

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 22-M-0159 - Proceeding to Implement Customer Credits and Reimbursements Pursuant to Public Service Law Section 73.

NOTICE OF NEW PROCEEDING
AND SOLICITING COMMENTS

(Issued April 11, 2022)

On December 22, 2021, Chapter 786 (Part B) of the Laws of 2021 was signed into law, thereby amending the Public Service Law (PSL) to add PSL §73, effective April 21, 2022. PSL §73 requires electric and gas utilities (Utilities) to compensate customers who have experienced prolonged outages that are widespread. PSL §73 also requires that the Commission promulgate procedures, standards, methodologies, and rules, and define specified terms, including "widespread prolonged outage," "small business customer," and "proof of loss." Department of Public Service staff prepared and submitted the attached proposal (Staff Proposal) for comment on the definitions, process, and procedures that staff recommends the Utilities implement to comply with PSL §73.

PSL §73 requires Utilities to provide residential customers: 1) a bill credit of \$25 for each 24-hour period of service outage that occurs for more than 72 consecutive hours after an emergency event; 2) reimbursement up to \$235 if the residential customer provides an itemized list or up to \$540 if the customer provides proof of loss, for any food that spoils due to a service outage that lasts longer than 72 consecutive hours after an emergency event; and 3) reimbursement for prescription medications that have spoiled up to the amount of the actual loss. Further, PSL §73 requires that Utilities

reimburse small business customers for food spoilage up to \$235 if they provide a list or up to \$540 if they provide documentation of losses. Both residential and small-business customers are to provide the utility with itemized lists and/or proof of loss within 14 days of the outage and the Utilities are to provide reimbursement within 30 days of receipt, or within a time-period determined by the Commission if the Utility seeks a waiver of the credit or reimbursement. Any costs incurred by the Utility in compliance with this section shall not be recoverable from ratepayers.

Additionally, Utilities may petition the Commission for a waiver of the credits/reimbursement requirements within 14 days after the "occurrence" of the emergency event. The Utility must demonstrate that granting the waiver is fair, reasonable, and in the public interest. PSL §73 provides that the Commission shall issue a final decision regarding the grant of the requested waiver no later than 45 days after submission of the Utility waiver petition.

PLEASE TAKE NOTICE this proceeding has been initiated and initial and reply comments on the attached Staff Proposal are sought. Interested persons and entities should submit initial comments providing draft definitions of the statutorily required terms and setting forth procedures and rules pursuant to PSL §73 **by May 20, 2022**. Reply comments are due **by June 13, 2022**. Comments may be submitted by e-filing through the Department's Document and Matter Management system (DMM).¹ Individuals unable to file electronically may mail their comments to the Hon. Michelle L. Phillips, Secretary to the New York State Public Service Commission, Three Empire State Plaza, Albany, New York, 12223-1350.²

¹ To e-file in DMM, go to <https://www.dps.ny.gov/efile>.

² Filing electronically is strongly encouraged.

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All comments received will be posted to the Department of Public Service's website and included in the record of this proceeding.

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

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STAFF PROPOSAL: PROCEDURE AND DEFINITIONS

Introduction

On December 22, 2021, Chapter 786 (Part B) of the Laws of 2021 was signed into law, thereby amending Public Service Law (PSL) by adding PSL §73, effective April 21, 2022. PSL §73 is intended to compensate customers who have experienced prolonged outages that are widespread. PSL §73 further requires that the Commission promulgate procedures, standards, methodologies and rules, including defining the terms "widespread prolonged outage," "small business customer," and "proof of loss." Department of Public Service Staff (Staff) submits this Staff Proposal for comment on the definitions, as well as the process and procedures recommended to be implemented to comply with the intent of PSL §73.

PSL §73 requires gas and electric corporations (Utilities) to provide residential customers: 1) with a credit of \$25 on the balance of their bill for each twenty-four hour period of service outage that occurs for more than 72 consecutive hours after an emergency event; 2) with a reimbursement up to \$235 if the residential customer provides an itemized list or up to \$540 if the customer provides proof of loss, for any food that spoils due to a service outage that lasts longer than 72 consecutive hours after an emergency event; and 3) reimbursement for prescription medications that have spoiled up to the amount of the actual loss. Small business customers shall be reimbursed by gas and electric corporations for food spoilage if they provide a list and proof of loss up to

\$540. Both residential and small-business customers are to provide the Utility with itemized lists and/or proof of loss within fourteen days of the outage and the Utilities are to provide reimbursement within thirty days of receipt, or within a time-period determined by the Commission if the Utility seeks a waiver of the credit or reimbursement. Any costs incurred by the Utility in compliance with this section shall not be recoverable from ratepayers.

Additionally, Utilities may petition the Commission for a waiver of the credits/reimbursement requirements within 14 days after the beginning of the emergency event. The Utility must demonstrate granting of the waiver is fair, reasonable and in the public interest. When determining whether to grant such waiver, the Commission shall consider factors such as whether the Utility complied with its submitted emergency response plan or contributed to prolonging the widespread outage, as well as the hardships endured by the customers due to the prolonged service outage, the balancing of equities, or any other criteria the Commission deems in the public interest. PSL §73 provides that the Commission shall issue a final decision regarding the grant of the requested waiver no later than 45 days after submission of the Utility waiver petition.

As provided in PSL §73(4), the Commission must promulgate procedures, standards, methodologies and rules, including defining the terms "widespread prolonged outage," "small business customer," and "proof of loss." Staff proposes, and seeks comment on, the following draft definitions of the required terms and procedures and rules to provide customer credits and reimbursements as mandated by PSL §73.

