STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission	]	
Regarding the Effects of COVID-19 on	]	Case 20-M-0266
Utility Service	]	

Initial Comments of the Public Utility Law Project of New York

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I. PRELIMINARY STATEMENT

Pursuant to a directive from Governor Cuomo on March 13, 2020, New York State's Public Service Commission ("PSC" or "Commission") subsequently declared it had achieved a pledge from New York utilities that they would institute a voluntary moratorium on utility service terminations during the COVID-19 health pandemic.[1] At first, some utilities ceased issuing termination letters for customers in arrears. However, without termination notices, residential customers would be unable to receive funds under New York's rules for the federal Low-Income Home Energy Assistance Program ("HEAP"), thus utilities have resumed sending such notices. Since the end of April, HEAP has been extended twice, with a current deadline of August 30, 2020. Those extensions have maintained vital access to one important financial assistance program for individuals struggling to pay their heating bill due to the COVID-19 health pandemic and the subsequent economic downturn.

On March 20, 2020, Governor Cuomo signed Executive Order 202.8 ("NY on Pause")[2] . This Executive Order required 100% of all "non-essential" workers to work from home, including the State work force, effectively instituting a "lockdown" of workplaces and most commercial and industrial establishments. As New York entered the "lockdown" phase necessary to stop the spread of the novel coronavirus ("COVID-19"), large numbers of New Yorkers were "furloughed," laid off, or otherwise lost their income. By June 20, 2020, 2.8 million New Yorkers had filed for unemployment,[3] and 1.1 million were 60 days or more in

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[1]See, . Open Element"http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/3F74F913F5E331B28525852A006FB646/$File/pr20023.pdf?OpenElement. The voluntary moratorium only affected jurisdictional utilities, so, e.g., roughly 90% of New York's water ratepayers were not covered by the moratorium because they received water from municipal systems or public authority systems; municipal coop energy utilities were also not covered; cable companies were not covered, and similarly for telephone companies (landline and cellular). . Open Element"http://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/3F74F913F5E331B28525852A006FB646/$File/pr20023.pdf?OpenElement. The voluntary moratorium only affected jurisdictional utilities, so, e.g., roughly 90% of New York's water ratepayers were not covered by the moratorium because they received water from municipal systems or public authority systems; municipal coop energy utilities were also not covered; cable companies were not covered, and similarly for telephone companies (landline and cellular).

[2] See, https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

[3] See, New York State Department of Labor ("NYS DOL"): https://labor.ny.gov/stats/PDFs/Research-Notes-Initial-Claims-WE-6202020.pdf

energy utility arrears,[4] owing $874 million or almost $800 per customer.[5] At the same, analysis of the broader U.S. economy revealed that at best the U.S. was plunging into an economic downturn equal to the "Great Recession of 2008-2010,"[6] but was more likely plummeting into a second Great Depression.[7] In other words, the economic dislocation would not ease rapidly, and millions of New Yorkers would have trouble affording the utility bills, housing and other vital expenses such as medicine and healthcare, and food. Rate relief for utility consumers, and particularly low-income, fixed-income and moderate-income households became a key aspect of the public interest and will be addressed in this proceeding.

The Commission began addressing the policy and social consequences of COVID-19 by taking action in individual cases to address the economic impact of pre-authorized rate increases, e.g., rate increases authorized for the Middleburgh Telephone Company,[8] the Niagara Mohawk Power Corporation ("NiMo"),[9] and New York American Water ("NYAW").[10] In each of those cases, the Commission took individualized action to require or allow postponement of a preapproved rate increase. However, the Commission had not opened a statewide "generic" policy proceeding to address all utilities, involving issues raised by the pandemic and economic contraction, which it was clear would be required to establish a uniform approach statewide.[11]

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4 See, *Proceeding on Motion of the Commission to examine the collection practices of the major gas and electric utilities in New York State to identify ways to reduce losses due to uncollectibles while maintaining a high level of customer service*, Case 91-M-0744 ("CARS Proceeding"). Available at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=91-m-0744&submit=Search. While PULP would have included the arrears/collections data of other utility industries, energy utilities at this time are the only ones to fully report the data NARUC and NASUCA agreed in 2019 are important for policymakers to base utility policy upon.

5 See generally, CARS Proceeding.

6 Another Way to See the Recession: Power Usage is Way Down; https://www.nytimes.com/interactive/2020/04/08/upshot/electricity-usage-predict-coronavirus-recession.html?referringSource=articleShare.

7 See, "New York State Unemployment Rate is at Highest Level Since the Great Depression," https://www.forbes.com/sites/mayrarodriguezvalladares/2020/04/26/new-york-state-unemployment-rate-is-at-highest-level-since-the-great-depression/#17b9f02c76f2 .

8 See, Matter 20-00516, Middleburgh Telephone Company – Rates, Untitled Order (issued March 24, 2020).

9 See, Case 17-E-0238 et al., Niagara Mohawk Power Corporation d/b/a National Grid et al. – Rates, Order Postponing Approved Electric and Gas Delivery Rate Increases and Updated Reduction to the Low Income Discount Credit and Temporarily Waiving Certain Tariff Fees (issued March 25, 2020).

10 See, Case 16-W-0259, New York American Water, Inc. – Rates, Order Postponing Approved Rate Increases and System Improvement Charge (issued March 25, 2020).

11 The National Association of State Utility Consumer Advocates ("NASUCA") created a resolution on proposed uniform measures the states should take on COVID-19's utility and utility consumer effects. See, https://www.nasuca.org/nwp/wp-content/uploads/2020/05/2020-01-NASUCA-COVID-19-Policy-Resolution-Final-5-12-20-.pdf.

Therefore, PULP filed a petition seeking the creation of a statewide COVID-19 generic proceeding.[12] PULP also suggests the Commission should give due consideration to the policy suggestions made in NASUCA's resolution 20-01, passed by a strong majority affirmation of the State Consumer Advocates and Attorneys General of the fifty states and U.S. territories.[13]

Despite parts of New York State beginning to reopen now in July, the COVID-19 pandemic is still ongoing, as is the economic crisis. Governor Cuomo's signature of A.10521/ S.08113-A into law[14] has highlighted that the New York State government is taking the effects of the pandemic on utility customers seriously, along with the manifest inability of large numbers of New Yorkers to stay current on their bills. In addition, the Commission began the generic proceeding to attempt to combat these impacts on utilities, the economy and ratepayers in which these comments are filed.[15]

PULP submits the following comments in response to the Commission's June 11, 2020 *Order Establishing Proceeding* in Case 20-M-0266 ("Order"). The Commission has stated that the previous filing made by PULP would be incorporated into this proceeding.[16] Consequently, PULP respectfully restates its previous concerns discussed in its petition for a generic proceeding as if explicitly made herein. Additionally, PULP urges that this generic proceeding must be acted upon quickly as outlined below, in order to protect New York State residents when the statutory protections end.

II. PROCEDURE

Per the Commission's Order, 20-M-0266 incorporates all documents from Cases 20-M-0198 and 20-M-0187, and Matter 20-01023.[17] The public interest also requires making reference to Commission and Department of Public Service ("DPS" or "Department") reasoning from Recommended Decisions, Orders, and Commission Guidance Documents from prior cases from

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12 See, *Petition for Generic Proceeding*, Case 20-M-0198. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F5361B5C-F03C-43D0-A443-26011B4FCFF2}.

13 Supra note 11, and see Appendix A.

14 See, https://nyassembly.gov/leg/?default_fld&leg_video&bn=A10521&term=2019&Summary=Y&Actions=Y&fbclid=IwAR0NQ5lDunMyiZqkTJBLFrZaPzvb9gVAhgPV8P4gj1yPPmd0dmdpXoNXU_I.

15 See, Order Establishing Proceeding, Case 20-M-0266, issued and effective June 11, 2020.

16 *Id.*

17 Issued and effective June 11, 2020. Presumably public comments in those proceedings are also subsumed into 20-M-0266. If not, we request such action here.

analogous periods such as the 2009 generic proceeding to develop utility austerity plans ("Austerity Proceeding"), and the 2013 Post-Superstorm Sandy proceeding.[18] It may also be useful to examine the outcomes in the 1980s era Long Island Lighting Company case and other Orders made while considering economic impact upon ratepayers from proposed rate increases, against a background of economic stress caused by stagflation, runaway interest rates, the Oil Shock and Oil Embargo, and the "Reagan Recession".[19] Previously, the Commission has recognized that economic impact should be understood as being broader than just the hardship posed by the customer's monthly utility bills. Instead, "[u]tility rates have various potentially harmful and beneficial multiplier effects on the overall financial and economic health of the territory where the rated are imposed."[20] It is incumbent upon the Commission and participants in this proceeding therefore to take note of this interaction.

Finally, since a number of other states have begun or already concluded COVID proceedings before their Commissions.[21] As a result, the deliberations and discussion in this proceeding, and final order, should be informed by best practices adopted by other states' commissions and collectively by expert staff of those commissions and the many statutory consumer advocates and attorneys general providing briefs, comments and filings in such proceedings.[22]

Given the unprecedented loss of employment, contraction of New York's economy, and accumulation of arrears and increase of numbers of customers/households in arrears, PULP believes that this proceeding should be calculated to result in as comprehensive and robust a record as possible. Additionally, all activity within this proceeding, and in post-proceeding reconciliation processes and mechanisms, must be as transparent to ratepayers and the State as is

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18 See, Case 09-M-0435, supra, Order Approving Ratepayer Credits (issued December 22, 2009) ("Austerity Order").
19 See also, among other sources the PSC's Statement of Policy Concerning Evidence of Economic Impact in Rate Cases, issued January 14, 1980 ("EEI Policy").
20 *Id.* at 2.
21 See, e.g., Illinois' completed COVID case, Docket 20-0309 at https://www.icc.illinois.gov/docket/P2020-0309/documents/297460; see also, Indiana COVID proceeding Cause No 45390 which has had a final order for phase 1, at https://www.in.gov/iurc/files/45380Phase1_ord_062920.pdf; and see, California's partially completed terminations moratorium proceeding that morphed into a COVID proceeding, CPUC D20-04-027 at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M334/K805/334805753.PDF; and see, California Resolution M4842 issued and effective April 2020 on lowering service terminations.
22 See, e.g., the NARUC tracker on State responses to the COVID-19 emergency at https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/; see also the NASUCA tracker of state moratoria at https://www.nasuca.org/nwp/wp-content/uploads/2020/06/Summary-of-State-Moratoriums5.pdf.

reasonably achievable. Consequently, PULP suggests that parties should be able to conduct discovery as is provided for under Commission rule and precedent, and that to a certain extent this proceeding should take on the process of an evidentiary proceeding,[23] subject to certain proposals concerning timing that PULP will describe below.

There is an important paradox inherent in the need to conduct as thorough and deliberate a proceeding as the gravity of the crisis and the complexity of issues involved requires – with full evidentiary processes – while yet retaining the ability to act rapidly to address emergent issues. So, there should be simultaneous action on emergency issues, while also taking the time necessary to fully and transparently analyze the problems arising from the public health crisis and economic collapse. Such a review should be conducted in a manner that allows comprehensive weighting of potential solutions, and the potential risks of downside effects inherent in balancing the public interests components of ratepayer protections and affordability, versus utility solvency and the potential for long-term rate impacts by too great a reliance upon deferrals and non-transparent reconciliation mechanisms.

Consequently, PULP proposes the Commission divide the issues presented in its COVID Order into three categories of action:

(1) Emergent issues that need immediate remedies by Commission Order, including but not limited to imposition of rate relief through nullification and/or deferral of rate increases; compelling utilities to file austerity plans such as was contemplated and partially achieved in 2009 (aimed at achieving rate reductions across all utility sectors); updates regarding employee staffing levels; suspension of ongoing rate cases rate litigation, and settlement proceedings; an immediate halt on new rate filings; substantially reformed and updated procedures to assist enrollment in utility low-income programs; and

(2) Intermediate term issues, including but not limited to analysis of austerity filings by utilities; the creation of arrearage management programs ("AMP"s) and other mechanisms to slow or avert the growth of ratepayer back arrears; the suspension of activity in all costly REV

[23] Due to the inability for intervenors to obtain certain data without Commission-sponsored discovery, and to the difficulty of obtaining rapid FOIL responses during off-site work policies, PULP intends to establish a complete public record of arrears development in this proceeding, among other things discussed in Section III below. Given the current unavailability of this data, together with the uncertainties surrounding the re-opening of the State economy and the prospect of a federal "fiscal cliff" that could additionally and severely harm vulnerable New York ratepayers, we will file timely supplements to these comments reporting arrears progression and such other areas that we reasonably believe would harm low-/fixed-income residential ratepayers.

proceedings that would not result in immediate ratepayer relief; similar suspension for REV sub-proceedings and workgroups where such action does not lead to immediate provable reductions of current expenses born by ratepayers and long-term rate impacts; and the triaging of all Commission and DPS activity to raise priority on proceedings during this crisis that will lower short and intermediate-term bill impacts upon ratepayers; and

(3) Long term issues, including but not limited to creating new collections procedures to take place after the end of utility service termination moratoria calculated to avert widespread impaired credit, eviction(s) and foreclosure and/or residential consumer bankruptcies; creating arrearage forgiveness mechanisms or programs designed to lower the creation or increase of uncollectibles, and to allow the forgiveness of consumer utility debt without over-socialization or unnecessary impairment of utility finances; issuing additional guidance for utility low-income programs, and actions aimed at addressing such issues as:

> (1) Whether a distribution company incurred any incremental O&M costs during the state of emergency, and if so, addressing any arguments seeking deferral and recovery by the utilities of such costs;
> (2) Bad debt incurred by utilities during the state of emergency;
> (3) Whether Management made any efforts to minimize costs during the state of emergency;
> (4) Actions taken by management to comply with Department orders and orders by the Governor;
> (5) Actions taken by management to assist customers during the state of the emergency;
> (6) The distribution companies' compliance with service quality guidelines during the state of emergency, and whether or not utilities failed to provide service upon request;
> (7) The number of residential customers successfully enrolled in budget billing or any other bill payment assistance program, both during and following the state of emergency;
> (8) The number of residential customers successfully enrolled in low-income assistance programs, including the low-income discount rate program established in Case 14-M-0565 and any AMPs, both during and following the state of emergency, and;
> (9) The distribution companies' monthly average cost rate of short-term debt.

PULP respectfully suggests that the DPS issue an emergency SAPA notice on July 16 aimed at effectuating solutions for emergent ratepayer issues and necessary rate relief (i.e., "category 1"), shortly after the deadline for initial comments set in this proceeding, and issue an interim final order on such issues sixty (60) days after the publishing of such notice. Intermediate term issues (i.e., "category 2") should be addressed in an interim order issued between three and six months after the deadline for these comments. Finally, a final order in this proceeding (i.e., "category 3") should address the long-term issues necessitating solutions and should be issued no later than March 31 of 2021, or when the moratorium period created by the Chapter 108 of 2020[24] (a/k/a the "Parker/Mosley Bill") ends, whichever is sooner in time. In furtherance of such suggested procedure, PULP respectfully requests the assignment of one or more ALJs to this proceeding to supervise discovery and address disputes if such arise.

In order to prevent any further harm to utility customers' finances and credit, PULP also requests an immediate suspension of all current rate cases, including ongoing settlement discussions and litigations, scheduled rate increases due to past settlements, and adding extensions of the maximum suspension periods until the end of the state of emergency. In the end, the purpose of this proceeding is to address all matters related to COVID-19 as it relates to utilities, their role in their service territories, and ratepayers.[25] Consequently, while PULP has provided some suggested procedures and timing of the solution of issues above, they are illustrative in nature and based upon as yet incomplete knowledge of the issues that must be addressed. PULP therefore suggests that for each separate sub-proceeding and interim process suggested for this proceeding that there be a fresh opportunity to submit comments, and that all comment opportunities should be paired with the ability to file reply comments upon an accelerated schedule. PULP further suggests that the Office of Consumer Services be tasked with filing comments as an advocate for mass market consumers' interests at each stage of this proceeding.

III. BACKGROUND

Executive Order 202 instructed all New York State agencies to "take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide

[24] PULP notes here that Ch. 108 of 2020 subjects municipal water utilities to the PSC's jurisdiction and rulemaking authority and will therefore be providing suggested implementation rules in a separate appendix attached to these comments and will be concurring with joint comments filed by the "Water Coalition."
[25] *Supra* footnote 14 above.

such other assistance as is necessary to protect public health, welfare, and safety."[26] In response to this directive, as described in the introduction above, the Commission has taken several steps, including the postponement of rate increases for Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid Upstate")[27] and New York American Water Company ("NYAW")[28]. However, the Commission did not pursue any actions to apply to utility companies under its control as a whole.

On April 10, 2020, Multiple Intervenors ("MI"), an unincorporated and usually anonymous group of large energy consumers, submitted a petition requesting a generic proceeding.[29] On April 20, 2020, PULP submitted a Petition requesting a generic proceeding.[30] Multiple groups submitted comments and letters of support for both MI's and PULP's requests.[31] On April 21, 2020, a matter and case number were created for the petition that is the focus of these comments.[32] Per the Order, "[t]he petitions and all documents and comments filed in Cases 20-M-0198 and 20-M-0187, and Matter 20-01023, are incorporated into the newly established proceeding."[33]

IV. DISCUSSION

In its notice published on June 11, 2020 the Commission requested comments in this proceeding in the following (3) areas:

- Collections and Termination of Service
- Commission Priorities in Serving the Public Interest

[26] See, https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york.
[27] Case 17-E-0238 et al., Niagara Mohawk Power Corporation d/b/a National Grid et al. – Rates, Order Postponing Approved Electric and Gas Delivery Rate Increases and Updated Reduction to the Low Income Discount Credit and Temporarily Waiving Certain Tariff Fees (issued March 25, 2020).
[28] Case 16-W-0259, New York American Water, Inc. – Rates, Order Postponing Approved Delivery Rate Increases and System Improvement Charge (issued March 25, 2020).
[29] See, PETITION OF MULTIPLE INTERVENORS SEEKING IMMEDIATE, MATERIAL RATE RELIEF FOR ELECTRIC AND GAS CUSTOMERS, INCLUDING A PAUSE IN SURCHARGES AND COLLECTIONS FOR PROGRAMS AND PROJECTS DELAYED AS A RESULT OF THE COVID-19 PANDEMIC, 20-M-0187.
[30] See, PETITION OF THE PUBLIC UTILITY LAW PROJECT OF NEW YORK FOR AN ORDER OF THE PUBLIC SERVICE COMMISSION COMMENCING A GENERIC PROCEEDING TO AVERT UNREASONABLE NUMBERS OF SERVICE TERMINATIONS AFFECTING RATEPAYERS, AND UNJUST AND UNREASONABLE BILL IMPACTS UPON RESIDENTIAL RATEPAYERS ARISING FROM THE COVID-19 PANDEMIC, THE NEW YORK ON PAUSE ORDER AND VARIOUS MORATORIA, filed April 20, 2020.
[31] See, 20-M-0187 and 20-M-0198.
[32] See, 20-M-0198.
[33] See, Case 20-M-0266, Order Establishing Proceeding, issued and effective June 11, 2020, p. 7.

- Rate and Financial Aspects

In PULP's petition, we had requested that the scope of the generic proceeding include five categories of issues:

- Current multi-year rate plans;
- Rate cases currently under litigation and/or settlement negotiation;
- Rate cases already approved by the Commission but where pre-approved rate increases are scheduled to go into effect during this proceeding or before the end of the public health emergency;
- Rate cases that will be filed during this public health crisis and while the economic effects arising during and after the state of emergency continue to persist; and
- The unplanned but likely synchronization of service termination letters and actual shutoffs due to the various moratoria on shutoffs and other collection activities, which may well occur at the same time as the restart of evictions and foreclosure proceedings.

These items will be discussed in more detail and in the context of the Commission's topics below.

1. Collections and Termination of Service

PULP supports and is grateful for the passage of A.10521/ S.08113-A into law, which will help to protect utility customers impacted by COVID-19 for 180 days after the state of emergency is terminated.[34] Moreover, the new law includes municipal utilities, including water service, which is a new area of legal jurisdiction for the Department of Public Service during these difficult economic times.

