

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

CASE 02-G-0711 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by National Fuel Gas Distribution Corporation of the Informal Decision Rendered in Favor of Ms. Darlene Respress, filed in C 26358 (020092)

COMMISSION DETERMINATION  
(Issued and Effective April 25, 2003)

This is an appeal by National Fuel Gas Distribution Corporation (the utility or NFG) to the Commission from an informal hearing decision dated May 17, 2002, in favor of Ms. Darlene Respress (complainant).<sup>1</sup> The decision upheld an earlier staff decision ordering the utility to (1) pay a forfeit to complainant pursuant to 16 NYCRR §11.9(c) for failing to promptly reconnect her heat-related gas service, and (2) offer repayment terms consistent with complainant's (rather than her household's) income. The utility contends that the informal decision is based on incorrect interpretations of our regulations and on factual errors. The appeal is denied in part and granted in part. Specifically, we deny the utility's appeal of the finding that other residents' income may not be required as a condition to negotiating a deferred payment agreement or better than standard terms.

BACKGROUND

Complainant established a gas heating account with the utility, effective October 7, 1999, for her residence, an apartment in a two-family building in Buffalo, New York. Following receipt of a January 14, 2000 notice from the utility

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<sup>1</sup> Complainant is presently represented by Barbara M. Syms, Attorney at Law, 120 Delaware Building, Mohawk Suite, Buffalo, New York 14202.

that service would be terminated shortly for nonpayment, complainant telephoned the utility on January 18, 2000, and told its representative that she had recently made a partial payment of the overdue amount. The utility representative therefore concluded that complainant intended to accept the standard repayment terms offered with its January 14, 2000 notice, even though complainant did not return a signed copy of the agreement to the utility.<sup>2</sup> However, complainant did not make the payments required by this agreement.

On March 14, 2000, the utility sent complainant another termination notice. The March 14, 2000 termination notice was based on complainant's failure to maintain the standard payment agreement that was offered in January. Prior to the March 14, 2000 termination notice, the utility's bill for the monthly period ending March 9, 2000, had advised complainant that the January agreement had been voided, but could be renewed if the missed payments were immediately forwarded to the utility. Complainant telephoned the utility on March 29, 2000, and, according to utility records, indicated that she would not be making such payments.

Utility records also indicate that complainant asserted during this conversation that her bills were excessive, and was informed that the charges appeared consistent with the thermostat setting she reported. Finally, utility records show that the representative informed complainant that if she wanted to negotiate a more favorable deferred payment agreement based on her financial circumstances, she should visit its local

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<sup>2</sup> Utilities frequently continue service based on such verbal agreements. However, 16 NYCRR §11.10(a)(1) requires the utility to offer a written deferred payment agreement, signed "by both the utility and the customer," prior to terminating service for nonpayment. Therefore, a customer who defaults on a verbal deferred payment agreement remains eligible for deferred payment terms, as per 16 NYCRR §11.10(b)(1).

office with documentation of her monthly income and expenses. Complainant did not do so.

On April 4, 2000, the utility terminated service. Complainant then asserted that lack of service would adversely impact the health or safety of someone residing at her dwelling.<sup>3</sup> The utility refused to restore service because: (1) complainant did not provide a letter from her doctor substantiating the health or safety impact;<sup>4</sup> and (2) she did not enter into an agreement for payment of arrears on her account.<sup>5</sup>

Complainant contacted the Department of Public Service's Office of Consumer Services (OCS) on April 4, 2000 seeking assistance in having her utility service restored. Since complainant indicated she could not afford the payment

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<sup>3</sup> Prior to terminating heat-related service during cold weather periods, utilities are required by 16 NYCRR §11.5(c)(2)(i) to attempt to ascertain if a resident would likely suffer a serious impairment to their health if such service is interrupted. If a resident might suffer a serious health impairment, the utility is obliged to temporarily continue service and to inform a local social services official of its concerns. Utilities are also required, by 16 NYCRR §11.9(a)(5), to reconnect terminated residential service within 24 hours "where a utility has notice that a serious impairment to health or safety is likely to result if service is not reconnected."

