

PENDING PETITION MEMO

Date: 10/17/2007

TO : OEE
OGC

FROM: CENTRAL OPERATIONS

UTILITY: NIAGARA MOHAWK POWER CORPORATION

SUBJECT: 07-M-1245

Petition of Carol Maxwell and the Public Utility Law Project for an Investigation into Certain Practices of Niagara Mohawk Power Corporation d/b/a National Grid Relating to Denials of Service to Residential Applicants and Related Matters.



Public Utility Law Project of New York, Inc.

194 Washington Avenue, Suite 420
Albany, New York 12210
Website: www.pulp.tc

2007 OCT 17 AM 10:12

Phone: (518) 449-3375
Fax: (518) 449-1769
E-Mail: info@pulp.tc

October 16, 2007

Hon. Jaclyn Brilling
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Dear Secretary Brilling;

Please file the enclosed petition of Carol Maxwell and the Public Utility Law Project of New York, Inc. The petition requests the Commission to

- Commence a proceeding to investigate certain practices of Niagara Mohawk Power Corporation d/b/a National Grid relating to denials of utility service to residential applicants with arrears owed for service to a prior account. These practices include demands for down payments before discussing the terms of a Deferred Payment Agreement ("DPA") with the applicants, demands for excessive DPA down payments, and refusals to negotiate fair and equitable DPA terms based on the applicant's financial circumstances in situations where applicants cannot afford the amount demanded.
- Issue an Interim Order directing National Grid to negotiate the terms of fair and equitable Deferred Payment Agreements with petitioner and henceforth with any other applicants for service who owe the utility money for service provided to a prior account in the applicant's name, pending completion of the proceeding.
- Issue a Declaratory Ruling that the practices of National Grid challenged in the petition are in violation of the Home Energy Fair Practices Act, PSL §§30, 31, and 37; in violation of regulations of the Commission, 16 NYCRR §§11.3 and 11.10; and contrary to the state policy favoring the provision of residential utility service without unreasonable qualifications or lengthy delays declared in PSL §30. These violations include:

Demanding DPA down payments from applicants of service with arrears for service to a prior account before attempting to negotiate with the customer the terms of a down payment and installments based on the customer's financial circumstances, as required by Commission regulation §11.10(a)(1);

Demanding excessive down payments, often of \$1000, in violation of PSL §31(1)(b) and §37(1), which limit the maximum DPA down payments to half the

arrears or an amount equal to three months average billing, whichever is less, and in violation of Commission regulation §11.10(c)(2)(ii) s which further limits the amount of a DPA down payment to the amount agreed to by the customer or to 15% of the balance owed or half of one month's average usage, whichever is greater;

Failing to advise the customer that the terms of a DPA proposed by the utility are negotiable, and failing to provide valid notices of service denial, contrary to PSL §31(2) and Commission regulation§ 11.3(b).

- Direct National Grid to remedy any past wrongful denials of service to applicants due to the practices challenged in this proceeding within the 180 days preceding the filing of the petition and to compensate applicants wrongfully denied service in accordance with PSL §31(5).
- Upon a finding, after investigation, that the challenged practices are unreasonable or in violation of the Home Energy Fair Practices Act and Commission regulations, provide a substantial rate reduction or deferred rate credit for the benefit of customers, or, alternatively, commence a penalty proceeding pursuant to PSL §25.

Because Petitioner Maxwell is presently denied service Petitioners request that the petition be referred to the Chairman, or in her absence, any Commissioner available to issue a single Commissioner order pending further action by the full commission.

Very truly yours,



Gerald Norlander

cc:

Robert H. Hoaglund, II
National Grid
300 Erie Boulevard West, A-3
Syracuse, NY 13202-4250

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

RECEIVED
PUBLIC SERVICE
COMMISSION
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In the Matter of the Petition of Carol
Maxwell and the Public Utility Law Project
for an Investigation into Certain Practices of
Niagara Mohawk Power Corporation d/b/a
National Grid Relating to Denials of Service
to Residential Applicants and Related Matters.

PETITION FOR
INVESTIGATION,
DECLARATORY RULING
AND OTHER RELIEF

For their Petition, Carol Maxwell and Public Utility Law Project allege as follows:

Introduction

1. Petitioners request the Commission to commence a proceeding to investigate certain practices of Niagara Mohawk Power Corporation d/b/a National Grid relating to denials of utility service to residential applicants with arrears owed for service to a prior account. The challenged practices include demands for down payments before discussing the terms of a Deferred Payment Agreement (“DPA”) with the applicants, demands for excessive DPA down payments, and refusals to negotiate fair and equitable DPA terms based on the applicant’s financial circumstances in situations where applicants cannot afford the amount demanded.

Petitioners

2. .Petitioner Carol Maxwell resides at 492 Madison Avenue, Albany, NY 12208. Effective October 17, 2007 she will reside at 65 First Street, Albany, NY 12210. Her affidavit in support of the petition is attached.

3. Petitioner Public Utility Law Project of New York, Inc. is a not for profit organization located at 194 Washington Avenue, Suite 420, Albany, NY 12210.

Facts

4. In anticipation of moving to a new address on October 12, 2007, Petitioner Maxwell applied for utility service from National Grid on Tuesday, October 9th, 2007. Petitioner requires utility service at the new premises.

5. Petitioner Maxwell is not now a customer of National Grid. She was previously a customer of National Grid in 2004. In January 2005, she moved to her present apartment where utilities are included in the rent.

6. Petitioner Maxwell owed arrears of \$742.37 on her prior National Grid account when it was closed in or about January 2005. She has not paid the balance of the account. National Grid took no collection action with regard to the balance due from January 2005 to date.

