STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations **CASE 17-E-0238**
of Niagara Mohawk Power Corp.
dba National Grid for Electric Service

Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations **CASE 17-G-0239**
of Niagara Mohawk Power Corp.
dba National Grid for Gas Service

TESTIMONY OF WILLIAM D. YATES, CPA

FOR

PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.

Dated: August 25, 2017

Table of Contents

I. INTRODUCTION AND OVERVIEW 3

II. THE UTILITY UNAFFORDABILITY CRISIS 12

III. CUSTOMER/FIXED CHARGES 19

IV. AMI, SERIOUS/CHRONIC MEDICAL CONDITIONS 20

IV. COLLECTIONS PRACTICES 26

A. Collection Arrangements vs. Payment Agreements 26

B. Non-Enforceable Payment Agreements 49

IV. CONCLUSION 79

I. INTRODUCTION AND OVERVIEW

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND IDENTIFY FOR WHOM YOU ARE PRESENTING TESTIMONY IN THIS PROCEEDING.

My name is William D. Yates, my office address is at Public Utility Law Project of New York, Inc., 90 South Swan Street - Suite 401, Albany, NY 12210. I am presenting testimony in this proceeding for the Public Utility Law Project of New York, Inc. (PULP).

Q. PLEASE DESCRIBE PULP AND YOUR RELATIONSHIP TO THE ORGANIZATION.

A. PULP is a New York not-for-profit corporation that was formed in 1981. Its primary focus is to promote and defend the legal rights of residential utility consumers by educating the public, regulators and elected officials about the impacts of utility rates, conducting research on the rights and energy burden of utility consumers, and advocacy with an emphasis on the rights and needs of low income utility consumers. I have been employed by PULP in various capacities since July of 1990. I am currently Director of Research for PULP.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND, YOUR PROFESSIONAL QUALIFICATIONS, AND EMPLOYMENT HISTORY?

A. I am a graduate of Colgate University (B.A. in History, 1982) and a graduate of the New York University Stern School of Business Administration (M.S. in Accounting, 1982). I am a Certified Public Accountant (CPA), licensed to practice in New York State since 1987, and I am a member of the American Institute of Certified Public Accountants (AICPA).

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NEW YORK STATE PUBLIC SERVICE COMMISSION?

A. Yes, I have provided testimony before the Public Service Commission ("PSC" or "Commission") on behalf of PULP in a number of prior rate proceedings, including the following cases in 2012, 2013, 2016 and 2017:

2012 - Cases 12-E-0201 and 12-G-0202 (Niagara Mohawk, a/k/a Nat'l Grid-Upstate);

2013 - Cases 13-E-0030 and 13-G-0031 (Con Edison);

2016 - Cases 16-E-0058 and 16-G-0059 (Nat'l Grid-NY; and Nat'l Grid-LI);
Cases 16- E-0060 and 16-G-0061 (Con Edison);
Case 16-G-0257 (Nat'l Fuel Gas); and
2017 – Case 17-E-0238 and 17-G-0239 (Niagara Mohawk; testimony pending)
Case 17-E-0459 and 17-G-0460 (Central Hudson; testimony pending)

In 12-E-0021 and 12-E-0202, I testified regarding the experience of utility customers of Niagara Mohawk who enter into contracts for "commodity" (or "supply") with energy service companies ("ESCOs"). The testimony I provided in that case was the first time evidence of ESCOs systematically charging more than the utility was put forward in a PSC rate case.

In 13-E-0030 and 13-G-0031, I testified regarding the Joint Proposal's low-income assistance changes, and data reflected in Collection Activity Reports filed monthly by Con Edison concerning its residential customers with arrears who were at risk of actual or threatened interruption of utility service.

In cases 15-M-0127, 12-M-0476 and 98-M-1343, I am still analyzing and constructing my testimony on ESCO excess electric and gas charges, which is anticipated to be filed in September of 2017.

In Cases 16-G-0058 and 16-G-0059, I testified regarding affordability issues, HEFPA matters and rate design in the KEDNY and KEDLI service areas of National Grid, and I provided testimony concerning the cost of SIRs and superfund site cleanup.

In Cases 16-E-0060 and 16-G-0061, I testified regarding affordability issues, HEFPA matters and rate design in the Con Edison service area,

In Case 16-G-0257, I testified concerning affordability issues, rate design and low income program funding in the National Fuel Gas service area.

In Cases 17-E-0238 and 17-G-0239, the details of my testimony are set forth below.

In Cases 17-E-0459 and 17-G-0460, I am still analyzing and developing my testimony, which is pending.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. My testimony examines and offers recommendation in several areas: (1) evidence regarding the difficulties a large number of the Company's customers, in particular, low-income, fixed-income and moderate-income customers, are having paying their utility bills (the Unaffordability Crisis); (2) the Company's policies and application of collections methodologies, deferred payment agreements, replevins and terminations (HEFPA Compliance); (3) the potential impact of a lowered “fixed charge” or “Customer Charge,” (4) discuss briefly issues related to the Company’s handling of customers with serious/chronic medical conditions, and (5) will make a few observations about the Company’s planned AMI rollout.

Q. ARE YOU SPONSORING ANY EXHIBITS?

A. Yes. I am sponsoring 7 exhibits:

(**WDY-01);** Comparison of Major Characteristics of HEFPA-compliant deferred payment agreements (DPAs) with Company “Collection Arrangements” and “Payment Agreements”;

(WDY-02); Collection Activity Reports (CARs) submitted by the Company and other utilities to the New York State Public Service Commission and obtained through FOIL or from the Commission’s DMM website for Case 91-M-0744; and

(WDY-03); Responses to various PULP information requests (I/Rs) by the Company.

(WDY-04); New York State Annual Poverty Report, New York State Community Action Association, 2017.

(WDY-05); United Way ALICE Report – New York, 2016.

(WDY-06); National Grid, June 1, 2017 Procedural Conference Presentation.

(WDY-07); Company responses to PULP’s discovery requests labeled PULP-NIMO 58-65.

Q. PLEASE PROVIDE A BRIEF OVERVIEW OF THE SOURCES YOU REVIEWED THAT LED YOU TO MAKE YOUR FINDINGS AND FORM YOUR RECOMMENDATIONS.

A. As discussed in more detail in the remainder of my testimony, I reviewed information from several sources that provided evidence that many of the Company's customers cannot afford their utility bills. Sources included monthly Collections Activity Reports (CARs) for years 2003 through 2016 submitted by the Company to the Public Service Commission (PSC or Commission) either obtained by PULP from the Company during discovery in this proceeding (See PULP-6 LBJ-6 BULI-156 Response) or from the Department of Public Service (DPS) through requests under the Freedom of Information Law (FOIL), or by use of the DPS "department matter manager" (DMM); responses to information requests (I/Rs) submitted by PULP and other parties; the 2017 New York State Poverty Report of New York's Community Action Association (CAPs); discovery requests by other parties to this proceeding and the Company's responses; and, other publicly available information. Using these sources, I analyzed indicia of unaffordability in the Company's service area and other factors, such as:

- Increased residential service terminations each year from 2012 through 2016, including a significant and disproportionate rise in service terminations in 2015 – 2016 directed at customers participating in one of the Company's low-income assistance (LICAAP) plans;
- Persistent past-due balances (arrears) owed by 12-15% of its residential customers averaging $200 million or more annually since 2009;
- Lack of sufficient access to DPAs; and
- Pervasive use by the Company of non-HEFPA compliant "Collection Arrangements" and "Payment Agreements" (hereinafter also referred to collectively as "Non-HEFPA Payment Plans") which have, since at least 2003, subjected customers eligible for DPAs (in particular, LICAAP customers) to unnecessary late payment charges, extra cash flow burdens and risk of collections measures - including service termination – but have no legal standing under HEFPA.

Q. WHAT HAS YOUR ANALYSIS DETERMINED REGARDING THE RELATIONSHIP BETWEEN THE AFFORDABILITY PROBLEMS IN THE COMPANY'S SERVICE AREAS AND THE LACK OF SUFFICIENT ACCESS TO DPAs FACED BY LARGE NUMBERS OF THE COMPANY'S CUSTOMERS?

A. Simply put, the Company has adopted various collection methods for managing customer debt. I do not believe the record and/or the Company's responses prove that all methods adopted are strictly HEFPA compliant in the context of deferred payment agreements ("DPAs") offered by the Company. Additionally, my data shows that the use of non-HEFPA compliant DPAs has contributed to an increase of the Company's uncollectible debt balance, and also, an increase in the number of the Company's terminations overall. As is relatively obvious, the amount of arrears on the Company's balance sheet, and the number of terminations made within a specific period of time, particularly a constrained period of time, directly contributes to the affordability crises because the combination of large numbers of financially challenged households, and growing debt, leads directly to more shut-offs.

Q. WHAT MAKES A DPA "HEFPA COMPLIANT"?

A. HEFPA compliant DPAs are written deferred payment agreements to pay outstanding utility charges over a specific period of time. Before a utility may terminate, deny an application for service, or refuse to reconnect service because of a customer's arrears, it must first offer a DPA to the residential applicant or customer. Failure to offer a DPA before terminating service to a customer makes the termination unlawful, and is grounds for a complaint to both the utility and the PSC, to restore service pending restitution of new termination procedures that comply with the law. Although a utility need not offer a DPA to any customer whom the PSC determines is able to pay their bill, nor to any customer who has defaulted on an existing, signed DPA, certain conditions exist. If a customer rejects a proffered utility DPA on financial grounds, the utility may require the customer to complete a confidential, financial disclosure form to document assets, income and expenses.

The content of a DPA as required by HEFPA is very specific. The payment terms must be specified, including any down payment required. By law, the down payment cannot exceed the lesser of half the balance due or the amount for three months service. Additionally, the DPA must state that it is affordable and should not be signed unless the customer is unable to pay under its terms. The DPA must also state that alternate terms may be available if financial need is shown, including a waiver of any down payment and installment payments as low as $10 per month. The DPA must state that public assistance and social security income recipients may receive help form a local district social service office. Finally, the DPA must state certain precautions such as the customer's failure to meet the terms of the DPA will result in termination of utility service.

Q. WHY AREN'T THE COMPANY'S COLLECTION PRACTICES, IN YOUR OPINION, NOT STRICTLY ADHERING TO HEFPA?

Non-HEFPA Payment Plans subject customers eligible for DPAs (in particular, LICAAP customers) to unnecessary late payment charges, extra cash flow burdens and risk of collections measures - including service termination - but have no legal standing under HEFPA.

For example, the Company's Customer Service System (CSS) defaults to sending "Standard Payment Agreement" offers before the Company documents that it has taken reasonable steps to contact customers in an effort to negotiate fair and equitable DPAs tailored to customers' financial circumstances, as required by HEFPA.

Additionally, the Company's CSS system still retains the functionality to create and maintain oral payment agreements, not written agreements as required by HEFPA, and other Non-HEFPA Payment Plans it considers "non-enforceable". Though the Company states that such plans have not been used since 2010, Attachment 2 to its response to DPS-580 (the "CSR Training Materials") were last updated in 2015 and still include instructions on the creation and maintenance of these

Non-HEFPA Payment Plans, including steps to determine whether or not a particular plan is "enforceable".

It is also unclear whether the Company makes 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, as required under 16 NYCRR § 11.l0(a)(1), prior to making a written standard offer of a deferred payment agreement.

Q. WHAT ARE YOUR RECOMMENDATIONS IN THE CONTEXT OF THIS RATE CASE?

A. The Company's proposed rate increase should not be approved without the Company's agreement, or the Commission's requirements that the Company make the following changes:

1. The Company should cease the use of all Non-HEFPA Payment Plans;
2. The Company should agree to commence the process for executing DPAs electronically (e-DPAs), based on the successful pilot program conducted by National Fuel Gas in Case 13-G-0016[1], as elucidated in the Commission's *Order Modifying Replevin Acts and Practices* in Case 16-M-0501 which will be undertaken by Consolidated Edison New York this year.[2]
3. The Company should modify its customer service procedures for negotiation of DPAs such that:
    a. Prior to sending final termination notices (FTNs) to residential customers whose accounts are past due, the Company should inform these customers – directly and in writing by surface mail (supplemented, as applicable, by email) - of their rights under HEFPA; in particular to DPA;

[1] See: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=41790
[2] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={11B91D1C-2FB7-4D12-850E-824D43E6DA39}

b. The Company's customer service representatives (CSRs) responding to customers' phone, email/website, in-person or other forms of inquiry about their resolving their arrears, should be required to read a statement at the beginning of each interaction explaining the customer's rights under HEFPA; in particular to DPA;

c. Phone calls between customers and CSRs should be recorded, to the extent permitted by law; and

d. All agreements between customers and the Company to settle past due balances should be confirmed directly and in writing by surface mail (supplemented, as applicable, by email).

4. The Company's proposed performance incentive measuring the rate of service terminations and total uncollectible expense, as described in its Shared Services Panel Testimony, should be rejected. (Shared Services Panel Testimony at 29-32)

Q. WHAT IS THE AMOUNT OF SERVICE TERMINATIONS OF THE COMPANY?

A. They are as follows:

1. The Company's residential service terminations increased each year from 2012 – 2016, reaching 64,634 by 2016 – higher than any year since 2004. In 2015, the Company's residential service terminations were the highest of the six combined electric and gas utilities in New York State as a percent of average customers. In 2016, service terminations as a percent of average residential customers rose to 4.35%.
2. In 2015 and 2016, LICAAP customers were subject to more than 25% of all distinct termination "instances" of service termination, however, based on the Company's CARs, it can be estimated that these customers comprise only about 7% of total residential customers.
3. The Company has experienced a persistent level of past-due balances (arrears) owed by 12-15% of its residential customers averaging $200 million or more annually since 2009. During this period, arrears per residential customer increased 21%, from $865 to $1,050.

Q. DURING THIS SAME PERIOD OF TIME ANALYZED FOR TERMINATIONS, HOW MANY HEFPA COMPLIANT DEFERRED PAYMENT AGREEMENTS WERE ARRANGED WITH CUSTOMERS?

A. The average number of residential customers with DPAs dropped forty percent (40%) between 2010 and 2016. As a percent of customers in arrears, customers with DPAs dropped from 41.9% to 29.0% in 2015, the lowest of the six combined service electric and gas utilities in New York State.

Q. DURING THIS SAME PERIOD OF TIME ANALYZED FOR TERMINATIONS, HOW MANY ALTERNATIVE COLLECTION ARRANGEMENTS OFFERED BY THE COMPANY (WHICH YOU REFER TO AS "NON-HEFPA COMPLIANT") WERE ARRANGED WITH CUSTOMERS?

A. Non-HEFPA Payment Plans have increased dramatically since 2003. They now constitute a substantial majority of all payment arrangements and agreements. Additionally, a 2015 internal audit report by the Company found inconsistently applied accepted practices around deferred payment agreement activation. Management Audit RE: Collections See response to DPS-141 (Inconsistently applied accepted practice around deferred payment agreement activation.)

II. THE UTILITY UNAFFORDABILITY CRISIS

Q. HOW LARGE IS THE COMPANY'S SERVICE TERRITORY?

A. Niagara Mohawk serves more than twenty-five Upstate counties in whole or in part, with gas or electric service, or combined service.[3] The Company has approximately 1.6 million electric customers and 600,000 gas customers.

Q. ARE THERE ANY LARGE CITIES IN THE COMPANY'S SERVICE TERRITORY?

A. Yes. The Company serves several distinct regions of Upstate New York, and each region contains at least one large urban area of more than 30,000 residents.

In the Capital Region, the cities of Albany (98.468), Schenectady (67,735), and Troy (49,933) taken together, yield a population of just under 250,000 in urban areas.

In Central New York, the cities of Rome (32,916), Syracuse (144,564) and Utica (61,628) taken together, yield a population of just approximately 240,000 in urban areas.

