

MEUW BULLETIN

MANAGING LARGE CUSTOMER ACCOUNTS

In the current economic climate, MEUW members can expect that increasing numbers of commercial customers will delay their utility payments, miss payments altogether, or file bankruptcy petitions. MEUW members must be proactive in managing their large commercial customer accounts to minimize losses associated with customer delinquencies. Here are some suggestions:

- Identify high risk customers

Utilities should act now to identify high risk commercial customers. Low cost internet resources can be utilized to gather basic credit-related information on businesses, including www.experian.com and www.creditriskmonitor.com.

- Monitor customer payment activity

In tight cash flow situations, customers may opt not to pay current utility bills in anticipation of a bankruptcy filing because the money can be diverted to other obligations or used to provide adequate assurance after the petition is filed. Utilities must monitor customer payment activity carefully in order to obtain deposits or other forms of payment security as soon as possible, prior to a bankruptcy filing.

- Obtain a deposit from **existing** customers if permitted under PSC rules
 - PSC rules allow utilities to collect deposits from existing commercial customers if prompt payment has not been made of all bills within the last 24 months or if the customer had an arrearage during the cold weather moratorium period more than 80 days past due.
 - The utility can also receive a guarantee, letter of credit or other form of surety in lieu of a cash payment. The deposit must be refunded, however, with accrued interest, after 24 months of consecutive timely payments.
 - Commercial customers asked to provide a deposit also have the right to receive service under an installment payment agreement.
 - Customers have the right to appeal a deposit request, so even though the rules allow utilities to collect an amount of up to the customer's estimated gross electric bill for 2 consecutive months of service, it may be prudent to work with the customer in establishing a more workable deposit amount. One measure might be to seek an amount equivalent to the utility's maximum

exposure in the event a bankruptcy petition is filed on the last day of a billing cycle. To facilitate payment, utilities can also collect the deposit as a surcharge on their regular monthly invoices.

- Impose strict credit requirements on applicants for **new** commercial or farm service
 - Applicants for new commercial service should be required to establish their creditworthiness. To establish credit, the PSC rules allow utilities to utilize credit information from credit reporting services, obtain letters of credit from financial institutions or other utilities, and request financial statements and other pertinent information about an applicant's business characteristics, asset profile, and financial condition.
 - If there are commercially reasonable grounds to be concerned about an applicant's creditworthiness, the utility should require a deposit or obtain a guarantee.

Special Bankruptcy Note: Deposits, or other forms of surety, can also be collected from a business that has reorganized in the context of a Chapter 11 bankruptcy petition. Such deposits are authorized by the federal bankruptcy to ensure payment of post-petition electric charges for the newly reorganized entity. Deposits collected pre-petition may be applied against arrearages.

- Disconnection rights should be utilized when necessary

Large customers are often valued customers of the utility and for the community as a whole. However, the right to disconnect a nonpaying commercial customer can be an effective last resort to address delinquencies or other service rule violations.

- An account is deemed delinquent and a notice of intent to disconnect may be issued if a bill has not been paid **within 20 days** of the date of issuance.
 - The customer must be notified at least **10 days** in advance of the proposed disconnection. Notice must be reissued if disconnection has not occurred on or before the 20th day after notice is issued.
 - Special restrictions apply for cold weather disconnections.
- Consider using other credit assurance mechanisms

Most wholesale power contracts contain credit assurance provisions that give suppliers the right to obtain letters of credit, accelerated payments or other forms of security when there are commercially reasonable grounds for doing so. Nothing in the PSC rules would preclude a utility from seeking such forms of credit assurance voluntarily from a large customer, as long as there was no coercion or discrimination. A more aggressive approach would be to seek PSC approval for the incorporation of such credit assurance provisions into a utility's large customer tariffs or service rules. However, because there is little or no precedent for use of such provisions in the retail context, it is not certain whether a request for amendment of a utility's tariffs or service rules would be granted.

MEUW BULLETIN

MANAGING CUSTOMER ACCOUNTS IN THE CURRENT ECONOMIC CLIMATE

In the current economic climate, MEUW members should anticipate that increasing numbers of residential and commercial customers will delay their utility payments, miss payments altogether, or file bankruptcy petitions. MEUW members must be proactive in managing their customer accounts in order to minimize losses associated with such customer delinquencies. This bulletin summarizes PSC rules and federal bankruptcy law as it pertains to utility customer accounts and collections and suggests how MEUW members can protect themselves.