7. Petitioner called National Grid and applied for service on Tuesday, October 9, 2007 in order to have service on her planned moving day, October 12, 2007. National Grid demanded that she show a lease in her name. After her landlord faxed the lease, and other documentation, Petitioner Maxwell was told that unless she pays the full balance of \$742.37, the utility will not turn service on at the new address. National Grid did not ask about her financial circumstances or offer to negotiate a lesser amount as a down payment. National Grid refused to accept anything less than \$742.37 when Petitioner Maxwell informed National Grid she could not pay that amount.

8. Unable to afford the amount demanded by National Grid, Petitioner Maxwell went to

Albany County Department of Social Services and applied for assistance. She was told that the National Grid bill was too old and that they would not be able to help her because she had not had utility service in the past four months.

9. Petitioner went to Catholic Charities for assistance but they would not pay what National Grid demanded. Petitioner was referred by Catholic Charities to the Public Utility Law Project (“PULP”) who in turn referred her to the PSC Complaint Line and the PSC Hotline.

10. Petitioner called both the Complaint Line and the Hotline and in both cases was told by staff of the Department of Public Service, in substance, that the PSC could not do anything, that she would have to pay the entire balance of \$742.37 demanded by National Grid before the lights could be turned on.

11. There are four people in Petitioner Maxwell’s household: herself, her husband, a seventeen year old and a two month old baby. The family must vacate its present abode today because it has been rented to others. The lack of utility service makes it impossible to move into the new apartment, properly care for the baby, and provide for other family needs for safe heat, light, refrigeration and cooking.

12. PULP provides information services to low income utility consumers and advocates through its toll free line and Internet Help Center.

13. In recent weeks, PULP received calls from numerous low income persons involving denials of utility service by National Grid because the applicants owed money from prior accounts, sometimes closed years ago. In each of these cases, National Grid demanded very large DPA down payments of as much as \$1,000.

14. In each of these instances National Grid's demands were far beyond the financial means of the applicant. Further, National Grid refused to negotiate the amount of the up front payment demanded for service, even when charitable groups offered assistance that would partially meet the demand. And, the amounts demanded bore no relation to the limits of applicable statutes and Commission regulations.

15. As a result of National Grid's practices, numerous applicants for utility service and their households are going without electric service, contrary to the public interest and creating unnecessary risks to health and welfare of the denied applicants and the communities in which they live. For example:

- A. A household with a 14 month old infant was without service because they could not meet the demand for \$1000.
- B. A mother with four children was evicted and became homeless when the father halted child support payments. The family was living in a car, and was relocated to a possibly dangerous motel situation. The mother found an apartment, but was unable to move in because the landlord required utility service to be on before giving possession. She could not resolve her homeless situation because she could not meet National Grid's demand for \$1000.
- C. A senior citizen who receives SSI and who is moving to a different apartment where utilities are not included in rent, who has arrears dating back more than six years, was refused service unless he paid at least \$1000, which he does not have.
- D. A disabled amputee with seizures was denied service due prior arrears and could

not satisfy National Grid's inflexible demand for \$1000.

National Grid's Practices Conflict with HEFPA Requirements

16. The practices of National Grid are in violation of the Home Energy Fair Practices Act, PSL §§30, 31, and 37 violate of regulations of the Commission, 16 NYCRR §§11.3 and 11.10; and contrary to the state policy favoring the provision of residential utility service without unreasonable qualifications or lengthy delays declared in PSL §30. Copies of relevant provisions of the statutes and regulations cited are attached.

17. National Grid's demands for DPA down payments from applicants of service with arrears for service to a prior account before attempting to negotiate with the customer the terms of a down payment and installments based on the customer's financial circumstances, as required by Commission regulation §11.10(a)(1).

18. National Grid's demands for excessive down payments, often for full payment, as in the case of Petitioner Maxwell, or for \$1000, violate PSL §31(1)(b) and §37(1), which limit the maximum DPA down payments to half the arrears or an amount equal to three months average billing, whichever is less, and in violation of Commission regulation §11.10(c)(2)(ii) which further limits the amount of a DPA down payment to the amount agreed to by the customer or to 15% of the balance owed or half of one month's average usage, whichever is greater;

19. National Grid's failure to advise the customer that the terms of a DPA proposed by the utility are negotiable, and failing to provide valid notices of service denial, are contrary to PSL §31(2) and Commission regulation §11.3(b).

Request for Relief

Petitioners request that the Commission

- A. Commence a proceeding to investigate practices of Niagara Mohawk Power Corporation d/b/a National Grid relating to denials of utility service to residential applicants with arrears owed for service to a prior account. These practices include demands for down payments before discussing the terms of a Deferred Payment Agreement (“DPA”) with the applicants, demands for excessive DPA down payments, and refusals to negotiate fair and equitable DPA terms based on the applicant’s financial circumstances in situations where applicants cannot afford the amount demanded.
- B. Issue an Interim Order directing National Grid to negotiate the terms of fair and equitable Deferred Payment Agreements with petitioner Carol Maxwell and henceforth with any other applicants for service who owe the utility money for service provided to a prior account in the applicant’s name, pending completion of the proceeding.
- C. Issue a Declaratory Ruling that the practices of National Grid challenged in the Petition are in violation of the Home Energy Fair Practices Act, PSL §§30, 31, and 37; in violation of regulations of the Commission, 16 NYCRR §§11.3 and 11.10; and contrary to the state policy favoring the provision of residential utility service without unreasonable qualifications or lengthy delays declared in PSL §30. These violations include:

Demanding DPA down payments from applicants of service with arrears for service to a prior account before attempting to negotiate with the customer the terms of a down payment and installments based on the customer’s financial circumstances, as required by

Commission regulation §11.10(a)(1);

Demanding excessive down payments, often of \$1000, in violation of PSL §31(1)(b) and §37(1), which limit the maximum DPA down payments to half the arrears or an amount equal to three months average billing, whichever is less, and in violation of Commission regulation §11.10(c)(2)(ii) which further limits the amount of a DPA down payment to the amount agreed to by the customer or to 15% of the balance owed or half of one month's average usage, whichever is greater;

Failing to advise the customer that the terms of a DPA proposed by the utility are negotiable, and failing to provide valid notices of service denial, contrary to PSL §31(2) and Commission regulation §11.3(b).

