

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

New Hampshire Public Utilities

Investigation into the Effects of the Covid-19 Emergency on
Utilities and Utility Customers

Docket No. IR 20-089

Petition of the Office of the Consumer Advocate for Emergency Rulemaking or
Evidentiary Hearing

NOW COMES the Office of the Consumer Advocate (“OCA”), the official representative of New Hampshire’s residential utility customers pursuant to RSA 363:28 and a participant in this investigation, and petitions the New Hampshire Public Utilities Commission (“Commission”) to open an emergency rulemaking proceeding pursuant to RSA 541-A:4 and RSA 541-A:18 or, in the alternative, to commence adjudicative proceedings pursuant to RSA 541-A:31 *et seq.* In support of this petition, the OCA states as follows:

On June 30, 2020, Governor Sununu rescinded his Emergency Order #3, which declared a moratorium on utility disconnections of customers for non-payment and specified that the moratorium would remain in effect for the duration of the state of emergency declared in response to the pandemic spread of the Novel Coronavirus. Emergency Order #3 had further specified that at the end of the State of Emergency, “customers having arrearages accrued during the State of Emergency

shall be provided the opportunity to make a reasonable payment arrangement over no less than a six-month period and shall not be charged any fees for late payment for arrearages accrued during the State of Emergency.”

According to the newly issued Emergency Order #58, the disconnection moratorium will now expire on July 15, 2020. This is presumably well before any end to the State of Emergency.

Earlier on June 30, 2020, the Consumer Advocate received an e-mail communication from the director of the Commission’s division of consumer assistance and external affairs. In its entirety, the communication reads as follows:

[B]elow is the agreement for managing receivables and collections, which the utilities agreed to on Friday.

Commercial customers:

- Soft collections until August 15
- Disconnection notices could start beginning August 16
- No late payment charges through September 1
- No late payment charges if establish a payment arrangement
- No deposits from existing accounts through December 31, 2020; deposit requests for new accounts beginning August 15.
- 12 month payment arrangement; one time opportunity catch up missed payment and retain the arrangement

Residential customers:

- Soft collections until September 15
- Disconnection notices could start September 16
- No late payment charges through October 1
- No late payment charges if establish a payment arrangement (current requirement for residential customers under Puc 1200)
- No deposits from existing customers until April 2021 (cannot assess deposit on residential customers during winter under Puc 1200)
- 12 month minimum payment arrangement; at least one opportunity to catch up missed payment and retain payment arrangement but, depending on the circumstances, more than one opportunity could be reasonable
- No requests to disconnect medical accounts until 2021

Based on various telephone conversations the Consumer Advocate has had with the consumer services and external affairs division, as well as representatives of the state's biggest utility, Public Service Company of New Hampshire d/b/a Eversource Energy, it is the understanding of the OCA that these changes (termination of Emergency Order #3 and its replacement with the understandings described in the message above) were negotiated among representatives of the Governor's Office, the Commission, and one or more regulated public utilities. The Office of the Consumer Advocate was not involved in any of these discussions and did not learn of them until after they had occurred.

The OCA does not contest the Governor's decision to rescind Executive Order #3, nor his reasons for doing so. However, the abrupt termination of the protections contained in Executive Order #3 and their replacement with the guidelines for disconnections and payment arrangements described in the Commission's message, at least some of which are significantly less favorable for residential ratepayers than the protections afforded to them under Executive Order #3, constitute, or at least may constitute, an "imminent peril to the public health or safety" within the meaning of RSA 541-A:18, I so as to justify the adoption by the Commission of emergency rules.

The imminent peril, of course, arises out of the ongoing effects of the pandemic and resulting economic disruption throughout New Hampshire and, indeed, the rest of the United States. To cite but one economic datum, according to

the U.S. Bureau of Labor Statistics the unemployment rate in New Hampshire went from 2.4 percent in March to a high of 17.1 percent in April declining to a still-alarming 14.5 percent in May.¹ The utilities themselves have provided additional alarming data. According to Eversource, accounts receivable greater than 60 days old have increased 45 percent (as a percentage of billed revenue) compared to year-ago figures. Eversource Presentation of June 17, 2020 (Tab 4) at 5. At Unitil, accounts receivable from both electric and gas residential customers greater than 90 days old similarly increased by 28 percent. Unitil presentation of June 17, 2020 (Tab 5) at 15. Liberty reports that payments from its gas customers are down as much as 29 percent compared to last year. Liberty Presentation of June 17, 2020 (Tab 6) at 6. Aquarion Water Company reports a “[s]teady increase since March in accounts receivables outstanding greater than 60 days and 90 days when compared to prior year.” Aquarion Water Company Presentation of June 17, 2020 (Tab 7) at 6.

As for the health effects of the pandemic, the respected Johns Hopkins University databased reported in late June that positive Novel Coronavirus had declined to a reassuring 2 percent (approximately) after spiking at nearly 18 percent in mid-April.² However, on June 29, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, warned in testimony before the U.S. Senate that across the U.S. the number of new cases of Novel Coronavirus

¹ See <https://www.bls.gov/eag/eag.nh.htm>.

² See <https://coronavirus.jhu.edu/testing/individual-states/new-hampshire>.

could more than double to 100,000 a day if there is no containment of a surge now ongoing in many states.³ Although New Hampshire is not one of those states, there is a real and present danger that the Granite State will not be able to insulate itself from this surge and, thus, that the process of relaxing the previously imposed and economically devastating stay-at-home measures will require reimposition in whole or in part.

