Center for Elder Law and Justice • Environmental Advocates New York
Food and Water Action • Freshwater Future • Local Progress NY
NAACP New York State Conference • National Center for Law and Economic Justice
Natural Resources Defense Council • New York Lawyers for the Public Interest
New York Public Interest Research Group • The Public Utility Law Project of New York
Western New York Law Center

July 13, 2020

Secretary Michelle Phillips
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

RE: Case 20-M-0266 - Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service

Dear Madam Secretary:

We, the undersigned organizations, appreciate the opportunity to provide comment on the Public Service Commission's (Commission) Case 20-M-0266, regarding the effects of COVID-19 on utility service. Our organizations advocate for water justice in New York, and are working to ensure all New Yorkers have affordable and clean water in their homes. Our comments will focus specifically on water policy issues that we hope the Commission will address in this current proceeding.

Introduction

Clean water is essential to keep individuals, families, and communities safe and healthy during COVID-19. Over the last several months, New York has documented over 400,000 confirmed coronavirus cases and over 30,000 confirmed deaths.[1] At a time when hand-washing and proper hygiene is key to stopping the spread of the virus and preventing its resurgence, all state residents must have clean, affordable water in their homes. Urgent action is needed to protect

[1] US Centers for Disease Control and Prevention, "Cases in the US," accessed July 7, 2020, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

the populations disproportionately impacted by utility shut-offs, predominantly low-income households and communities of color.[2]

In addition to this public health crisis, New York is facing an unprecedented economic crisis. Across the state, 10% of mortgages were delinquent in May,[3] compared to just 3.2% of mortgages in January.[4] Over two million New Yorkers have filed for unemployment benefits since the beginning of the COVID-19 pandemic,[5] a number which dwarfs the approximately 300,000 jobs lost between December 2008 and December 2009 during the Great Recession.[6] The NYS Department of Labor reported that the state's unemployment rate in May stood at 14.5%.[7] Compounding the problem, the federal government's $600 per week supplemental unemployment benefit is set to expire at the end of this month. Finally, 1.1 million energy utility customers were 60 days or more in energy utility arrears,[8] owing $874 million or almost $800 per customer.[9] Although only energy utilities collect granular data on arrearage and collections and make it public, it is reasonable to infer from these numbers that water service customers' bill payments are similarly impaired.

The fallout from these concurrent crises cannot be overstated. Families are struggling to afford basic necessities, including water payments. They must make desperate choices between staying current on their mortgages or rent, feeding and clothing their families, buying needed medications, keeping their gas or electricity on or delaying paying the water bill. Many are forced to choose the last option.

Water bills were already unaffordable for many New Yorkers before COVID-19, and the pandemic has only exacerbated underlying inequalities. Without state action to protect access to clean water and provide financial relief, many households will become buried in unescapable

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[2] Pacific Institute, "Water and the COVID-19 Pandemic: Equity Dimensions of Utility Disconnections in the U.S.," June 2020, https://pacinst.org/publication/equity-dimensions-of-disconnections/.
[3] Black Knight Financial Technology Solutions, "Mortgage Monitor: May 2020 Report," https://cdn.blackknightinc.com/wp-content/uploads/2020/07/BKI_MM_May2020_Report.pdf.
[4] Black Knight Financial Technology Solutions, "Mortgage Monitor: January 2020 Report," https://cdn.blackknightinc.com/wp-content/uploads/2020/02/BKI_MM_Jan2020_Report.pdf.
[5] NYS Department of Labor press release, May 20, 2020, https://www.labor.ny.gov/pressreleases/2020/may-20-2020.shtm.
[6] NYS Department of Labor, "A Look Back at the Great Recession," February 2010, https://labor.ny.gov/stats/PDFs/enys0210.pdf.
[7] NYS Department of Labor press release, June 18, 2020, https://labor.ny.gov/stats/pressreleases/pruistat.shtm.
[8] See, *Proceeding on Motion of the Commission to examine the collection practices of the major gas and electric utilities in New York State to identify ways to reduce losses due to uncollectibles while maintaining a high level of customer service*, Case 91-M-0744 ("CARS Proceeding"). Available at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=91-m-0744&submit=Search.
[9] *See generally*, CARS Proceeding.

water bill debt, which could produce waves of water shut-offs in the future after the crisis is over, a catastrophic growth in water liens, and a potential spike in homelessness.