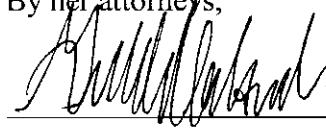
- D. Direct National Grid to remedy any past wrongful denials of service to applicants due to the practices challenged in this proceeding within the 180 days preceding the filing of the Petition and to compensate applicants wrongfully denied service in accordance with PSL §31(5).
- E. Upon a finding, after investigation, that the challenged practices are unreasonable or in violation of the Home Energy Fair Practices Act and Commission regulations, provide a substantial rate reduction or deferred rate credit for the benefit of customers, or, alternatively, commence a penalty proceeding pursuant to PSL §25.
- F. Grant such other and further relief as the Commission, based on the record of the proceeding to be commenced, deems to be just and reasonable.

Dated: October 16, 2007

Respectfully submitted,

Carol Maxwell, Petitioner

By her attorneys,



Gerald A. Norlander, Esq.

Louis Manuta, Esq.

Public Utility Law Project

of New York, Inc.

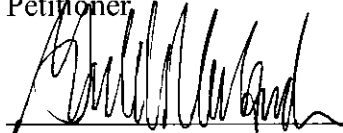
194 Washington Avenue, Suite 420

Albany, NY, 12210

Public Utility Law Project

Of New York, Inc.

Petitioner,



Gerald A. Norlander, Esq.

Louis Manuta, Esq.

Public Utility Law Project

of New York, Inc.

194 Washington Avenue, Suite 420

Albany, NY, 12210

TO: Robert H. Hoaglund II
National Grid
300 Erie Blvd West A-3
Syracuse, NY 13202-4250

Certificate of Service

I, Mary Jane De Chiro, certify that I have served by first class mail a copy of the Petition for Investigation, Declaratory Ruling and other Relief, to Robert H. Hoaglund, II National Grid, 300 Erie Boulevard West, A-3, Syracuse, NY 13202-4250 (dated October 16, 2007)

Dated: October 16, 2007


Mary Jane De Chiro

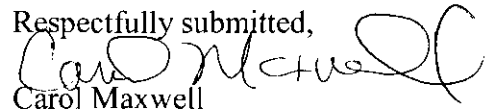
AFFIDAVIT

Carol Maxwell, being duly sworn, deposes and says:

1. My name is Carol Maxwell. I reside at 492 Madison Avenue, Albany, NY 12208. I applied for utility service from National Grid on Tuesday, October 9th, 2007 for a new apartment located at 65 First Street, 2nd Fl., Albany, NY 12210. There are four people in my household, myself, my husband, a two month old baby, and a seventeen year old.
2. I am not now a customer of National Grid. I was a customer of National Grid in 2004. In January 2005, I moved to my present apartment where utilities are included in the rent. I owed arrears of \$742.37 when my prior National Grid account was closed. I have not paid the balance of the account. I have received no letters or bills from National Grid regarding the amount I owed for past service to my prior account.
3. I am now in the course of moving again, and need to establish service to a new account in my name today. I called National Grid and applied for service on Tuesday, October 9, 2007 in order to have service on our planned moving day, October 12, 2007. First National Grid demanded that I show a lease in my name. After my landlord faxed the lease, then I was told that unless I pay the full balance of \$742.37, they will not turn service on at the new address. National Grid did not ask about my circumstances or offer to negotiate a lesser amount as a down payment. National Grid refused to accept anything less than \$742.37.
4. I went to Albany County Department of Social Services and applied for assistance. I was told that the National Grid bill is too old and that they will not be able to help me because I have not had utility service in the past four months.
5. I went to Catholic Charities for assistance but they would not pay what National Grid demanded. I was referred to the Public Utility Law Project ("PULP") and they referred me to the PSC Complaint Line and the PSC Hotline. I called both the Complaint Line and the Hotline and in both cases I was told that the PSC could not do anything, that I would have to pay the entire balance of \$742.37 before the lights could be turned on.
6. I have two children, one of them a newborn. I must vacate my present apartment today. It is impossible to keep the baby warm without utility service.

WHEREFORE, I request that the petition to investigate National Grid's denial of service to persons in my situation be granted, that the Commission direct National Grid to negotiate a fair and equitable DPA based on my financial circumstances, that all the relief requested in the petition be granted.

Respectfully submitted,


Carol Maxwell

Sworn to Before me
This 6th Day of October, 2007


NOTARY PUBLIC

LOUIS MANUTA
Notary Public
State of New York
Qualified in Schenectady County
Registration No. 02MA5052724
Commission Expires 12/4/2009

**ARTICLE 2—RESIDENTIAL GAS, ELECTRIC
AND STEAM UTILITY SERVICE****Section**

- 30. Residential gas, electric and steam service policy.
- 31. Applications for service.
- 32. Termination of service.
- 35. Reconnection of service.
- 37. Deferred payment agreements.
- 39. Meter reading and estimated bills.
- 43. Complaint handling procedures.
- 44. Utility bills; informational notices.
- 46. Emergency disconnections to residences.
- 49. Residential steam service.
- 52. Gas, electric and steam service to tenants provided through shared meters.
- 53. Application.

§ 30. Residential gas, electric and steam service policy

This article shall apply to the provision of all or any part of the gas, electric or steam service provided to any residential customer by any gas, electric or steam and municipalities corporation or municipality. It is hereby declared to be the policy of this state that the continued provision of all or any part of such gas, electric and steam service to all 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.