In Western New York, the cities of Buffalo (259,517) and Niagara Falls (49,435 yield more than another 300,000 urban ratepayers. Added together, the Company serves approximately 800,000 individuals living in large cities.

Q. DO THE LARGE CITIES YOU HAVE PICKED ABOVE SHARE ANY IMPORTANT CHARACTERISTICS?

A. Yes. With the exception of the Western New York cities that do not receive gas service from the Company,[4] the cities selected are the largest population urban areas that receive gas service from Niagara Mohawk. Due to constrained fiscal resources, the cities selected are also strongly

[3] See, https://www9.nationalgridus.com/niagaramohawk/about_us/serviceterr_map.asp. And see, https://www9.nationalgridus.com/non_html/a2_map_usa.pdf.

[4] The Company does not provide gas service in twelve counties in Western New York, which are served by National Fuel Gas.

likely to need to reduce street lighting expenses through replacement of existing bulbs with LED installations, or by purchasing lights to end rental costs. To the extent such cities have underground plant, they are likely to have more such underground networks than smaller cities or rural areas, and are also more likely to have problems with said underground plant. Finally, as the Company rolls out AMI, the largest concentrations of such rollout will be in the selected cities, as will the added consumer costs, despite the current and presumed future inability of many of the cities' residents to afford their utility and other vital bills.

Q. WHY IS IT IMPORTANT THAT THESE LARGE CITIES RECEIVE GAS SERVICE FROM THE COMPANY?

A. There are several reasons to focus upon the large cities in the Company's territory. First, with the exception of Buffalo, all of these cities and their close environs are connected to the Company's gas infrastructure. Second, the Company's proposed double-digit gas delivery increase, will fall most heavily upon these large cities, and will be distributed along a line essentially following the Thruway/Erie Canal from Albany and Rensselaer to Syracuse and up into Oswego and Jefferson Counties. On the Albany end, the gas or combined gas/electric service ascends up past Saratoga Springs (Saratoga, Warren and Washington counties) and south to Hudson (Columbia County). Finally, of the large municipalities in the Company's service areas, the large urban areas have some of the highest indicia of unaffordability.

Q. DO THESE CITIES HAVE ANY INDICIA OF UNAFFORDABILITY?

A. Yes. I will outline the affordability concerns of the major cities in the Company's service territory, and then I will subsequently examine some of the more economically challenged counties.

In the Capital Region, the City of Albany[5] has a poverty rate of 26.8%, with 35% of children under 18 living in poverty, 12.6% of seniors living in poverty, and 47.3% of woman-headed households with children live in poverty. The City of Schenectady[6] has a poverty rate of 22.8%, with 40% of children under 18 living poverty, 9.5% of seniors living in poverty, and 51.7% of woman-headed households with children live in poverty. In the City of Troy,[7] the poverty rate is 26.1%, with 40.7% of children under 18 living in poverty, 9.7% of seniors living in poverty, and 51.5% of woman-headed households with children living in poverty.

In Central New York, the City of Rome[8] has a poverty rate of 18.6%, with 28% of children below 18 living in poverty, 9.8% of seniors living in poverty, and 43% of woman-headed households with children living in poverty. The City of Syracuse[9] has a poverty rate of 34.8%, with 49.6% of children below 18 living in poverty, 16.7% of seniors living in poverty, and 54.5% of woman-headed households with children living in poverty. In the City of Utica,[10] the poverty rate is 32%, with 49.8% children under 18 living in poverty, 16% of seniors living in poverty, and 57.3% of woman-headed households with children living in poverty.

In Western New York, the City of Buffalo[11] has a poverty rate of 31.4%, with 48.9% of children under 18 living in poverty, 15.7% of seniors living in poverty, and 54.3% of woman-headed households with children living in poverty. The City of Niagara Falls[12] has a poverty rate of 26.7%, with 42.5% of children under 18 living in poverty, 10% of seniors living in poverty, and 58% of woman-headed households with children living in poverty.

---

[5] See, the 2017 New York State Annual Poverty Report of the New York State Community Action Association, at p. 72 (hereafter "Poverty Report"). The Poverty Report relies upon data from the U.S. Census – American Community Survey reports from 2011-2015.
[6] See, Poverty Report at p. 100.
[7] See, Poverty Report at p. 102.
[8] See, Poverty Report at p. 98.
[9] See, Poverty Report at p. 101.
[10] See, Poverty Report at p. 103.
[11] See, Poverty Report at p. 76.
[12] See, Poverty Report at p. 90.

Q. WHY IS IT IMPORTANT THAT THERE ARE LARGE NUMBERS OF HOUSEHOLDS IN THESE LARGE CITIES THAT HAVE TROUBLE PAYING THE UTILITY AND OTHER BILLS?

A. Because with the exception of Buffalo, these cities are the largest municipal entities in the Company's gas and combined electric/gas service areas, and their populations will receive the largest part of the Company's double-digit gas delivery charge increase. For municipalities with large numbers of residents that are unable to afford their current bills, an increase of the size requested in this rate case could drive them into financial crisis. As a practical matter that means the potential of increased homelessness in the cities, and the necessity to increase safety net expenses. In counties with large numbers of residents gripped in an unaffordability crisis, under the impact of a double-digit rate increase like the one proposed in this case, Social Service Law 131-S payments ("One-Shots") will increase vastly, straining the counties' budgets.

Q. ARE THERE ANY RURAL COUNTIES OR COUNTIES IN THE COMPANY'S SERVICE TERRITORY WITH SMALLER URBAN AREAS WITH SIMILARLY GRAVE INDICIA OF UNAFFORDABILITY?

A. Yes.

In Central-Northern New York, there is Franklin County, which is served by the Company with electricity, the poverty rate is 20.3%, 30% of children under 18 live in poverty, 10.7% of seniors live in poverty, and 49% of woman-headed households with children present live in poverty.[13] In St. Lawrence County, also served by the Company for electricity, the county poverty rate is 19.4%, 27.5% of children under 18 live in poverty, 9% of seniors live in poverty, and 43% of woman-

[13] See, Poverty Report at p. 24.

headed households with children present live in poverty.[14] In Oswego County, the county poverty rate is 18.6%, 28% of children under the age of 18 live in poverty, 7% of seniors live in poverty, and 50% of woman-headed households with children present live in poverty.[15]

In Western New York, there is Cattaragus County, which is served by the Company with electricity, has a county poverty rate of 18.3%, and 27.7% of children under the age of 18 live in poverty, 10% of seniors live in poverty, and 41% of woman-headed households with children live in poverty.[16] In Orleans County, the poverty rate is 15.7%, 22% of children under the age of 18 live in poverty, 7% of seniors live in poverty, and 41.8% of woman-headed households with children present live in poverty.[17] Finally, in Chautaqua County, the poverty rate is 18.9%, 29.9% of children under 18 live in poverty, 7.9% of seniors live in poverty, and 49.4% of woman-headed households with children present live in poverty.[18]

There are also a number of other rural, urban and mixed counties in the Company's service territory that suffer from a similar crisis of affordability, and receive either a rate increase on electric service, gas service, or both, but I will not describe them all in detail here.

Q. ARE THERE ANY POPULATIONS IN THESE URBAN AREAS OR RURAL AREAS BESIDES THOSE LIVING BELOW THE POVERTY LEVEL THAT ARE HAVING DIFFICULTY PAYING THEIR UTILITY AND OTHER VITAL BILLS?

A. Yes. In 2016, the United Way updated its analysis of a population that is above the poverty line, but below the line that is able to afford to pay all of their vital bills.[19] That population is called

[14] See, Poverty Report at p. 57.
[15] See, Poverty Report at p. 45.
[16] See, Poverty Report at p. 12.
[17] See, Poverty Report at p. 44.
[18] See, Poverty Report at p. 14.
[19] See, United Way ALICE Report – New York, 2016 ("ALICE Report"). The ALICE Report is based upon data from the U.S. Census -- American Community Survey.

"Asset Limited Income Constrained Employed," or ALICE, which was formerly referred to as the "working poor." In New York, that population is one that has recovered significantly from the worst parts of the Great Recession and escaped from below the poverty line, but they have not reached a place where the affected families can afford to pay vital bills. Moreover, when the ALICE cohort is added to low/fixed-income households in many areas of New York, the percentage of households that cannot afford to pay their bills is increased by another 20-40%. In other words, in places like Albany County, when the 30% ALICE percentage is added to the City of Albany's poverty rate of 26%, it reveals that more than 50% of Albany ratepayers cannot afford their bills.[20] In Rensselaer County, adding the 33% ALICE percentage to Troy's 26% poverty rate, reveals 59% of ratepayers cannot afford their bills.[21] In Schenectady County, adding the 44% ALICE percentage to Schenectady's 22% poverty rate, it reveals that 66% of ratepayers cannot pay their bills.[22] Examining Rome[23] and Utica[24] in Oneida County, and Syracuse[25] in Onondaga County, the blended poverty plus ALICE percentages reveal that 49% (Rome), 66% (Utica) and 71% (Syracuse), of ratepayers cannot afford their bills. In Erie County and Niagara County, respectively, the blended percentages reveal that 63% (Buffalo)[26] and 57% (Niagara Falls)[27] of ratepayers cannot afford their bills. Finally, turning to the rural counties, and counties with smaller urban areas considered above, the blended rates for Cattaragus[28] and Chautaqua[29] counties in Western New York reveal that 45% (Cattaragus) and 47% (Chautaqua) of the counties' ratepayers cannot afford their bills. In Central and Northern New York, in Franklin,[30] Oswego[31] and St.

[20] See, ALICE Report at p. 154.
[21] See, ALICE Report at p. 190.
[22] See, ALICE Report at p. 193.
[23] See, ALICE Report at p. 183.
[24] See, ALICE Report at p. 183.
[25] See, ALICE Report at p. 184.
[26] See, ALICE Report at p. 166.
[27] See, ALICE Report at p. 181.
[28] See, ALICE Report at p. 218.
[29] See, ALICE Report at p. 220.
[30] See, ALICE Report at p. 230.
[31] See, ALICE Report at p. 252.

Lawrence counties,[32] the blended percentages are 44% (Franklin), 45% (Oswego) and 52% (St. Lawrence) of the counties' ratepayers cannot afford their bills.

Looked at it as a whole, it is important to note that the large urban areas and their surrounding counties would suffer substantially from an affordability crisis under the double-digit rate increase proposed by the Company. And, in Albany, Onondaga, Rensselaer and Schenectady counties, for example, customers already struggling to stay afloat financially will be subject to a double-digit percentage increase in electric delivery rates and a double-digit percentage increase in gas rates, in addition to the fact that as the largest urban areas with developed gas infrastructure, most of the cost of the Company's gas increase will land upon them. In the less urbanized counties outlined above, the increase will only be the Company's electric delivery rate increase. But even though the percentage of ratepayers below the poverty level may be at a lower percent than the large urban areas, the number of ratepayers in the ALICE category struggling with an affordability crisis is still large.

III. Customer/Fixed Charges

Q. PLEASE DISCUSS HOW THE COMPANY'S RATE DESIGN IS CONTRIBUTING TO THE UTILITY AFFORDABILITY CRISIS.

A. The Company's rate design feature high fixed costs of basic service and declining block rates for delivery service. It is well settled that rate designs based on high fixed basic service charges and flat and declining block rates for delivery service create affordability problems for low income customers, and act as a disincentive to conservation and energy efficiency initiatives. (See, National Consumer Law Center, Utility Rate Design, High Utility Fixed Charges Harm Low Income, Elders and Households of Color, av'l here: http://www.nclc.org/energy-utilities-communications/utility-rate-design.html; Also see, Cases 16-G-0058/16-G-0059, *Proceeding on*

[32] See, ALICE Report at p. 264.

Motion of the Commission as to the Rates, Charges, Rules and Regulations of Brooklyn Union Gas Company dba National Grid NY for Gas Service and KeySpan Gas East Corp. dba Brooklyn Union Gas L.I. for Gas Service, William D. Yates Direct Testimony, filed May 20, 2016).

Q. HOW WOULD INCLINING BLOCK RATE DESIGNS HELP MAKE UTILITY SERVICE MORE AFFORDABLE TO CUSTOMERS?

A. Lowering basic service charges and the rate charged for lower blocks of energy; while at the same time raising the price of delivery for higher blocks of energy has resulted in rate relief for lower usage customers – including low income customers.

Inclining block rate designs foster conservation among high usage customers – a goal that is consistent with the priorities set forth in the Public Service Commission's "Reforming the Energy Vision" or "REV" initiative.

Under inclining block rate designs, savings at lower usage blocks inure to the benefit of all ratepayers. For the Company, such a design – particularly if it also capped basic service charges at $10 per month – would substantially reduce the need for incremental low-income assistance by effectuating much of that assistance at lower usage levels through rate re-design. In addition, the cost to all conservation-minded ratepayers for any further low-income assistance necessary would be more than offset by their savings at low usage levels.

IV. AMI, Serious/Chronic Medical Conditions

A. Advanced Meter Infrastructure Deployment

Q. IS THE COMPANY PROPOSING THE ROLLOUT OF ADVANCED METER INFRASTRUCTURE ("AMI") A/K/A SMART METERS IN THIS CASE?

A. Yes. The Company has proposed a rollout to 100% of its approximately 1.7 million electric and 650,000 gas customer meters. (See, Investing in New York's Energy Future: NMPC Electric & Gas Rate Case Procedural Conference, Jun 1, 2017, presentation by the Company ("Procedural Conference Presentation"). The projected total cost of this implementation is $990 million, with $158 million anticipated to be incurred in FY2019-2020 which, if the Company receives a three year rate plan, will be in years 2 and 3. The total rollout is anticipated to begin in FY2018 and complete in FY2024.[33]

Q. DID THE COMPANY POSIT ANY BENEFITS FOR CUSTOMERS?

A. Yes. The Company asserted that customers would benefit through: enhanced energy management, reduced energy consumption, third-party programs and offerings, innovative rate design options, enablement of smart home devices, and improved customer service.[34] However, generally speaking, business cases that provide support for smart metering investments rely heavily upon operational savings from replacing or upgrading a company's meters to allow full digital remote readings. In the case at hand, the Company is replacing approximately 2.3 million "drive-by" meters that have reached end of life. The benefit for such replacement will arguably accrue primarily to the Company, which will save significant expenditures upon the monthly reading of such meters by the Company's fleet of vehicles.

Q. DOES THE COMPANY DISCUSS OTHER BENEFITS AND THE "BUSINESS COST ANALYSIS" IN ITS ADVANCED METERING INFRASTRUCTURE PANEL?

A. Yes. Among the benefits discussed are integration of increasing levels of DER and other REV-related benefits, the Company also mentions remote disconnect, and is largely silent on the manner and scope of investment it will need to undertake to implement cybersecurity protections over the new types and large amounts of data the proposed new system will collect.

[33] See, Procedural Conference Presentation, at p. 25.
[34] Id.

Q. DO YOU AGREE WITH THE COMPANY'S PROPOSAL?

A. No. I believe that the Company's proposal is at this point, too expensive – in adding almost another $1 billion to the cost of this rate case – and there appears to have been little serious analysis put to the consideration of least and/or lesser cost alternatives that would provide the ratepayers with the potential environmental benefits that could arise from AMI, and the potential for enhanced demand management. The Company has also assigned a lengthy period of recoupment of the capital investment for the meters, but there is insufficient acknowledgement in the business case addressing the potential complications of the relative rapid lifecycles of digital and internet-enabled technology, which was demonstrated in California's initial rollouts of AMI. (See, Niagara Mohawk Power Corporation, Advanced Metering Infrastructure Pane, April 28, 2017.)[35]

B. Serious Medical Conditions

Q. DOES HEFPA PROVIDE ANY PROTECTION FOR CUSTOMERS WITH SERIOUS OR EMERGENT MEDICAL CONDITIONS?

A. Yes. Unlike many other states, New York's HEFPA protections provide a deferment of service termination if the consumer provides a doctor's letter possessing certain characteristics. (See, 16 NYCRR 11.5(a).) A deferment conferred by a doctor's letter that is compliant with HEFPA (see, e.g., 16 NYCRR 11.5(a)(3)), certifies to a medical emergency and is effective for thirty (30) days.