The truth is that many New Yorkers are struggling financially. Reviewing the May 2020 county-based unemployment report from the NYS Department of Labor ("DOL") is eye opening.[35] The Capitol region reported a 14.5% unemployment rate (up from 3.6% in May 2019). The Buffalo-Niagara region reported a 14.3% unemployment rate (up from 3.8% in May 2019). The Long Island region reported a 12.2% unemployment rate (up from 3.2% in May 2019) and New York City reported an 18.2% unemployment rate (up from 3.8% in 2019).

[34] https://nyassembly.gov/leg/?default_fld&leg_video&bn=A10521&term=2019&Summary=Y&Actions=Y&fbclid=IwAR0NQ5lDunMyiZqkTJBLFrZaPzvb9gVAhgPV8P4gj1yPPmd0dmdpXoNXU_I. See, alternately, Chapters 108 and 126 of 2020.

[35] State Labor Department Releases Preliminary May 2020 Area Unemployment Rates, June 23, 2020, press release at: https://www.labor.ny.gov/stats/pressreleases/prlaus.shtm.

As stated in our request for generic proceeding, PULP believes that there must be an immediate analysis of rate relief for low- and fixed-income customers that includes those impacted by COVID-19. There must also be a uniform state-wide collections activity plan in place. PULP also requests that the Commission collaborate with the Office for Temporary and Disability Assistance ("OTDA") to ensure that customers can continue to receive Emergency HEAP ("E-HEAP") during the shut-off moratorium, and that there will be funding for those who need it post-moratorium. PULP explores these points and others in the answers to the questions posed by the Commission order issued on June 11, 2020.

Q. • How should the Commission direct the regulated entities (electric utilities, gas and steam distribution utilities, private water supply companies, and telecommunications companies) to address the post-crisis resumption of collections and terminations, in a manner that provides appropriate consideration in cases of hardship while preserving the entities' ability to continue to serve all customers safely, reliably and cost-effectively?

1) The Department should create and order a uniform consumer protection plan to be followed by regulated utility companies across New York State.

PULP urges the Department to formulate a clear and consistent statewide plan regarding customer protections following the end of the moratorium on utility service terminations. Due to the variety of types of utilities and the vast differences between service territories located across the State, uniformity is necessary so that the State, the companies, the Office of Temporary and Disability Assistance ("OTDA") and advocacy groups can work together to alert and help customers. Uniformity will also assist the Department in compliance review and enforcing what will undoubtedly be a far more complicated plan to utilities unaccustomed to any new procedures arrived at herein.

A uniform plan will make it easier for the Department to track how the protections are working in practice and whether changes are needed. This will provide efficiency rather than allowing each company to have their own practices, which can result in completely different implementation problems and results across the State. In addition, since the COVID-19 health pandemic is ongoing and subject to intensification or mutation at literally any point, the Department and Commission should make certain that the proceeding and any order issued can be easily modified or re-opened for revisions based on the collection of uniform, objective and comprehensive data.[36]

In addition, the new moratorium law includes municipal utility systems in the Commission and Department's jurisdiction, despite their historic exclusion from Article 2 of the Public Service Law until the signing into law of the Parker/Mosley Bill. As a result of this law, the Department will have authority over municipal utility services, including water, until the law expires either 180 days after the end of the State of Emergency or on March 31, 2021. Consequently, the Department will need to construct and rollout a uniform implementation and enforcement plan, along with a data collection plan and presumably an audit plan to ascertain the level of compliance with regulations during the emergency and afterward. Applying the same customer service protections and legal parameters for collections activities, and affordable DPAs, will be essential to assuring that uniform protections are in place for all municipal, privately owned and investor-owned utility customers during the moratorium period.

During the months of March and April 2020, PULP's complaint hotline received calls from municipal utility customers who were experiencing issues with their service. Some experienced service terminations before the March 13, 2020 voluntary pledge by utility companies not to cut service during the pandemic. Others were at risk of losing their service during the pandemic due to non-payment. It is PULP's understanding and concern that there are currently customers who have been without service during the pandemic. This must be remedied as it is inequitable, endangers the health, safety and welfare, and is counter to the public interest for an individual not have utility service of any kind during a state of emergency. The vagaries of utility ownership – such as whether a customer has a municipal provider rather than a regulated utility -- should not be the determining factor in whether that customer should have service. The moratorium law therefore levels the playing field.

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[36] North Carolina, for example, has seen the need to order utility data collection due to COVID-19. North Carolina Utilities Commission, "Docket M-100 Sub 158," at https://starw1.ncuc.net/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=66e14449-b407-4ac3-93eb-a417521e1269.

PULP recommends that the Department initiate regular communication with municipalities across the State as soon as possible to explain what the moratorium law means for their operations and collections practices, as well as what the timeline is. This includes assigning one division (presumably OCS, with assistance from Counsel's Office) and a specified DPS point person member to be liaison between the municipalities and the Department. There should also be an independent page on the Department's website dedicated to the municipalities' duties so that they and their customers are fully aware of what their responsibilities are under the regulatory system. Moreover, there should be monthly email updates to the municipalities with a link to the Department's webpage dedicated to municipal water systems and the Department's liaison. Each of these measures is geared at efficiency and clear communication between the Department and the municipalities, who may not be used to communicating with Department staff and particularly with matters concerning customer service and HEFPA-compliant collections practices.

As a result of the factors discussed above, PULP recommends that the Department direct all of the utilities, both private and municipal, to take the following steps for creating a uniform plan in the public's interest:

A. Specific consumer protections measures should be directed as applicable to every regulated utility

PULP recommends instituting uniform measures including but not limited to:

- Eliminating down payment requirements on deferred payment agreements ("DPA") for customers who need one for the first time and those who have defaulted on a prior DPA;
- Allowing flexible/reasonable DPA terms based on the customer's ability to pay as well as the ability to re-negotiate the DPA terms later;
- Allowing customers to transmit financial documentation or completed DPAs back to their utility through alternative means including but not limited to, USPS regular mail, facsimile ("fax"), or email, thereby easing the customer's ability to obtain a DPA;
- Require the immediate reconnection of any customer who continues to live without utility service during the health pandemic;

- Eliminating any requirement that disconnected customers pay the full arrearage in order to reconnect, thereby permitting reconnection upon issuance of an affordable DPA;
- Requiring utilities to adhere to a uniform DPS plan for treatment of past arrears for consumers who certify that they are eligible for HEAP and agree to enter into an AMP created during this proceeding; and[37]
- Prohibit utilities from imposing any fees, including but not limited too late or reconnection fees, for at least 5-years following the lifting of the COVID-19 moratoria.

These actions will allow the necessary flexibility for customers struggling with their finances. The list above will give customers the ability to work with their utility provider to enter into a payment plan that the customer can manage, providing the utility company with payments without placing the customer at risk of defaulting and further falling behind. A carefully crafted AMP could also meet the societal need for the "forgiveness" of utility debt in a manner that neither strains the finances of the utilities, nor more importantly, excessively burdens ratepayers. PULP urges the Department and the Commission to accept these consumer protection measures, among other ratepayer protections provided herein and in the record of this proceeding and order the Companies to implement them.

B. Increased communication with customers concerning the end of the terminations moratorium.

With Governor Cuomo's signature of A.10521 (Mosley)/ S.08113-A (Parker) into law on June 17, 2020, a time frame, while somewhat dependent on circumstances, is now in place for the end the moratorium on service terminations. The new law protects customers affected by COVID-19 from service loss for at least 180 days after the state of emergency is terminated or March 31, 2021, whichever comes first. While having this timeframe should result in establishing some certainty for the companies and customers, it all hinges on clear communication. The regulated utilities must engage in multiple forms of communication with their residential utility customers leading up to the end of the moratorium on service terminations.

[37] PULP notes here, briefly, that the DPS and Commission should also give thought to the potential significant growth of "LSE" customers due to the long-term respiratory effects of COVID-19 for patients that have used respirators in ICUs, or otherwise, and how HEFPA requires the treatment of a rapidly growing category of ratepayers using "life-saving equipment" that cannot be shutoff.

For example, regular alerts on the moratorium's end should be included not only on monthly bills or bill inserts but also on the utility companies' homepages. Customer service centers should run pre-recorded announcements warning individuals of the moratorium end date and more. Customer service representatives should also be directed to call customers who have fallen behind on their bills and alert them of the end date but also of the different financial assistance programs in place as well as the payments options available. The sooner this message is shared with the public the better so that customers can begin to prepare themselves.

C. The utilities should be directed to follow a 5-year time period following the end of the moratorium on service terminations, prior to sending accounts to collections or engaging in replevin proceedings.

Moreover, utility actions are not limited to terminations. As a result, the utility companies should be directed to follow a uniform time period prior to sending accounts to collections agencies, making derogatory credit reports, seeking money judgements, liens or other judicial relief outside of HEFPA, and resuming replevin proceedings. Accounts should not be sent to collections agencies for negative credit reporting for at least five years after the end of the moratorium on service terminations so that individuals have time to get their finances in order. The risk of negative credit actions is particularly dangerous for customers effected by the variety of financial effects created by the COVID-19 health pandemic. Such issues involve the loss of employment, difficulties returning to work due to the need to care for sick family members or the loss of childcare options that would permit someone to work. Impaired credit also causes problems applying for and/or receiving unemployment benefits/financial assistance/federal stimulus funds, and more. The risk of potentially harming someone's credit due to utility arrears should be prevented for at least five years.

Replevins involve court proceedings where the utility company seeks a court order to remove the meter from a customer's residence.[38] Due to the varying Executive Orders issued since March 20, it currently remains unclear when replevin actions will resume. As of June 26, 2020, the New York State Unified Court System announced that all courts outside of New York

[38] New York Civil Practice Law and Rules (CPLR) Article 71, entitled "Recovery of Chattel." A chattel is generally defined as any personal property which has any monetary value. See also, https://www.law.cornell.edu/wex/replevin.

City would be in phase three of a return to in-person operations, which would include cases such as child support proceedings, selected plea and sentencing proceedings for defendants at liberty, preliminary hearings in criminal cases for defendants being held in jail on felony complaints and a limited number of bench trials in civil matters. [39] On July 8, 2020 courts in the 3rd, 9th and 10th Judicial Departments began phase four,[40] and generally utilities may have different stages of access to courts in differing portions of their service territories.

All existing replevin matters should be placed on hold for five years following the end of the moratorium on service terminations. Moreover, the utility companies should also be directed to hold-off on filing any new replevin actions with any court in New York State for a five-year following the end of the moratorium. This five-year period provides a clear period of time within which individuals can get their finances in order to work with their utility company to enter into an affordable payment agreement. Such a timeline also offers predictability for the utilities.

D. The Department and the utilities must remain in contact with OTDA regarding the availability of financial assistance funds to help customers.

With New York State facing one of the most difficult financial recessions in history, we must be mindful that even the financial assistance programs themselves, as administered by OTDA could receive budget cuts on the federal or state level. This includes the Home Energy Assistance Program ("HEAP"), which are federal funds provided to New York State, and Emergency Energy Assistance under 131-s of the Social Service Law. With over 1.3 million newly unemployed currently eligible for unemployment benefits,[41] there is a distinct possibility and risk that local Department of Social Services ("DSS") and the NYS Human Resources Administration ("HRA") could run out of the funds necessary to meet the wave of demand for utility assistance.[42]

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39 See, "By Week's End, All Courts Outside New York City Will Be in Phase Three of Return to In-Person Operations." Press Release by the New York State Contact: Unified Court System, June 25, 2020; https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_31.pdf.

40 See, https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR20_35.pdf.

41 See, https://www.labor.ny.gov/pressreleases/2020/june-18-2020.shtm.

42 See, "New York State Department of Labor Announces Over $10 Billion in Unemployment Benefits Paid to Over 2 Million New Yorkers During COVID-19 Pandemic; Pre-4/22 Application Backlog Reduced to 7,580." NYS Department of Labor, press release, May 20, 2020, at: https://www.governor.ny.gov/news/new-york-state-department-labor-announces-over-10-billion-unemployment-benefits-paid-over-2.

•*Q. How should the Commission direct the regulated entities to account for and manage the financial ramifications of such policies, so as to preserve financial integrity?*

The Commission should order the utility companies to file austerity plans immediately, pursuant to an Emergency SAPA rule. The austerity reports must provide reasonable and practical methods for lowering utility expenses and providing immediate rate relief to consumers, and should include but not be limited to:[43]

- Inter-company borrowing as opposed to external debt issuances to mitigate increased cost of debt;
- Reduced and deferred capital expenditures;
- Delayed payments to vendors; tax deferral strategies; salary and hiring freezes; early retirement offerings;
- Reduced employee overtime, travel, and other benefits;
- Reduced charitable contributions and sponsorships;
- Reduced association memberships and conference attendance;
- Cut back on advertising, printing, postage, periodical subscriptions;
- Reduction of energy use within the company;
- Identification and implementation of prospective reductions in discretionary spending;
- Suspension of all earnings sharing mechanisms;
- Suspension of all dividend payments to shareholders;
- No deferrals for late payments charges/other collections measures applicable to dates after Governor's stay-at-home order; and
- Relief to customers arising from austerity measures in the form of direct bill credits, as opposed to "deferrals for the benefits of customers".

Following the submission of their austerity plans, the utilities should be required to file monthly update reports with the Department and Commission, under the matter number for this proceeding, so that the public can monitor each utility companies' progress in achieving austerity measures. Such reports should be filed on a monthly basis for approximately one-year following the end of New York's State of Emergency and thereafter, be filed quarterly for up to five-years after the end of the State of Emergency. The frequency of the filings will allow the Department, the Commission, the companies, and the public sufficient information in relation to the utilities' finances.

[43] Case 09-M-0435, NYSEG/RG&E Report on Temporary Austerity Measures, June 12, 2009.

• *Q. How will terminations of service, if any, be affected by utility staffing levels?*

This question poses a serious concern that PULP raised in our generic petition.[44] PULP believes that it is important to remember that utility line workers and customer service representatives could have been personally affected by the COVID-19 virus, or may be unable to work in COVID-unsafe work conditions due to family health concerns or being in one or more risk groups.[45] With staffing levels essential to the safety and reliability in the delivery and restoration of utility service, the Department must require utilities to have back up staffing plans similar in concept to the mutual aid plans for storm/weather recovery, and DPS must be ready to assist any utility Company experiencing staffing shortages or other COVID-related problems that could affect reliability, resilience or safety. This should especially be true for central or critical control rooms,[46] as the vulnerability of such systems to COVID, and the necessity to take extreme steps was demonstrated earlier in the emergency, as was the lack of uniform policies across utilities in New York and the United States.[47]

With the need to train replacement staff also a factor for consideration, it is important to note now that any staffing shortages could affect customers' ability to enter into deferred payment agreements under NY PSL 37(1); 16 NYCRR 11.10 and/or have their service reconnected without delay. As a result of these concerns, PULP urges the Commission in its first interim order to order each utility to report current staffing levels within fifteen days of the issuance of the order in this proceeding. Thereafter, the utilities should presumptively issue similar staffing reports to the Department and Commission every thirty-days for the next five-years. Especially in light of the fact that as of the filing of these comments, no vaccine currently exists for the COVID-19 virus and other States, including Florida and Texas are seeing spikes in

[44] See, PULP COVID-19 Petition, page 24.
[45] See, https://www.utilitydive.com/news/con-edison-reaches-142-confirmed-covid-19-cases-2-deaths-as-risks-rise-fo/575417/.
[46] See, https://www.greentechmedia.com/articles/read/coronavirus-pushes-new-yorks-grid-operators-to-work-and-live-in-isolation.
[47] See, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-utilities-divided-on-plans-to-sequester-essential-employees-57741135.

cases, five-years of monthly reporting of staffing levels would be a reasonable measure to require the Companies to take.[48]

In the event the reports show low staffing levels, PULP encourages the Department to direct emergency staff to be employed to the specific utility company's assistance for a 30-day period. This emergency assistance can be extended as needed until such time as the utility company has reached safe staffing levels.[49]

•Q. Should down payments be waived for deferred payment agreements (DPA)?

Yes. PULP unequivocally believes that down payments are an unnecessary barrier for customers looking to enter a DPA with their utility to obtain or maintain service. Article 2 of the Public Service Law, the Home Energy Fair Practices Act ("HEFPA") and its implementing regulations specifically provide limitations on how a utility can calculate a down payment and in what circumstances a down payment can be required. However, in many cases, the utility will require a down payment be made as part of a standard DPA, and not just the "standard offer." For instance, the "standard offer" prescribes that a maximum down payment is equal to 15% of the unpaid bill, or the cost of one-half of one month's average use, whichever is greater. However, that is only unless that amount is less than the cost of one half of one month's average usage, in which case the down payment may be up to 50 percent of such amount with monthly installment up to the cost of one half of one month's average usage or one tenth of the balance, which is greater.[50]

For customers who were not in a DPA at the time of the health pandemic, down payments will act as a significant barrier when obtaining service or protecting their account from termination once the moratorium has been lifted. This subset of customers will include many of

48 See, "Reopening reverses course in Texas and Florida as coronavirus cases spike." by Arleis Hernandez, Frances Stead Sellers and Ben Guarino, the Washington Post, June 26, 2020; https://www.washingtonpost.com/national/reopening-reverses-course-in-texas-and-florida-as-coronavirus-cases-spike/2020/06/26/72eb5f6a-b7c5-11ea-a510-55bf26485c93_story.html. And see, https://www.manufacturing.net/economics/news/21139688/us-economy-stumbling-as-pandemic-worsens; and https://news.bloomberglaw.com/daily-labor-report/pandemic-exacerbates-inequality-as-vulnerable-workers-bear-brunt.

49 PULP also suggests that utilities and DPS plan for the inability to use multi-state mutual aid agreements in extreme weather conditions at least until after a vaccine has been developed and utility crews from other states have been certified as being protected from infection or reinfection from COVID-19.

50 16 NYCRR § 11.10(c)(2)(i)-(ii). PSL §§ 31 and 37 set a statutory maximum of a down payment no more than half the arrears or three months' usage.

the "newly low income" customers whose households lost their jobs/income sources in the pandemic. Such customers may not be familiar with the utility's collections procedures since many of them were employed. Many of these customers may not have ever received a termination notice or final disconnection letter in the past, making this their first time falling dangerously behind on their utility bill. As a result, easing the down payment requirements will allow these customers and other first-time applicants or otherwise vulnerable households to enter into a DPA without worrying about collecting upfront the immediate funds necessary to protect their account from a termination.

Moreover, the limitations in place to control the down payment amount do not apply when the customer has broken their DPA[51]. This means that depending on the policy of the utility involved, the customer may be required to pay more than the statutory limits discussed above. PULP urges the Department, Commission and the utility companies to recognize the reality that anyone who was in a DPA prior to and including March 2020 who was financial effected by the COVID-19 health pandemic has a very high chance of breaking that existing agreement. As a result, it is imperative that the DPS require utilities to temporarily reform the restrictions for entering DPAs so that their customers can get back on track once they are financially able to. Again, PULP believes such extraordinary relief created by DPA reform should be in place for five years due to the likelihood that economic recovery may be very slow.[52]

In conclusion, it makes sense for the DPS to require utilities to ease the need for any down payments following the COVID-19 pandemic. Instead, the companies can work with their customers to enter a DPA for the first time or agreed to a new DPA following the default of an existing DPA due to COVID-19.

•Q. Should the terms of DPAs be adjusted to reflect ratepayers' ability to pay?

Yes. The basic rule of HEFPA requires such a treatment.[53] But, as discussed in the prior section, there are different subsets of customers affected by the COVID-19 health pandemic.

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51 See, 16 NYCRR §11.10.
52 See, e.g., on the slow recovery forecast for the economy, https://www.bloomberg.com/graphics/recovery-tracker/, and see, https://www.nytimes.com/2020/05/21/opinion/economy-recovery-coronavirus.html.
53 See generally, 16 NYCRR § 11.10(a)(1).

This includes those customers who had DPAs but were unable to complete them due to the financial downturn. Normally, such customers would not be entitled to a minimum DPA. There are also “newly low-income" customers who lost their jobs/income sources due to the health pandemic. Should they be treated the same, or not?

As a result of these unprecedented financial struggles, PULP argues that the PSC and DPS should broaden the coverage of HEFPA and reform the terms of HEFPA’s basic DPA language so that the ability of any customer/ratepayer to enter into an affordable DPA tailored to their own financial situation and needs, would stretch to embrace the circumstances of customers that may have been unable to complete a DPA due to COVID’s economic consequences, and customers that would objectively be unable to complete a DPA within ten years, or a customer that might need multiple DPAs with all their utilities. There are numerous other all too real situations that will face the ratepayers and utilities, and the HEFPA DPA rules must be temporarily reformed sufficiently to avert unnecessary terminations, impairment of credit, and undermining of the health, safety and welfare.

