

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 18-148

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

Complaint by Judith Tompson against Liberty Utilities

Order Dismissing Petition and Denying Complaint

ORDER NO. 26,291

September 5, 2019

APPEARANCES: Judith Tompson, *pro se*; Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Utilities; and Mary E. Schwarzer, Esq., on behalf of Commission Staff.

This order confirms that Ms. Tompson has an arrearage dating back to 2003 and is required to make a payment arrangement with Liberty to avoid disconnection of service. The order also denies or dismisses all claims made by Ms. Tompson against Liberty.

I. PROCEDURAL HISTORY

On September 17, 2018, Judith Tompson filed a 22-page complaint alleging that Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty or the Company) violated N.H. Code Admin. Rules Puc Parts 1203 and 1205 when it sought permission to disconnect her electricity for nonpayment. Liberty denied the allegations and filed a response.

On November 30, 2018, the Commission scheduled a hearing for January 29, 2019. The Commission's notice to Ms. Tompson included a procedural schedule and a Summary of Allegations contained in her complaint. The Commission set forth a simplified process for Ms. Tompson to identify information she wished to keep confidential and excused Ms. Tompson from electronic filing requirements. *See* October 22, 2018, Secretarial Letter; November 30,

2018, Secretarial Letter; Hearing Transcript of February 19, 2019, (Tr.) at 30, 173-77.

Ms. Tompson did not receive the November notice, and the Commission rescheduled the hearing for February 19, 2019. *See* January 18, 2019, Secretarial Letter.

On January 29, Ms. Tompson filed a pleading called, Inaccuracies in the DE 18-148 Summary of Allegations. Liberty filed a motion to dismiss to which Ms. Tompson filed an objection. On February 12, in preparation for the hearing, Liberty filed a Memorandum of Law supporting its Motion to Dismiss, and a Proposed Statement of Undisputed Facts.

The complaint and subsequent docket entries, including the transcript, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://www.puc.nh.gov/Regulatory/Docketbk/2018/18-148.html>.

II. BACKGROUND

Ms. Tompson resided at the same location during the relevant period (2003-August 2018). As of an August 2018 bill date, Ms. Tompson owed a cumulative balance of \$5,386.37 on her electric bill. Exh. M, T; Tr. 139-40. Liberty asserts this balance represents unpaid charges from bills dated January 21, 2003, through August 17, 2018. *See* Exhibit LU14, LU16, Tr. 150-56. Ms. Tompson argues that she is not required to make any payments for reasons identified in Section III below.

During 2017 and 2018, Ms. Tompson provided Liberty with valid annual medical emergency certifications. *See* Puc 1205.02; Liberty's Proposed Statement of Undisputed Facts (February 12, 2019); Exh. 2, K, LU4, LU7-8; Tr. at 21, 29, 34, 36, 87, 135. A medical emergency certification contains a statement "that the customer ... has a physical or mental health condition which would become a danger to the customer's ... physical or mental health should the utility service be disconnected." *See* N.H. Admin. Rules Puc 1202.12 *and* Puc

1205.02(e). It must be signed by a physician, advanced practice registered nurse, physician's assistant, or mental health practitioner. *See* Puc 1205.02.

Since 2011, the federal fuel assistance program known as the Low-Income Home Energy Assistance Program (LIHEAP), has annually awarded Ms. Tompson a monetary grant, or benefit, for use during the winter heating season. LIHEAP's "winter heating season" runs from November 1 through April 30 of the following year. *See* Exh. LU15; LU22.¹ Ms. Tompson's annual fuel assistance benefit was sequentially applicable to each of her then-current monthly electric bills during the winter heating season. Exh. LU15, LU22; Tr. 81-82. Due to Ms. Tompson's low annual electricity usage, only a portion of her available fuel assistance grant was paid to Liberty on her behalf before the grant expired each year at the conclusion of the winter heating season. Exh. LU15, LU16.

While LIHEAP payments were made on Ms. Tompson's behalf, Ms. Tompson made no payments on her account from November 2006 to the present, with one recent exception. *See* Exh. LU9, LU14, LU16, M, T; Tr. 37-38. On July 18, 2018, Liberty billed Ms. Tompson for an outstanding balance of \$5,395.80, including a "final bill" with then-current charges of \$9.43. *See* Exh. M, LU14. Ms. Tompson paid the \$9.43, which Liberty showed as a credit in a "charges" column for a bill date of August 17, 2018. *See* Exh. LU14; Tr. 37-38, 139-40, 155-56.

Ms. Tompson's arrearage, as identified by Liberty, includes two categories of billed charges. The first category consisted of charges billed from January 21, 2003, through and including July 17, 2014. Those charges were for services provided by Granite State Electric

¹ LIHEAP's "winter heating season" is not the same as the "winter period" as defined by the Commission. Under the Commission's rules, the "winter period" runs from November 15 through March 31 of the following year. *See* Puc 1202.19. During the winter period, the Commission provides some additional protection from disconnection for utility customers. *See* Puc 1205.01. Payment terms are most flexible for individuals with a current medical emergency certification. *Compare* Puc Parts 1205 and 1204.

