

DE 18-148

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**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

No. _____

JUDITH TOMPSON

v.

LIBERTY UTILITIES

COMPLAINT OF THE PLAINTIFF

**Judith Thompson, pro se
9 Lancelot Court #8
Salem, NH 03079**

PUBLIC UTILITIES COMMISSION
ATTN: Debra Howland, CEO
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

COMPLAINT

PARTIES

Plaintiff:

Judith Tompson
9 Lancelot Court, Unit 8
Salem, NH 03079
[No email and/or no ability to receive electronic mail]

Defendant:

Liberty Utilities
P.O. Box 1380
Londonderry, NH 03053
[Account Number: XXXXXXXXXX]

STATEMENT OF AUTHORIZATION

The Public Utilities Commission ("PUC") oversees the electric service distribution in New Hampshire. The Puc 1201.02, Scope of Rules, states: "With the exception of Puc 1204, and where otherwise noted, **these rules shall apply to any public utility providing electric, gas, sewer, steam, telephone, or water service to the public in the state of New Hampshire** excluding limited electrical energy producers as defined in RSA 362-A." Puc 1201.02. The word 'shall' is defined as "a word, when used, is imperative or mandatory." *Liberty Nursing Home, Inc. v. Director, Va. Dept. of Med. Assistance Svcs.*, 45 Va. Cir. 534, 537 (Va. Cir. Ct. 1998).

STATEMENT OF FACTS

The PUC oversees the exclusive jurisdictional electric service distribution provided by the defendant, Liberty Utilities ("Liberty"), in the town of Salem, New Hampshire. The Plaintiff, Judith Tompson, resides alone at 9 Lancelot Court, Unit 8, in Salem, New Hampshire. Plaintiff is disabled due to a chronic and debilitating physiological medical condition. Plaintiff subsists on monthly social security disability payments as her sole unearned source of income. Plaintiff receives state electric assistance, fuel assistance, and food stamps. Plaintiff has a \$724.00 monthly medical spend-down in order to qualify for NH Medicaid. Plaintiff has only 'hospitalization' Medicare. Plaintiff has a current medical

certificate, on file with Liberty, signed by her medical physician. Plaintiff files for an electric service medical certificate yearly; which is signed by the same specialist medical doctor. Liberty has twice used PUC sanctioned electricity disconnection as debt collection on its own behalf; which is unfair and deceptive practices in violation of both state and federal law. Liberty has violated the PUC regulations regarding a failure in Notice requirements. In August 2018, Liberty transferred Plaintiff's electric account into another's name in order to disconnect services. In November 2017, Liberty disconnected Plaintiff's electricity without Notice; which is in violation of PUC regulations. Liberty alleges thousands of dollars in arrears; which Plaintiff disputes. Plaintiff now files this PUC Complaint against Liberty.

STATUTORY PROVISIONS AND/OR LEGAL PRECEDENT FOR RELIEF

Plaintiff is a consumer. "Customer" means "any person, firm, partnership, corporation, cooperative marketing association, tenant, governmental unit, or a subdivision of a municipality, or the State of New Hampshire, who has contracted for electric, gas, sewer, steam, telephone, or water service from a utility." Puc 1202.07. Plaintiff files this PUC Complaint against the defendant. "Complaint" means "an expression of dissatisfaction by a customer which the utility has failed to resolve to the customer's satisfaction." Puc 202.04. "These rules shall apply to any public utility providing electric...service to the public in the state of New Hampshire." Puc 1201.02. The defendant is an electric service distributor, exclusive to the Town of Salem, as granted by the PUC. "Utility" means "every electric, gas, sewer, steam, telephone, and water individual or business entity determined to be a public utility under New Hampshire statutes, and every municipal authority furnishing any of the above services outside its municipal boundaries excluding those municipalities exempted from regulation by RSA 362:4." Puc 1202.18. **When the utility seeks commission authorization to disconnect service, pursuant to this section, it shall notify the customer in writing of its request and provide a copy of the request** for authorization at the same time. Puc 1205.03(14)(d). Liberty failed to notify Plaintiff of the May 2018 disconnection permission it sought from the PUC. "Upon approval by the commission of disconnection, **the utility shall provide notice to the customers** as required in Puc 1203.11 **prior to disconnecting service.**" Puc 1205.03(14)(h). Liberty Notice is not according to PUC regulations and/or Notice is non-existent.

Plaintiff argues the defendant billing and/or alleged arrears are not owed and/or not due to Liberty by Plaintiff. Liberty appears to have included alleged arrears from a prior electric service provider. "Current bill" means "the amount of money due to the utility for basic utility service, including all applicable state and federal taxes, rendered in the most recent billing period." Puc 1202.06. Due to alleged arrears, and two (2) eviction notices, Liberty sought disconnection and/or termination of Plaintiff's electric service while Plaintiff continued to reside at the aforementioned address. A "Disconnection" means "a technological function which occurs when a customer is physically or effectively separated or shut off from a utility service." Puc 1202.08. "Termination" means "a bookkeeping function which occurs when a customer account is closed permanently." Puc 1202.16.

Plaintiff is disabled due to a chronic and debilitating physiological medical condition and subsists on monthly social security disability payments as the sole source of unearned income. "Financial hardship" means "a residential customer has provided the utility with evidence of current enrollment of the customer or the customer's household in the Low Income Home Energy Assistance Program, the Electric Assistance Program, the Neighbor Helping Neighbor Program, the Link-Up and Lifeline Telephone Assistance Programs, their successor programs or any other federal, state or local government program or government funded program of any social service agency which provides financial assistance or subsidy assistance for low income households based upon a written determination of household financial eligibility." Puc 1202.10. Moreover, a current medical certificate exists on Plaintiff's account. "Medical emergency" means "a situation where a utility customer or member of the customer's household has a physical or mental health condition that would become a danger to the customer's or household member's physical or mental health in the absence of utility service as certified to the utility by a licensed physician, advanced practice registered nurse, physician's assistant or mental health practitioner as defined in RSA 330-A:2,VII." Puc 1202.12. Plaintiff is a disabled middle-aged female receiving monthly social security disability payments. The utility shall not deny service to any qualified applicant based upon Income; home ownership; or Disability. Puc 1203.01(k)(1)(2)(10).

The August 2018 FINAL BILL mailed to Plaintiff failed to state the next meter reading. [ATTACHED] Bill Forms shall apply to electric utilities. Puc 1203.06(a). Bills shall be rendered at regular intervals. Puc 1203.06(b). Bills shall indicate the date of the current meter reading. Puc 1203.06(c)(1). Bills shall indicate the current meter reading, Puc 1203.06(c)(2). Bills shall indicate the prior meter reading. Puc 1203.06(c)(3). **Bills shall indicate the approximate date of the next meter reading.** Puc 1203.06(c)(5). Bills shall indicate all factors necessary to compute the charges. Puc 1203.06(c)(6). Bills for residential customers shall be delivered via first class mail. Puc 1203.06(d)(e)(1). A negligent misrepresentation occurs when a person, during the course of business, gives false information in business transactions. *DeLuca v. Jordan*, 57 Mass. App. Ct. 126 (Mass. App. Ct.2003).

LIBERTY INTENDED DISCONNECTION OF SERVICE BY IMPROPER ACCOUNT TRANSFER

On 08/18/2018, via telephone, Plaintiff spoke with "Jen" [refused to give her last name] whom reported the electric account had been transferred, by Liberty, into the "new" owner's name and electricity was scheduled to be terminated on 08/29/2018. On 08/29/2018, Liberty sought to disconnect service with NO NOTICE. Liberty violated PUC 1203.11. A Liberty FINAL BILL was received by Plaintiff. Plaintiff paid the current charges and called the Liberty phone number with the payment confirmation code number. Plaintiff was transferred to Jen, a collections department supervisor. Jen stated the electric account had been transferred to another and an "order" for termination of service had been "put in." Plaintiff explained that she resided at the address and was unaware of the electric service transfer. No Notice had been sent to Plaintiff. Plaintiff never consented to a service transfer.

Plaintiff has a current medical certificate on the account. Jen argued money was owed and demanded \$2,500.00 immediate payment or the electricity would be terminated "as scheduled" on 08/29/2018.