<sup>4</sup> The procedures described in n. 3, supra, call for utility representatives to assess for themselves whether interruption of heat-related utility service during a cold-weather period might cause a serious impairment to a resident's health or safety. See 16 NYCRR §11.5(c)(2)(iii). Regardless of time of year, if a medical doctor or local health board certifies that a medical emergency exists, "[n]o utility shall terminate or refuse to restore service . . ." 16 NYCRR §11.5(a)(1).

<sup>5</sup> NFG's April 5, 2000 "denial of service" form indicates that it offered to reconnect service once complainant entered into an agreement providing for a downpayment of one-half her account's arrears (the maximum downpayment allowed by 16 NYCRR §11.9(c)(2)), and to negotiate more reasonable payment terms based upon a documented statement of complainant's financial circumstances.

terms offered by the utility, staff directed the utility to offer complainant payment terms consistent with her income and expenses.

The utility objected to staff's directive, urging that information complainant refused to provide (i.e., information concerning the financial circumstances of the other members of her household) was a prerequisite to offering her better terms. The utility argued that, in reviewing a customer's financial circumstances for the purpose of negotiating repayment terms, it was permitted to consider income received by the entire household as opposed to merely the income of its customer of record.<sup>6</sup> Staff agreed with the utility's argument and informed complainant, by letter dated April 13, 2000, that (1) it was rescinding its April 4, 2000 directive and (2) the utility need only offer repayment terms based on the financial resources of complainant's entire household.<sup>7</sup>

#### INFORMAL HEARING

Complainant continued to contact OCS objecting to the utility's conditions for the restoration of service and, in an undated letter received on June 28, 2000, requested an informal hearing or review. The utility wrote to complainant on July 12, 2000, offering to negotiate repayment terms based upon the

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<sup>6</sup> Since March 29, 2000, complainant has insisted she could afford no more than a "minimal" monthly installment of \$10, in addition to payment of subsequent monthly charges, towards repayment of the arrears on her account. Utilities will extend service on this basis, provided a customer or an applicant demonstrates a financial need for such terms. Pursuant to 16 NYCRR §11.10(d)(2), a utility is not required to offer a payment agreement providing for installment payments of less than \$10 a month.

<sup>7</sup> Staff also conveyed this information to complainant during an April 5, 2000 telephone conversation.

financial resources of complainant's entire household.<sup>8</sup> Complainant did not respond. Since complainant was without service, staff conducted an informal review rather than a hearing, believing that a review would be more expeditious.

An informal review decision was issued on July 18, 2000 (the 2000 Decision). The 2000 Decision found that the utility's unwillingness to negotiate repayment terms based only on complainant's income<sup>9</sup> reflected the utility's conclusion that complainant had financial resources sufficient to make full payment. The hearing officer reasoned that such a conclusion by the utility was improper because, under our regulations, a utility may refuse to negotiate payment terms with a residential customer in arrears only if "the commission or its designee determines that the customer or applicant has the resources available to pay the bill."<sup>10</sup> In the absence of such a determination by the Commission or its designee, the utility had no authority to refuse to negotiate with complainant based solely on her financial circumstances.

The informal hearing officer also faulted the utility for not ascertaining, before terminating service, whether the

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<sup>8</sup> The utility's July 12, 2000 letter requested that complainant provide "proof of income for the household." Acceptable documents were described as "your last 4 weekly pay stubs as well as your husbands [sic]" or most recent tax return. In the event that alimony was included in complainant's income, the letter sought "divorce papers."

<sup>9</sup> See 16 NYCRR §11.10(d)(1)(a utility must "offer a payment agreement that the customer or applicant is able to pay, considering his or her financial circumstances").