(Added L.1981, c. 713, § 3; amended L.2002, c. 686, § 2, eff. June 18, 2003.)

Historical and Statutory Notes**L.2002, c. 686 legislation**

L.2002, c. 686, § 2, rewrote this section, which had read:

"This article shall apply to the provision of residential service by gas, electric and steam corporations and municipalities. It is hereby declared to be the policy of this state that the continued provision of gas, electric and steam service to residential customers without unreasonable qualifica-

tions or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest."

L.2002, c. 686, § 1, provides:

"Short title. This act [amending Public Service Law §§ 30, 31, 32, 35, 37, 39, 43, 44, 46, 49 and 52 and adding Public Service Law § 53] shall be known and may be cited as 'the energy consumer protection act of 2002'."

Legislative Histories

L.2002, c. 686: For Legislative, Executive or Judicial memorandum relating to this law, see McKinney's 2002 Session Laws of New York, p. 2137, 2138.

Research References**Encyclopedias**

- NY Jur. 2d, Counties, Towns, & Municipal Corp. § 174, Construction of Constitutional or Statutory Provisions Conferring Powers.
- NY Jur. 2d, Declaratory Judgments & Agreed Case § 48, Miscellaneous Professions, Occupations, or Businesses.
- NY Jur. 2d, Declaratory Judgments & Agreed Case § 150, Taxpayers; Challenges to State Action.
- NY Jur. 2d, Energy § 75, Public Service Law.
- NY Jur. 2d, Public Utilities § 6, Nondiscrimination as to Services and Facilities.
- NY Jur. 2d, Public Utilities § 74, Utility Bill Payments to Authorized Agencies.

Treatises and Practice Aids

Carmody-Wait, 2d § 147:70, Building and Construction.

§ 31

PUBLIC SERVICE LAW

§ 31. Applications for service

1. Every gas corporation, electric corporation or municipality shall provide residential service upon the oral or written request of an applicant, provided that the commission may require that requests for service be in writing under circumstances as it deems necessary and proper as set forth by regulation, and provided further that the applicant:

(a) makes full payment for residential utility service provided to a prior account in his name; or

(b) agrees to make payments under a deferred payment plan of any amounts due for service to a prior account in his name and makes a down payment based on criteria to be established by the commission. No such down payment shall exceed one-half of any money due from an applicant for residential utility service, or three months average billing, whichever is less; or

(c) is a recipient of public assistance, supplemental security income or additional state payments pursuant to the social services law, or is an applicant for such assistance, income or payments, and the utility corporation or the municipality receives payment from, or is notified of the applicant's eligibility for utility payments by the social services official of the social services district in which such person resides for amounts due for service to a prior account in the applicant's name, together with guarantee of future payments to the extent authorized by the social services law.

2. In the event a utility corporation or municipality denies an applicant's application for service it shall provide prompt written notice to such applicant of its reasons for denying service, specify what the applicant must do to qualify for service, and advise the applicant of his right to investigation and review of the denial of service by the department if the applicant considers such denial to be without justification. Any such notice denying service shall be sent to an applicant within three business days after either a completed oral or written application for service is received, provided however, the commission may specify a different period for good cause. The commission may also establish such additional notice requirements upon a utility corporation or municipality as it believes necessary to assure reasonable notification and protection for applicants.

3. Subject to the requirements of subdivisions four and five of this section, whenever a residential customer moves to a new residence within the service territory of the same utility corporation or municipality, he shall be eligible to receive service at the new residence and such service shall be considered a continuation of service in all respects, with any deferred payment agreement honored, and with all rights of such customer and such utility corporation provided by this article unimpaired.

4. In the case of any application for service to a building which is not supplied with electricity or gas, a utility corporation or municipality shall be obligated to provide service to such a building, provided however, that the commission may require applicants for service to buildings located in excess of one hundred feet from gas or electric transmission lines to pay or agree in writing to pay material and installation costs relating to the applicant's proportion of the pipe, conduit, duct or wire, or other facilities to be installed.

5. A utility corporation or municipality shall institute service to any applicant who meets the requirement of subdivision one of this section, within five business days after such applicant applies for service, provided however, such requirement shall not apply where the institution of service within five business days is prevented by adverse weather conditions, serious physical

§ 35

PUBLIC SERVICE LAW

dollars per day for each day thereafter, as determined by the commission, that such service is not supplied.

(Added L.1981, c. 713, § 3; amended L.2002, c. 686, § 5, eff. June 18, 2003.)

Historical and Statutory Notes

L.2002, c. 686 legislation

Subd. 1. L.2002, c. 686, § 5, rewrote the first sentence of subd. 1, which had read: "The commission shall by regulation establish reasonable conditions under which an electric or gas corporation or municipality shall be required to reconnect service to residential customers."

L.2002, c. 686, § 1, provides:

"Short title. This act [amending Public Service Law §§ 30, 31, 32, 35, 37, 39, 43, 44, 46, 49 and 52 and adding Public Service Law § 53] shall be known and may be cited as 'the energy consumer protection act of 2002'."

Legislative Histories

L.2002, c. 686: For Legislative, Executive or Judicial memorandum relating to this law, see McKinney's 2002 Session Laws of New York, p. 2137, 2138.

Research References

Encyclopedias

NY Jur. 2d, Energy § 249, Reconnection of Service.

§ 36. Residential service deposits

Research References

Encyclopedias

NY Jur. 2d, Energy § 237, Recipients of Certain Payments.

NY Jur. 2d, Energy § 238, Consumers 62 Years of Age or Older.

NY Jur. 2d, Energy § 239, Authorization of Deposits by Public Service Commission.

NY Jur. 2d, Energy § 241, Terms of Deposits; Interest and Refunds.

NY Jur. 2d, Public Utilities § 73, Consumer Deposits.