On 08/29/2018, Liberty personnel left a letter on Plaintiff's door stating it planned to disconnect in two days. [ATTACHED] As Liberty sought to disconnect service with only two (2) days Notice; the "letter" left on Plaintiff's door was non-conforming to the Notice requirements. Liberty violated PUC 1203.11. A utility shall provide notice of disconnection. Puc 1203.11(b). Notice of disconnection shall include the following information: (1) For purposes of this section, notice of disconnection to a residential or non-residential customer shall consist of written notice setting forth the information listed in (2) below, postmarked **14 calendar days prior** to the proposed date of disconnection; (2) Notice of disconnection shall set forth in clear, concise, and conspicuously printed words the following information: NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES 17 Puc 1200. Puc 1203.11(b)(1)(2). The Notice of Disconnection shall include the **proposed date of disconnection** of service. Puc 1203.11(b)(1)(2)(d). The Notice of Disconnection shall include the statement or a statement substantively consistent with the statement: "MEDICAL EMERGENCY- If you believe that a medical emergency exists in your home or would exist if your service were to be disconnected, you may be protected from disconnection. Please contact us at [Insert telephone number of the utility] for more information." Puc 1203.11(b)(1)(2)(k). Liberty failed to comply with PUC regulations.

Plaintiff had not abandoned the property. The new owner, and Liberty, knew or should have known this fact. At no time did Liberty verify whether Plaintiff continued to reside on the property. Sixty days had not passed. Notice to a residential or non-residential customer shall not be required if the utility notifies the commission of the disconnection within 48 hours of the disconnection and conditions exist. Puc 1203.11(c). One of the conditions includes the customer has **clearly abandoned the property** as demonstrated by the fact that the service address premises have been unoccupied and vacant for a period of **60 calendar days**. Puc 1203.11(c)(2). A second issue is **a condition dangerous to the health, safety, or utility service of others exists**. Puc 1203.11(c)(3). The third issue is a clear and present danger to life, health, or physical property exists. Puc 1203.11(c)(4). Termination of electricity ceases all electricity-generated fire alarms in the unit; which effects the health and safety of Plaintiff and the health and safety of all individuals in the other twenty-three units in the apartment building. **The commission shall impose a moratorium on disconnections of service when there exists an imminent peril to the public's health, safety, or welfare.** Puc 1203.11(t).

Liberty sought to disconnect services on Friday, 08/31/2018; which was one working day prior to the Monday Labor Day Holiday. [ATTACHED] The utility shall not disconnect service to its residential customers if the proposed disconnection would occur on a state or federal holiday. Puc 1203.11(j)(1). The utility shall not disconnect service to its residential customers if the proposed disconnection would occur on the day preceding a state or federal holiday. Puc 1203.11(j)(2). The utility shall not disconnect service to its residential customers if the proposed disconnection would occur on a day the

commission is closed to the public. Puc 1203.11(j)(3). The utility shall not disconnect service to its residential customers if the proposed disconnection would occur on the day preceding a day the commission is closed to the public. Puc 1203.11(j)(4).

LIBERTY VIOLATED PUC 1203.12 REGARDING TENANT/LANDLORD SITUATIONS

Plaintiff was the customer of record. Liberty wrongfully transferred the account without Plaintiff's knowledge or consent. Puc 1203.12 shall apply to utilities, other than sewer or telephone utilities, and situations **where the landlord is the utility's customer of record**. Puc 1203.12(a)(1)(2). A "Tenant" means "a person who rents and occupies a room in a rooming house or a person who rents and occupies a dwelling unit, in a building or mobile home park owned by another, consisting of contiguous living, sleeping, kitchen and bathroom facilities for the exclusive use of that person and his or her immediate family. Tenant specifically excludes a person who rents a unit for short-term, vacation, or recreation purposes." Puc 1203.12(b).

Plaintiff never received Notice. **No utility shall disconnect service to a customer** if any part of the service provided accrues to the benefit of one or more parties known by the utility to be residential tenant(s) **unless the utility gives written notice to those tenants**. Puc 1203.12(c). Written notice of disconnection to tenants shall set forth the date on or after which the utility proposes to disconnect service; a statement that the reason for disconnection is a dispute between the utility and the landlord; a statement that the tenant should contact the landlord for more information regarding the dispute; and a statement that the tenant has a right to put service in his or her own name and thereby become the customer of record. Puc 1203.12(d)(1)(2)(3)(4). Immediately upon learning that a tenant has been erroneously disconnected without notice, the utility shall reconnect service at no cost to the tenant and shall proceed with proper notice pursuant to this section. Puc 1203.12(f).

Delivery of **written notice** shall be made on the tenants **at least 10 calendar days in advance of the proposed disconnection**. Puc 1203.12(g). Written notice of the proposed disconnection shall be made on the tenants by posting a conspicuously lettered notice at least 10 calendar days prior to the proposed date of disconnection **and** a utility shall deliver written notice. Puc 1203.12(g)(1)(2). Written notice shall be delivered by one of the following methods: Written notice shall be delivered by posting or hanging the notice on the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(a). Written notice shall be delivered by sliding the notice under the front or back door of each tenant's dwelling unit. Puc 1203.12(g)(1)(2)(b). **Written notice shall be delivered by mail which is postmarked not less than 14 calendar days prior to the proposed date of disconnection and addressed to each tenant by name or to the "occupant" of each affected dwelling unit.** Puc 1203.12(g)(1)(2)(c). **The utility shall provide service to a tenant in the tenant's own name as customer of record.** Puc 1203.12(h).

The PUC regulations are silent on the issue of a Landlord, unknown to a tenant, voluntarily transferring an account into his name and assuming debt on the account. "The utility shall provide service to a tenant in the tenant's own name as customer of record if so requested, subject to the terms and requirements of the utility's tariff and this chapter, **without requiring the tenant to pay any part of the landlord's past due balance** as a condition of receiving service." Puc 1203.12(h). In this case, upon transfer of the account, the landlord assumed any alleged debt on the account and Liberty must pursue collections against the "new" owner as landlord.

A current medical certificate exists. The commission shall order a utility to reconnect service during other than regular business hours when it determines that a **medical emergency** exists. Puc 1203.13(d)(1). The commission shall order a utility to reconnect service during other than regular business hours when it determines property damage would occur. Puc 1203.13(d)(2). The commission shall order a utility to reconnect service during other than regular business hours when it determines other similar unusual **circumstances exist which involve significant risk to health, safety or property** and which require immediate reconnection. Puc 1203.13(d)(3). No charge shall be made when the cause for disconnection was not in compliance with Puc 1203.11; 1203.12; and/or 1205. Puc 1203.13(e).

SOCIAL SERVICE ASSISTANCE WAS NOT PROVIDED BY LIBERTY

Liberty failed to provide social service providers; which may have assisted Plaintiff. In fact, Liberty only directed Plaintiff to the town welfare office, in order for the welfare office to "set up" a payment plan for Liberty in this case. The Salem welfare office will not pay bills. "The utility shall provide the names and addresses of those social service organizations in its franchise area, known to the utility as providing possible **assistance with the payment of utility bills**, to its customers who are experiencing difficulty in paying utility bills." Puc 1203.14(a). **The utility shall make arrangements with social service organizations that might provide assistance** so that the utility will receive notice by telephone or in writing that the social service organization will agree to pay the current bill of the customer within 4 business days of a customer's application for assistance. Puc 1203.14(b). The utility shall continue to provide utility service to the customer during the 4 business days before confirmation by telephone or in writing is received. Puc 1203.14(c).

NH Fuel Assistance Program has paid bills on behalf of Plaintiff. "Upon receipt of the social service organization's notification of its agreement to pay the current bills of the customer, **the utility shall treat the social service organization as the party responsible for payment of bills.**" Puc 1203.14(d). In fact, Fuel Assistance benefits have been \$675.00 yearly on behalf of Plaintiff. **FOR YEARS, NO MONTHLY ACCOUNTING WAS PROVIDED BY LIBERTY TO PLAINTIFF OF FUEL ASSISTANCE PAYMENTS MADE.** "The utility shall provide the customer with a monthly accounting of his or her billing and payment history during the period when the social service organization is making payments." Puc 1203.14(e). "Each utility shall keep an

accurate account of all charges for services billed to each customer and shall maintain records showing information from which each bill rendered may be readily computed." Puc 1203.06(f). A utility shall provide the customer with a clear and concise statement of the actual consumption of service by the customer for each billing period during the prior year. Puc 1203.06(g). Notice of disconnection shall not be sent to any customer receiving assistance with the payment of his or her utility bill from a social service organization unless the utility has determined that the customer's assistance from the organization has been exhausted or that **the organization has failed to make payments as agreed**. Puc 1203.14(f). Plaintiff believed the fuel assistance covered all debt accrued each year. In addition, in 2018, Plaintiff was awarded additional money to be paid directly to Liberty; which does not appear to have been paid and/or applied to the account. [ATTACHED]

NO NOTICE TO PLAINTIFF OF IMPROPER TRANSFER OF SERVICE

Whenever a utility receives a request **to change an account for service from one customer to another** or to add another name to an account, the utility shall give timely notice of such change to the new customer; and the utility may require written confirmation of the request from the new customer. Puc 1203.18(a)(1)(2). "Timely Notice" means "notice made to the new customer within 5 business days of the utility's receipt of the request to change an account for service from one customer to another." Puc 1203.18(b). Until timely notice is given pursuant to (a)(1) or until **the new customer has given confirmation** pursuant to (a)(2), the original customer of record shall remain liable for charges on the account. Puc 1203.18(c). During the winter period **notice shall be provided to an adult who occupies the affected residence**. Puc 1204.05(a)(1).