The Commission opened the instant docket by Order of Notice issued on June 4, 2020. In its Order of Notice, the Commission determined that “it is necessary to investigate the impacts of the COVID-19 pandemic” on New Hampshire’s utilities (including the substantially deregulated New Hampshire Electric Cooperative). Order of Notice (Tab 1) at 2. The Commission further indicated that it would “consider necessary and appropriate changes to existing policies and practices regarding utility operations, collections, revenues, finances, accounting, customer assistance measures, and ratemaking impacts, in light of the pandemic.” *Id.*

Accordingly, as indicated in the Order of Notice, the Commission conducted a status conference (virtually, via the WebEx platform) on June 17, 2020. The

³ See, e.g., “As shaken cities and states pull back from reopening, Fauci sounds alarm on surging virus,” Washington Post, July 1, 2020, available at https://www.washingtonpost.com/politics/as-the-coronavirus-gains-ground-shaken-cities-and-states-pull-back-from-reopening/2020/06/30/937d0c6e-bacd-11ea-8cf5-9c1b8d7f84c6_story.html.

Consumer Advocate made a presentation at the status conference and, at the request of Commissioner Giaimo, filed a letter thereafter so as to reduce the OCA's specific recommendations to writing. *See* June 17, 2020 letter of Consumer Advocate Kreis to Executive Director Howland (Tab 10). The recommendations tendered by the OCA at that time are incorporated here by reference. They are considerably more solicitous of the needs of ratepayers, particularly those facing unemployment and other dire economic stresses, than those reflected in the agreement the utilities reached with the Commission set forth *supra*. New Hampshire Legal Assistance ("NHLA"), whose Energy and Utility Justice Project is specifically focused on the needs of low-income customers, also made recommendations that are considerably more solicitous of the needs of such customers than the terms apparently agreed to by the PUC.⁴

At the time the OCA and NHLA addressed the Commission during the status conference, there was *no reference to behind-the scenes discussions* among the utilities, the Governor's office, and the PUC, nor did the OCA or NHLA have any reason to believe that revocation of Emergency Order #3 was under consideration. The issuance of Emergency Order #58 now transforms Docket IR 20-089 into a far more urgent inquiry. So urgent, in fact, that the Commission can and should invoke its authority under RSA 541-A:18 to promulgate emergency rules or, in the

⁴ The official Clerk's Report of the status conference (Tab 3) incorrectly omits any reference to the fact that Consumer Advocate Kreis and Attorney Raymond Burke, director of NHLA's Energy and Utility Justice Project, addressed the Commission. The OCA respectfully requests that the Clerk's Report be corrected.

alternative, its authority under RSA 541-A:31 et seq. to conduct an evidentiary hearing and issue an order.

The authority for the OCA's request for an emergency rulemaking appears at RSA 541-A:4, I, which provides that any "interested person" may petition an agency "to adopt amend, or repeal a rule." As the statutory representative of residential ratepayers, the OCA qualifies as an "interested person." *See* RSA 541-A:1, XIII (defining "person" for purposes of the Administrative Procedure Act). RSA 541-A:4, I does not limit the subject of such a petition to permanent and/or interim rules, as distinct from the emergency rules authorized by RSA 541-A:18.

Emergency rules are an appropriate course of action because the measures discussed at the status conference, as well as the new measures apparently agreed to by the PUC, are all at variance with (and, appropriately in light of the pandemic) more customer-favorable than the requirements applicable under N.H. Code Admin. Rules ch. 1200 (the Commission's Rules for the Uniform Administration of Customer Relations). Thus, absent some action by the Commission to waive or abrogate on an emergency basis the applicable provisions of the Puc 1200 rules, it is these provisions that become legally binding once they are no longer superseded by Emergency Order #3. Therefore, this is not a suitable occasion for adjudication and, as recently argued by Public Service Company of New Hampshire in Docket No. IR 15-296 (the Commission's grid modernization investigation), the Commission may not alter the rights and duties of those subject to the agency's determinations

(including both utility customers and utility shareholders) via an informal process that is neither a rulemaking nor an adjudication. *See* Motion of Public Service Company of New Hampshire for Reconsideration and/or Clarification (Tab 112) in Docket No. IR 15-296 at 37-39.

An alternative approach would be to transform this docket into an adjudicative proceeding and conduct a hearing on an emergency basis. The timeline specified for responding to petitions for rulemaking under RSA 541-A:4 is laconic at best. If the Commission is unwilling or unable to consider emergency rules on an expedited basis, the contested case provisions of RSA 541-A:31 *et seq.* are a compelling alternative.

The Office of the Consumer Advocate has no reason to question the sincerity of the concern for the plight of utility customers during the pandemic reflected in the efforts of the utilities, the PUC, the PUC Staff, or the Governor. However, these are weighty matters bearing significantly on the economic well-being of New Hampshire's utility customers, particularly those who have difficulty paying their utility bills in a time of pandemic-induced crisis and economic depression. Customers are suffering and customers are dying. Whatever protections replace Emergency Order #3 is a question that should be addressed publicly so that ratepayer representatives can be heard and have a fair opportunity to influence the Commission's decisionmaking.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Immediately commence proceedings to promulgate emergency rules on utility disconnection and arrearage payments, either within the confines of this docket or otherwise, and
- B. Grant any other such relief as it deems appropriate.

Sincerely,



D. Maurice Kreis
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1174
donald.kreis@oca.nh.gov

July 1, 2020

Certificate of Service

I hereby certify that a copy of this Petition was provided via electronic mail to the individuals included on the Commission's service list for this docket.



D. Maurice Kreis