Fortunately, Governor Cuomo and the State Legislature have taken an important first step to ensure water justice in New York. On June 17, 2020, Governor Cuomo signed S.8113-A/A.10521, a bill establishing a statewide moratorium on utility shut-offs during the COVID-19 state of emergency and requiring reconnection of utility service that had been shut off during the emergency. For New Yorkers who have experienced a change in financial circumstance due to the COVID-19 state of emergency, the legislation also bans shut-offs for 180 days after the end of the state of emergency, prohibits late fees and penalties, and guarantees access to deferred payment agreements.

New York's new shut-off law is groundbreaking. Its requirements apply to both public and private water utilities, and for the first time has required public water utilities to comply with New York's Home Energy Fair Practices Act (HEFPA) regulations. However, much remains to be done to ensure that New Yorkers emerge financially sound from the pandemic and have access to clean, running water. It is imperative that the Commission implements policies that match the enormity and severity of our current crisis and further racial, economic, and environmental justice. With clean water more important than ever, bold action is needed to realize the goals of New York's new shut-off law.

Specifically, we urge you to:

1. **Require public and private water utilities to accept a declaration from an individual as proof of "a change in financial circumstances due to the COVID-19 state of emergency."**
2. **Require affordable, fair, and equitable deferred payment agreements (DPAs) to be offered by public and private water utilities.**
3. **Require public and private water utilities to proactively and safely reconnect service to all households, including those cut off from service before the COVID-19 state of emergency began, and waive all reconnection fees.**
4. **Develop guidance for public and private water utilities on proactive and safe reconnection practices.**
5. **Halt any scheduled and future rate increases by utilities whose rates are subject to Commission regulation, and conduct audits of each water utility to determine whether recent or proposed rate increases are just and reasonable.**
6. **Require data collection and reporting by public and private utilities to the state.**
7. **Require public and private water utilities to develop Arrearage Management Plans (AMPs).**

Water Affordability in the United States and New York

For many, running water is such a dependable feature of their homes that its presence is simply commonplace. But for too many other households, access to clean, running water is not a certainty. As noted by the United Nations, globally "one in three people do not have access to safe drinking water, two out of five people do not have a basic hand-washing facility with soap and water."[10] Considering that the United Nations declared 2018 through 2028 as the water action decade, it is critical for our country to examine both our ability and our failure to provide clean water to all of our residents.[11]

As water utilities across the United States grapple with decreased federal aid and increased costs associated with aging and crumbling infrastructure, environmental clean-ups, and the climate crisis, they often raise rates on their customers and create increasingly unaffordable bills. Nationally, residential water rates have increased at three times the rate of inflation over the last decade.[12] For most of that time, real growth in household income has been relatively stagnant and income inequality has increased. As a result, water costs impose a growing financial burden, as a share of household income, for many lower-income people all around the country.

There is evidence that the trend towards unaffordable water bills applies in New York as well. According to a survey of eight New York water utilities conducted by the Natural Resources Defense Council, four of the utilities more than doubled their water rates between 1996 and 2016. This would amount on average to a 4.7% annual increase in water rates, more than double the rate of the average annual growth in median household income in New York State during that time (2.7%).[13]

Poverty is a driving force behind water insecurity. Families with lower incomes struggle to manage ever-increasing rates and are among the first to lose access to reliable water. Water shut-offs are a common practice that water systems employ when customers are unable to pay their bills, and they have devastating effects on human health and community wellbeing.[14] The

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[10] United Nations, Sustainable Development Goals, Goal 6: Ensure access to water and sanitation for all, https://www.un.org/sustainabledevelopment/water-and-sanitation/.

[11] United Nations, Water Action Decade, https://www.un.org/sustainabledevelopment/water-action-decade/.

[12] https://www.wsj.com/articles/who-is-paying-to-fix-outdated-water-and-sewer-systems-you-are-1521106201

[13] NRDC et al, "Proposal to Establish a Low-Income Assistance Program for Water and Sewer Services." February 12, 2018, https://atlantic2.sierraclub.org/sites/newyork.sierraclub.org/files/documents/2018/02/Letter%20to%20Gov%20Cuomo%20re%20Water%20Affordability%2002-12-2018.pdf?scv=1518547054270.

