

**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 • Partnership for the Public Good  
The Public Utility Law Project of New York • Western New York Law Center**

August 28, 2020

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

RE: Reply Comments on Case 20-M-0266 - Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service; Public Comment in Matter 20-01676

Dear Secretary Phillips:

Thank you for the opportunity to submit reply comments on the proceeding regarding the effects of COVID-19 on utility service. Our initial comments, *Joint Detailed Water Comments to PSC Case 20-M-0266*, described the actions the Public Service Commission (the Commission) must take to make water affordable and accessible for all New Yorkers during this unprecedented public health and economic emergency.<sup>1</sup>

In this pandemic, millions of New York households are struggling to keep healthy, get and pay for medical care, pay rent, stay current on mortgages, put food on the table, find work or keep their jobs, provide childcare -- and pay utility bills. Tragically, as we have learned, those New Yorkers struggling the most are disproportionately people of color.

Since the submission of our initial comments, the Commission has begun implementing New York's new law establishing a moratorium on utility shut-offs during the COVID-19 state of emergency.<sup>2</sup> On August 11, the Commission promulgated guidance on all utilities' (including

---

<sup>1</sup> The undersigned groups are filing jointly as organizations concerned specifically with the effect of COVID-19 on water customers.

<sup>2</sup> New York State Laws of 2020, Chapters 108 and 126.

formerly non-jurisdictional municipal water utilities’) responsibilities under the shut-off law.<sup>3</sup> Very few municipal water utilities, however, have complied with the directive in that guidance to submit a compliance plan and other information. We have identified only a handful of municipal water utilities that have created forms for customers to declare that they have experienced financial hardship due to the COVID-19 state of emergency.<sup>4</sup>

**Our comments review these documents and detail why they are insufficient to guarantee New Yorkers their new rights to affordable water. We have documented serious non-compliance by water utilities, and we are concerned that New Yorkers will not be protected from unlawful water shut-offs when New York’s state of emergency expires on September 7.**<sup>5</sup> The Commission and Department staff must take immediate action to strengthen implementation requirements and to enforce the law regarding both public and private utilities. New York is currently unprepared to deal with the expiration of the state of emergency and blanket moratorium on utility shut-offs on September 7. Moreover, New York utilities appear to have done little to advise their customers, as required by the shut off law, of the rights provided to utility customers in that law. Without strong policies in place guaranteeing New Yorkers their new rights under the shut-off law, and broad and effective communication of such rights and consumer remedies, waves of water shut-offs will likely sweep the state and countless New Yorkers will fall victim to crushing water bill debt.

Specifically, we urge the Commission to:

1. Direct Department staff to promulgate a standardized declaration of financial hardship form which clearly informs New Yorkers of their rights under the shut-off law, as well as template implementation plans and public notices.
2. Direct Department staff to issue guidance stating explicitly that all utilities must adhere to Home Energy Fair Practices Act (HEFPA) regulations, as required by the shut-off law, especially with regards to the offering, negotiating, and renegotiating of affordable and individually negotiated Deferred Payment Agreements (DPAs).
3. Identify enforcement actions that the Commission will take against any public or private utility that fails to comply with the law and the Department’s regulations and requirements.
4. Increase the frequency and level of detail of required data reporting by utilities, to be submitted to the Commission for publication on its website.

---

<sup>3</sup> Public Service Commission, “Notice of Department of Public Service Guidance Relating to the COVID-19 Utility Moratorium on Terminations and Disconnections,” August 11, 2020.

<sup>4</sup> Under the new law, customers who make this declaration are protected against shut-offs for an additional 180 days after the end of the COVID-19 state of emergency and are granted the right to enter into or restructure a Deferred Payment Agreement (DPA) without late fees, penalties, or a down payment.

<sup>5</sup> It is possible that Governor Cuomo extends the state of emergency before it expires on September 7.

5. Direct staff to conduct 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.
6. Provide guidance on how utilities should broadly publicize the rights guaranteed by the shut-off law.
7. Clarify that the requirements in the Secretary's Notice have the force of law, and that utility compliance is not optional.
8. 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.
9. Address the points made in our initial comments.

We also attach a copy of a letter filed yesterday in Matter No. 20-M-01676, which requested that Department Staff take a number of these actions immediately, to ensure proper implementation of the new law in anticipation of the end of the COVID-19 state of emergency on September 7th.

#### Part 1: Public Service Commission Secretary's Notice

On August 11, the Commission promulgated guidance on water utilities' responsibilities under the shut-off law. The document states, "The Department's guidance is offered with the intent of protecting affected residential customers from unnecessary terminations or disconnections while also encouraging customers and utility providers to work cooperatively to address unpaid arrears for necessary utility service." Below, we note some of the most significant positive aspects of the Secretary's Notice, and identify areas where the Commission must further expand the document's protections.