Public Service Commission Rules: Deposits (Admin. Rule PSC 113.0402/113.0403)

- Utilities may request deposits from **current residential** customers if their service was shut down in the last 12 months; the customer falsified the service application; or the customer failed to pay during the winter and the bill becomes over 80 days past due.
- Utilities may request deposits from **current commercial** customers if the customer has not made prompt payment every month in the last 24 months or the customer has not paid during the winter and the bill is over 80 days past due.
- Utilities may request deposits from **new residential** customers if they owed an undisputed bill for the same type of service in Wisconsin within the last six years.
- Utilities may request deposits from **new commercial** customers if the applicant's credit has not been established to the utility's satisfaction.
- The amount of the deposit should be based on the 2 highest consecutive bills within the last 12 months for the address where the service is being used. A winter moratorium non-payer deposit is based on the 4 highest consecutive bills within the 12 month review period.
- Commercial deposits are returned with interest after 24 months of prompt payment.
- The rules require utilities to provide non-cash options for paying the deposit. These options may include a letter of guarantee from an individual or institution for either the amount of the required deposit or payment of future bills.
- Deposits may not be required of customers whose income is below 200 percent of the federal poverty level guideline.

Public Service Commission Rules: Disconnection (Admin. Rule PSC 113.0301, et. seq.)

- Residential and commercial utility service can be disconnected for failure to pay a delinquent account or deferred payment plan, failure to adhere to service rules and other reasons.
- An account is deemed delinquent and a notice of intent may be issued if a bill has not been paid within 20 days of the date of issuance.
- Notice and disconnection procedures apply.
- Special restrictions apply for cold weather disconnections.

Bankruptcy (11 U.S.C. §101, et. seq.)

- Chapter 7 of the Bankruptcy Code involves liquidation and distribution of personal assets; Chapter 11 of the Code involves reorganization of a business; Chapter 13 allows for reorganization of assets for individuals.
- When a bankruptcy petition is filed, the utility will receive a notice from the clerk of the bankruptcy court. Filing of the notice triggers an "Automatic Stay."
- The Automatic Stay prevents creditors, including utilities, from undertaking action to enforce their claims. This means utilities cannot recover utility arrearages that arose prior to the date the petition is filed or place delinquent charges on the property tax rolls.
- Proofs of claims of unsecured creditors (including utilities) must be filed with bankruptcy court clerk within 90 days of the scheduled creditors' meeting.
- Utilities may not cut off a debtor's service after the debtor has filed a petition; neither may they discriminate against a trustee or debtor due to the filing of a bankruptcy petition or non-payment of a pre-petition debt.
- Utilities can require a deposit (or other means of security) to provide "adequate assurance" of post-petition payment. The amount is generally determined in accordance with the PSC's deposit rules (i.e. the two highest consecutive bills during the last twelve-month period).
- Non-cash forms of security such as letters of credit, surety bonds, prepayments, and certificates of deposit are also considered adequate assurance.
- The utility may take action to discontinue service in a Chapter 11 (business reorganization) filing if adequate assurance is not provided within 30 days of the order for relief; discontinuance may occur within 20 days for a Chapter 7 filing.
- The 2005 Bankruptcy Reform Act allows utilities to set-off pre-petition deposits against arrearages without seeking a court order.

Steps Utilities Should Take To Protect Themselves

- Utilities should act now to identify high risk customers.
- Low cost internet resources can be utilized to gather basic credit-related information on businesses, including:
 - www.experian.com: Requires modest base fee for subscription to obtain password and user name and minimal per search charges depending on the level of detail sought.
 - www.creditriskmonitor.com: Can purchase detailed credit reports for about \$50.00 per report.
- Utility account manager should assist delinquent customers become current by agreeing to a payment plan for arrearages. If payments are not received by due date, deposits or other non-cash forms of security (e.g. letters of credit, guarantees or surety bonds) should be obtained.
- In tight cash flow situations, customers may opt not to pay current utility bills in anticipation of a bankruptcy filing because the money can be diverted to other obligations or used to provide adequate assurance after the petition is filed. Utilities must monitor customer payment activity carefully in order to obtain deposits or other forms of payment security as soon as possible, prior to a bankruptcy filing.