COMMISSION APPROVAL SOUGHT FOR DISCONNECT WAS FOR COLLECTION PURPOSES

In August 2017, Plaintiff received an eviction notice. Liberty sought PUC disconnection permission. In May 2018, Plaintiff received an eviction notice. Liberty sought PUC disconnection permission. Both times the PUC granted disconnection even though Plaintiff, a disabled female, lived on the property. An eviction notice is not abandonment of property. It is the intent of the owner; which may change. If the utility is unable to notify an adult occupant of the affected residence, the utility shall seek commission approval before disconnecting service. Puc 1204.05(b). When seeking commission approval, pursuant to (b), the utility shall inform the commission of the **existence of any current or prior medical emergency certifications for the customer** or household members. Puc 1204.05(c)(6). **The utility shall inform the commission of the existence of any financial hardship**, if known. Puc 1204.05(c)(7). **The commission shall not approve disconnection of service to customers when the customer has financial hardship**. Puc 1204.05(d)(1). Where a customer indicates that a household member has a **medical emergency**, as defined in Puc 1202.12, the utility shall inform the customer of his/her rights, as detailed in Puc 1205, and service will be restored upon receipt of a licensed physician's, advanced practice registered nurses', physician's assistant's or mental health practitioner's certification of medical emergency. Puc 1204.06(f)(1).

In her letter, Amanda O. Noonan inaccurately claimed a lack of 'good faith' by Plaintiff; which is false. Setting up a payment plan for alleged disputed arrears reaffirms the debt. Plaintiff has repeatedly disputed, and disputes, all alleged debt and/or arrears claimed by Liberty. A customer that disputes a bill is not liable for the disputed amount. The term 'good faith' is ambiguous and undefined. "The commission shall not approve disconnection of service to customers when the customer has made a **good faith** effort to make payments towards the utility bill." Puc 1204.05(d)(2). "Good Faith" is defined as "an intangible and abstract quality with no technical meaning or statutory definition." Black's Law Dictionary, p.477, West Group (1991).

Plaintiff repeatedly disputed billing from Liberty with no results. The PUC employee, Amanda O. Noonan, merely ignored the written and presented issues raised by Plaintiff and granted disconnection, twice, without any verification and/or validation of the alleged debt claimed. Amanda O. Noonan granted disconnection after an August 2017 request was made by Liberty. Plaintiff received a copy of the request from Liberty and responded in writing. Amanda O. Noonan granted disconnection after a May 2018 request was made by Liberty. Plaintiff never received a copy of the May 2018 request from Liberty as required by PUC standards. Any claim that Liberty mailed Plaintiff a copy of the May 2018 request to disconnect is false. It is the duty of one who volunteers information to another not having equal knowledge, with the intention that he will act upon it, to exercise reasonable care to verify the truth of his statements before making them." *Patch v. Arseneault*, 139 N.H. 313, 319 (1995); quoting *McCarthy v. Barrows*, 118 N.H. 173, 175 (1978). The provisions of Puc 1205 shall apply to service provided to residential customers by electric utilities. Puc 1205.01. A medical emergency certification is current on Plaintiff's account. Plaintiff disputes the billing charges by Liberty. Provision of a medical emergency certification, in conjunction with a payment arrangement for any past due balances in accordance with Puc 1203.07, shall be sufficient to protect a customer's account from disconnection of service so long as the customer complies with the terms of the payment arrangement and follows the requirements for renewal of the certification upon its expiration, as set forth in Puc 1205.02(f). Puc 1205.02(a).

The current medical emergency certification on Plaintiff's account is for one (1) year. A medical emergency certification shall be valid for the period of time designated by the licensed physician, licensed advanced practice registered nurse or licensed physician's assistant or mental health practitioner as defined in RSA 330-A:2, VII, provided the certification is for no less than 90 days and no more than one year. Puc 1205.02(b). There is no limit on the number of times a medical emergency certification may be renewed. Puc 1205.02(c). Oral notification of the existence of a physical or mental health condition which would become a danger to the physical or mental health of the customer or household member may be provided to the utility by the customer and shall be sufficient to protect a customer's account from disconnection of service. Puc 1205.02(d). Certification must be from a physician, advanced practice registered nurse, physician's assistant or mental health practitioner. Puc 1205.02(d)(1). Certification must be received within 15 calendar days. Puc

1205.02(d)(1). Any prior oral notification made within the past 6 months has been verified through certification. Puc 1205.02(d)(2).

Certification of a medical emergency by a physician, advanced practice registered nurse, physician's assistant or mental health practitioner shall contain a statement to the effect that the customer or identified member of the customer's household has a physical or mental health condition which would become a danger to the customer's or household member's physical or mental health should the utility service be disconnected. Puc 1205.02(e). Certification of a medical emergency must be in writing, which includes any electronic communication, or be made by telephone with written or electronic confirmation received by the utility within 15 calendar days of the telephoned certification. Puc 1205.02(e)(2). Certification of a medical emergency must contain licensing information for the physician, advanced practice registered nurse, physician's assistant or mental health practitioner. Puc 1205.02(e)(3). All renewals of medical emergency certifications shall comply with (b) and (e). Puc 1205.02(f). The medical emergency certification may be made through the completion of a form provided by the utility or another written or electronic format provided such other format complies with the provisions of (e). Puc 1205.02(g).

Liberty violated PUC 1205.02(h). Plaintiff requested a copy of the current medical certification three (3) times. Liberty falsely claimed it had mailed the notice. Liberty did not mail the notice to Plaintiff upon repeated request. On 09/12/2018 Plaintiff received the certification copy; which was in a packet leaning against her door. According to the document date, **the certification EXPIRED the day before it was issued**. The document is dated 6/27/18 and states "until **6/26/18**." [ATTACHED] Upon being notified of the existence of a medical emergency, in accordance with (d) or (e), the utility shall inform the customer in writing. Puc 1205.02(h). **A utility shall not disconnect service to a customer who has provided current verification of a medical emergency.** Puc 1205.03(a).

Liberty does not inquire regarding "hardship" issues. However, Liberty was aware Plaintiff received fuel assistance and electric assistance as both programs are applied to the electric bills. If a customer does not enter into a payment arrangement or does not comply with the terms of a payment arrangement negotiated in accordance with Puc 1203.07, the utility **may** seek permission to disconnect service to the customer. Puc 1205.03(b). When requesting permission from the commission to disconnect service, the utility shall provide the commission with the existence of any **financial hardship**, if known. Puc 1205.03(c)(13). **The commission shall not approve disconnection of service to customers with a current medical emergency certification** when the customer has made a good faith effort to make payments towards the utility bill. Puc 1205.03(14)(e). Plaintiff has made a good faith effort in disputing the bills to no avail.

NOTICE OF PENDING CERTIFICATION EXPIRATION NOT MAILED TO PLAINTIFF BY LIBERTY

Plaintiff never received notice of expiration of the certification in 2018. This was the first year Liberty failed to mail a recertification form. **"Thirty days prior to the expiration of the medical emergency certification, the utility shall send a reminder notice to the customer advising that, if a medical emergency still exists, the certification of a medical emergency must be renewed.** The notice shall include the date by which the certification must be renewed." Puc 1205.04(a). However, Liberty mailed Plaintiff notice of the expired certification notice; which prompted PUC employee, Amanda O. Noonan, to "blame" Plaintiff for a failure to produce the re-certification form even though Plaintiff never received it from Liberty. "Upon the expiration of a medical emergency certification, the utility shall notify the customer that the medical emergency certification has expired and the customer's account will no longer be medically protected. Such notice shall also indicate the balance due, if any." Puc 1205.04(b). Notice provided in (b) shall include a statement directing the customer to contact the utility immediately if the previously certified medical condition continues to exist. Puc 1205.04(c). The Liberty staff behavior has been misleading and manipulative. The Liberty staff appear to desire inflicting harm.