(GSE) and billed by National Grid when National Grid owned GSE, or billed by National Grid on Liberty's behalf during a transition period. *See* Exh. LU14, LU16; Tr. 23, 150-52, 205. Bills issued by National Grid during this period totaled \$4,250.12 of the \$5,386.37 arrearage, or 79 percent of the total arrearage. *See* Exh. LU14. Liberty acquired GSE in July of 2012, including the accounts receivables. Tr. 150-056, 190; *see National Grid USA, et al, Transfer of Ownership of Granite State Electric Company and Energy North Natural Gas, Inc. to Liberty Energy NH, Order Approving Settlement, Granting Motions for Confidential Treatment and Waiver of Certain Filing Requirements, Order 25,370* (May 30, 2012). National Grid continued to bill customers on Liberty's behalf through July of 2014. *See* Tr. 150-56, 190, 204-06, 231, Exh. LU14, LU16. Liberty does not have any information about National Grid's collection efforts prior to its purchase of GSE.

The second category of charges included charges billed by Liberty from July 18, 2014, through and including August 17, 2018. For that period, Liberty billed charges in the amount of \$2,338.66, offset by credits of \$1,202.41 ("SNHS payment"² + \$9.43), resulting in an arrearage of \$1,136.25, or 21 percent of the total arrearage. *See* Exh. LU14, LU16; Tr. 154-55. During the four-year period, fuel assistance benefits were available to pay Ms. Tompson's then-current bills in the months of November through April. *See* Puc 1202.06 (defining "current bill" as "the amount of money due to the utility for basic utility service, including all applicable state and federal taxes, rendered in the most recent billing period"). For those months, even though Ms. Tompson paid nothing, the account showed that current bills were paid. For the months of May through October, fuel assistance benefits were not available. For those months Ms. Tompson continued to pay nothing, despite receiving monthly bills from Liberty.

² SNHS payments are fuel assistance payments.

Consequently, the electric account arrearages increased. *See* Exh. LU14; Tr. 25, 52, 83, 151-56. Liberty initiated additional collections efforts in 2016, in the form of collections letters and telephone calls. Tr. 212-13.

Liberty frequently asked Ms. Tompson to set up a payment arrangement for her unpaid balance. *See* Exh. LU9, LU12-13, LU 18-21, D, H, K, L, M, T. The parties' interactions have been contentious and unproductive. Tr. 28-29, 29-51, 128; *see* Exh. LU14, LU16.

In August 2017, Liberty concluded that minimum monthly payments of \$65 would be reasonable, based on Ms. Tompson's arrearage and her medical certification. Exh. 2; Tr. 175-78. Liberty was unable to reach Ms. Tompson to share its conclusion with her; however, the Commission's Consumer Services Division shared this information with Ms. Tompson soon thereafter. Exh. 2; Tr. 175-78. The \$65 monthly payment represented Ms. Tompson's average monthly bill as well as a \$25 payment towards the arrearage. Exh. LU1; Tr. 120-22, 125-28, 175-78. Ms. Tompson has consistently refused to discuss making a payment arrangement with Liberty or with the Consumer Services Division.

Liberty has twice sought and received permission from the Commission's Consumer Services Division to disconnect Ms. Tompson's account. On November 6, 2017, the Company turned off Ms. Tompson's service for approximately one hour. Exh. 1-3, W; Tr. 32, 121, 128-29. At that time, Ms. Tompson spoke with an on-site technician and said she had received insufficient notice. The technician called Ms. O'Neil, Liberty's Collections Supervisor through July 31, 2018, who told him to turn the power back on. Tr. 32-33, 120-22, 114, 125-28, 179-80.

In May 2018, Liberty again sought permission to disconnect electric service to Ms. Tompson's account. Exh. Staff 3, H, LU3. On or about June 19, 2018, the Consumer Services Division granted permission after finding that Ms. Tompson did not have a current

medical emergency certification, and that, even if a certification were provided, Ms. Tompson had failed to make and comply with a payment arrangement, and failed to make a good faith effort to make payments towards the utility bill. *See* Exh. 3, LU4, LU7, LU12, LU15; *see also* N.H. Admin Rules Puc 1205.02, 1205.03.

The Consumer Services Division authorized Liberty to disconnect Ms. Tompson's account, effective June 19, 2018. That permission did not expire until the beginning of the Commission-defined winter period on November 15, 2018. *See* Exh. 3, LU4, LU7, LU10, LU12, LU15; *see also* N.H. Code Admin Rules Puc 1202.19.

In order to follow through on the permission granted by the Commission's Consumer Services Division and disconnect Ms. Tompson's service, the Company was required to send Ms. Tompson a 14-day notice of disconnection, and to complete the disconnection following the end of the notice period. *See* Exh. LU10; Liberty Memorandum of Law (February 12, 2019) at 7; *see also* Puc 1205.03(h); 1203.11(b). During the months of June, July, and August 2018, Liberty did not take those steps. *See* Exh. LU10; Liberty Memorandum of Law at 7; and 1203.11(b).

Several complications arose almost immediately after Liberty received permission to disconnect the account. In early June, after Ms. Tompson's 2017-2018 medical emergency certification expired, Ms. Tompson gave the Company oral notification that her medical emergency was ongoing. Consequently, Liberty placed a hold on collection activity from June 20 through July 5, 2018. *See* Exh. LU7, LU8; *and* Puc 1205.02(d). In addition, although Ms. Tompson provided a new medical emergency certification on or about June 26, 2018, the status of the new certification was ambiguous. After consulting with the Commission's Consumer Services Division, Liberty called Ms. Tompson's doctor to determine if a reference to

“air purification” was related to a medical condition. Tr. 162. Liberty reported that the physician told the Company to shred the document he provided because it was submitted to assist Ms. Tompson but was not medically valid. Exh. LU12, LU15. A Liberty witness explained that Liberty nonetheless accepted the authorization, because the physician did not formally withdraw it. *See* Exh. LU12, LU15, LU16; Tr. 162-164.

