 10 percent if heating with electricity. The state then covers the outstanding balance.[31] This program is not widely offered by all states, due to the cost of subsidizing outstanding bills and regulatory authority limits. PIPPs are a ceiling to prevent overwhelming utility burdens.

Work with Utility Regulators to Determine Cost Recovery, Customer Repayment, or Other Actions to Address COVID-19 Costs

Many options that states can pursue will be regulatory in nature, particularly for investor-owned utilities, so governors may want to work closely with state utility regulators to identify solutions.[iv]

Track data on COVID-19 impacts to utilities and utility customers

A key challenge to identify the need for bill relief, assess the scale of utility arrearages, and effectively target assistance to those with the greatest need is tracking adequate, timely data on arrearages. Many Governors and state regulators are requiring utilities to track financial impacts from COVID-19 at a granular level to allow for better future decision making on bill payments, cost recovery, or other potential interventions. Data is generally tracked at a granular local level, although states should be cautious about requesting or collecting customer-level, personally identifiable information without strong data protections in place.

In **California,** utilities are required to report residential arrearages monthly and, during the pandemic, provide weekly reports on electric and gas consumption.[32] **Washington** state regulators directed investor-owned utilities to report data on the number and amount of customer arrearages. This data will be reported at the zip code and census tract level and while results are preliminary, they have indicated that customers facing payment challenges prior to the pandemic have increased their utility debts during the pandemic.[33] **Illinois** regulators approved a relief settlement between customers and utilities which requires utilities to report disconnection information by zip code to identify impacted communities.[34]

Following **Maryland** Governor Larry Hogan's Executive Order Number 20-06-29-01 prohibiting utility disconnections and late fee collections, the Maryland Public Service Commission opened a new administrative docket, Public Conference 53, to track "information related to the impacts of COVID-19 and resulting economic disruption on Maryland utilities and ratepayers." This required investor-owned electric and natural gas utilities to report their operational changes made in response to COVID-19, changes to system usage and load, and customer payment impacts, among other data. By collecting this information through the pandemic, Maryland aims to make more informed decisions about needed interventions to protect customers and reimburse utilities.[35]

Determine appropriate regulatory mechanisms to recover costs or forgive debts

State public utility commissions are examining mechanisms to address mounting customer utility bills, balancing the need to keep utilities affordable for vulnerable populations while maintaining the financial health of state-regulated utilities. Three primary options for state regulated energy and water utilities are:

- Develop payment plans and require accrued bills to be repaid over time by the customer;
- Track these costs as a regulatory asset so they can be considered for future cost recovery by the utilities; or
- Disallow cost recovery and require that utilities absorb those additional debts.

[iv] These solutions apply primarily to regulated energy and water utilities. Only 12 percent of households are served by state-regulated private water companies, so other solutions described in this memo will be more applicable to that sector.

Recovering costs from individual customers is fairer but does not ultimately remove the repayment burden from customers who may not have the means to do so, even once the effects of the pandemic subside. Allowing cost recovery of outstanding arrearages would potentially socialize otherwise individual COVID debts, reducing the impact on an individual household while shifting those costs to all other customers within a customer class. Disallowing any form of cost recovery protects individual customers with arrearages, but may place a high financial burden on utilities, particularly small municipal and cooperative utilities. In addition, disallowing cost recovery of the cost to operate and provide service arguably violates the regulatory compact in that investor-owned utilities are given the opportunity to recover costs, plus a reasonable return.

- The **Maryland** Public Service Commission allowed regulated utilities to "create a regulatory asset to record the incremental costs related to COVID-19 prudently incurred beginning on March 16, 2020." Any assistance utilities receive will balance any costs incurred during the pandemic. The order includes both residential and non-residential costs.[36]
- **California** regulators required utilities to track incremental costs during the COVID emergency that may be considered for future cost recovery.[37]
- On May 27, the **Arkansas** Public Service Commission ordered that it was too early to decide recovery mechanisms due to unknown total expenses and different recovery mechanisms. Instead, utilities must record in a regulatory asset the incremental costs that may be deemed allowable at a future date.[38]

These are examples of states taking regulatory action to prepare for possible future recovery. Since the total impact to utilities is unknown, cost recovery mechanisms may be premature, so tracking expenses is the preferred approach.

Utility Bond Securitization

Utilities can also explore ratepayer backed bond securitization to refinance utility investments. Securitization can be used to manage stranded costs, including those related to COVID-19 revenue impacts. Securitization creates a non-utility entity that collects revenue from customers and issues bonds backed by this revenue stream.[39] Some states and utilities have issued, or are considering issuing, securitization bonds to cover the costs of retiring existing fossil-fired power plants early to help meet their clean energy objectives. More than twenty states, primarily those with restructured electricity markets, have legislation in place permitting securitization of utility assets.[40] **California** allowed its utilities to recover certain COVID-19 related revenue shortfalls through bond issuances if the California Public Utilities finds the resulting rates would be just and reasonable following a public process. Without this bill, utilities were anticipating a rate spike between 4% and 7%. Instead, utilities are able to buffer against rate hikes in the short term.[41] **Colorado, Montana**, and **New Mexico** have also passed legislation to authorize ratepayer-backed bonds, with others considering legislation.[42] Energy Innovation released a comprehensive set of recommendations for regulators to consider when authorizing securitization.[v]

[v] Energy Innovation Securitization Brief

Bolster Customer Engagement and Outreach about Available Resources

Expanding availability of and access to programs alone is not sufficient, as many of those in need of assistance may not be aware of or know how to access those programs. Governors can solve this through their wide-reaching communications platforms and ability to coordinate messaging across parties.