In fact, Liberty staff Alison O'Neil called Plaintiff's doctor's office and attempted to dissuade the physician from filing the faxed medical certificate form; which had been signed, dated, and already faxed to Liberty. Ms. O'Neil spoke with the doctor's administrative assistant. After Plaintiff received notice of this outrageous event, Plaintiff and her doctor discussed the issue. Plaintiff was assured, by her doctor, that he had no issue with signing the form and his office faxing the form to the utility, as he had completed this task for years, on Plaintiff's behalf, due to Plaintiff's chronic medical condition. This unconscionable act, by Liberty staff, is evidence of some strange personal vendetta; which must cease. "The essence of fraud is a fraudulent misrepresentation. *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 46-47, 534 A.2d 706 (1987).

THE SALEM 10TH CIRCUIT DISTRICT COURT ORDER PROTECTS PLAINTIFF

The PUC should not allow electricity disconnection due to court order. A Salem 10th Circuit District Court Order exists; which clearly states the electric service at Plaintiff's current address must remain in operation. [ATTACHED] An affidavit is attached; which specifically states Liberty Utilities as the electric service provider. Further, Liberty has exclusive jurisdiction as an electric service distributor in the Town of Salem, as granted by PUC employee, Amanda O. Noonan. A party seeking to set aside an order of the PUC has the burden of demonstrating that the **order is contrary to law** or, by a clear preponderance of the evidence, that the order is unjust or unreasonable. RSA 541:13 (2007); see *Appeal of Pennichuck Water Works*, 160 N.H. 18, 26, 992 A.2d 740 (2010).

APPELLATE STANDARDS

Agency decisions are appealed to the NH Supreme Court ("NHSC") for review. Where an issue presented is purely a question of law, we [NHSC] review the PUC's statutory interpretation de novo.

Appeal of Town of Seabrook, 163 N.H. 635, 644, 44 A.3d 518 (2012). Although we give the PUC's policy choices "considerable deference" in reviewing its decisions rendered on the merits, we do **not** defer to its statutory interpretation. *Pennichuck*, 160 N.H. at 26, 992 A.2d 740. While an interpretation of a statute by the agency charged with its administration is entitled to some deference, we are still the final arbiter of the legislature's intent and are not bound by an agency's interpretation of a statute. *Appeal of Bretton Woods Tel. Co.*, 164 N.H. 379, 386, 56 A.3d 1266 (2012). "In matters of statutory interpretation, we are the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." *Roy v. Quality Pro Auto*, 168 N.H. 517, 519, 132 A.3d 418 (2016). "We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." *Id.* We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. *LLK Trust v. Town of Wolfeboro*, 159 N.H. 734, 736, 992 A.2d 666 (2010). We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. *Id.* Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. *Id.* This enables us to better discern the legislature's intent and to interpret statutory language in light of policy or purpose sought to be advanced by the statutory scheme. *Id.*

LIBERTY ELECTRIC RATE MONOPOLY HIGHEST IN NH

Liberty has exclusive jurisdiction as an electric service distributor in the Town of Salem, as granted by PUC employee, Amanda O. Noonan. Liberty has an improper electric service monopoly. Plaintiff has no choice in electric service distribution. In 1996, the legislature found that "New Hampshire has the highest average electric rates in the nation and such rates are unreasonably high." Laws 1996, 129:1, I. These high electric rates, combined with the findings "that electric rates for most citizens may further increase" and "that there is a wide rate disparity in electric rates both within New Hampshire and as compared to the region," were found to have "a particularly adverse impact on New Hampshire citizens." Laws 1996, 129:1, I. The legislature further found that the effects of the state's "extraordinarily high electric rates disadvantage all classes of customers," were "causing businesses to consider relocating or expanding out of state," and were "a significant impediment to economic growth and new job creation in this state." Laws 1996, 129:1, II. Accordingly, the legislature determined that "New Hampshire must aggressively pursue restructuring and **increased consumer choice** in order to provide electric service at lower and more competitive rates." Laws 1996, 129:1, III. To address these concerns, the legislature enacted RSA chapter 374-F. See RSA 374-F:1.

As set forth in the statute, "the most compelling reason to restructure the New Hampshire electric utility industry is to **reduce costs for all consumers of electricity** by harnessing the power of competitive markets." RSA 374-F:1, I. "The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by **reducing costs to consumers while maintaining safe and reliable electric service** with minimum adverse impacts on the environment." *Id.* To that end, the statute identifies "interdependent

policy principles" that "are intended to guide the New Hampshire public utilities commission in implementing a statewide electric utility industry restructuring plan and in regulating a restructured electric utility industry." RSA 374-F:1, III. The "Restructuring Policy Principles" includes: **System Reliability; Customer Choice; and Benefits for All Consumers**. RSA 374-F:3, I-XV (2009 & Supp. 2017). Furthermore, RSA 374-F:3 expressly states when such policy principles establish directives to the PUC, "**reliable electricity service must be maintained.**" RSA 374-F:3, I (2009). "**A utility providing distribution services must have an obligation to connect all customers in its service territory to the distribution system.**" RSA 374-F:3, V(a)(c) (2009). Policy principles state that the PUC "should" take certain factors into consideration. RSA 374-F:3, II, III. (2009). The use of the word "should" allows the PUC to exercise its discretion and judgment. *Ford v. N.H. Dep't of Transp.*, 163 N.H. 284, 296, 37 A.3d 436 (2012); *Appeal of Psychiatric Institutes of America*, 132 N.H. 177, 183, 564 A.2d 818 (1989). "An "electric utility industry should provide adequate safeguards to assure universal service." RSA 374-F:3, VII (2009). Customers should be able to choose among options of service reliability." RSA 374-F:3, IV (2009). "Non-discriminatory open access to the electric system should be promoted." RSA 374-F:3, V(a) (2009). "**Electric service is essential** and should be available to all customers." RSA 374-F:3, VII (2009). The primary intent of the legislature, in enacting RSA chapter 374-F, was to reduce electricity costs to consumers. See RSA 374-F:1, I.

In fact, "until relatively recently, most state energy markets were vertically integrated monopolies," *Hughes v. Talen Energy Marketing, LLC*, --- U.S. ----, 136 S.Ct. 1288, 1292, 194 L.Ed.2d 414 (2016), in which "electricity was sold by vertically integrated utilities that had constructed their own power plants, transmission lines, and local delivery systems," *New York v. FERC*, 535 U.S. 1, 5, 122 S.Ct. 1012, 152 L.Ed.2d 47 (2002). Such a utility's "sales were 'bundled,' meaning that consumers paid a single charge that included both the cost of the electric energy and the cost of its delivery." *Id.* In the 1990s, the Federal Energy Regulatory Commission "commenced a program of deregulating and 'unbundling' the wholesale electric power industry by restructuring and separating electrical generation, transmission, and distribution." *MPS Merchant Services, Inc. v. F.E.R.C.*, 836 F.3d 1155, 1160 (9th Cir. 2016). Subsequently, many states restructured and deregulated their own electric energy markets. *Northeast Energy v. Mahar Regional School*, 462 Mass. 687, 971 N.E.2d 258, 264 n.14 (2012). The term "functional separation," while not explicitly defined in RSA 374-F:2 (Supp. 2017), may be understood to mean "requiring utilities to separate their competitive generation functions from their regulated transmission and distribution functions." Sonnet C. Edmonds, *Retail Electric Competition in Kansas: A Utility Perspective*, 37 Washburn L.J. 603, 632 (1998). Divestiture; which means "a utility would have to divest itself of all or a portion of its generating assets to another entity or entities in order to remain in the distribution business." *Paul L. Joskow & Roger G. Noll, The Bell Doctrine: Applications in Telecommunications, Electricity, and Other Network Industries*, 51 Stan. L. Rev. 1249, 1304 (1999). "Vertical integration between the monopolistic transmission and distribution functions and the competitive generation function effectively **turns the supply of generating service into a monopoly**" despite the existence of competitors in the generation

market. *Joskow & Noll*, supra at 1298. In NH, monopolies are prohibited. The establishment, maintenance or use of monopoly power, or any attempt to establish, maintain or use monopoly power over trade or commerce for the purpose of affecting competition or controlling, fixing or maintaining prices is unlawful. RSA 356:3. A "commodity" shall include tangible or intangible property, real, personal, or mixed. RSA 356:1(I). A "government entity" shall include the state of New Hampshire and its political subdivisions. RSA 356:1(II). A "person" shall include natural persons, trusts, government entities, **corporations**, partnerships, limited partnerships, proprietorships, incorporated or unincorporated associations, and any other legal entity. RSA 356:1(III). **"Service" shall include any activity which is performed in whole or in part for financial gain.** RSA 356:1(IV). "Trade or commerce" shall include any economic activity involving or relating to any commodity, or service, and any other business activity. RSA 356:1(V).