The Secretary's Notice includes the following strong provisions:

1. The Secretary's Notice is addressed to all utilities covered by the new law, including those not previously regulated by the PSC, such as municipal water utilities.
2. The Secretary's Notice requires utilities to accept self-certification from customers as proof of a change in financial circumstance due to the COVID-19 state of emergency.

We are pleased that the Commission is adopting this equitable and inclusive approach. If implemented correctly, self-certification will allow New Yorkers to easily access their rights to enter into a DPA and continue to be protected against shut-offs once the state

of emergency expires. In our initial comments, we cited several government agencies that have adopted this approach during the pandemic. We want to bring to the Commission's attention one other entity that is allowing customers to self-certify that they have experienced financial impacts from COVID-19. In an order promulgated on May 21, 2020, the Kansas State Corporation Commission stated that, "the Commission will not require customers to demonstrate or the utilities to verify that a customer's inability to pay is due to COVID-19."<sup>6</sup> Kansas agreed with comments submitted by several gas utilities that "it could be administratively burdensome to assess and validate whether a customer's inability to pay is attributable to COVID-19."<sup>7</sup>

3. The Secretary's Notice clearly states, as provided in the new law, that any customers who self-certify a change in financial circumstance due to the COVID-19 state of emergency cannot be disconnected during that period, even if they do not enter into a deferred payment agreement.
4. The Secretary's Notice required all utilities covered by the law to file within 10 days -- August 21 -- an "overall plan" for implementing the new law and a copy of the public notice to be used to inform customers of the law's new protections.

However, we urge the Commission and the Department to expand upon and strengthen the Secretary's Notice to ensure the effective implementation of the shut-off law. We urge the Commission to:

- 1. Direct Department staff to promulgate a standardized declaration of financial hardship form which clearly informs New Yorkers of their rights under the shut-off law, as well as template implementation plans and public notices.**

Part II of our comments reviews shut-off law compliance plans and customer notices filed with the Commission by several municipal water utilities, as well as forms posted online by several additional municipal water utilities on Long Island.

Unfortunately, as our analysis will reveal, these documents do not meet the obligations imposed by the shut-off law. They do not fully and accurately notify New Yorkers of

---

<sup>6</sup> Kansas State Corporation Commission, "Order Concerning Kansas Jurisdictional Utilities Following Expiration of Prohibition of Disconnects," May 21, 2020, page 9, <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20200521111445.pdf?Id=932794de-f0cc-4397-b1bf-948512be107e>

<sup>7</sup> Ibid., page 3.

their rights. We are severely concerned that New Yorkers will not be protected from unlawful water shut-offs when New York's state of emergency expires on September 7.

Many municipal water utilities may be unaware of the new law's requirements or lack a proper understanding of all of the protections that it entails. Given the non-compliance we have documented in Part II and Appendix B, it is imperative that the Commission provide utilities template documents that accurately convey the rights guaranteed to New Yorkers, and which utilities can easily and quickly disseminate to their customers.

We have created a template checklist of the rights that these forms should be required to communicate, which can be found in Appendix A.

**2. Direct Department staff to issue guidance stating explicitly that all utilities must adhere to Home Energy Fair Practices Act (HEFPA) regulations, as required by the shut-off law, especially with regards to the offering, negotiating, and renegotiating of affordable and individually negotiated Deferred Payment Agreements (DPAs).**

As New York faces its worst economic crisis since the Great Depression, many New Yorkers are unable to afford their water bills and need help getting back on their feet financially. DPAs can be vital lifelines to these New Yorkers, helping them pay their bills over an extended period of time and avoid falling into unescapable bill debt.

The new shut-off law recognizes that customers of both private and municipal water utilities need access to DPAs during this unprecedented time. In a core requirement, the law mandates that, for 180 days after the state of emergency ends, municipalities "shall provide" residential service customers who have "experienced a change in financial circumstances due to Covid-19 with the right to enter into, or restructure, a deferred payment agreement without ... a down payment, late fees, or penalties ...." To guarantee those rights, the law directs that every municipality "shall provide" written notice to residential customers of the "provisions of this section" – in short, of the rights conferred by the new law. Critically, the law requires that the right to enter into or restructure deferred payment agreements *must be as "provided for in Article 2 of this chapter" [emphasis added]*.

