

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, 89-1, and 91 (Chapters 108 and 126 of the Laws of 2020) Regarding Moratorium on Terminations and Disconnections of Residential Utility Customers During the COVID-19 State of Emergency.

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

(Issued September 8, 2020)

On June 17, 2020, Governor Andrew M. Cuomo signed into law amendments to the Public Service Law (PSL) that ordered a moratorium on terminations and disconnections of residential electricity, gas, steam, telephone, and water customers during the COVID-19 state of emergency.<sup>1</sup> These amendments provide that residential customers, in certain circumstances, may be eligible for additional protections from terminations or disconnections if the residential customer had "a change in financial circumstances due to the COVID-19 state of emergency."

On September 4, 2020, Governor Andrew M. Cuomo signed Executive Order 202.60 which extended the State of Emergency until October 4, 2020.

The moratorium is in effect from the passage of the PSL amendments until 180 days after the COVID-19 state of emergency is lifted or expired. The COVID-19 state of emergency

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<sup>1</sup> <https://www.governor.ny.gov/news/no-20260-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

period is defined in the PSL<sup>2</sup> as "the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty." The executive order, issued on March 7, 2020, is currently set to expire on October 4, 2020. The PSL amendments provide an additional time period during which residential customers are protected from terminations or disconnections, for 180 days after the lifting or expiration of the executive order.<sup>3</sup>

The PSL amendments charge the Department of Public Service (Department) with defining what constitutes a "change of financial circumstances" for the period of 180 days after the state of emergency is lifted or expires, which is currently expected to run from October 4, 2020, to March 31, 2021. The Department's guidance is offered with the intent of protecting affected residential customers from unnecessary terminations or disconnections while also encouraging customers and utility providers to work cooperatively to address unpaid arrears for necessary utility service.

This Notice is to provide guidance to and request filings from all regulated utility providers and municipalities subject to these amendments to the PSL.

The PSL amendments excerpted below "shall take effect immediately and shall expire March 31, 2021, when upon such date the provisions of this act shall be deemed repealed."<sup>4</sup>

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<sup>2</sup> PSL §§ 32(6), 89-b(8), 91(9), and 89-1(3).

<sup>3</sup> 180 days from October 4, 2020 is April 2, 2021. The 180 days continues past the expiration date of the statute on March 31, 2021. The statute's end date - March 31, 2021 - is the termination date of these additional protections.

<sup>4</sup> L.2020, c. 108 § 5.

The amendments to PSL §32 provide:

6. No utility corporation or municipality shall terminate or disconnect services to any residential customer 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 (herein after "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 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 the COVID-19 state of emergency is lifted or expires, no utility corporation or municipality shall terminate or disconnect the service of a residential 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 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.

8. Every utility corporation or municipality shall provide notice to residential 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 the lifting or expiration of the COVID-19 state of emergency, 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.

10. Implementation of the provisions of this section shall not limit the contractual remedies for damages which might be available to the terminating utility provided that an award of such damages is not inconsistent with any of the provisions of this article.

The amendments to PSL §89-b provide:

8. No water-works corporation shall terminate or disconnect the supply of water to residential accounts 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 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 the COVID-19 state of emergency is lifted or expires, no water-works corporation shall terminate or disconnect the service of a residential 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 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 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.

11. Implementation of the provisions of this section shall not prohibit a water-works corporation from recovering lost or deferred revenues after the lifting or expiration of the COVID-19 state of emergency, 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.

The amendments to PSL §89-1 provide:

3. No municipality shall terminate or discontinue residential service for the nonpayment of bills, taxes, or fees 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"). Every municipality shall have a duty to restore service to any residential 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 the COVID-19 state of emergency is lifted or expires, no municipality shall terminate or discontinue the service of a residential 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 COVID-19 state of emergency, as defined by the department. The municipality shall provide a residential 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.

5. Every municipality shall provide notice to residential 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.

6. Implementation of the provisions of this section shall not prohibit a municipality from recovering lost or deferred revenues after the lifting or expiry of the COVID-19 state of emergency, provided that such means are not inconsistent with the provisions of this article. Nothing in this section shall prohibit a municipality from disconnecting service when it is necessary to protect the health and safety of customers and the public.