Treatises and Practice Aids

Carmody-Wait, 2d § 8:53, Affidavits in Support of Motion.

§ 37. Deferred payment agreements

1. No utility corporation or municipality shall terminate or refuse to take all actions within such corporation or municipality's control and, where applicable, consistent with the provisions of the agreement for commodity service, if any, between the corporation and the customer, provided such provisions are consistent with this article, to restore service to a residential customer, because of arrears owed the utility corporation or municipality, unless the utility or municipality offers such customer a deferred payment agreement for such arrears; provided, however, that a deferred payment agreement under this article shall not be available to any customer who the commission determines has the resources available to pay his bill, and provided further, however, that any such agreement may provide for the customer to make a downpayment of the arrears, provided that no such downpayment shall exceed one-half of the amount of arrears or three months average billing, whichever is less. In addition, the commission shall provide by regulation that (a) all deferred payment agreements authorized by this article be fair and equitable, considering the customer's financial circumstances; (b) that such agreements obligate customers to make timely payment of current charges for service together with payment of arrears during the pendency of the agreements; that such agreements may be renegotiated and amended where the customer can demonstrate that there have been significant changes in his or her

financial circumstances which have arisen due to conditions beyond the customer's control, and that, if the customer receives a utility service by the receipt of portions of such service from each of two or more utility corporations and is billed for such service through a single bill, the payments pursuant to the deferred payment agreement for current charges shall be allocated to each such utility corporation based on the current charges owing to each and the payments for arrears shall be allocated equitably on a pro-rata basis between such utility corporations based on the amount of arrears owing to each.

2. Upon offering any deferred payment agreement, and prior to the signing thereof, a utility corporation or municipality shall give a customer a copy of the agreement, in a form established or affirmatively approved by the commission, which shall contain a conspicuous, bold type notice that the customer may request the assistance of the commission in reaching an agreement. Any such agreement shall be signed in duplicate by the utility or municipality and the customer and each shall receive a signed copy thereof.

(Added L.1981, c. 713, § 3; amended L.2002, c. 686, § 6, eff. June 18, 2003.)

Historical and Statutory Notes

L.2002, c. 686 legislation

Subd. 1. L.2002, c. 686, § 6, rewrote subd. 1, which had read:

"No utility corporation or municipality shall terminate or refuse to restore service to a residential customer, because of arrears owed the utility corporation or municipality, unless the utility or municipality offers such customer a deferred payment agreement for such arrears; provided, however, that a deferred payment agreement under this article shall not be available to any customer who the commission determines has the resources available to pay his bill, and provided further, however, that any such agreement may provide for the customer to make a downpayment of the arrears, provided that no such downpayment shall exceed one-half of the amount of arrears or three months average billing, whichever is less. In addition, the commission shall provide by regulation

that all deferred payment agreements authorized by this article be fair and equitable, considering the customer's financial circumstances; and that such agreements obligate customers to make timely payment of current charges for service together with payment of arrears during the pendency of the agreements; and that such agreements may be renegotiated and amended where the customer can demonstrate that there have been significant changes in his or her financial circumstances which have arisen due to conditions beyond the customer's control."

L.2002, c. 686, § 1, provides:

"Short title. This act [amending Public Service Law §§ 30, 31, 32, 35, 37, 39, 43, 44, 46, 49 and 52 and adding Public Service Law § 53] shall be known and may be cited as 'the energy consumer protection act of 2002'."

Legislative Histories

L.2002, c. 686: For Legislative, Executive or Judicial memorandum relating to this law, see McKinney's 2002 Session Laws of New York, p. 2137, 2138.

Research References

Encyclopedias

NY Jur. 2d, Energy § 250, Deferred Payment Agreements.

§ 38. Budget or levelized payment plans; quarterly billing

Research References

Encyclopedias

NY Jur. 2d, Energy § 287, Budget Payment Plans.

§ 11.2
Appendix

DEPARTMENT OF PUBLIC SERVICE

(ii) such service is primarily used for his or her residential purposes and the customer has so notified the utility;

(iii) the utility knows or reasonably should have known that any of such service is provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part; or

(iv) such person was a residential customer, as defined in the preceding subparagraphs of the same distribution utility within 60 days of making the request, was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services, and has moved to a different dwelling within the distribution utility's service territory so long as such person remains a residential customer as defined in the preceding subparagraphs.

(3) The term *applicant*, when used in this Part, shall include any person who requests all or any part of gas, electric or steam service at a premises to be used as his or her residence or the residence of a third party on whose behalf the person is requesting service, where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who requests service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential applicant solely because the distribution utility's tariff specifies a residential rate;

(ii) such service will primarily be used for the resident's residential purposes and the applicant has so notified the utility; or

(iii) the utility knows or reasonably should know that any of such service will be provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part.

(b) Nothing in this Part shall modify the commission's rules or orders applicable to the provision of gas, electric or steam service to nonresidential customers.

§ 11.3. Applications for residential service

(a) **Extension of service.** (1) Consistent with the provisions of paragraphs (2)-(4) of this subdivision, every distribution utility shall provide residential service to an applicant upon his or her oral or written request.

(2) A distribution utility shall not be obligated to provide service to an applicant who owes the distribution utility money for residential service provided to a prior account in his or her name unless:

(i) the applicant makes full payment for residential service provided to any such prior account in his or her name;

(ii) the applicant agrees to make payments under a deferred payment plan of any amounts due for service to a prior account in his or her name, pursuant to section 11.10 of this Part;

(iii) the applicant has pending a billing dispute pursuant to section 11.20 of this Part with respect to any amounts due for service to a prior account in his or her name and has paid any amounts required to be paid pursuant to those provisions;

(iv) the applicant is a recipient of or an applicant for public assistance, supplemental security income benefits or additional State payments pursuant to the Social Services Law, and the distribution utility receives from an official of the social services district in which the applicant resides, or is notified by such an official that it is entitled to receive, payment for services due to a prior account in the applicant's name together with a guarantee of future payments to the extent authorized by the Social Services Law; or

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(v) the commission or its authorized designee directs the provision of service.

