

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE	)	
APPLICATION OF BLACK HILLS	)	
NEBRASKA GAS, LLC d/b/a	)	
BLACK HILLS ENERGY FOR A	)	Application No. NG-107
DEFERRED ACCOUNTING ORDER	)	
ALLOWING TO RECORD AND	)	
PRESERVE COSTS RELATED TO THE	)	
COVID-19 PANDEMIC.	)	

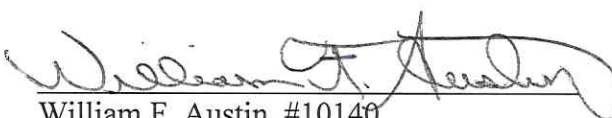
**NOTICE OF FILING OF REPORT OF THE PUBLIC ADVOCATE**

The Public Advocate, Intervenor in the above-referenced proceeding, does hereby file his report styled “Review and Recommendations of the Public Advocate Regarding the Application for a Deferred Accounting Order (COVID-19 Pandemic)” prepared by Blue Ridge Consulting Services on behalf of the Public Advocate. Eight copies of the report, plus an electronic copy in pdf format, and a copy of all text documents in Microsoft Word, are being submitted herewith in accordance with 291 NAC 9-004.12. Electronic and/or hard copies are being provided, as appropriate, in accordance with the Service List.

WHEREFORE, the Public Advocate requests the Commission to consider his report, to hold a hearing, as necessary or required, on the Application and the waiver of certain tariff provisions, Standards, and Rules and Regulations, as requested by Black Hills Nebraska Gas, LLC, and to enter an order, or such other action, as the Commission deems just and proper.

DATED this 25<sup>th</sup> day of June, 2020.

PUBLIC ADVOCATE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Notice of Filing of Report of the Public Advocate was served electronically on this 25<sup>th</sup> day of June, 2020, upon the following:

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William F. Austin, #10140

**Black Hills Nebraska Gas, LLC****Docket No. NG-107****Review and Recommendations of the Public Advocate Regarding the Application for a Deferred Accounting Order (COVID-19 Pandemic)****Introduction**

On April 22, 2020, Black Hills Nebraska Gas, LLC d/b/a Black Hills Energy (“BH Nebraska Gas” or “Company”), filed an application with the Nebraska Public Service Commission (“Commission”) seeking approval to establish a regulatory asset to record and preserve costs related to the COVID-19 pandemic.

Blue Ridge reviewed the Company’s proposal, requirements before a regulatory asset can be recorded, and actions taken by commissions in other jurisdictions. This report provides a review of that analysis and our recommendations for the Commission to consider.

**Black Hills Energy’s Application**

On April 22, 2020, BH Nebraska Gas filed an application seeking approval to establish a regulatory asset to record and preserve costs related to the COVID-19 pandemic.

The Company believes it will incur extraordinary costs and experience lost revenue related to the COVID-19 pandemic. These costs and revenue losses were not anticipated and are not currently included in base rates. BH Nebraska Gas will not include any COVID-19-related costs in the upcoming Rate Application, as those costs may not be known at the time of the filing or during the pendency of the case.

Some of the anticipated extraordinary costs, that the Company proposes to document beginning on March 1, 2020, include

- 1) Increased cost of operation due to COVID-19 precautions that may include, but are not limited to increased labor costs safety equipment, and COVID-19 related employee benefits,
- 2) Increase in bad debt related to customers’ inability to pay utility bills, and
- 3) Other COVID-19 related lost revenue.

BH Nebraska Gas proposes to record the deferral of the extraordinary costs as a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) and credit the appropriate FERC accounts associated with the expenses, such as FERC Account 904 (Uncollectible Accounts).

BH Nebraska Gas acknowledges that the Commission’s approval of deferred accounting treatment for COVID-19 related costs will not constitute approval of ultimate recovery of those costs. Recovery of the costs would be subject to a prudence review and a final decision on rate recovery in a future regulatory filing.

BH Nebraska Gas requests that the Commission authorize the Company to record carrying charges related to any COVID-19-pandemic-related deferrals at the Commission-approved customer deposit rate.

