

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION  
DE 18-148

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.  
d/b/a LIBERTY UTILITIES

Complaint by Judith Thompson against Liberty Utilities

Liberty's Legal Memorandum

Liberty Utilities (Granite State Electric) Corp., through counsel, respectfully submits the “brief legal analysis of the issues identified in the attached ‘DE 18-148 Summary of Allegations’ issues involved in this case” as requested by the Commission’s January 18, 2019, secretarial letter.

Below are the allegations as stated in the “Summary of Allegations,” followed by a brief legal analysis.

- the provisions of Puc 1203.01 and 07, *Payment Arrangements*, and Puc 1205.02, *Medical Emergency Certification*, by directing Ms. Thompson to set up a payment plan;

Puc 1203.01 contains the rules governing the “Initiation of Basic Utility Service.” It is not clear which portion of this lengthy rule, which contains subsections (a) through (k), forms the basis of any part of Ms. Thompson’s complaint.

Puc 1203.07 pertains to “Payment Arrangements” generally and, in subsection (b), states that when medical emergencies exist and the customer is unable to pay the total arrearage, the

utility shall continue service and offer a more flexible payment arrangement. Liberty offered payment arrangements to Ms. Thompson, but she never accepted or agreed to one.

Puc 1205.02 is the section titled, “Medical Emergency Certification,” and it contains many provisions governing how one obtains and maintains a medical certification, and how the utility may disconnect a customer who has been medically certified. Again, it is not clear which portion of this rule Ms. Thompson alleges that Liberty did not satisfy.

- the provisions in Puc 1203.18, *Transfer of Service*, by transferring Ms. Thompson’s account to her landlord on or about August 2018, without notice, without Ms. Thompson’s consent, and while she continued residing at the service address;

Puc 1203.18, titled “Transfer of Service,” requires written confirmation to the new customer when a service has been transferred to that new customer’s name: “Whenever a utility receives a request to change an account for service from one customer to another ... (1) The utility shall give timely notice of such change to the new customer; and (2) The utility may require written confirmation of the request from the new customer.” Puc 1203.18 simply does not require notice to the prior customer, which appears to be Ms. Thompson’s complaint.

Prior to April 2018, Ms. Thompson was the customer of record for her electric account. In April 2018, Ms. Thompson’s condominium—which had been acquired by the bank in 2017—was sold at auction to Madhu Gaddam d/b/a Madhu Estates, who became Ms. Thompson’s new landlord. In July 2018, Mr. Gaddam, as owner of the resident, contacted Liberty and requested that Ms. Thompson’s account be put in his name. Mr. Gaddam believed that he was required to put the account in his name based on a July 12, 2018 court order from the Salem circuit court.

In August 2018, however, Liberty received notification from Mr. Gaddam’s attorney that the July 12 state court order was not valid because Ms. Thompson had removed the case to federal

court before the July 12 state court order was issued. On August 17, 2018, a Liberty employee spoke with Ms. Thompson and asked whether Ms. Thompson wanted the electric service to be placed back in her name. Ms. Thompson requested that the account be placed back in her name, which was done.

Any notice provisions of Puc 1203.12, which are only triggered when a landlord's account is to be disconnected, were therefore not applicable because the electric services for Ms. Thompson's account were never scheduled for disconnection during the short period of time during which the landlord was the customer of record.

- the provisions of Puc 1203.14(a), *Social Service Assistance*, by failing to direct Ms. Thompson to social service providers who could pay her bill;

Puc 1203.14(a) states:

The utility shall provide the names and addresses of those social service organizations in its franchise area, known to the utility as providing possible assistance with the payment of utility bills, to its customers who are experiencing difficulty in paying utility bills.

Liberty typically provides information related to social service assistance in several ways -- newspaper advertisements for local fuel assistance programs, automated calls at the beginning of each winter period that advise customers to contact Liberty to make payment arrangements, bill inserts, and the like. Ms. Thompson necessarily received such notice because she has applied for and received assistance from social service agencies for three winters. Indeed, the only payments made on Ms. Thompson's bills for several years were from social service providers.

- the provisions of Puc 1203.06 *Bill Forms*, by not including required information in an August 2018 bill, including the date of the current meter reading, the date of the prior meter reading and the date of the next meter reading;

Puc 1203.06 states that bills “shall be rendered at regular intervals,” and that “Bills shall indicate at a minimum,” a specified list of information, for example, the date of the current meter reading, the current meter reading, the prior meter reading, etc. Puc 1203.06(c)(1) through (10).

Ms. Thompson’s complaint appears to be that she did not receive a bill for the period 7/18/2018 through 8/18/2018 and thus did not receive the information required by this rule. Ms. Thompson did not receive a bill for this period because the account was billed to the current owner of the property, Madhu Estates, as described above and in the *Statement of Undisputed Facts*.

- the provisions of Puc 1205.02, *Medical Emergency Certification*, by failing to provide a copy of Ms. Thompson’s “current medical certification” despite multiple requests;

Puc 1205.02, which states contains subsections (a) through (k) over a page and a half of single spaced text, does not appear to explicitly require Liberty to provide Ms. Thompson with a copy of her “current medical certification.” Nonetheless, Liberty sent copies to Ms. Thompson several times by regular mail (which were not returned), and by certified mail (which was declined or returned as unable to deliver). Liberty succeeded in making confirmed delivery of the document through hand delivery.

