

Aug. 27, 2020

Secretary Michelle L. Phillips
New York State Department of Public Service
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Via electronic submission to docket in Matter No. 20-01676

Re: Matter 20-01676 – In the Matter of the Implementation of Public Service Law §§ 32, 89-b, 89-l, and 91 (Chapters 108 and 126 of the Laws of 2020) Regarding Moratorium on Terminations and Disconnections of Residential Utility Customers During the COVID-19 State of Emergency.

Dear Secretary Phillips,

The undersigned organizations write to identify significant violations by numerous municipal water utilities of the new Public Service Law § 89-l requirements regarding shutoff moratoria; to share our concerns about implementation of the above-referenced amendments to the Public Service Law; and to request four urgent actions by Department staff, which are described below.

The statutory amendments, enacted by the Legislature and signed by Governor Cuomo in June 2020, are precedent-setting nationally. They make New York the first state to act via legislation to establish COVID-19 utility shutoff protections for all residential customers of electric, gas, water, and telephone utilities. As the state's efforts to control the spread of COVID-19 continue to bear fruit, effective implementation is vital to protect New Yorkers' health and to promote economic recovery.

We appreciate the Department's initial guidance issued in this matter on August 11, 2020 ("Secretary's Notice").¹ In forthcoming comments to the Commission's main docket on COVID-19 issues, at the end of this week, we and other partner organizations will provide comprehensive comments on the substance of the Secretary's Notice, and on further actions that the Department and the Public Service Commission should take in the weeks and months ahead.²

We write separately now, however, because our initial review of municipal water utilities' non-compliance with the new law, we believe Department staff must take urgent action to protect customers of the state's more than one thousand municipal water utilities

¹ Matter 20-M-01676, Notice of Department of Public Service Guidance Relating to the COVID-19 Utility Moratorium on Terminations and Disconnections (Aug. 11, 2020). <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C6425545-3F61-4ADD-A1E1-CF1090CF0592}>

² Case 20-M-0266 - Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service. <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=62828&MNO=20-M-0266>

from unlawful disconnection. We urge the Department to take the following steps now, in anticipation of the expiration of the COVID-19 state of emergency on September 7, 2020:

1. Undertake extensive outreach to municipal water utilities, in coordination with other state agencies, such as the Department of Health and Department of State, which have regular contact with (and exercise oversight of) municipal water utilities and local governments;
2. Further clarify municipal water utilities' obligations under the law, including their obligations under the Department's deferred payment agreement ("DPA") regulations
3. Provide detailed, standardized forms for utilities to use to notify customers of their rights; and
4. Widely publicize the rights provided by the new law, including informing the public that customers may contact the Department for assistance if they believe that their utility may be violating the law.

* * * * *

The amendments to the Public Service Law granted the Public Service Commission jurisdiction with regard to municipal water utilities' obligations under the amendments.³ The Secretary's Notice required all utilities to make these submissions by August 21, 2020.⁴ The online docket opened by the Secretary's Notice (Matter No. 20-01676) reflects that, as of August 26, 2020, only a small number of the over one thousand municipal water utilities covered by the law timely submitted an implementation plan and a copy of their notices to customers.⁵

As detailed below, we have identified some municipal water utilities that are already misinforming customers of their rights – erecting impermissible barriers to securing the protections the law guarantees. If these violations are not corrected, and if the Department does not ensure that all municipal utilities across the state comply with the law, many customers with financial need arising from the pandemic likely will be disconnected after Governor Cuomo's state of emergency declaration expires on September 7, 2020, when they cannot meet their utility's unlawful demands to pay more than they can actually afford to maintain service.

³ Pre-existing subsection (1) of PSL § 89-1 provides that "The jurisdiction of the public service commission, with respect to such a municipality or its said business, is that, and only that, provided for in this section [i.e., PSL § 89-1]." The amendments to PSL § 89-1 added new subsections (3) through (6), which establish municipal water utilities' customer protection obligations in regard to COVID-19. (Notably, the new subsection (3) expressly assigns responsibility to the Department to define certain terms, and subsection (4) expressly extends to municipal utilities the Public Service Law's DPA provisions, which necessarily include the Department's DPA regulations implementing those provisions.)

⁴ The Secretary's Notice states that its purpose is to "provide guidance to and request filings from all the utility providers and municipalities subject to these amendments [to the Public Service Law]." Secretary's Notice at 2. It further provides that, by August 21, 2020, utilities "shall file with the Department the following documents: 1. The utility's overall plan for implementation of this statute. 2. A copy of the notice to consumers pursuant to PSL §§ 32(8), 89-b(10), 89-1 (5) or 91(11)." *Id.* at 8-9. Public Service Law § 89-1(5) requires municipal water utilities to notify customers of their rights under the new law.