BH Nebraska Gas agrees to maintain proper documentation for costs recorded within the requested regulatory asset and such costs will be subject to review by the Commission and other interested parties prior to being included in rates charged to customers.

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BH Nebraska Gas also requests a waiver of certain provisions of the Company's tariffs, Operation & Maintenance standards, and Commission Rules and Regulations to protect the health and safety of its employees and customers. Specifically, the Company requests a waiver of requirements related to meter replacement and testing, farm tap replacements, government-mandated road moves that require service line replacements, meter reading, and any processes that require entry into a customer premise or customer contact. BH Nebraska Gas notes that some customers do not want Company technicians to enter their premises. The Company also wishes to protect its employees if current pandemic conditions worsen by delaying work required in the tariffs, standards, and rules. The Company is also concerned that when the quarantine provisions are lifted, a substantial backlog of work will burden the Company's employees and potentially cause increased risk to Company technicians as they deal with a likely delay in service response times.

**Requirements to Record a Regulatory Asset**

Commission authorization to establish a Regulatory Asset permits a public utility to defer specific costs on its balance sheet for future examination and recovery. Special consideration is afforded to these costs because they are unique and/or extraordinary in nature and therefore are not addressed in normal base rates. In effect, these costs are capitalized and then amortized over time. The amounts would otherwise be required to appear on the company's income statement as current-period expenses.

The Financial Accounting Standards Board Accounting Standards Codification (ASC) 980-340-25-1 states that the "rate action of a regulator can provide reasonable assurance of the existence of an asset." All or part of an incurred cost that would otherwise be charged to expense should be capitalized as a regulatory asset if these conditions are met:

- a. It is *probable* that future revenues in an amount approximately equal to the capitalized cost will result from inclusion of that cost in allowable costs for ratemaking purposes.
- b. The regulator intends to provide for the recovery of that specific incurred cost rather than to provide for expected levels of similar future costs.

An *incurred cost* is defined in ASC 980 as "a cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and must be paid for."

*Probable* is defined in ASC 450, Contingencies, as "likely to occur," which is a high threshold to meet. *Probable* is a matter of professional judgment. If a recorded regulatory asset no longer meets the above criteria, the cost should be charged to earnings. Thus, probability assessment is continuous and must be met at each balance sheet date in order for a regulatory asset to remain recorded.

SEC staff has unofficially suggested that evidence of *probable* to support future recovery and corroborate management's representation includes these conditions:

- Rate orders from the regulator specifically authorizing recovery of the costs in rates

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- Previous rate orders from the regulator allowing recovery for substantially similar costs
- Written approval from the regulator approving future recovery in rates
- Analysis of recoverability from internal or external legal counsel

**Actions Taken in Other Jurisdictions**

Numerous other jurisdictions have recognized the need to require utilities to track the additional costs that could be incurred related to COVID-19 pandemic. NARUC is tracking states' responses to COVID-19. The NARUC.org web page (State Response Tracker) lists several state commissions that are requiring cost tracking and the creation of a regulatory asset:

***Arkansas Public Service Commission***

On April 10, 2020, the Arkansas Public Service Commission issued an order in a new docket (No. 20-012-A) to place a moratorium on service disconnections during the state of emergency and encouraged the provision of payment arrangements. Utilities were also directed to use an accounting mechanism to track costs associated with the moratorium. Quarterly reports, beginning on July 1, will reflect the costs incurred. (4/10/20). Of specific note, the order presents these considerations:

- Utilities should be provided some regulatory certainty by authorizing the use of an accounting mechanism and a subsequent process through which regulated Utility companies may seek future recovery of costs resulting from the suspension of disconnections. The Commission authorizes each of these Utilities to establish regulatory assets to record costs resulting from the suspension of disconnections. In future proceedings, the Commission will consider whether each Utility's request for recovery of these regulatory assets is reasonable and necessary.
- The Commission will also consider in a future proceeding other issues, such as the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, any savings directly attributable to suspension of disconnects, and other related matters.
- Utilities shall be required to offset costs by any cost savings directly attributable to the suspension of disconnections or other activities during the emergency declaration. Utilities should track all costs related to the implementation of these emergency measures.
- All Utilities shall file a quarterly report on the amounts of the costs incurred and saved which have been booked to the regulatory assets beginning on July 1, 2020, and every three months thereafter.
- The [report] should identify the categories and amounts of the costs incurred and the savings realized.