On or about July 12, 2018, in an eviction proceeding, the Salem District Court granted a motion filed by Ms. Tompson to continue electric service at her residence. Liberty was notified by the property owner’s attorney that the Salem District Court order required that the electric account for the residence be transferred to the property owner. The Company complied with the owner’s request, and made the owner financially responsible for the account as of July 19, 2018. Exh. LU10, M. The process of transferring the account generated a bill for Ms. Tompson that Liberty identified as the “final bill.” That bill included “current charges” in the amount of \$9.43. Exh. M. Ms. Tompson paid the “current charges” amount. *See* LU14. On August 17, 2018, in the course of initiating a call to Liberty to confirm her payment, Ms. Tompson learned of and objected to the transfer. Liberty put the account back in Ms. Tompson’s name. *See* Exh. LU10-11, LU 14, I, J, N, P; Tr. 35-36; 91 (referencing item 14 in Liberty’s Proposed Statement of Undisputed Facts), 140-44.

Liberty’s collection efforts resumed on or about August 17, 2018, after Ms. Tompson initiated a call to confirm her payment of the current charges of \$9.43 on the “final bill,” a step required by Liberty’s automated payment processing system. During that telephone call, and after the account was returned to her, Liberty employee Jennifer Hemeon told Ms. Tompson that typically once a customer has been approved for disconnection — as Ms. Tompson had been — the Company requests payment of at least half of the arrearage from a customer to avoid

disconnection. Tr. 91 (referencing item 14 in Liberty's Proposed Statement of Undisputed Facts). Ms. Hemeon then explained that pursuant to that formula, a payment of approximately \$2,500 would be needed to maintain service. Tr. 37, 139, 144-45. Ms. Tompson did not agree to make that payment. Ms. Hemeon also asked Ms. Tompson to name an alternate payment amount, without success. Tr. 144-45. On August 29, 2018, Ms. Jessica Allen, Liberty's Collections Supervisor as of August 1, 2018, hand-delivered a letter to Ms. Tompson's unit. The letter stated that unless Ms. Tompson entered into a payment arrangement before September 1, 2018, Liberty would "have no choice but to disconnect service." Exh. LU13; Tr. 114, 145-49.

On August 29 and 30, 2018, Ms. Tompson spoke with the Assistant Director of the Commission's Consumer Services Division to challenge Liberty's demand for payment of an approximately \$5,300 arrearage, and to assert that disconnection was inappropriate. *See* Exh. Staff 3, LU15. The Assistant Director instructed Liberty to suspend collection activity until September 17, 2018, to give Ms. Tompson time to file a formal complaint, and the Assistant Director gave Ms. Tompson information about how to do so. *See* Exh. LU15. The Assistant Director also noted that if no complaint were filed by September 17, Liberty could resume its collection activity by sending Ms. Tompson a notice of disconnection pursuant to Puc 1203.11. *See* Exh. LU 15.

In June of 2018, Ms. Tompson had asked Liberty to provide an analysis of the balance the Company identified as due, including copies of supporting monthly bills; the Assistant Director renewed that request in August 2018. *See* Exh. LU12, LU15, BB. On or about September 12, 2018, Liberty completed that analysis based on information available in the

Company's billing system. *See* Exh. LU12, LU14, LU16; Tr. 152-54, 193-97, 201-02, 221-223.

On September 12, 2018, Ms. Allen left information outside Ms. Tompson's door. Tr. 149;

Exh. LU17. On September 17, 2018, Ms. Tompson filed her complaint with the Commission.

III. POSITIONS OF THE PARTIES AND STAFF

A. Judith Tompson

The list of claims Ms. Tompson included in her complaint is extensive. Ms. Tompson argues that she is not required to make any payments because she has a current medical emergency certification. In the alternative, she argues that her LIHEAP fuel assistance payments constituted a payment arrangement.

Ms. Tompson asserts that Liberty is required to direct her to social service organizations that will provide assistance. She also argues that, pursuant to Puc 1203.14(e), Liberty ought to have annually tracked her federal fuel assistance benefits. Had Liberty done so, Ms. Tompson argues she could have asked the fuel assistance program to apply her unused benefits to her non-winter charges and arrearage. *See* Tr. 92-95. Ms. Tompson agrees that she could have independently tracked her own fuel assistance benefits. *Id.*

Ms. Tompson asserts that Liberty cannot collect payment for charges billed by National Grid because Liberty did not provide those services. *See* Exh. LU14, LU16; Tr. 88, 150-52.

Ms. Tompson further argues that the statute of limitations has run on 85 percent of her past due amount, and therefore Liberty cannot require her to pay that portion. Tr. 22, 51; Liberty's Proposed Statement of Undisputed Facts, #29. She also claims that she cannot pay her bill because doing so will reaffirm a debt she disputes.