In addition, the utilities should be ordered to accept financial documentation and completed DPAs in alternative ways, including but not limited to USPS regular mail, facsimile or email. Each method will provide the customer with a range of personal options for communicating with their utility company. These options will result in logistical efficiencies and the overall ability to speed up the negotiation and completion of DPA terms.

•*Q. Should utilities be required to write off debt from HEAP qualified ratepayers?*

Yes. Through the low-income proceeding, Case 14-M-0565[54] the Department and the Commission have recognized the importance behind using HEAP income guidelines to further assist needy utility customers. Now, not only does HEAP lower a customer’s arrears, but those who receive HEAP are eligible for every NYS energy utility company’s monthly low-income discount program. This recognition should be similarly applied here in the COVID-19 proceeding when or if deciding to write off debt associated with HEAP qualified ratepayers.

[54] See generally, Case 14-M-0565, Order Adopting Low Income Program Modifications and Directing Utility Filings, at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BC2F31C9-B563-4DD6-B1EA-81A830B77276}.

This debt forgiveness will protect customer accounts from service termination while easing the individual's overall financial burden. Basing this forgiveness on HEAP eligibility rather than HEAP receipt is thereby consistent with New York State's recognition that HEAP's eligibility criteria represents a specific part of the customer population who needs assistance with lowering their energy burden. Basing forgiveness upon HEAP receipt also avoids the problem that many New Yorker's qualify but are unable to receive HEAP.

•*Q. Should late fees be prohibited for COVID-19 related overdue payments?*

Yes. Prohibiting the collection of any fees, including late payment and reconnection fees is only fair for struggling New Yorkers affected by COVID-19. Such fees are meant as both an incentive for customers to pay on time and as a penalty for not paying their bill on time. In other words, the late fees are meant to send a market signal to change behavior. COVID and the harms it has wrought upon finances is not amenable to behavioral correction and market signals. Furthermore, the financial harm caused by COVID-19 should not be allowed to grow through the use of fees for at least a five-year period following the end of the moratorium on service terminations.

2. Commission Priorities in Serving the Public Interest

PULP has numerous recommendations for how the Department and Commission can best protect the public interest during and after the COVID-19 health pandemic, which are discussed below. PULP recognizes that during this time, it is necessary that the Department and Commission strike a careful balance between protecting the public's interest or continuing to ensure the safety and reliability of utility service. Both must be priorities. We believe that our recommendations below help provide fairness, accountability, and transparency during these difficult times.

In addition, PULP also wanted to raise questions relating to public engagement in this proceeding. With social distancing measures in place for the foreseeable future, PULP encourages discussion to determine how public comments and opinions will be gathered and how any evidentiary or other hearings in this proceeding might be conducted. Finally, reasonable concerns about the public health safety of public statement hearings and other hearings must be balanced with the reality that many low- and fixed-income utility customers do not have adequate internet access to utilize virtual meetings, and many may also depend upon wireless Lifeline service with limited voice minutes or limited coverage.

• *Q. What should the Commission consider in determining whether and how rate relief should be provided for ratepayers?*

First, PULP notes that this question would be answered quite differently depending upon which utility PULP focused upon, since despite the coverage of all utilities by HEFPA, the differences of the varied industries creates some non-uniformity in application of HEFPA. Second, PULP notes that the DPS and Commission should consider the differences between cost of service regulated utilities (such as water utilities), hybrid cost of service regulation under REV (such as the energy utilities), and blends of cost of service and price cap regulation (telecom). Last, the DPS and Commission also need to consider that there is only one utility industry with no low-income plans at this point (water), and that telecom companies have two different types of low-income plans (Lifeline for phone companies[55] and a "low-income rate" for cable customers due to the mergers of Altice and Charter/Spectrum[56]), and that utilities have a low-income affordability program established by Case 14-M-0565,[57] but that analysis by the City of New York[58] and PULP[59] have shown it to be less uniformly successful than all the stakeholders had hoped; i.e., failing to meet the PSC and Governor's goals in much of the State. In order to effectively deploy rate relief to utility consumers in the midst of this existential crisis, PULP

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55 See, https://www.fcc.gov/general/lifeline-program-low-income-consumers; and see, https://www3.dps.ny.gov/W/AskPSC.nsf/All/01BC8E76E515299785257FA2006AE2F7?OpenDocument.

56 See, e.g., Case 15-M-0388, Order Granting Joint Petition Subject to Conditions filed on January 8, 2016 at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DEE1823A-AADD-48D4-94BD-B96BAC096DAA}; and see, Case 15-M-0647, Order Granting Joint Petition Subject to Conditions filed on June 15, 2016, at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={432349AA-B17A-4341-98FE-98C7F0BE1A97}.

57 See, Case 14-M-0565, Order Adopting Low Income Program Modifications and Directing Utility Filings, issued and effective May 20, 2016 at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BC2F31C9-B563-4DD6-B1EA-81A830B77276}; and see, Order Approving Implementation Plans and Modifications, issued and effective February 17, 2017 at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={9BE99F5C-7F98-4376-8ABF-F3604F4495BF}.

58 See, generally, Petition of the City of New York to Reexamine Statewide Utility Low-Income Program Discounts, filed January 31, 2020, at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D0B7B14E-0BD8-4DD4-82C9-8C7F284AF3FF}.

59 See, generally, Informal Comments of the Public Utility Law Project of New York following the March 5, 2020 Stakeholders Meeting in Case 14-M-0565, filed on April 3, 2020, at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6AA850B2-6218-482F-96BC-E4EF8F2F8246}.

argues the PSC must consider these concerns before turning to the issues presented by lack of uniform data across all utility industries, lack of familiarity with applying census data to utility service territories to ascertain utility and housing burden, and evidence of economic dislocations, unemployment, dependence upon public assistance, and flight of large employers (e.g., large industrial or commercial industries) from the utilities' service territory.

PULP argues that the public interest requires the Commission to consider many factors, first of which is the use of several readily accessible sources of public data that would allow an objective analysis of whether or how much the pandemic and economic collapse worsened the overall economy and ratepayers' circumstances in a given utility's service territory. The relevant data sets could include, but should not be limited to, the CARS reports[60], the Department of Labor ("DOL") statewide and county employment reports, the DOL unemployment filing monthly reports, and the U.S. Census' American Community Survey Public Use Microdata Areas ("PUMAs") datasets, which provide granular data of energy and water burden by micro-area, poverty/low-income statistics, and percentage of protected classes in such micro-areas.

For example, an examination of the CARS reports for energy utilities would show the increase of customers in arrears and the increases in amounts owed by those ratepayers, along with the percentage of such consumers on DPAs and other useful data. There is also a decade or longer baseline of such reports being publicly and readily available. However, since water utilities (and all non-investor-owned water systems) do not file or otherwise report data analogous to CARS reports, and neither do telecommunications utilities, the use of CARS is only definitive for the energy sector, but it is instructive for the situation of ratepayers of other utilities located in the same service territory and counties.[61] After all, it is entirely reasonable that consumers having difficulty paying energy bills would also have difficulty paying water and telecommunications bills.

60 See, e.g., Case 91-M-0744.

61 PULP requests here and below that DPS and/or the Commission impose a CARS-type reporting requirement upon all jurisdictional utilities and those utilities over whom the department and Commission were given jurisdiction through Chapter 108 of 2020. Such reports shall be similar to CARS reports and shall include such currently non-included information and principles as are prescribed in the 2019 Joint NARUC-NASUCA resolution on data collection. See, https://www.nasuca.org/nwp/wp-content/uploads/2018/11/2019-07-NASUCA-Data-Collection-Resolution-Joint-with-NARUC-Final.pdf; and see, Appendix B below.

In addition to those examples of data sources outlined briefly above, PULP recommends the following illustrative list of factors be considered in regard to whether rate relief should be provided, including but not limited to:

- Examining utility austerity plans that the Commission should compel utilities to file, as it did in the 2009 austerity proceeding,[62] so that the Department can review the responses and determine from the companies' austerity frameworks what sort of rate relief might achieve meaningful financial results;
- All multiyear rate plan increases should be deferred at least until the State Division of the Budget's projected year for the recovery of the State's economy (2023), and all rate cases filed with double-digit increases in settlement or litigation should be withdrawn from settlement and fully litigated, and the ALJs should follow the guidance on austerity frameworks, require the utilities to "refresh" their data upon which their revenue requirements were constructed, and request the Commission to issue temporary rates based on the inflation rate, deferring larger increases until at least 2023;
- Returns on equity should be reviewed and potentially modified downward into more compliance with the Commission's generic financing model, and reflective of lowering of costs of capitol and lowering of interest rates;
- Ratios between equity and debt should be reviewed and modified downward;
- Distinguishing between capital projects legally required for safe and adequate service, and close scrutiny of the timing necessity for such projects and when such projects will become used and useful for ratepayers, versus non-essential capital spending;
- Lowering of the factor(s) used for forecasted inflation, especially concerning operations; and maintenance;
- Increased demand for participation in low-income programs;
- Utility work upon and achievement of energy efficiency targets, (all metrics should be reviewed, and the utilities should be instructed to alter project timing so that human capital-intensive projects are prioritized, particularly if such projects will retain or create jobs in financial troubled areas of a utility's service territory);
- The Commission should suspend use of Earnings Incentive Mechanisms, Earnings Adjustment Mechanisms and Positive Revenue Adjustments and other mechanisms that depart from "plain vanilla" cost of service ratemaking; and
- The Commission should institute Negative Revenue Adjustments for failures to achieve and sustain "stretch" safety and reliability metrics.

In the Commission's 1980 "Statement of Policy Concerning Evidence of Economic Impact in Rate Cases" moderating rate increases when "there is persuasive testimony that higher rates, at a time of economic distress, would adversely affect the public--including the utility

[62] See, Case 09-M-0435.

company—by precipitating or aggravating economic dislocations and problems such as unemployment, dependence of public assistance, and departure of industries..."[63] was recognized as a valuable consideration. When conducting its review, the Commission acknowledged a wide variety of economic impact analysis that could prove useful to determining economic impact, including but not limited to "evidence about employment rates, housing starts, income levels and age distribution." [64]

Regarding how rate relief should be provided, PULP recommends that the following non-exhaustive list of mechanisms and/or actions be considered when determining how to provide rate relief:

- Instituting temporary rates while deferring utility rate increases that have already been approved by the Commission as part of multi-year rate plans; and for price-cap telecom carriers, if possible, lowering the imputed price caps via temporary rate adjustment mechanisms;
- Instituting direct bill credits for ratepayers resulting from utility austerity measures, as opposed to "deferrals for the benefit of customers";
- Preventing unreasonable bill impacts being non-transparently imposed upon ratepayers through utility rate adjustment mechanisms ("RAMs"), revenue decoupling mechanisms ("RDMs") or trackers, fees or adjustment mechanisms that automatically continue independent of, or beyond, rate plans;
- Requiring a freeze on the use of separate adjustment mechanisms or fees while all utilities file updated austerity rate plans[3] without delay;
- Requiring a freeze on any adjustments to a utility company's low-income program established by Case 14-M-0565 that would decrease discounts to customers, and directing Staff to utilize the City of New York's ("NYC's" or "City's") and PULP's methodologies for determining actual increased discounts to meet the Governor and PSC's goal 6% of income;[65]
- Ensuring that utility service is affordable for *all* traditional low-/fixed-/moderate-income and "newly low-income"[66] residential customers by allowing HEAP eligibility to qualify a customer/household for inclusion in the Low-Income Affordability program;
- Expanding the definition of "low-income customer" to temporarily include anyone who self-certifies that they have experienced financial hardship due to the

[63] EEI Policy, at 3.
[64] *Id* at 4.
[65] Supra footnotes 52 and 53 above.
[66] PULP considers those households that lost employment as "newly low-income", which is particularly true for those that filed for unemployment benefits but have as yet received nothing.

COVID-19 health pandemic,[67] or is a recipient of Lifeline, Medicaid or SNAP in non-Con Edison territories;

- Reconnecting residential customers without delay whose service was terminated during the crisis despite the moratoria on such terminations, or terminated between January and March 13, 2020;
- Averting unreasonable simultaneous numbers of service terminations due to the unintended synchronization of utility collections and field activity at the end of the moratoria on service terminations; and
- Creating a uniform and graduated collections activity plan for the regulated utilities to follow that will adequately protect customers subsequent to a transition period (aka "Grace Period") beginning once the moratorium on shutoffs is lifted; and
- Averting unreasonable simultaneous numbers of service terminations due to the unintended synchronization of utility collections and field activity at the end of the moratoria on service terminations, or issuance of water liens, or other collections activity including derogatory credit reports, judgements or other impairments of a customer/household's credit or finances.

• Q. What should the Commission consider in determining whether and how measures other than rate relief can provide benefit to different classes of customers, including large and small business, residential, and low-income?

As noted by the difference in requests of PULP and MI in their petitions requesting a COVID-19 generic proceeding,[68] and that fact that neither entity spoke for the needs of small commercial consumers, the needs of different classes of customers obviously vary greatly. Therefore, it will be important for the Commission to carefully consider the public comments submitted in this proceeding and recognize that a "one-size-fits-all" approach will not be beneficial here. All utility customers have been affected by COVID-19[69] and therefore, multiple levels and types of relief should be offered.

• Q. In addition to program modifications under consideration in Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low

[67] This was one of the solutions arrived at in Illinois' COVID-19 proceeding's settlement and stipulation. See, https://www.nasuca.org/nwp/wp-content/uploads/2020/06/20-0309-EXHIBIT-A-FINAL-LUG-STIPULATION-Executed-06-10-20-.pdf; and see, https://www.nasuca.org/nwp/wp-content/uploads/2020/06/20200611_COVID19UtilityCustomerReliefFINAL-1.docx.

[68] See, 20-M-0198 and 20-M-0187.

[69] See, https://www.utilitydive.com/news/utilities-are-beginning-to-see-the-load-impacts-of-covid-19-as-economic-sh/574632/.

Income Utility Customers; are temporary changes to the Commission's low-income programs warranted, including approaches to streamlining enrollment and similar actions?

Yes. With record unemployment levels, "furloughs," and reduced hours for millions of New York State residents, many hundreds of thousands of utility customers are "newly low-income" because their household income has dropped to zero or at least below 135% of the federal poverty level. PULP anticipates the number of households eligible for HEAP would likely double if the program opened now, rather than only being on its third extension. Consequently, the eligibility criteria for the Low-Income Affordability program ("Affordability Program") established in Case14-M-0565 should be amended to streamline enrollment by at least making HEAP eligibility rather than HEAP receipt the benchmark qualification for enrollment in the Affordability Program.[70] Additionally, PULP suggests the use of SNAP, TANF, and Lifeline as added criteria for eligibility[71] would cast the broadest net for ensuring no needy households fail to be enrolled in the Affordability Program, while limiting any unreasonable increases in administrative costs. PULP also suggests that the expansion in eligibility criteria should be supported by increases in the Affordability Program discounts and pilots statewide replicating New York City's increased summer funding for air-conditioning expenses for low-income households due to the need to shelter in place[72] and the lack of objectively safe congregate cooling facilities across much of New York State for this extremely hot summer.

PULP argues here that its prior filings in Cases 14-M-0565, 20-M-0198, and 20-M-0231 are relevant to the answers for this question. First, we submitted comments in support of New York City's emergency petition, Case 20-M-0231, and our petition for emergency relief in Case 14-M-0565, requesting additional relief on an emergency basis for low-income households facing atypically large energy costs due to the workplace shutdowns and shelter in place orders, and additional assistance to afford cooling costs. Our comments in the Affordability Proceeding,

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70 As PULP argued in its 2020 comments in the Affordability Proceeding, Case 14-M-0565, not only should eligibility criteria be broadened, discount amounts should also be increased and the City of New York's petition for increased discounts should be granted. See, PULP Comments in Case 14-M-0565 dated April 3, 2020, p. 13 passim. See, also, PULP's Petition for Emergent Relief in Case 14-M-0565 dated May 15, 2020.

71 PULP initially made this suggestion for expanded eligibility in 2015. See, Case 14-M-0565, Comments of the Public Utility Law Project in Case 14-M-0565, filed on August 24, 2015 at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EA2B8804-00BA-4012-9492-D8959E0F5C61}.

72 See, Case 20-M-0231.

and petitions, also encouraged the statewide application of additional and increased financial support for low-income utility customers as outlined by the City of New York and PULP. PULP echoes our comments in that proceeding here as it is essential for non-NYC utility customers to have access to additional financial funds during and after the health pandemic. As noted below, there are several regions throughout NYS reporting double-digit unemployment rates, which does not include the lack of work for those that have given up looking and are no longer counted as unemployed. Additionally, there are zip codes and/or census tracts that have experienced far greater hospitalizations, mortality and mountains of health care costs, much of which will weigh upon the households for years to come. This cannot and should not be ignored.

• Q. What actions can utilities take to eliminate or defer spending without compromising safe and adequate service and should these actions be reflected in customer rates?

Like other corporations faced with economic collapse affecting their consumers, utilities have many actions they can take to address the economic impacts currently harming their consumers, including "sharing the pain."[73] Additionally, due to the requirement to provide safe and adequate service, the regulatory compact, the obligation to serve, and the ability to rate base expenses and capital investments however, utilities arguably have a heightened duty to adjust their normal and/or pre-approved spending plans in order to moderate the effects of rate increases upon already financially challenged customers. While non-cost of service utilities, whether modified or not, may argue they cannot rate base expenses – this applies primarily to Verizon and Frontier and to the cable companies – this merely argues that they should find non-rate case mechanisms for passing on O&M and capital expenditure savings to customers. In any case, PULP argues that all New York utilities, including those governmentally owned water systems over which Ch. 108 of 2020 extended temporary PSC jurisdiction, have a duty to find and achieve savings and pass them back to customers as immediate rate relief, without undermining safe and adequate service.

In 2009, the DPS and Commission launched Case 09-M-0435, the Proceeding on Motion of the Commission Regarding the Development of Utility Austerity Programs.[74] The purpose of

[73] See, e.g., Harvard Business Review at https://hbr.org/2020/03/the-coronavirus-crisis-doesnt-have-to-lead-to-layoffs.
[74] See, Case 09-M-0435 - Notice Requiring the Filing of Utility Austerity Plans (issued May 15, 2009) ("Austerity Proceeding").

that proceeding was for each utility to file a description of proposed austerity measures the utility would take to assist its customers in weathering the extraordinary financial circumstances of the current, recessionary economy.[75] Each utility was instructed to "closely examine its capital expenditures, operation and maintenance expenses and any other expenses over which a utility has discretion to identify costs that may be reduced without impairing the ability to provide safe and adequate service."

The purpose of the austerity measures was to "to assist [utilities'] customers in weathering the extraordinary financial circumstances of the current, recessionary economy"[76] by providing "modest bill reductions without jeopardizing safety and reliability and without harm to utility shareholders."[77] While the utilities reportedly did not adhere to the spirit of the Commission's Austerity Proceeding, the Commission noted that throughout the remainder of the recession it would continue to seek austerity measures calculated to create rate relief for consumers, and that utilities should utilize as many cost-cutting measures as possible. Such measures, the Commission said, "could include, but are not limited to, limiting training of employees in only safety-related or legally-mandated areas, freezing managerial salaries,[78] foregoing managerial bonuses, and limiting travel"[79] and lowering O&M expenses. Some utilities, such as National Fuel Gas ("NFG"), which appears to the only utility to meet the Commission's request squarely, also accelerated repayment of excess collected taxes to its customers.[80]

PULP advocates for the Commission to order all utilities to make austerity filings within thirty (30) days of the deadline for the filing of these comments. Like the Commission requested in 2009, the austerity plans filed by the utilities should provide for rate relief in the form of bill credits or such other mechanism(s) as may be necessary and convenient and should immediately benefit ratepayers. DPS Staff should simultaneously create austerity plans for New York's

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75 See, Case 09-M-0435, the Proceeding on Motion of the Commission Regarding the Development of Utility Austerity Programs, Order Approving Ratepayer Credits ("Austerity Order"), issued and effective December 22, 2009, at p. 1.

76 *Id.*

77 *Id.* at p. 2.