⁵ The municipal water utilities that have filed also provide electric service; the latter service is regulated by the Public Service Commission. No utility that was not previously subject to PSC regulation submitted a report as directed by the Secretary's Notice. See <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=63251&MNO=20-01676>

The amendments to the Public Service Law prohibit utility shutoffs of all residential customers through the end of the state of emergency and require restoration within 48 hours of the effective date of the law of any residential customer previously disconnected during the state of emergency.⁶ The amendments also provide extended protection, beyond the end of the state of emergency, for customers that have “experienced a change of financial circumstances due to the COVID-19 state of emergency, as defined by the [D]epartment [of Public Service].”⁷ In the Secretary’s Notice, the Department provided that, to qualify for the extended protections, utilities “shall accept a residential customer’s self-certification that the customer has experienced a change of financial circumstances due to the COVID-19 state of emergency.”⁸ The Secretary’s Notice also re-stated the law’s clear meaning that these financially impacted customers “are not required to enter into a new [deferred payment agreement] to avail themselves to the protections provided for by the PSL amendments.”⁹

For municipal water utilities, as for all other utilities, the extended protections for these customers include an additional 180-day shutoff moratorium beyond the end of the state of emergency, and 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 2 of [the Public Service Law].”¹⁰ Under the Department’s pre-existing regulations implementing Article 2, “a deferred payment agreement [DPA]...is a written agreement for the payment of outstanding charges over a specific period of time,” which must include terms ensuring, among other things, “that the customer is able to pay, considering his or her financial circumstances” and that there shall be “installments as low as \$10 per month and no down payment, when the customer or applicant demonstrates financial need for such terms.”¹¹

The amendments to the Public Service Law also require every utility to provide notice to residential customers of the protections established by the new law in writing.¹²

As a spot-check of municipal water utilities’ compliance, we examined the customer notices that six municipal water utilities in Long Island posted on their websites, and the customer notices submitted to DPS by the municipal water utilities that submitted the required compliance plans under the Secretary’s Notice. Key deficiencies in these notices are described below. All of them misstate the law in ways that will result in disconnection of customers – in particular, customers who are unable to afford their bills due to financial impacts of the COVID-19 emergency – under circumstances prohibited by the amendments to the Public Service Law.

⁶ See, e.g., PSL § 89-1(3)-(4) (applicable to municipal water utilities).

⁷ *Id.*

⁸ Secretary’s Notice at 7.

⁹ *Id.*

¹⁰ PSL § 89-1(4).

¹¹ 16 NYCRR § 11.10(a), (d).

¹² PSL § 89-1(5) (requiring utilities to provide written notice and to “further make reasonable efforts to contact customers who have demonstrated a change in financial circumstances due to the COVID-19 state of emergency for the purpose of offering such customers a deferred payment agreement consistent with the provisions of this article”).

The six customer notices by the six Long Island utilities violate the 180-day extended moratorium and the deferred payment agreement requirements.¹³ The notices state that customers certifying that they have been financially impacted by the COVID-19 state of emergency may “defer” payment for up to a certain number of months or billing periods (in the case of two utilities, only a single billing period), but provide that full payment is due immediately following that deferral in order to avoid disconnection. Such policies violate these customers’ right to avoid shutoff for 180 days beyond the end of the state of emergency without making any payment during that time, as well as their rights to an affordable DPA tailored to each customer’s ability to pay.

The customer notice submitted to the Department by the Jamestown Board of Public Utilities also violates the law in several ways.¹⁴ The notice unlawfully provides that, “to avail themselves of additional disconnection protection” beyond the end of the state of emergency, customers experiencing financial impact from the COVID-19 state of emergency may be required to submit “a financial statement and supporting documentation,” not just a self-certification of financial impact; and, moreover, that such customers must actually enter into a DPA in order to receive the extended shutoff protection. It also provides no notice of the minimum DPA terms to which financially impacted customers are entitled. Further, the compliance plan included in Jamestown’s submission contains no information on the utility’s implementation of the requirement to restore service to anyone disconnected during the COVID-19 state of emergency.¹⁵

The customer notices submitted by the New York Municipal Power Agency (“NYMPA”) on behalf of its members (many of which provide both water and electric service)¹⁶ and by the Village of Holley¹⁷ also violate the law. In both cases, the customer notices inform customers that, if they are financially impacted by the COVID-19 state of emergency they can “enter into a Deferred Payment Agreement to prevent future terminations or disconnections.” They do not inform customers that a self-certification of financial impact is sufficient to secure the 180-day extended shutoff protection, without need to enter into a DPA.¹⁸ Further, while NYMPA did not