(3) A distribution utility shall not be obligated to provide service to an applicant for seasonal or short-term service who fails to post a lawfully required deposit.

(4) A distribution utility shall be obligated to provide service to any applicant who meets the requirements of paragraphs (1) and (2) of this subdivision within five business days of receipt of a completed oral or written application for service, or such later time as may be specified by the applicant, except:

(i) where prevented by labor strikes or precluded by law;

(ii) where precluded by consideration of public safety;

(iii) where the applicant fails to pay or agree in writing to pay the material and installation costs relating to line extensions as required by Parts 98 and 230 of this Title, or otherwise fails to comply with any applicable requirements of Parts 99, 100, 103 and 233 of this Title, and the commission's minimum insulation standards for gas-heating customers contained in Op. No. 77-10 as described in section 10.3 of this Title (17 NY PSC 546; 17 NY PSC 861); or

(iv) where precluded by physical impediments including:

(a) adverse weather conditions;

(b) inability to gain access to premises in the possession of the applicant or others;

(c) incomplete construction of necessary facilities by the applicant or inspection thereof by the appropriate authorities; or

(d) incomplete construction of necessary facilities by the distribution utility.

The distribution utility shall make reasonable efforts to eliminate conditions preventing extension of service and shall pursue completion of any facilities it must construct with due diligence.

(v) An oral application for service shall be deemed completed when an applicant who meets the requirements of paragraphs (1)-(3) of this subdivision provides his or her name, address, telephone number and address of prior account (if any) or prior account number (if any). A distribution utility may establish non-discriminatory procedures to require an applicant to provide reasonable proof of the applicant's identity. Service may be denied to applicants who fail to provide reasonable proof of identity. A distribution utility may require an applicant to complete a written application if:

(a) there are arrears at the premises to be served and service was terminated, disconnected or suspended for nonpayment or is subject to a final notice of termination, disconnection or suspension;

(b) there is evidence of meter tampering or theft of service;

(c) the meter has advanced and there is no customer of record; or

(d) the application is made by a third party on behalf of the person(s) who would receive service.

A written application may require the submission of information required in an oral application, and reasonable proof of the applicant's responsibility for service at the premises to be supplied. A distribution utility requiring a written application shall so notify an applicant as soon as practicable after the request for service is made, and in no event more than two business days after such request, and shall state the basis for requiring a written application. A written application containing the required information shall be deemed completed when received by the distribution utility.

Comment: When a written application is permitted, a distribution utility may require the applicant to provide a copy of a lease (if one exists),

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deed, bill of sale or other documentation to show the date the applicant became responsible for service. A distribution utility must make a diligent effort to notify promptly an applicant who will be required to submit a written application. If a distribution utility is unable to contact the applicant orally, it must, not later than the second business day after the request for service is received, send a written notice to the applicant.

(5) Subject to the requirements of paragraph (4) of this subdivision, whenever a residential customer moves to a different dwelling within the service territory of the same distribution utility and for which the distribution utility's tariff specifies a residential rate, and requests distribution utility service within 60 days, he or she shall be eligible to receive service at the different dwelling, and such service shall be considered a continuation of service in all respects, with any deferred payment agreement honored, and with all rights; provided, however, that such customer's prior service was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services.

(6) A distribution utility shall extend service to an applicant for residential service whose application for service has previously been denied within two business days (or such later time as may be specified by the applicant) after the following events:

- (i) elimination of all the conditions specified in paragraphs (2)-(4) of this subdivision which resulted in the denial of service; or
- (ii) by direction of the commission or its authorized designee, who may require such extension of service to be made within 24 hours.

(b) Denial of application for service—notice. (1) As used in this subdivision, the terms *deny* and *denial* shall mean any determination, by a representative of a distribution utility in response to an application for service, that service will not be initiated as requested. An application for service not approved within three business days shall be deemed denied.

(2) No distribution utility shall deny an application for service without sending to the applicant, within three business days of receipt of the application for service, written notice which:

- (i) states the reasons for the denial;
- (ii) specifies precisely what the applicant must do to qualify for service; and
- (iii) advises the applicant of the right to an investigation and review of the denial by the commission or its authorized designees if the applicant considers the denial to be without justification. The distribution utility shall advise the applicant of the appropriate address and telephone number of the commission, including the commission's hot-line number and the times of its availability.

(3) The notice required by paragraph (2) of this subdivision shall be in writing and shall be either served personally upon the applicant or mailed to the applicant at his or her current address unless a different address is specified. When the written notice is given by mail, the distribution utility shall make a reasonable effort to provide immediate notice orally.

(4) Every distribution utility shall maintain, for a period not less than one year, records of oral or written requests for service that are denied, including the name and address of the applicant, the date of the application and the utility representative(s) who denied it.

(c) Penalty A distribution utility failing to initiate service within the time required by this section shall forfeit and pay to the applicant the sum of \$25

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per day for each day that service is not supplied unless the commission finds that the utility had good cause for not initiating service in the required time.

§ 11.4. Termination or disconnection of residential service, and suspension of distribution service pursuant to Public Service Law, section 32(5)

(a) *Termination or disconnection of residential service.* This subdivision sets forth termination and disconnection procedures applicable where a utility provides only distribution service and seeks to terminate the distribution service, the utility provides both distribution service and commodity supply and seeks to terminate them both or an ESCO seeks to terminate commodity supply. Where an ESCO seeks suspension of a residential customer's distribution service due to the customer's non-payment of the commodity portion of a consolidated bill, subdivision (b) of this section also applies.