By including that last crucial stipulation, the Legislature made it plain that the pre-existing consumer rights "provided for in Article 2", also known as HEFPA, were expressly incorporated into the new law. Given HEFPA's incorporation into that law, the rights in Article 2 now apply to customers of municipal water utilities, including the right

to negotiate affordable and individualized deferred payment agreements. Our principal concerns focus on the rights in Article 2, Section 37 and the applicable regulations.

Article 2, Section 37, entitled “Deferred Payment Agreements,” enumerates the rights customers have in negotiating such agreements. It requires that the Commission ensure that deferred payment agreements are (1) “fair and equitable, considering the customer’s financial circumstances” and (2) that deferred payment agreements can be “renegotiated” where customers demonstrate “significant changes” in their financial circumstances due to conditions beyond their control.

To elucidate the consumer rights noted above, Section 37 directs that “the Commission shall provide by regulation” for their protection. The Commission’s regulations are found in 16 NYCRR 11.10. Those regulations – explicitly incorporated into the new law – mandate requirements utilities must follow in offering, negotiating, and renegotiating deferred payment agreements. They enumerate the rights consumers possess in negotiating deferred payment agreements with utilities. To protect those rights, the regulations mandate that utilities “must” do the following:

- “must make reasonable efforts to contact eligible customers or applicants by phone, mail or in person for the purpose of offering a deferred payment agreement.” 16 NYCRR 11.10(a)
- “must negotiat[e] terms tailored to the customer’s financial circumstances” and do so “prior to making a written offer of a deferred payment agreement....” Id.
- “must negotiate in good faith with any customer or applicant ... to achieve an agreement that is fair and equitable considering the customer’s financial circumstances.” Id. (a)(1)(i)
- “must make a written offer of a payment agreement ....” Id. (a)(4)
- “must renegotiate and amend a payment agreement if the customer or applicant demonstrates that his or her financial circumstances has changed significantly because of conditions beyond his or her control.” Id. (a)(5)
- “must provide for installments as low as \$10 per month ... when the customer or applicant demonstrates financial need for such terms ....” Id. (a)(1)(iii)

Additional regulations detail the “form” of payment agreements offered by utilities and impose the following requirements as to the forms utilities use in offering such agreements:

- that they be written in clear and understandable language; 16 NYCRR 11.10 (d)(1)
- that they advise customers not to sign if they will be “unable to pay its terms;” Id.
- that if a customer is unable to pay the terms of the agreement or wishes to discuss it, the customer should call the utility at a specified telephone number and if further assistance is needed the customer should call the Public Service Commission at a specified number; Id. (d)(4)
- that utilities advise customers of the total amount due and the exact dollar amount and due date of each installment; Id. (d)(8)

Not only does the shut-off law confer these four-decade-old substantive rights onto a new and vast group of utility customers formerly denied such protections, but its wording bespeaks an unmistakable legislative intent imposing an affirmative obligation on utilities to provide written notice of those rights. Accordingly, the Legislature mandated that every municipality “shall provide” notice to residential customers in “writing” of the “provisions of this section . . . .”

The Secretary's Notice did not explicitly state that all utilities -- including municipal water utilities -- are subject to the Commission’s HEFPA DPA regulations at 16 NYCRR 11.10, with respect to DPAs offered pursuant to the new law. Without those HEFPA protections, New Yorkers may become trapped in repayment terms that they can’t afford, deepening their economic anxiety. The Commission must immediately correct this so that municipal water utilities can craft proper implementation plans and guarantee New Yorkers their rights conferred by the shut-off law.

**3. Identify enforcement actions that the Commission will take against any public or private utility that fails to comply with the law and the Department’s regulations and requirements.**

Recent events have demonstrated how important it is for the Commission to enforce the shut-off law against both municipal and private water utilities. On August 11, the Department called for all utilities covered by the shut-off law to submit implementation plans and draft customer public notices by August 21. However, as of August 28, only 3 municipal water utilities had submitted the required documents, out of a total of more than 1,000 municipal water utilities in New York.

The failure of these utilities to comply with the Secretary's Notice is extremely troubling. We currently do not know if the municipal utilities serving water to the vast majority of New Yorkers have taken any steps to prepare for the expiration of the state of emergency and blanket shut-off moratorium. If these utilities have taken steps to prepare, we do not know if their documents adhere to the shut-off law's requirements and guarantee New Yorkers their full suite of rights.

Moreover, all of the municipal water utility implementation documents that have been submitted to the Department, and several others available on municipal water utilities' websites that we have reviewed, violate the shut-offs law's requirements. We will cover their deficiencies in detail in Part II of these comments.