78 See, Central Hudson Gas & Electric's ("CHG&E") austerity plan letter to Secretary Brilling dated June 15, 2009 at p. 2. See also a partial list of austerity measures outlined on pp. 6-7.

79 *Id.* at p.7.

80 See, Case 09-M-0435, Austerity Order at p. 2, 4, 10.

utilities and utilities must file plans responsive to the Commission's four basic austerity criteria from 2009.

> "The Commission's pronouncements on austerity indicate four basic criteria for the application of an austerity adjustment to further reduce a revenue requirement that would normally be considered appropriate. First, there must be harsh economic circumstances generating widespread hardship for both businesses and consumers. Second, it must be possible to make cuts in spending that are truly discretionary in the sense that they will have no negative impact on safety and reliability. Third, the adjustment must not adversely affect the interests of shareholders; and finally, the savings must inure to the benefit of ratepayers immediately, in order to provide relief during, not after, the recession."[81]

If the utilities do not meet the Commission's criteria, Staff's austerity plans should be used to institute temporary rates and the utility(ies) should be ordered to begin austerity rate filings. In conclusion, PULP strongly supports institution of austerity measures and respectfully requests the Commission utilize its fullest powers to avert the outcome of the 2009 proceeding where utility cost cutting almost uniformly did not benefit ratepayers,[82] but rather vested in shareholders.

• *Q. What types of utility expenditures and outlays are most beneficial and valuable?*

Because the utilities have a duty to provide safe and reliable service at just and reasonable rates, a brief answer to what expenditures and outlays are most beneficial and valuable is those which allow the utility to meet its legal duties and further the public interest. At a high level this implies that the most beneficial and valuable utility expenditures on those made on reliability and resilience, safety, customer service actions, procedures required under HEFPA, and expenditures calculated to lower, or not to cause, strong bill impacts unless required by the public interest. If, however, one construed this formulation as maximizing shareholder value, which PULP does not, a different answer would occur. PULP rejects the notion that maximizing shareholder value for utilities at this moment is in the public interest.

PULP restates that the public interest is paramount in this analysis and that expenditures and outlays that further the public interest is most beneficial and valuable. Such a statement as

[81] See, Case 10-E-0362, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Recommended Decision filed April 4, 2011 at p. 74-75.
[82] *Id.* at p. 72.

noted above obviously focuses upon safety expenditures, reliability/resilience expenditures, and adequacy measures. This includes but is not limited to:

- Safe staffing levels for line workers and customer service representatives;
- Funds available to maintain and repair distribution and transmission lines safely;
- Funds to modify technology services to allow customer service representatives to work remotely and or safely on site when possible, for the purpose of providing efficiencies for their customers (such as technology to allow customer service representatives to work remotely, efforts to speed up the use of electronic DPAs);
- Funds to maintain fleet equipment including repair trucks;

PULP believes that it is important to add that while in general, we find the above listed items to be "beneficial and valuable," we also wanted to share a list of items that we do not find to be the "most beneficial and valuable" at this time, which includes:

- Raises for executive staff;
- Increased dividends or stock buybacks;
- Starting or re-initiating construction for non-essential capital projects;
- Installation of AMI with marginal cost-benefit analyses and/or where existing meters are not near their end of life;
- Subsidies for electric vehicles, and on a utility by utility basis, subsidies for infrastructure for electric vehicles other than mass transit;
- Replacing capital goods that are not at their end of life, or whose end of life might be prolonged without reducing safety;
- Consolidation or construction of new headquarters or other management buildings without a clear savings that can benefit ratepayers through rate relief;

• Q. Should utilities be required to develop economic stimulus programs and, if so, how should the impact of these actions be reflected in customer rates?

For the purpose of this answer, PULP interprets this as requiring additional economic stimulus/development programs to those in existence currently at several of the utilities. PULP is not opposed to the development of economic stimulus programs. PULP asserts however that economic stimulus programs could take several forms. First, the utilities and DPS could arrive at a COVID-safe plan for accelerating energy efficiency upgrades to low-income, moderate-income and senior housing, particularly to the extent such housing is in the nature of a multiple dwelling unit ("MDU") construction or a manufactured home (aka a "trailer" or "mobile home"). The utilities, DPS, and NYSERDA could also accelerate the investments planned for NYSERDA's "LMI portfolio," provided however that all of these programs should be COVID-safe, that workers should as much as possible be recruited from the counties most economically devasted by COVID-19, and that where skilled workers do not yet exist, that the Workforce Development Institute and the unions be consulted on setting up proper training and certificate regimens.

Second, for those utilities with reliability concerns due to older or problematic infrastructure (e.g., copper telephone plant that has not received significant investment over time, or failure to run fiber-to-the-home), the utilities could develop plans to replace such infrastructure in a COVID-safe manner and with their highly skilled labor forces. The workers that do plant maintenance for utilities usually live locally, many in distressed census tracts, and their salaries are middle-class level and anchor the economic security of many areas of Upstate.

Third, accelerating vegetation management with local New York State labor would also have a stimulus effect in distressed counties for customers of both telecommunications and energy companies. Similar investment in watershed maintenance or upgrades for water utilities could have similar effects as was made plain in New York State during the New Deal when the Civilian Conservation Corps ("CCC") tended reservoir watersheds and planted new trees to tremendous effect.

However, the creation of such programs should not be passed along immediately as a cost to residential customers, who are significantly struggling due to the financial downturn. As discussed previously, New Yorkers are suffering from crippling unemployment rates and total arrears are skyrocketing. Any added costs placed upon residential customers without concomitant growth in income or relief from bill impacts and/or utility debt will only exacerbate their current financial difficulties and likely add to growing arrears. If, however, such program spending resulted in measurable economic stimulus and was paired with rate relief, and arrearage management and affordable DPAs, the recovery of such funds might not have a broadly harmful negative impact.

• *Q. Should investments in and collections for clean energy programs be modified during the pandemic and, if so, how should these actions be reflected in customer rates?*

No. PULP's "generic position" is there should be no modification of investments into clean energy programs other than such investments for clean energy programs that would have the effect of increasing employment and investment in "human capital," which PULP believes should be marked for expansion where such expansion would contribute to jobs and have a stimulus effect.[83] PULP also does not believe that collections for such programs in the bills of commercial and industrial consumers should be altered, and PULP strongly opposes "refunding" any such collections to non-mass market ratepayers as was sought in the petition giving rise to Case 20-M-0187. PULP explicitly cautions the Department and Commission from taking steps toward redirecting any or all collections for clean energy programs directly assisting low and moderate income ("LMI") New Yorkers. These funds have been carefully negotiated and crafted from years of work inside and outside of rate cases and are an important factor in New York reaching its climate goals, as well as addressing historic energy and environmental justice issues. Moreover, due to the financial difficulties facing existing low-income customers as well as "newly low-income" customers, now is not the time to re-direct any funds away from investments that could give rise to lower bills.

• Q. How should the Commission and the Department of Public Service work with other governmental entities post-crisis to address ramifications related to COVID-19?

PULP believes the Commission and DPS should work aggressively with other government agencies post-pandemic to address issues created or exacerbated by COVID-19. As discussed previously, communication and cross agency efforts will be extremely important for the Department and the Commission during and after the health pandemic, for the same reasons as PULP and other intervenors advocated for an inter-agency task force in the Low-Income Affordability Proceeding (Case 14-M-0565). It is only through program and benefit stacking that the ultimate goal of affordability, rate relief, economic stimulus and safe and adequate service can be achieved.

Such inter-agency communications include but is not limited to regular communication by the PSC with:

- The Office of Temporary and Disability Assistance- for the purposes of tracking financial assistance programs available, specifically those applicable to utility related arrears and costs;
- The New York State Energy Resources and Development Authority ("NYSERDA");

[83] We remain open to a proposal that would lower the rate burden/bill impacts upon financially vulnerable New Yorkers without slowing down the investments necessary to fight climate change and achieve New York's goals.

- The Empire State Development Corporation
- NYC's Economic Development Corporation;
- The NYS Department of Labor;
- The NYS Department of Health;
- Local, state and federal elected officials; and
- Legal services groups and community-based organizations.

Such efforts at increased communication should include a task force with bi-weekly meetings for at least five years after the lifting of the State of Emergency. A bi-weekly email update and posting on each entity's homepage would also assist the public in being able to keep up to date on the latest news and discussions.

• Q. What Commission actions (if any) are necessary to implement, or to maximize value of, federal assistance to utilities and/or utility customers?

The Commission and the Department should work with Governor Cuomo and his staff to determine what efforts on the federal level to obtain state funding are necessary to help manage and lessen the economic crisis in which the State is enmeshed. First, PULP suggests seeking additional HEAP funds for the 2020-2021 heating season. The State, energy utilities, and advocates/stakeholders should seek an expansion of LIHEAP to at least the $5.4 billion that was appropriated each year of the Obama Administration's stimulus program.

Second, PULP suggests that the PSC, DEC, DOH, the water utilities and municipal/public authority systems, and stakeholders, jointly advocate for a "LIHEAP for Water," of at least $1.5-$2 billion for each of the next four years. Water unaffordability is a national crisis,[84] and despite the lack of the granular data necessary to fully make evidence-based policy in New York,[85] large numbers of New York households have difficulties affording their water bills.[86]

Third, the PSC, the Governor's Broadband Program Office, the City of New York's Department of Information Technology and Telecommunications ("DoITT"), the

84 See articles on the water affordability crisis by Food and Water Watch at https://www.nytimes.com/2018/10/29/opinion/drinking-water-shut-offs.html; and by the NAACP at https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf.

85 See, policy resolution of the National Association of State Utility Consumer Advocates at https://www.nasuca.org/nwp/wp-content/uploads/2019/11/2019-06-NASUCA-Water-Affordability-Resolution.pdf.

86 Although the City of New York's annual water lien sale is postponed due to COVID-19 here is a map showing the properties with liens eligible for sale to 3rd parties; see, https://cnycn.org/nyc-tax-lien-sale/.

telecommunications utilities, and the State Legislature should jointly advocate for more funding for competitive broadband in New York. It is time to leave behind the legacy of monopoly or duopoly that retards affordable broadband in our communities by stifling competition or removing incentives to continually increase quality and speed to match the world's best practices and average offering for home and business broadband.

COVID's impact upon schooling at all levels, and upon the workplace, has made it clear that New York can no longer rely upon its existing broadband infrastructure. Without competition there will be no lower prices. And without federal programmatic funds, there will be no takers for RFPs seeking overbuilders or "last mile" builders for much of the State. This government-private sector partnership should also seek to reform legislation that might tend to disincentivize wireline broadband competition. It is inherently cheaper, faster and more secure than the wireless alternatives.

3. Rate and Financial Aspects

The economic impacts of COVID-19 will continue to be felt for years to come.[87] This raises concerns about current rate plans, current ongoing rate cases, and future rate cases. All cases must have up-to-date rate case-quality data, as PULP requested in the KEDNY/KEDLI, NYSEG/RG&E and Suez rate cases;[88] additionally, PULP requests all utilities file potential austerity updates as we noted and requested above; and we request the utilities to adjust their ROEs and debt to equity ratios consistent with today's economic conditions.

As mentioned previously, the Commission's 1980 "Statement of Policy Concerning Evidence of Economic Impact in Rate Cases" provides guidance regarding the types of broader data one could use when trying to measure economic impact during times of financial duress. This guidance included three specific "issue areas where evidence of economic impact might be useful, which were 1) revenue requirements, 2) questions of timing- when deciding whether to

[87] See, COVID-19'S HISTORIC ECONOMIC IMPACT, IN THE U.S. AND ABROAD; https://hub.jhu.edu/2020/04/16/coronavirus-impact-on-european-american-economies/.
[88] See, e.g., Case 19-G-0309, Request for New Rate Data and Testimony, filed on March 30, 2020 at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3541C2FA-8BD8-4D99-8E72-B8065F1DF8B3}.

recognize particular expenses and 3) revenue distribution among customers.[89] The Commission did not intend for the list to be exhaustive. As a result, PULP's review of rate and financial aspects is equally broader than just these three issue areas.

For instance, PULP is incredibly concerned that recent action by Energy Service Companies ("ESCOs") may cause harm to customers already harmed by COVID-19. The National Energy Marketers Association ("NEM") has spoken out against Consolidated Edison New York ("ConEd") and their decision to reduce the cost of electricity to assist residents of New York City during this time.[90] While appreciative of the DPS' decision to prevent ESCOs from participating in door-to-door marketing as a way to "stop the spread," PULP believes that the ESCOs' attempt once again to fight to charge prices in excess of default utility pricing should be denied for Con Edison's territory and all other utilities' service territories for mass market customers. PULP also believes that additional protections must be put in place during this unprecedented public health and economic crisis to prevent predatory ESCOs from further harming utility customers. What follows is a broader review of rate and financial aspects that should be considered in light of the COVID-19 health pandemic.

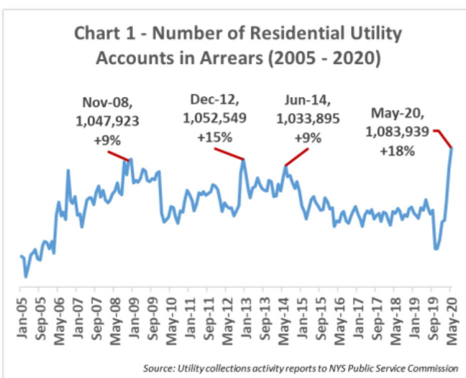
Q. How should previously authorized rate increases and revenue adjustment mechanisms for regulated entities (electric utilities, gas and steam distribution utilities, private water supply companies, and telecommunications companies) be addressed?

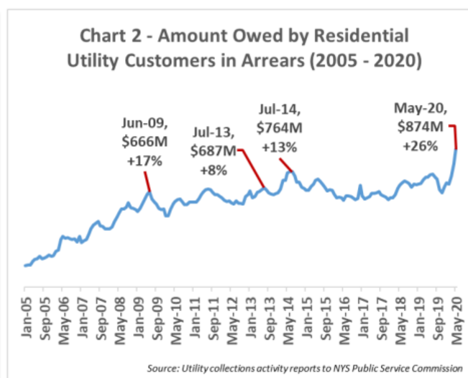
The unique circumstances of the utility affordability crisis unfolding in New York demand a robust statewide policy response designed to avert the catastrophe that millions of households would face if their service were to be disconnected and/or were to face other onerous collections actions simply because they were unable to pay their utility bills. At the same time, such policies must allow the State's regulated utilities to earn enough revenue to ensure safe and reliable service for all customers. Accordingly, all previously authorized rate increases and revenue adjustment mechanisms for all regulated entities (electric utilities, gas and steam distribution utilities, private water supply companies, and telecommunications companies) in New York State should be carefully examined so as to address the severe burdens the concurrent public health and economic emergencies are placing upon ratepayers. All previously

89 See, EEI Policy, at 5-6.
90 See, National Energy Marketers Association Motion in Case 15-M-0127, filed June 16, 2020.

preapproved rate increases should be delayed/deferred. Joint proposals currently being considered for Commission approval — such as those of New York State Electric and Gas (NYSEG)/Rochester Gas & Electric (RG&E) and Suez Water — should be similarly scrutinized for adjustment. Austerity measures applied to utility operating entities regulating by the Commission should include but not be limited to those items listed above on page 11. PULP believes those are the least measures the Commission should take to address this affordability and arrears crisis, since the problems is unprecedently vast.

Based on emerging data available to assess the impact of the COVID-19 pandemic thus far on residential customers' ability to pay their utility bills, PULP fears that the current emergency will dwarf the experiences of the Great Financial Crisis (GFC) of 2008 – 2009, Superstorm Sandy, and the Polar Vortex winter of 2013 - 2014. As shown in Charts 1 and 2, monthly collections activity reports (CARs) submitted by each utility to the Commission reflect unprecedented percentage increases in the number of residential utility customers in arrears in New York State during the five months from January through May, 2020; as compared to the peaks in arrears during each of these prior crises.

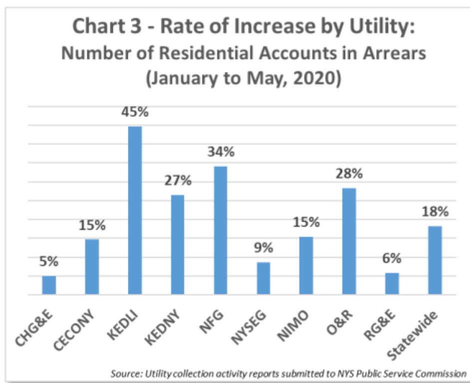




Residential utility customers in New York State are falling behind on their bills at an alarming rate in these early months of the COVID-19 pandemic, especially when considered in comparison to the Great Financial Crisis, Superstorm Sandy and Polar Vortex crises. Just five months into the pandemic, residential customers in arrears (1.08 million) and the amounts they owed ($874 million) are at a sixteen-year high — having risen 18% and 26%, respectively, from January through May. Contrast these rates with those leading to final peaks in prior crises: GFC – 9%/17%, Sandy – 15%/8%, and the Polar Vortex - 9%/13%.

Moreover, since the CARs reflect customers who have fallen behind on their bills by *at least sixty (60) days*, and since the Governor's state of emergency declaration requiring the New Yorkers to stay at home only took effect in the third week of March, it is almost certain that the May, 2020 data substantially undercount the magnitude of this crisis. For example, it is clear the CARS reflect only a fraction of the total population of customers who are now in arrears because they lost employment or otherwise suffered disruption due to the pandemic.

PULP expects these effects to be fully phased-in during the June through August period. We also consider it possible that by September the number of residential customers past-due 60 days or more could approach 2 million — double the number since January. This is not mere conjecture: as Chart 3 suggests, such a scenario could already be initially unfolding in service areas that include National Grid – Long Island (KEDLI), National Fuel Gas (NFG), Orange and Rockland (O&R) and National Grid – New York City (KEDNY).



Importantly, the COVID crisis is wholly unlike the GFC, Superstorm Sandy, and Polar Vortex episodes. Whilst the latter certainly created destruction, disruption, and extreme economic hardship for millions of New Yorkers (and death for many), they were the type of disasters with which policymakers accustomed to dealing. Policy responses, such as the rebuilding of infrastructure, bolstering of future resilience, enhancement of consumer protections, and provision of financial aid to those in need were ascertainable solutions,[91] though not always evenly or effectively deployed. In contrast, the COVID virus is "novel", meaning that it is a new variant of disease with which science has no experience and for which humans have no immunity. Thus far, this has presented State policymakers with an acute combination of

[91] See, e.g., the Moreland Commission Report on Utility Storm Preparation and Response, released on June 22, 2013 at https://utilitystormmanagement.moreland.ny.gov/sites/default/files/MACfinalreportjune22.pdf.

public health and safety, economic, administrative and legal conundrums. We do not yet have a handle on all the ways these dimensions will impact vulnerable ratepayers. We cannot even determine how long the crisis will continue, or whether or how often it will return.

What can be reasonably assumed though is that in the short term, the progression of arrears in coming months will largely depend on the degree to which the State policymakers are successful in their attempts to re-open the State economy by allowing businesses to resume operations and people to return to work, and by aggressively taking the policy suggestions for lowering or averting arrears growth provided in the record of this proceeding. Much will also depend on the timing, nature and extent of continued fiscal support for individuals and small businesses at the federal level once CARES act enhanced unemployment benefits and the PPP expire July 31.

PULP intends to establish a complete public record of arrears development in this proceeding. Given the current unavailability of this data at this time however, together with the uncertainties surrounding the re-opening of the State economy and the prospect of a federal "fiscal cliff" that could additionally and severely harm vulnerable New York ratepayers, we will file timely supplements to these comments reporting arrears progression, affordability regression, and increase of terminations.