[14] Unitarian Universalist Service Committee, The Invisible Crisis: Water Unaffordability in the United States, May 2016, http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf.

lack of water can make a home uninhabitable, forcing already vulnerable populations to uproot or even leading to loss of custody of children. It impacts diet, physical health and mental well-being. The problem of water shutoffs is particularly acute in communities that are faced with compounded issues of food and income insecurity.

A March 2020 story in the Buffalo News vividly demonstrates that long-standing water shut-offs persist today and pose immense health risks to New Yorkers during this COVID-19 crisis.[15] As detailed below, from 2015 through March 2019, Buffalo disconnected water service on over 17,000 occasions. In 2016, Suffolk County Water Authority disconnected residential water service for over 9,000 people due to non-payment.[16] A national survey of 73 large water utilities found that these water systems disconnected a total of over 500,000 households for non-payment in 2016.[17]

Unpaid water bills can also lead to tax sales of properties – houses can be foreclosed upon due to water debt. Vacant, foreclosed properties in neighborhoods can disincentivize investment in already financially distressed communities and can reduce opportunities for economic growth.

The lack of reporting by water utilities and the subsequent lack of a comprehensive federal or state database to track water rates and shut-offs makes it difficult to ascertain the full extent of our water affordability crisis. However, the data that is available shows that even before the COVID-19 pandemic, water was becoming increasingly unaffordable. The strains placed on families to pay their water bills has only worsened during our current public health and economic crisis. Available data from other states suggest that more than a million New Yorkers are likely behind on their water and sewer bills, accumulating substantial arrears that would subject them to shut-offs absent the protections provided by state law during the COVID-19 crisis.[18]

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[15] Deidre Williams, "Critics want water shut-offs reversed, but city says residents must call first," Buffalo News, March 23, 2020, https://buffalonews.com/2020/03/23/critics-blast-citys-plan-to-reverse-water-shut-offs-as-insufficient/.
[16] Food & Water Watch, "America's Secret Water Crisis," October 2018, https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis.
[17] Ibid.
[18] For example, data from North Carolina (a state with a population only about half the size of New York's, and with a less severe rise in unemployment than New York) show that, by the end of April, over 770,000 people in that state lived in households that had fallen behind on their water bills. About half that number were far enough behind that they became eligible in April to be disconnected for non-payment, but avoided shutoff because of a state moratorium on water shutoffs. See L. Levine, "Data Show Millions at Risk of Water Shutoff During COVID-19," May 7, 2020, updated May 19, 2020, https://www.nrdc.org/experts/larry-levine/data-show-millions-risk-water-shutoffs-during-covid-19.

Water Shut-Off Case Study: The City of Buffalo

Buffalo, the state's second largest city, has long been one of the poorest in the nation. Nearly one in three residents fall below the federal poverty level.[19] The city also suffers from one of the most serious water shut-off problems in the country.

For years, the Buffalo Water Board, responsible for administering water to city residents, has exercised the authority to shut off water for nonpayment. From 2015 through March 2019, Buffalo terminated water on over 17,000 occasions. Throughout the year, City of Buffalo workers shut off water each week to about 80 households.[20]

Data from a Freedom of Information Law request revealed that from January through May 2019, Buffalo shut off water to 1,103 occupied homes, averaging around 220 shut-offs per month. The median amount of money owed to the Buffalo Water Board when the shut-off occurred at the occupied home was $1,117.27. Of the 1,103 shut-offs, there were 97 shut-offs in which less than $500 was owed, and the minimum amount owed was $185. The maximum amount of money owed was $42,837.25. **This data shows that water is being shut-off for many households despite small amounts of money being owed. In addition, the data indicate that households are drowning in large amounts of debt that they will likely never be able to ever fully repay.**

The Partnership for the Public Good mapped shut-off data from January and February 2019 to reveal the most impacted Buffalo ZIP codes.[21] Of the four ZIP codes where COVID-19 rates are now the highest, the same ZIP codes have shut-off rates higher than the city-wide rate of 2.8 shut-offs per 1000 households. According to PPG, "these four zip codes (14208, 14215, 14207, and 14211) in fact have the highest shut off rates in the entire city." In all four zip codes, the childhood poverty rate is at least 43%, and at least 50% of the population is non-White. In the three zip codes on the city's West Side (14208, 14211, and 14215), at least 72% of the population is Black.[22]