The Commission cannot remain in the dark about municipal water utility compliance, and it also cannot allow clear violations of the shut-off law to go uncorrected. To avoid waves of water shut-offs from sweeping New York when the state of emergency expires in less than two weeks, the Commission must identify a list of actions it will take to hold municipal water utilities accountable for their new responsibilities.

The general statutory authority for the Commission's enforcement power can be found in Public Service Law, Article 1. Section 4 confers on the Commission all "powers necessary or proper to enable it to carry out the purposes of this chapter [i.e., the Public Service Law]." This encompasses, but is not limited to, powers specifically granted by other sections, such as those that specifically reference penalties and enforcement. For example, sections 24, 25, and 26 require compliance with the Public Service Law and applicable regulations and orders and provide for penalties and enforcement, with respect to any "public utility company, corporation or person and the officers, agents and employees thereof."<sup>8</sup> Indeed, as recently as May of 2019 the Court of Appeals underscored the wide breadth of powers granted the PSC under Articles 1 and 2 of the public service law.<sup>9</sup>

---

<sup>8</sup> Section 2 defines "public utility company" to include "one or more persons or corporations operating an agency or agencies for public service, and who or which is or are subject to the jurisdiction, supervision and regulations prescribed by or pursuant to provisions of this chapter [i.e., the Public Service Law] other than article 11 [regarding cable television companies]"; as explained above, by virtue of the recently adopted PSL 89-1(3)-(6), municipal water utilities are, with respect to their obligations specified in those provisions, "subject to the jurisdiction, supervision, and regulations prescribed by or pursuant to provisions of the [Public Service Law]." Additionally, section 2 defines "person" to include any "individual," which would include individuals directing or implementing the activities of any entity subject to requirements under the Public Service Law.

<sup>9</sup> See, <https://www.nycourts.gov/ctapps/Decisions/2019/May19/21-22opn19-Decision.pdf>.

Further, PSL 89-l(1) provides that municipal water systems are subject to the “jurisdiction” of the Public Service Commission as “provided for in this section,” including “such provisions [of the Public Service Law] as are applied by this section by express reference.” The new PSL 89-l(3)-(6) expand the Commission’s jurisdiction pursuant to 89-l(1), as paragraphs (3) through (6) are now part of “this section.” Further, the new PSL 89-l(4), by “express reference,” renders applicable to municipal water utilities the DPA provisions or PSL article 2, with respect to customers that have experienced financial impacts from the COVID-19 emergency. PSL article 2, in turn, provides for, among other things, the Commission’s authority and obligation to issue regulations as needed to implement (among other things) HEFPA’s DPA provisions, PSL 51; and to establish regulations for handling customer complaints with respect to negotiation of DPAs, PSL 43(2).

**4. Increase the frequency and level of detail of required data reporting by utilities, to be submitted to the Commission for publication on its website.**

The Secretary’s Notice only requires utilities to report data once to the Commission, and that data does not have to be submitted until April 30, 2021. The Commission is also not requiring utilities to report how many customers were reconnected after the shut-off law was signed by the Governor.<sup>10</sup>

Without regular data reporting by utilities throughout the pandemic, it will be impossible to know whether the shut-off law is operating as intended. Policymakers will need to know in real time if huge numbers of shut-offs are occurring once the state of emergency expires. When state legislators next return to Albany, they will need information to consider whether to make any improvements or updates to the law or to extend it before the law expires on March 31, 2021. Similarly, the Commission, the Cuomo Administration, and the Legislature all need to know, as soon as possible, the extent of customers’ need for financial assistance, to inform efforts to identify and allocate funds for such relief. Unfortunately, because the Commission is not requiring utilities to report data on the number of customers certifying financial impacts from COVID-19, the number of disconnections taking place, and the number of DPAs entered into or renegotiated under the law, until April 30, 2021, state legislators will not have sufficient data to inform critical public policy and guide their decision-making. It is also possible that many utilities may submit the required data late.

---

<sup>10</sup> For any customers who were disconnected during the COVID-19 state of emergency, the law required utilities to reconnect service within 48 hours of the effective date.

In our initial comments, we detailed how other states are requiring utilities to report data monthly (North Carolina) and by zip code (Illinois), and we strongly urge the Commission to adopt these reporting timeframes and scales, and to publish this information online. We also urge the Commission to expand the amount of information it requires utilities to report. A complete list of our recommendations can be found in our initial comments. Below is the information that we especially believe the Commission should add to its list:

- Number of residential disconnections conducted between March and June 17
- Number of residential accounts that were disconnected as of June 17
- Number of residential reconnections conducted between June 17 and June 19
- Number of accounts currently disconnected\*
- Number of reconnections conducted\*
- Number of customers who missed a payment on their DPA\*
- Total dollar amount of arrears owed to the utility\*

\*reported monthly and by zip code

**5. Direct staff to conduct 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.**

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.