<sup>10</sup> 16 NYCRR §11.10(b)(1)(ii). Pursuant to 16 NYCRR §11.10(b)(1)(i) and (ii), if a customer is eligible for a payment agreement, one must be offered unless the customer has broken an existing payment agreement or a determination is made by the Commission or its designee that the customer has such resources available. The 2000 Decision incorrectly referred to this regulation as §11.10(d).

lack of gas heating service might result in a serious impairment to a resident's health or safety.<sup>11</sup> Accordingly, the hearing officer concluded that the utility's actions were contrary to the intent of 16 NYCRR §11.1,<sup>12</sup> and directed the utility to restore service.

Finally, since the utility improperly failed to reconnect service on April 4, 2000, the 2000 Decision further directed the utility to forfeit to complainant \$50 a day for each day between April 4, 2000 and April 15, 2000, and to forfeit \$25 a day each day thereafter, until complainant's service was reconnected (July 19, 2000). The forfeited amount was to be applied as an offset against complainant's unpaid arrears.

The utility restored service on July 19, 2000, but did not credit complainant with \$50 or \$25 a day for the interim period. It objected that it had not received sufficient opportunity, before the informal review decision was issued, to show that it had complied with service termination regulations. The matter was remanded for an informal hearing (held on November 29, 2001) before a different informal hearing officer.<sup>13</sup>

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<sup>11</sup> See n. 3, *supra*, regarding special procedures gas and electric utilities must follow prior to terminating a residential customer's heat-related service during cold weather periods.

<sup>12</sup> Section 11.1 states that Part 11 implements the Home Energy Fair Practices Act, which "establishes as State policy that the continued provision of gas, electric and steam service to residential customers without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest."

<sup>13</sup> Prior to the informal hearing, the utility, on April 16, 2001, terminated complainant's service for nonpayment of arrears related to service furnished after July 19, 2000.

Complainant did not attend but was represented by an attorney.<sup>14</sup> Based on its January 18, 2000 and March 29, 2000 contacts with complainant, the utility argued that it had met its obligations to (1) offer repayment terms and (2) ascertain that termination of heat-related service would not cause any resident to suffer a serious health impairment.

On May 17, 2002, the second informal decision (the 2002 Decision) was issued. The 2002 Decision rejected the utility's arguments, concluding that the utility could not demand documentation of the financial circumstances of household members other than its customer of record. The 2002 Decision also stated that the utility could not require a customer to submit divorce or separation papers to establish whether a spouse was receiving alimony.<sup>15</sup>

With respect to the deferred payment agreement, the 2002 Decision also found that the utility had failed to offer to negotiate payment terms prior to terminating service on April 4, 2000. Moreover, utility records did not establish that the utility made the required efforts to determine whether termination of heat-related service would result in a resident's serious health impairment. Finally, the 2002 Decision found that the utility had violated applicable regulations in failing to reconnect complainant's service on April 4, 2000. It therefore directed the utility to pay complainant \$50 a day for

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<sup>14</sup> Complainant was represented by Brian P. Cleary, Law Firm of Frank R. Bayger, P.C., 100 South Elmwood Avenue, Buffalo, New York 14202.

<sup>15</sup> See n. 8, supra. The informal decision relies on Case 27405, In the Matter of Alleged Discriminatory Credit Practices by Consolidated Edison, Order (issued August 4, 1978), p. 11, which specifies that regulated utilities "may not under any circumstances require that a woman provide a copy of a divorce decree or separation agreement as a condition for receiving service."

the period that service remained off between April 4, 2000 and April 15, 2000, and \$25 a day for the period that service remained off thereafter (until July 19, 2000).

POINTS ON APPEAL

By letter dated May 30, 2002, the utility appeals from the 2002 Decision, asserting that it reflects the following errors.