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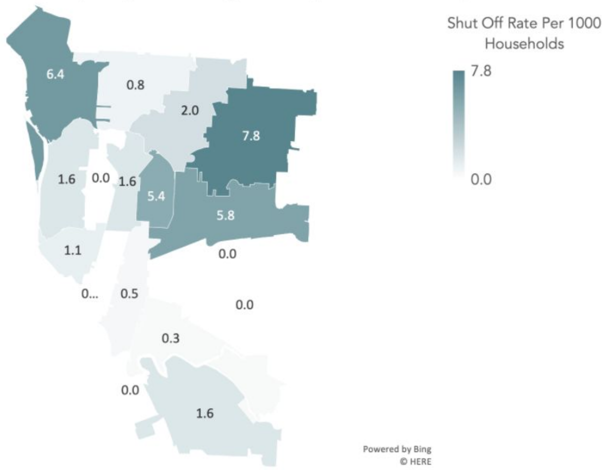
[19] United States Census, "Quick Facts: Buffalo," accessed July 7, 2020, https://www.census.gov/quickfacts/buffalocitynewyork.

[20] PUSH Buffalo et al, "Proactive Action to Restore Water to Combat COVID-19 in Buffalo," April 1, 2020, https://ppgbuffalo.org/news-and-events/news/article:04-01-2020-12-00am-community-groups-call-on-the-city-of-buffalo-and-buffalo-water-to-restore-services-to-combat-covid-19-in-buffalo/.

[21] Partnership for the Public Good, "Mapping COVID-19 Cases and Other Local Data," May 19, 2020, https://ppgbuffalo.org/news-and-events/news/article:05-19-2020-12-00am-diving-into-the-data-covid-19-cases-and-other-local-data/.

[22] United States Census Bureau, "2014-2018 American Community Survey 5-Year Profiles," accessed July 10, 2020, https://www.census.gov/acs/www/data/data-tables-and-tools/narrative-profiles/.

Water Shut Offs per 1000 Households in the City of Buffalo by Zip Code, January & February 2019



Zip Code	Shut Off Rate Per 1000 HHs
14201	1.1
14202	0.0
14203	0.0
14204	0.5
14206	0.0
14207	6.4
14208	5.4
14209	1.6
14210	0.3
14211	5.8
14212	0.0
14213	1.6
14214	2.0
14215	7.8
14216	0.8
14220	1.6
14222	0.0

Source: Data obtained through Freedom of Information Law Request to the City of Buffalo Water Board

In response to the COVID-19 crisis, the Buffalo Water Board established a shut-off moratorium in March 2020. The city promised to reconnect households that had been disconnected due to non-payment, though local community organizations argued the city was not being proactive enough to reach those without water. Buffalo Water claimed to have reconnected over 200 residences between mid-March and the end of June.[23] It is unclear how many occupied homes are still without water in the city during this extremely virulent pandemic.

When the statewide utility shut-off moratorium ends, there is ample reason to fear what will follow. The Water Board will have an incentive to initiate shut-offs aggressively to attempt to make up for lost revenue. If we extrapolate from the average of 220 monthly shut-offs the Water Board ordered from January to May 2019, there may be a backlog of thousands of households in Buffalo unable to pay their bills over the course of the pandemic and who, but for the moratorium, would probably have had their water shut off.[24] They will be at high risk of being shut off once the statewide moratorium expires.

The precarious situation in Buffalo underlines the need for the Public Service Commission to take bold action to make water affordable during COVID-19 and beyond, and to prevent waves of shut-offs once New York's state of emergency expires.

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[23] City of Buffalo press release, "MAYOR BYRON W. BROWN ANNOUNCES THREE NEW INITIATIVES AIMED AT ADJUSTING FEES AND FINES LOW INCOME RESIDENTS FACE FOR LATEST PHASE OF THE BUFFALO REFORM AGENDA," June 29, 2020, https://www.buffalony.gov/DocumentCenter/View/7647/ParkingAmnesty-PressRelease.

[24] This implies that similar action will be forthcoming from other municipal water utilities, particularly with federally unreimbursed expenses for fighting COVID-19 and reductions in AIM distributions in the Executive Budget.