The amendments to PSL §91 provide:

9. No telephone corporation shall terminate or disconnect a residential service customer 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"). Telephone corporations shall have a duty to restore service, to the extent not already required under this chapter, at the request of any residential customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency and disconnection of such service was due to non-payment of an overdue charge.

10. For a period of one hundred eighty days after the COVID-19 state of emergency is lifted or expires, no telephone corporation shall terminate or disconnect the service of a residential customer account because of defaulted deferred payment agreements or arrears then owed to the telephone 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 telephone corporation shall provide such residential customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties.

11. Every telephone corporation shall provide notice to residential 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.

12. Implementation of the provisions of this section shall not prohibit a telephone corporation from recovering lost or deferred revenues after the lifting or expiration of the COVID-19 state of emergency, 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 telephone corporation from disconnecting service at the request of a customer. Nothing in this section shall prohibit a telephone corporation from disconnecting service when it is necessary to protect the health and safety of customers and the public.

Pursuant to amendments to PSL §§ 32, 89-b, 89-1, and 91 (Chapters 108 and 126 of the Laws of 2020), the Department is required to define what constitutes a residential utility customer's "change in financial circumstances due to the COVID-19 state of emergency."

The Department offers this administrative guidance:

1. No terminations or disconnections for non-payment of an overdue charge may occur between March 7, 2020, and the day when the COVID-19 state of emergency is lifted or expires, which is currently October 4, 2020.
2. After the COVID-19 state of emergency is lifted or expires, currently October 4, 2020, until the expiration of the statute on March 31, 2021, a utility provider may require a residential customer to contact the utility to avail themselves of the protections provided for in the PSL amendments.
3. The utility provider 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 provider must document the "change in financial circumstance"

and record the self-certification in its business records.

4. The self-certification must include the following language, "I attest that due to the COVID-19 state of emergency, which began on March 7, 2020, I have experienced a change in financial circumstances."
5. After the COVID-19 state of emergency is lifted or expires, which is currently October 4, 2020, the utility shall provide a residential customer with the right to enter into a Deferred Payment Agreement (DPA) to prevent future terminations or disconnections. The utility may require that the customer complete a financial statement and provide supporting documentation. Utility providers may use existing forms and instruments, with appropriate modifications, to collect this information.
6. After the COVID-19 state of emergency is lifted or expires, which is currently October 4, 2020, residential customers financially disadvantaged by the COVID-19 emergency are not required to enter into a new DPA to avail themselves to the protections provided for by the PSL amendments. If a residential customer contacts the utility to attest to a change of financial circumstance due to COVID which occurred after March 7, 2020, the household cannot be terminated for arrears due or prior default on a DPA.
7. These laws require no other preconditions for a residential customer to avail themselves of the protection from termination. Utility providers cannot condition the application for or receipt of Home Energy Assistance Program (HEAP) or any other public assistance program as a condition precedent for eligibility for protection from termination.
8. After October 4, 2020, the eligibility date for customers to qualify for an additional period of a suspension on termination or disconnections and to assert a change in financial circumstances must be on or after March 7, 2020, the date of the declared state of emergency in Executive Order 202.



9. The utilities shall utilize all existing mechanisms and procedures of providing financial assistance to their residential customers, including, but not limited to, outreach materials regarding HEAP, enrollment in any low-income discount program, or providing a no money down DPA.
10. Any DPA negotiated subject to provisions of these PSL amendments cannot include a down payment, late fees or penalties.

The utility providers and municipalities subject to these PSL amendments shall provide notice to their residential customers regarding these statutory changes and the availability of a DPA for those residential customers who experience a change of financial circumstances due to the COVID-19 state of emergency.

By this Notice, regulated utilities and municipalities shall file with the Department the following documents:

1. The utility's and municipality's overall plan for implementation of this statute.
2. A copy of the notice to consumers pursuant to PSL §§ 32(8), 89-b(10), 89-1(5) or 91(11).
3. A final report to be filed with the Department within 30 days of the effective end date of these PSL amendments. The report shall include: (1) the number of affected households that have availed themselves of these protections; (2) the number of new DPAs for the period of time from October 4, 2020, to March 31, 2021; and (3) the total number of residential customer terminations or disconnections for nonpayment for the period from October 4, 2020 to March 31, 2021.

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The documents shall be filed with the Secretary within 10 days of date of this Notice. The final report shall be filed no later than 30 days from March 31, 2021.

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary