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Debra Howland, Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

RE: Docket No. DE 18-148; Complaint by Judith Tompson against Liberty Utilities  
Response of Liberty Utilities

Dear Director Howland:

On behalf of Liberty Utilities (Granite State Electric) Corp. ("Liberty"), I write to respond to the complaint filed by Judith Tompson as required by Puc 204. Below Liberty distilled Ms. Tompson's complaint into the following allegations, each of which is followed by Liberty's response.

A. Complaint re Notice:

1. Notice of Account Transfer

Ms. Tompson alleged that she did not receive any notice that her electric account was being transferred (presumably to her landlord). She stated that "Liberty wrongfully transferred the account without Plaintiff's knowledge or consent." Complaint at 5. She alleged that Liberty's failure to notify her of the account transfer violates Puc 1203.12.

Liberty Response:

Liberty did not violate the notice provisions of Puc 1203.12, Disconnection of Service in Residential Tenant/Landlord Situations, because Ms. Tompson's electric service was never disconnected or at risk of disconnection during the short period of time during which her landlord was the customer of record for her account.

Puc 1203.12(c) states, “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) as defined in (b) above, unless the utility gives written notice to those tenants pursuant to (d) below.”

Prior to April 2018, Ms. Thompson was the customer of record for her electric account. In April 2018, Ms. Thompson’s condominium—which had been acquired by the bank in 2017—was sold at auction to Madhu Gaddam d/b/a Madhu Estates, who became Ms. Thompson’s new landlord. In July 2018, Mr. Gaddam contacted Liberty and requested that Ms. Thompson’s account be put in his name. Mr. Gaddam believed that he was required to put the account in his name based on a July 12, 2018 court order from the Salem circuit court.

In August 2018, however, Liberty received notification from Mr. Gaddam’s attorney that the July 12 state court order was invalid because Ms. Thompson had moved to remove the case to federal court before the July 12 state court order was issued. On August 17, 2018, a Liberty employee had a phone conversation with Ms. Thompson wherein she asked Ms. Thompson whether she wanted the electric service for the account to be disconnected, or to be placed back in her name. Ms. Thompson requested that the account be placed back in her name. The notice provisions of Puc 1203.12, which are only triggered when a landlord’s account is to be disconnected, were therefore not applicable because the electric services for Ms. Thompson’s account were never scheduled for disconnection during the short period of time during which the landlord was the customer of record.

Note that there is no general requirement that a utility give notice to the existing customer of an account transfer; only the new customer must receive notice outside the context of the disconnection process. See Puc 1203.18.

## 2. Notice of Expiration of Medical Emergency Certification

Ms. Thompson alleged that she did not receive notice that her Medical Emergency Certification would expire in June 2018. On page 10 of her complaint, she stated: “Plaintiff never received notice of expiration of the certification in 2018. This was the first year Liberty failed to mail a recertification form.” She alleged that Liberty’s failure to notify her of the expiration of her certificate violates Puc 1205.04.

### Liberty Response:

Liberty sent a notice on May 16, 2018, to Ms. Thompson advising that her Certification of Medical Emergency (“Certification”) was set to expire on June 14, 2018. Liberty admits that the

notice was sent 29 days before the expiration of the Certification rather than the 30 days required by the rule. Puc 1205.04(a). The notice properly advised Ms. Tompson to contact the Credit Department immediately if her certified medical condition still existed, and provided the Credit Department's hours and phone number. The notice also provided the outstanding balance on Ms. Tompson's account.

Liberty also sent a notice to Ms. Tompson when her Certification expired on June 15, 2018, as required by Puc 1205.04(a). Upon expiration of the Certification, Ms. Tompson's account was no longer protected from collection activity and was subject to a continuation of the lengthy medical disconnect process. However, on June 23, 2018, Liberty received notice from Ms. Tompson by fax that her previously certified medical condition still existed. Two days later, on June 25, 2018, Liberty received a completed medical certification form from Ms. Tompson's physician. Liberty thus placed a valid Certification back on Ms. Tompson's account, protecting it from collections activity.

### 3. Notice of Disconnection

Ms. Tompson alleged that she did not receive adequate notice that her electric service would be terminated on August 31, 2018. She stated: "On 08/29/2018, Liberty personnel left a letter on Plaintiff's door stating it planned to disconnect in two days .... 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." Complaint at 4. She alleged that Liberty's failure to provide proper disconnection notice violates Puc 1203.11.

Ms. Tompson also stated that she was never notified that Liberty requested disconnection in May 2018. "Plaintiff never received a copy of the May 2018 request [for disconnection] from Liberty as required by PUC standards. Any claim that Liberty mailed Plaintiff a copy of the May 2018 request to disconnect is false."