Recommendations

New York's new shut-off law provides the Commission with broad authority to regulate both private and public water utilities. We ask the Commission to make clear in its rulemaking that while the shut-off law is in effect, municipal water utilities are subject to Home Energy Fair Practices Act (HEFPA) regulations. Any amendments to the regulations interpreting HEFPA that the Commission promulgates as part of this proceeding will therefore also apply to both public and private utilities, providing the Department of Public Service with the guidance and opportunity to address issues including, but not limited to, terminations, reconnections, down payments, late fees and penalties, and data collection and reporting.

To ensure the effective implementation of the new shut-off law and provide the necessary relief to households struggling during this public health and economic crisis, we urge the Commission to take the following actions to provide all New Yorkers clean, running water during the COVID crisis and through the recovery:

1) **Require public and private water utilities to accept a declaration from an individual as proof of "a change in financial circumstances due to the COVID-19 state of emergency."**

   For 180 days after the end of the state's COVID-19 state of emergency, New York's new utility shutoff law grants residential customers of publicly and privately owned water utilities (as well as gas, electric, steam, and telephone utilities) protection against shutoff for non-payment, as well as the right to enter into or restructure a deferred payment agreement for arrears (without down payments, late fees, or penalties), if they have "experienced a change in financial circumstances due to the Covid-19 state of emergency, *as defined by the department [of Public Service]*."[25] (emphasis added) We urge the Commission to promulgate the most equitable, inclusive and flexible standard, allowing individuals to easily apply for restructured or deferred payment agreements without being required to produce excessive paperwork or documentation. Given how essential clean water is to stopping the spread of COVID-19, we do not want a single New Yorker to have their water shut off due to inability to pay. This approach will also place the least administrative burden on water utilities, many of which are already struggling with reduced staffing levels and stretched budgets.

   We urge the Commission to define the standard so that individuals can meet it by declaring on a preprinted form mailed to them by the utility and returnable to the utility

[25] New York State Laws of 2020, Chapter 108, sections 2 and 4.

that the customer has experienced a change in financial circumstances due to COVID-19. Utilities should also be required to make this form available for electronic submission on their websites. The regulations should require utilities to include the printed form and information about where to find the online version of the form with every bill and notice of non-payment until 180 days after the end of the COVID-19 state of emergency. Making individuals aware of their rights with each bill will ensure that individuals do not cut other essential payments, including for groceries or childcare, in order to cover what may currently be unaffordable monthly payments to the utility. The form should be available in the six most widely spoken languages in each utility service area. Customers would be directed to sign and mail the preprinted form in with their bill or to complete the form online. There should be no deadline for filing such a declaration, to ensure that not a single New Yorker falls through the cracks.

There is precedent in New York State for this approach. The Department of Financial Services (DFS), recognizing the severity of the COVID-19 crisis, has accepted written declarations by individuals as proof of financial hardship during COVID-19. On March 30, 2020, DFS promulgated an emergency regulation imposing a moratorium on any insurer cancelling any property/casualty insurance policy for a period of 60 days, for any property/casualty policyholder facing financial hardship as a result of the COVID-19 pandemic.[26] The regulations state, “Solely for the purposes of this Part, an insurer shall accept a written attestation from a policyholder as proof of financial hardship as a result of the COVID-19 pandemic.” DFS continued using its approach of accepting written declarations as proof of financial hardship in an emergency regulation promulgated on April 7, 2020, which extended the period for the payment of health insurance premiums for anyone who is facing financial hardship as a result of the COVID-19 pandemic. The regulations stated, “Solely for the purposes of this section, an insurer, HMO, or student health plan shall accept a written attestation from an individual, small group, or student blanket comprehensive policyholder or contract holder as proof of financial hardship as a result of the COVID-19 pandemic.”[27]

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[26] NYS Department of Financial Services, “Insurance Regulations 27A, 27C, and 216,”,March 30, 2020, https://www.dfs.ny.gov/system/files/documents/2020/07/re_consolidated_amend_part_405_27a_27c_new_216_text.pdf.

[27] NYS Department of Financial Services, “Fifty-Ninth Amendment to 11 NYCRR 52 (Insurance Regulation 62): Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.” April 7, 2020, https://www.dfs.ny.gov/system/files/documents/2020/04/re62_a59_text.pdf.

We also note that the Illinois Commerce Commission recently adopted an order on a COVID-19 relief plan for utility customers, which relies on self-certification of financial hardship to establish eligibility for certain heightened protections.[28]

2) Require affordable, fair, and equitable deferred payment agreements (DPAs) to be offered by public and private water utilities.