As previously discussed, there are several examples of past Commission responsiveness to the impact past public emergencies have had on customers' ability to pay their utility bills, most recently during the severe recession caused by the Great Financial Crisis of 2008-2009 and the destruction and disruption caused by Superstorm Sandy in late 2012. In its April 24, 2009 *Order Setting Electric Rates* during the GFC in Case 08-E-0539, the Commission states:

> "*In setting just and reasonable rates, we consider all reasonable costs that the Company will incur in order to provide safe and reliable service. In setting such rates, we recognize that many of the expenses that the Company incurs are difficult to avoid or control and while the Company is challenged to achieve efficiencies and productivity gains, we generally allow some level of costs that are discretionary in nature (i.e., expenses associated with areas that are not strictly necessary for the provision of safe, adequate, and reliable service, but fund certain corporate goals and priorities that could be delayed to another day without impact). Expenditures that are reasonable during average or good economic times are not necessarily reasonable when economic conditions are*

> *extremely poor. When consumers are experiencing the extraordinary harsh economic realities we see today, a certain measure of frugality is properly expected from utilities and a reprioritizing of expenditures may be needed.*" [92]

During the Sandy emergency, the Commission developed a consistent statewide policy covering customer outage credits and other consumer protection policies, as well as revenue recovery, through its generic proceeding in Case 13-M-0061, thereby providing regulatory certainty for electric utilities and assurance for electric utility customers dealing with the aftermath of prolonged outages. In its November 18, 2013, *Order Establishing Policies*, the Commission directed utilities to adopt a number of measures in consideration of the impacts of the outages on their customers. These included, but were not limited to Commission action that:

- Temporarily suspended or waived several regulations and tariff provisions for customers who were significantly adversely impacted by the storm, including foregoing the assessment of late payment charges and pro-rating and crediting customers for portions of customer charges related to the period of loss of service, and;
- Approved utility proposals that resulted in shareholders absorbing the lost revenues associated with pro-rating the customer charge, instead of allowing utilities to recover such lost revenues through their revenue decoupling mechanisms (RDM).

Further, during the proceeding, the utilities voluntarily ceased their normal collection and service termination practices during and for some time after the completion of restoration efforts.[93]

The Commission also approved, with modifications that included a two-tiered set of consumer protections, DPS Staff's proposal[94] to establish a uniform policy of minimum utility

[92] See, *Order Setting Electric Rates*, Case 08-E-0539 at 331 - 344. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={60F4148E-77EE-4933-AF38-B4AB16700257}.
[93] See, *Order Establishing Policies*, Case 13-M-0061 at 1-2, available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={90BC7F9A-6BA7-46E6-A0B5-D41C33DAB140}.
[94] See, *Notice Soliciting Comments - Proposed Consumer Policies Relating to Prolonged Outages* (attachment), Case 13-M-0061 at 1-5, available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={71528CAC-5169-4610-B909-273FEB85F5BF}.

practices that would be applicable as a result of prolonged outages due to major storms and other emergency events, including the criteria for recovery of associated costs and lost revenues.[95]

Unlike the generic proceeding addressing ratepayer impacts in the Sandy emergency, the Commission's efforts in 2009 to craft a uniform response to the suffering experienced by vulnerable ratepayers during the GFC were not successful, leading to a patchwork of uneven remedies in individual rate cases, of which the Order cited above in Case 08-E-0539 is but one example. In its *Notice Requiring the Filing Of Utility Austerity Plans* in generic Case 09-M-0435, the Commission directed the utilities to file austerity plans aimed at eliminating or deferring spending whenever such actions can be taken without compromising the provision of safe and reliable service. Specifically, the Commission directed each such utility to closely examine its capital expenditures, operation and maintenance expenses and any other expense areas over which it has discretion to identify costs that may be reduced.[96] The responses by the utilities were, to put it mildly, disappointing. As noted in Section 2 above, the order in Case 08-M-0835[97] conveyed the Commission's palpable frustration with the utilities' responses to calls for austerity:

> "Generally, the utility filings were unresponsive to the intent of the Austerity Notice. Only National Fuel Gas Distribution Company (NFG) proposed direct credits to customers. While the remaining utilities reported the postponement of capital spending (much of which was delayed for reasons not associated with the Commission's Austerity Notice), and described other cost-saving measures they apparently adopted, none offered direct benefits, such as bill credits, to ratepayers after such spending cuts were made.
> Instead, and in the absence of any direct benefit to ratepayers, the utilities' austerity proposals would result in savings that accrue exclusively to the benefit of the utilities' shareholders.[3] The purpose of the Austerity Notice, however, was to assist utility customers during the current recession with modest bill reductions without jeopardizing safety and reliability and without harm to utility shareholders. The Austerity Notice was not intended as a new opportunity to boost utility earnings.
>
> Therefore, having shown no commensurate benefit to ratepayers from delaying or foregoing any identified capital or O&M project, with the exception of NFG, we are neither approving nor sanctioning any such delays. Further, such delays will not be accepted in the future as a basis for failing to meet reliability or other targeted measures. Without a concomitant benefit to ratepayers, no project should be delayed under the guise

[95] *Order Establishing Policies*, Case 13-M-0061 at 8 – 21 and Attachment A.
[96] See, *Notice Requiring the Filing of Utility Austerity Plans*, Case 09-M-0435. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4454F6C6-869F-4636-AACA-E8588BD971C5}.
[97] See, generally, Austerity Proceeding.

> of compliance with the Commission's Austerity Notice. The utilities should proceed to comply with any obligations and commitments, including those to other administrative or government agencies.
>
> Finally, while this Order concludes this proceeding, it is anticipated that we will continue to seek austerity measures that can provide rate relief to utility customers. Accordingly, through 2010, we anticipate that all rate filings and all joint proposals submitted to the Commission will identify, for austerity purposes, discretionary spending cuts. Until the current economic downturn reverses, utilities should employ as many cost-cutting measures as possible. These measures could include, but are not limited to, limiting training of employees in only safety-related or legally-mandated areas, freezing managerial salaries, foregoing managerial bonuses, and limiting travel."

With footnote 3 stating:

> "Austerity measures could trigger the sharing with ratepayers of excess earnings by operation of utilities' existing rate plans. Such sharing occurs only after the utility is earning its full rate of return plus any applicable deadband. If, before the austerity savings are considered, the utility is not earning at its allowed rate of return, ratepayers would receive no share of the austerity savings."

The case for a robust statewide response during the COVID emergency, and avoiding the pitfalls clearly displayed in the 2008-09 Austerity Proceeding, could not be made clearer.

A comparison of 2009 – 2011 with 2019 calendar year returns on equity (ROE) as reported by the investor-owned electric and gas utilities in New York State in their annual reports to the Commission suggests that some opportunities to provide relief to customers having difficulty with their bills may have been missed during the GFC and, equally, that there may opportunities in the current emergency to provide such relief to the far greater number of customers likely to be struggling with their bills now.

To be clear, since these ROEs are calculated on calendar year basis, they are not equal to, or necessarily comparable, to ROEs calculated on a rate year basis. They instead offer an "apples-to-apples" comparison based on the calendar years customers were affected. Table 1 presents this comparison.

Table 1 - Calendar Year Return on Equity Reported to NYS Public Service Commission
Investor Owned Electric and Gas Utilities + Suez Water

Utility	2009						2010						2011						2019					
	Electric		Gas		Water		Electric		Gas		Water		Electric		Gas		Water		Electric		Gas		Water	
Central Hudson	7.04%		5.79%				8.68%		11.22%	1			8.12%		9.12%				7.72%		8.98%			
Con Edison	7.32%		9.75%				8.36%		9.11%				9.09%		7.72%				9.71%	1	9.27%	1		
NFG			10.36%	1					11.48%	1					12.26%	1					9.53%	1		
KEDLI			6.61%						5.03%						4.86%						10.33%	1		
KEDNY			8.15%						10.78%	1					8.76%						4.61%			
NIMO	4.49%		5.49%				6.76%		0.76%										8.70%		6.95%			
NYSEG	2.38%		10.59%	1			8.09%		10.38%	1			7.47%		7.87%				2.87%		7.25%			
O&R	11.33%	1	11.34%	1			N/A	?	N/A	?			10.89%	1	11.25%	1			13.20%	1	11.97%	1		
RG&E	2.38%		5.71%				7.23%		5.76%				7.20%		8.60%				5.37%		5.86%			
Suez West					3.10%						7.30%						5.10%						7.10%	
Suez NY					8.10%						8.00%						8.00%						9.90%	1,2

Source: Utility annual reports to NYS Public Service Commission

1 Higher than current return on equity effective in rate plan
2 Higher than proposed return on equity in pending JP

Table 1 shows that one electric utility (O&R[98]) and three gas utilities (NFG[99], NYSEG[100] and O&R) were likely earning ROEs from 2009 – 2011 that were higher than was effective for their then current rate plans, and likely far higher than an ROE that would have been arrived at by use of the Commission's Generic Finance Model. PULP considers it likely that a generic evidentiary proceeding with discovery could have determined if this was the case and could have used those insights to require greater austerity measures for those utilities. In contrast, the same evidentiary proceeding could have determined that other utilities were apparently earning less than their ROE in effect.

Such an examination would have been more uniform and would have provided more timely relief to ratepayers than what actually took place. Since the austerity plans submitted in 09-M-0435 were deemed inadequate, the case was closed, and steps were only taken when each utility subsequently filed new rate plan proposals. The outcome was therefore more or less completely non-uniform.

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98 Allowed ROE: 9.4% for electric; 10.4% for gas. See: *Order Establishing Electric Rate Plan for Orange and Rockland Utilities, Inc.*, Case 07-E-0949 at 37. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D45012FB-28BC-469D-908F-78DCBE000BD4}, and *Order Adopting Joint Proposal and Implementing a Three-Year Rate Plan*, Case 08-G-1398 at 7. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B946AABA-8FC3-4EF7-B5AD-8B86F11FD0F4}.

99 Allowed ROE: 9.1%. See, *Order Establishing Rates for Gas Service*, Case 07-G-0141, at 41. Available at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=28680&MNO=07-G-0141.

100 Allowed ROE: 10.5% See, *Order Establishing Rates*, 01-G-1668 at 9. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D802A97C-6A71-4DD1-9613-25B93E4F9457}.

It is also noteworthy that, despite the concern raised about earnings sharing mechanisms during periods of austerity in the 2009 order in 09-M-0435, each of the utilities that had such mechanisms were permitted to retain them in their rate cases following the closing of the generic proceeding. Niagara Mohawk was even allowed to initiate an ESM in its 2009 gas case,[101] at a time when the financial crisis was far from over.

In terms of the present COVID emergency, Table 1 identifies two electric utilities (Con Edison[102] and O&R[103]) and four gas utilities (Con Edison, NFG[104], KEDLI[105] and O&R) that may be achieving ROEs that are higher than in effect for their current plans. Additionally, Suez Water New York is identified as possibly achieving an ROE that is greater than both its current effective ROE and its proposed ROE as reflected in the JP currently before the Commission.[106] Given that it is early in the COVID crisis, PULP believes that this represents a significant opportunity uniformly to utilize the generic proceeding currently underway on an expedited basis to assess the relative ability of each utility to provide enact austerity measures that could provide relief to ratepayers immediately through an interim order issued pursuant to an emergency SAPA notice.

Further evidence that the current emergency argues for a robust, uniform generic response including an evidentiary process is reflected in a comparison of dividends declared by

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101 See: *Order Adopting the Terms of a Joint Proposal and Implementing a State Assessment Surcharge*, Case 08-G-0609 at 16. Available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={05AEC2F3-4D8D-4846-A986-349AAB618671}.

102 Allowed ROE: 8.8% for electric; 8.8% for gas. See: *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan*, Cases 19-E-0065, 19-G-0066 at 25-26. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B06921C-6160-4FFD-B10F-1C1D03F16AEE}.

103 Allowed ROE: 9.0% for electric; 9.0% for gas. See: *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan*, Case 18-E-0067, 19-G-0068 at 24-25. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B06921C-6160-4FFD-B10F-1C1D03F16AEE}.

104 Allowed ROE: 8.7%. See: *Order Establishing Rates for Gas Service*, Case 16-G-0257 at 57. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B06921C-6160-4FFD-B10F-1C1D03F16AEE}.

105 Allowed ROE: 8.7%. See: *Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans*, Case 16-G-0058 at 32. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7B06921C-6160-4FFD-B10F-1C1D03F16AEE}.

106 See, *Order Establishing Rate Plan*, Case 16-W-0130 at 14. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={ECCAD35D-B853-47EA-B97E-5F6BB1020CFC}; and *Joint Proposal*, Case 19-W-0269, Appendix 4 at 1-5. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FB5030F8-C554-4B7A-A13C-BDCCE0C6F603}.

investor-owned utilities payable to their parent companies from 2009 – 2011 with 2019. Table 2 illustrates this comparison.

Table 2 - Dividends Declared by Utilities Payable to Parent Companies
Investor Owned Electric and Gas Utilities + Suez Water

Utility	2009	2010	2011	2019
Central Hudson	$0	$31,000,000	$43,000,000	$0
Con Edison	$652,000,000	$670,000,000	$681,000,000	$912,000,000
NFG	$57,900,000	$118,400,000	$78,400,000	$44,000,000
KEDLI	$0	$0	$0	$0
KEDNY	$125,000,000	$150,000,000	$220,000,000	$0
NIMO	$500,000,000	$200,000,000	$300,000,000	$0
NYSEG	$0	$75,000,000	$125,000,000	$100,000,000
O&R	$32,000,000	$32,000,000	$33,000,000	$47,000,000
RG&E	$0	$0	$100,000,000	$0
Suez West	$0	$0	$0	$0
Suez NY	$0	$0	$4,000,000	$4,000,000
Total	$1,366,900,000	$1,276,400,000	$1,584,400,000	$1,107,000,000

Source: Utility annual reports to NYS Public Service Commission

Table 2 shows that in 2010 and 2011 Con Edison was able to increase dividends to its parent despite the quite limited austerity measures required by the Commission in its April 24, 2009 order in Case 08-E-0539[107] which, it should be noted, preserved the Company's earnings sharing mechanism and allowed for deferral of 50% of the Commission's $60 million in operating expense reductions for potential future recovery.

It is further worth noting that O&R was able to maintain its dividend from 2009 – 2011 (even slightly increasing it in 2011) despite the limited austerity measures to which it was subjected in 09-M-0435[108]. As stated above, Table 1 the Company's calendar-year 2009 – 2011 ROEs suggest that it may have been achieving a return higher than the rate set in its rate plans. PULP notes that these plans also included earnings sharing mechanisms.

107 See, *Order Setting Electric Rates*, Case 08-E-0539 at 341-344. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={60F4148E-77EE-4933-AF38-B4AB16700257}.

108 *Order Approving Ratepayer Credits*, Case 09-M-0435 at 9-10; and See, *Order Adopting Joint Proposal and Implementing a Three-Year Rate Plan*, Case 08-G-1398 at 12. Available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B946AABA-8FC3-4EF7-B5AD-8B86F11FD0F4}.

Startlingly, NFG was able to more than double its dividends in 2010 despite being the only utility cited by the Commission's order in 09-M-0435 to have offered bill credits to its customers in connection with its response to Commission calls for austerity plans in that proceeding. NFG is similarly notable in this regard in that it is one of the utilities that appears to have exceeded the ROE effective for its rate plan in 2009.

Finally, PULP notes that NYSEG was able to pay a $75,000,000 dividend in 2010 despite the concerns it raised in its 2009 petition for rate relief[109] which was rejected by the Commission as noted by the Company in its response to calls for austerity in 09-M-0435[110].

In sum, the efficacy of austerity measures imposed by the Commission through its unsuccessful generic proceeding in 2009 and the patchwork of measures unevenly applied in subsequent rate cases appears to have been extremely limited and certainly inadequate to address the residential customer arrears issues that arose from 2008 – 2010. As we have noted herein, such an approach cannot be replicated in this proceeding.

Turning to the relationship between 2019 dividend declarations and the present emergency, it certainly appears that insight may be gained supporting PULP's call for a robust generic austerity proceeding (including an evidentiary phase) designed to provide uniform direct relief to ratepayers. Firstly, Con Edison's new rate plan effective January 2020, cannot be dismissed as a primary driving factor leading to its 34% increase in dividends (to almost $1 billion) in 2019. It is noteworthy also that Con Edison's calendar-year ROEs for both electric and gas reached levels in 2019 that suggest it was already earning more than the rates that became effective in 19-E-0065 and 19-G-0066[111] (Table 1) - plans that continue to provide at least some relatively easily achievable earnings sharing mechanisms.

Similarly, Suez Water New York's calendar-year ROE in 2019, which suggests it may be earning more than both the rates effective in its current and proposed rate plans, cannot be dismissed as a primary driving factor leading to its initiation of dividends in 2019. Each of these

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109 See, *Order Dismissing the January 2009 Rate Filings*, Cases 09-E-0082 et al, at 3. Available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DCE5A33F-7F76-4D8C-8493-134F1E6452C0}.

110 See, *Order Approving Ratepayer Credits*, Case 09-M-0435 at 6.

111 *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan*, Cases 19-E-0065, 19-G-0066 at 25-26.

plans contain earnings sharing mechanisms, and again in Suez it would be hard to say they are tied to "stretch" goals.

O&R also raised its dividend 42% in 2019, while achieving calendar-year ROEs in both its electric and gas businesses that may have exceeded those set in its current rate plans, which continue to provide earnings sharing mechanisms.

NFG continued paying dividends in 2019, albeit at a lower rate, and also continued to achieve a calendar-year ROE that may have exceeded the rate set in its current rate plan.

Finally, NYSEG continued paying dividends in 2019, despite a calendar-year ROE lower than the rate-year based return set in its current rate plans[112].

Dividend payments in 2019 by the above utilities appear to reflect their confidence in their financial prospects moving forward. That confidence may be supported by ROEs that exceed the rates set in current and/or proposed rate plans. This suggests that these companies may be able to adopt austerity measures greater than those that could be adopted by utilities that do not appear to be earning at a rate set in their current rate plan. But we cannot know unless this situation is examined in a uniform, generic manner in this proceeding (including an evidentiary phase).

Such an examination is the best way to achieve the right amount of direct, timely relief to ratepayers while still providing each utility with a rate of return that ensures safe and reliable service. The patchwork of uneven measures applied in an ad-hoc fashion between the unsuccessful generic Case 09-M-0435 and subsequent rate cases will not suffice in the present emergency. Those measures have been shown to have been inadequate in halting the upward progression of arrears from 2008 – 2010, a progression that was only stopped by a sudden drop of 104,364 Con Edison residential accounts in arrears in January, 2010, the cause of which PULP is unable to answer -- PULP's operations had been ceased at that time due to lack of funding related to the GFC. Indeed, if that anomaly is some sort of data problem, it's entirely possible that there was no drop in arrears in 2010 at all and that the progression just continued

112 See, *Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal*, Cases 15-E-0283, 15-G-0284 at 32-33. Available at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-e-0283&submit=Search.

uninterrupted. Given the present alarming rates of increase of both the number of customers in arrears and the amounts they owe – to record levels by May 2020 – PULP repeats and argues strongly that policymakers cannot take an ad-hoc approach during the COVID-19 emergency.

- *Q. What has been the impact of COVID-19 on earnings, liquidity, cash flow, and access to capital*

Based on our review of the most recent publicly available information, PULP concludes that thus far the COVID-19 pandemic has had only a limited impact on the earnings, liquidity, cash flow, and access to capital of the investor-owned electric and gas utilities, as well as Suez Water, in New York State.[113]

PULP reviewed SEC filings and other public statements from each utility. Based on the utility companies own comments, PULP does not believe at this time that the net financial effects of COVID-19 on earnings, liquidity, cash flow and access to capital will be substantial.

The forward guidance that PULP has obtained is as follows:

Central Hudson (Parent Company: Fortis Inc.)

Central Hudson is a New York State regulated utility of Fortis Inc (Fortis). In its filings with the Securities and Exchange Commission since March, Fortis provides the following information and guidance:

Central Hudson Specific

- During the first month of the pandemic (March 2020), residential sales were unchanged. Additionally, Central Hudson has limited exposure to commercial and industrial sales.[114]
- Operating income for the quarter was 9% higher than the quarter ended March 31, 2019.[115]
- Five-year capital expenditures (2020 – 2024) are forecast at $1.6 billion.[116]
- Central Hudson's Standard & Poor's and Moody's credit ratings, at "A-"and "A3", respectively, are both investment grade.[117]
- Due to the COVID-19 pandemic and in agreement with the New York Public Service Commission, Central Hudson will postpone the collection of previously deferred costs, mainly related to environmental remediation, totaling approximately US$3 million.

113 Due to some unusual financial, operating and reporting difficulties, American Water is not included here.
114 See, *Fortis Inc. First Quarter 2020 Earnings Conference Call, May 6, 2020*, Securities and Exchange Commission Form 8K filing at 8. Available at: https://www.sec.gov/Archives/edgar/data/1666175/000117184320003350/exh_991.htm.
115 *Fortis Inc. First Quarter 2020 Earnings Conference Call* at 26.
116 *Fortis Inc. First Quarter 2020 Earnings Conference Call* at 29.
117 *Fortis Inc. First Quarter 2020 Earnings Conference Call* at 31.