Ms. Tompson asserts that Liberty was required to give her notice when financial responsibility for electric service was transferred to the person who owns her residence. She

argues that Liberty failed to conform to billing requirements by omitting a “next meter read date” on her July 18, 2018, “final bill.” She alleges that Liberty improperly tried to persuade her medical doctor not to renew her 2018 medical emergency certification. She argues that Liberty violated a Salem District Court Order, which directs the owner of her residence to maintain electric service at her address, when Liberty continued to take steps to disconnect her.

Ms. Tompson alleges that Liberty has frequently failed to give her notice and that she did not receive multiple Liberty letters that the Company claims were mailed to her. She asserts that Liberty provided improper notice that her medical emergency certification would expire by providing notice 29 days in advance of its expiration, instead of the requisite 30-day advanced notice. Ms. Tompson alleges that Liberty provided improper notice of disconnection on November 6, 2017, and on August 29, 2018.

Ms. Tompson claims that Liberty violated the New Hampshire Consumer Protection Act and the federal Fair Debt Collection Practices Act by the steps it took to get her to make payments. She also claims that when Liberty transferred her account to the property owner he assumed her balance, including her arrearage. Finally, Ms. Tompson’s complaint alleges that Liberty violated a contractual duty of care it owed to her, and that it engaged in extortion and negligent misrepresentation when it threatened to disconnect her service.

B. Liberty

Liberty denies most of Ms. Tompson’s factual allegations and disagrees with her legal claims. Liberty states that a medical emergency certification, by itself, is insufficient to protect Ms. Tompson from disconnection. Liberty argues that Ms. Tompson must set up a payment arrangement in order to be protected from disconnection, and that LIHEAP payments do not constitute a payment arrangement, or a good-faith effort to make payments. *See* Tr. 237. Liberty

asserts that it complied with Puc 1203.14(a) by directing Ms. Tompson to social service providers who might provide assistance, and that it was not required to provide her with a running tally of fuel assistance program benefits.

Liberty asserts that when it purchased GSE from National Grid, it also purchased National Grid's accounts receivable. Liberty also asserts that the identity of the entity providing services to Ms. Tompson never changed; it remained GSE. By extension, Liberty claims that, as GSE's parent company, Liberty is entitled to collect all arrearages, including arrearages for charges billed by National Grid on behalf of Liberty following the sale and during the transition period.

With regard to Ms. Tompson's statute of limitations claim, Liberty asserts that, under the "continuing violation" doctrine, there is no bar to its recovery of unpaid charges from 2003 to the present. Under that doctrine, the Company asserts that it has the right to go back for the whole series of transactions, and collect approximately \$5,300. Liberty also asserts that there is no requirement for it to sue to collect the arrearage. Liberty notes that since 2014, it has continuously billed for both the outstanding balance associated with service rendered but not paid for prior to its acquisition of GSE in 2012, and for the outstanding balance for all post-2012 services. Liberty emphasizes that Ms. Tompson has failed to pay the arrearage every month. Liberty asserts that each monthly bill sent to Ms. Tompson continually refreshes the balance, which makes the entire debt current each month.

Liberty argues that it was not required to give Ms. Tompson notice when financial responsibility for the electric account was transferred to the property owner. Liberty asserts that, although most bills are required to include the date of the "next meter reading," a "final bill" does not have a "next" meter reading. Liberty asserts it was entitled to call Ms. Tompson's

medical doctor to clarify an ambiguity on the medical emergency certification. Tr. 162-64, 243-44. Liberty denies attempting to dissuade Ms. Tompson's physician from providing a new medical emergency certification for the 2018-2019 period. Tr. 162-64, 243-44. Liberty argues it is not subject to the terms of the Salem District Court's order.

Liberty asserts it made reasonable efforts to provide Ms. Tompson with required documentation, including copies of her medical emergency certifications, collection letters, and disconnection notices. *See* Tr. 149-50, 159, 229-30. Liberty admits that it mailed Ms. Tompson's notice of expiration for her 2017-2018 medical emergency certification one day late. Liberty concedes that a technician turned off Ms. Tompson's power on November 6, 2017. Liberty notes, however, that it turned the power back on just one hour later, after Ms. Tompson reported she had not received notice, and before the technician left the premises. Tr. 27, 125-28; Exh. 1-2. Liberty states that the August 29, 2018, letter was not intended to be a "disconnection notice." *See* Liberty's Memorandum of Law.

Liberty filed a motion to dismiss claims under the New Hampshire Consumer Protection Act and the federal Fair Debt Collection Practice Act. Liberty argued, among other things, that matters over which the Commission has jurisdiction are exempt from the state statute, and that the Commission does not have jurisdiction to enforce the federal statute.

Early in the proceeding, Liberty was directed to file a list of agreed upon, relevant, facts. *See* Secretarial Letters (November 30, 2018; January 18, 2019). Liberty filed its Proposed Statement of Undisputed Facts at the hearing, in lieu of written testimony.

C. Staff

At the hearing, Staff noted that Commission rules state that a medical emergency certification, alone, is insufficient to protect a customer from disconnection. Staff recommended

that the Commission find that the payment of LIHEAP benefits to a utility does not constitute a payment arrangement. Staff also recommended that the Commission find that fuel assistance payments, by themselves, do not constitute a “good faith effort to make payments.”