LIBERTY IS A DEBT COLLECTOR USING ITS OWN COLLECTIONS DEPARTMENT

At no time has Liberty engaged in external collection practices. "A utility may use a third party to conduct collection activities provided the third party complies with Puc 1200 and the use of a third party is transparent to the customer." Puc 1203.11(s)(1)(2). All debt collection practices are completed by Liberty Utilities' employees in the "Collections Department." Hence, Liberty is a debt collector on its own behalf.

LIBERTY VIOLATED STATE LAW UNDER UNFAIR AND DECEPTIVE PRACTICES

Fraudulent or deceptive conduct can be actionable if it occurs in a business setting involving the advertising or sale of a commodity or service as part of the day-to-day business of the defendant. *Snow v. American Morgan Horse Assoc.*, 141 N.H. 467, 471, 686 A.2d 1168 (1996). "To determine whether the Consumer Protection Act applies to a particular transaction, we analyze the activity involved, the nature of the transaction, and the parties to determine whether a transaction is a personal or business transaction." *Hughes v. DiSalvo*, 143 N.H. 576, 578, 729 A.2d 422 (1999). "Remedies under the Consumer Protection Act are not available where the transaction is strictly private in nature and is in no way undertaken in the ordinary course of a trade or business." *Id.*

The New Hampshire Consumer Protection Act is RSA 358-A:2 (Supp.2001). Using the threat of electricity disconnection, as a means of debt collection, violates state law. RSA 358-A:2 provides that **"It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state."** RSA 358-A:2. The section provides several examples of conduct which meet this standard. RSA 358-A:2, I-XIII. The court's inquiry does not "end with this list because the statute itself states that it is not limited to the listed transactions." *Gautschi v. Auto Body Discount Center*, 139 N.H. 457, 459-60, 660 A.2d 1076 (1995). "Trade or commerce" is defined under the Act as including "the advertising, offering for sale, sale, or **distribution of any services** and any property, tangible or intangible, real,

personal or mixed, and any other article, commodity, or thing of value wherever situated." RSA 358-A:1, II.

LIBERTY VIOLATED FEDERAL LAW UNDER UNFAIR AND DECEPTIVE PRACTICES

The defendant violated the NH Unfair and Deceptive Practices Act. In NH, "It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state." RSA 358-A:2. The defendant violated the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA covers a natural person obligated to pay any obligation or alleged obligation arising from a transaction the subject of which is primarily for personal, family, or household purposes. Collections need not be a majority portion of the collector's business. *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). Under the FDCPA, a **"debt collector" is "any person who uses any instrumentality of interstate commerce, or the mails, in any business the principle purpose of which is collection of any debts, or who regularly collects or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."** 15 U.S.C. §1692a(6).

Using the threat of electricity disconnection, as a means of debt collection, violates federal law. 15 U.S.C. Section 1692(f); Section 808 Unfair Practices states: **A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.** Without limiting the general application of the foregoing, the following conduct is a violation of this section **the collection of any amount** (including any interest, fee, charge, or expense incidental to the principal obligation) **unless such amount is expressly authorized by the agreement creating the debt or permitted by law.** 15 U.S.C. §1692(f)(1). **A debt collector may not exhibit taking, or threatening to take, any non-judicial action to effect dispossession or disablement of property** if there is no present right to possession of the property claimed as collateral through an enforceable security interest; 15 U.S.C. §1692(f)(6)(A); there is no present intention to take possession of the property. 15 U.S.C. §1692(f)(6)(B); **the property is exempt, by law, from such dispossession or disablement.** 15 U.S.C. §1692(f)(6)(C). A 2018 court order exists; which orders continued electricity on the property. [ATTACHED] Unfair methods of competition in or affecting commerce, and **unfair or deceptive acts or practices** in or affecting commerce, **are hereby declared unlawful.** 15 U.S. Code §45(a)(1).

Defendant had a duty of care to Petitioner. Parties to a contract have an "independent duty of care" in the performance of their contractual services "to all those whom the party knew or reasonably should have foreseen would be injured by the party's negligent acts or omissions." *Cleveland Indians Baseball Co., L.P. v. New Hampshire Ins. Co.*, 727 F.3d 633, 638-39 (6th Cir.2013). "One who undertakes...to **render services** to another is subject to liability for physical harm resulting from his failure to exercise reasonable care to perform his undertaking." Restatement (Second) of Torts §323 (1965).

The FDCPA is 'self-enforcing' through private causes of action. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983). The FDCPA covers a natural person obligated to pay **any obligation** or alleged obligation arising from a transaction the subject of which is primarily for personal, family, or **household** purposes. **Collections need not be a majority portion of the collector's business.** *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). The underlying debt must arise from a "transaction." *Mabe v. G.C. Services Limited Partnership*, 32 F.3d 86 (4th Cir. 1994); *Zimmerman v. HBO Affiliate Group*, 834 F. 2d 1163 (3rd Cir. 1987); *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998); *Stephens v. Omni Ins. Co.*, 138 Wash.App. 151, 159 P.3d 10 (Wash.App. Div. 1 Apr 23, 2007). The FDCPA arises in a "consumer" "debt" "transaction." 15 U.S.C. §§1692a(3) and (5); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 1997). Under the FDCPA, a "debt collector" is defined as "any person who uses any instrumentality of interstate commerce or the mails in any business the principle purpose of which is collection of any debts, or who **regularly collects or attempt to collect**, directly or indirectly, **debts owed or due** or asserted to be owed or due another." 15 U.S.C. §1692a(6). In determining whether any particular conduct violates the FDCPA, the courts have used an objective test based on the least sophisticated consumer. *Federal Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504 (6th Cir. 2007). The FDCPA is a strict liability statute and subjects debt collectors to civil liability for engaging in debt collection practices prohibited by the Act. 15 U.S.C. §1692(k). The FDCPA statutory definitions cover those who collect debts both directly as well as indirectly. *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1143 (9th Cir. 1998).

A collector must "regularly" **attempt** to collect debts. 15 U.S.C. §1692a(6); *Heintz v. Jenkins*, 514 U.S. 291 (1995); *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373 (4th Cir. 2006). **Collections need not be majority portion of the collector's business.** *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997). "Regularly collecting" occurs when undertaking collection activity "more than a handful of times per year." *Crossley v. Lieberman*, 868 F. 2d 566 (3rd Cir. 1989). The collection offending employees are liable. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983). **The validity of the underlying debt is immaterial.** *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992); *Baker v. G.C. Services Corp.*, 677 F.2d 775 (9th Cir. 1982); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998); *Turner v. Shenandoah Legal Group, et al.*, 2006 U.S. Dist. Lexis 39341 (E.D. Va. 2006). In *Purnell*, **because defendant engaged in debt collection activities based on its understanding that plaintiff's debt was delinquent, or in default, defendant is considered a "debt collector" under the FDCPA**, regardless of whether plaintiff was actually in default. *Purnell v. Arrow Financial Services, LLC*, 2007 U.S. Dist. Lexis 7630 (E.D. Mich. 2007). *Magee v. Alliance One, Ltd.*, 487 F. Supp. 2d 1024 (S.D. In. 2007). The presence of a valid debt would **not** preclude an action under the FDCPA. The FDCPA may serve its purpose of curtailing **abusive practices** even under circumstances where a valid debt exists. *Nield v. Wolpoff & Abramson*, 453 F. Supp 2d 918 (E.D. Va. 2006).