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***Connecticut Public Utilities Regulatory Authority***

On March 12, 2020, the Connecticut Attorney General filed an emergency petition for a proceeding to establish a State of Emergency Utility Shut-Off Moratorium docketed as Docket No. 20-03-15. Thereafter, the PURA expanded the scope of Docket No. 20-03-15 to include therein all non-residential customers of PURA-regulated gas, electric, and water utilities through May 1, 2020; granted temporary waiver of financial security deposits and balance reduction payments normally required for reconnection of service through May 1, 2020; ordered PURA-regulated gas, electric, and water utilities to track all costs related to the implementation of these emergency measures; and created a forum to consider thoroughly the expansion of existing affordability measures to all customers, such as an increased offering of flexible payment plans and late fee waivers. In the PURA's Order No. 4, Public Service Utilities were directed to maintain a detailed record of costs incurred and revenues lost as a result of implementing the COVID-19 response measures, and were allowed to establish a regulatory asset to track incurred costs. PURA mandated the filing of detailed monthly cost reports, also including information on terminations, disconnections, and reconnections; and bad debt.

***Iowa Utilities Board***

On May 1, 2020, the IUB issued an order to provide assistance to customers and utilities and to aid in Iowa's recovery from the COVID-19 pandemic. The May 1 order also found the use of regulatory accounts by rate-regulated utilities to be appropriate for the tracking of financial impacts after March 1, 2020, that arise from the pandemic. The order opens separate dockets for each rate-regulated utility to file information regarding these accounts and requires each rate-regulated utility to file a proposal for the use of regulatory accounts to be submitted for review by the IUB to include information on revenue loss, expenses, and other financial impacts due to the COVID-19 pandemic

***Maryland Public Service Commission***

On April 9, 2020, in Case No. 9639, the Maryland Public Service Commission issued an order whereby utilities in Maryland were authorized to track the financial impacts of providing safe and reliable service to customers during this crisis. This action may facilitate the recovery of costs associated with utility efforts to serve and accommodate customers during the pandemic. Specifically, the order offered this information:

The Commission acknowledges the potential for significant financial implications that compliance with these emergency orders may have on Maryland Utilities and service providers. Consequently, in light of the extraordinary circumstances and in an effort to minimize adverse financial impacts to Maryland Utilities, the Commission authorizes each Utility to create a regulatory asset to record the incremental costs related to COVID-19 prudently incurred beginning on March 16, 2020, by the Utility to ensure that Maryland residents have essential utility

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services during this period.<sup>1</sup> The Commission finds that the creation of the regulatory asset for COVID-19-related expenses will facilitate the recovery of those costs prudently incurred by the Utilities in their efforts to serve customers during this period, and the Commission finds that deferral of such costs is appropriate because the current catastrophic health emergency is outside the control of the Utility and a non-recurring event. Such incremental costs shall also include any assistance or benefit received by the Utilities in connection with COVID-19, regardless of form, that would offset any COVID-19-related expenses. (pages 2–3)

In order to be eligible for inclusion in a Utility’s COVID-19 designated regulatory asset, the Utility must maintain detailed records of the incremental costs prudently incurred for the provisioning of utility services used to maintain the health, safety and welfare of Maryland customers during COVID-19 pandemic.<sup>2</sup> The Commission will consider in future proceedings whether each Utility’s request for recovery is just and reasonable pursuant to PUA §§ 4-101, 4-102, and 4-201. The Commission will also consider during those proceedings other issues such as the appropriate period of recovery for the approved amount of the regulatory asset, any amount of carrying costs thereon, and other related matters. (page 3)

***Public Utilities Commission of Nevada***

On March 27, 2020, in Docket No. 20-03021, the Nevada PUC issued an Emergency Order related to utility service and COVID-19. The Order directs all rate-regulated jurisdictional utilities to track expenses related to suspending the termination, discontinuance, and/or disconnection of services. Specifically, the order offered this information:

- Directs all of the rate-regulated public utilities within its jurisdiction, including providers of electric, natural gas, water, wastewater, and telecommunications services, to begin recording, as of March 12, 2020, in regulatory asset accounts, amounts that reflect the costs of maintaining service to customers affected by COVID-19 whose service would have been terminated, discontinued, and/or disconnected under normally-applicable terms of service.
- Such regulatory asset accounts must be maintained in a manner that will allow costs to be readily identified in future Commission proceedings where the utilities may seek recovery of the reasonably and prudently incurred costs.

