

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

MATTER 20-01676 - In the Matter of the Implementation of the Public Service Law §§ 32, 89-b, 89-l, 91, 216 and General Business Law § 399-zzzzz (Chapter 106 of the Laws of 2021) Regarding Issuing a Moratorium on Utility Service Terminations and Disconnections of Residential and Small Business Customers During the COVID-19 State of Emergency.

DEPARTMENT OF PUBLIC SERVICE GUIDANCE RELATING TO THE COVID-19 MORATORIUM ON UTILITY SERVICE TERMINATIONS AND DISCONNECTIONS

(Dated May 24, 2021)

On May 11, 2021, Governor Andrew M. Cuomo signed into law amendments to the Public Service Law (PSL) and General Business Law (GBL) that provide an expansion of the moratorium on terminations and disconnections of electricity, gas, steam, landline telephone, cable television, broadband, and water services to customers during and after the COVID-19 state disaster declaration.¹ These amendments expand the moratorium protections to small business customers with twenty-five or fewer employees and include additional protections for customers of municipal water, cable television, and broadband services. The amendments also establish the timeframe for ongoing moratorium protections, from May 11, 2021, until the state of emergency is lifted or expires or December 31, 2021, whichever date is earlier. Thereafter, for 180 days, customers who have experienced "a change in financial circumstances due to the COVID-19 state of emergency" as defined by the Department of Public Service (Department)

¹ https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf. The terms "state disaster declaration" and "state of emergency" are used interchangeably in this document.

may be eligible for additional protections from terminations or disconnections.

The moratorium on disconnections and terminations is in effect from May 11, 2021 until either the COVID-19 state of emergency is lifted or expired or December 31, 2021, whichever date is earlier, and thereafter for 180 days for qualified customers. The COVID-19 state of emergency period is defined in the PSL as "the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty."² The Executive Order, originally issued on March 7, 2020, is currently set to expire on May 25, 2021 but may be extended.³ After the state of emergency is lifted or expired or December 31, 2021, whichever date is earlier, residential and small business customers must self-certify to their utility⁴ that they experienced a change in financial circumstances due to the COVID-19 state of emergency to be eligible for the additional 180-day protection from termination or disconnection. This guidance provides utilities with some administrative flexibility to determine the most efficient and effective means to communicate with affected residential and small business customers.

The PSL and GBL amendments charge the Department with defining what constitutes a "change of financial circumstances due to the COVID-19 state of emergency." The Department's guidance is offered with the intent of protecting affected residential and small business customers

² PSL §§32(6), 89-b(8), 89-1(3), 91(9), 216(6); see also GBL §399-zzzzz(2).

³ Utilities should monitor the Governor's Executive Orders to ensure awareness of the effective dates of the COVID-19 state of emergency.

⁴ The term "utility" is used throughout this guidance to encompass all service providers, including municipalities and other public entities that provide natural gas, electric, steam, water, landline telephone, broadband, and cable television service.

from unnecessary and unlawful terminations or disconnections while also encouraging customers and utilities to work cooperatively to address unpaid arrears for essential services. Additional administrative flexibility is available to utilities to encourage customers to seek all available state and federal resources to assist with paying past due arrears. Upon the end of the state of emergency or the 180-day period and no later than the sunset date of this legislation on July 1, 2022, any unpaid arrears accumulated by residential and small business customers will be owed and due to utilities. Therefore, the PSL and GBL moratorium protections merely provide a grace period for customers who have been financially impacted by COVID-19 to catch up on their bills.⁵ This document provides additional guidance to and requests new filings relating to the additional categories of customers (small business) from all utilities subject to the PSL and GBL amendments. Filings from all utilities that have not yet complied with prior guidance and previous legislation also are requested.⁶

The PSL and GBL amendments excerpted below "take effect immediately [May 11, 2021] and shall expire July 1, 2022, when upon such date the provisions of this act shall be deemed repealed."⁷

⁵ Arrears subject to the provisions of Chapter 56 of the Laws of 2021, Part BB, Subpart A, Section I (COVID-19 Emergency Rental Assistance Program) or Part BB, Subpart B (Tax Law §187-q) for which the utility receives a tax credit cannot be recovered through the provisions of PSL §§32(9).