- the provisions of Puc 1205.04, *Expiration of Medical Emergency Certification*, when the company failed to notify Ms. Thompson 30 days before the expiration of her medical emergency certification; and when Liberty contacted her physician and “fraudulently” “attempted to dissuade the physician from filing” a medical certification form;

Puc 1205.04(a) states:

Thirty days prior to the expiration of the medical emergency certification, the utility shall send a reminder notice to the customer advising that, if a medical emergency still exists, the certification of a medical emergency must be renewed. The notice shall include the date by which the certification must be renewed.

Ms. Thompson’s complaint may be that Liberty’s notice of expiration was sent on 5/16/18 and Ms. Thompson’s medical certification was entered into Liberty’s system as expiring on 6/14/18, which was 29 days later, instead of the correct expiration date of 6/21/18. Note that Liberty did not disconnect Ms. Thompson in 2018.

Ms. Thompson’s second allegation above does not require legal analysis. It is a factual allegation that is simply not true. Liberty will present testimony as to the true substance of the conversation with the doctor’s office.

- the payment, scope, and debt collection provisions of Puc 1203, *Service Provisions*, and Puc 1204, *Winter Rules*, RSA 358-A:2, the *New Hampshire Consumer Protection Act*, and 15 U.S.C. Sec. 1692, the *federal Fair Debt Collection Practices Act* (FDCPA), by charging Ms. Thompson amounts not due, including the portion of her account balance transferred to Liberty by “a prior electric service provider[National Grid]”; by failing to apply funds made available by N.H. Fuel Assistance, by failing to treat Fuel Assistance as the “party responsible for payment of bills,” and by sending Ms. Thompson notice of disconnection rather than sending the notice to Fuel Assistance; improperly calculating, accounting for, and/or failing to validate her outstanding monthly balance; using disconnection as a means of debt collection; and by asking her to set up a payment plan, which she asserts “reaffirms” a debt she disputes;

Liberty's motion to dismiss addresses the claims under RSA 358-A (the statute does not apply to the PUC) and under 15 USC §1692 (even if the PUC could adjudicate this federal claim, it does not apply to Liberty as a matter of law under the terms of the statute).

As for alleged violations of Puc 1203, "Service Provisions," and Puc 1204, "Winter Rules," referenced above, the legal requirements are clear. Under the arrangement specific to Ms. Thompson, NH Fuel Assistance only agreed to pay – and is only authorized by law to pay -- Ms. Thompson's bills during the winter period, not during the summer period. Although NH Fuel Assistance (or any other social service agency) is the "party responsible for payment of bills" after the utility receives "the social service organization's notification of its agreement to pay the current bills of the customer," Puc 1203.14(d), notice of disconnection must still go to the customer, not the social service agency, when the customer has exhausted the available assistance or the agency has not make the promised payments:

Notice of disconnection shall not be sent to any customer receiving assistance with the payment of his or her utility bill from a social service organization unless the utility has determined that the customer's assistance from the organization has been exhausted or that the organization has failed to make payments as agreed.

Puc 1203.14(f). Liberty thus properly sent disconnection notices to Ms. Thompson.

Finally, Liberty agrees it must – and did – properly calculate her outstanding balance, Liberty has the right to disconnect customers during the winter for the reasons provided in the rules, *see* Puc 1204.02, which include nonpayment, Puc 1204.04. And the rules authorize Liberty to require the establishment of and adherence to a payment plan to avoid disconnection during the winter. Puc 1205.03(a).

- the notice provisions of Puc 1203.11, *Disconnection of Service*, 1203.12, *Disconnection of Service in Residential Tenant/Landlord Situations*, Puc 1203.11, *Disconnection of Service*, Puc 1205.03, *Disconnections of Services to Medical Emergency Customers*, and/or Puc 1205.04, *Expiration of Medical Emergency Certification*, by failing to provide appropriate notice when it disconnected her gas service in November 2017, failed to provide a copy of the company's May 2018 request for permission to disconnect her service, and through delivery of an August 29, 2018, letter, which stated, "After Friday, August 31, 2018[,] we will have no choice but to disconnect your service letter; and

First, Liberty did not complete a disconnection of Ms. Thompson's services in November, 2017. The service order note from the technician states "cancelled per Allison."

Second, Liberty did notify Ms. Thompson on 5/1/2018 that the Company was requesting permission from the Commission to disconnect.

Third, the letter of 8/29/18 did not specify a disconnection date, nor has one been scheduled with the field since 2017. The letter confirms the Company's intent to set up arrangements to prevent disconnection. Absent Ms. Thompson's request for a hearing, Liberty would have sent a disconnect letter giving her 15 day notice and then scheduled the disconnection with the field staff.

Respectfully submitted,  
Liberty Utilities (Granite State Electric) Corp.  
By its Attorney,



Date: February 12, 2019

By: \_\_\_\_\_  
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Certificate of Service

I hereby certify that on February 12,, 2019, a copy of this memorandum has been electronically forwarded to the service list and sent by first class mail to Ms. Thompson.

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By: \_\_\_\_\_  
Michael J. Sheehan