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<sup>1</sup> A Utility may establish a COVID-19 regulatory asset account beginning on a date earlier than March 16, 2020, if it can demonstrate the commencement of a plan to suspend service terminations in connection with the COVID-19 pandemic prior to the date of the Governor’s March 16, 2020 Executive Order.

<sup>2</sup> The Utility’s regulatory asset accounting shall include all offsets to COVID-19-related expenses and losses, including but not limited to any income received pursuant to the U.S. Department of Treasury’s administration of S.3548 (the “CARES Act”).



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***Pennsylvania Public Utility Commission***

On May 13, 2020, in Docket No. M-2020-3019775, the PA PUC issued an Emergency Order which prohibited regulated utilities from terminating service during the pendency of the Emergency Proclamation, unless necessary to ameliorate a safety emergency or unless otherwise determined by the Commission, and also encouraged reconnection of service if such action could be done safely.

In an effort to accurately account for prudently incurred incremental extraordinary, nonrecurring expenses related to COVID-19, which result from compliance with the Emergency Proclamation and Emergency Order, the Commission directs all utilities to review and comply with the following provisions, as applicable.

**I. COVID-19 Expense Tracking/Loan and Grant Tracking**

The Commission hereby directs all jurisdictional electric, natural gas, water, wastewater, steam and telecommunications utilities to track extraordinary, nonrecurring incremental COVID-19 related expenses and to maintain detailed accounting records of such expenses. Utilities must maintain detailed records of the incremental expenses incurred for the provisioning of utility services used to maintain the health, safety and welfare of Pennsylvania customers during the COVID-19 pandemic. With the exception of the separate regulatory authorization afforded uncollectible expenses below, this Secretarial Letter does not grant authorization for utilities to defer any other potential COVID-19 related expenses.

Utilities shall also track any loans, grants, assistance or benefit they receive in connection with COVID-19, regardless of form or source, that would offset any COVID-19-related expenses.

**II. Regulatory Asset for COVID-19 Uncollectible Expenses Resulting from Compliance with the Emergency Order**

The Commission recognizes that compliance with its Emergency Order may increase uncollectible expenses for utilities. Consequently, the Commission authorizes electric, natural gas, water, wastewater, steam and all rate base/rate of return telecommunications utilities to create a regulatory asset for any incremental uncollectible expenses incurred above those embedded in rates since the issuance of the Emergency Order. In order to be eligible for inclusion in a utility's COVID-19 designated regulatory asset, the utility must maintain detailed records of the incremental extraordinary, nonrecurring expenses incurred as a result of compliance with the Emergency Order, as outlined in Part I of this Secretarial Letter.

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***Public Utility Commission of Texas***

On March 26, 2020, in Project No. 50664, the Texas PUC issued an order related to accrual of regulatory assets. Specifically, the order advances these essentials:

- Provides some regulatory certainty by authorizing the use of an accounting mechanism and a subsequent process through which regulated utility companies may seek future recovery of expenses resulting from the effects of COVID-19
- Provides statutory authority to preserve on utilities' books the effects of unpaid customer accounts until the Commission approves rate changes that adjust charges to Texas customers
- Authorizes each electric, water, and sewer utility to record as a regulatory asset expenses resulting from the effects of COVID-19, including but not limited to non-payment of qualified customer bills as specified by separate order issued on this same date
- Provides that in future proceedings, the Commission will consider whether each utility's request for recovery of these regulatory assets is reasonable and necessary
- Ensures the Commission will also consider in the future proceeding other issues, such as the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, and other related matters
- Orders that each electric utility and water and sewer utility in the state of Texas shall record as a regulatory asset expenses resulting from the effects of COVID-19
- Provides that in future proceedings, the Commission will consider, on a case-by-case basis, the appropriate adjustment to a utility's rates to reflect the recovery of the approved amount of regulatory assets recorded in accordance with this Order