Staff believes that a payment arrangement requires that an agreement between the customer and utility be in place, that the customer agree to make monthly payments that are reasonable, and that the customer make regular payments throughout the year. Staff believes that if a payment arrangement is in place or, in the alternative, if a customer is making a good faith effort to make payments, then the customer is protected from disconnection. Tr. at 235-38; *see* Exh. 2-3, LU15, LU22.

Staff took no position on the application of the statute of limitations to Ms. Tompson’s account. Staff recommended that the Commission grant Liberty’s motion to dismiss Ms. Tompson’s claims under the state Consumer Protection Act and the federal Fair Debt Collection Practice Act, for the reasons cited in that motion.

IV. COMMISSION ANALYSIS

As the final arbiter between the interests of customers and regulated utilities, the Commission must balance a utility’s right to payment with a customer’s right to charges that are reasonable and just. *See* RSA 363:17-a; RSA 374:2.

A. A Current Medical Emergency Certification, by Itself, Is Insufficient to Protect an Account from Disconnection

A current medical emergency certification is only sufficient “in conjunction with a payment arrangement for any past due balances.” *See* Puc 1205.02 (a). A customer’s failure to enter into a payment arrangement, or failure to comply with an existing payment arrangement, can result in the disconnection of service. *See* Puc 1205.03. At the very least, in order to retain utility service, a customer with a current medical emergency certification must make a good faith

effort to make payments toward the utility bill. *See* Puc 1205.03(e). It is undisputed that Ms. Tompson had medical emergency certifications in 2017 and 2018. There is a dispute, however, about whether she did other things necessary to avoid disconnection. Unless and until Ms. Tompson enters into a reasonable payment arrangement and abides by its terms (or otherwise makes a good faith effort to do so), a medical emergency certification consistent with Puc 1205.02 will not insulate her from disconnection. *See* Puc 1205.03(e).

B. LIHEAP Payments Are Not A Payment Arrangement

“Payment arrangements” are governed by Puc 1203.07. Payment arrangements are to be entered into “when a residential customer is unable to pay the total arrearage due.” If the utility and the customer can agree to (1) payment of a reasonable portion of the arrearage, (2) payment of that portion in reasonable installments, and (3) payment of current and future bills by their due date, then the utility must continue to provide service to that customer. Puc 1203.07(a). Utilities are permitted to make more flexible payment arrangements when the customer has first provided medical emergency certification. Puc 1203.07(b). A utility may disconnect service when a customer fails to pay an arrearage after demand has been made, or a customer fails to comply with a payment arrangement properly entered into and confirmed. *See* Puc 1203.11(f); Puc 1204.05(d) (disconnections not approved when financial hardship exists and a customer has made a good faith effort to make payment); Puc 1205.03(e) (disconnections not approved when a current medical emergency certification exists and a customer has made a good faith effort to make payment).

The LIHEAP program provides certified income-eligible households with assistance in paying electric bills during the winter heating season if those households use electricity for heat as the primary heating source. Exh. LU15, LU22 at 5, 9, 41. Typically, the fuel assistance program works by allocating a grant to households at the beginning of the winter heating season.

Each month during the heating season, the household's current bills are then paid from the allotted grant until the grant is gone, or until April 30 when "[a]ll credits with vendors terminate and unused benefit balances roll back into the program." Exh. LU15 (quoting Exh. LU22, p. 9). Fuel assistance is a valuable resource in assisting customers with their fuel bills. Fuel assistance is not designed to, or allowed to, pay for service rendered, or arrearages accrued, outside the current winter heating season. Exh. LU15, LU22 at 5, 9, 41.

In this circumstance, fuel assistance is not a payment arrangement. A standard payment arrangement is something a residential customer and utility agree to put in place. *See* Puc 1203.07. It must include terms whereby the customer agrees to pay a reasonable portion of the arrearage, in reasonable installments, and to pay the current bill and future bills by the due date printed on the bill. *Id.* Fuel assistance payments only fulfill a part of one of those criteria by paying then-current bills from November 1 through April 30.

A customer with a current medical emergency certification is accorded more flexibility in making payment arrangements than other customers. Puc 1203.07(b). Regular monthly payments and an explicit agreement between the customer and the utility are required. By definition, fuel assistance benefits, and payment by fuel assistance of charges between November and April, standing alone, do not qualify as a payment arrangement. It follows that Ms. Tompson's fuel assistance benefits do not constitute a payment arrangement.

In certain circumstances, good faith efforts to make payments may protect an account from disconnection. Ms. Tompson, however, did not make any payment during the non-winter months from July 2014 through August 2018, with the exception of one payment of \$9.43. One payment during that period does not establish a "good faith effort to make payments," as required by Commission rule. *See* Puc 1205.03(e).

C. Liberty Is Not Required to Guarantee that a Social Service Agency Will Provide Benefits or Track the Use of LIHEAP Benefits

Ms. Tompson asserts that Liberty is required to attain a social service agency that will provide assistance with bill payment. The rule, however, only requires the utility to provide the customer with the names of organizations known to the utility as providing possible assistance with the payment of utility bills. *See* Puc 1203.14.

If the customer receives ongoing social service assistance that is more than a one-time payment, including but not limited to LIHEAP benefits, the utility is required to treat the social service organization as the party responsible for the payment of current bills. Puc 1203.14(d). It must also “provide the customer with a monthly accounting of his or her billing and payment history during the period when the social service organization is making payments.”