Central Hudson expects to collect these costs in customer rates effective July 1, 2021, through its normal-course regulatory proceedings.[118]

Parent Company

- Strong Liquidity Position, Access to Debt Markets and Investment Grade Credit Ratings[119]
- Outlook: While uncertainty exists due to the COVID-19 Pandemic, the Corporation's long-term outlook is unchanged. Fortis continues to be well positioned to enhance shareholder value through the execution of its capital plan, the balance and strength of its diversified portfolio of utility businesses, and growth opportunities within and proximate to its service territories.[120]

CECONY/O&R (Parent Company: Consolidated Edison, Inc.)

CECONY/O&R are New York State regulated utility of Consolidated Edison, Inc. (Con Edison). In its filings with the Securities and Exchange Commission since March, Con Edison provides the following information and guidance:

CECONY/O&R Specific

- COVID-19 Regulatory Matters:

  In March 2020, New York State Governor Cuomo declared a State disaster emergency for the State of New York. Since that declaration, the NYSPSC and the Utilities have taken actions to mitigate the impact of the COVID-19 pandemic on the Utilities, their customers and other stakeholders. New York State has designated utilities, including CECONY and O&R, as essential businesses that may continue their work. The Utilities have modified or suspended certain work in the state.

  In March 2020, the Utilities began suspending service disconnections, certain collection notices, final bill collection agency activity, new late payment charges and certain other fees for all customers. Historically, these fees have amounted to approximately $6 million and $0.4 million per month for CECONY and O&R, respectively. The suspension of these fees is expected to result in a reduction in revenues during the suspension period, the length of which has not yet been determined. The Utilities also began providing payment extensions for all customers that were scheduled to be disconnected prior to the start of the COVID-19 pandemic. All customer walk-in centers have been closed to the public and in-person investigations of billing issues at customer residences and businesses have been suspended. In April 2020, the NYSPSC also suspended certain interconnection payment deadlines to mitigate the impact of the COVID-19 pandemic on developers of distributed renewable generation and energy storage. See Note K to the First Quarter Financial Statements.

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118 *Fortis Inc. Form F-6, May, 2020* at F-7. Available at: https://www.sec.gov/Archives/edgar/data/1666175/000166617520000019/a2020q1form6k.htm.
119 *Fortis Inc. First Quarter 2020 Earnings Conference Call* at 18-20.
120 *Fortis Inc. Form F-6, May, 2020* at F-19.

In March 2020, the Utilities requested and the NYSPSC granted extensions until July 31, 2020 to file their 2019 Earnings Adjustment Mechanisms (EAMs) reports, which would delay the start of collection of earned EAM incentives of approximately $46 million and $3 million for CECONY and O&R, respectively, from the twelve-month period beginning June 2020 until the twelve-month period beginning September 2020.

The Utilities' rate plans have revenue decoupling mechanisms in their New York electric and gas businesses that reconcile actual energy delivery revenues to the authorized delivery revenues approved by the NYSPSC on a monthly basis and accumulate the deferred balances semi-annually under CECONY's electric rate plan (January through June and July through December, respectively) and annually under CECONY's gas rate plan and O&R New York's electric and gas rate plans (January through December). The difference is accrued with interest on a monthly basis for CECONY and O&R New York's electric customers and after the annual deferral period ends for CECONY and O&R New York's gas customers for refund to, or recovery from customers, as applicable. Generally, the refund to or recovery from customers begins August and February of each year over an ensuing six-month period for CECONY's electric customers and February of each year over an ensuing twelve-month period for CECONY's gas and O&R New York's electric and gas customers.[121]

Parent Company

- The Companies are responding to the Coronavirus Disease 2019 (COVID-19) global pandemic by taking steps to mitigate the potential risks posed to employees, customers and other stakeholders by its spread. The Companies have mobilized a pandemic planning team and an incident command system structure. The Companies have taken precautions with regard to employee and facility hygiene, such as performing a temperature check on employees arriving at critical locations, cleaning and disinfecting all work and common areas, separating crews into multiple vehicles, promoting social distancing, imposing travel limitations on employees and directing employees to work remotely whenever possible. Employees who test positive for COVID-19 remain home from work and are closely evaluated to determine if any other employees may have had close, prolonged contact that would require other employees to quarantine at home and, following the Centers for Disease Control and Prevention guidelines, sick or quarantined employees return to work when they can safely do so. In addition, critical operators of the bulk power system have been sequestered in order to limit their exposure to COVID-19. The Utilities have continued to provide critical electric, gas and steam service to customers during the pandemic, and additional protocols have been implemented for required work at customer premises to protect employees, customers and the public.[122]
- For the year of 2020, the company expects its adjusted earnings per share to be in the range of $4.15 to $4.35 per share. The company's previous forecast was in the range of $4.30 to $4.50 per share. The company's revised adjusted earnings per share range for the year 2020 reflects predominantly the impact of warmer than normal winter weather on steam revenues, and also the potential financial impact from the Coronavirus Disease

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[121] See, *Consolidated Edison Form 10-Q, March 31, 2020*, Securities and Exchange Commission Form 10-Q filing at 23. Available at: https://www.sec.gov/ix?doc=/Archives/edgar/data/23632/000104786220000103/ed-20200331x10q.htm.

[122] *Consolidated Edison Form 10-Q, March 31, 2020*, Securities and Exchange Commission Form 10-Q filing at 46.

2019 (COVID-19) pandemic. The company's forecast assumes the restart of some "paused" commercial activities by early June, with a phased process that continues through the third quarter. Adjusted earnings per share exclude the effects of HLBV accounting for tax equity investments in certain of the Clean Energy Businesses' renewable electric production projects (approximately $(0.19) a share). Adjusted earnings per share also exclude the Clean Energy Businesses' net mark-to-market effects, the amount of which will not be determinable until year end.[123]

Liquidity Update

- Con Edison's credit facility of $2,250 million supports commercial paper with $1,042 million of borrowing capacity available under the facility as of March 31, 2020, and additionally Con Edison had $1,395 million of cash and temporary cash investments as of March 31, 2020.
- Financing plan for 2020:
  - Debt: Issue between $1,500 million and $2,000 million of long-term debt, primarily at the Utilities, in addition to issuance of long-term debt to refinance maturities at CECONY
  - Equity: Issue up to $600 million of common equity in 2020 in addition to equity issued through dividend reinvestment, employee stock purchase and long-term incentive plans
- Debt maturities / amortizations for 2020 are $518 million: CECONY $350 million (June); CEB $165 million; and CEI $3 million
- Steps we have taken to improve our liquidity position:
  - In March 2020, CECONY issued $1,600 million of Green Debentures
  - In April 2020, Con Edison entered into a $750 million supplemental credit agreement for incremental liquidity and for general corporate purposes

- [124]

1Q 2020 Developments[a]

CECONY & O&R

- In March 2020, New York State Governor Cuomo declared a State disaster emergency for the State of New York. Since that declaration, the NYSPSC and the Utilities have taken actions to mitigate the impact of the COVID-19 pandemic on the Utilities, their customers and other stakeholders. New York State has designated utilities, including CECONY and O&R, as essential businesses that may continue their work. The Utilities have modified or suspended certain work in the state. (pages 23, 45)
- In March 2020, the Utilities began suspending service disconnections, certain collection notices, final bill collection agency activity, new late payment charges and certain other fees for all customers. Historically, these fees have amounted to approximately $6 million and $0.4 million per month for CECONY and O&R, respectively. The suspension of these fees is expected to result in a reduction in revenues during the suspension period, the length of which has not yet been determined. The Utilities also began providing payment extensions for all customers that were scheduled to be disconnected prior to the start of the COVID-19 pandemic. All customer walk-in centers have been closed to the public and in-person investigations of billing issues at customer residences and businesses have been suspended. In April 2020, the NYSPSC also suspended certain interconnection payment deadlines to mitigate the impact of the COVID-19 pandemic on developers of distributed renewable generation and energy storage. (pages 23, 35, 46)
- As a result of the COVID-19 pandemic, both commercial and residential customers may have increased difficulty paying their utility bills, as a result of, among other factors, a decline in business, bankruptcies, layoffs and furloughs. CECONY and O&R have existing allowances for uncollectible accounts established against their customer accounts receivable balances which are reevaluated on a quarterly basis and updated accordingly. Changes to the Utilities' reserve balances which result in write-offs of customer accounts receivable balances are not reflected in rates during the term of the current rate plans and will be addressed during a future rate proceeding. During the first quarter of 2020, the potential economic impact of the COVID-19 pandemic was also considered in forward looking projections related to write-off and recovery rates, resulting in increases to the allowance for uncollectible accounts as detailed herein. CECONY's and O&R's allowances for uncollectible accounts reserve increased from $65 million and $4.6 million at December 31, 2019 to $70 million and $4.8 million at March 31, 2020, respectively. (page 48)
- In March 2019, the NYSPSC ordered CECONY to show cause why the NYSPSC should not commence a penalty action and prudence proceeding against CECONY for alleged violations of gas operator qualification, performance, and inspection requirements. At December 31, 2019, the company had an accrued regulatory liability related to this matter of $10 million, and at March 31, 2020, the company accrued an additional regulatory liability of $5 million. In April 2020, the NYSPSC approved a $15 million settlement agreement for the benefit of CECONY's gas customers between CECONY and NYSPSC staff related to this matter. (page 25)
- The impacts of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that became law on March 27, 2020 appear on page 47 of the 10-Q and on page 36 of this presentation.

- a. Page references to 1Q 2020 Form 10-Q. [125]

[123] See, *Con Edison Reports 2020 First Quarter Earnings*, Securities and Exchange Commission Form 8K filing at 1. Available at: https://www.sec.gov/Archives/edgar/data/23632/000104786220000104/ed-20200331xexx991.htm.
[124] See, *Consolidated Edison First Quarter 2020 Earnings Release Presentation*, Securities and Exchange Commission Form 8K filing at 14. Available at: https://www.sec.gov/Archives/edgar/data/23632/000104786220000104/ed-20200331ex992.htm.
[125] *Consolidated Edison First Quarter 2020 Earnings Release Presentation* at 18.

Tax Update on the CARES Act

Coronavirus Aid Relief and Economic Security (CARES) Act:

- Enacted on March 27, 2020 in response to the COVID-19 pandemic
- Contains $2.3 trillion in economic relief to eligible businesses and individuals impacted by the Coronavirus outbreak

Opportunities Applicable to Con Edison:

- Five-year carryback of a net operating loss (NOL) for tax years 2018-2020
  - Con Edison will carryback its NOL of $29 million from 2018 back to 2013. This will allow Con Edison, mostly at the Clean Energy Businesses, to receive a $2.5 million cash refund and to recognize an income tax benefit of $4 million in March 2020, due to the higher federal tax rate in 2013
  - Con Edison and its subsidiaries are not expecting to have a federal NOL in tax years 2019 or 2020
- Due to temporary relaxation of limitations on interest deductions under IRS Code 163(j), Con Edison and its subsidiaries expect to benefit:
  - By the increase in the percentage for calculating the limitation on the interest expense deduction from 30 percent of Adjusted Taxable Income (ATI) to 50 percent of ATI in 2019 and 2020
  - This may allow the Companies to deduct 100 percent of its interest expense – over $900 million annually
- The companies qualify for Employee Retention Tax Credits and Deferral of Payroll Tax
  - Eligible employers that continue to pay employees, but a portion of its workforce cannot perform their regular jobs due to Coronavirus pandemic
  - Receive a 50 percent credit on wages up to $10,000 per employee against their employment taxes each quarter
  - Allows for deferral of employer share (6.2 percent) of employee wages subject to Social Security taxes due from March 27 through December 31, 2020 (the Companies intend to defer the payment of employer payroll taxes for the period April 1, 2020 through December 31, 2020 of approximately $73 million - $65 million of which is for CECONY)
  - 50 percent repayment of payroll taxes due by December 2021 and remaining 50 percent due by December 2022

- [126]

Financing Plan for 2020 – 2022

Financing Plan

- Issue between $1,500 million and $2,000 million of long-term debt, primarily at the Utilities, in 2020 and approximately $1,800 million in aggregate of long-term debt at the Utilities during 2021 and 2022, in addition to the issuance of long term debt to refinancing maturities at the Utilities.
- Issue debt secured by the Clean Energy Businesses' renewable electric production projects and by Con Edison Transmission's investments.
- Issue up to $600 million of common equity in 2020 and approximately $1,100 million in aggregate of common equity during 2021 and 2022, in addition to equity issued through dividend reinvestment, employee stock purchase and long-term incentive plans.
- Planned issuance is in addition to the 1.05 million shares issued for $88 million in January 2020 to settle the remainder of a May 2019 equity forward transaction.

2020 Debt Financing Activity

- In March, CECONY issued $600 million of 3.35 percent of debentures due 2030 and $1,000 million of 3.95 percent debentures due 2050 in its inaugural green bond offering.
- In April, CEI entered into a $750 million supplemental revolving credit agreement for a 90-day period, with an option, to convert any loans outstanding on July 2, 2020 into a 270-day term loan that would mature in March 2021. CEI has not borrowed under the supplemental revolving credit agreement.

Debt Maturities

($ in millions)	2020	2021	2022	2023	2024
Con Edison, Inc. [parent company]	$3	$1,178	$293	$—	$—
CECONY	350	640	—	—	250
O&R	—	—	—	—	—
CEBs[a]	165[b]	149	144	316	135
Total	**$518**	**$1,967**	**$437**	**$316**	**$385**

a. Does not include additional principal amounts lenders for PG&E-related project debt may, upon written notice, declare due and payable. See Note C to the financial statements in the Form 10-Q.
b. CEBs repaid $38 million of maturing debt during the three months ended March 31, 2020.

- [127]

126 *Consolidated Edison First Quarter 2020 Earnings Release Presentation* at 36.
127 *Consolidated Edison First Quarter 2020 Earnings Release Presentation* at 43.

Rating Agency Credit Metrics

Rating Agency	Rating / Outlook[(a)]	Rating Agency Key Metric[(b)]	Rating Agency Forecast[(c)]	Rating Agency Downgrade Threshold
Moody's Investors Services	• CEI: Baa2 / Stable • CECONY: Baa1 / Stable • O&R: Baa1 / Negative	CFO pre-WC[(e)] / Debt	• 15% • 14% - 16% • <15%	• <13% • <14% • <15%
S&P Global Ratings[(d)]	• CEI: BBB+ / Stable • CECONY: A- / Stable • O&R: A- / Stable	Funds from operations to Debt	• >16%	• <16%
Fitch Ratings	• CEI: BBB+ / Negative • CECONY: A- / Negative • O&R: A- / Negative	Funds from operations-Adjusted Leverage	• No updated forecast specified	• >5.0x • >5.0x • >5.0x

This slide reflects the company's understanding of certain credit criteria of the rating agencies at this time, which are subject to change.

Source: Moody's Investors Service Credit Opinion March 17, 2020; S&P Global Ratings RatingsDirect January 23, 2020; Fitch Ratings press release "Fitch Affirms ConEd & Subsidiaries at 'BBB+'; Outlook Revised to Negative" March 25, 2020.

a. Represents senior unsecured ratings. Ratings are not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at anytime.
b. As defined and calculated by each respective rating agency. The rating agencies use other metrics that are not described on this slide.
c. Forecast represents: "12-18 Month Forward View As of Date Published" for Moody's; "2020 onward" for S&P; Fitch published a forecast of Funds from operations-Adjusted Leverage of "Near or at 5.0x" for CEI, 4.7x for CECONY and 4.6x for O&R in the December 17, 2019 press release; however, on March 25, 2020 Fitch indicated a "view credit metrics are now likely to weaken over the rating horizon," which is 2020-2022.
d. S&P rates CECONY and O&R on a group rating methodology with Con Edison.
e. CFO pre-WC is defined by Moody's as cash flow from operations before changes in working capital.

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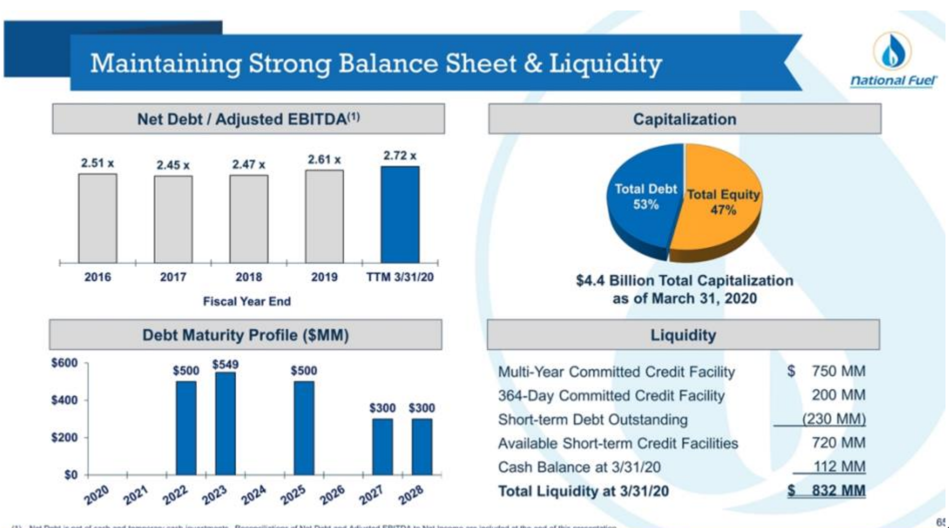
<u>NFG (Parent Company: National Fuel Gas Company)</u>

NFG is a New York State regulated utility of National Fuel Gas Company (National Fuel). In its filings with the Securities and Exchange Commission since March, National Fuel provides the following information and guidance:

Parent Company



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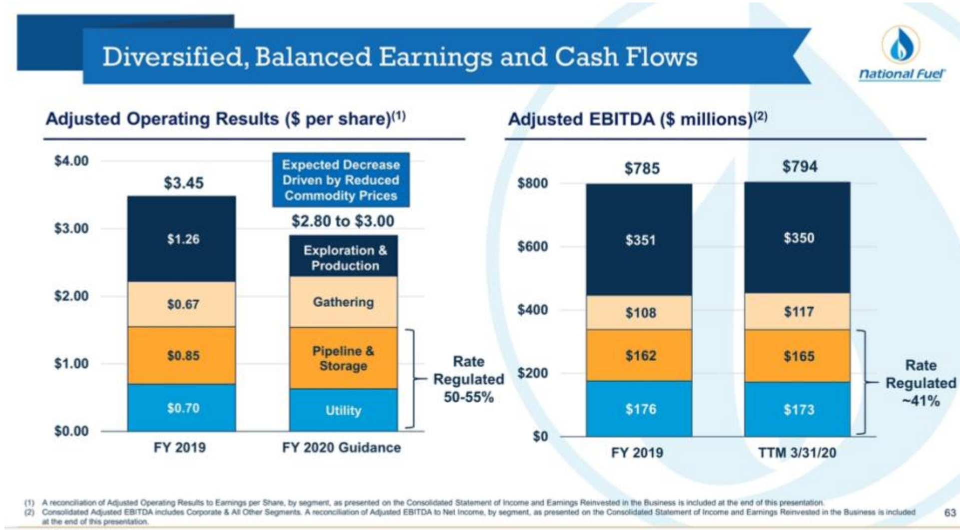
128 *Consolidated Edison First Quarter 2020 Earnings Release Presentation* at 52.
129 *National Fuel Investor Presentation, May 2020 Update*, Securities and Exchange Commission Form 8K filing at 65. Available at: https://www.sec.gov/Archives/edgar/data/70145/000119312520132411/d924876dex99.htm.