### Liberty Response:

Liberty did not violate the notice requirements of Puc 1203.11 arising from any alleged failure to deliver the May 18 letter (which Liberty disputes), because Ms. Tompson's account was never scheduled for disconnection. In May 2018, Liberty sought approval from the Commission to disconnect Ms. Tompson's electric service. Liberty sent a notice to Ms. Tompson on May 1, 2018, notifying her of Liberty's request for disconnection permission. Liberty received Commission approval of its request on June 19, 2018. However, Liberty never

scheduled a disconnection date, but rather continuously tried to make contact with Ms. Thompson in order to negotiate a payment arrangement.

Except for sending the notice of upcoming expiration of Ms. Thompson's Certification 29 days (rather than 30) days prior to expiration, Liberty met all its obligations under the rules discussed above. Also, since Liberty did not follow through with the disconnection, but tried to resolve the issue with Ms. Thompson, she suffered no harm.

**B. Complaint re Medical Emergency Certification**

Ms. Thompson alleged that it was unlawful for Liberty to terminate her electric service because she had a valid Medical Emergency Certificate on file. She stated that:

A medical emergency certification is current on Plaintiff's account . . .

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).

Complaint at 8. Ms. Thompson alleged that the disconnection of her electric service while she had a valid Medical Emergency Certificate violated Puc 1205.02. Additionally, Ms. Thompson alleged that a Liberty employee called Ms. Thompson's doctor and "attempted to dissuade the physician from filing the faxed medical certificate form." Complaint at 10. Ms. Thompson called this an "outrageous" and "unconscionable" act that is "evidence of some strange personal vendetta." Id.

**Liberty Response:**

Ms. Thompson claims Liberty violated both Puc 1203.07 and Puc 1205.02 (which protect from disconnection those customers with both a Certification and who enter and keep a payment arrangement) in disconnecting her service. First, none of the provisions of 1203.07 apply because Ms. Thompson never entered into a payment arrangement with Liberty. And although as of June 25, 2018, Ms. Thompson had complied with the renewal requirements of her medical Certification under Puc 1205.02, Ms. Thompson never entered into a payment arrangement with Liberty, which is the second requirement of Puc 1205.05(a) to be exempt from disconnection.



Since May 2018, when Liberty received disconnection approval from the Commission, Liberty has repeatedly attempted to make contact with Ms. Thompson in order to negotiate a payment arrangement. The only contact that Liberty was able to make with Ms. Thompson was a phone conversation between Ms. Thompson and a Liberty employee on August 17, 2018, but Ms. Thompson refused to engage in negotiations of a payment arrangement. Because Ms. Thompson never entered into a payment arrangement, her account was not subject to the protection of Puc 1203.07(b) and Puc 1205.02(a).

Liberty acknowledges that another Liberty employee contacted Ms. Thompson's physician to verify the need for and meaning of "air purification" equipment, which was listed on the medical certification as being necessary for life support purposes. The Liberty employee received permission from the PUC to contact the physician prior to making the phone call. Liberty denies, however, that the Liberty employee tried to dissuade the physician from submitting the certification form.

C. Complaint re Social Service Programs

Ms. Thompson alleged that Liberty failed to provide her with a monthly accounting of fuel assistance payments that were made to her account by the NH Fuel Assistance Program (NH FAP), in violation of Puc 1203.14(e). She also alleged that Liberty "failed to provide social service providers; which may have assisted Plaintiff," in violation of Puc 1203.14(a). Complaint at 6. Ms. Thompson stated that she believed the assistance she received from NH FAP "covered all debt accrued each year" in her Liberty account. Complaint at 7. She stated that a supplemental award of \$270 by NH FAP on February 8, 2018, does not appear to have been deposited into her Liberty account. Complaint at 7; NH Fuel Assistance Program Letter (attached to Complaint).

Liberty Response:

Ms. Thompson claimed that Liberty did not follow the requirements for involving social service agencies. Liberty denies, first, that it failed to provide Ms. Thompson with information about available social services. Generally, Liberty places ads in local newspapers for local fuel assistance programs, and also makes automated calls at the beginning of each winter period that advise customers to contact Liberty to make payment arrangements. This notification was also provided as a statement on customer bills. Specifically, Ms. Thompson was personally advised of the availability of local social service programs during her phone conversation with Liberty on August 17, 2018.

Liberty also denies that it failed to provide Ms. Tompson with a monthly accounting. Ms. Tompson receives monthly statements showing the billing and payment information for her account. These statements indicate payments made by social service agencies. Plus, on Ms. Tompson's request, a Liberty employee provided Ms. Tompson with her account history, showing the bills and payments for Ms. Tompson's account over the past four years. These documents were contained in the packet that Liberty left leaning on Ms. Tompson's front door on September 12, 2018. Liberty had previously attempted to send this packet to Ms. Tompson multiple times, both via regular and certified mail, but Ms. Tompson refused delivery each time.