Puc 1203.14(e). “Monthly accounting” means that the customer receives what might otherwise be a “bill,” except the utility is already billing the social service organization. The accounting, as required by Puc 1203.14(e), directs the utility to provide the customer with current monthly charges, payments, and the payment history, meaning history of payments *to the utility*. There is no requirement that Liberty identify LIHEAP benefits granted to Ms. Tompson by the fuel assistance program in preparation for a winter heating season, or that Liberty tally the ongoing “benefits used” and “benefits remaining.” Ms. Tompson herself might have done that, but did not. Ms. Tompson’s mere belief that Liberty would track that information is unavailing, and her allegations that Liberty acted improperly by failing to track her fuel assistance benefits are groundless.

Furthermore, remaining fuel assistance benefits would have been irrelevant, as they could not be used to pay for arrearages or service outside the winter period. Ms. Tompson appears to believe that LIHEAP benefits or credits that were not needed to cover her bills in one winter

could be used in the summer or in subsequent years to pay her electric bills. That is not how the program works. As noted by Liberty, after April 30, “[a]ll credits with vendors terminate and unused benefit balances roll back into the program.” Exh. LU15 (quoting Exh. LU22, p. 9).

D. Liberty Owns National Grid’s Accounts Receivable

Ms. Tompson argues that Liberty cannot bill her for the same electric service National Grid billed her for between 2003 and July 2014 “because Liberty did not provide those services.” *See* Exh. LU14, LU16. As described above, GSE provided Ms. Tompson with services in 2003, and continues to do so. National Grid sold all of GSE’s assets, including its accounts receivable, to Liberty in 2012. Liberty thus owns National Grid’s accounts receivable, and Liberty is the appropriate entity to seek payment for all of National Grid’s outstanding accounts receivable including those National Grid billed on Liberty’s behalf and including Ms. Tompson’s arrearage. Indeed, Liberty is the only entity that can seek payment from Ms. Tompson for the arrearage at issue.

E. Liberty is Entitled to Continue Billing for the Full Arrearage on Ms. Tompson’s Account Without Regard to the Statute of Limitations

Liberty claims that Ms. Tompson is responsible for payment of the full amount of her billed arrearage from 2003 through August 2018, and that the full amount should serve as the basis for a reasonable payment arrangement. In contrast, Ms. Tompson argues that Liberty can no longer enforce its right to payment for any arrearage accrued from 2003 to approximately August of 2015, and that Liberty is precluded from using the full amount of arrearage as the basis for a reasonable payment arrangement, due to application of a three-year statute of limitations. Thus, we must consider whether the three-year statute of limitations in RSA 508:4 applies to the calculation of an arrearage for an active customer account for the purpose of establishing a payment arrangement or terminating electric service.

A statute of limitations “bars claims after a specified period,” and specifically through legislation establishes “a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered).” *Black’s Law Dictionary*, (11th ed. 2019). New Hampshire has a three-year statute of limitations for personal actions, including actions in contract. *See* RSA 508:4. The purpose of a statute of limitations is “to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonable available and fresh.” *Black’s Law Dictionary* (11th ed. 2019); *see also Dupuis v. Smith Properties, Inc.*, 114 N.H. 625, 629-30 (1974) (purpose is to ensure defendants receive timely notice of actions against them).

The three-year statute of limitations is a “procedural limitation[] upon a party’s right to sue” in court; it “affects only the remedy and not the substantive rights of the litigants.” *See Martin v. Pat’s Peak, Inc.*, 158 N.H. 735, 741-42 (2009). Because a debtor still owes a time-barred debt, most courts agree that the statute of limitations does not prevent a debt owner from seeking to collect even the entire amount of the debt outside of court, and they agree that it is appropriate to do so. *See* Marc C. McAllister, *Ending Litigation and Financial Windfalls on Time-Barred Debts*, 75 Wash. & Lee L. Rev. 449, 459 (2018) (citing cases); *see, e.g., Buchanan v. Northland Grp., Inc.*, 776 F.3d 393, 396-97 (6th Cir. 2005) (noting that, under most states’ laws, “a debt remains a debt even after the statute of limitations has run on enforcing it in court”); *Freyermuth v. Credit Bureau Servs. Inc.*, 248 F.3d 767, 771 (8th Cir. 2001) (noting that “a statute of limitations does not eliminate the debt; it merely limits the judicial remedies available”).

The matter before us is not a personal action to collect a past due debt, and even if it were, the Commission does not adjudicate that type of action. Consequently, while the

three-year statute of limitations might be available to Ms. Tompson as an affirmative defense were Liberty to seek full payment of the arrearage amount in court, it is not applicable to our decision whether Liberty may disconnect Ms. Tompson's electric service.³

Our rules governing arrearages, payment arrangements, and disconnections do not compel any different conclusion. Liberty's calculation of Ms. Tompson's "arrearage" is fundamental to the setting of payment arrangements and to authorized disconnections.

"Arrearage" is defined in our rules as "any amount due to the utility for basic utility service which remains unpaid after the due date printed on the original bill." Puc 1202.01. We interpret that definition according to its plain meaning. Missing from the definition is the phrase "after application of the statute of limitations to the amount due." We will not read that phrase into our rule, as Ms. Tompson would have us do. *See Zorn v. Demetri*, 158 N.H. 437, 438 (2009) (interpretation must be based on the rule as written).⁴ Based on our definition of "arrearage," we find that Liberty properly determined that the past due arrearage on Ms. Tompson's account is not time-barred or otherwise limited by the statute of limitations.