Using the threat of electricity disconnection, as a means of debt collection, is extortion. In determining actions, we have employed the "rascality" test. **Under the rascality test, "the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone injured."** *Beckstead v. Nadeau*, 155 N.H. 615, 619, 926 A.2d 819 (2007). The court should consider the "totality of the circumstances" in determining whether a party acted in subjective bad faith and should consider whether circumstantial evidence would support an inference of bad faith. *Monolithic Power Systems, Inc. v. O2 Micro International, Ltd.*, 726 F.3d 1359 (Fed.Cir.2013). **It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state.** RSA 358-A:2. The use of word "shall" in a statute, or regulation, are considered mandatory in nature. *McFadden v. State*, 580 So.2d 1210, 1215 (Miss.1991). **A frequent violation is threatening to take, or taking, any action that cannot legally be taken or is not intended to be taken.** 15 U.S.C. §1692e(5); *Withers v. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997); *Morgan v. Credit Adjustment Board*, 999 F.Supp. 803 (E.D. Va. 1998). *Francis v. Snyder*, 389 F. Supp. 2d 1034 (N.D. Ill. 2005). *Gonzales v. Arrow Financial Services, LLC.*, 660 F.3d 1055 (9th Cir. 2011). In *Patzka*, the court held that **an attempt to threat to take action that could not be taken legally violated the FDCPA.** *Patzka v. Viterbo College*, 917 F. Supp. 654, 658-59 (W.D. Wis. 1996). **A "threat" to take an illegal action encompasses actually taking the illegal action as well.** *Marchant v. U.S. Collections West, Inc.*, 12 F. Supp. 2d 1001, 1006 (D. Ariz. 1998). **Threatening remedies exceeding that permitted by law violate the FDCPA.** *Seabrook v. Onondaga Bureau of Medical Economics*, 705 F.Supp. 81 (N.D.N.Y. 1989). **Any demand for payment that does not comply with relevant state law violates the FDCPA.** *Newman v. Checkrite California*, 912 F.Supp. 1354 (E.D.Ca. 1995). The FDCPA is based on the premise "that every individual, whether or not he owes the debt, has a right to be treated in a reasonable and civil manner." 123 Cong. Rec. 10241 (1977) (remarks of Rep. Annunzio). The FDCPA broadly **prohibits unfair or unconscionable methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt.** 15 U.S.C. §§1692d, 1692e, and 1692f. **Misrepresentation of "debt" violates the FDCPA.** *Veatch v. Sheeks*, 316 F.3d 690 (7th Cir. 2003). The FDCPA broadly **prohibits unfair or unconscionable methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt.** 15 U.S.C. §§1692d, 1692e, and 1692f.

However, **proof of an intent to deceive by the debt collector, is not a necessary element.** *U.S. v. Nat'l Fin. Servs., Inc.*, 98 F.3d at 139. The standard is a measure tending to deceive "consumers of below-average sophistication or intelligence." *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993). Any "plausible" interpretation of a representation which is deceptive or false to the "least sophisticated consumer" violates the FDCPA. *Dutton v. Wolhar*, 809 F. Supp. 1130 (D. Del. 1992). **Any "contradicting" and/or "inaccurate" statements violates the FDCPA.** *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994). **Misrepresenting the "character, amount," or legal**

status of the debt is an FDCPA violation. *Finnegan v. University of Rochester Medical Center*, 21 F.Supp.2d 223 (W.D.N.Y. 1998). Misrepresenting the amount of a debt is in violation of 15 U.S.C. §1692g(a)(1). *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003). The FDCPA broadly prohibits **any false, deceptive or misleading statements, in connection with the collection of a debt.** 15 U.S.C. §§1692d, 1692e, and 1692f. Negligence is a duty owed; which had been violated. *Payton v. Abbott Labs*, 386 Mass. 540, 547 (1982). A negligent misrepresentation occurs when a person, during the course of business, gives false information in business transactions. *DeLuca v. Jordan*, 57 Mass. App. Ct. 126 (Mass. App. Ct. 2003). The person giving false information will be liable for pecuniary loss. *Wessa v. Watermark Paddlesports, Inc.*, 2006 U.S. Dist. LEXIS 32412 (W.D. Wash. May 22, 2006). A person in the course of business, who gives false information, is subject to liability for the loss caused. *DeLuca v. Jordan*, 57 Mass. App. Ct. 126, 137 (Mass. App. Ct. 2003). The alleged arrears are falsely reported by Liberty. Validation and/or verification of the alleged arrears is missing. A "Corporation" shall be deemed to include any company carrying on its own business for profit. 15 U.S.C. §44. "Commerce" means among several states. 15 U.S.C. §45(a)(2). RSA 358-A:1, in part, defines "trade" and "commerce" as the distribution of any services...directly or indirectly affecting people of this state. RSA 358-A:1. A person who makes a representation with the intent to defraud commits fraud. *Imprimis Investors, LLC v. KPMG Peat Marwick LLP*, 19Mass. L.Rep. 51 (Mass. Super. Ct. 2005). The elements of a cause of action for fraud are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage. *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-231 (Chapman). "Having previously recognized the tort of negligent infliction of emotional distress, there is no logical reason why we should not now recognize the tort of intentional infliction of emotional distress." *Patch v. Arsenault*, 139 N.H. 313, 319 (1995).

The FDCPA provides a remedy for those "who are subjected to abusive, deceptive, or unfair practices." *Pollice v. Nat'l Tax Funding, L.P.*, 225 F. 3d 379, 400 (3d Cir. 2000). A single violation of the FDCPA triggers statutory liability and remedies. *Morgan v. Credit Adjustment Board, Inc.*, 999 F.Supp. 803 (E.D.Va. 1998); *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993). Statutory damages are available even in absence of actual damages. *Baker v. G.C. Services Corp.*, 677 F.2d 775 (9th Cir. 1982); *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998). The amount is to be determined by the trier of fact is on the basis of the frequency, persistence, and nature of the violation(s) and whether the violation or violations were intentional. 15 U.S.C. §1692k(b)(1). Equitable defenses are not available. *Newman v. Checkrite California*, 912 F.Supp. 1354, n.30 (E.D.Ca. 1995). The FDCPA is a strict liability statute where **the degree of the defendant's culpability is relevant.** *Morgan v. Credit Adjustment Board*, 999 F. Supp. 803, 805 (E.D.Va. 1998) (Judge Merhige), citing *Russell v. Equifax A.R.S.*, 74 F.3d at 33; *Jones v. Vest*, 2000 U.S. Dist. LEXIS 18413, *4 (E.D. Va. 1999) (Judge Dohnal), citing the Fourth Circuit's opinion in *U.S. v. National Financial Services, Inc.*, 98 F.3d at 139. See, also *Turner v. Henandoah Legal Group, et al.*, 2006 U.S. Dist. Lexis 39341, * 8 (E.D. Va. 2006). **"The FDCPA is a strict liability statute."** *McLean v. Ray*, 2011 WL 1897436, *5 (E.D.Va., May 18, 2011) (Judge

O'Grady). "Because the FDCPA is a strict liability statute, **evidence of actual deception is unnecessary.**" *Bicking v. Law Offices of Rubenstein and Cogan*, 783 F. Supp. 2d 8410 (E.D. Va. 2011) (Judge Hudson); *Reichert v. National Credit Systems, Inc.*, 531 F.3d 1002 (9th Cir.). The Seventh Circuit has held that **the FDCPA applies "even when a false representation was unintentional."** *Gearing v. Check Brokerage Corp.*, 233 F.3d 469, 472 (7th Cir. 2000). The Second Circuit has adopted a similar position. *Russell*, 74 F.3d at 33, 36. FDCPA violations are complete even without intent and injury. The FDCPA is violated even though a plaintiff does not offer proof of the defendant's intent. *Cacace v. Lucas*, 775 F. Supp. 502, 505-06 (D. Conn. 1990).

Error does not excuse a defendant's actions. An overstatement of debt "that was a **mistake**" violated the FDCPA. *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2nd Cir. 1993); *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997). **Mistake as to the law is insufficient.** *Baker v. GC Services Corp.*, 677 F.2d 775 (9th Cir. 1982); *Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 452 (8th Cir. 2001). Also, see: *Armstrong v. Rose Law Firm, P.A.*, 2002 U.S. Dist. LEXIS 4039 (D.Minn., Mar. 25, 2002). **Intent is not an element of liability.** *Patzka v. Viterbo College*, 917 F.Supp. 654 (W.D.Wis. 1996). The mere fact that error was unintentional is insufficient. *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996). Because **the FDCPA is designed to protect**, it is liberally construed in favor of consumers to affect its purpose. *Ramirez v. Apex Financial Management, LLC and Hilco Receivables, LLC*, 567 F. Supp. 2d 1035, (N.D. Ill. 2008). **Neither knowledge nor intent are necessary to establish liability.** *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997). **Fraudulent or deceptive conduct can be actionable if it occurs in a business setting involving the advertising or sale of a commodity or service as part of the day-to-day business of the defendant.** *Snow v. American Morgan Horse Assoc.*, 141 N.H. 467, 471, 686 A.2d 1168 (1996).

THREE YEAR STATUTE OF LIMITATIONS

In NH, there is a three-year statute of limitations on personal injury actions and contract breach cases. A cause of action arises when all elements exist. It does not accrue until plaintiff discovers, or should have discovered, both injury and cause. The discovery rule states: For actions when injury and its cause not discovered and could not be discovered; the action may be brought within three (3) years of the date plaintiff "discovers" or should have discovered the injury. N.H. Rev. Stat. Ann §508:4(I); *Glines v. Bruk*, 140 N.H. 180 (1995). If a federal statute does not contain express limitation periods, federal courts apply state statute of limitations. *Lowe v. Volkswagen of America, Inc.*, 879 F.Supp. 28,30 (E.D. Pa. 1995). In NH, the statute of limitations is governed by RSA 508:4(I). All personal actions may be brought only within three (3) years. RSA 508:4(I). Under the discovery rule, the statute of limitations does not accrue until (1) plaintiff knows, or should have known, of injury; (2) plaintiff knows, or should have known, the causal connection between injury and alleged conduct. *Kelleher*, 152 N.H. at 824. "If the relevant statute of limitations has run, a utility may, for a period of 3 years after the expiration of the Statute of Limitations, deny new service to any

JUDITH TOMPSON v. LIBERTY UTILITIES

applicant due to an outstanding arrearage with that particular utility for prior service if the utility has made reasonable, verifiable, documented collection efforts during the running of the statute of limitations." Puc 1203.15(c). The defendant's actions have been unconscionable. The improper electric account transfer relieves Plaintiff of any and all alleged arrears. Liberty's aggressive debt collection practices are unfair, deceptive, and injurious. The defendant appears to seek multiple years of alleged prior arrears; which has not been proven is due, or owed by Plaintiff, to Liberty. There is no validation of the alleged debt. There is no verification of the source of the alleged arrears. Plaintiff has disputed, and continues to dispute, all alleged arrears on this account.

CONCLUSION

Wherefore Judith Thompson respectfully requests the Public Utilities Commission:

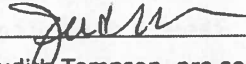
1. Schedule an Adjudicatory Hearing on the matter; and
2. Order removal of all alleged arrears on the account; and
3. Deny electric service disconnection; and
4. Sanction defendant for the electric account transfer; and
5. Sanction defendant for multiple PUC violations; and
6. Sanction defendant for state and federal violations of unfair and deceptive practices; and
7. Grant any further relief as deemed just in this case.

ATTACHED:

- 02/08/2018 Fuel Assistance Benefit Letter
- 06/25/2018 Salem 10th Circuit District Court Order
- 06/25/2018 Salem Court Order Affidavit
- 06/27/2018 Expired Liberty Medical Certification Letter
- 07/18/2018 Liberty Final Bill
- 08/29/2018 Liberty Letter

Signed this 14th day of September 2018.

Respectfully Submitted,


Judith Thompson, pro se
9 Lancelot Court #8
Salem, NH 03079

CERTIFICATION OF SERVICE

I, Judith Thompson, certify a copy of the attached Complaint was sent, via postage prepaid first-class mail, ATTN: Susan Fleck to Liberty Utilities at P.O. Box 1380 in Londonderry, NH 03053.

Signed this 14th day of September 2018.

Respectfully Submitted,


Judith Thompson, pro se

Southern NH Services, Inc. / Rockingham Community Action

Southern NH Services, Inc. / Rockingham Community Action
P.O. Box 5040
Manchester, NH 03108-5040

2/8/2018

Judith Tompson
9 Lancelot Ct Apt 8
Salem, NH 03079-3542

**New Hampshire Fuel Assistance Program
Supplemental Benefit Notification**

Dear Judith Tompson,
Case Number: [REDACTED]

Based on the information you provided, your household has been determined to be eligible for a Supplemental benefit in ADDITION to your original 2018 Fuel Assistance Program benefit. The additional assistance will come in the form of:

A Supplemental to: Liberty Utilities-Granite State Electric Corp in the amount of \$270.00 .

Liberty Utilities-Granite State Electric Corp will also receive notification of the Supplemental benefit.

All unused Fuel Assistance Program credits will expire on April 30, 2018.

This is an automatic benefit. You do not need to contact us for approval. Vendors will be notified directly.

All Fuel Assistance Program benefits are subject to availability of federal funds.

PLEASE SAVE THIS LETTER!

If you have any questions, please feel free to contact us at:

Southern NH Services, Inc. / Rockingham Community Action
P.O. Box 5040
Manchester, NH 03108-5040

Tel: 800-322-1073
Fax: 603-645-6734

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

SALEM 10th CIRCUIT DISTRICT COURT

DOCKINGHAM COUNTY

CASE NO. 473-2018-LT-59

RECEIVED
NH CIRCUIT COURT
10TH CIRCUIT SALEM
JUN 25 PM 2:21

Madhu Gaddam d/b/a Madhu Estates

v.

Judith Tompson

MOTION TO ORDER CONTINUED ELECTRICITY ON PROPERTY

PROPERTY:

9 Lancelot Court, Unit #8, in Salem, New Hampshire 03079

Defendant is disabled. Electricity is necessary for safety while Defendant lives at 9 Lancelot Court in Unit 8. Electricity is a necessity. Disconnection of electric service is a hardship; which includes, but is not limited to: an inoperable unit fire alarm, a disconnected building fire alarm system, a disconnected fire station fire alarm system, an inability to refrigerate food, an inability to prepare food, an inability to store food, an inability to see and safely get to the bathroom, an inability to decrease accumulated heat in the brick building, an inability to regulate the poor air quality in the unit, an inability to remove water from the air in my damp basement unit, loss of my landline telephone and telephone service, an inability to call 911, an inability to call medical providers, and/or a high probability of physical injury due diminished sight as a result of the loss of needed electricity.

There is no prejudice to plaintiff. In fact, granting this motion will not affect the plaintiff in any way. However, a denial of this motion will negatively affect Defendant and may deprive her of a necessary utility; which affects a sustainable existence, health, and safety. Defendant implores this Honorable Court to grant this motion.

CONCLUSION

Wherefore, Defendant prays this Honorable Court:

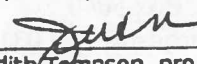
1. Order continued and/or ongoing electricity on the property; and
2. Grant any other relief deemed fair, equitable, and just.

ATTACHED: Notarized Electricity Hardship Affidavit

Signed this 25th day of June 2018.

Granter
7.12.18
Robert S. Stephen

Respectfully Submitted,


Judith Tompson, pro se
9 Lancelot Court #8
Salem, NH 03079

CERTIFICATION OF SERVICE

I certify a copy of the Motion was sent, via postage prepaid first-class mail, to Madhu Gaddam at 58 Buttrick Lane in Carlisle, MA 01741.

Signed this 25th day of June 2018.

Respectfully Submitted,


Judith Tompson, pro se

AFFIDAVIT

I, Judith Tompson, on Oath depose and state the following:

On 08/01/2017, at 9 Lancelot Court, Unit #8, in Salem, NH, was posted on my door an Eviction Notice dated 08/01/2017. Three (3) days later, Liberty Utilities sought to disconnect electric service.

On 05/01/2018, at 9 Lancelot Court, Unit #8, in Salem, NH, was posted on my door an Eviction Notice dated 05/01/2018. Fifteen (15) days later, Liberty Utilities sought to disconnect electric service.

I have resided at 9 Lancelot Court, Unit #8, in Salem, NH for eighteen (18) years. Only twice, in those eighteen years, has any electric utility company ever sought to disconnect electric service; which is Liberty Utilities immediately after receiving Notice of an Eviction. I have a chronic, debilitating physiological medical condition. I live solely on unearned income; which consists of monthly federal social security disability payments.

On 05/22/2018, I spoke with the Salem Town Manager's Office employee; whom informed me that Liberty Utilities is the only exclusively authorized electric service distributor in the entire Town of Salem. This fact was verified and validated when I contacted the New Hampshire Public Utilities Commission. Due to the connected unit and building alarm system; which is connected directly to the fire station, electricity is necessary for the safety of others in case of fire.

Electricity is a necessity. Disconnection of my electric service is a hardship; which includes, but is not limited to: an inoperable unit fire alarm, a disconnected building fire alarm system, a disconnected fire station fire alarm system, an inability to refrigerate food, an inability to prepare food, an inability to store food, an inability to see and safely get to the bathroom, an inability to decrease accumulated heat in the brick building, an inability to regulate the poor air quality in the unit, an inability to remove water from the air in my damp basement unit, loss of my landline telephone and telephone service, an inability to call 911, an inability to call medical providers, and/or a high probability of physical injury due diminished sight as a result of the loss of needed electricity.

I am a disabled. Electricity is necessary for my safety while I reside at 9 Lancelot Court, Unit 8, in Salem, NH.

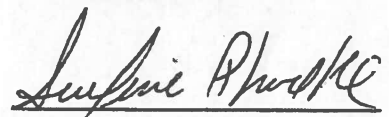
Signed and Sealed under the pains and penalties of perjury this 25th day of June 2018.

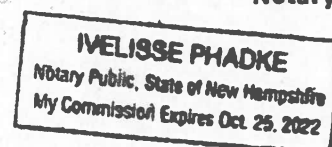

Judith Tompson

**STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY**

Be it known, that Judith Tompson personally appeared before me, this date, and swears the foregoing to be her free act and deed. Judith Tompson swears upon pain and penalty of perjury that the foregoing is factually accurate. Judith Tompson swears the aforementioned disclosures are true to the best of her understanding, personal knowledge, and belief.

Signed this 25 day of June 2018.


Notary Public





Liberty Utilities

JUDITH TOMPSON
9 LANCELOT CT APT 8
SALEM, NH 03079

6/27/2018

Bill Account No: [REDACTED]
Service Address: 9 LANCELOT CT APT 8
SALEM, NH 03079
RE: MEDICAL CERTIFICATE CONFIRMATION

This is an important notice. Please have it translated.

Enci é un aviso importante. Queira mundillo traducilo.
Este es un aviso importante. Sírvase mandarlo traducir.
Avis important. Veuillez traduire immédiatement.

ĐÂY LÀ MỘT BẢN THÔNG CÁO QUAN TRỌNG
XIN VỊ LÒNG (CHO D)CH LẠI THÔNG CÁO ẤY
Questa è un'informazione importante,
si prega di tradurla.

Это очень важное сообщение.
Пожалуйста, попросите чтобы
вам его перевели.

Dear JUDITH TOMPSON,

We have received the completed form from your Medical Professional certifying the existence of a medical emergency in your household. Therefore, we have placed a temporary protection status on your account which will protect your account from collection activity, including termination, until 6/26/18. It is your responsibility to renew any medical certification on a timely basis to ensure continued service.

Although you qualify for temporary medical protection, this does not relieve you of your obligation to pay your bill. In compliance with the New Hampshire Public Utilities Commission, you must enter into and comply with a payment agreement for any past due amount as a condition of the medical certification. **Failure to make arrangements or comply with any payment agreement on your past due balance will result in disconnection of service.**

Currently, your account has an overdue balance of \$5,267.00. The last payment that we received was on 5/30/2018. To discuss payment arrangements, please contact our Credit Department at (800) 375-7413 Monday thru Friday 7:00am – 5:00pm.

If you use medical equipment, we recommend that you plan for any power outages that may occur.

Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
(800) 852-3793

Sincerely,

Liberty Utilities

15 Buttrick Road, Londonderry, NH, 03053
1-800-833-4200
www.libertyutilities.com



Liberty Utilities

Liberty Utilities
P.O. Box 1380
Londonderry, NH 03053-1380
Visit our website at www.libertyutilities.com

FOR QUESTIONS REGARDING YOUR BILL CALL (800) 375-7413
FOR EMERGENCIES CALL (855) 349-9455



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JUDITH TOMPSON
9 LANCELOT CT APT 8
SALEM, NH 03079-3542

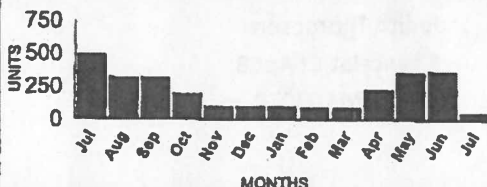
FINAL BILL

ACCOUNT INFORMATION

Account Number:	
Statement #:	7815140
Bill Date:	07/18/2018
Due Date:	08/15/2018
Next Meter Read:	/ /

Service Address: 9 LANCELOT CT APT 8
SALEM NH 03079

MONTHLY CONSUMPTION CHART



Meter Number	Type of Service	Rate Code	Read Type	# of Days	Service Dates	(Current - Previous) x	Multiplier	= Usage	Demand	KVA/KVAR
	Energy	D	A	5	07/13/18-07/18/18	64801 - 64744	1	57		

For electric emergencies or to report power outages call 1-855-349-9455.

ACCOUNT ACTIVITY

Voltage Delivery Level	0 - 2.2 kv
Previous Balance:	5,386.37
Payments Received:	0.00
Balance Forward:	5,386.37
Current Charges:	
Customer Chg	2.34
Consumption Tax 57.00 units @ 0.00055	0.03
Distribution Chg 57.00 units @ 0.04299	2.45
Energy Service 57.00 units @ 0.08931	5.09
Stranded Cost Chg 57.00 units @ -0.00095	0.05 CR
Sys Benefits Chg 57.00 units @ 0.00457	0.26
Transmission Chg 57.00 units @ 0.03460	1.97
EAP Discount 22%	2.66 CR
Miscellaneous Charges/Credits:	

SPECIAL MESSAGE

Effective June 1st, a number of charges were changed, including the Distribution Charge, Transmission Charge, and Stranded Cost Charge. Effective July 1st, as usual, a new monthly rate for Energy Service for large commercial and industrial customers will begin. The change in the Energy Service rate does not apply to customers taking Electricity Supply from a third party. Please refer to our website at www.libertyutilities.com for all of our current rates.

KEEP THIS PORTION FOR YOUR RECORDS

Please include your account number on your check.
Make checks payable to Liberty Utilities

Payment Coupon

Please check box and see reverse for: ☐ Update phone/address

Service Address: 9 LANCELOT CT APT 8 SALEM NH 03079

JUDITH TOMPSON
9 LANCELOT CT APT 8
SALEM, NH 03079-3542

DETACH AND RETURN THIS REMITTANCE PORTION OF THE BILL WITH YOUR PAYMENT

BALANCE FORWARD	CURRENT CHARGES	AMOUNT DUE	ENCLOSED AMOUNT
5,386.37	9.43	5,395.80	

Account Number: [REDACTED]
Statement #: 7815140
Bill Date: 07/18/2018
Due Date: 08/15/2018

Liberty Utilities - NH
75 Remittance Drive, Suite 1032
Chicago, IL 60675-1032

01446527994434715210000000943100000539580



Liberty Utilities

PO Box 1380
Londonderry, NH 03053-1380

August 29, 2018

Bill Account No: [REDACTED]

Service Address: 9 Lancelot Ct Apt 8
Salem, NH 03079

Judith Thompson
9 Lancelot Ct Apt 8
Salem, NH 03079

Dear Judith Thompson:

You have been notified by both Liberty Utilities and the Public Utilities Commission stating that your service is to be disconnected. In an attempt to negotiate payment arrangements to prevent disconnection I visited your address today, Wednesday, August 29, 2018. I was unable to make contact.

Please know that my intent is to set up arrangements to prevent your disconnection.

Your current balance is \$5,386.37, which is currently past due. In the last month, you have refused to receive both written and verbal contact with us in order to negotiate payment arrangements.

Please contact me or the Sr. Manager below, so that we can work towards a solution. After Friday, August 31, 2018 we will have no choice but to disconnect your service.

Jessica Allen
Supervisor, Collections
Office: 603-216-3581
Cell: 603-327-9114

Christine Downing
Sr. Manager, Customer Service
Office: 603-216-3588
Cell: 603-362-2709

Best Regards,

Jessica Allen

Supervisor, Collections