Q. DOES THE COMPANY TRACK THE NUMBER OF CUSTOMERS THAT HAVE A SERIOUS MEDICAL CONDITION/MEDICAL EMERGENCY?

A. Yes. The total number of accounts that are currently coded by the Company as having a medical condition as of August 4, 2017 is 433. (See Exhibit WDY-7, Company response to

[35] See, http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={224F9FD6-8CFA-47E4-98A9-88F5B0A149A4}.

discovery request PULP-NIMO 58). However, the total number of accounts that are currently coded as qualifying as elderly, blind, and/or disabled ("EBD") and/or as customers with life-sustaining equipment ("Life Support"), at least some of which might presumably fit within the first category, is 67,134. (See Exhibit WDY-7, Company discovery response to PULP-NIMO 59). Additionally, it appears that the Company does not know how many Special Needs Forms it has on file, or it appears that however many the Company does have on file, do not match the number of customers it has on file with a medical condition. The "Special Needs Form" is available on the Company's website (see: https://www.nationalgridus.com/upstate-ny-home/storms-outages/life-sustaining-equipment) and is apparently one of several methods used by the Company to "initiate the process of identifying customers who (i) qualify as elderly, blind and/or disabled ("EBD"), and/or (ii) who have life-sustaining equipment ("Life Support")".

Although, "the Company does not maintain records of EBD/Life Support accounts enrolled using the Notification of Special Needs form" (Company response to PULP-NIMO 59), it can provide the total number of accounts that were coded as elderly, blind, and/or disabled ("EBD") and/or as have life-sustaining equipment ("Life Support") at the close of each year from 2013 through 2016 is shown in the table below.

Year	Number of EBD and/or Life Support accounts
2013	83,569
2014	81,427
2015	75,930
2016	71,143

(See Exhibit WDY-7, Company response to PULP-NIMO 60)

Q. DOES THE COMPANY TRACK THE AMOUNT OF ARREARS OWED, OR DPAS ENTERED INTO, OR OTHER COLLECTIONS ARRANGEMENTS ENTERED INTO, BY CUSTOMERS WITH A SERIOUS MEDICAL CONDITION/MEDICAL EMERGENCY WHO ALSO HAVE A "SPECIAL NEEDS FORM" ON FILE?

A. No. (See Exhibit WDY-7, Company response to PULP-NIMO 61 & PULP-NIMO 62).

Q. DOES THE COMPANY TRACK THE NUMBER OF CUSTOMERS WITH A KNOWN MEDICAL CONDITION WITH A WRITTEN DEFERRED PAYMENT AGREEMENT WITH THE COMPANY?

A. Yes, the Company reports a total of 1,608 residential customers from April 2012 through March 2017 with a known medical condition with a written deferred payment agreement. (See Exhibit WDY-7, Company response to PULP-NIMO 63).

Q. DOES THE COMPANY TRACK THE NUMBER OF CUSTOMERS WITH A KNOWN MEDICAL CONDITION WITH SOME COLLECTION ARRANGEMENT WITH THE COMPANY (NOT A WRITTEN DEFERRED PAYMENT AGREEMENT)?

A. Yes, the Company reports a total of 260 residential customers from April 2012 through March 2017 with a known medical condition under some sort of collection arrangement with the Company. (See Exhibit WDY-7, Company response to PULP-NIMO 64).

Q. DOES THE COMPANY TRACK THE NUMBER OF SERVICE TERMINATIONS THAT IT CONDUCTS AGAINST CUSTOMERS WITH SERIOUS MEDICAL CONDITIONS/MEDICAL EMERGENCY?

A. Yes. Out of the 1,608 residential customers from April 2012 through March 2017 with a known medical condition with a written deferred payment agreement as reported by the Company

(Company's response to PULP-NIMO 63), roughly fourteen percent (14%), or 229 of those customers had their service accounts terminated. (See Exhibit WDY-7, Company's response to PULP-NIMO 65)

Q. WHAT IS THE IMPORTANCE OF TRACKING NUMBERS OF, ARREARS OWED BY, DPAS ENTERED INTO AND SERVICE TERMINATIONS CONDUCTED AGAINST CUSTOMERS WITH SERIOUS MEDICAL CONDITIONS/MEDICAL EMERGENCY?

A. There are two primary reasons why I believe it is necessary for an accurate analytical data profile, in the aggregate, to be developed for these customers. First, although the doctor's letter/certification only defers collection activity for thirty days per HEFPA, there are potential extenuating circumstances acknowledged in 16 NYCRR 11.5(a)(4-7) that could lead the company to avoid termination of the account for an extended period of time. Similarly, if a customer whose certification expires is nonetheless paying a DPA, the customers service may remain on for an extended period of time despite ongoing accumulation of arrears in the account. Although apparently, terminations are conducted against such customers in very high percentages.

Taken together, the arrears that could result in these situations could amount to large sums in the Company's service territory and across the State, potentially requiring the ratebasing of the cost of removing such uncollectible arrears from the Company's books. Second, it is my belief that the collection of data as proposed here has not been undergone in previous rate cases for this Company, or for the other major utilities in New York. Alternately, it would be very important to determine why the service termination activity conducted against such customers is so high.

Overall, I believe that such data collection is important and necessary, and while it is unlikely there will be enough data in the record of this case to arrive at a solution in this case, I believe there should be consideration of creating a workgroup in this case, or potentially on a statewide basis, to inquire into the questions presented in this section, and to what sort of remedies might be crafted to ameliorate the underlying problem(s).

IV. COLLECTIONS PRACTICES

A. Collection Arrangements vs. Payment Agreements

Q. WHAT PAYMENT OPTIONS DOES THE COMPANY OFFER TO RESIDENTIAL CUSTOMERS STRUGGLING TO PAY THEIR NIAGARA MOHAWK BILLS?

A. I will examine the different payment options offered by the Company to residential customers struggling to pay their utility bills through a simple hypothetical involving two different Niagara Mohawk customers, Mr. Smith and Ms. Jones. Each customer finds themselves unable to pay their $300 Niagara Mohawk bill due today. This isn't the first-time money has been tight for either of them: each is on a limited income, and each periodically has unplanned expenses that force them to prioritize their bill payments. While this has caused them to fall behind on their Niagara Mohawk bills in the past, each has always managed to catch up within a few months.

Mr. Smith calls Niagara Mohawk to explain his situation and ask for more time paying his bill. Since it's due today, the Company's customer service representative first requests him to pay the full balance. Mr. Smith explains that he can't do that, at which point the representative offers him a "*Collection Arrangement*" under which he would pay 50% of the balance today ($150), and the remaining $150 will be due within the next 42 days. He'll still incur late charges and receive final termination notices, but no order to terminate his utility service will issued by the Company as long as he honors the terms of his arrangement. This "Collections Arrangement" is a verbal offer made over the phone, and not written down, or signed, if agreed to by the customer.

Mr. Smith declines the offer because he can't pay a $150 down payment today. Instead, heasks the representative whether he can pay the $300 arrears due in regular installments starting next week. The representative explains that only customers with a credit rating[36] of "B" or higher, as reflected

[36] The internal credit rating issued by Niagara Mohawk's customer service system, which is based on the customer's risk factors and collection activities (Company Response to DPS-580, Attachment 2, Page 3).

by the Company's customer service system, are permitted to enter into a *Collection Arrangement* with no down payment and, unfortunately, his credit rating is a "C". Mr. Smith pauses, reconsiders his financial priorities, and determines that he may be able to make the down payment if he postpones filling a prescription for new medication he received from his doctor yesterday. He accepts the offer for the *Collection Arrangement*, makes the $150 down payment while on the phone, schedules his installment payments, and completes the call.

Ms. Jones' financial circumstances and credit rating are exactly the same as Mr. Smith's and her call with Niagara Mohawk customer service proceeds in exactly the same manner; except that, while pausing to consider the terms of her *Collection Arrangement* offer, she thinks to inquire about other alternatives there may be to this type of arrangement. When she asks the representative about such a possibility, she is informed that she is also eligible for a "*Payment Agreement*" that would allow her to lower her down payment to $45.00 and thereafter make ten monthly installment payments of $25.50 to resolve her arrears. All she has to do is sign an agreement form that reflects these terms and details a number of other protections afforded to her. As long as she keeps up her payments, she will not incur late payment charges and will not receive final termination notices during the period of the agreement. She's glad to hear that such an alternative exists, but she informs the representative that she can't even afford to make the $45.00 down payment today. At that point, the representative indicates to Ms. Jones that she may be eligible for a waiver of the down payment altogether, which can be determined while they're on the call. To make that determination, the representative requests Ms. Jones to gather information that will be uploaded to a personal financial statement on the Company's computer system. Ms. Jones provides the necessary information and finds out that she's eligible for a waiver of the down payment. She will simply need to pay thirty monthly installments of $10 to pay back her $300 of arrears. She accepts this option and completes the call. Three days later she receives, reads and signs the written minimum *Payment Agreement*. The next day she mails the signed agreement back to the Company.

Q. WHAT IS THE PROBLEM WITH THESE OPTIONS OFFERED BY THE COMPANY?

A. Mr. Smith and Ms. Jones should have been offered a HEFPA-compliant deferred payment agreement when the Company learned of their inability to pay their $300 bill due today. That DPA should have been tailored to the financial circumstances of each customer, taking into account factors relevant to whether the customer could pay the outstanding bill. Based on his financial circumstances, Mr. Smith might have been able to get a similar arrangement to Ms. Jones – no down payment, and $10 per month. Instead, he assumed that the "collections arrangement" offered by the Company was his best option, and he chose to pay the $150 down payment to prevent termination of service, at the expense of his health.

Q. WHY IS THE "PAYMENT AGREEMENT", AS FINALLY OFFERED BY THE COMPANY TO MS. JONES PREFERRABLE TO THE "COLLECTION ARRANGEMENT" OPTION ACCEPTED BY MR. SMITH?

A. The financial advantages of the minimum Payment Agreement option are obvious – Ms. Jones is able to eliminate her down payment, which immediately saves her $150. She can then spread out her installment payments equally over thirty months, at $10 per month, without incurring late payment charges. The cash flow savings to Ms. Jones during the first 42 days of the minimum Payment Agreement versus the Collection Arrangement is $292.25. The *timing* of this cash flow savings is especially important to Ms. Jones, since it is *today* that her cash flow problem is most acute. Mr. Smith's cash flow situation is the same, but he has to make a $150.00 down payment today.

Table 1 provides a comparison of the cash flow impact, by payment due date, of the Collection Arrangement versus minimum Payment Agreement type plans used to resolve each customer's past due balance in this hypothetical example.

Table 1 - Cash Flow Impact to Customer of Hypothetical "Collection Arrangement" vs. Minimum "Payment Agreement" used to Resolve $300.00 Past Due Balance

Payment Plan Type (Customer)	Type of Payment	Payment Due Date									
		Day 1	Month 1	42 days	Month 2	Month 3	Month 4	Month 5	Month 6	Each of Next 24 Months	Total
Collection Arrangement (Mr. Smith)	Down Payment	$150.00	$0.00	$150.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$300.00
	Installment Payment	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Late Payment Charge	$0.00	$0.00	$2.25	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$2.25
	Total	$150.00	$0.00	$152.25	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$302.25
Minimum Payment Agreement (Ms. Jones)	Down Payment	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Installment Payment	$0.00	$10.00	$0.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$300.00
	Late Payment Charge	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Total	$0.00	$10.00	$0.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$300.00
Difference:											
For Due Date Only		**$150.00**	**-$10.00**	**$152.25**	**-$10.00**	**-$10.00**	**-$10.00**	**-$10.00**	**-$10.00**	**-$10.00**	
Running Net Difference		**$150.00**	**$140.00**	**$292.25**	**$282.25**	**$272.25**	**$262.25**	**$252.25**	**$242.25**	**To:**	**$2.25**

Q. WHY DID MR. SMITH CHOOSE THE "COLLECTION ARRANGEMENT" INSTEAD?

A. In the hypothetical example, Mr. Smith made his decision to accept the offer of a Collection Arrangement because, unlike Ms. Jones, he did not think to ask whether, and therefore was not aware that, there was an alternative payment plan option available to him. Because Mr. Smith's financial circumstances and credit rating were exactly the same as Ms. Jones, he would also have been eligible for a Payment Agreement. Uninformed of the Payment Agreement option, he instead was placed in a position where he chose to re-prioritize his short term expenditures and accept the Collection Arrangement.

Q. HOW IMPORTANT ARE THE PROTECTIONS AFFORDED TO MS. JONES IN THE WRITTEN OFFER OF THE PAYMENT AGREEMENT SHE RECEIVED FROM THE COMPANY?

A. Extremely important. They are part of a comprehensive set of statutory rights and protections for residential electric and gas customers known as the "Home Energy Fair Practices Act" or "HEFPA", which itself is part of the New York State Public Service Law.[37] HEFPA is implemented and interpreted principally through New York Public Service Commission ("PSC") regulations and PSC orders, and is administratively enforced through PSC complaint and emergency Hotline procedures.[38]

The Payment Agreement chosen by Ms. Jones in the above hypothetical would be a part of the Company's implementation of the requirements set forth for "Deferred Payment Agreements" or "DPAs", which HEFPA defines as follows:

> *"*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."
> (16 NYCRR § 11.l0(a)(1))

In its training materials for its customer service representatives ("CSR Training Materials"), the Company defines Payment Agreements as follows:

> "Payment Agreements:
> While collection arrangements are similar for all customers, there are a number of different payment agreement types available based on customer history and household income in accordance with New York State Public Service Law. In a payment agreement, the customer will be resolving their balance in equal monthly installments on top of their future bills. A payment agreement may or may not require a down payment. Customers are not

[37] Public Service Law (hereinafter "PSL"), Article 2, §§4(1), 30-53, 66 and 80(1).
[38] Title 16 of New York Compilation of Codes, Rules and Regulations (hereinafter "16 NYCRR") Parts 11 and 12.

> charged interest while active on a payment agreement, will not receive collection notices and an order to terminate service for nonpayment will not be issued."
> (Company Response to DPS-580, Attachment 2, Page 2)

Q. YOU PROVIDED A COUPLE OF EXAMPLES OF HEFPA PROTECTIONS AFFORDED BY THE PAYMENT AGREEMENT IN THE HYPOTHETICAL SCENARIO ABOVE. CAN YOU DISCUSS THE OTHER PROTECTIONS THAT HEFPA STATES MUST BE INCLUDED IN *DPAS*?

A. The fundamental principle of customer protection that HEFPA requires be achieved through DPAs is elucidated in the statute as follows:

> "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."
> (16 NYCRR § 11.l0(a)(1)(i))

Broadly speaking, these required customer protections, which are detailed by the rest of 16 NYCRR § 11.l0, fall under four categories:

1. <u>Written evidence of agreement</u> between the Company and customer as to the terms and conditions by which the customer will resolve his or her arrears;
2. <u>Affordability</u>, achieved through fair and equitable negotiation between the Company and customer of a payment plan tailored to the customer's financial circumstances;
3. <u>Relief from collections measures</u> for the duration of the agreement, as long as the customer meets his or her obligations under the Payment Agreement; and
4. <u>Further protections</u> in the event of changes in financial circumstances beyond the customer's control.