(1) The hearing officer incorrectly concluded that:

(a) the utility failed to comply with regulations requiring it to make reasonable efforts to contact a customer and determine whether termination would pose a serious risk to health or safety;

(b) the utility failed to substantiate that a deferred payment agreement was offered to complainant;<sup>16</sup>

(c) relevant regulations barred the utility from requiring information about other household members' income, as well as complainant's income, in determining appropriate terms for a repayment agreement;

(2) assuming it is upheld, the informal decision's forfeiture requirement should be limited to 13 days.<sup>17</sup>

By letter dated July 2, 2002, complainant responds to the utility's appeal. She reiterates that the 2002 Decision should be upheld as the utility violated her right to make payment arrangements. She submits the utility's July 12, 2000

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<sup>16</sup> The utility contends that an agreement was offered to complainant during the utility representative's telephone conversation with her at 9:39 a.m. on March 29, 2000. The utility also maintains that complainant was told at that time of the utility's willingness to negotiate better terms, but says complainant refused to provide necessary information about other household members' income.

<sup>17</sup> The utility relies on Case 93-E-0998, Appeal by Con Edison of the Informal Decision in Favor of Burt Westridge, Commission Determination (issued November 13, 1996).



letter to show that the utility did require submission of divorce papers as a condition for negotiating such repayment terms.<sup>18</sup> She also disputes the utility's explanation for allegedly excessive gas heating charges for the apartment. She contends the utility should not have subsequently terminated service for nonpayment on April 16, 2001, and requests that service be restored pending resolution of this dispute.<sup>19</sup>

DETERMINATION

The primary issues presented by this case are:

(1) whether NFG properly complied with regulations requiring it, prior to termination during cold-weather periods, to contact a customer by telephone or in person to ascertain whether termination of heat-related service is likely to cause any resident to suffer a serious health impairment; (2) whether the utility properly advised complainant of the availability of a deferred payment agreement; (3) whether the utility may require a customer to document the financial circumstances of household members in order to seek better deferred payment terms; (4) whether the utility violated regulations requiring prompt reconnection of a customer under certain circumstances, and, if so, whether the number of days for the utility forfeiture

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<sup>18</sup> See n. 8, supra, regarding the July 12, 2000 letter.

<sup>19</sup> At the time of the November 29, 2001 informal hearing, the utility was providing gas service to complainant's apartment, in response to an application accepted from another resident of the dwelling. Around the time the 2002 Decision was issued (May 17, 2002), the utility terminated service to this second customer. On October 21, 2002, the utility denied complainant's written application for service (submitted the same date) stating that service would not be provided unless complainant paid the undisputed past-due bills or signed a deferred payment agreement to pay those bills over a "standard" 10-month period. On or about November 1, 2002, the utility restored gas service upon certification by complainant's doctor that gas heating service was necessary to avoid a medical emergency.

payments was properly calculated; and (5) issues raised by complainant. These issues are addressed below.

1. Whether NFG Complied with Special Cold Weather Protections.

Section 11.5 (c)(2) requires special procedures aimed at determining whether termination of heat-related service during cold weather will impair a resident's health or safety. Utilities providing such service are required by 16 NYCRR §11.5(c)(2)(i), in connection with termination during any period between November 1<sup>st</sup> of one year and April 15<sup>th</sup> of the following year, to attempt "to contact, by telephone or in person, the customer or an adult resident of the customer's premises at least 72 hours before the intended termination, for the purpose of ascertaining whether a resident is likely to suffer a serious impairment to health or safety as a result of termination." During such contacts, utilities are further required by 16 NYCRR §11.5(c)(2)(i) to "fully explain the reasons for termination and provide customers with information on the protections available under this Part." Accordingly, a utility must make inquiries about the possible effect of termination on residents' health and, if relevant, must inform customers of the possibility of seeking certification of a medical emergency from a doctor.