As amended by the new COVID-19 utility shut-off law, Section 89-l of New York's Public Service Law, which applies to publicly owned water utilities, states that, "The municipality shall provide a residential service customer that has experienced a change in financial circumstances due to the COVID-19 state of emergency with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, *as such is provided for in article two of this chapter [i.e., pursuant to HEFPA]*"[29] (emphasis added). Under Section 89-b of the Public Service Law, also as amended by the COVID-19 utility shut-off law, the same rule applies to privately-owned water utilities.

Under the new law, for the first time, public water utilities are required to comply with HEFPA regulations and offer and restructure DPAs. HEFPA regulations require utilities to conduct proper outreach to individuals unable to pay their bills, make a written offer of a DPA, and guarantee a fair negotiation and adjudication process.

If structured correctly, DPAs can be critical lifelines for individuals with water bill debt and who cannot afford their bills. During the current pandemic, New Yorkers are caring for sick family members, educating children at home, dealing with lost wages, and facing rising food costs. They need help getting back on their feet financially.

We urge the Commission to provide a crucial piece of financial relief and ensure that DPAs are as affordable and accessible as possible by enacting the following:

- **Guarantee the right to be offered up to 10 years to repay water bill debt for individuals who have experienced a change in financial circumstance due to the COVID-19 state of emergency.** New York City allows individuals to enter

[28] Illinois Commerce Comm'n, On its Own Motion -- In the Matter of Moratorium on Disconnection of Utility Services during the Public Health Emergency Declared on March 9, 2020 pursuant to Sections 4 and 7 of the Illinois Emergency Management Agency Act, ICC Docket No. 20-0309, Stipulation of Large Utility Group and Joint Consumer Parties, filed June 10, 2020. See https://www.icc.illinois.gov/docket/P2020-0309/documents/300399.
[29] New York State Laws of 2020, Chapter 108.

DPAs with repayment periods that can last for up to 10 years.[30] Given the severity of the public health and economic crisis, this length of time for DPAs should be available to customers who have experienced a change in financial circumstance due to the COVID-10 state of emergency.

- **Guarantee that individuals who have experienced a change in financial circumstance due to the COVID-19 state of emergency can pay as little as $10 a month under their DPAs, with $0 downpayment on back-arrears.** Section 11.10(a)(1)(iii) of the Commission's HEFPA rules states, "a payment agreement must provide for installments as low as $10 per month and no down payment, when the customer or applicant demonstrates financial need for such terms, but need not provide for monthly installments of less than $10."[31] We urge the Commission to make clear in the regulations that a change in financial circumstance due to the COVID-19 state of emergency demonstrates financial need for such terms.

- **Require utilities to include a preprinted form to declare a change in financial circumstance due to the COVID-19 state of emergency during outreach and communication regarding DPAs.**

In addition, we also urge the Commission to clarify existing HEFPA regulations to fully align with New York's new utility shut-off law:

- **Clarify that the down payments and penalties referenced in 16 NYCRR 11.10 do not apply to customers who have experienced a change in financial circumstance due to the COVID-19 state of emergency.**

- **Clarify that a failure to complete a DPA will not result in a termination of service for customers who have experienced a change in financial circumstances due to the COVID-19 state of emergency.** New York's new utility shut-off law is written to provide sweeping protections against shut-offs to those New Yorkers who have experienced a change in financial circumstance due to the COVID-19 state of emergency. The law states, "For a period of one hundred eighty days after the COVID-19 state of emergency is lifted or expires, no municipality shall terminate or discontinue the service of a residential customer *because of bill arrears, taxes, or fees owed to the municipality* when such

[30] NYC Department of Environmental Protection, "Overdue Water and Sewer Charges," accessed July 7, 2020, https://www1.nyc.gov/site/dep/pay-my-bills/overdue-water-sewer-charges.page.
[31] Title 16 of NYCRR 11.10(a)(1)(iii), https://www.dps.ny.gov/HEFPA_Brochure_12-08.pdf.

customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department." (emphasis added) A DPA that a customer does not complete results in the customer owing arrears to water utilities; water utilities are therefore prohibited by the new utility shut-off law from disconnecting residential customers due to an incomplete DPA. Moreover, the new shut-off law guarantees residential customers who have experienced a change in financial circumstance due to the COVID-19 state of emergency with the right to "restructure a DPA." This also prohibits a water utility from disconnecting service due to a customer's inability to complete a DPA.