⁶ Matter 20-01676, Moratorium on Terminations and Disconnections of Residential Utility Customers During the COVID-19 State of Emergency, Department Notice (issued August 11, 2020).

⁷ Chapter 106 of the Laws of 2021.

The amendments to PSL §32 provide that:

6. No utility corporation or municipality shall terminate or disconnect services to any residential customer or a small business customer with twenty-five or fewer employees that is not a (a) publicly held company, or a subsidiary thereof, (b) seasonal, shortterm, or temporary customer, (c) high energy customer as defined by the commission, or (d) customer that the utility can demonstrate has the resources to pay the bill, provided that the utility notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures, for the non-payment of an overdue charge for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency").

Utility corporations and municipalities shall have a duty to restore service, to the extent not already required under this chapter, to any residential or small business customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency.

7. For a period of one hundred eighty days after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twentyone, whichever is earlier, no utility corporation or municipality shall terminate or disconnect the service of a residential or small business customer because of defaulted deferred payment agreements or arrears owed to the utility corporation or municipality when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department. The utility corporation or municipality shall provide such residential or small business customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, as such is provided for in this article with such prohibition on down payments, late fees, or penalties applicable to all arrears incurred during the duration of the COVID-19 state of emergency.

8. Every utility corporation or municipality shall provide notice to residential and small business customers, in a writing to be included with a bill statement or, when appropriate, via electronic transmission the provisions of

this section and shall further make reasonable efforts to contact customers who have demonstrated a change in financial circumstances due to the COVID-19 state of emergency for the purpose of offering such customers a deferred payment agreement consistent with the provisions of this article.

9. Implementation of the provisions of this section shall not prohibit a utility or municipality from recovering lost or deferred revenues after either the lifting or expiration of the COVID-19 state of emergency or December thirty-first, two thousand twenty-one, whichever is earlier, pursuant to such means for recovery as are provided for in this chapter, and by means not inconsistent with any of the provisions of this article. Nothing in this section shall prohibit a utility corporation or municipality from disconnecting service necessary to protect the health and safety of customers and the public.

The amendments to PSL §89-b provide that:

8. No water-works corporation shall terminate or disconnect the supply of water to residential accounts or the account of a small business customer with twenty-five or fewer employees that is not a (a) publicly held company, or a subsidiary thereof, (b) seasonal, short-term, or temporary customer, (c) high energy customer as defined by the commission, or (d) customer that the utility can demonstrate has the resources to pay the bill, provided that the utility notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures, for the non-payment of water rents, rates or charges for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency"). Water-works corporations shall have a duty to restore service, to the extent not already required under this chapter, to any residential or small business customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency.

9. For a period of one hundred eighty days after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twentyone, whichever is earlier, no water-works corporation shall terminate or disconnect the service of a residential or small business customer account because of defaulted deferred payment agreements or arrears

owed to the water-works corporation when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency as defined by the department. The water-works corporation shall provide such residential or small business customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, as such is provided for in article two of this chapter.

10. Every water-works corporation shall provide notice to residential and small business customers, in a writing to be included with a bill statement or, when appropriate, via electronic transmission, the provisions of this section and shall further make reasonable efforts to contact customers who have demonstrated a change in financial circumstances due to the COVID-19 state of emergency for the purpose of offering such customers a deferred payment agreement consistent with the provisions of this section and article two of this chapter.

11. Implementation of the provisions of this section shall not prohibit a water-works corporation from recovering lost or deferred revenues after either the lifting or expiration of the COVID-19 state of emergency or December thirty-first, two thousand twenty-one, whichever is earlier, pursuant to such means for recovery as are provided for in this chapter, and by means not inconsistent with any of the provisions of this article. Nothing in this section shall prohibit a water-works corporation from disconnecting service when it is necessary to protect the health and safety of customers and the public.