In this case, after sending complainant a termination notice on March 14, 2000, the utility reached complainant by telephone on March 29, 2000 at 2:32 p.m., for the purpose of making the inquiry about possible health or safety risk. The script NFG provided and which its representatives are required to follow during such a call includes questions intended to identify possible health or safety risks (as well as providing information about the availability of a deferred payment agreement). Records show that complainant contacted the utility several times on April 4, 2000, following the termination of service. The utility's record of one of these contacts states that complainant "inq[ui]red] how can we . . . [terminate] if

[she] has medical condition / ad[vised] have doctor give us info for poss[ible] recon[nexion]." A record of an earlier contact on the same date reports that complainant "can not get ahold [sic] of doctor," presumably for the purposes of requesting a letter indicating that the lack of heating service would likely result in a serious impairment to the health and safety of a resident of the premises.<sup>20</sup> These subsequent inquiries confirm the utility representative who called complainant on March 29, 2000 followed the utility's script. Accordingly, we conclude that the record does not support the hearing officer's finding that the utility was subject to the forfeiture requirement of 16 NYCRR §11.9(c) on the basis that it terminated service without ensuring that doing so would not seriously impair the health of any resident.

2. Whether NFG Notified Complainant of Availability of a Deferred Payment Agreement.

Complainant was eligible for a deferred payment agreement even though she failed to comply with a presumed oral deferred payment agreement made in January 2000. Section 11.10(a)(1) requires that a deferred payment agreement be a "written agreement . . . , signed by both the utility and the customer or applicant." Accordingly, the utility could not deny her a payment agreement when it threatened to terminate her service in March 2000 based on its assertion that she had broken an existing payment agreement (see 16 NYCRR §11.10(b)(1)(i)).

We have already indicated that the utility did inform complainant, on March 29, 2000, of the availability of a

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<sup>20</sup> No such letter has been shown to have been provided during the period complainant was without service, nor is there indication that complainant told OCS staff (apart from a reference in her letter received by staff on June 28, 2000) that any resident had a serious medical condition.

deferred payment agreement. The utility record concerning an earlier call it received from complainant on March 29, 2000, at 9:39 a.m., shows that payment agreements were discussed. In any case, the hearing officer did not find that the utility failed to offer complainant an agreement prior to termination of service on April 4, 2000, but rather that the utility, in violation of 16 NYCRR §11.10(a)(1)(i) and (ii) had refused to negotiate a deferred payment agreement with her unless she provided details and substantiation of the income of other household members, and we turn now to that issue.

3. Whether NFG Properly Required Complainant to Document Household Members' Income to Seek Better Payment Terms.

Section 11.10(a) of our regulations requires a utility to negotiate deferred payment terms "tailored to the customer's financial circumstances." Section 11.10(a)(i) requires good faith negotiation "to achieve an agreement that is fair and equitable considering the customer's financial circumstances." Section 11.10(a)(ii) permits a utility to "require that a customer or applicant complete a form showing assets, income and expenses, and provide reasonable substantiation of the information on that form . . . ." <sup>21</sup> Section 11.10(a)(iii) requires that a payment agreement "provide for installments as

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<sup>21</sup> In modifying the deferred payment regulations in 1988, the Commission commented that "most customers who are in arrears have genuine financial difficulty and do negotiate in good faith." Case 28080 - In the Matter of the Rules and Regulations of the Public Service Commission regarding the implementation of the Home Energy Fair Practices Act, Memorandum, Order and Resolution (issued May 4, 1988), p. 10. The Commission also stated regarding this regulation that "substantiation [of financial information] would not be required from most customers, and would primarily be required as a protection to a utility from customers who it has reason to believe are abusing the right to a deferred payment agreement." Id.

low as \$10 per month and no down payment, when the customer or applicant demonstrates financial need for such terms . . . ."

The customer of record is the only party the utility may pursue for payment of charges, and the regulations concerning what information a customer may be required to provide in seeking better deferred payment terms refer solely to the customer's financial circumstances. The regulations allow a utility to require a customer to provide information about and reasonable substantiation of his or her financial circumstances in order to seek more affordable deferred payment terms. However, it does not authorize a utility to require information about, or substantiation of, other household members' financial circumstances a condition for negotiating an agreement on better than standard terms.