***Public Service Commission of Wisconsin***

On May 14, 2020, the Wisconsin PSC, issued its first supplemental order in Docket No. 5-AF-105. The order authorizes utilities to defer expenditures resulting from compliance with Emergency Order #11, orders by the Commission in docket 5-UI-120, and other requirements to ensure provision of safe, reliable, and affordable access to utility services during the declared public health emergency for COVID-19. Specifically, the order provided this information:

**Identification of Expenditures and Potential Inclusion of Bad Debt Expense**

For purposes of this proceeding, the Commission finds it reasonable for the deferral authorization to include COVID-19 related incremental increases in bad debt or uncollectible expense above what is currently included in authorized rates and that any recovery of bad debt should flow back to the deferral as an offset. The Commission finds that taking action on requests for escrow accounting for bad debt or uncollectible expense is not warranted at this time.

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**Foregone Revenue**

The Commission finds it reasonable to conclude that any foregone revenue associated with the temporary authorized waivers be included in the deferral authorization in this docket. However, because there is insufficient information regarding the effect of the COVID-19 pandemic on sales revenue, the Commission declines to include declining sales revenue as a component of forgone revenue in the deferral authorization.

**Tracking and Reporting**

The Commission finds it reasonable for utilities to record COVID-19 expenditures to a variety of Federal Energy Regulatory Commission (FERC) or Uniform System of Accounts (USOA) accounts, including those related to customer accounts, sales expense, and administrative and general expenses. To ensure consistent tracking for items subject to this deferral, utilities should work with Commission staff in creating sub-accounts specific and limited to COVID-19 costs. Additionally, the Commission finds that tracking should include any federal or state reimbursements provided to utilities for possible reimbursement and offset of costs associated with COVID-19. In addition, utilities shall identify and track any funding sources, such as government lending programs, that, while not intended to reimburse costs, provide assistance to utilities in covering the identified expenditures and foregone revenues.

Accurate documentation and reporting will be essential as utilities file future rate applications seeking recovery of deferred balances; however, the Commission recognizes that reporting places further demands on utilities' resources and time. Therefore, the Commission finds it reasonable to direct Class A and B utilities to provide total deferral reporting by FERC or USOA account on a monthly basis and for Class C and D utilities to provide such reporting on a quarterly basis. The Commission will re-evaluate these reporting requirements once Commission staff reports back on progress two months after the date of the Commission's discussion.

**Carrying Costs**

To protect the financial stability of public utilities and ensure the operational stability of utilities for customers, the Commission finds it reasonable to authorize carrying costs for deferred amounts.

Given the inability to predict the timetable and financial materiality associated with the health emergency, the Commission finds it reasonable at this time to authorize the accrual of carrying costs of

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investor-owned utilities (IOU) that are associated with balances deferred and accumulated to be recorded at the short-term rates authorized in each IOU's most recent rate case and for municipal utilities to accrue at the benchmark rate of 4.90 percent. However, the Commission may adjust these rates upon receiving evidence of a demonstrable need for the rates to be increased.

**CARES Act**

The Commission finds that it would not be reasonable to order utilities to defer tax savings resulting from the CARES Act. Ordering such a deferral would hamper utilities' ability to manage their finances in the midst of declining sales and foregone revenues. Further, because the effects of the CARES Act will not be fully understood for a significant period of time, and because deferring any savings would harm the financial stability of utilities, the Commission finds it unnecessary to solicit comment on the effects of the CARES Act.

***Wyoming Public Service Commission***

On May 18, 2020, the Wyoming PSC approved the Application of Black Hills Wyoming Gas, LLC d/b/a Black Hills Energy (BHWG or "Company"), to establish a deferred regulatory account to record and preserve expenses and any benefits received related to the COVID-19 pandemic, effective on and after March 13, 2020. The order provides these provisions:

The Wyoming Public Service Commission (Commission) approved the Application of Black Hills Wyoming Gas, LLC d/b/a Black Hills Energy (BHWG or the Company), for authority to establish a deferred regulatory account to record and preserve expenses and any benefits received related to the COVID-19 pandemic, effective on and after March 13, 2020.