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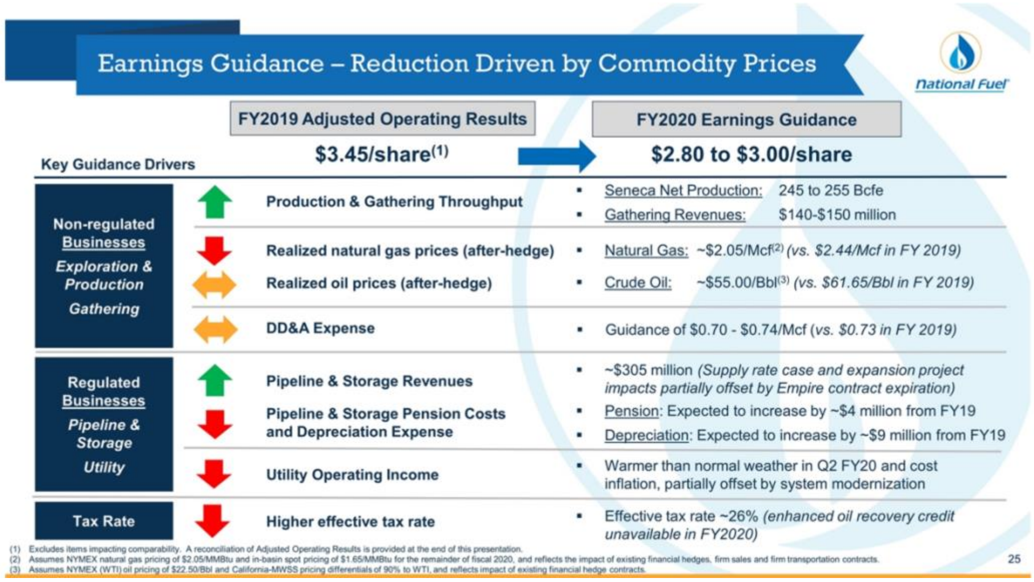
130 *National Fuel Investor Presentation, May 2020 Update* at 63.
131 *National Fuel Investor Presentation, May 2020 Update* at 12.

- 

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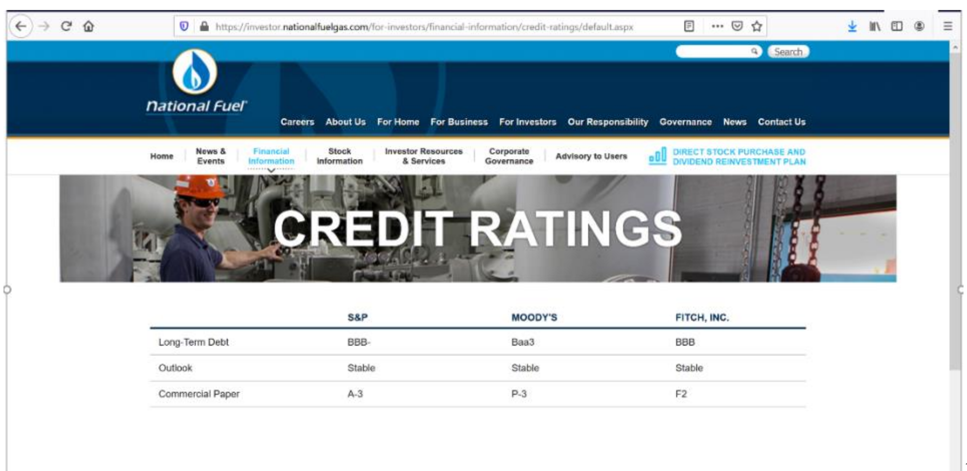
- 

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- COVID-19 global pandemic: The actual or perceived effects of a widespread public health concern or pandemic, such as COVID-19, could negatively affect our business and results of operations. While to date the Company has not experienced any material negative effects as a result of COVID-19, the situation continues to rapidly evolve and could result in material negative effects on our business and results of operations. The Company and its Pandemic Response Team are closely monitoring the impacts of the pandemic on the Company's workforce, customers, suppliers, business continuity, and liquidity. A protracted slowdown of broad sectors of the economy or significant changes in legislation or regulatory policy to address COVID-19 could adversely impact the Company. Although it is not possible to predict the ultimate impact of COVID-19, including on the Company's business, results of operations, cash flows or financial positions, such impacts that may be material include, but are not limited to: (i) a significant reduction in demand for natural gas; (ii) increased late or uncollectible

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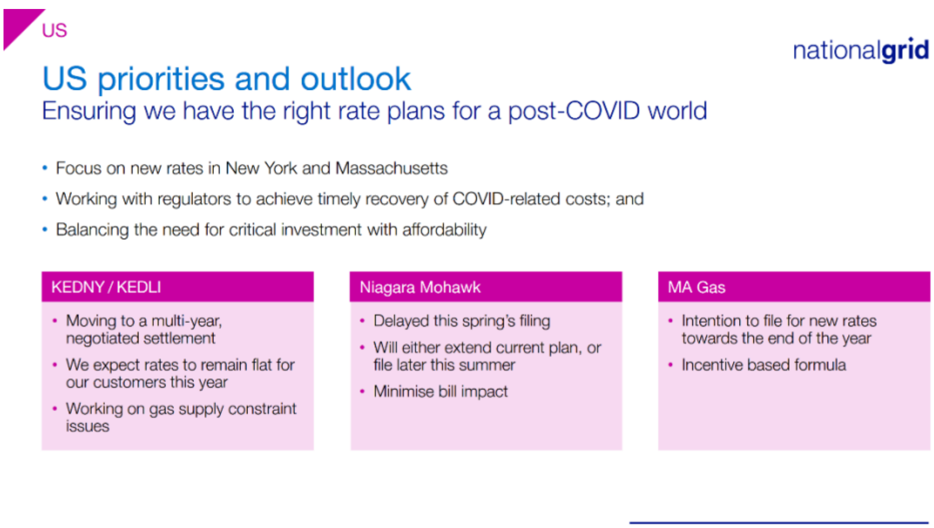
132 *National Fuel Investor Presentation, May 2020 Update* at 25.
133 See, National Fuel Gas Company website (Retrieved 7/7/20). Available at: https://investor.nationalfuelgas.com/for-investors/financial-information/credit-ratings/default.aspx.

> customer payments; (iii) the inability for the Company's contractors or suppliers to fulfill their contractual obligations; (iv) significant changes in the Company's human capital management approach, and increased cybersecurity threats associated with work-from-home arrangements; (v) difficulties in obtaining financing on acceptable terms or at all for working capital, capital expenditures and other investments, or to refinance maturing debt; and (vi) impacts on natural gas pricing and the potential impairment of the recorded value of certain assets as a result of reduced projected cash flows. To the extent the duration of any of these conditions extends for a longer period of time, the adverse impact will generally be more severe.[134]

<u>NIMO/KEDLI/KEDLI (Parent Company: National Grid USA)</u>

NIMO/KEDLI/KEDLI are New York State regulated utilities of National Grid USA (National Grid). In its filings with the Securities and Exchange Commission since March, National Grid provides the following information and guidance:

NIMO/KEDLI/KEDLI Specific



- [135]

134 See, *National Fuel Gas Company Form 10-Q, March 2020*, Securities and Exchange Commission Form 10-K filing at 53-54. Available at: https://www.sec.gov/Archives/edgar/data/70145/000119312520132411/d924876dex99.htm.

135 See, *National Grid plc Full Year Results 2019/20*, June 18, 2020 at 27. Available at: https://investors.nationalgrid.com/~/media/Files/N/National-Grid-IR-V2/results-centre/2020/fy20-results-combined-presentations-with-appendices.pdf.

Appendix 9

nationalgrid

New York jurisdiction

Regulated asset base ('Rate base') and returns

Rate bases are reported by regulatory entity as at 31 March 2020 Returns are those for the fiscal year ended 31 March 2020	**Long Island (KEDLI)**	**Downstate New York (KEDNY)**	**Upstate New York (NMPC Gas)**	**Upstate New York (NMPC Electric)**
Regulator	New York PSC	New York PSC	New York PSC	New York PSC
Rate base	$2,932m	$4,555m	$1,328m	$5,881m
Base allowed return	9.00% (RoE)	9.00% (RoE)	9.00% (RoE)	9.00% (RoE)
Achieved return	9.7%	7.7%	8.7%	8.9%
Equity / debt (assumed)	48 / 52	48 / 52	48 / 52	48 / 52
Sharing factors (shareholder retention at RoE)	100% to 9.5% 50% to 10.0% 25% to 10.5% 10% above 10.5%	100% to 9.5% 50% to 10.0% 25% to 10.5% 10% above 10.5%	100% to 9.5% 50% to 10.0% 25% to 10.5% 10% above 10.5%	100% to 9.5% 50% to 10.0% 25% to 10.5% 10% above 10.5%
Last rate case filing	Effective from April 2017[1]	Effective from April 2017[1]	Effective from April 2018	Effective from April 2018

[1] Currently in settlement discussions with the regulator with new rates expected to be backdated to 1 April 2020

National Grid plc Full Year Results 2019/20 June 2020 44

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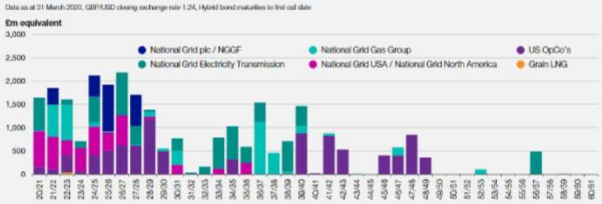
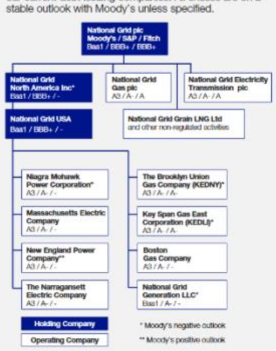
National Grid long term debt maturity profile

Data as at 31 March 2020, GBP/USD closing exchange rate 1.24, Hybrid bond maturities to first call date



Group debt issuing companies credit ratings

We have credit ratings from at least two agencies for all of our current debt issuing companies. All entities are on a stable outlook with Moody's unless specified.



* Moody's negative outlook

** Moody's positive outlook

Weighted average long term debt maturity

	Years
National Grid plc and NGG Finance	6
National Grid Gas Group	11
National Grid Electricity Transmission	13
US Group	12

2019/20 Debt Issuance

We issued £2.9bn of long term senior debt during 2019/20, as well as refinancing £1.1bn of hybrid debt.

- US Operating Companies: £0.5bn
- National Grid North America: £0.3bn
- National Grid Electricity Transmission: £1.8bn
- National Grid Gas: £0.3bn

Currency profile of issuance

Note: Gross borrowings at 31 March 2020 excluding associated derivatives and cash and investments

Important notice

This document contains certain statements that are neither reported financial results nor other historical information. These statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements include information with respect to National Grid's financial condition, its results of operations and businesses, strategy, plans and objectives. Words such as 'aims', 'anticipates', 'expects', 'should', 'intends', 'plans', 'believes', 'outlook', 'seeks', 'estimates', 'targets', 'may', 'will', 'continue', 'project' and similar expressions, as well as statements in the future tense, identify forward-looking statements. Furthermore, this document, which is provided for information only, does not constitute summary financial statements and does not contain sufficient information to allow for as full an understanding of the results and state of affairs of National Grid, including the principal risks and uncertainties facing National Grid, as would be provided by the full Annual Report and Accounts, including in particular the Strategic Report section and the 'Risk factors' section on pages 212 to 215 of National Grid's most recent Annual Report and Accounts for the year ended 31 March 2019 as updated by National Grid's unaudited half-year financial information for the six months ended 30 September 2019, published on 14 November 2019. Copies of the most recent Annual Report and Accounts are available online at www.nationalgrid.com or from Equiniti Limited. Except as may be required by law or regulation, National Grid undertakes no obligation to update any of its forward-looking statements, which speak only as of the date of this document. The content of any website references herein do not form part of this document.

Further information

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Parent Company

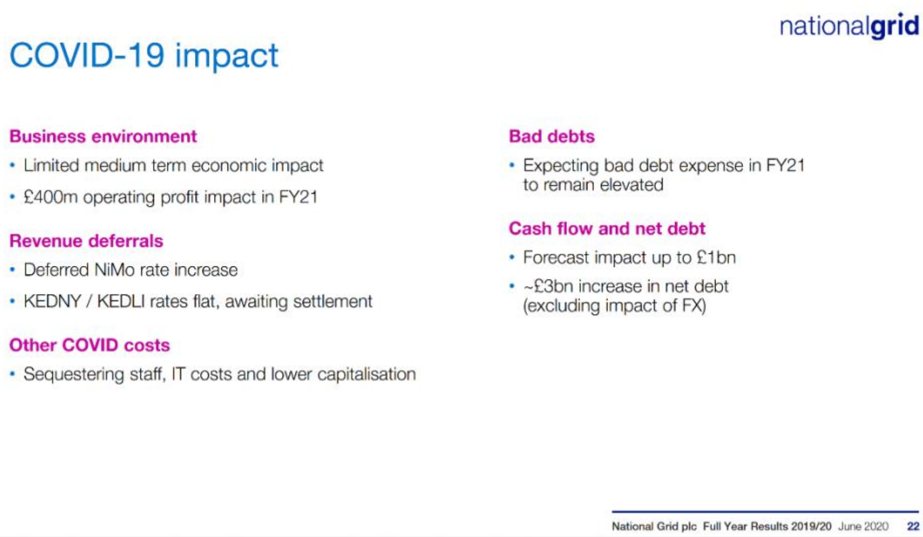
- COVID-19: At this stage we have not seen a material impact on our financial performance as a result of COVID-19, however we are starting to see some delays and disruption to our capital programme. In progressing our capital programme, working closely with our regulators and other relevant authorities in each of our jurisdictions, we will prioritize the health and safety of our employees, customers and communities. In the US, we have

136 *National Grid plc Full Year Results 2019/20* at 44.

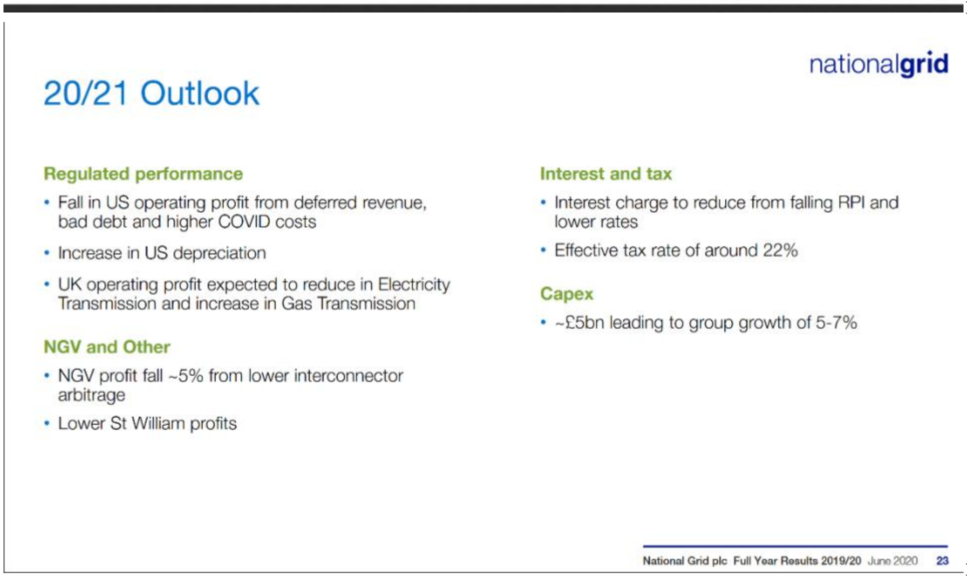
137 See, *N.G. Debt, June 2020*, at 2Available at: https://investors.nationalgrid.com/~/media/Files/N/National-Grid-IR-V2/factsheets/2020/national-grid-debt.pdf.

suspended debt collection and customer termination activities across our jurisdictions, which is resulting in near term lower customer collections, and could result in increasing levels of bad debt and associated provisions. Whilst this uncertainty persists, we will continue to monitor the situation closely.

Our balance sheet remains strong with GBP5.5bn of undrawn committed bank facilities.[138]

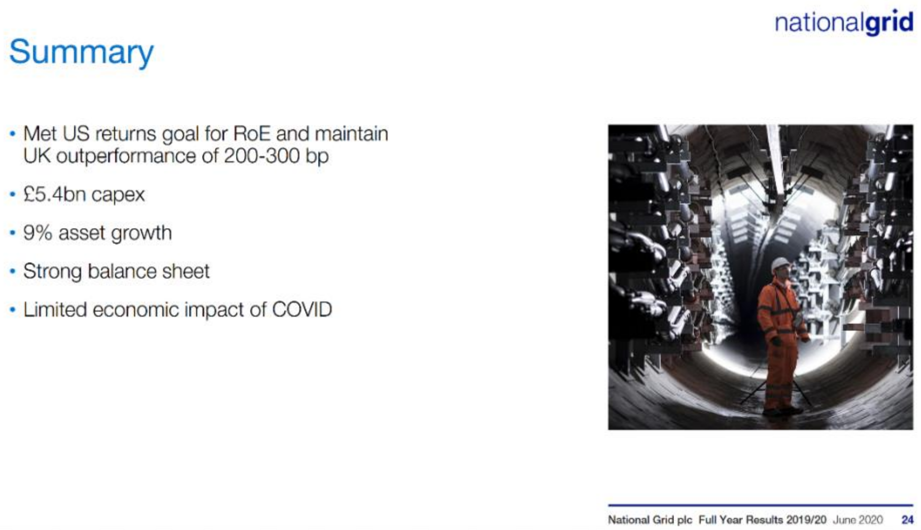


[139]



[140]

138 See, *National Grid plc Pre-Close Update ahead of 2019/20 Full Year Results*, April 2, 2020, Securities and Exchange Commission Form 6-K filing at 1. Available at: https://www.sec.gov/Archives/edgar/data/1004315/000100431520000024/pre-close_finalreformatted.htm.
139 *National Grid plc Full Year Results 2019/20* at 22.
140 *National Grid plc Full Year Results 2019/20* at 23.



[141]

NYSEG/RG&E (Parent Company: Avangrid Inc.)

NYSEG/RG&E are New York State regulated utilities of Avangrid Inc. (Avangrid). In its filings with the Securities and Exchange Commission since March, Avangrid provides the following information and guidance:

NYSEG/RG&E Specific

- COVID-19 Network Impacts and Mitigation, Current expectations based on estimate of 3 months of 'Stay at Home' policies & moratoriums lifted by June 30th (NY): Currently in settlement discussions; Requested delay in effective date until Sept 13th with make-whole provision to April 17th.[142]
- COVID-19 Impacts – Regional Utility Impacts, Precautionary social distancing measures & disconnect moratoriums in all states (NY): Schools closed effective March 16, Non-essential services closed effective March 20, stay-at-home orders effective March 22 – May 15, voluntary COVID-19 disconnect moratorium effective March 13.[143]
- NYSEG/RG&E Rates Cases: On March 23, 2020, the Public Utility Law Project (a party to the cases) submitted a letter motion requesting that the NYPSC administrative law judges assigned to preside over the rate cases require NYSEG and RG&E to pause settlement discussions and to provide new and accurate calculations

141 *National Grid plc Full Year Results 2019/20* at 24.
142 See, *Avangrid Inc. Results Presentation, First Quarter, April 29,2020*, Securities and Exchange Commission Form 8K filing at 18. Available at: https://www.sec.gov/Archives/edgar/data/1634997/000119312520123080/d879022dex992.htm.
143 *Avangrid Inc. Results Presentation, First Quarter, April 29,2020* at 32.

based on the current and future expected economic impact of COVID-19. On March 31, 2020, the NYSEG and RG&E, Multiple Intervenors (a party to the cases), and NYDPS staff each filed a response in opposition to the motion. On April 7, 2020, the NYPSC administrative law judges issued a Ruling Denying Public Utility Law Project's Motion, allowing settlement negotiations to continue. On April 22, 2020, the Public Utility Law Project and AARP filed an interlocutory appeal requesting that the NYPSC review the determination of the administrative law judges. NYSEG, RG&E, NYPSC staff and other parties are continuing settlement negotiations and plan to address impacts of the COVID-19 pandemic. We cannot predict the outcome of these proceedings.[144]

Parent Company

- Affirmed 2020 earnings guidance and sufficient liquidity and access to capital markets; expect minimal impact to 2020 revenues; potential reductions in capital expenditures; and higher uncollectibles and overdue receivables.[145]

Suez Water (Parent Company: Suez SA)

Suez Water New York and Suez Water Westchester are New York State regulated utilities of Suez SA (Suez). On its investor relations website, Suez provides the following information and guidance:

Suez Water Specific

- Regarding April, 2020, business activity, *we can also identify clear areas of stability such as our North American utility*.[146]

Parent Company

- Liquidity: Since April 1, raised nearly $1.5 billion of new gross cash; Continued to have access to both short term and long term borrowings; actually lengthened average maturity in CP market; In long term market have borrowed at 7, 8 and 12 years at interest rates < 1.4% on average; Have a $2.5 billion revolver with a 2025 maturity, recently extended with no covenants (like all group debt); All LT debt payments for the year have already been made with ex. Of $150 million that will be paid in June; Eur. 5.6 billion liquidity available in total of which Eur. 3.6 is cash.[147]

As discussed above, PULP has reviewed SEC filings and other public statements from several of the utility companies operating in NYS. Each of these Companies have publicly indicated that

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144 See, *Avangrid Inc. Form 10-Q, March 31, 2020,* Securities and Exchange Commission filing at 17. Available at:

145 *Avangrid Inc. Results Presentation, First Quarter, April 29,2020* at 8, 15, 18, 22; *Avangrid Inc. Form 10-Q, March 31, 2020 at 53-55.*

146 Webcast: *Audiocast SUEZ Results Q1 2020* at 28:45. Available at: https://channel.royalcast.com/suez-en/#!/suez-en/20200430_1.