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.

- 6. Provide guidance on how utilities should broadly publicize the rights guaranteed by the shut-off law.**
- 7. Clarify that the requirements in the Secretary's Notice have the force of law, and that utility compliance is not optional.**

Some utilities, especially municipal water utilities who are not in regular contact with the Commission, may misinterpret the use of the word 'guidance' in the Secretary's Notice. The Commission should make clear that both public and private utilities are required to comply with the directives listed in the Secretary's Notice, including the submission of compliance plans and draft public notices.

- 8. 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 Department should provide communication materials explaining New Yorker's new rights under the shut-off law to other state agencies, especially those which provide financial assistance to New Yorkers, to generate a wider understanding of the law's provisions. The Department should utilize its social media platform and email lists to inform the public and consumer advocacy groups. The Department should also prominently place a notice on its website that customers can contact the Department for assistance if they believe their utility may be violating the law, including a phone number to call.<sup>11</sup>

## Part II: Water Utilities' Implementation Forms

By enacting the shut-off law, the State Legislature and Governor protected and created new vital rights for our most vulnerable citizens so they can continue to have water and access to important financial tools during this crisis. The effective and accurate notice of these rights is imperative.

We have reviewed the compliance plans and customer notices and forms filed with the Commission by the Jamestown Board of Public Utilities, the Village of Holley, and the NY Municipal Power Association (on behalf of many members that provide both electric and water service), as well as the customer notices and forms posted online by the Town of Hempstead,

---

<sup>11</sup> California has created an online submission form where customers can report illegal shut-offs or a failure by utilities to properly inform customers of payment options: <https://watershut-off.covid19.ca.gov/>

the Locust Valley Water District, the Roslyn Water District, the Garden City Park Water District, the Bethpage Water District, and the Jericho Water District. **Unfortunately, these documents do not meet the obligations imposed by the statute. They do not fully and accurately notify New Yorkers of their new rights, as required by the shut-off law.**<sup>12</sup>

We detail the specific inadequacies in the compliance plans and customer notices and forms we have reviewed in Appendix B of these comments. Our general observations are below.

The Secretary's Notice, which we analyzed in Part I, requires that the "utility provider shall accept a residential customer's self-certification" of a change of financial circumstances due to Covid-19.<sup>13</sup> But contrary to that determination, the forms sent by many of the municipal water utilities we reviewed require customers to provide financial information that the Covid-19 crisis has changed their financial circumstances.

Many other provisions in the forms we have reviewed do not comply with the notice required to be given to consumers:

- None of the forms notified customers of the crucial fact that, under the express terms of the new statute, no utility may terminate residential service for nonpayment during the declared state of emergency.
- None of the forms notified customers that if their financial circumstances have changed due to Covid-19, for 180 days after the state of emergency is lifted no municipality shall terminate residential service -- *regardless of whether or not the customer enters into a DPA*. That is a particularly important omission because many consumers will doubtlessly feel compelled to agree to the terms of an offered payment agreement even though they know they may not be able to honor it. They will feel that compulsion to accept an unacceptable offer because they understandably will want to keep their water running during the pandemic.
- None of the forms notified customers that all deferred payment agreements must be "fair and equitable, considering the customer's financial circumstances." Public Service Law, See, Section 37 (1) and see also, 16 NYCRR 11(a)(1).
- None of the forms notified customers that any deferred payment agreement could be "renegotiated and amended" if customers "demonstrate[d] ... significant changes" in their financial circumstances due to conditions "beyond the customer's control." *Id.* Section 37 (2) and, see also, 16 NYCRR Section 11.10(a)(5).

---

<sup>12</sup> As we wrote in Part I, the Legislature mandated that every municipality "shall provide" notice to residential customers in "writing" of the "provisions of this section". (NY Public Service Law 89-l)

<sup>13</sup> Public Service Commission, "Notice of Department of Public Service Guidance Relating to the COVID-19 Utility Moratorium on Terminations and Disconnections," August 11, 2020, page 7.