The utility argues that household income is the relevant measure for determining eligibility for various social service grants toward payment of a customer's heating expense (which may reduce a customer's indebtedness to a utility) and implies that if a customer is not eligible for such grants, the customer in all likelihood could afford more than a minimum monthly installment payment (\$10) toward arrears that have accumulated on his or her account. We note that utilities are free to inquire, as most do, about household expenses and income when customers seek payment terms. The form, approved by staff, that utilities ask a customer to fill out in order to provide financial information in connection with a request for a payment agreement asks for household expenses and income.<sup>22</sup> However, if a customer declines to provide or document household income information on this form, the utility may not, on that ground

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<sup>22</sup> In suitable cases customers may then present the same form to the social service agency having jurisdiction in support of a request for assistance with utility bills (we understand that household income is, indeed, required for that purpose).

alone, refuse better deferred payment terms that the customer's own income would warrant.

The utility's appeal implies a conclusion that complainant seeks to abuse its willingness to negotiate repayment terms (see n. 10, supra). The complaint file does not support such a conclusion. Complainant has not defaulted on any signed, written deferred payment agreement, and has endured the loss of utility service rather than accept standard repayment terms. Any risk inherent in continuing service on the basis of repayment terms which provide for payment of a minimal monthly installment in addition to subsequent current bills is outweighed by the utility's obligation to provide continued residential service without unreasonable restrictions. The utility's tariff includes a monthly late payment charge on any balance outstanding twenty days after a bill's due date.<sup>23</sup> As long as a customer maintains a payment agreement and makes timely payment of future bills, the amount of the customer's final bill that ultimately might become uncollectible should in all likelihood decrease. We agree with the hearing officer that the utility improperly made substantiation by complainant of other household members' income a prerequisite for negotiating repayment terms more affordable than its standard repayment terms.

4. Whether the Utility Is Subject to Forfeiture for Improperly Failing to Reconnect Complainant's Service.

The 2002 Decision upheld the requirement that, pursuant to 16 NYCRR §11.9(c), the utility forfeit to complainant \$50 per day from April 4, 2000 to April 15, 2000,

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<sup>23</sup> P.S.C. No. 8 - Gas, General Information, II.8.e, Payment and Late Payment, Leaf 44. The utility does not impose late payment charges on amounts held in dispute while a complaint is being investigated by staff. 16 NYCRR §11.15(a)(3).

and \$25 per day from April 15 to July 18, 2000 (when service was ordered restored). The theory for this forfeiture was that (1) the utility had improperly refused to negotiate a payment agreement with complainant based only on her income as directed by staff on April 4, 2000, and (2) had the utility offered such an agreement, complainant would have accepted its terms and service been promptly reconnected.

The Commission held in Westridge, that "rules establishing penalties for the failure to supply service on request, as penalties, must be strictly construed."<sup>24</sup> Pursuant to 16 NYCRR §11.9(a), the utility can be required to forfeit amounts for wrongful failure to reconnect service only after one of the following circumstances has occurred: (1) payment "of the full amount of arrears for which service was terminated"; (2) "agreement by the utility and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan"; (3) an order or directive from the Commission or its designee (for this purpose, OCS staff) to reconnect service; (4) receipt of payment or a written guarantee of payment from an appropriate social services official; or (5) when the utility has notice that "a serious impairment to health or safety is likely to result if service is not reconnected."<sup>25</sup>

Our review indicates that none of these circumstances existed on April 4, 2000. Staff's April 4, 2000 directive did not require reconnection of service; rather it required the utility to offer complainant a deferred payment agreement based on her income alone. Moreover, the April 4, 2000 directive had been rescinded by letter dated April 13, 2000. Nor did any

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<sup>24</sup> Case 93-E-0998, supra, Commission Determination (November 13, 1996), p. 5.