12. The public service commission shall have the authority to adjudicate complaints and conduct investigations for violation of this section in the manner provided by the provisions of this article and shall have the authority to enforce the provisions of this section in accordance with section twenty-six of this chapter.

The amendments to PSL §89-1 provide that:

3. No municipality shall terminate or discontinue service to, or place, sell or enforce any lien on the real property of, a residential customer, a nonresidential customer whose account serves residential premises, or a small business with twenty-five or fewer employees that is not a (a) publicly held company, or a subsidiary thereof, (b) seasonal, shortterm, or temporary customer, (c) high usage customer as defined by the commission, or (d) customer that the utility can demonstrate has the resources to pay the bill, provided that the utility

notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures, for the nonpayment of bills, taxes, or fees, and no bills, taxes, or fees charged to such customers shall otherwise become a lien on real property, for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter the "COVID-19 state of emergency") or at any time when a customer is in compliance with the terms of a deferred payment agreement entered into pursuant to subdivision four of this section. Every municipality shall have a duty to restore service to any residential customer, non-residential customer whose account serves residential premises, or small business customer within forty-eight hours of the effective date of this subdivision if such service has been terminated during the pendency of the COVID-19 state of emergency.

4. For a period of one hundred eighty days after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twentyone, whichever is earlier, no municipality shall terminate or discontinue the service of, or place, sell or enforce any lien on the real property of, a residential customer, a non-residential customer whose account serves residential premises or small business customer because of bill arrears, taxes, or fees owed to the municipality when such customer has experienced a change in financial circumstances due to the COVID19 state of emergency, as defined by the department. The municipality shall provide a residential customer, a non-residential customer whose account serves residential premises, or small business service customer that has experienced a change in financial circumstances due to the COVID-19 state of emergency with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, as such is provided for in article two of this chapter. The duration of a deferred payment agreement entered into or restructured pursuant to this subdivision shall be determined as such is provided for in article two of this chapter and shall not be limited to the period described in the first sentence of this subdivision. A deferred payment agreement entered into or restructured pursuant to this subdivision shall remain subject to the provisions of article two of this chapter until the termination of the agreement as such is provided in article two of this chapter.

4-a. No municipality shall terminate or discontinue service to, or place, sell or enforce any lien on the real property of any residential customer, nonresidential customer which serves residential premises, or a small business customer for the nonpayment of bill arrears, taxes, or fees after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twentyone, whichever is earlier, unless at least thirty days previously it sent to that customer a notice of its intention to do so together with a notice of rights under this section in the form set forth in subdivision five of this section.

5. Every municipality shall provide notice, in the same frequency that the customer receives a regular bill, to residential customers, non-residential customers whose accounts serve residential premises, and small business customers in a writing to be included with a bill statement or, when appropriate, via electronic transmission the provisions of this section and shall further make reasonable efforts to contact customers who have demonstrated a change in financial circumstances due to the COVID-19 state of emergency for the purpose of offering such customers a deferred payment agreement consistent with the provisions of this section and article two of this chapter.

5-a. Notwithstanding the provisions of subdivision one of this section, for the purposes of subdivisions three, four, five and six of this section, a "municipality" shall also include a public water authority established pursuant to article five of the public authorities law. Every municipality shall be subject to the jurisdiction of the commission for the purposes of enforcing the provisions of subdivisions three, four, four-a, five, five-a and six of this section pursuant to sections twenty-four, twenty-five and twenty-six of this chapter.

Pursuant to amendments to PSL §§32, 89-b, 89-1, 91, 216 and GBL §399-zzzzz (Chapters 106 of the Laws of 2021), the Department is required to define what constitutes a residential or small business customer's "change in financial circumstances due to the COVID-19 state of emergency."