Q. DOES HEFPA SAY ANYTHING ABOUT COLLECTION ARRANGEMENTS?

A. No. HEFPA does not contemplate anything other than a DPA being used, as the use of Non-HEFPA Payment Plans could undermine consumer protections in the law.

Q. HOW DOES THE COMPANY DEFINE A COLLECTION ARRANGEMENT?

A. In its CSR Training Materials, the Company defines Collection Arrangements as follows:

> "Collection Arrangements:
> In a Collection Arrangement, the customer is agreeing to resolve their entire balance, including the current bill within 36 – 42 days. Customers will continue to receive Disconnect Notices and will have interest charged on overdue balances while they are active on a collection arrangement, and the terms of the arrangement will not be reflected in future bills. As long as the terms of a collection arrangement are kept, an order to terminate service for nonpayment will not be issued."
> (Company Response to DPS-580, Attachment 2, Page 2)

Q. HOW DO THE HEFPA REQUIREMENTS SET FORTH FOR DPAS COMPARE WITH THE COLLECTION ARRANGEMENTS AND PAYMENT AGREEMENTS OFFERED BY THE COMPANY TO RESOLVE CUSTOMER PAST DUE BALANCES?

A. Exhibit ___(WDY-01) provides a side-by-side comparison of the major characteristics of HEFPA DPAs with the Company's Collection Arrangements and Payment Agreements.

Q. DO THE COMPANY'S COLLECTION ARRANGEMENTS MEET THE HEFPA REQUIREMENTS SET FORTH FOR DPAS?

A. No. Collection Arrangements do not meet the statutory requirements HEFPA mandates for DPAs. They are a different type of payment plan that has no legal standing under HEFPA and that does not provide the customer protections afforded by HEFPA DPAs.

Q. ARE THE COMPANY'S COLLECTION ARRANGEMENTS WRITTEN DEFERRED PAYMENT AGREEMENTS?

A. No. Collection Arrangements do not meet the statutory requirement that HEFPA sets for written Payment Agreements. According to the Company CSR training materials:

- Collection Arrangements are created in the Company's CSS system by CSRs through their oral (mainly telephone) interaction with customers. (Company Response to DPS-580, Attachment 2, Pages 4-16)
- The customer does not receive any communication from the Company confirming the terms of their Collection Arrangement, as evidenced by the training guidance for the CSR on Page 16:

> "
>
> Scripting for Collection Arrangement Calls
>
> The following script should be used when a establishing a Collection Arrangement and there is a Disconnect Notice on the account:
>
> *'Mr/Mrs…… to clarify our conversation before I process this transaction. Should you default on this Arrangement you may be required to pay the full balance due to prevent service interruption or to have your service restored.* ***You will not receive any written notification of this arrangement****.' (pause)*

'It would be helpful for you to write this information down, for your own reference.' (If necessary, allow time to get pen and paper)

'Mr/Mrs…… you have agreed to pay $XXX.XX on (date) and the balance of $XXX.XX on (date).'

"

(***Emphasis added***)

Further it is provided on Page 8 of the CSR Training Materials:

"Customer Contacts for Collection Arrangements

Customer contact information is critical for Collection Arrangements

If the customer defaults or the arrangement is changed, cancelled or completed, this would be the only record to contain the details of the original arrangement.

The contact must include:

- o Name of the person agreeing to the arrangement
- o Exact payment amounts and method of payment
- o Due dates

"

(***Emphasis added***)

Further instructions on Page 15 of the CSR Training Materials are provided when cancelling a Collection Arrangement:

"

> The Collection Arrangement is now cancelled. ***The only record that there was a Collection Arrangement is the original contact that was created when the arrangement was created***.
> "
>
> (***Emphasis added***)

Thus, the training materials clearly evidence that documentation of the original terms and conditions of Collection Arrangements between the Company and customer is entirely dependent on entry by CSRs in into a "Contact Information" screen. The Company's response to PULP-36 confirms the training materials' guidance by stating that:

> "All Company collection arrangements are offered verbally".
>
> (Company's response to PULP-36)

The Company's response to PULP-41 further confirms the training materials' guidance that the Customer Contact screen is the only place where the original terms of defaulted, changed, cancelled or completed arrangement can be retrieved:

> "The Company does not have the requested data regarding renegotiated or reinstated defaulted collection arrangements. Following a default on a collections arrangement, a new collection arrangement is established, when appropriate."
> (Company's response to PULP-41)

If the CSR fails to enter the original terms and conditions into the "Contact Information" screen, or enters them incorrectly, there is no accurate permanent record of such terms. In such a situation, one where the customer receives no independent documentation of the Collection Arrangement, the door is left open to disputes due to collection representative data entry errors, misinterpretation of the terms to which the customer agreed, and other deficiencies, and unnecessary exposure to the possibility that collections actions (which may include service termination) may resume at some point even though they may have made a good faith effort to honor the terms of the arrangement. Further, there is no indication in the "Contact Information" screen that any of the information provided in HEFPA DPAs to customers about of their rights and what other resources for assistance they might access should they require them were disclosed during the interaction between the customer and the CSR.

Based on the above evidence, it is clear that the Company's Collection Arrangements fail to meet the statutory requirements set forth by HEFPA that specifically require DPAs to be written.

Q. ARE THE COMPANY'S COLLECTION ARRANGEMENTS AFFORDABLE AND ACHIEVED THROUGH FAIR AND EQUITABLE NEGOTIATION BETWEEN THE COMPANY AND CUSTOMER OF A PAYMENT PLAN TAILORED TO THE CUSTOMER'S FINANCIAL CIRCUMSTANCES?

A. No**.** There is no evidence that Collections Arrangements meet the statutory requirement that HEFPA sets for affordability, which is that a repayment plan must be arrived at through fair and equitable negotiation between the Company and customer of a payment plan tailored to the customer's financial circumstances. The elements included in Collection Arrangements that clarify they are inconsistent with HEFPA's requirements are as follows:

- There is no independent, written record of the agreement between parties as to its terms and conditions established at the formation of the arrangement, which makes it impossible to make a positive determination that the fair and equitable negotiations required by HEFPA took place;
- Collection Arrangements only last for a set and limited term, which does not support the creation of payment plans tailored to the customer's financial circumstances; i.e., they are short term in nature, only allowing 36 – 42 days to resolve the customer's

arrears, instead of allowing however long is necessary to resolve the arrears. (Company Response to DPS-580, Attachment 2, Page 4; Company Responses to PULP-31, 33)

- The amount of down payment required is based on the customer's *credit rating, as assessed by the Company*. Customers with an A or B credit rating are not required to make a down payment; while customers with a C or D credit rating are told they must provide a down payment of 50% of their arrears before they can obtain a Collection Arrangement, which clearly violates HEFPA's strictures concerning down payments. (Company Response to DPS-580, Attachment 2, Page 9; Company Response to PULP-31, Attachment 3, Page 1).
- The Company's policy is to use the customer's credit rating as what it terms a predictive tool to measure the risk, in its opinion, that customer will not fulfill the terms of their Collection Arrangement. Instead of a predictive tool however, the "prediction" may be a self-fulfilling outcome, where overly large down payments create an inability to meet the terms of a Collection Arrangement. (Company Response to DPS-580, Attachment 2, Page 3) <u>This is completely contrary to the intent of HEFPA; which is to provide customers with an affordable DPA tailored to their financial circumstances, because creating an affordable agreement helps avert the risk of failure to fulfill an agreement.</u> (16 NYCRR § 11.l0(a)(1)(i))
- CSRs are instructed to offer Collection Arrangements to customers *before* offering Payment Agreements. This was the situation encountered by Mr. Smith in the hypothetical scenario provided earlier.

Q. CAN YOU PROVIDE AN OUTLINE OF THE PROCEDURE USED IN OFFERING COLLECTION ARRANGEMENTS INSTEAD OF DPAS?

A. The Company's response to DPS-43 outlines this sequence of events:

"

1. Payment agreement options are available for residential customers who have an arrears balance and are unable to pay. ***Customers are initially offered short term collection arrangements***, also known as extension agreements, that allow for additional time to pay. ***If a customer cannot pay*** the arrears with a short term arrangement, the following procedures apply:

a. The customer is offered a standard agreement that provides for (i) a down payment in the amount of 15% of the balance or 50% of the average monthly bill, whichever is greater, and (ii) the remaining balance in ten installments.

b. If the customer is unable to pay per the terms of a standard agreement, then a documented financial statement is required from the customer. Financial statements are taken over the phone. Depending on the customer's monthly Form 103 cash flow, a minimum deferred payment agreement may be offered with a down payment as low as $0 and installments as low as $10. The customer is required to sign and return the payment agreement and may submit it via mail, fax, or email. Depending upon the terms, short term arrangements and payment agreements may be initiated via the web or telephone.

"

(Company Response to DPS-43, Page 1, ***Emphasis Added***)

Q. IS THERE ANY FURTHER EVIDENCE THAT RATHER THAN OFFERING DPAS AS IS REQUIRED BY HEFPA, THE COMPANY OFFERS COLLECTION ARRANGEMENTS INSTEAD?

A. Yes. The Company's CSR Training Materials provide further evidence that Collection Arrangements are offered before DPAs:

"

Active Customers

No previously defaulted payment agreement (or last agreement is refused)

Request full balance (offer Western Union Speedpay) or Pay by Phone

If unable, ***offer a Collection Arrangement (if eligible)***

If unable/not eligible, offer a "Negotiated Standard" payment agreement (use CSS)

"

(Company Response to DPS-580, Attachment 2, Page 26, ***Emphasis Added***)

The Company's "Negotiations/Payment Agreement Decision Table" confirms again that Collection Arrangements are offered before Payment Agreements:

"

Credit Score A and B

1. Ask the customer if they can pay the full balance within 42 days.

- If the customer accepts, offer up to a Standard 42-day collection arrangement.
- Ask the customer for specific amounts and dates of payment.

Credit Score C,D and E

1. Ask the customer to pay 50% of the total balance and provide proof of payment.

- Advise the customer no holds are placed on the account.

2. Once proof is received, offer up to a Standard 42-day collection arrangement on the remaining balance.

If the full balance cannot be paid within 42 days:

1. Offer "Negotiated Standard" payment agreement (Refer to: Offer Negotiated Standard action steps).
    - No Financial Statement is required
    - Do Not change the terms

"

(Company Response to PULP-31, Attachment 2, Page 1, ***Emphasis Added***)

Q. DID YOU TRY TO CONFIRM THROUGH DISCOVERY REQUESTS WHETHER OR NOT THE COMPANY INFORMED CONSUMERS OF THEIR RIGHT TO RECEIVE A DPA RATHER THAN SOME OTHER COMPANY-CREATED PAYMENT VEHICLE FIRST?

A. Yes. In response to PULP-34, which asked:

"

For all customers eligible to obtain DPAs, does the Company advise each of their eligibility; providing them with detailed descriptions of the similarities and differences between DPAs and collection arrangements, and soliciting their interest in negotiating a DPA before attempting to negotiate a collection arrangement with them? If not, please explain why not and for each month reported on Attachment 1, provide the number of customers who were not so advised; and the associated number and dollar amount of arrangements to which those customers were subject.

"

The Company's response was:

"

Response:

Niagara Mohawk uses a variety of methods to help ensure that all customers are aware of their payment extension options:

• The Company's Residential Rights and Responsibilities for National Grid Customers in New York State (the "Residential Rights & Responsibilities") brochure contains a section on Payment Agreements that educates customers on the availability of standard and Form 103 minimum deferred payment agreements, consumer advocates services, and rights to protection from termination. Welcome packets that include the Residential Rights & Responsibilities are sent to all new residential customers. The Residential Rights & Responsibilities brochure is updated and mailed to all customers annually, and is also available on the Company's website.

• The availability of deferred payment agreements is discussed on the last page of all residential bills under the section "Payment Programs."

• The Company's website maintains a page that explains both collection arrangements and deferred payment agreements: [https://www.nationalgridus.com/ Upstate-NY-Home/Bill-Help/More-Time-to-Pay].

• All residential customers are advised of the availability of payment extension options upon inquiry during customer service phone calls. All residential customers are advised of their eligibility for a deferred payment agreement and/or a collection arrangement upon inquiry during collection phone calls.

• A deferred payment agreement is automatically offered in writing to residential accounts receiving a disconnect notice, provided that the account has no record of a defaulted payment agreement within the prior 18 months.

While the Company notes inbound collections inquiries on individual account histories (see the response to PULP-1 (LBJ-3)), the Company does not maintain records of which inquiries included a request for payment option information, nor does it maintain records of which payment option was discussed first on the call.

"

(Company Response to PULP-34)

Q. DID THE COMPANY'S RESPONSE ANSWER THE QUESTION OF WHETHER OR NOT CONSUMERS WERE AFFIRMATIVELY INFORMED OF THEIR STATUTORY RIGHT TO A DPA?

A. No. While the Company may indeed possess a variety of methods to help ensure that all customers are aware of their payment extension options; that was not the question asked in PULP-34. PULP-34 asked the Company whether, for all customers ***eligible*** to obtain DPAs, it advised ***each*** of their eligibility; providing them with detailed descriptions of the similarities and differences between DPAs and collection arrangements, and soliciting ***their*** interest in negotiating a DPA ***before*** attempting to negotiate a collection arrangement with them. The question was not whether the Company has general purpose publications, notices on bills, or website information – all of which are useful ways of helping ***all*** customers become ***generally*** aware of their rights and responsibilities – but rather, whether it affirmatively advised customers of their specific HEFPA right to a DPA. That the Company's answer does not address the question appears to be a key procedural failure.

Q. IS IT POSSIBLE FOR CONSUMERS TO BE INFORMED OF THEIR HEFPA RIGHT TO A DPA DURING A CALL WITH A CSR?

A. Yes, it is possible, although it is unclear under what circumstances a consumer may be informed of their HEFPA rights in such a call. For example, as the Company states in response to PULP-34:

"All residential customers are advised of the availability of payment extension options ***upon inquiry*** during customer service phone calls",

and that

> "All residential customers are advised of their eligibility for a deferred payment agreement and/or a collection arrangement ***upon inquiry*** during collection phone calls."
>
> (Company Response to PULP-34, ***Emphasis Added***)

Q. DOES THIS MEAN THAT THE CUSTOMER DOESN'T LEARN ABOUT THEIR PAYMENT EXTENSION OPTIONS UNLESS THEY INQUIRE?

A. It is unclear. Returning to the case of Mr. Smith in the hypothetical scenario above: he made an uninformed decision to accept a Collection Arrangement, because he was not made aware of his eligibility for a HEFPA-compliant DPA. Should Mr. Smith and innumerable similarly situated customers be subject to disparate treatment compared to that of Ms. Jones and similarly situated customers that might simply inquire about the possibility of more affordable alternatives to a Collection Arrangement, and obtain a DPA tailored to their financial circumstances?

Q. IS IT POSSIBLE THAT WHETHER CUSTOMERS RECEIVE OR DO NOT RECEIVE THEIR HEFPA RIGHTS MIGHT DEPEND UPON THEM INQUIRING ABOUT THEIR RIGHTS, RATHER THAN BEING TOLD OF THEM AS IS REQUIRED BY HEFPA?

A. The answer cannot be determined. The final part of Company's statement is that it:

> "does not maintain records of which inquiries included a request for payment option information, nor does it maintain records of which payment option was discussed first on the call"
>
> (Company Response to PULP-34)

Q. IS THERE ANY EVIDENCE THAT COLLECTION ARRANGEMENTS MEET HEFPA'S STATUTORY REQUIREMENTS, OR POSSIBLY ARE COMPLEMENTARY TO THEM?

A. No. There is no evidence that Collections Arrangements meet the statutory requirement that HEFPA sets for affordability, achieved through fair and equitable negotiation between the Company and customer of a DPA tailored to the customer's financial circumstances. Instead, there is a sufficiency of evidence to the contrary.