- None of the forms notified customers that “prior to making the written offer of a deferred payment agreement” utilities must “negotiate terms tailored to the customer’s financial circumstances.” Id. Section 11.10(a)(2).
- None of the forms notified customers that payment agreements “must provide for installments as low as \$10 per month” when the customer “demonstrates financial need for such terms....” Id. Section 11.10(a)(1)(iii) and d)(2).
- None of the forms notified customers not to sign the agreement if they would be “unable to pay its terms.” Id. 11.10(d)(2)
- None of the forms notified customers that if they were unable to pay the terms of the agreement offered to them or wished to discuss it, they should call the utility at a specified telephone number and, if they needed further help, call the Public Service Commission at a specified number. Id. 11.10(d)(4).
- None of the forms notified the customer of the total amount due and the exact dollar amount and due date of each installment. Id. Section 11.10(d)(8).

These wide-ranging deficiencies are distressing. They suggest the need for the Commission to provide utilities with a comprehensive checklist of the information they must communicate to customers under the law, to monitor the notices filed with in Matter number 20-01676, and to report the findings of that monitoring to the public.

Many customers may choose not to submit the forms reviewed below because they cannot afford the dictated timetable of payments, and because they lack full knowledge of their rights. Because these forms are tied to self-certification of a change in financial circumstance, those customers would lose out on the very protections against water shut-offs that the new law was written to provide them. Many others may find the payment terms onerous, but, desperate to keep their water running, they will be compelled to sign the form anyway, locking themselves into payments they can’t afford and potentially forcing a choice between buying medicine, food or paying utilities.

Ultimately, unless the New York Public Service Commission takes action to enforce New Yorkers’ rights and declare that all utilities must follow HEFPA regulations, hundreds of thousands of households will be at risk of water shut-offs when New York’s state of emergency expires on September 7. We can only estimate the scale of this crisis because of lack of reporting by water utilities, but based on the data reported by energy utilities, almost a million New York households are behind on their utility bills.

Appendix A that immediately follows provides an enumeration of the rights that utilities should communicate to customers in their forms and notices. Appendix B specifies the deficiencies we found in the nine notices we reviewed.

Thank you again for the opportunity to provide comment on this important issue.

Sincerely,

Kevin Quinn  
Supervising Attorney  
**Center for Elder Law and Justice**

Maureen Cunningham  
Senior Director for Clean Water  
**Environmental Advocates New York**

Eric Weltman  
Senior Organizer  
**Food and Water Action**

Kristy Meyer  
Associate Director  
**Freshwater Future**

Chad Radock  
Chapter Manager  
**Local Progress NY**

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

Katharine Deabler  
Staff Attorney  
**National Center for Law and Economic Justice**

Larry Levine  
Director, Urban Water Infrastructure & Senior Attorney, Healthy People and Thriving  
Communities Program  
**Natural Resources Defense Council**

Christine Appah  
Senior Staff Attorney  
**New York Lawyers for the Public Interest**

Elizabeth Moran  
Environmental Policy Director  
**New York Public Interest Research Group**

Andrea Ó Súilleabháin  
Executive Director  
**Partnership for the Public Good**

Richard Berkley  
Executive Director  
**The Public Utility Law Project of New York**

Steve Halpern  
Staff Attorney  
**Western New York Law Center**

## Appendix A

### A checklist of notifications to be provided by utilities to all customers

Our coalition urges the Commission to provide all utilities subject to the new law with a comprehensive checklist of notifications they, in turn, *must* provide to all customers. The contents of the checklist, and the authority for each required notification, should include at least the list following:

*To meet their obligations under the law and protect the new rights of consumers, utilities are obliged to notify customers of the following consumer rights and to do so in several major languages spoken in their market, in a conspicuous place in their correspondence and in **BOLD PRINT**:*

1. “[M]ake reasonable efforts to contact eligible customers or applicants by phone, mail or in person for the purpose of offering a deferred payment agreement.” *Id.* 11.10(a)
2. “[N]egotiat[e] terms tailored to the customer’s financial circumstances” and do so “prior to making a written offer of a deferred payment agreement....” *Id.*
3. “[N]egotiate in good faith with any customer or applicant ... to achieve an agreement that is fair and equitable considering the customer’s financial circumstances.” *Id.* (a)(1)(i)
4. “[M]ake a written offer of a payment agreement ....” *Id.* (a) (4)
5. “[R]enegotiate and amend a payment agreement if the customer ... demonstrates that his or her financial circumstances has changed significantly because of conditions beyond his or her control.” *Id.* (a)(5)
6. “[P]rovide for installments as low as \$10 per month ... when the customer or applicant demonstrates financial need for such terms ....” *Id.* (a)(1)(iii)
7. Write deferred payment agreements “in clear and understandable language;” 16 NYCRR 11.10(d) (1).
8. Advise customers not to sign if they will be “unable to pay its terms;” *Id.*
9. Advise customers that if they “demonstrate financial need ... “installments may be as low as \$10 per month;” *Id.* (d) (2).
10. Advise customers that if they are unable to pay the terms of an agreement or wish to discuss that, they should call the utility at a specified telephone number and, if further assistance is needed, should call the Public Service Commission at a specified number; *Id.* (d)(4)
11. Advise customers that by signing and returning a deferred payment form within the required time, they will be entering an agreement and thereby avoid termination, disconnection or suspension of service; *Id.* (d)(5)