<sup>25</sup> 16 NYCRR §11.9(a), (c).

other circumstance warranting application of the forfeiture requirement pursuant to 16 NYCRR §11.9 exist here. Therefore, we reverse the 2002 Decision's conclusion that the utility forfeit amounts to complainant for the period between April 4, 2000 and July 19, 2000, when complainant had no service.<sup>26</sup>

5. Complainant's Issues.

To the extent they have not already been addressed, we turn to complainant's assertions in support of the hearing officer's decision. In her response to the appeal, complainant disputes the utility's March 29, 2000 explanation (see p. 2, supra), for what she contends are excessive bills for gas heating service to her apartment. No high bill issue was presented or considered by the hearing officer in reaching the decision now on appeal. There is no basis on this record for us to reach any conclusions about complainant's assertion regarding her billing.

Complainant also asserts that the utility failed to reconnect service after April 16, 2001. At that time, the utility refused complainant's request for service because complainant had not paid for most of the service supplied after July 19, 2000, and had not entered into an agreement to pay for such service. Nor had other conditions for requiring service to be provided under 16 NYCRR §11.3(a) been met.<sup>27</sup>

Finally, complainant objects to the utility requesting "divorce papers." Both the utility's July 12, 2000 letter and

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<sup>26</sup> The utility's arguments that Westridge requires a limitation on the number of days to which forfeiture under 16 NYCRR §11.9 could be applied are moot.

<sup>27</sup> Neither the Commission nor staff had directed that service be reconnected; the utility had not received a commitment or guarantee of payment from a local social service official; and the utility did not have notice that a serious impairment to health or safety was likely to result if service was not reconnected. See 16 NYCRR §11.9(a).



its guideline for completing its form for provision of information on financial circumstances solicit divorce papers, if a customer receives alimony. The utility's appeal, while acknowledging that the utility "cannot mandate that divorce or separation papers be provided," argues that it can request documents showing either complainant's husband's financial contribution or that complainant's husband has, in fact, left the household.<sup>28</sup> It is far from clear, however, that utility representatives previously communicated its willingness to accept alternative forms of proof. As we previously stated in Case 27405, regulated utilities may not routinely request such customer documents. We conclude that the utility is not entitled to request "separation papers" or "divorce papers" or "divorce decree" for the purpose of documenting alimony received by customers seeking to negotiate affordable repayment terms, without an accompanying statement that, as an alternative, the customer can provide either an affidavit or a "certificate of disposition," as described by New York State Domestic Relations Law §235(3). The utility's practices and procedures on this point should be corrected.

In order to assure that all aspects of this case have been properly addressed, a staff member has thoroughly reviewed the complaint file. We determine that the utility complied with special procedures prior to terminating heat-related service on April 4, 2000, and that the utility did not improperly fail to reconnect service within the meaning of 16 NYCRR 11.9(a) and is not subject to the forfeiture requirements of 16 NYCRR §11.9(c). We also determine that the utility improperly made provision and substantiation of information about the income of household members other than complainant (including requiring provision of divorce or separation documents) a condition for offering a more

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<sup>28</sup> Utility's May 30, 2002 appeal, pp. 4-5.

affordable payment agreement than the standard one. Therefore, the utility's appeal is granted in part and denied in part, and the informal hearing decision is reversed in part and upheld in part.

The utility is directed, within 30 days of the date of this determination, to:

(1) revise its practices and procedures to ensure that they are consistent with this decision in the following respects:

(a) although the utility may inquire about financial circumstances of other household members, it may not condition the availability of more affordable deferred payment terms on provision of such information;

(b) the utility may not require production of divorce papers without offering customers the alternative of providing an affidavit or other proof regarding the information sought;

(2) offer complainant a deferred payment agreement consistent with her financial circumstances (i.e., if her financial circumstances remain unchanged, one based on the minimal terms provided by the regulations of \$10 per month toward repayment of past due charges, in addition to payment of current and future bills);

(3) provide documentation confirming its compliance with (1) and (2) above, to the director of the Office of Consumer Services.