(1) Conditions for termination or disconnection. A utility may terminate or disconnect residential service as provided for in these rules if the customer:

(i) fails to pay charges for services rendered at any time during the preceding 12 months; provided, however, that termination or disconnection of service for bills due for service rendered during periods in excess of the 12-month period is permitted in cases involving billing disputes during the 12-month period, estimated bills, the culpable conduct of the customer or excusable utility delays; and provided further, that the utility shall commence any such billing not more than four months after the resolution of the billing dispute, the adjustment to estimated bills, or the cessation of excusable utility delays or delays caused by the customer's culpable conduct; or

(ii) fails to pay amounts due under a deferred payment agreement;

(iii) fails to pay or agree in writing to pay equipment and installation charges relating to the initiation of service; or

(iv) fails to pay a lawfully required deposit; and

(v) is sent a final notice of termination or disconnection no less than 15 days before the termination or disconnection date shown on the notice.

(2) Final notice. A final notice of termination or disconnection shall clearly state or include:

(i) the earliest date on which termination or disconnection may occur;

(ii) the reasons for termination or disconnection, including the total amount required to be paid, and the manner in which termination or disconnection, may be avoided;

(iii) the address and phone number of the office of the utility that the customer may contact in reference to his account;

(iv) the availability of utility procedures for handling complaints; and

(v) a summary, prepared or approved by the commission or its authorized designee, of the protections available under this Part, together with a notice that any customer eligible for such protections should contact the utility.

The final notice of termination or disconnection may include any additional information not inconsistent with this Part. The final notice of termination from an ESCO, however, shall inform the customer that suspension of the customer's distribution service can accompany the ESCO's commodity termination, even if the customer's account for distribution service is current. In addition, the notice shall have printed on its face, in a size type capable of attracting immediate attention, language conveying the following:

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(2) agreement by a utility and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;

(3) upon the direction of the commission or its designee;

(4) upon the receipt by a utility of a commitment of a direct payment or written guarantee in accordance with the Social Services Law;

(5) where a utility has notice that a serious impairment to health or safety is likely to result if service is not reconnected. Doubts as to whether reconnection of service is required for health or safety reasons shall be resolved in favor of reconnection; or

(6) upon the expiration of one year after such termination of commodity service, or upon the receipt of payments by or on behalf of the customer to the ESCO that requested the suspension such that the amount paid by such customer to the ESCO plus the amount previously paid the ESCO plus any charges paid to the distribution utility during the period when such customer's arrears accrued is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the distribution utility during such period.

§ 11.10. Deferred payment agreements

(a) *Utility's obligations.* (1) A utility 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 and negotiating terms tailored to the customer's financial circumstances, prior to making the written offer of a deferred payment agreement required under paragraph (4) of this subdivision. Consistent with provisions of its agreement to supply commodity, if applicable, and provided such provisions are consistent with other requirements of the Public Service Law, a utility must make reasonable efforts to contact eligible customers or applicants for the purpose of offering a deferred payment agreement and negotiating terms tailored to the customer's financial circumstances, prior to making the written offer of a deferred payment agreement required under paragraph (4) of this subdivision. A *deferred payment agreement* or *payment agreement* (also referred to as *the agreement* in this section) is a written agreement for the payment of outstanding charges over a specific period of time, signed by both the utility and the customer or applicant.

(i) A utility must negotiate in good faith with any customer or applicant with whom it has contact so as to achieve an agreement that is fair and equitable considering the customer's financial circumstances.

(ii) A utility may require that a customer or applicant complete a form showing assets, income and expenses, and provide reasonable substantiation of the information on that form, provided that all such information shall be treated as confidential.

(iii) A payment agreement must provide for installments as low as \$10 per month and no down payment, when the customer or applicant demonstrates financial need for such terms, but need not provide for monthly installments of less than \$10.

(iv) A payment agreement may provide for any size or no down payment, and installments on any schedule over any period of time if mutually agreed to by the parties.

(2) At the time a utility notifies a customer of his or her right to an installment payment plan under section 11.13(f) or 11.14(a) or (c) of this Part, the utility must also make reasonable efforts to negotiate terms tailored to the customer's financial circumstances, in accordance with paragraph (1) of this section.

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(3) A utility may postpone a scheduled termination, disconnection or suspension of service up to 10 calendar days after the date stated in the final notice of termination, disconnection or suspension for the purpose of negotiating payment agreement terms, provided that the customer is clearly advised of such postponement.

(4) A utility must make a written offer of a payment agreement by providing two copies of the payment agreement form setting forth the specific terms for payment and signed by the utility to an eligible customer or applicant at the following times:

(i) not less than seven calendar days (10 days, if mailed) before the earliest date on which termination, disconnection or suspension may occur, which is either the date stated in a final notice of termination, disconnection or suspension or a date, up to 10 days thereafter, to which the company has postponed the termination, disconnection and suspension of service while negotiating a payment agreement pursuant to paragraph (3) of this section;

(ii) when payment of outstanding charges is a requirement for acceptance of an application for service, in accordance with section 11.3 of this Part;

(iii) when payment of outstanding charges is required in accordance with section 11.9(a) and/or (b) of this Part; and

(iv) as required after a broken payment agreement in accordance with paragraph (e)(3) of this section.

(5) A utility must renegotiate and amend a payment agreement if the customer or applicant demonstrates that his or her financial circumstances have changed significantly because of conditions beyond his or her control.

(6) A utility must develop written payment agreement procedures and forms for evaluating the financial need of a customer or applicant, for assuring the confidential handling of such information, for arriving at fair and equitable payment terms and for training company personnel, which procedures shall be filed with the Office of Consumer Services.

(7) The commission or its authorized designee may order a utility to offer a payment agreement in accordance with this section where the parties have been unable to reach agreement or where an agreement is necessary for the fair and equitable resolution of a complaint.

