



STATE OF NORTH CAROLINA  
OFFICE OF THE GOVERNOR



STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

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## Guidance on Customer Payment Plans under Executive Order 124 and 142

Executive Orders 124 and 142 placed a moratorium on residential customer disconnections from March 31, 2020 to July 29, 2020. Some customers have not paid balances over this March 31-July 29 timeframe, or have paid partial balances. The executive orders require that these customers must be given the opportunity to pay their balance (the amount in arrears) using a reasonable payment arrangement that spreads out repayment over at least six months. Specifically, Executive Order 142 reads:

“Customers shall be provided the opportunity to make reasonable payment arrangements to pay off over at least a six (6) month period any arrearages accumulated during the effective period of [Executive Order 124], of Section 2 of [Executive Order 142], and of any other order extending this Executive Order. In the event a utility service provider and customer are unable to agree on the duration of an extended repayment plan, the default repayment period shall be six (6) months. The six (6) month payoff period shall be calculated from the date of termination of this Section of this Executive Order....”

E.O. 142 § 2(C). Both the Governor’s Office and the Attorney General’s Office have received several questions about how customer payment plans should work under the executive orders. The following guidance responds to these questions.

Note that this guidance does not apply to utilities that are regulated by the North Carolina Utilities Commission. Therefore, this guidance does not apply to utilities such as Duke Energy, Dominion Energy, PSNC, Piedmont Natural Gas, and Aqua. This guidance does apply, however, to providers such as municipal utilities and electric co-ops. The last page of this guidance document provides more information about how customer protections are different for different kinds of utilities.

### What kind of notice must the utility offer to make customers aware they have the right to a repayment plan?

The executive orders require utilities to “reasonably inform their customers” of the orders’ protections “through the means those providers most typically use to communicate urgent messages to customers, such as print, email, SMS text message, Internet, and phone calls.” E.O. 124 § 1(F) and E.O. 142

§§ 2(A)-(B). The executive orders also require that utilities “provid[e] the opportunity to make reasonable payment arrangements.” E.O. 124 § 1(C); E.O. 142 § 2(C).

This means that the utility must inform customers about their right to a repayment plan, and must communicate this notice:

- Clearly;
- At a reasonable time -- at least ten days -- before any disconnection may take place; and
- On a bill, or through the communication method the utility uses to communicate urgent messages (like a text message or phone call), or both.

The notice to customers does not need to contain any particular words, but the notice must “reasonably inform” the customer about their right to a repayment plan. E.O. 124 § 1(F); E.O. 142 § 2(B).

A notice that is sent before the date on which this guidance is published is valid so long as it reasonably informs the customer.

### What kind of payment plan must the utility offer?

The executive orders require that utilities offer “reasonable payment arrangements to pay off” balances “over at least a six (6) month period.” In practice, this means:

- **No forced front-loading of payment plans.** The executive orders state: “Customers shall be provided the opportunity to make reasonable payment arrangements.” E.O. 124 § 1(C); E.O. 142 § 2(C). It would not be reasonable for the utility to require that payments be front-loaded so that materially more is due in the first month (or first few months).<sup>1</sup>

The Utilities Commission has identified two standard ways in which regulated utilities can offer customers repayment plans:

- “Equal, fixed monthly installments”; or
- “A pre-agreed fixed percentage of each monthly bill added to current charges.”

Either or both of these standard options comply with the executive orders’ requirement for a “reasonable payment arrangements.” Other arrangements may also comply with the executive orders. Further, customers and the utility may consent to personalized payment plans that front-load or back-load payments in a way that is customized for the customer’s needs and financial situation.

- **Six months from July 29 is the default payment period.** As stated in the executive orders, if the customer and utility are “unable to agree on the duration of an extended repayment plan, the default repayment period shall be six (6) months.” E.O. 124 § 1(C); E.O. 142 § 2(C). The six-month repayment period begins on July 29, 2020, which is the date of termination of the

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<sup>1</sup> This is shown not only by the way the word “reasonable” is used in ordinary speech by laypeople, but also by the Utilities Commission’s recent order that requires its regulated utilities to offer “equal, fixed monthly installments” or offer payment plans that add a “fixed percentage” on top of each monthly bill. July 29, 2020 Emergency Order, Docket No. M-100, Sub 158, § 4(b). The executive orders point to the Utilities Commission orders as guidance in interpreting the orders’ text. E.O. 124 § 1(A)(3); E.O. 142 § 2(A).

general moratorium under Section 1(C) of Executive Order 124 and Sections 2(C) and 2(D) of Executive Order 142.

- **Repayment plans may extend longer than six months.** If the customer and utility agree that the payment plan should extend over a period that is different from the standard six months, they may create that kind of personalized repayment plan.
- **Terms of the repayment plan must be disclosed to the customer.** When discussing a repayment plan with a customer, the utility must tell the customer the amount in arrears and how that amount will be divided between payments. The utility should also make clear the consequences of missing a payment under the payment plan, including possible disconnection.