- **Clarify that customers who have experienced a change in financial circumstance due to the COVID-19 state of emergency have the right to enter into or restructure a new DPA even if they had previously failed to complete a DPA.**

- **Suspend 11.10(a)(1)(ii), which allows utilities to require individuals to produce documentation of their financial situation to determine eligibility, for customers who submit a declaration that they have experienced a change in financial circumstances due to the COVID-19 state of emergency.**

3) Require public and private water utilities to safely reconnect service to all households, including those cut off from service before the COVID-19 state of emergency began, and waive all reconnection fees.

Though New York's new utility shut-off law requires swift service reconnections for those who experienced a shut-off during the COVID-19 state of emergency, the law does not require water utilities to turn the water back on for those who have experienced more long-standing service disconnections.

Unless the Commission requires that water service be reconnected, many people will face greater vulnerability to COVID-19 due to lack of clean water. If New Yorkers are being urged to stay at home, they must be guaranteed the essential services to keep themselves and their families safe.

California,[32] Michigan,[33] and Wisconsin[34] are requiring proactive service reconnection by all water systems in their states during the COVID-19 pandemic. Of the eight public water systems in New York that we had identified as committed to suspending water shut-offs during COVID-19 (prior to the passage of the statewide law), we know of only one that has committed to proactive reconnection.

It is critical that reconnections be conducted as soon as possible and in a manner that fully protects public health. Water systems must be instructed to complete reconnections as soon as possible, and by no later than two weeks after the promulgation of regulations.

4) **Develop guidance for public and private water utilities on proactive and safe reconnection practices.**

We also urge the Commission to provide technical guidelines to water systems about how to proactively reconnect water and properly flush piping after service is reconnected. Water systems must be required to provide educational materials on properly flushing piping to residents upon reconnection. Water that has stagnated in plumbing can expose residents to dangerous levels of lead as well as *Legionella* and other pathogens in their drinking water. This guidance should be available in the six, most widely-spoken languages in each utility service area. We recommend the guidance in the footnote below, which was commissioned by the Natural Resources Defense Council and developed by a professional engineer with specific expertise in this field.[35]

5) **Halt any scheduled and future rate increases by utilities whose rates are subject to Commission regulation, and conduct audits of each water utility to determine whether recent or proposed rate increases are just and reasonable.**

We appreciate the action the Commission has already taken during the pandemic to halt scheduled utility rate increases. We urge the Commission to continue this policy. The economic toll of this pandemic on New Yorkers is immense, with a loss of wages and

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[32] Governor Gavin Newsom, "Executive Order N-42-20," April 2, 2020, https://www.gov.ca.gov/wp-content/uploads/2020/04/4.2.20-EO-N-42-20.pdf.
[33] Governor Gretchen Whitmer, "Executive Order 2020-28," https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-523414--,00.html.
[34] Public Service Commission of Wisconsin, "Investigation on the Commission's Own Motion to Ensure Safe, Reliable and Affordable Access to Utility Services During Declared Public Health Emergency for COVID-19," March 24, 2020, http://apps.psc.wi.gov/pages/viewdoc.htm?docid=386373.
[35] Safe Water Engineering, "Is your water being turned back on?" April 3, 2020, https://safewaterengineering.com/news/2020/4/28/flushing-household-plumbing-after-a-water-service-restoration.

jobs across many sectors of our state economy. We urge the Commission to ease the financial burden that many New Yorkers are facing.

6) **Require data collection and reporting by public and private water utilities to the state.**

Water utilities in New York do not currently report information necessary to inform the development of, and ensure the effectiveness of, COVID-19-related customer protections and water affordability policy more generally. To fully understand the scale and extent of shut-offs and water debt across the state, utilities must be required to compile and report critical information to the Commission, which should publish the information on its website in monthly reports. For example, North Carolina has adopted standardized reporting requirements for both publicly owned and privately owned utilities during COVID-19 and publishes the results monthly.[36] The Illinois Commerce Commission's recent order concerning COVID-19 relief for utility customers also establishes detailed reporting requirements for utilities, including reporting of data disaggregated by customer ZIP code to allow for identification of any disparate impacts of utility bill collection practices by race, income, or other factors.[37] The National Consumer Law Center has also developed recommendations on information utilities should be required to report during and after COVID-19.[38]