Widespread Prolonged Outage: A "widespread prolonged outage" is defined as an electric outage event impacting at

least 20,000 customers at the same time and having one or more customers who remain without power for 72 hours or more due to Utility-owned equipment unable to provide power, or a gas outage event impacting at least 500 customers at the same time and having one or more customers who remain without service for 72 hours or more, unless the Utility is denied access to inspect and relight those services prior to the 72-hour mark.

Proof of Loss: A "proof of loss" is defined as verifiable proof of perishable food and/or prescription medication spoilage. To verify spoilage, the customer must provide an itemized list of perishable foods and/or prescription medication and a depiction (photographic evidence) of food and/or prescription medication spoilage. To determine the reimbursement amount of an impacted customer's food and/or prescription medication spoilage, the customer must provide itemized receipts, itemized cash register receipts, itemized credit card receipts, or photographs of replacement goods that also indicate the price of the item, or other verifiable documentation of the market value of the item, or, in appropriate circumstances, an interview with the claimant.

Small Business Customer: A "Small Business Customer" is defined as a person, corporation or other entity, receiving gas and/or electric service from a utility, that is not a residential customer as defined in Section 11.2(a)(2) of Title 16 of the New York Codes, Rules and Regulations, and has an accepted permanent application for service. An electric "small business customer" may take electric demand service as part of a voluntary demand-based rate offering, may have actual demand that is less than or equal to 500 kilowatt (kW), or may have electric generating capacity that is less than or equal to 500 kW. A gas "small business customer" is a firm gas customer that

has actual annual gas consumption that does not exceed 750 dekatherms per year, or, for customers with less than one year of actual meter readings, is a firm gas customer that has an average actual monthly usage that when multiplied by 12 does not exceed 750 dekatherms.

Procedures and Rules: Utility Filings

The effective date of PSL §73 is April 21, 2022; however, the State Administrative Procedure Act requires that this proposal be issued for public comment prior to its consideration by the Commission. Thus, there is a question of what happens if there is an outage longer than 72 hours that could arguably trigger the credits and reimbursements as mandated by PSL §73 prior to a Commission determination on the required definitions and procedures. The intent and effective date of PSL §73 is clear; residential customers and to be defined small business customers are to receive credits and reimbursements in a timely and efficient manner. To protect customer interests and follow PSL §73, Staff recommends that if an event occurs prior to a Commission determination resulting in an electric and/or gas outage for 72 consecutive hours, the respective Utility must file a notice to the Secretary of the Commission indicating such. Further, Staff recommends that the Utility provide notification to customers without electric and/or gas service for at least 72 consecutive hours of the possibility of a credit/reimbursement and for customers to keep a record of spoiled items and proof of loss, thereby preserving the rights of both customers and the Utility if such an event occurs until a Commission determination is issued. The rules and procedures adopted in by the Commission in this proceeding, as well as the procedures and rules mandated by PSL §73, would then be applied to any such outage event. To allow for the

application of PSL §73 to an event that occurs between April 21, 2022 and the Commission's adoption of procedures and rules in this proceeding, the Utility must keep relevant records. Such records would include, at a minimum, documentation of the cause of the event; the identity of the customers that lost service for over 72 hours; the number of 24-hour periods after the 72-hour threshold customers were without electric and/or gas service; the peak number of customers without service during the outage along with the date and time of this occurrence; when the utility contacted the gas customer to restore the customer's gas service (if applicable), the date of the customer's response, and when access was granted; the date and time of the onset of the outage event; the date and time of the complete restoration of all customers from the outage event; and customer and public communication regarding the outage event.

Additionally, if a residential or small business customer experiences both a gas and electric outage for 72 consecutive hours, Staff proposes that the customers would be entitled to a credit for the outage of each service. There are instances where customers receive electric and gas service from different utilities and would be entitled to a credit for the outage of each service. Customers who are provided both services from a single utility should also be entitled to the same credits and reimbursements. Staff thinks this interpretation is reasonable and satisfies the intent of PSL §73. Staff further proposes that the inability to use gas appliances due to the loss of electrical service does not constitute a loss of gas service. Also, reimbursement for any food and prescription medications that spoils due to a gas-only outage event that lasts longer than 72 consecutive hours is required under PSL §73 if a customer can provide proof of the use of a gas-powered refrigerator or freezer.

Staff recommends that the Commission determine that the \$25 outage credit is triggered once the 72nd outage hour has passed. An eligible residential or small-business customer would then be entitled to a \$25 credit until the start of the next 24-hour outage period, and once each subsequent 24-hour outage period begins, the customer would be entitled to another \$25 credit. Staff does not propose any pro-ration of credits for ease of administration and to avoid customer confusion. Further, the \$25 credit encompasses the current practice of any Utility that provides a credit to residential and small business customers for customer or service charges, which could be less than \$1 dollar a day for an outage. Such credits could potentially result in customer frustration and confusion. For those Utilities that currently have tariff provisions in effect that concern customers, other than residential customers or to be defined small business customers, Staff proposes that those tariffs remain in effect until otherwise determined by the Commission.

Concerning the waiver provisions stated in PSL §73(3), "a utility company" can file a waiver of the statute's requirement no later than 14 days after the "occurrence of a widespread prolonged outage." The triggering of the 14-day filing period is the day on which an event first meets the definition of a "widespread prolonged outage." It is anticipated that such a waiver request would be noticed by the Commission to allow any interested party to comment and Staff to review such request. The Commission would within its discretion issue a decision within the time-period mandated by PSL §73 considering any and all criteria set forth in PSL §73(3).

To effectuate the efficient implementation of PSL §73, Utilities should include in their comments draft tariff language

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deemed necessary to comply with PSL §73 and to address this Staff Proposal.