

Texas PUC Issues Three Orders in Response to COVID-19 to Assist Residential Ratepayers

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The Public Utility Commission of Texas (PUC or Commission) issued three orders on March 26, 2020, establishing a new COVID-19 Electricity Relief Program for residential customers and modifying certain regulatory requirements applicable to retail electric providers (REPs) and electric utilities, including transmission and distribution utilities (TDUs).

Order Implementing COVID-19 Electricity Relief Program

The Commission first issued an [order](#) establishing the new COVID-19 Electricity Relief Program, a customer assistance program for residential customers meeting certain eligibility criteria. The COVID-19 Electricity Relief Program also creates a temporary exemption from disconnections for non-payment for residential customers who have experienced financial hardship because of COVID-19 in areas open to customer choice.

The funding for the COVID-19 Relief Program will be collected through the implementation of a new rate rider to be charged by TDUs. The rider will be used to collect funds to reimburse TDUs and REPs for unpaid bills from eligible residential customers experiencing unemployment due to the impacts of COVID-19, and to ensure continuity of electric service for those residential customers. REPs will be reimbursed for the delinquent charges of eligible residential customers with unpaid, past due bill balances when a payment plan cannot be implemented, following the requisite non-payment notice. TDUs will also be reimbursed for the unpaid balances of eligible residential customer electric delivery charges. TDUs must cease charging REPs the delivery charges otherwise owed by eligible residential customers, with the exception of charges related to securitized costs that have previously been included in a Commission-approved financing order. TDUs must implement this new rate rider to fund the Electricity Relief Program by April 6, 2020, and the rate will be effective immediately upon filing with the Commission.

The initial rider will be set at \$0.33 per megawatt hour (MWh) and will be collected by the TDUs across all customer classes. The \$0.33 per MWh charge will be reviewed in one month but may be modified before then at the discretion of the Commission. Either TDUs or REPs may ask the Commission at any time to adjust the rider if the rider is not collecting sufficient funds to cover the costs of the eligible residential customers.

The COVID-19 Relief Program, including the suspension of disconnections for non-payment, will remain in effect for six months unless extended by the Commission. Upon the cessation of the COVID-19 program, the riders will remain in place until all eligible costs have been reimbursed to TDUs and REPs.

Order Granting Exceptions to Certain Retail Rules and Ordering REPs to Provide Deferred Payment Plans

The Commission next issued an [order](#) to protect retail electric customers from late fees and disconnections, as well as to provide greater flexibility in payment plan options.

The Commission suspended rules 16 Texas Administrative Code (TAC) §§ 25.28(b) and 25.480(c) related to the assessment of late fees on residential customers for delinquent bills. Electric utilities and REPs are no longer able to charge customers a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. A bill is considered delinquent if payment is not received by the close of business on the due date.

Commission rule 16 TAC § 25.29(b)(1) related to the disconnection of electric service for nonpayment has also been suspended. Electric utilities are no longer permitted to disconnect a customer for a customer nonpayment.

The Commission further exercised its authority under 16 TAC §§ 25.480(j)(1)(B) and 25.498(i)(1)(B) and instructed REPs to offer deferred payment plans to customers, upon request. A deferred payment plan is an arrangement between the electric utility and a customer that permits a customer to pay an outstanding bill in installments. The Commission has the authority to direct REPs to offer deferred payments plans to customers, upon a customer request, during a state of disaster declared by the Governor, in the areas covered by the declaration. As a result, REPs may now implement switch-holds for customers who request a deferred payment plan. Switch-holds prevent customers from changing their REP of choice until their payment obligations under the deferred payment plan have been met.

Order Related to Accrual of Regulatory Assets

Finally, the Commission issued an [order](#) instructing electric utilities to create a regulatory asset to record the costs and expenses a utility incurs “resulting from the effects of COVID-19.”¹ While the Commission did not provide an exhaustive list of the costs eligible for inclusion, the Commission explicitly instructed electric utilities to include the costs associated with a customer’s nonpayment.

The Commission also stated that in future proceedings, it will determine, on a case-by-case basis, whether each request for recovery of these regulatory assets is reasonable and necessary, the amount eligible for recovery, the appropriate period of recovery for the approved amount, and whether the approved amount should include carrying costs.

It is important to note that the regulatory asset of each utility is created on behalf of, and may be used only for the recovery of, that utility’s reimbursement for its eligible residential customers nonpayment. Unpaid amounts owed by eligible residential customers will only be socialized across that eligible residential customer’s utility, and not across all utilities. Such assignment of costs on a utility-by-utility basis will avoid both socializing costs among all utilities, and burdening electric cooperatives and municipally-owned utilities, which are taking similar measures and incurring costs for their own customers, from subsidizing other utilities and the REPs providing service to the utility’s customers.

Commission Policy Initiatives Moving Forward Concurrently While Market Uncertainty Remains

Although the PUCT took specific action related to create the COVID-19 Electricity Relief Program and to modify certain regulatory requirements applicable to REPs and TDUs, the PUCT has not taken action to delay policymaking initiatives, nor has it addressed compliance with specific ERCOT Protocols and procedures. The Chairman has stated, however, that the Commission will exercise its

discretion with respect to enforcement of deadlines and other compliance requirements to the extent impacted by COVID-19. REPs face compounded uncertainty as necessary customer protection measures are implemented to prohibit disconnection of customers for non-payment, capital markets constrict, and demand projections shift as shut down orders are issued in cities and counties across the state. Each of these individual factors increases the risks to REPs. The impact of the combination of such factors on the retail market cannot yet be determined. However, market rules around credit requirements and defaults may be impacted by COVID-19 emergency actions.

Both PUCT proceedings and ERCOT stakeholder meetings are proceeding through teleconference and videoconference as part of their respective responses to COVID-19. At the federal level, stakeholder groups have called for federal rulemaking comment periods to be put on hold to allow stakeholders to focus all efforts on responding to COVID-19 issues. Although such action has not been taken by the PUCT or ERCOT, the PUCT has made clear that its priority is to ensure that all Texans have access to safe and reliable power during this time. It is likely that policymaking initiatives and more routine matters such as certain licensing application reviews may face delays in the coming weeks.

Market participants should anticipate continued responses from regulators of the electric power markets. FERC and NERC announced that they would consider the effects of COVID-19 on registered entities' ability to comply with Reliability Standards. Specifically, FERC and NERC announced that the effects of COVID-19 will be considered an acceptable reason for non-compliance with obtaining and maintaining personnel certification for the period of March 1, 2020 to December 31, 2020. In addition, on-site audits, certifications and other on-site activities will be postponed until July 31, 2020 at the earliest.

Haynes Boone's COVID-19 Task Force continues to monitor the global impact of COVID-19 on various industries. [See our resources page here.](#)

For questions on the PUCT's evolving COVID-19 regulatory requirements, please contact [Diana Liebmman](#), [Jennifer Littlefield](#), or [Carlos Carrasco](#).

¹ Under the Public Utility Regulatory Act (PURA) § 14.151, the Commission has the broad authority to specify the form of accounts and records to be kept a utility related to the provision of service, the receipt and expenditure of money, and "any other form" the Commission considers necessary.