The pandemic and its economic effects have increased the number of households requiring aid and strained staff capacity for those administering assistance programs. Messaging is required to reach those in need, as many of those needing assistance are unfamiliar with the programs that could provide help. Governors have an excellent platform to make these updates known, as many programs remain open. It is key for states to build capacity for program administration to quickly utilize federal funds and reach eligible customers.

Potential solutions include maintaining an accessible public portal through which customers can find and access programs, including information about utility assistance in other COVID-related outreach materials, and working with utilities to proactively contact customers behind on their payments. In **Washington** state, for example, officials have maintained a list of 73 electric and natural gas utility programs to facilitate customer navigation.[43]

Address Institutional and Structural Affordability Issues

Near term action continues to be needed to address mounting utility arrearages. Governors can continue exploring funding for and expansion of the programs that structurally address affordability, including low-income energy and water efficiency, renewable energy deployment and home weatherization.

Energy Efficiency, Water Efficiency and Weatherization

Energy efficiency, weatherization, and water efficiency programs take time to implement but are instrumental to reduce usage, thereby lowering customer bills. Governors can work with utility regulators and utilities to designate a greater share of energy efficiency, water efficiency and renewable energy funds to address the needs of low-income households. Additionally, the December stimulus package included weatherization provisions such as addressing indoor air quality, solar energy deployment, and extending efficiency tax incentives.[44] Continuing to create water programs, such as the new federal low-income water assistance program, in parallel to energy assistance programs will ensure customers' needs are holistically addressed. Once all customers can pay for a proportionate share of utility costs, then greater affordability will be achieved.

Even with additional dollars offsetting the upfront costs of these projects, those costs may still be prohibitive to low-income households and unemployed individuals. Low-cost financing mechanisms, like on-bill financing, reduce these barriers by having the utilities bear the initial costs and structuring payments through energy bills over time, ideally at a rate at which repayments are offset by energy cost savings. Utilities in states such as **Hawaii**, **Washington**, **Arkansas** and **South Carolina** have implemented these programs and Governors can work with regulators and utilities to explore such mechanisms.[45]

Water Utility Consolidation and Regionalization
Many small water systems have difficulty maintaining their plants and complying with regulations because of the limited number of customers, due in part to their small sizes. There are more than 52,000 public community drinking water systems and 15,000 wastewater treatment plants in the United States.[46] Almost 92 percent of the population is served by 8,674 large- or medium-sized drinking water systems, while approximately 8 percent of the population is served by the remaining 43,400 medium or smaller systems.[47]

To help spread debt service and operations and maintenance costs over a larger rate base, Governors can promote consolidation of small water and wastewater utilities with larger systems. They can create programs that facilitate consolidation, fund local governments and nonprofit water corporations to conduct consolidation efforts and prioritize drinking water state revolving fund loans to systems that consolidate or regionalize.

For example, **North Carolina's** Merger/Regionalization grants span a three-year period for consolidation studies, or to help finance the merger of two systems.[48] **Kentucky** created a structured planning process in 2000 for state water services and directed the Kentucky Infrastructure Authority to create programs for regionalization. The state provided more than $800 million to incentivize expansion of water services and facilitate mergers in public water systems, with the goal of providing access to clean water to the people of Kentucky.[49] The state also prioritized state revolving fund loans to systems that consolidated or regionalized. This effort reduced the number of public water systems from about 700 in 1999 to about 400 today.[50]

Additionally, to help private water companies consolidate with degraded public water utilities that need investment, Governors can introduce "Fair Market Value" legislation that allows enhanced rate base adjustments for needed upgrades. Without this legislation, larger private utilities are reluctant to purchase utilities in need of physical upgrades due to the risk that they may be unable to recover their investment.[51] This type of legislation was adopted in **California**,[52] **Illinois**,[53] **Indiana**,[54] **Iowa**,[55] **Maryland**,[56] **Missouri,**[57] **New Jersey**,[58] **North Carolina**,[59] and **Pennsylvania.**[60]

Conclusion
Adverse impacts from the COVID-19 pandemic continue to reverberate throughout the economy, although recovery efforts are underway. However, the recovery has been uneven and utility arrearages have continued to accrue for vulnerable households, creating additional financial strain on customers and utilities alike.

As utility disconnection moratoriums expire, Governors have a range of tools at their disposal to work with state regulators and legislators to address accrued arrearages, protect utility customers, and support the sustained financial health of utilities. These solutions are likely to vary by state and many will need to be coordinated with energy and water utilities, utility regulators, and affected communities and customers. Ultimately, a balanced approach is advised to address immediate financial needs while also exploring longer term, structural adjustments to improve utility affordability. Near term solutions such as bill assistance, improved outreach, education, and communications, and regulatory action to address large arrearages can provide the immediate relief to customers and utilities while longer term solutions can reduce growing customer arrears, address inequities, and ensure continued access to the energy and water utilities that are critical for health and safety.

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