147 *Audiocast SUEZ Results Q1 2020* at 30:40.

there has been little if any financial effects on the companies' earnings due to the COVID-19 health pandemic. Based on the utility companies own comments, PULP does not believe at this time that the financial effects of COVID-19 on earnings, liquidity, cash flow and access to capital will be substantial.

Q. What long-term impacts due to COVID-19 are forecasted at this time in relation to earnings, liquidity, cash flow, other credit quality metrics and access to capital?

Again, the utility companies own public statements and financial filings indicate that the COVID-19 health pandemic and economic downturn has had little to no effect on earnings, liquidity, cash flow or other credit quality metrics nor access to capital. (See PULP findings above in response to prior question.)

- *Q. Should the Commission consider passing back net regulatory liabilities outside of traditional rate-setting?*

Yes. As a general principle, PULP advocates for the direct return, through bill credits, of all net regulatory liabilities to the extent that such returns would not negatively impact utility cash flows and/or credit metrics to such an extent that it would be necessary to raise rates more than the benefit that was achieved by returning net regulatory liabilities. PULP is not in a position to assess these dynamics at this point but notes that such an analysis should be included in a robust generic proceeding with discovery, designed to provide as much immediate relief as possible to customers in the present emergency.

PULP emphasizes in this proceeding its <u>strong preference for direct bill credits</u>, rather than deferrals, as the form by which relief is provided to customers to customers having difficulty paying their utility bills due the COVID-19 crisis. Deferrals "for the benefit of customers" are all too often used to pay for future rate increases or other expenditures; in addition, the rapid return of net regulatory liabilities to the ratepayers is often opposed with the phrase that it might cause "hockey stick" rates in the future. Setting aside the fact that such an argument assumes that the utilities' rate increases will be approved for large amounts, the nature of a crisis like this is that consumers need rate relief now. So, if the nature, timing and extent of benefits to ratepayers are left to be argued in individual rate cases; this is obviously not a recipe for providing the necessary timely relief in the context of the present emergency. Therefore, PULP's position in this proceeding is that:

1) The return of net regulatory liabilities should be maximized in an amount that does not negatively impact utility cash flows and/or credit metrics to such an extent that it would be necessary to raise rates more than the benefit that was achieved by returning the net regulatory liabilities, and;
2) The method of return should be in the form of direct bill credits.

The oft advanced argument that returning "too much" of a utility's net regulatory liabilities sets customers up for hockey-stick style "rate shock" later is one that PULP always views as problematic for several reasons. First, such an argument presumes that the next rate increase will be granted and granted for a sufficient amount to create a hockey stick. Second, the balance sheets of public utilities should not be used accrue reserves for future priorities in such a way that the netting of regulatory assets against regulatory liabilities and/or the offsetting of increased rates obscures the relative merits (or lack thereof) of such priorities. Deferrals should be used sparingly and, to the greatest extent possible, in such a way that preserves the matching principle of accounting.

- *Q. Should revenue decoupling mechanisms be modified to address the impact of current economic conditions on different rate classes?*

No. PULP does not support the use of revenue decoupling mechanisms ("RDMs") to address the effects of the current economic crisis on different rate classes. To begin, RDMs were created for the purpose of removing utility disincentives to invest in energy efficiency, weatherization, demand reduction and other commodity sales reduction programs that allow us to lower greenhouse gas impacts. Their purpose should not be undermined by using them as a shadowy revenue recovery mechanism.

Second, in general, PULP finds the use of RDMs non-transparent. We oppose RDMs time and time again for that reason and will similarly oppose their use now to address economic effects of COVID-19.

- *Q. Should reconciliation or deferral of any expenses related to COVID-19 be permitted and, if so, with what guidance?*

PULP can only answer this question with a hypothetical answer at this time since there is currently no proposed amount to be recovered (or returned). As a result, PULP would welcome the analysis and public presentation by Department Staff of such information as it relates to deferrals or reconciliations. However, a public process and dialogue would be necessary so that the analysis could be closely scrutinized on a case by case basis with full discovery. Moreover, PULP could not advocate for allowing such recovery unless or until it was balanced against the utilities' austerity plans' rate relief for residential ratepayers.

CONCLUSION

PULP is appreciative of the opportunity to submit what it hopes will be initial comments in this generic proceeding. In the interest of transparency and public involvement, PULP respectfully requests the opportunity to file reply comments, as well as at least two more opportunities for comments and reply comments per the proposed procedural schedule outlined in section II above. Finally, PULP believes as argued throughout these comments that an evidentiary proceeding with full discovery is warranted to ensure to the greatest extent rate relief for the mass market consumers, and particularly for low-/fixed-income consumers.

Sincerely,

/s/

Sam Faduski, Esq., LMSW
Richard Berkley, Esq.
Laurie Wheelock, Esq.
William Yates, CPA

Appendix A

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES Resolution 2020-01

NASUCA Recommendations Concerning the Effects of the Public Health and Economic Crises Resulting from COVID-19 upon Utility Rates and Services Provided to Consumers by Public Utilities

Whereas, on January 30, 2020 the World Health Organization (WHO) declared the novel coronavirus outbreak (COVID-19) a Public Health Emergency of International Concern[i] (PHEIC). By March 11, 2020 the WHO characterized COVID-19 as a world pandemic; and

Whereas, on January 31, 2020 the Secretary of the United State Department of Health and[ii]

Human Services declared a public health emergency related to the COVID-19. On March 13, 2020 the President of United States declared that the COVID-19 outbreak in the United States constituted a national emergency[iii]; and

Whereas, during this national emergency, extraordinary actions have been instituted by State Governors and the federal government to reduce social contact with the goal of preventing the spread of the COVID-19 virus. Many businesses have been declared non-essential during the crisis and temporarily closed. Many states have issued temporary orders for citizens to shelter-in-place and avoid all non-essential movement away from home. Schools have been closed in many states. These emergency actions have resulted in record unemployment, widespread financial hardship and severe contraction of state economies; and

Whereas, to reduce the economic impact of this national emergency the United States Congress has passed, and the President has signed, several laws that offer financial support for states, citizens and businesses, some of which specifically include funding for essential utility services; and

Whereas, State governors and state public utility commissions and consumer advocates have taken steps to order or request voluntary compliance, and utilities and communications providers have taken steps either voluntarily or pursuant to orders, to stop disconnecting consumers that are unable to pay for service during the national emergency, to reconnect service for consumers that were disconnected prior to the national emergency, and to cease other collection activity temporarily; and

***Wherea*s**, the national crisis caused by COVID-19 is extraordinary in its breadth and depth, and the speed of its onset. While the ultimate depth and duration of the economic crisis is unknown, the initial impact of the economic crisis has been severe, resulting in closed businesses,[iv]

Wherea*s*, the end of the COVID-19 virus public health emergency, however defined, will not correspond to the end of the economic crisis. Many utility consumers are already behind on, or will fall behind on their utility bills, and will need uniform programmatic assistance and financial help getting back on their feet. This includes payment arrangements covering much longer time periods than normal, discount/assistance plans where none currently exist or expansion of existing plans; and

Whereas, access to electricity, water, natural gas and communications networks are essential for the health, safety, and welfare of all people, and that particularly during this unparalleled crisis broadband communications has played a vital role in protecting and furthering the health, safety and welfare of the States and their peoples; and

Whereas, small water and wastewater utilities have unique liquidity and infrastructure needs that must be addressed. Due to the lack of population density and the lack of economies of scale, small communities often face hurdles in supporting water and wastewater systems. Urban and rural water systems may also have issues with lead and other contaminants, and face other infrastructure challenges; and

Whereas, one of the goals of regulation besides protecting consumers is to serve as a proxy for the positive results of competition, and competitive enterprises have sought or will seek to reduce costs during this economic crisis.

Now, Therefore, Be It Resolved: Every effort must be made to ensure that universal access to and affordability of utility services are not diminished during this public health and economic crisis. Utilities, regulators and consumer advocates should work together to craft evidence-based solutions that address the unique challenges and burdens faced by all consumers and other stakeholders during this crisis. Such solutions should ensure the continued safe and adequate provision of utility services at affordable rates and under terms and conditions that are reasonable within this new environment; and

Be it further resolved, ***that***: When utilities, states or consumer advocates are communicating with consumers during this crisis, effort should be made to focus on the following:

- Consumers who are having trouble paying their utility bills should be urged to communicate with their utilities early and frequently;
- States, utilities and other service agencies should work together to communicate with utility consumers to ensure access to low income bill payment assistance, weatherization or other energy efficiency programs and any other resources available to help consumers pay arrearages, reduce bills and maintain service;
- Utility consumers should be urged to continue to pay their utility bills if possible, and if they cannot pay in full, to pay some portion of the bill to minimize any balance that will accumulate and be due at a later date; and

Be it further resolved, ***that*:** With regard to disconnection moratoria and communication rules between utilities and consumers during this crisis:

• Congress should respect state jurisdictional and decision-making authority to determine the extent and duration of any shutoff moratoria and to control any rules related to disconnections and reconnections, utility communications, payment programs and revenue collection activities;

- State public utility commissions should revisit utility tariffs and other terms and conditions applicable to disconnections, reconnections, late payment penalties and deposits in proceedings to address the economic impacts upon consumers of the ongoing economic crisis and to adopt policies applicable after the crisis ends to protect continued access to vital utility services by providing more time for repayment of past due amounts and reducing the burden of collection-related charges on consumers;
- Utilities should track and publish detailed information about consumer arrearages andv

Be it further resolved, ***that***: To help consumers pay utility bills during this crisis, NASUCA believes:

- Congress should provide supplemental funding for fiscal year 2020 and increase funding for subsequent fiscal years through the Low-Income Home Energy Assistance Programs (LIHEAP) and other funding mechanisms to address heating and cooling bills for consumers impacted by the COVID-19 crisis;
- Congress should create and fund a LIHEAP type mechanism to assist low-income water and wastewater utility consumers in paying their bills;
- Congress should consider providing direct support to utilities to assist consumers that may not otherwise qualify for LIHEAP assistance, including providing direct funding to utilities to reduce consumer arrearages and provide bill credits to help consumers maintain service;
- States should review and relax LIHEAP income eligibility standards to allow a wider range of consumers to qualify for assistance;
- States should consider adopting or strengthening bill payment assistance programs such as discounted rates, Percentage of Income Payment Plans (PIPPs) and arrearage management or arrearage reduction programs; and

Be it further resolved that*:* Accounting and utility operating cost:

- State commissions are urged to identify cost reductions when evaluating utility requests to defer COVID-19 cost increases as a regulatory asset;
- Congress should eliminate the normalization requirement contained in the Tax Cuts and Jobs Act of 2017 associated with the flowback of excess protected accumulated deferred income taxes to allow state commissions more flexibility to use these consumer-supplied funds to offset expenses; and

Be it further resolved, ***that***: Broadband, telephone and cable:

- To facilitate the additional capacity necessary to support telemedicine and education and commerce, Congress should work with states and increase funding to appropriate state government agencies or create incentives for investor-owned broadband internet access providers to expand broadband capability and availability in all areas, but with additional focus on unserved and underserved areas to reduce the impact of the digital divide;

- Communications providers should sign the FCC's Keep Americans Connected Pledge and should extend the protections of that Pledge through August 2020;
- Communications providers should consider additional protections and relief programs for consumers that extend beyond the terms of the FCC's Keep Americans Connected Pledge, including, among other things, making every effort to find workable arrangements to allow consumers to pay any arrearages caused by the COVID-19 crisis over a reasonable period of time after the crisis eases;
- To ensure consumers have access to local news and community television channels—which may be the only sources of COVID-19 or other emergency-related information for certain consumers, cable television providers should consider extending the protections of the FCC's Keep Americans Connected Pledge to basic cable service and consider allowing consumers that cannot pay their bills for other levels of service to downgrade to basic cable service, without additional costs or fees, in lieu of disconnection, through August 2020 or 60 days after the end of the public health emergency, whichever is later;
- NASUCA affirms its historic support for universal service and affordability, service quality and the need for telephone service to reach as close as practicable to 100% of low-income households in the United States, as was originally provided for by the Communications Act of 1934 and the 1985 Lifeline amendments thereto, and as such programs are consistent with NASUCA policy positions taken over time in its resolutions and legal action(s); and NASUCA supports the uncapping and increasing of the Lifeline program funds so that for the duration of this public health and economic crisis the funding of such program is sufficient to meet need, provided that such reasonable protections against waste be retained to protect the public and NASUCA supports the expansion of the provision of voice minutes, text messages and broadband internet access over wireless Lifeline phones such that vulnerable families will retain full and reasonable access to online education, government, health/telemedicine and public safety services; and

***Be it further resolved*, *that*:** Consumer access to utility-supplied water and wastewater services is critical to consumer health and safety:

- NASUCA affirms its support for legislation to fund critical water and wastewater infrastructure technical assistance and workforce development needs especially for small systems and systems burdened by lead and other nationally recognized contaminants. And all such action should focus upon maintaining or creating affordability, safety and potability of drinking water.

Be it further resolved, that NASUCA authorizes its Executive Committee to develop specific positions and take appropriate actions, consistent with the terms of this resolution and the needs of its Members and their utility consumers. The Executive Committee shall notify the membership of any action pursuant to this resolution.

Submitted by the COVID-19 Response Subcommittee

Passed by Membership Vote May 12, 2020

Abstained___________________________________ Kentucky AG Ohio Oklahoma AG Tennessee AG Texas

Endnotes

[i] https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19

[ii] https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html

[iii] https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/

[iv] The U.S. Department of Labor reports that 16.4 million Americans are unemployed as of April 18, 2020 https://www.dol.gov/ui/data.pdf.

[v] https://www.nasuca.org/nwp/wp-content/uploads/2018/11/2019-07-NASUCA-Data-Collection-Resolution-Joint-with-NARUC-Final.pdf; https://www.nasuca.org/2018-04-data-collection-resolution/

Appendix B

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
Resolution 2019-07

Resolution on Best Practices in Data Collection and Reporting for Utility Services Delinquencies in Payments and Disconnections of Service

WHEREAS services from public utility companies including providers of electricity, heating fuels, water and wastewater are vital and necessary to modern life;

WHEREAS many utility customers have chronic difficulties paying their utility bills in full, which can result in disconnection of service by the utility for nonpayment;

WHEREAS these difficulties have been of concern for state regulatory agencies and other interested parties for at least 50 years;

WHEREAS these difficulties have persisted or are worsening despite protracted and ongoing efforts to provide direct financial support from federal and state tax dollars, and customer donations, plus financial assistance and programming provided by social services agencies, religious institutions, and other community-based organizations;

WHEREAS disconnection during either cold or hot temperature extremes in weather can prove dangerous and potentially life-threatening;

WHEREAS many electric customers rely on continuous service to power medical care devices that are essential for their health, the disconnection of which can be life-threatening;

WHEREAS almost half of all residential energy consumption is devoted to heating and cooling of homes, with these services being essential to maintaining health, safety and welfare of ratepayer households;

WHEREAS the large number of disconnections of utility service jeopardizes the health and safety of many households and the safety of many communities and leaves vulnerable households subject to risk of harm;

WHEREAS households with seniors and infants and very young children are particularly at risk if utility services are disconnected as all are more susceptible to hypothermia if there is no heat and heat stress when there is no air conditioning;

WHEREAS seniors on fixed incomes, in particular, may face challenges in not only affording service but also in accessing assistance for paying utility bills, due to mobility limitations or other age-related disabilities;

WHEREAS households with annual incomes at or below $30,000, have "energy burdens" two to four times as large as households that make in excess of $30,000 (with "energy burden" defined as the percent of income spent on energy costs);

WHEREAS funding to assist lower-income households pay their energy bills is insufficient to meet the need, with funding available from the federal Low-Income Home Energy Assistance Program (LIHEAP) able to assist only about 6.1 million or about one-fifth of eligible households, with an average annual grant of $458, during federal fiscal year 2018;

WHEREAS low-income households often postpone other important purchases, even in some cases going without food, or forgoing medical or dental care, in order to pay utility bills, or suffer illness in an effort to lower those bills by reducing their usage of heating and cooling energy to what may be unhealthy levels;

WHEREAS States vary widely in the protections against disconnection available to customers and to households with persons who have a serious illness or who are otherwise vulnerable, including additional procedural delays, or disconnection stays of limited or unlimited duration, with some states having no protections;

WHEREAS both National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) have revisited related concerns about low-income utility services in recent years and have both passed at least a dozen related resolutions on this topic;

WHEREAS NARUC and NASUCA recognize the value of evidence-based policy making to improve outcomes for both utilities and customers;

WHEREAS data collection and sharing play an integral role in providing information for developing evidence-based policies; *now therefore be it*

RESOLVED, that NASUCA, convened at its 2019 annual meeting in San Antonio, TX encourages all interested parties to study and consider implementing best practices to help reduce the incidence of and minimize the negative impacts on utility services payment delinquencies and disconnections and take into consideration and explore the following actions;

- work to standardize the terms used to discuss delinquencies and disconnections and definitions of those terms including, at a minimum, the terms -- disconnection, reconnection, displacement (meaning a customer once disconnected who does not ever reconnect to service at the same address),vulnerable customers and critical medical needs customers;
- work to standardize the data collected, insofar as that is practicable, in order to facilitate state comparisons and track progress towards reducing these problems;
- describe and implement best practices related to data collection regarding delinquencies and disconnections;

- regularly seek input from consumers, and the agencies and organizations that work with consumers, so that utility companies and regulators continue to be apprised of evolving customer needs and preferences;
- consider implementing quality audits and data-governance practices to ensure the information collected and reported is valid and reliable;
- to the extent permissible under federal and state laws, collect and share data for research purposes, while ensuring privacy of personally identifiable information;
- work to identify and share best practices that demonstrate promise to reduce delinquencies and disconnections, with the explicit goal of increasing customers capabilities to pay utility bills over time including best practices that identify and highlight access to helpful programs and services, including bill affordability programs such as discount rates or percentage of income payment plans, energy efficiency programs and services, weatherization, consumer education, expanding existing shutoff protections, custom payment plans that reflect the ability of the customer to successfully complete the payment plan, and flexible bill due dates;
- train employees of utilities and service agencies to assess and work with customers on sustainable solutions to avoid arrearages and maintain utility services;
- work with all stakeholders, including utility companies, to collect and share data on arrearages and disconnections;
- share information about best practices with all interested parties; and
- work on continuous improvements in policies and programs designed to help reduce delinquencies and disconnections;
- *and, be it further RESOLVED*, that States should consider requiring

utilities to (1) collect monthly data that tracks uncollectables, number of payment arrangements, number of payment arrangement defaults, number of revised payment arrangements, disconnections, reconnections, duration and frequency of disconnections and other relevant data points;
(2) make the data publicly available on a monthly basis, delineated by general residential customers and those receiving low-income assistance; and
(3) file the data with state public utility commissions to be published on the
public utility commission's website so that policy makers might have access to sufficient, objective and granular data for forming public policy aimed at protecting the public health, safety and welfare.

BE IT FURTHER RESOLVED, that NASUCA authorizes its Executive Committee to develop specific positions and take appropriate actions consistent with the terms of this resolution.

The Executive Committee shall advise the membership of any proposed action prior to taking action if possible. In any event the Executive Committee shall notify the membership of any action pursuant to this resolution.

Submitted by Consumer Protection Committee

Approved November 18, 2019 San Antonio, Texas