- There is no written evidence of such fair and equitable negotiation;
- The time parameters for Collection Arrangements are short term in nature (up to 42 days), therefore they do not support the creation of DPAs tailored to the customer's financial circumstances;
- The amount of down payment required is based on the customer's credit rating, a predictive tool to measure the risk that customer will not fulfill the terms of their Collection Arrangement that is completely contrary to the intent of HEFPA; which is to provide customers with an affordable DPA tailored to their financial circumstances;
- Finally, CSRs are instructed to offer Collection Arrangements to customers before offering DPAs; and there is evidence that not all customers eligible for DPAs learn about this option as part of their interaction with the Company's customer service representatives to resolve their past due balances.

Based on the above evidence, it is clear that the Company's Collection Arrangements fail to meet the statutory requirement set forth by HEFPA for affordable DPAs.

Q. PLEASE DISCUSS THE DIFFERENCES BETWEEN THE COMPANY'S COLLECTION ARRANGEMENTS AND HEFPA DPAS PERTAINING TO RELIEF FROM COLLECTIONS MEASURES FOR THE DURATION OF THE AGREEMENT, AS LONG AS THE CUSTOMER MEETS HIS OR HER OBLIGATIONS UNDER THE DPA.

A. Collection Arrangements do not meet the statutory requirements of HEFPA DPAs because they do not provide relief from all collections measures while the customer is meeting their obligations under arrangement.

As described in the CSR training materials:

"

Customers will continue to receive Disconnect Notices and will have interest charged on overdue balances while they are active on a collection arrangement, and the terms of the arrangement will not be reflected in future bills. As long as the terms of a collection arrangement are kept, an order to terminate service for nonpayment will not be issued.

"

(Company Response to DPS-580, Attachment 2, Page 2)

Customers entering into Collection Arrangements do not receive relief from collections practices including the issuance of final termination notices ("FTNs") or the assessment of late payment charges. Customers are relieved from both these collections practices under a HEFPA DPA.

Based on this evidence, it is clear that the Company's Collection Arrangements fail to meet the statutory requirement set forth by HEFPA for DPAs that provide relief from all collections measures while the customer is meeting their payment obligations.

Q. PLEASE DISCUSS THE DIFFERENCES BETWEEN THE COMPANY'S COLLECTION ARRANGEMENTS AND HEFPA DPAS PERTAINING TO FURTHER PROTECTIONS IN THE EVENT OF CHANGES IN FINANCIAL CIRCUMSTANCES BEYOND THE CUSTOMER'S CONTROL.

A. Collection Arrangements do not meet the statutory requirements of HEFPA DPAs because they do not provide for further customer protections – i.e., modifications -- in the event that changes in financial circumstances beyond the customer's control impact the customer's ability to fulfill their obligations under the Collection Arrangement.

Although they can be modified,[39] Company policy is that Collection Arrangements cannot be reinstated or restored in the event of default; instead, a new Collection Arrangement must be set up. (Company Response to PULP-41).

As described in the CSR Training Materials, if the customer has a defaulted Collection Arrangement:

"The customer must pay a minimum of 50% of the arrears and provide proof of payment (receipt# or Western Union Speedpay confirmation#) BEFORE the Collection Arrangement can be set up for the remaining balance"
(Company Response to DPS-580, Attachment 2, Page 9)

Further, because no communications are sent by the Company to the customer about their Collection Arrangement, in the event of default no reminder notices are sent that alert the customer about their default prior to the issuance of an FTN, which is required under a

[39] The CSR training materials provide no guidance as to the policy or procedures regarding modification of Collection Arrangements.

HEFPA DPA. They also do not have the opportunity to cure their lack of payment within twenty days after the payment was due, as is required under a HEFPA DPA.

Based on this evidence, it is clear that the Company's Collection Arrangements fail to meet the statutory requirement set forth by HEFPA for DPAs that provide further protections in the event of changes in financial circumstances beyond the customer's control.

Q. What position does the Company take with regard to whether the greater use of Collection Arrangements complies with the statutory requirements set forth by HEFPA for DPAs?

A. In response to I/R PULP-54, which asked:

"Please provide any and all Company documents that describe with specificity how the Company's collection arrangements, such as those reported on Attachment 1, comply, or alternately do not comply, with the Home Energy Fair Practices Act (HEFPA) as set forth in Public Service Law, Article 2, §§4(1), 30-53, 66 and 80(1).";

The Company stated that:

"The availability of a short-term collection arrangement is provided by the Company in addition to the traditional Deferred Payment Agreement program set forth in Public Service Law, Article 2, §§4(1), 30-53, 66 and 80(1). The broadened repayment options enhance the Company's efforts "to negotiate terms tailored to the customer's financial circumstances," per HEFPA, §11.10 (a) (2), while remaining compliant with other provisions of §11.10 through continued availability of the traditional Deferred Payment Agreement."

(Company Response to PULP-54)

Even if, purely for the sake of argument, one credited the Company with believing that greater use of Collection Arrangements – at the expense of DPAs – actually enhances its HEFPA compliance, it is completely illogical that a shortened payment period and increased down payment could somehow increase affordability or somehow enhance the ability to negotiate a more affordable agreement. It must be concluded therefore that the Company's prioritizing of Collection Arrangements, which fail to meet the statutory requirements set forth by HEFPA for DPAs for all the reasons thus far provided, has undermined its HEFPA compliance.

Q. IN YOUR OPINION, BASED ON MORE THAN TWENTY-FIVE YEARS' EXPERIENCE WITH DPAS AND HEFPA, DO COLLECTION ARRANGEMENTS VIOLATE ARTICLE 2 OF THE PUBLIC SERVICE LAW (I.E., HEFPA)?

A. Yes. Collection Arrangements violate the statutory rules governing HEFPA Payment Agreements. HEFPA provides specific consumer protections for consumers in arrears, which I discussed above. In contrast, Collection Arrangements do not result in written evidence of agreement between the Company and customer as to the terms and conditions by which the customer will resolve his or her arrears.

Q. DO COLLECTION ARRANGEMENTS ENHANCE OR ENSURE AFFORDABILITY AS THE COMPANY ASSERTED IN RESPONSE TO PULP-54?

A. No. They do not ensure affordability, which is appropriately achieved through fair and equitable negotiation between the Company and customer of a payment plan tailored to the customer's financial circumstances. There is no relief from FTNs or late payment charges while the arrangement is in effect, even if the customer upholds the terms of the arrangement. Though active Collection Arrangements can be modified, there is no opportunity to restore/reinstate a defaulted arrangement should the customer's financial circumstances have changed for reason beyond their control, and customers who have defaulted on a Collection Arrangement must furnish a 50% down payment on the balance of the defaulted arrangement as a condition for receiving a new arrangement. Collections calls resume immediately upon default, and defaulting customers do not have the opportunity to cure their default by making the agreed upon payments within 20 days after due date. Customers who have not yet received their first FTN will have not also received a standard DPA offer from the Company that includes an explanation of their rights under HEFPA to a fair and equitable DPA.

B. Non-Enforceable Payment Agreements

Q. APART FROM THE DIFFERENCE BETWEEN THE COMPANY'S COLLECTION ARRANGEMENTS AND THE HEFPA STATUTORY CRITERIA FOR DPAS, HAS THE COMPANY CREATED ANY OTHER NON-COMPLIANT TYPES OF PAYMENT AGREEMENTS? TO PUT IT ANOTHER WAY, CAN YOU DETERMINE WHETHER ALL THE COMPANY'S POLICIES AND PRACTICES REGARDING DPAS MEET THE HEFPA REQUIREMENTS?

A. No. I cannot make that determination. Based on responses to PULP and DPS I/R requests, together with the DPA data I analyzed in the Company's monthly CARs, I cannot say that all the Company's policies and practices involving Payment Agreements meet the statutory requirements set forth by HEFPA for DPAs. In particular, the evidence provided by responses to I/Rs reveals a type of payment plan the Company calls a "Non-Enforceable Payment Agreement", which, like Collection Arrangements, was neither contemplated by HEFPA nor meets HEFPA requirements.

Q. WERE YOU ABLE TO DETERMINE HOW WIDESPREAD THE COMPANY'S USE OF "NON-ENFORCEABLE PAYMENT AGREEMENTS" IS, OR WAS?

A. No. Due to incomplete I/R responses regarding Non-Enforceable Payment Agreements as of the date of my testimony, and certain inconsistencies in responses for which I did receive responses, I cannot determine the extent to which the Payment Agreements in use by the Company may include ones that do not fully meet the statutory requirements set forth by HEFPA.

Q. WHAT IS A "NON-ENFORCEABLE PAYMENT AGREEMENT"?

A. The Company's CSR training materials define a Non-Enforceable Payment Agreement as:

"A payment agreement that does not have a signature or a Financial Statement indicating the plan is fair and equitable"
(Response to DPS-580, Attachment 2, Page 3)

Based on the CSR training materials, it is clear that Company's CSS system makes it possible for Payment Agreements to be created either orally or in written form, and resulting in agreements that are not "fair and equitable."

Q. COULD YOU PROVIDE MORE EXPLANATION OF THE ELEMENTS OF THESE NON-COMPLIANT AGREEMENTS?

A. Yes. Oral Payment Agreements have no statutory recognition under HEFPA. For this reason, the Company's CSR training materials identify oral payment agreements as "Non-Enforceable". Likewise, the CSR training materials reveal that the CSS system makes it possible to create Payment Agreements that are not "fair and equitable". Such agreements also have no legal standing under HEFPA for both of these types of agreements. (Company Response to DPS-580, Attachment 2, Page 3 of 62.)

Q. IS THE COMPANY STILL CREATING AND/OR USING NON-ENFORCEABLE AGREEMENTS?

A. It is unclear. In response to I/R PULP-79, the Company stated:

"The non-enforceable agreement has not been utilized since 2010. The training documentation that was provided in DPS-580 contained ntan outdated reference. That document will be updated to align with the Collections Overview training guide (Attachment 1), which indicates on page 5 of 63 that the non-enforceable payment agreement is "[n]ot currently in use." Relevant training documentation will also be reviewed to ensure this update is made."

(Company Response to PULP-79)

Q. DO THE COMPANY'S TRAINING MATERIALS PROVIDE INSTRUCTION ABOUT HOW TO CREATE AND MAINTAIN NON-ENFORCEABLE PAYMENT AGREEMENTS?

A. Yes, but while the "Collections Overview training guide" referenced in the Company's response includes only a single, five page module on the subject of Payment Agreements (Company Response to PULP-79, Attachment 1, Pages 31-36); the CSR training materials include three modules of instruction comprising thirty two pages regarding Payment Agreements (Company Response to DPS-580, Attachment 2, Pages 18-29, 30-38, 39-49). From my review of these sources, it is evident that the CSR Training Materials provide the necessary instruction regarding the day-to-day creation and maintenance of Payment Agreements - instruction that the Collections Overview training guide does not offer. While the pertinent reference on Page 5 of Attachment 1 to the Company's response to

PULP-79 reiterates the Company's position that Non-Enforceable Payment Agreements are not currently in use, neither the five page module at Pages 31-36 of Attachment 1, nor the thirty two pages of instruction regarding Payment Agreements at Pages 18-49 of the CSR training materials provide any indication that the CSS features that allow the creation of Non-Enforceable Payment Agreements have been disabled. This is important because, if those CSS features have not been disabled, then it is still possible for Non-Enforceable Payment Agreements to be created, whether or not it is the policy of the Company to utilize such agreements. That the CSR training materials provide the necessary instruction to create and maintain Non-Enforceable Payment Agreements increases the possibility that Non-Enforceable Payment Agreements continue to be created. And, due to the design and programming of CSS, Non-Enforceable Payment Agreements can, under certain scenarios, even be created automatically.

Q. IS THERE OTHER EVIDENCE THAT NON-ENFORCEABLE PAYMENT AGREEMENTS MAY PERSIST, DESPITE COMPANY POLICY TO THE CONTRARY?

A. Yes. Although the Company indicates that Non-Enforceable Payment Agreements have not been in use since 2010, each page of its CSR training materials indicates at the bottom right that their last update was September 15, 2015. Even assuming that the CSS functionality to create and maintain Non-Enforceable Payment Agreements was not disabled between 2010 and 2015, would it not have been advisable to update the CSR training materials to reflect that Non-Enforceable Payment Agreements were no longer supposed to be used? (Company Response to DPS-580, Attachment 2)

Q. HOW COULD THE POSSIBILITY THAT NON-ENFORCEABLE PAYMENT AGREEMENTS ARE STILL BEING CREATED AND/OR MAINTAINED AFFECT THE ABILITY OF RESIDENTIAL CUSTOMERS EXPERIENCING

FINANCIAL DIFFICULTY TO OBTAIN A DPA THAT ACHIEVES THE AFFORDABILITY AND CUSTOMER PROTECTION REQUIREMENTS OF HEFPA?

A. Refer back to the hypothetical scenario I used to introduce the difference between the Company's Collection Arrangements and Payment Agreements; but this time, consider the situation of a third customer, Ms. Doe, whose financial circumstances and credit rating are exactly the same as Mr. Smith's and Ms. Jones'. Ms. Doe's call with Niagara Mohawk customer service proceeds in exactly the same manner as Jones'; except that, while pausing to consider the terms of terms of the first Payment Agreement offer, which requires a $45.00 down payment, she does not think to inquire about the possibility she could have her down payment waived altogether. Unaware that by furnishing a financial statement while on her call she could determine whether her financial circumstances make her eligible for a waiver of the down payment, Ms. Doe reconsiders her financial priorities and decides to postpone the filling of a new prescription she received from her doctor the day before so she can make the $45.00 down payment. She accepts the first Payment Agreement offer and completes the call. Three days later, she receives the written Payment Agreement in the mail, reads and signs it. The next day she mails the signed agreement, together with a check for the $45.00 down payment, back to the Company. However, because she was not informed of her right to obtain a $0 down payment by taking certain steps, the agreement is potentially non-enforceable, and financial harm was caused to her that could have been averted if a minimum agreement had been proffered.

Q. WHAT CRITERIA DID THE COMPANY USE TO OFFER MS. DOE THE PAYMENT AGREEMENT THAT REQUIRED A $45.00 DOWN PAYMENT?

A. The Payment Agreement Ms. Doe was offered that included the $45.00 down payment is commonly called a "Standard Payment Agreement", which is not specifically defined by

HEFPA, but the terms of which are set forth in 16 NYCRR § 11.l0(c)(2)(ii). HEFPA provides that these terms should be offered if the utility is unable to achieve a negotiated Payment Agreement that is tailored to the financial circumstances of the customer. 16 NYCRR § 11.l0(c)(2)(ii) generally limits down payments to the greater of up to 15% of arrears, or the cost of one-half of monthly average usage; and monthly installments to the greater of up to the cost of one half of one month's average usage or one tenth of the balance. (16 NYCRR § 11.l0(a)(1), 16 NYCRR § 11.l0(c)(2))

Q. WHAT EFFECT DOES OBTAINING A STANDARD PAYMENT AGREEMENT, INSTEAD OF A MINIMUM PAYMENT AGREEMENT, HAVE ON MS. DOE'S PAYMENT PLAN AFFORDABILITY?

A. As was the case when comparing a Minimum Payment Agreement versus a Collection Arrangement, the financial advantages of the Minimum Payment Agreement over a Standard Payment Agreement are obvious – Ms. Jones eliminates her down payment, while Ms. Doe is required to make a down payment of $45.00. Ms. Jones can then spread out her installment payments equally over thirty months at $10 per month, while Ms. Doe has only ten months to make her installment payments, which are $25.50 per month. The cash flow savings to Ms. Jones during the first ten months of the Minimum Payment Agreement versus the Standard Payment Agreement is $200.00. The *timing* of this cash flow savings is especially important to Ms. Jones, since it is *today* that her cash flow problem is most acute. Ms. Doe's cash flow situation is the same, but she has to make a $45.00 down payment today.

Table 2 provides a comparison of the cash flow impact, by payment due date, of the Minimum Payment Agreement versus Standard Payment Agreement type plans used to resolve each customer's past due balance in this hypothetical example.

Table 2 - Cash Flow Impact to Customer of Hypothetical Standard Payment Agreement vs. Minimum Payment Agreement used to Resolve $300.00 Past Due Balance

Payment Plan Type (Customer)	Type of Payment	Payment Due Date												
		Day 1	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Each of Next 20 Months	Total
Standard	Down Payment	$45.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$45.00
Payment	Installment Payment	$0.00	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$0.00	$255.00
Agreement	Late Payment Charge	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
(Ms. Doe)	Total	$45.00	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$25.50	$0.00	$300.00
Minimum	Down Payment	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Payment	Installment Payment	$0.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$300.00
Agreement	Late Payment Charge	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
(Ms. Jones)	Total	$0.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$10.00	$300.00
Difference:														
For Due Date Only		**$45.00**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**$15.50**	**-$10.00**	
Running Net Difference		**$45.00**	**$60.50**	**$76.00**	**$91.50**	**$107.00**	**$122.50**	**$138.00**	**$153.50**	**$169.00**	**$184.50**	**$200.00**	**To:**	**$0.00**

Q. WHY DID MS. DOE CHOOSE THE "STANDARD PAYMENT AGREEMENT" INSTEAD?

A. Like the hypothetical example involving Mr. Smith, Ms. Doe made her decision to accept the offer of a Standard Payment Agreement because, unlike Ms. Jones, she did not think to ask whether, and therefore was not aware that, there was an alternative payment plan option available to her. Because Ms. Doe's financial circumstances and credit rating were exactly the same as Ms. Jones, she would also have been eligible for a Minimum Payment Agreement. Unaware of the Minimum Payment Agreement option, she instead chose to re-prioritize her short-term expenditures and accept the Standard Payment Agreement.

Q. WHAT CONCERN DOES THE MANNER IN WHICH MS. DOE OBTAINED A STANDARD PAYMENT AGREEMENT RAISE IN TERMS OF THE STATUTORY REQUIREMENTS SET FORTH BY HEFPA FOR PAYMENT AGREEMENTS?

A. Once again, it is helpful to reiterate the four major categories of customer protections that are required of all HEFPA DPAs. These are:

1. Written evidence of agreement between the Company and customer as to the terms and conditions by which the customer will resolve his or her arrears;
2. Affordability, achieved through fair and equitable negotiation between the Company and customer of a payment plan tailored to the customer's financial circumstances;
3. Relief from collections measures for the duration of the agreement, as long as the customer meets his or her obligations under the Payment Agreement; and
4. Further protections in the event of changes in financial circumstances beyond the customer's control.

In the case of Ms. Doe, the concern is that she, unlike Ms. Jones, did not have the opportunity to obtain a minimum DPA simply because she did not think to inquire about the possibility that there might be a way to eliminate her down payment and spread her monthly installment payments over a longer period of time. This situation is similar to the one that affected Mr. Smith, who, in the first hypothetical scenario on pages 13-14, was not aware that an alternative to Collection Arrangements that was more tailored to his individual financial circumstances might exist. Ms. Doe's situation is unlike Mr. Smith's, however, in that she does receive a written offer of her Payment Agreement, relief from collections measures, and further protections in the event of a change in her financial circumstances beyond her control.

Q. PLEASE EXPLAIN HOW MS. DOE COULD WIND UP WITH THE STANDARD PAYMENT AGREEMENT UNDER THE HYPOTHETICAL SCENARIO YOU HAVE PRESENTED.

A. The CSR training materials for Payment Agreements provide the following guidelines for representatives negotiating agreements for active customers:

"

No previously defaulted payment agreement (or last agreement is refused)

Request full balance (offer Western Union Speedpay) or Pay by Phone

If unable, offer a Collection Arrangement (if eligible)

If unable/not eligible, offer a "Negotiated Standard" payment agreement (use CSS)

- Do not change the terms

If unable, complete a financial statement (read script)

"

(Company Response to DPS-580, Attachment 2, Page 26, ***Emphasis Added***)

The designation "Negotiated Standard" in the above script means that the terms and conditions of the agreement to be proposed by the CSR at this step in the negotiation are identical to those of the Company's standard Payment Agreement. (Company Response to DPS-580, Attachment 2, Page 19)

As the script evidences, the customer must answer that they are unable to afford a Collection Arrangement, and then must indicate that they are unable to afford a standard Payment Agreement before they are offered the opportunity to complete a financial statement that may make them eligible for a minimum DPA. Like Ms. Jones, Ms. Doe answered the offer of a Collection Arrangement by stating she could not afford it; but unlike Ms. Jones, she did not think to inquire about a more affordable Payment Agreement than the standard agreement, instead deciding to re-prioritize her expenses so she could make the $45.00 down payment. There is no instruction in the CSR training materials indicating that the representative should proceed to the next step – to take a financial statement that might indicate Ms. Doe's eligibility for a minimum Payment Agreement – if she accepts the standard Payment Agreement.

Neither does there appear to be any instruction to solicit a financial statement for a customer in Ms. Doe's situation in the Negotiations/Payment Agreement Decision table provided by the Company in response to PULP-73 unless they were to indicate they are unable to accept the terms of a "Negotiated Standard" Payment Agreement:

Negotiations/Payment Agreement Decision Table
(For Account Status *'Active'* Only - NY Only)

Scenario	Action
Customer Has No Defaulted Payment Agreements AND No Defaulted Collection Arrangements	Request Full Balance. If unable, offer Collection Arrangement
Collection Arrangement Defaulted, But No Defaulted Payment Agreements	Offer Collection Arrangement (if eligible)
No Defaulted Payment Agreement	Offer Negotiated Standard Payment Agreement
	If unable to accept terms, complete Financial Statement for Positive or Negative Cash Flow Terms
Defaulted Standard OR Negotiated Standard Payment Agreement	Offer to Restore Payment Agreement
Defaulted Minimum Payment Agreement	Offer to Restore Payment Agreement

(Company Response to PULP-73, Attachment 1)

Nor does there appear to be any instruction to solicit a financial statement for a customer unable to afford a "Negotiated Standard" Payment Agreement in the five page module pertaining to Payment Agreements in the "Collections Overview training guide" (Company Response to PULP-79, Attachment 1, Pages 31-36)

Q. WHAT DOES HEFPA REQUIRE REGARDING THE OFFERING OF A STANDARD DPA?

A. HEFPA requires the following:

"A distribution 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 (a)(4) of this section. 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 (a)(4) of this section. 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." 16 NYCRR § 11.l0(a)(1) (***Emphasis Added***)

The disparate treatment of Ms. Jones and Ms. Doe, who have identical financial circumstances and credit ratings, resulting in Ms. Jones obtaining a minimum DPA while Ms. Doe receives a standard Payment Agreement with comparatively negative cash flow consequences, is rooted in the training provided to the Company's customer service representatives. The Company's CSS decision trees don't introduce all payment vehicles initially; instead, they offer the most burdensome payment vehicles first and only progress to incrementally more affordable ones as the customer indicates they can't afford the current option. Once a customer indicates that they can afford the current option, there is no evidence that more affordable alternatives are then revealed. Thus it is not clear whether or not they have been informed of all the payment options available to them to settle their past due balances. The result is that Ms. Doe does not obtain a Payment Agreement that meets the statutory requirements of HEFPA, and, using the Company's terminology, is "Non-Enforceable".

Q. WHAT MAKES YOU THINK THAT SITUATIONS SUCH AS THOSE OF THE HYPOTHETICAL MS. DOE MIGHT ACTUALLY OCCUR?

A. Because the CSR training materials provide instructions as to what to do in the event a customer obtains a "Non-Enforceable Payment Agreement", especially when such a customer defaults on their agreement.

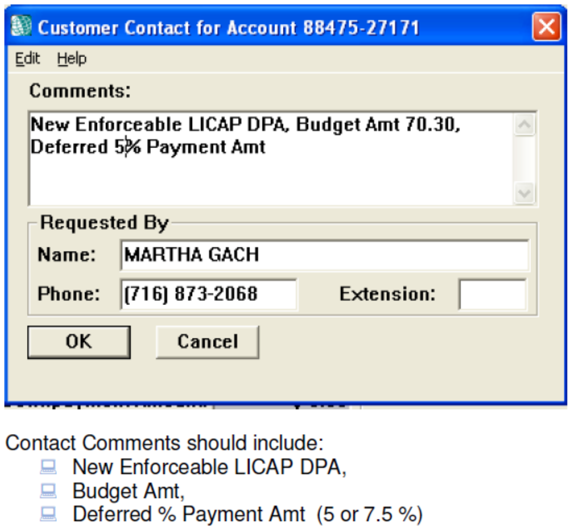
Q. PLEASE EXPLAIN COMPANY POLICY FOR CSRS HANDLING A NON-ENFORCEABLE PAYMENT AGREEMENT.

A. The following instructions are provided involving Non-Enforceable Payment Agreements:

"***If the most recent agreement was not enforceable***, you would instead offer the customer a brand new agreement, ***this time obtaining enforceability***."

(Company Response to DPS-580 CK-27, Attachment 2, Page 35 of 62 - ***Emphasis Added***)

"



"

(Company Response to DPS-580 CK-27, Attachment 2, Page 53 of 62)

"

There are several reasons for creating a Financial Statement:

To help determine what new payment agreements may be available for the customer.

To determine if a previously defaulted agreement could be considered "enforceable".

"

(Company Response to DPS-580 CK-27, Attachment 6, Page 3 of 14 - ***Emphasis Added***)

Q. ARE THERE ANY OTHER WAYS THAT CUSTOMERS WHO MIGHT OTHERWISE BE ELIGIBLE FOR A MINIMUM DPA COULD, THROUGH COMPANY ACTION, WIND UP WITH A STANDARD PAYMENT AGREEMENT?

A. Yes. It is the Company's policy to serve a written offer of a standard Payment Agreement automatically upon the issuance of the first FTN to a customer in arrears:

"Payment Agreement Types

The Payment agreement types available to you in CSS are as follows:

Standard – This agreement is automatically generated and mailed to every residential customer by the CSS system when they first receive a disconnect notice.

"

(Company Response to DPS-580 CK-27, Attachment 2, Page 19 of 14 - ***Emphasis Added***)

The CSS system generates and mails the standard Payment Agreement *automatically* at the time the customer's first disconnect notice is sent. In 2016, the Company sent out an average of 79,483 disconnect notices each month. If 25% of these were the first notice, had the Company made reasonable …. , to all 19,870 customers[40] monthly receiving such notices as HEFPA requires to each of these customers *before* mailing the standard Payment Agreement offer that accompanied the disconnect notice?

It is unclear whether they did so. In response to DPS-041 1a:

[40] 79,483 x .25 = 19,870

"How residential arrearages are monitored and reported, the assignment of responsibility for reviewing such reports and directing collection resources, and responsibility for reviewing individual accounts and authorizing payment agreements or payment extensions on accounts with arrears of varying sizes;"

(DPS-041 1a)

the Company states:

"Residential arrearages are monitored through a variety of periodic reports generated from the Company's customer system by the Credit & Collections Reporting and Analytics Team. These reports are updated weekly and reviewed by the Director of Credit & Collections and the Credit and Collections managers. Individual accounts are assigned to Credit & Collections representatives and analysts who review accounts in the portfolio. When appropriate, outbound calls are made, during which a payment agreement or payment extension may be negotiated. Additionally, representatives at the Company's call centers may negotiate payment agreements and extensions, after review of the account, within Company policies."

(Company Response to DPS-041 1a)

The Company states that its representatives make outbound calls to customers in arrears "*when appropriate*", that during such calls a payment agreement or payment extension *"may"* be negotiated, and that call center representatives "*may"* negotiate payment agreements and extensions. It is unclear whether these measures rise to the level of "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" that HEFPA requires.

In this context, it is worth reiterating that, while Company notes inbound collections inquiries on individual account histories, it does not maintain records of which inquiries included a request for payment option information, nor does it maintain records of which payment option was discussed first on the call. (Company Response to PULP-34)

Q. DOES THE COMPANY DO SO FOR ANY INQUIRIES, INBOUND OR OUTBOUND?

A. It is unclear from the discovery responses provided by the Company, but appears unlikely.

Q. WHAT IS THE EFFECT OF THIS LACK OF RECORD KEEPING?

A. If the Company does not maintain such records, then it seems unlikely that it can document that it made a reasonable effort to contact the customer for the purpose of offering an agreement and negotiating terms in a manner tailored to the customer's financial circumstances prior to making a its written offer of a standard Payment Agreement".[41] The Company acknowledges such a possibility as one of the reasons for creating a financial statement - to determine if a previously defaulted agreement could be considered enforceable (Company Response to DPS-580, Attachment 6, Page 3). The Company further acknowledges one of the ways in which an agreement can fail to be enforceable: if it does not have a financial statement indicating it is fair and equitable (Company Response to DPS-580, Attachment 2, Page 3).

Based on the above evidence, it is apparent that the Company encounters situations in which written Payment Agreements, signed and returned to the Company by the customer, are not enforceable because they have not been negotiated in accordance with 16 NYCRR § 11.l0(a)(1); in particular, in situations where a written Payment Agreement was

[41] 16 NYCRR § 11.l0(a)(1)

negotiated without obtaining a financial statement from the customer and the customer then defaulted on the agreement because it was unaffordable.

Q. YOU INDICATED EARLIER THAT THE CSR TRAINING MATERIALS CLEARLY INDICATE THAT COMPANY'S CSS SYSTEM MAKES IT POSSIBLE FOR PAYMENT AGREEMENTS TO BE CREATED EITHER ORALLY OR WRITTEN FORM. CAN YOU EXPLAIN HOW ORAL PAYMENT AGREEMENTS COULD BE CREATED?

A. CSS will create an oral Payment Agreement in situations where the "Do Not Send Form" checkbox is checked at the time the agreement is created; therefore resulting in no mailing of an agreement form for signature. (Company Response to DPS-580, Attachment 2, Page 31)

Additionally, the Company's CSS system assigns a "Pending" status to payment agreements that have been set up but not activated. The system waits ten days for someone to activate the agreement, upon receipt of the signed agreement by the customer, and then automatically changes the status to "Refused" if it is not activated within this time period. Based on the description of the functionality of the Payment Agreement "Status" dropdown list on the CSS "Maintain Payment Agreement Screen" (Company Response to DPS-580, Attachment 2, Page 37), it *may* also be *mechanically* possible for a CSR to activate a Payment Agreement's status to "Active" in situations where it was still "Pending" or had later defaulted to "Refused" because a signed copy of the agreement was not yet received from the customer, though such a change would likely violate Company policy. (Company Response to DPS-580, Attachment 2, Page 24)

These two scenarios for creating and maintaining oral Payment Agreements give rise to a series of questions that bear directly on the question of whether CSS still retains the functionality necessary to create and maintain oral Payment Agreements. Notwithstanding the Company's statement in I/R responses to PULP that "The non-enforceable payment agreement has not been used since 2010, and the fact that the Collections Overview training guide states that "the non-enforceable payment agreement is not currently in use,"[42] these questions include, but are not limited to:

- Whether CSRs are authorized to change the status of an agreement for which the customer has not returned a signed copy to the Company;
- Whether status codes can be/are changed again after the CSS system defaults to "refused";
- Whether legacy oral Payment Agreements from before 2010 are still extant and being maintained in the CSS system;
- Whether and how CSRs use the CSS system to maintain oral Payment Agreements in accordance with their terms and conditions as they *might* have been agreed to by the customer, despite the fact that oral agreements violate HEFPA; and
- Whether and how the Company proceeds with collection actions in the event that the customer enters into the equivalent of "*default*" on an oral Payment Agreement in CSS, including service terminations.

Q. WHAT DID THE COMPANY'S RESPONSE TO DPS-141 DISCUSS REGARDING PAYMENT AGREEMENT ACTIVATION?

A. In response to DPS-141, the Company discussed the existence of a *Management of Credit and Collections Program (Follow-up)* internal audit report issued November 3, 2015 that found inconsistently applied accepted practices around deferred payment agreement activation. The report found:

[42] Company Response to PULP-79, Attachment 1, Page 5.

"i. Customer system constraints within CSS and CRIS result in different practices between CSS and CRIS for activation of payment agreements in New York. The Company is working to update policies, procedures, and training materials to outline the practice for activation of payment agreements by system.

ii. Credit & Collections is working to develop processes and subsequent training documentation for all Contact Centers, outlining payment agreement policies and to create similar procedures, where regulations permit, throughout the service territory with standard electronic documentation retention."

(Company Response to DPS-141, Page 1)

Q. WHAT ARE THE RISKS TO THE CUSTOMER OF OBTAINING AN ORAL, INSTEAD OF WRITTEN, PAYMENT AGREEMENT?

A. From a consumer protection point of view, the ultimate risk to customers with oral Payment Agreements (as well as written payment agreements that are not just and equitable) is that in agreeing to a non HEFPA-compliant agreement, they could have collections action, including service termination, taken upon them based on agreements that have no legal standing under HEFPA.

Q. IS THERE ANY QUESTION WHETHER OR NOT ORAL AGREEMENTS VIOLATE HEFPA, AND ADDITIONALLY, WHY DOES THAT MATTER IF AN ORAL AGREEMENT POTENTIALLY OFFERS MORE FLEXIBILITY?

A. Plainly, oral Payment Agreements do not meet the statutory requirement that HEFPA sets for written Payment Agreements. 16 NYCRR § 11.l0(a)(1) expressly states that:

"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."

(***Emphasis Added***)

For the customer who obtains an oral Payment Agreement with the Company because the "Do Not Send Form" checkbox was checked at the time the agreement was created, the problem is similar to those of the customer who obtains a Collection Arrangement with the Company. In such a situation, one where the customer receives no independent documentation of the Payment Agreement, the door is left open to disputes due to collection representative data entry errors, misinterpretation of the terms to which the customer agreed, and other deficiencies, and unnecessary exposure to the possibility that collections actions (which may include service termination) may resume at some point even though the customer may have made a good faith effort to honor the terms of the agreement. However, *unlike* the situation for a Collection Arrangement customer, it appears that CSS agreement history functionality includes oral Payment Agreements.

Customers who do not return signed copies of their payments agreements to the Company, but who may have had oral Payment Agreements created for them because the status of their agreements was changed in error to "Active", *might* at least retain copies of their unsigned agreements to which they can refer back, however, as with all oral agreements, there would be no independent written verification that the agreement had been negotiated and otherwise formed in a manner that was fair and equitable to the customer. Here too the customer is exposed to disputes due to collection representative data entry errors, misinterpretation of the terms to which the customer agreed, and other deficiencies, and unnecessarily exposed to the possibility that collections actions (which may include service termination) may resume at some point even though the customer may have made a good faith effort to honor the terms of the agreement.

Q. YOU MENTIONED THAT, FROM A CUSTOMER PROTECTIONS POINT OF VIEW, THE ULTIMATE RISK TO CUSTOMERS WHO OBTAIN PAYMENT AGREEMENTS THAT DO NOT MEET THE STATUTORY REQUIREMENTS REQUIRED BY HEFPA IS THAT THEY COULD BE SUBJECT TO COLLECTIONS ACTION, INCLUDING SERVICE TERMINATION, BASED ON THEIR DEFAULT ON NON-STATUTORY AGREEMENTS. IS THAT ALSO TRUE OF COLLECTION ARRANGEMENTS AND ORAL AGREEMENTS?

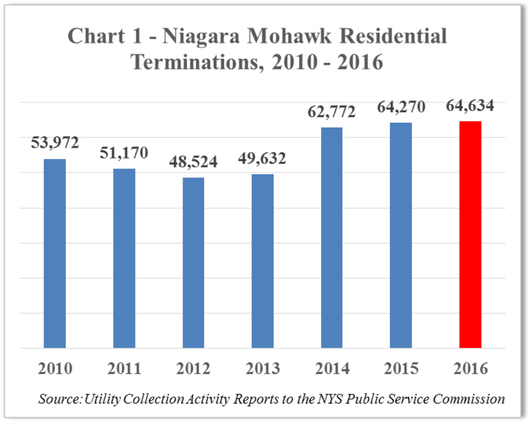
A. Yes.

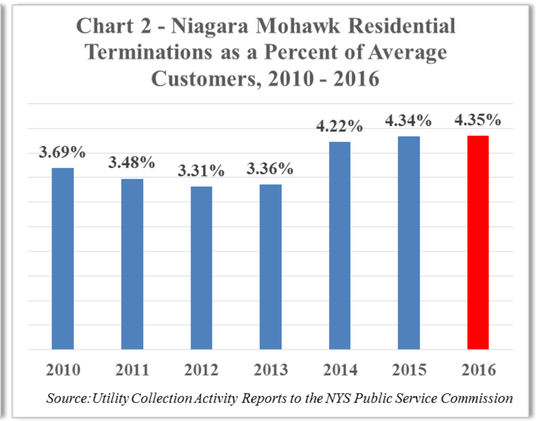
Q. DO YOU HAVE ANY DIRECT EVIDENCE THAT COLLECTIONS ACTION, INCLUDING SERVICE TERMINATION, BASED ON THEIR DEFAULT ON NON-STATUTORY AGREEMENTS HAS OCCURRED?

A. No.

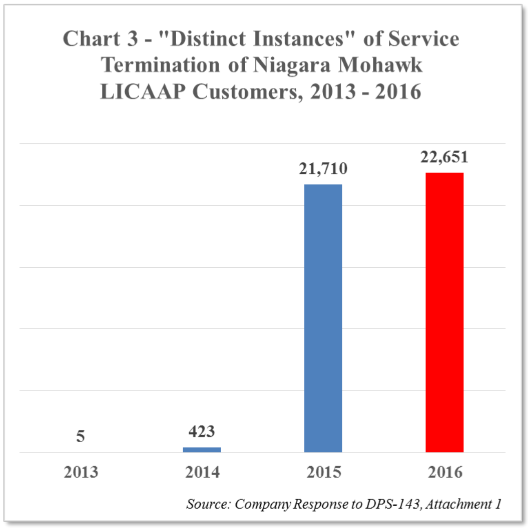
However, the evidence I have presented that non-statutory Collection Arrangements and Non-Enforceable Payment Agreements have been, and at least in the case of Collection Agreements are still being, used by the Company must be viewed against a backdrop of rising residential terminations – a disproportionate share of which have affected customers who are participants in one or more of the Company’s low income assistance plans (LICAAP customers); increasing arrears and arrears per customer; sharply decreasing use of Payment Agreements, both in absolute terms and as a percent of residential customers in arrears; and other indicia of unaffordability. Specifically:

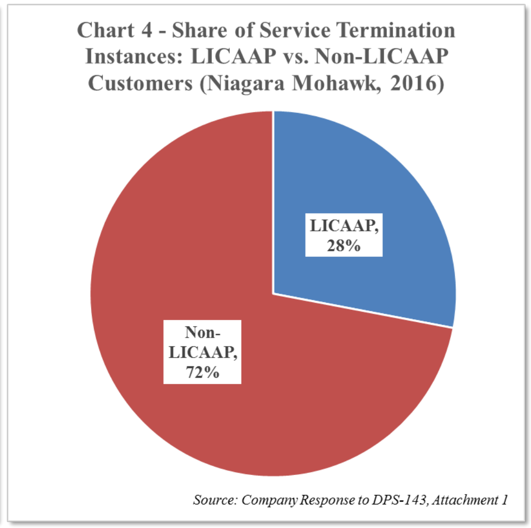
- Residential service terminations increased in each year from 2012 – 2016, reaching 64,634 by 2016 – higher than any year since 2004. In 2016, service terminations as a percent of average residential customers rose to 4.35%. (Charts 1-2)



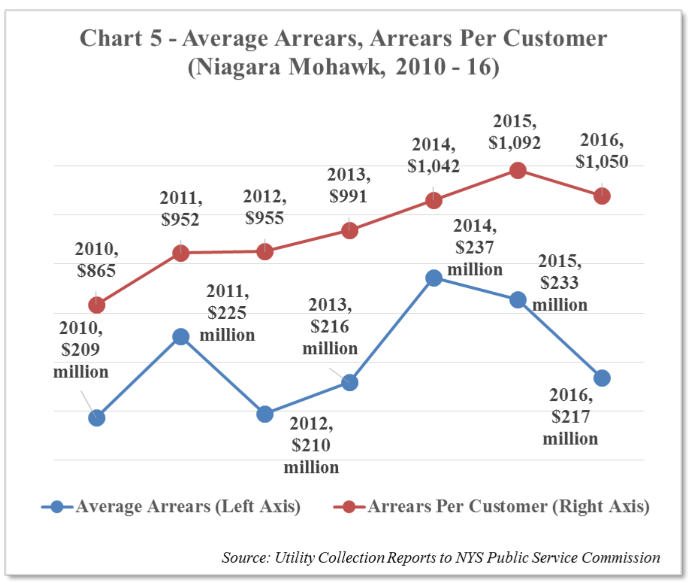


- The Company's response to DPS-143 shows that, in 2015 and 2016, service terminations to customers participating in one of the Company's low income assistance plans increased from almost no terminations to over 20,000 distinct "instances". According the Company's response to PULP-76, the data provided in DPS-143 is not directly comparable to the Company's CARs, however, based on that data it can be estimated that these customers accounted for over 25% of total residential terminations by 2016, though they comprise only about 7% of total residential customers. (Charts 3-4)

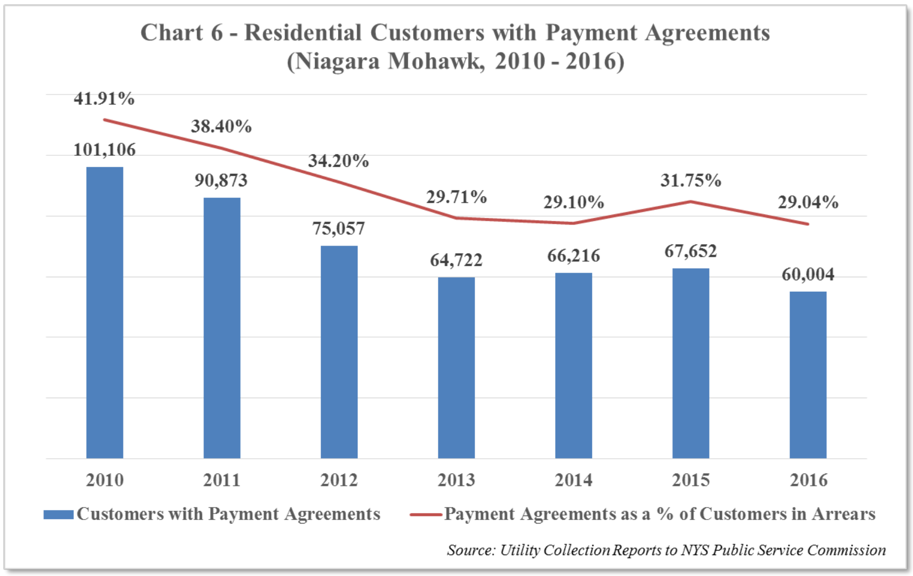




- Arrears of the Company's residential customers increased from $209 million in 2010 to $217 million in 2016; while arrears per residential customer increased 21%, from $865 to $1,050. (Chart 5)

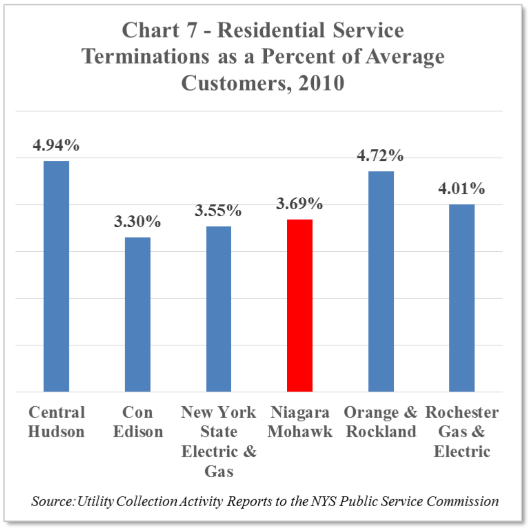


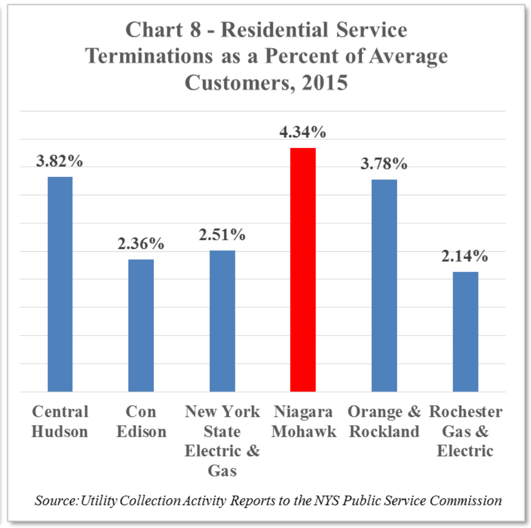
- The average number of residential customers with statutory Payment Agreements dropped forty (40%) percent between 2010 and 2016, from 101,106 to 60,004. As a percent of average customers in arrears, average of customers with statutory Payment Agreements dropped from 41.9% to 29.0. (Chart 6)



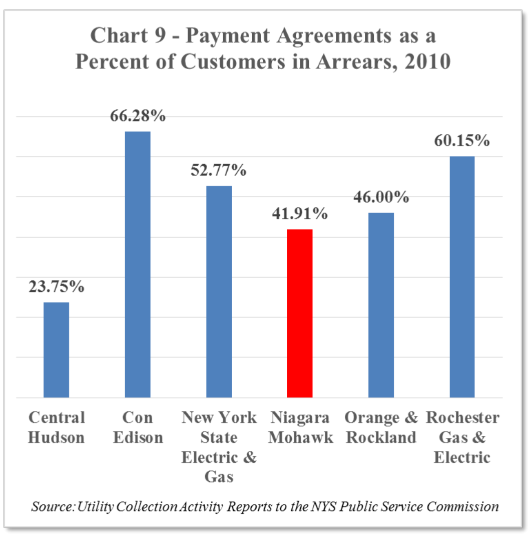
- Of the six combined service electric and gas utilities in New York State from 2010 – 2015[43], the Company:
  - In 2010, the Company ranked third out of six in terms of service terminations as a percent of total customers. By 2015, the Company ranked first for this metric. (Charts 7-8)

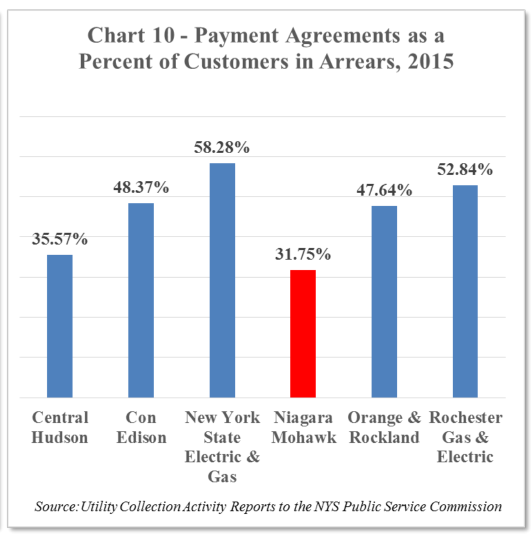
[43] Collections data posted on the DMM website for Case 91-M-0744 is incomplete for April and June – September 2016 for some utilities; therefore no comparison is provided for 2016.