We recommend that the following information on residential accounts be reported monthly *by ZIP code*:

- Number of accounts
- Total dollar value billed by the utility
- Number of accounts currently disconnected from service due to non-payment
- Average duration of disconnection
- Number of accounts that missed a payment during the reporting period
- Number of disconnection notices sent
- Number of disconnections due to non-payment
- Number of accounts that attempted to declare a change in financial circumstance due to the COVID-19 state of emergency but were rejected

[36] North Carolina Utilities Commission, "Docket M-100 Sub 158," accessed July 7, 2020, https://starw1.ncuc.net/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=66e14449-b407-4ac3-93eb-a417521e1269.

[37] Illinois Commerce Comm'n, On its Own Motion -- In the Matter of Moratorium on Disconnection of Utility Services during the Public Health Emergency Declared on March 9, 2020 pursuant to Sections 4 and 7 of the Illinois Emergency Management Agency Act, ICC Docket No. 20-0309, Stipulation of Large Utility Group and Joint Consumer Parties, filed June 10, 2020. See https://www.icc.illinois.gov/docket/P2020-0309/documents/300399.

[38] National Consumer Law Center, "The Need for Utility Reporting of Key Credit and Collections Data Now and After the Covid-19 Crisis," April 2020, https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Data_Reporting.pdf.

- Number of accounts that successfully declared a change in financial circumstance due to the COVID-19 state of emergency
- Number of accounts that became eligible for disconnection but were not disconnected because they declared a change in financial circumstance due to the COVID-19 state of emergency
- Number of reconnections completed after disconnection due to non-payment
- Number of accounts charged a late fee or penalty
- Dollar value of late fees or other penalties charged to accounts
- Dollar value of late fees or other penalties not charged to accounts because the customers declared a change in financial circumstance due to the COVID-19 state of emergency
- Number of accounts with deferred payment agreements
- Average repayment term of deferred payment agreements (length of repayment plan, monthly/quarterly billing amount, etc.)
- Number of accounts for which new deferred payment agreements were established
- Average repayment term of new deferred payment agreements
- Number of accounts with deferred payment agreements that missed a payment
- Number of accounts that successfully completed a deferred payment agreement
- Number of accounts charged a security deposit
- Dollar value of service deposits charged to accounts
- Dollar value of security deposits not charged to accounts because the customers declared a change in financial circumstance due to the COVID-19 state of emergency
- Number of accounts with an arrearage balance, by vintage:
    - 60 – 90 days
    - 90+ days
- Dollar value of arrearages, by vintage:
    - 60 – 90 days
    - 90+ days

7) Require public and private water utilities to develop Arrearage Management Plans (AMPs).

As important as DPAs are, they might not be enough for households struggling with large water debts. AMPs are designed to prevent participating customers from sinking into a debt-spiral and to incentivize regular payments from those customers. AMPs help customers by providing forgiveness for existing arrearages as long as the customer remains current on their bills. Each time an AMP participant makes a regular payment (the current bill), the arrearage is reduced by a set amount until it is completely eliminated.[39] We support requiring utilities to develop AMPs with upfront arrearage forgiveness.

Conclusion

As the world confronts the COVID-19 pandemic, public health officials across the globe are imploring people to wash their hands to reduce the spread of the disease. Quite simply, it's extremely hard to do this without running water in your home. The lack of running water only heightens the risk of infection and the possibility of spreading that infection to others. For people facing unaffordable water bills, large amounts of debt, or the threat of future shut-offs, the fear of getting sick is very real.

Water shut-offs are often considered to be an individual household issue, but it is time to recognize that they are social concerns that demand comprehensive, statewide solutions. Water is so universally essential to health and wellbeing that the absence of it creates a deep crisis.

We thank the Commission for the opportunity to provide public comment. We look forward to working with the Commission to ensure that all New Yorkers have clean, affordable water during COVID-19 and beyond.

Sincerely,

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[39] Charlie Harak, "Helping Low-Income Utility Customers Manage Overdue Bills Through Arrearage Management Programs (AMP)," National Consumer Law Center (Sept. 2013), https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf.

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