We find further that the definition of "arrearage," combined with our rules governing payment arrangements and disconnections, properly balances a utility's right to payment for

³ The Vermont Public Service Board (Board) has reached the same conclusion in several similar cases, concluding that the statute of limitations does not prevent a utility from collecting tardy charges or, in the alternative, disconnecting the customer. *See, e.g., Belanger v. Village of Morrisville Water & Light Dep't*, 2010 WL 2801101 (Vt. P.S.B. Dkt. No. 7571 (June 2, 2010)). In *Belanger*, the Board required a consumer to pay for services provided more than four and one-half years prior, a delay due wholly to the utility's error. The Board reasoned that "the general rule... is that a person who receives goods or services from a regulated utility must pay for them at the tariffed price, no matter what the impact upon the customer may be and no matter how careless the utility may have been in its billing." *Id.* The Board noted that the customer could only raise legal or equitable defenses to repayment, including a statute of limitations defense, in the event that the utility filed a civil collection action. *Id.* at 8.

⁴ Moreover, the Commission knows how to implicate a statute of limitations in its rules when it believes that the balance of utility and customer interests require it. *See e.g.*, Puc 1203.15(b) (utilities permitted to deny new service to applicants with an outstanding arrearage for prior service after the relevant statute of limitations has run, if the utility has pursued recovery of the debt through the court system); Puc 1203.15(c) (utilities permitted to deny new service to applicants with an outstanding arrearage for prior service for a period of 3 years after the relevant statute of limitations has run, provided the utility made collection efforts during the running of the statute of limitations).

electricity delivered, and its customer's right to continued electric service for an active account. While customers remain responsible for past due amounts that are older than three years, Commission rules give delinquent customers, who wish to continue service, protections an unregulated market would not otherwise provide. *See* Puc Parts 1203, 1204, and 1205.

Commission rules also protect other customers from higher rates. Utility shareholders do not absorb the losses associated with delinquent payments. Rather, those costs are borne by the utilities' other customers in the form of higher rates, and some of those other customers may be in challenging financial circumstances themselves. Commission rules also offer utilities some protection from the costs of litigation when they are required to file court cases to collect payment from active customers. Those costs of litigation are also ultimately borne by other customers in the form of higher rates.

In conclusion, we find that Liberty properly determined that the past due arrearage on Ms. Tompson's account is not time-barred or otherwise limited by the statute of limitations for the purposes of payment arrangements and disconnection of service.

F. Several Allegations Do Not State Violations of Commission Rules

Ms. Tompson alleges that Liberty failed to give her notice when the individual who owns her residence directed Liberty to put the account in his name. Liberty agrees that it did not provide notice. There is no rule, however, that requires Liberty to provide this sort of notice. *See* Puc Part 1200.

Similarly, Ms. Tompson complains that the "final bill" Liberty provided in July 2018, as part of transferring the account from Ms. Tompson to the property owner, did not include the date of the next meter reading. *See* Exhibit M. At the time the bill was rendered, Liberty believed that it was required to transfer the account to the owner of Ms. Tompson's residence. Accordingly, there was no need for Liberty to include the date of Ms. Tompson's next meter

reading on that bill because Liberty did not expect that there would be one; the bill was “final.” *See* Puc 1203.06 (c)(5). After Ms. Tompson objected to that transfer, the account was returned to her name. Her subsequent bills again included dates for upcoming meter readings, as required. Exh. LU18. We find no violation of our rules in these circumstances.

The Commission also finds that Ms. Tompson did not prove that Liberty’s conversation with her doctor was inappropriate. Liberty reasonably sought to determine whether the doctor’s written note referenced a medical condition. Liberty also notified the Commission’s Consumer Services Division before calling the doctor to clarify the meaning of the written note. There is no evidence Liberty attempted to persuade Ms. Tompson’s doctor not to renew her medical emergency certification. Moreover, Liberty’s conversation with Ms. Tompson’s doctor had no negative effect on her service as the Company took no action following that conversation.

Finally, Ms. Tompson argues that Liberty violated a Salem District Court Order when Liberty transferred financial responsibility for the electric service account to the property owner. The Salem District Court Order does not name Liberty. There is no evidence that the Order binds Liberty, moreover, the Commission does not have jurisdiction to enforce a Salem District Court Order.

G. Ms. Tompson’s Other Claims

a. One-Hour Shut-Off and One-Day Notice Delay

On November 6, 2017, Liberty turned Ms. Tompson’s electricity off for approximately one hour during which time its technician remained on the premises. The technician turned the power back on after Ms. Tompson explained she had not received sufficient notice of the disconnection. Liberty had obtained permission from the Commission’s Consumer Services Division to disconnect Ms. Tompson’s account in October of 2017; however, based on this record it is unclear whether Ms. Tompson received the requisite 14-day advance notice. *See*

Exh. 2, LU1. The Commission finds that, in this instance, Liberty's action did not rise to the level of a violation because Liberty's technician remained at Ms. Tompson's residence, Liberty took immediate action after determining that the notice required by Puc 1203.11 may not have been provided, and the power was off for no more than one hour. We caution Liberty, however, that any disconnection must be documented, and notice must be provided as required by Puc 1203.11. We urge Liberty to review its practices and procedures, as necessary, to ensure that it will comply with rule requirements.