The Department offers this administrative guidance:

RESIDENTIAL CONSUMER PROTECTIONS FROM TERMINATION OR
DISCONNECTION

1. For residential customers, no terminations or disconnections for non-payment of an overdue charge may occur between May 11, 2021, and the day when the COVID-19 state of emergency is lifted or expires or December 31, 2021, whichever date is earlier. There are no requirements in these amendments that customers affirmatively contact their utility to avail themselves of this protection. Residential customer accounts that have overdue charges beginning on or after March 7, 2020, are eligible for this protection.
2. After the COVID-19 state of emergency is lifted or expires or December 31, 2021, whichever date is earlier, a utility shall require a residential customer to contact the utility to avail themselves of the additional 180 days of protections. The customer's self-certification of a change in financial circumstances must relate to the period after March 7, 2020, the date of the declared state of emergency in Executive Order 202. Utilities should assume the state of emergency is in effect until it expires or is lifted by the Governor. The Department will issue additional guidance upon the commencement of the 180day period.
3. The utility shall accept a residential customer's self-certification that the customer has experienced a change of financial circumstances due to the COVID-19 state of emergency. The utility must record the selfcertification in its business records. The utility may honor prior customer self-certifications for those who experienced a change of financial circumstances.
4. Any self-certification for residential customers must include the following language: "I attest that due to the COVID-19 state of emergency, which began on or after March 7, 2020, I have experienced a change in financial circumstances."
5. The utility may require a residential customer to document the change in financial circumstances that the customer has experienced since March 7, 2020. A change in financial circumstances may include a customer who has qualified for unemployment or experienced a reduction in household income, incurred significant costs, or experienced other financial

hardship, directly or indirectly, due to the COVID-19 state of emergency.

6. After the COVID-19 state of emergency is lifted or expires or December 31, 2021, whichever date is earlier, the utility shall provide a residential customer who experienced a change of financial circumstances due to the COVID-19 state of emergency with the right to enter into a Deferred Payment Agreement (DPA) to prevent future terminations or disconnections. If the customer enters into a DPA, the utility may require that the customer complete a financial statement and provide supporting documentation. The utility may use existing forms and instruments, with appropriate modifications, to collect this information.
7. All residential customers who experienced a change of financial circumstances due to the COVID-19 state of emergency have the right to enter into or restructure a DPA without the requirement of a down payment. Utilities are prohibited from including late fees, penalties or interest in the DPA. The prohibition on late fees, penalties, and interest applies to all arrears incurred during the pendency of the COVID-19 state of emergency, which began on March 7, 2020.
8. Residential customers who experienced a change in financial circumstances due to the COVID-19 state of emergency are not required to enter into a new DPA to avail themselves of the 180-day protection from disconnection or termination provided for by the PSL and GBL amendments. If a utility accepts a residential customer's self-certification of a change of financial circumstance due to the COVID-19 state of emergency which occurred after March 7, 2020, the customer cannot be terminated for arrears due or a prior default on a DPA until the expiration of the 180-day period.

SMALL BUSINESS CONSUMER PROTECTIONS FROM TERMINATIONS OR
DISCONNECTION

9. For qualifying small business customers, no termination or disconnections may occur between May 11, 2021, and the day when the COVID-19 state of emergency is lifted or expires. The utility must establish administrative procedures to

ensure that small business customers who seeks protection are eligible for the protection from termination or disconnections during the moratorium periods. Small businesses shall be allowed to self-certify to the utility that they meet the eligibility criteria set forth in statute.

10. The self-certification criteria for small businesses shall include the following language: "I attest that due to the COVID-19 state of emergency, which began on or after March 7, 2020, the business that I own or am an officer of has experienced a change in financial circumstances."

The small business customer must also certify to the utility that:

- (i) the business currently has twenty-five or fewer employees;
- (ii) the business is not a publicly held company, or a subsidiary thereof; and,
- (iii) the business is not a seasonal, short-term, or temporary customer of the utility.

11. If the utility asserts it can demonstrate a small business customer has the resources to pay their bill, the utility must notify the small business customer of its position. The notification must include the utility's reasons for and the small business customer's right to contest the denial of its eligibility for the moratorium protections through the Public Service Commission (Commission) complaint procedures.