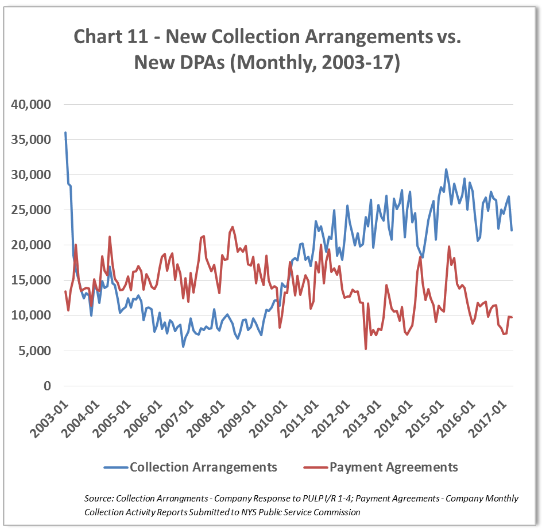
- In 2010, the Company ranked fifth out of six in terms of Payment Agreements as a percent of customers in arrears. By 2015 the Company ranked lowest for this metric. (Charts 9-10)

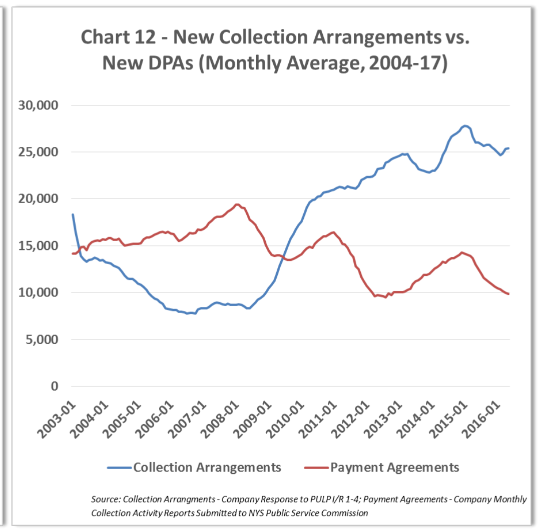




Q. WHAT HAS THE IMPACT BEEN ON THE COMPANY'S RESIDENTIAL CUSTOMERS FROM ITS USE OF COLLECTION ARRANGEMENTS?

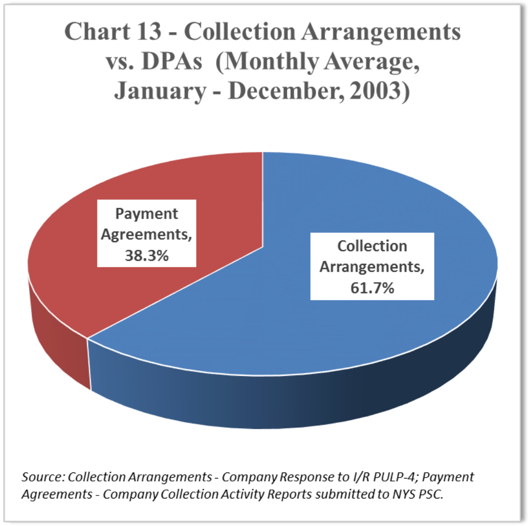
Charts 11 and 12 plot new monthly Collection Arrangements, as stated by the Company in response to PULP-4, versus new monthly DPAs, as reported by the Company in its CARs for this period:

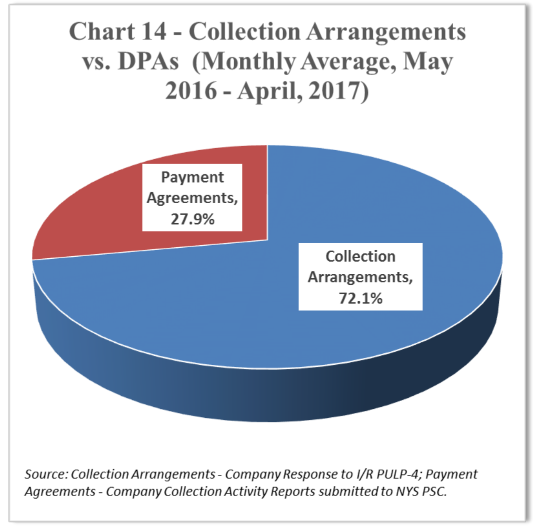




By April, 2010, new Collection Arrangements began to exceed new DPAs (17,878 vs. 15,725), which they have done every month for the past seven (7) years. By April, 2017, new Collection Arrangements exceeded new DPAs 2.3 to 1 (22,098 new Collection Arrangements versus new 9,723 DPAs).

Chart 13 and Chart 14 compare the share of Collection Arrangements and DPAs as a percent of total arrangements/agreements between December, 2003 and April, 2017.





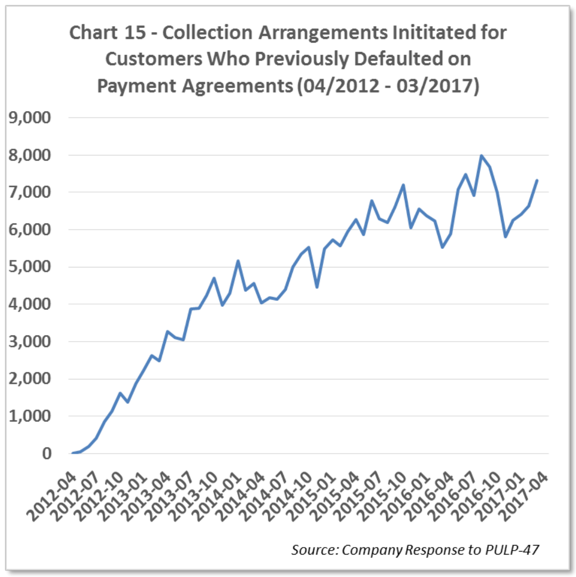
From January 2003 thru April, 2017, 2,975,992 (2.98 million) Collection Arrangements were initiated by the Company to settle the past due balances of residential customers. (Company Response to PULP-4) Each arrangement would have subjected past-due customers to continued FTNs and late payment charges through the completion of the arrangement – even if they remained current with its terms, and would have required customers with credit ratings below "B" who had not defaulted on prior payment plan to pay significantly more of a down payment than if they had been enrolled in a HEFPA DPA.

The Company's partial response to several PULP I/Rs provides evidence that, from April, 2012 through March, 2017, some Collection Arrangements were unaffordable as mechanisms for resolving the past-due balances of customers with such arrangements, which it is not unreasonable given that they may have been unaffordable compared to a HEFPA DPA tailored to an individual's financial circumstances. Specifically:

- Monthly, an average of 2.5% of accounts obtaining a Collection Arrangement required another arrangement within the same month. (Company Response to PULP-39)

- 327,568 out of the 1,459,569 arrangements initiated (22.4%) were defaulted upon (Company Response to PULP-42).

The Company's responses to PULP-4, PULP-46 and PULP-47 provide evidence that customers who had previously defaulted on a Payment Agreement accounted for more than the total of the increase in Collection Arrangements initiated from April 1, 2012 through March, 2017 (Chart 15).



The Company's responses to PULP-48 and PULP-49 provides evidence that, from April 2012 through March 2017, only 14% (96,251 out of 670,752) Payment Agreement offers to residential customers who had previously defaulted on a Collection Arrangement were accepted. (Company Response to PULP-48, Attachments 1; Company Response to PULP-49, Attachments 1).

Q. WHAT HAS BEEN THE IMPACT ON LICAAP CUSTOMERS OF THE COMPANY'S USE OF COLLECTION ARRANGEMENTS?

A. With regard to residential customers who were participants in a low income assistance plan sponsored by the Company (LICAAP customers), and who obtained one or more Collection Arrangements, the following observations can be made:

- From April, 2012 through March, 2017, 110,811 Collection Arrangements were initiated by the Company with LICAAP customers. The total dollar amount covered by these arrangements was $28,203,277.73. (Company Response to PULP-45)
- LICAAP Customers who entered into these arrangements were not covered by DPAs. (Company Response to DPS-580 CK-27, Attachment 2, Page 4)
- Those LICAAP customers who entered into these arrangements and were at least 20 days past-due on their bill would receive FTNs.
- Those LICAAP customers who entered into these arrangements were subject to late payment charges for any balances due after the due date of their bill, including those covered by the Collection Arrangement.
- At the standard rate of 1.5% per month, if LICAAP customers with Collection Arrangements from April, 2012 through March, 2017 were an average of 30 days late paying their bills, the total amount of late payment charges paid by these customers for the period covered by the Company's response to PULP-45 would have been $423,049.17.[44]
- The Company's Shared Services Panel testimony indicates that the average annual expense of the Company's low income discount program was approximately $16,528,000 from 2014-16.[45] (Shared Services Panel Testimony at 43-44). Based on the Company's response to I/R PULP-45, LICAAP customers who obtained

[44] $28,203,277.73 times 1.5% equals $423,049.17.
[45] Electric program rate allowance: $10.874 million, less $2 million underspent; Gas program rate allowance: $9.254 million, less $1.6 million underspent. ($10,874,000 - $2,000,000) + ($9,254,000 - $1,600,000) = $16,528,000.

Collection Arrangements would incur an average of $84,609.83 in late payment charges annually.

- If all LICAAP customers who obtained Collection Arrangements instead obtained, and remained current on, a HEFPA DPA, their late payment charges would be $0.
- The Company's response to PULP-52 provides evidence that a majority of the Collection Arrangements initiated for LICAAP customers (74,943 out of 110,811, or 67%) from April, 2012 through March, 2017 were obtained by customers who *had not previously defaulted on a Payment Agreement.* (Company response to PULP-52, Attachment 1) Presumably, these customers would have been eligible for such Payment Agreements, a sizeable number of which would likely have been minimum agreements with no down payment and monthly installment payments of only $10. How many were offered Payment Agreements and chose short term Collection Arrangements instead? How many of those that chose a Collection Arrangement instead of a Payment Agreement had a Company credit rating below "B" so that their choice of a Collection Arrangement over a Payment Agreement required them to make a 50% down payment of the balance of their bill?
- The Company's responses to PULP-52 provides evidence that, from April 2012 through March 2017, only 20% (23,020 out of 115,066) Payment Agreement offers to LICAAP customers who had previously defaulted on a Collection Arrangement were accepted. (Company Response to PULP-52, Attachments 3-4). Did the existence of a prior default on a non-statutory Collection Arrangement affect the nature of the terms of the Payment Agreement offered to the customer, and perhaps therefore whether customers were willing to accept those agreements?

The Company's choice to implement non-HEFPA compliant collection arrangements needlessly subjected participants in the Company's low income discount plan to late payment charges that would not have applied to them if the Company had followed state law and offered them a HEFPA-compliant DPA instead, thereby avoiding late payment charges as long as they stay current with their agreed-upon payments. The Company's choice to implement Collection Arrangements and impose unnecessary and statutorily barred late payment charges erodes the value of ratepayer-funded payment assistance programs, a matter that will take on increasing importance as the Company implements the requirements of the Public Service Commission's May 20, 2016 *Order Adopting Low Income Program Modifications and Directing Utility Filings* in Case 14-M-0565 (the "Low Income Order"). In its testimony, the Shared Services Panel estimates that an additional 55,000 program participants will be enrolled in the Company's expanded Energy Affordability Program, bring total enrollment to approximately 158,000. More significantly, the rate allowance for the Energy Affordability Program is projected to increase more than 250%, from $20.1 million to $71.5 million. (Shared Services Panel Testimony at 45-46) Due to a greater concentration of "high need" participants anticipated for the Energy Affordability Program, average annual benefits are expected to increase from about $160 to $453. Will it be in the public interest to subject these higher need customers to Collection Arrangements that feature continued late payment charges and final termination notices, while at the same time providing them with much higher ratepayer-funded discounts under the Low Income Order?

IV. Conclusion

Q. BASED ON THE EVIDENCE YOU HAVE PRESENTED ABOUT THE UTILITY UNAFFORDABILITY AND COLLECTIONS PRACTICES ISSUES FACING A SIGNIFICANT NUMBER OF NIAGARA MOHAWK'S CUSTOMERS, WHAT ARE YOUR CONCLUSIONS AND RECOMMENDATIONS CAN YOU MAKE?

A. Considering the fact that 12 – 15% of the Company residential customers are consistently in arrears over sixty days, is of heightened importance for the Company's collections practices to conform with the statutory rights and protections HEFPA sets forth for New

York State residential utility customers. The evidence I have presented in this testimony indicates otherwise. With respect to policies and practices involving payment plan alternatives for settling past due balances, the Company has employed Collection Arrangements and Non-Enforceable (either because they oral or not fair and equitable) Payment Agreements since at least 2003. In 2016, 299,424 Collection Arrangements initiated for Niagara Mohawk customers. There were only 125,780 new DPAs were created for the Company's customers. Every Collection Arrangement created was one that had no legal standing under HEFPA. Did the Company pursue collections actions against customers who defaulted on those arrangements? Training materials for its customer service and collections representatives certainly indicate that this happens. Would the Company actually terminate a customer's service because they defaulted on an "arrangement" that had no legal standing under HEFPA? Could those customers whose service was terminated for this reason include LICAAP customers, the evidence for whom I have presented had their service terminated at a disproportionate rate versus residential customers overall?

Presumably, all of the Payment Agreements created in 2016 were HEFPA-compliant DPAs. Yet a myriad of questions stand in the way of this presumption. The CSS system retains the necessary functionality to create Non-Enforceable Payment Agreements. Training materials are outdated and still provide instructions as to how to create and maintain oral Payment Agreements and how to determine whether the process of negotiating Payment Agreements included obtaining a financial statement from the customer so they could be deemed fair and equitable. A 2015 internal audit report, which I was unable to review for my testimony, cited problems of inconsistent policies and practices regarding payment agreements.

My recommendation is that the Company's proposed rate increase should not be approved without the Company's agreement, or the Commission's requirements that the Company make the following changes:

1. The Company should cease the use of all Non-HEFPA Payment Plans;
2. The Company should agree to commence the process for executing DPAs electronically (e-DPAs), based on the successful pilot program conducted by National Fuel Gas in Case 13-G-0016[46], as elucidated in the Commission's *Order Modifying Replevin Acts and Practices* in Case 16-M-0501 which will be undertaken by Consolidated Edison New York this year.[47]
3. The Company should modify its customer service procedures for negotiation of DPAs such that:
    e. Prior to sending final termination notices (FTNs) to residential customers whose accounts are past due, the Company should inform these customers – directly and in writing by surface mail (supplemented, as applicable, by email) - of their rights under HEFPA; in particular to DPA;
    f. The Company's customer service representatives (CSRs) responding to customers' phone, email/website, in-person or other forms of inquiry about their resolving their arrears, should be required to read a statement at the beginning of each interaction explaining the customer's rights under HEFPA; in particular to DPA;
    g. Phone calls between customers and CSRs should be recorded, to the extent permitted by law; and
    h. All agreements between customers and the Company to settle past due balances should be confirmed directly and in writing by surface mail (supplemented, as applicable, by email).

[46] See: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=41790
[47] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={11B91D1C-2FB7-4D12-850E-824D43E6DA39}

4. The Company's proposed performance incentive measuring the rate of service terminations and total uncollectible expense, as described in its Shared Services Panel Testimony, should be rejected. (Shared Services Panel Testimony at 29-32)

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.