Ms. Tompson alleges that Liberty failed to give her the requisite 30-day notice in advance of the expiration of her medical emergency certification. Liberty agrees that it was one day late in notifying Ms. Tompson that her 2017-2018 medical emergency certification had expired. While Ms. Tompson is correct, we note that the delay did not meaningfully affect her opportunity to protect her account from disconnection. Liberty gave her sufficient time to renew her certification, and her certification was successfully renewed. The Commission finds that this one-day delay had no effect on Ms. Tompson's account. Nonetheless, we urge Liberty to also review its practices and procedures regarding expiration of medical emergency certifications to ensure full compliance with Puc 1205.04.

b. Liberty Took Reasonable Steps to Provide Notice

The evidence does not support Ms. Tompson's allegation that Liberty failed to provide adequate notice. With regard to actual delivery of hard copies: Liberty sent correspondence to Ms. Tompson's mailing address of record by first class mail; Liberty attempted to send correspondence through Federal Express services; and Liberty hand-delivered documents to Ms. Tompson's home at the request of the Commission's Consumer Services Division. While Ms. Tompson may not have physically received all of the letters Liberty sent to her, especially

those requiring a signature, Liberty demonstrated that it took reasonable and appropriate steps to communicate with Ms. Tompson and to provide her with notices.

Ms. Tompson alleges that Liberty's August 29, 2018, letter which stated "After Friday August 31, 2018, we will have no choice but to disconnect your service," did not meet the notice requirements established in Puc 1203.11(b)(1) (written notice to be provided 14 calendar days prior to the proposed date of disconnection). *See* Exh. T. Had Liberty treated the August 29, 2018, letter as a notice of disconnection and disconnected Ms. Tompson's service, it would have acted prematurely and therefore improperly. The meaning of the August 29, 2018, letter is ambiguous. Liberty asserts that the August 29, 2018, letter was not intended to serve as a notice of disconnection, as required by Puc 1203.11(b)(1). *See* Liberty Memorandum of Law at 7. Regardless, two days after Liberty delivered the letter, the Consumer Services Division's Assistant Director directed Liberty to suspend disconnection activity on Ms. Tompson's account. *See* Exh. LU15. Accordingly, whether Liberty would have disconnected the account based on the August 29, 2018, letter is of no importance, because Liberty did not, in fact, disconnect Ms. Tompson's service at that time.

c. No Jurisdiction to Resolve Consumer Protection Act Claims

Ms. Tompson alleges that Liberty violated RSA Chapter 358-A, New Hampshire's Consumer Protection Act (CPA), with regard to Liberty's provision of electricity, the accuracy of its bills, and its efforts to collect Ms. Tompson's arrearage. The Commission lacks the jurisdiction to adjudicate a claim made pursuant to the CPA, and actions pursuant to that statute must be brought in a court of competent jurisdiction.

d. No Jurisdiction to Enforce the Federal Fair Debt Collection Practices Act

Ms. Tompson alleges that Liberty violated the federal Fair Debt Collection Practices Act (FDCPA) by the steps it took to collect her arrearage. The FDCPA states in relevant part:

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

15 U.S.C. § 1692k(d). The Commission is not a federal district court, or “any other court of competent jurisdiction.” Accordingly, Ms. Tompson’s allegations that Liberty violated the FDCPA cannot be adjudicated by the Commission, and we need not consider whether Liberty is a debt collector as defined by the FDCPA.

e. Allegations Without Developed Legal Argument

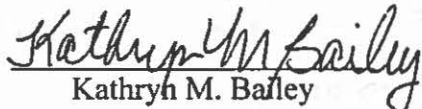
Ms. Tompson alleges that Liberty violated a contractual duty of care it owed her. She asserts that Liberty engaged in extortion and negligent representation when it threatened to disconnect her electricity. She argues that when Liberty transferred her account to the property owner, he assumed her electric account balance. Ms. Tompson did not develop facts or legal arguments to support any of those allegations. Therefore, the Commission need not address them, even assuming without deciding whether the Commission has jurisdiction to hear them. *Cf. Verizon New Hampshire*, Order No. 24,442 (March 11, 2005) (Commission may decline to rule on issues that have not been adequately developed). Similarly, Ms. Tompson’s document called Inaccuracies in the DE 18-148 Summary of Allegations (January 29, 2019) is nothing more than a collection of citations and quotations, and contains no argument to support her allegations. As such, we will not address it further. *Id.*

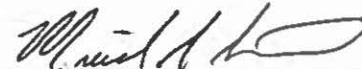
Based upon the foregoing, it is hereby

ORDERED, that for the reasons stated in the body of this order, Liberty's Motion to Dismiss is **GRANTED**; and it is

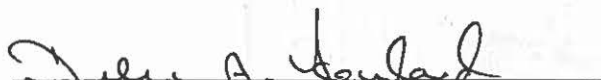
FURTHER ORDERED, that for the reasons stated in the body of this order, Judith Tompson's complaint is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 2019.


Kathryn M. Bailey
Commissioner


Michael S. Giaimo
Commissioner

Attested by:


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