Liberty agrees that the New Hampshire Fuel Assistance Program (FAP) covers all of Ms. Tompson's payments that are due during the Winter Period (the "Winter Period" means the period beginning November 15 and extending up to and including March 31, *see* Puc 1202.19). However, the FAP does not make payments outside of the Winter Period and thus cannot cover Ms. Tompson's outstanding debts incurred outside of the Winter Period. The supplemental \$270 award that Ms. Tompson received from the FAP was applied to her account, but she was not billed enough during the 2017-2018 winter months to exhaust the FAP funds that she received. FAP funds do not carry over into non-Winter months or into the next Winter Period.

D. Complaint re Unfair Debt Collection

1. Alleged PUC Regulation Violations

Ms. Tompson stated that she has repeatedly disputed and continues to dispute all debt to Liberty. Complaint at 8. She alleged that Liberty disconnected her service, even where she was making a good faith effort to make payments on her bill, in violation of Puc 1204.05(d)(2). *Id.* She also stated that Amanda Noonan of the PUC granted both disconnections—in August 2017 and August 2018—without validating Ms. Tompson's debt to Liberty. *Id.*

Liberty Response:

Liberty did not violate Puc 1204.05(d)(2), titled, "Winter Period Notice of Disconnection," because Ms. Tompson's electric service was not to be disconnected in the Winter Period. Indeed, her service was, in fact, never disconnected.

2. Alleged State and Federal Statute Violations

Ms. Thompson alleged that Liberty used the threat of electric disconnection as a means of debt collection in violation of the "NH Unfair and Deceptive Practices Act," RSA 358-A:2, and the federal statute 15 U.S.C. 1692(f). Complaint at 14.

Liberty Response:

Factually, Liberty denies that it used the threat of disconnection as a means of debt collection in its handling of Ms. Thompson's account. Liberty followed the rules governing the disconnection process and obtained the Commission's approval to disconnect.

Legally, Liberty is exempt from the provisions of RSA 358-A because that statute specifically exempts from its provisions those companies regulated by the Public Utilities Commission. "The following transactions shall be exempt from the provisions of this chapter ... Trade or commerce that is subject to the jurisdiction of ... the public utilities commission." RSA 358-A:3, I.

Liberty is likewise exempt from the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692, because Liberty does not fall under the statute's definition of a "debt collector." The FDCPA only applies to "debt collectors" and, under 15 U.S.C. 1692(a)(6), a "debt collector" only includes (1) businesses whose "principal purpose ... is the collection of any debts," or (2) businesses "who regularly collect or attempts to collect ... debts owed or due ... another." Liberty is therefore not a "debt collector" subject to the FDCPA because its principal business purpose is the provision of electric utility services, not the collection of debts, and because Liberty is attempting to collect a debt owed to Liberty, not another.

E. Complaint re Violation of State Court Order

On page 10 of the Complaint, Ms. Thompson stated that, "A Salem 10<sup>th</sup> Circuit District Court Order exists; which clearly states the electric service at Plaintiff's current address must remain in operation." Complaint at 10.

Liberty Response:

Liberty did not violate the Salem circuit court order issued on July 12, 2018, because (1) Liberty was not a party to that case, (2) the order was ruled to be moot, and (3) in any case, Liberty never disconnected Ms. Tompson's electric service.

The July 12 order arose out of the eviction case brought by Ms. Tompson's landlord, and granted her request to "order continued and/or ongoing electricity on the property." Liberty was not a party to the case. Ms. Tompson removed the case from the Salem circuit court to federal court (USDC docket 1:18-cv-00555-PB). The federal court issued a Report and Recommendation (R&R) on August 7, 2018, denying Ms. Tompson's previous motion for continued electric service. This R&R crossed in the mail with Ms. Tompson's motion to withdraw her previous motion for continued electric service. The federal court therefore amended its R&R on August 9, 2018, to add the following sentence: "A separate and independent basis for denying the motion to continue electricity (Doc. No. 7) is Tompson's filing of a motion seeking to withdraw that motion, see Doc. No. 14, which renders it moot." Thus there was no standing court order mandating the continued provision of electric service to Ms. Tompson by her landlord, not Liberty. And, in any case, Liberty never disconnected Ms. Tompson's service.

Conclusion

Although Liberty takes reasonable steps to accommodate those who experience financial hardship, Liberty owes a duty both to the Company and to the rest of its customers to collect debts owed for services rendered. Liberty has acted reasonably and in compliance with all laws and regulations in its handling of Ms. Tompson's account, and asks the Commission to deny the allegations set forth in Ms. Tompson's complaint.

Sincerely,



Michael J. Sheehan



Kelsey Sullivan, Legal Intern

cc: Service List