12. Advise customers of the utility's policy if an agreement is not signed and returned; *Id.* (d)(7)
13. Advise customers of the total amount due and the exact dollar amount and due date of each installment; *Id.* (d) (8).
14. Advise customers of the "right" to immediately enroll in a levelized payment plan, with a notice explaining that plan. The notice must be placed close to the signature line, include a conspicuous check-box option, and give a telephone number to call for more information.

## Appendix B

This Appendix specifies the deficiencies in the forms being used by the publicly-owned water utilities we reviewed.<sup>14</sup>

### The Bethpage Water District

This form fails to advise customers of these crucial facts about the new law: That no utility can terminate residential service during the pendency of the state of emergency and that, if a customer has experienced a change in financial circumstances due to Covid-19, the law prohibits shutting off service for a period of 180 days after the state of emergency is lifted.

The Bethpage form is entitled “Payment Deferral Request” and states that customers who have experienced a hardship due to COVID-19 have the “opportunity to defer payment ....” Indeed, 6 of 9 forms we have seen from municipal water utilities use the phrase “payment deferral request.” But the statute does not refer to a customer “requesting” a payment plan or having

---

<sup>14</sup> 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 document on homepage): <https://www.roslynwaterdistrict.org/>

Jamestown Board of Public Utilities: 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}>

Village of Holley:

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

NY Municipal Power Agency:

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

the “opportunity” to defer a payment. At best, those characterizations are inaccurate. At worst, they are misleading.

The language of the statute is clear. If a customer has experienced a change in financial circumstances due to the pandemic, it grants the customer a “right” – a *right* to enter into or restructure a payment agreement. Written notifications about deferred payment agreements under the new law should use that word.

The Bethpage form also makes no mention of various obligations that the utility has under the new law. Specifically, it fails to mention its obligations under Article 2 and its regulations – its obligations not merely to offer, but to negotiate and, where warranted, to re-negotiate deferred payment agreements. It fails to note that, prior to making a written offer of a deferred payment agreement, the law requires the utility to “*negotiate* terms tailored to the customer’s financial circumstances,” to “*negotiate*” an agreement that is “fair and equitable considering the customer’s financial circumstances,” to “provide for installments as low as \$10 per month ... when the customer or applicant demonstrates financial need for such terms,” and to advise customers with existing deferred payment agreements, that the utility “must renegotiate and amend” that agreement if the customer “demonstrates that his or her financial circumstances have changed significantly because of conditions beyond his or her control.” *Id.* (a)(5). [Emphasis supplied.]

Indeed, the Bethpage form makes no mention whatsoever of the right to a “deferred payment agreement” in the sense in which that phrase is discussed in article 2, Section 37. Rather, it only offers an opportunity to defer payment of the current water bill until the “following billing cycle,” unless the customer requests another deferment period. Finally, the Bethpage form requires the customer to fill in the specific billing periods for which the customer is requesting a deferral. But it does not notify customers that the statute places no time limits with regard to the period of time during which customers may make payments under a “negotiated” payment agreement.

#### Garden City Park Water District

This form, like the Bethpage form, does not advise customers of the moratorium on shut offs during the pendency of the state of emergency or of the prohibition on shut offs during the 180 day period after the emergency is lifted if a customer’s financial circumstances have changed due to Covid.

The form also notes that the utility is “offering residential consumers *the opportunity to defer*” paying bills. [Emphasis supplied.] Like the Bethpage form, It fails to inform customers that if they declare that their financial circumstances have changed due to Covid, they have a “right”

to enter into or restructure a deferred payment agreement with, as noted above, all the rights granted by Article 2 of the Public Service Law.

Furthermore, the Garden City form seems to suggest that all a customer can do is “defer” payments to the end of the first quarter of 2021, if a customer so indicates on the form. It then requires the customer to acknowledge that at the end of that period the customer must pay all water bills received during that period “in full.” But the crucial deficiency in this notification is Garden City’s failure to notify customers of the right, under the new law, to enter into a deferred payment agreement that could allow them to pay back the monies owed over an extended period of time, and depending upon the circumstances, for as little as \$10 a month.