(b) *Eligibility.* (1) A customer or applicant is eligible for a payment agreement and must be offered one in accordance with subdivision (a) of this section, unless:

(i) the customer has broken an existing payment agreement, except as provided in paragraph (e)(3) of this section; or

(ii) the commission or its designee determines that the customer or applicant has the resources available to pay the bill.

(2) If the utility believes that a customer or applicant is not eligible for a payment agreement because he or she has the resources to pay the bill, it may seek a determination from the commission or its designee, in accordance with the following procedures:

(i) the utility must notify the customer or applicant and the commission or its designee in writing of the reason for its belief;

(ii) the utility must give the customer or applicant written notice summarizing the procedures under this paragraph in clear and understandable language;

(iii) the commission or its designee will forthwith make a determination as to whether the customer or applicant has the resources available to pay the bill;

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(iv) until such a determination is made by the commission or its designee, the utility must postpone any termination, disconnection or suspension activity, restore service or provide service, as applicable, as long as the customer or applicant pays current bills, and a down payment and monthly installments consistent with subparagraph (c)(2)(ii) of this section, or such other amounts established by the commission or its designee.

(c) *Terms of agreement.* (1) A payment agreement shall obligate the customer to make timely payments of all current charges.

(2) A payment agreement shall either contain:

(i) the specific terms for payment of the amount covered by the agreement mutually agreed upon by the utility and the customer or applicant after negotiation pursuant to paragraph (a)(1) of this section; or

(ii) a down payment up to 15 percent of the amount covered by the payment agreement or the cost of one half of one month's average usage, whichever is greater; unless such amount is less than the cost of one half of one month's average usage, in which case the down payment may be up to 50 percent of such amount; and monthly installments up to the cost of one half of one month's average usage or one tenth of the balance, whichever is greater.

(3) The cost of one month's average usage shall be calculated by averaging the cost of service over the prior 12 months.

(d) *Form of agreement.* A payment agreement form shall in clear and understandable language and format contain the following information:

(1) that the utility is required to offer a payment agreement that the customer or applicant is able to pay, considering his or her financial circumstances, and that the agreement should not be signed if the customer or applicant is unable to pay its terms;

(2) that if the customer or applicant demonstrates financial need, alternate terms will be available, a down payment may not be required and installments may be as low as \$10 per month above current bills;

(3) that assistance to pay utility bills may be available to recipients of public assistance or supplemental security income from a local social services office;

(4) that if the customer or applicant is unable to pay the terms of the agreement, or if for any other reason the customer or applicant wishes to discuss the agreement, the customer or applicant should call the utility at a specified telephone number and that if any further assistance is needed, the customer or applicant should call the commission at a specified telephone number;

(5) that by signing and returning the form together with any required down payment to the utility within the required time period, the customer or applicant will be entering into a payment agreement, and by doing so, will avoid termination, disconnection, or suspension of service;

(6) the date by which the copy signed by the customer, and any applicable down payment, must be received by the utility in order to avoid termination of service, if applicable; provided, however, that such date may not be less than six business days after the agreement is sent by the utility;

(7) the utility's policy if the agreement is not signed and returned as required;

(8) the total amount due, the required down payment, if any, and the exact dollar amount and due date of each installment;

(9) that if the customer or applicant fails to comply with the terms of the payment agreement, the utility will take steps to terminate service;

(10) that the customer or applicant has a right to immediate enrollment on a levelized payment plan. This notice must be placed close to the signature line, include a conspicuous check-box option, and give a specified telephone number to call the utility for more information. A brief explanation of the levelized payment plan, consistent with section 11.11 of this Part, must accompany the agreement; and

(11) that if the customer or applicant later can demonstrate that his or her financial circumstances have changed significantly because of conditions beyond his or her control, the utility must amend the terms of the agreement to reflect such changes.

(c) *Broken agreements.* (1) If a customer fails to make timely payment in accordance with a payment agreement, the utility must send a reminder notice at least eight calendar days prior to the day when a final notice of termination, disconnection, or suspension will be sent, stating in conspicuous bold type that:

(i) the customer must meet the terms of the existing payment agreement by making the necessary payment within 20 calendar days of the date payment was due or a final termination, disconnection or suspension notice may be issued;

(ii) if the customer can demonstrate that he or she is unable to make payment under the terms of the payment agreement because his or her financial circumstances have changed significantly because of conditions beyond his or her control, the customer should immediately contact the utility at a specified telephone number because a new payment agreement may be available.

(2) If by the 20th calendar day after payment was due, the utility has neither received payment nor negotiated a new payment agreement, the utility may demand full payment of the total outstanding charges and send a final termination, disconnection or suspension notice in accordance with section 11.4(a) and/or (b) of this Part stating in conspicuous bold type:

(i) if the customer can demonstrate that he or she is unable to make payment under the terms of the payment agreement because his or her financial circumstances have changed significantly because of conditions beyond his or her control, the customer should immediately contact the utility at a specified telephone number because a new payment agreement may be available;

(ii) that assistance to maintain utility service may be available from a local social services office;

(iii) that before the social services office will provide assistance, the customer generally must provide the utility with information showing assets, income and expenses to evaluate whether the customer is entitled to a new payment agreement; and

(iv) either the address and telephone number of the appropriate social services office, or the local social services information number.

(3) Any final termination notice sent because the customer has broken an agreement negotiated pursuant to paragraph (a)(1) of this section and which required payment over a shorter period than the subparagraph (c)(2)(ii) of this section standard agreement for that customer would allow, must also be accompanied by a written offer of a new agreement to pay the outstanding balance in monthly installments calculated in accordance with subparagraph (c)(2)(ii) of this section.

§ 11.12. Residential service deposits

(a) For the purposes of this section, a *new residential customer* is an applicant. A *seasonal customer* is a person who applies for and receives