12. After the COVID-19 state of emergency is lifted or expires or December 31, 2021, whichever date is earlier, a utility shall require a small business customer to contact the utility to avail themselves of the protections provided for in the PSL and GBL amendments. Utilities should assume the state of emergency is in effect until it expires or is lifted by the Governor. The Department will issue additional guidance upon the commencement of the 180-day period.

13. A small business customer must certify to the utility that it is eligible for the additional 180-day protections. The small business customer must certify and provide appropriate documentation to the service provider that it has twenty-five or fewer employees, that it is not publicly held company, and that it is not a seasonal or temporary customer of the utility. For electric, gas and steam customers, a high energy use customer is defined in 16 NYCRR §13.5(b)(1). For water

and telephone services, a high usage customer will be determined by the Commission in the consumer complaint process, as necessary.

14. Any dispute about whether a small business customer is eligible for these protections may be resolved through the Commission's consumer complaint process. The utility has the burden to demonstrate that the small business is not eligible for the moratorium protections and has the resources to pay its bills.
15. After the COVID-19 state of emergency is lifted or expires, or December 31, 2021, whichever date is earlier, small business customers who experienced a change in financial circumstances due to the COVID-19 emergency must be offered the right to enter into or restructure a DPA.
16. Any DPA negotiated subject to provisions of these PSL and GBL amendments cannot include a down payment, late fees, penalties or interest. This prohibition applies to all arrears incurred during the duration of the state of emergency. Utilities are prohibited from including late fees, penalties or interest in the DPA. The prohibition on late fees, penalties, and interest applies to all arrears incurred during the pendency of the COVID-19 state of emergency, which began on March 7, 2020.

CONSUMER PROTECTIONS APPLICABLE TO MUNICIPAL WATER PROVIDERS

17. For the period of time from May 11, 2021, until the COVID-19 state of emergency is lifted or expired, municipal water utilities subject to PSL §89-1, are prohibited from placing, selling or enforcing any lien on the real property of a residential customer, a nonresidential customer whose account serves residential premises, or a qualified small business customer.
18. For the period of time after the state of emergency is lifted or expired or after December 31, 2021, whichever date is earlier, until July 1, 2022, no municipal water utility shall disconnect a residential customer or place, sell or enforce any lien on the real property of a residential customer, a nonresidential customer whose account serves residential premises, or a qualified small business customer unless at

least 30 days prior to the disconnection or lien action, it sends the residential customer a notice of its intention to do so together with a notice of the customer's rights to self-certify a change in financial circumstances due to the COVID-19 state of emergency or enter into a DPA.

19. If a residential customer, a non-residential customer whose account serves residential premises, or a qualified small business customer has an active DPA for which payments are being made in a timely manner, the arrears included in the DPA may not be considered "unpaid" and therefore cannot be included in any lien.

CONSUMER PROTECTIIONS GENERALLY APPLICABLE TO ALL CONSUMERS

20. These laws require no other preconditions for a customer to avail themselves of the protection from termination. The utility cannot condition the application for or receipt of funds from the Home Energy Assistance Program (HEAP), COVID Emergency Rental Assistance Program (ERAP), Emergency Broadband Benefit Program (EBB) or any other federal or state assistance program as a condition precedent for eligibility for protection from termination or disconnection. The utility may ask customers if they have used "best efforts" to obtain any available state or federal assistance grants to reduce the arrears.
The utility is encouraged to work with their customers to make them aware of available assistance.
21. The Commission will take complaints from customers of gas, electric, steam, landline telephone, cable television and water utilities. The Attorney General will take complaints from customers of broadband utilities in accordance with GBL §399-zzzzz.

The utilities subject to these PSL and GBL amendments shall provide new notices to their residential and small business customers regarding these amendments and statutory changes and the availability of DPAs for those residential and small business customers who have experienced a change of financial circumstances due to the COVID-19 state of emergency. Should the utility determine that a customer must produce additional documentation to substantiate a change in financial condition due to the COVID-19 statement of emergency, the utility must make the customer aware of this in its required notice to consumers,

including the specific types of documentation it requires to show a change of financial circumstances, as prescribed in paragraph 5 above.