#### The Roslyn Water District

This form contains an express limitation on the temporal duration of a deferral agreement. It notes that “[p]ayments will be deferred until the *following* billing cycle.” [Emphasis supplied.] Doubling down on that time limitation, much like the Garden City form, the Roslyn form contains a provision whereby customers “acknowledge” that they will be “responsible to pay, in full, for all water bills received through the conclusion” of the deferment period.

There is simply no provision in the new law or in article 2 of the Public Service Law governing payment agreements which imposes any such time limits on deferred payment agreements and, hence, there is no legal basis for a utility to impose such a time restriction on deferred payment agreements on all customers arbitrarily and unilaterally.

#### Locust Valley Water District

This form contains many of the deficiencies already noted. It says nothing about the prohibition on shut offs during the pendency of the emergency order and nothing about the prohibitions on shut offs during the 180 day period after the order expires if a customer declares that he or she has experienced a change in financial circumstances due to Covid.

Like the Roslyn form, it gives the consumer the option to defer up to four water bills through the first quarter of 2021. It then notes that payments will be deferred after the due date of the period selected for up to six months. Much like the other forms previously reviewed, there is no discussion of the statutory requirements that utilities consider the financial circumstances of the customer in offering a deferred payment agreement and “negotiate” with customers based on their individualized financial circumstances. Rather, it unilaterally and arbitrarily imposes a due date for payment of the entire outstanding amount.

#### Town of Hempstead Department of Water

Although this form also fails to mention the prohibition on shut offs during the pendency of the emergency order, it does note that after Hempstead grants a customer's "request" to defer payments, those payments will be deferred until 180 days after the state of emergency is lifted.

The Secretary's Notice states that the "utility provider 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." [Secretary's Notice, p. 7] But contrary to that policy, the Hempstead form requires the customer to "[b]riefly describe Covid-19 related hardship (job loss, layoff, loss of business income).

Additionally, the Hempstead form requires the customer to "acknowledge" that he or she will pay in full all water bills received during the duration of the agreement and that the customer will make that payment on the due date noted in the customer's "next quarterly bill." That kind of arbitrary deadline, without consideration of the customer's financial circumstances or without good faith negotiations with the customer about the customer's financial capacity to meet the terms of the "agreement," is contrary to the provisions of Article 2.

#### The Jericho Water District

In its "Deferral Request Form" this municipal water utility, like that offered by Locust Valley and Garden City utilities, noted that it would be willing to grant customers a deferral in payment for up to four quarters through, at the latest, the first quarter of 2021. Thereafter, the payments would be deferred for a six month period. Once again, this appears to be a "one size fits all" unilaterally imposed deferred payment "agreement," essentially dictated by the utility contrary to numerous provisions of the law already noted which require negotiated agreements based on a customer's financial circumstances.

#### The Jamestown Board of Public Utilities

The Jamestown 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 asks customers questions about their work situation, household income, assistance received from public or private sources, prior payments to the Board, the dollar amounts in their checking and saving accounts, credit card advancements, and specific monthly expenses. The form further advises customers that "[i]f necessary, you may be required to provide proof of any of the above questions." It also provides no notice of the minimum DPA terms to which financially impacted customers are entitled.

## The Village of Holley

There are several significant ways in which the plan proffered by the Village of Holley violates the new requirements.<sup>15</sup> First, the notice and form requires customers to fill out a ten-part questionnaire, asking detailed information about their financial circumstances, including their monthly income, any public sources of income, checking and savings account balances, credit card balances and monthly payments, monthly mortgage or rent payments, monthly household expenses, ownership of stocks or bonds, and monthly payments on debts. Second, rather shockingly in this time of COVID, to apply for the benefits under the new law, the Village requires residents to appear at the Village offices “**in person.**” [Emphasis in original.]

## New York Municipal Power Authority (NYMPA)

The standard customer notice being used by NYMPA’s members that operate water utilities 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. Instead, the notice informs customers, contrary to law, 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.”<sup>16</sup>

---

<sup>15</sup> Contrary to the Village’s customer notice and form, the “Village Policy Update on COVID-19 Utility Disconnection Policy for Residential Customers” included in the Village of Holley’s submission to the Department does state that anyone providing self-certification will not be disconnected during the 180-day period. However, because of the inconsistency between this statement and the actual customer notice and customer form, customers will not be aware that they can avail themselves of that protection and it is unclear how the utility would be able to effectively implement it.

<sup>16</sup> Contrary to the customer notices, NYMPA’s cover letter to the Department does state that anyone providing self-certification will not be disconnected during the 180-day period. However, because of the inconsistency between this statements and the actual customer notice, 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.