¹³ These utilities notices can be found at the following weblinks:

- Bethpage: <https://bethpagewater.com/Portals/0/Deferred%20Payment%20Form.pdf?ver=2020-06-29-092404-173>
- Garden City Park: <https://www.gcpwater.org/AletMessages/PaymentDeferralRequestForm.pdf>
- Hempstead: <https://hempsteadny.gov/files/pdfs/covid-water-payment-deferral-request-form.pdf>
- Jericho: <https://www.jerichowater.org/wp-content/uploads/2020/06/Payment-Deferral-Request-Form.pdf>
- Locust Valley: <https://www.locustvalleywater.com/images/covidarpaymentdefer.pdf>
- Roslyn (downloadable word doc on homepage): <https://www.roslynwaterdistrict.org/>

¹⁴ The notice is posted online at the following link, in the docket for Matter No. 20-01676:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A94F6D11-0C40-4829-86E7-94705589430D}>

¹⁵ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A94F6D11-0C40-4829-86E7-94705589430D}>

¹⁶ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2203E5B1-C60E-43AA-A4A9-4B52B8F7AD25}>

¹⁷ <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E4B44F94-FB55-4386-8D7E-7287CA4C6AC0}>

¹⁸ Contrary to the customer notices, NYMPA’s cover letter to the Department, and the “Village Policy Update on COVID-19 Utility Disconnection Policy for Residential Customers” included in the Village of Holley’s submission

submit a copy of a self-certification form or DPA request form, the Village of Holley submitted a form for self-certification of financial impact that is part of the DPA request form, which requires financial information beyond the self-certification. (The Village of Holley notice also requires customers to contact the utility “in person” to pursue these options, which requires customers to take an unnecessary risk to their health during the pandemic.)

As there are over 1,000 municipal water utilities in New York, ranging in size from 20 customers to over 8 million customers, we are certain that these utilities’ awareness of the new law’s requirements will be inconsistent, at best. And, even for those utilities *aware* of the new law, the examples above show some do not *understand* what it requires and are not properly *implementing* it. This leaves millions of New Yorkers at risk of unlawful disconnection of water service due to inability to pay.

We urge the Department to act now to ensure that all municipal water utilities comply with the law. These utilities must fully and accurately notify all residential customers of their rights and must have in place, before the expiration of the state of emergency, protocols to ensure that customers in arrears are invited to submit a self-certification of financial impact, are not disconnected if they submit that certification, and are offered a DPA that meets all requirements of the Public Service Law and the Department’s implementing regulations.

To quickly and effectively communicate these requirements to all municipal water utilities, the Department should act in coordination with other state agencies, such as the Department of Health and Department of State, that have regular contact with (and exercise oversight of) municipal water utilities and local governments. The Department could also work in partnership with statewide associations representing the municipal water utilities and local governments, such as the American Water Works Association New York Section, New York Conference of Mayors, and New York Association of Counties.

Further, the Department should supplement the Secretary’s Notice to state explicitly that DPAs for residential customers financially impacted by COVID-19 must comply with the Department’s DPA regulations, even if a utility is not otherwise subject to those regulations. The the Department should provide detailed, standardized forms for utilities to use to notify customers of their rights. And the Department itself should widely publicize the rights provided by the new law, including informing the public that customers may contact the Department for assistance if they believe that their utility may be violating the law.

Thank you for your consideration of the above requests. We would welcome the opportunity to discuss these issues further with Department staff. Please contact Lawrence Levine, Natural Resources Defense Council (llevine@nrdc.org) and Robert Hayes, Environmental Advocates of New York (rhayes@eany.org) if you would like to do so.

to the Department, *do* state that anyone providing self-certification will not be disconnected during the 180-day period. However, because of the inconsistency between these statements and the actual customer notices and customer forms, customers will not be aware that they can avail themselves of that protection and it is unclear how the utilities would be able to effectively implement it.

Sincerely,

Maureen Cunningham
Senior Director for Clean Water
Environmental Advocates NY

Eric Weltman
Senior Organizer
Food & Water Watch

Kristy Meyer
Associate Director
Freshwater Future

Chad Radock
Chapter Manager
Local Progress NY

Dr. Hazel N. Dukes
President
NAACP New York State Conference

Lawrence Levine
Director, Urban Water Infrastructure & Senior Attorney
Natural Resources Defense Council

Andrea Ó Súilleabháin
Executive Director
Partnership for the Public Good

Richard Berkley
Executive Director
Public Utility Law Project of NY

Steve Halpern
Attorney
Western New York Law Center

cc:

Senator Kevin Parker
Senator Leroy Comrey
Assemblywoman Amy Paulin