BHWG expects to incur extraordinary expenses related to the COVID-19 pandemic and is requesting permission to establish a regulatory asset to record and preserve those expenses. The Company states these expenses were unanticipated and are not currently included in its base rates. BHWG further states it anticipates incurring extraordinary expenses including, increased operations expenses due to COVID-19 precautions, an increase in bad debt related to customers' inability to pay utility bills, and other COVID-19 related expenses. The Company states the potential magnitude of the expenses related to the COVID-19 pandemic prompted BHWG to seek authorization for deferred accounting now, even though it is not currently capable of fully anticipating the scope or scale of the impacts. BHWG also states the risks related to its COVID-19 response are well outside ordinary business risks for the Company. BHWG states that deferred accounting

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will enable it to track its COVID-19 related expenses.

BHWG will provide quarterly status updates, commencing on July 1, 2020, and continuing until the Commission determines that it is no longer prudent to track extraordinary expenses related to the COVID-19 pandemic in the Company's deferred regulatory account. The Commission's approval is subject to notice, protest, intervention, change, further investigation, opportunity for hearing and further order of the Commission.

**Recommendations**

Based upon our review of the Company's proposal and actions taken by commissions in other jurisdictions, we offer the following recommendations.

1. The Commission should authorize the tracking of extraordinary costs and lost revenue related to the COVID-19 pandemic as a regulatory asset in FERC Account 182.3 (Other Regulatory Assets) and credit the appropriate FERC expense accounts subject to the caveats found in the remaining recommendations.
2. The Company must maintain detailed records of the incremental expenses incurred for providing utility services used to directly maintain the health, safety, and welfare of customers during the COVID-19 pandemic and 12 months thereafter.
3. Costs and lost (or incremental) revenue, along with supporting information, will be tracked with sufficient detail (including by rate schedule) to allow for a prudence review by the Commission and any other interested party prior to final disposition on their recovery in a future proceeding.
4. The Company should also track cost savings attributable to the suspension of disconnections, including those regarding limiting customer work to essential services only, having all non-essential employees work from home, and any other measures during the emergency declaration which may offset incremental expenses incurred. Such cost savings should include any local, state, or federal loans, grants, assistance, tax credits, or benefits received by the Company in connection with COVID-19, regardless of form, that would offset any COVID-19-related expenses, including, but not limited to, CARES Act payments, Paycheck Protection Program payments, and FFCRA tax credits.
5. The Company should file a monthly report on the amounts and types of costs incurred and saved which have been booked to the regulatory assets from March 13, 2020 (the date Nebraska Governor Ricketts declared a State of Emergency for COVID-19). The report should be filed beginning on July 1, 2020, and every month thereafter until 12 months after the emergency is lifted. The filing should identify the categories and amounts of the costs incurred and the savings realized. The report should also include actual-versus-budget and current-year-versus-prior-year costs.
6. Carrying charges on the amounts deferred should not be recorded at this time.

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7. In a future proceeding, the Commission will consider whether the Company's request for recovery of the regulatory asset is prudent, reasonable, and necessary. At that time, the Commission should also rule on the appropriate period of recovery for the approved amount of regulatory assets, any amount of carrying costs thereon, any savings directly attributable to suspension of disconnects, and other related matters.
8. The Commission should inform the Company that there is no guarantee all costs and lost revenue will be allowed full recovery. When determining whether the Company's regulatory asset is reasonable and necessary, the Commission should consider "sharing the pain" between the ratepayer and Company as many individuals and small business have suffered and do not have the ability for full recovery of their losses.
9. The Commission should grant BHE Nebraska Gas's request for waivers of certain provisions of the Company's tariffs, Operation & Maintenance standards, and Commission Rules and Regulations to protect the health and safety of its employees and customers. Specifically, the Company requests a waiver of requirements related to meter replacement and testing, farm tap replacements, government-mandated road moves that require service line replacements, meter reading, and any processes that require entry into a customer premise or customer contact.