### **Can the utility charge a fee or interest to the customer for entering into a repayment plan?**

No. The executive orders provide, “No interest or late fee shall be charged on arrearages.” E.O. 124 § 1(C); E.O. 142 § 2(C).

### **Can the utility penalize a customer for entering into a repayment plan by submitting a negative credit report or refusing to transfer service?**

No. Utilities may not report a customer to a credit reporting agency if the customer is in compliance with an established payment plan and is current on bills that are not covered by the executive orders. Utilities also must allow customers to move and transfer accounts to a new service location within their service area if they are in compliance with an established payment plan and are current on bills that are not covered by the executive orders. Any other action would be a prohibited fee or prohibited disconnection under the executive orders. E.O. 124 § 1(C) and E.O. 142 § 2(C); see also E.O. 124 § 1(A)(3) and the Utilities Commission July 29, 2020 Emergency Order, Docket No. M-100, Sub 158, §§ 4(c), (e).

### **If a customer misses a payment on his or her repayment plan, can the utility disconnect that customer?**

Yes. However, as noted above, for the payment arrangement to be “reasonable” as required by the executive orders, the utility must clearly disclose to the customer the terms of the repayment plan, including when the customer will be disconnected if the customer does not make a payment.

### **If a customer misses a payment on his or her repayment plan, can the utility accelerate all remaining amounts due?**

No. A utility may not respond to a missed payment on a repayment plan by making the entire amount of the repayment plan immediately payable. This would amount to a late fee on the arrearage, which is prohibited under Sections 1(C) of Executive Order 124 and 2(C) of Executive Order 142, and would be inconsistent with the requirement in Executive Order 142, Section 2(C), that repayment plans have a duration of at least six months.

## **If a customer misses a payment on his or her repayment plan, can the utility charge a fee or interest?**

No. The executive orders prohibit any “interest or late fee” that is “charged on arrearages” from March 31 to July 29, the period of the executive order moratorium. E.O. 124 § 1(C); E.O. 142 § 2(C).

## **Which bills are subject to the executive orders?**

The utility must give any customer the opportunity to enter into a repayment plan for any unpaid balance on bills with an assigned date of March 31 to July 29.

Utilities should use a consistent method, based on the business practice they have been using since the executive orders were issued, to assign a date to bills based on either (1) the date they were sent, (2) the due date listed on the bill, (3) the past-due date listed on the bill, or (4) some other method.

For example, if the utility originally used the listed due date to determine whether a bill was covered by the disconnection and late-fee moratorium in Executive Order 124, the utility must provide repayment plans for arrearages incurred from any bill with a listed due date between 12:01 am on March 31 and 11:59 pm on July 29.

## **Which bills are not subject to the executive orders?**

The executive orders apply only to bills with an assigned date of March 31 to July 29. (See the answer immediately above about which date should be assigned to a bill.) The executive orders do not prohibit disconnection, late fees, or interest for bills outside this time period. See E.O. 142 § 2(D).

The Attorney General strongly encourages utilities to provide repayment plans and work flexibly with customers for all balances due during the COVID-19 emergency, even if those balances are not covered by the executive orders.

## **If a utility does not follow these repayment plan requirements, what happens?**

If a utility does not follow the requirements of the executive orders concerning repayment plans, it is prohibited from disconnecting customers. The Attorney General’s Office is assigned responsibility “to enforce the provisions” of Executive Orders 124 and 142 “through any methods provided by current law.” E.O. 124 § 1(J) and E.O. 142 § 2(A). If necessary, the Attorney General’s Office would pursue any enforcement by seeking a temporary restraining order against the utility entity after providing notice to the entity and seeking a resolution of the issue without litigation.

If a utility does not follow the orders, consumers should contact the Attorney General’s Office by calling 1-877-566-7226 or by visiting <https://ncdoj.gov/file-a-complaint/consumer-complaint/> on the Attorney General’s website.

## **Which utilities are covered by this guidance?**

This guidance applies to utilities that are not governed by the North Carolina Utilities Commission and that provide electric, natural gas, water, or wastewater services directly to end-user residential customers, as well as all providers of a combination of these services. This includes municipal utilities and member-owned cooperatives.

## Which utilities are not covered by this guidance? What protections exist for customers of those utilities?

For Duke Energy, Dominion Energy, PSNC, Piedmont Natural Gas, Aqua, and all other utilities governed by the Utilities Commission, a different set of customer protections apply. For these utilities, the Utilities Commission ordered that:

- Customers will have 12 months to repay any overdue balances that are on their accounts as of August 31, 2020.
- These repayment plans must be based on either:
  - Equal, fixed monthly installments; or
  - Pre-agreed, fixed monthly percentages of each monthly bill that are added to current charges.
- For bills rendered on or before August 31, 2020, customers may be disconnected for nonpayment only if they fail to follow their payment plans and receive notice. For bills rendered on or after September 1, 2020, customers may be disconnected if they do not stay current.
- Late fees cannot be charged on any accounts until the end of the COVID-19 State of Emergency or until there is a further order by the Commission.

See the Utilities Commission's [July 29, 2020 emergency order](#) for more details.