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CASD Bulletin No. 2016-04

To: All Electric, Gas and Water Utilities
From: Derek D. Davidson, Director, Consumer Assistance & Safety Division (CASD)
Subject: Staff Interpretation of Chapters 815 and 660, §§ 10(H)(1) and (2).
Date: July 6, 2016

This bulletin is issued pursuant to Chapter 110, §7(C) of the Commission’s rules and provides a staff interpretation of sections 10(H)(1) and (2) of Chapters 815 and 660. These sections establish a utility’s options when a residential or non-residential customer pays an amount overdue to prevent disconnection with a check that is returned to the utility due to insufficient funds. A utility recently asked the CASD for clarification of its options under this section and if these same options also apply to payments made electronically, either through the use of a debit card or ACH payment over the phone, that are stopped due to insufficient funds or intentionally by the customer.

Section 10(H)(1) of Chapters 815 and 660 states “[i]f a residential customer has paid by a check that was not honored by the bank before the expiration of the disconnection notice, the utility must attempt to obtain payment by alternate means from the customer before disconnecting service. If a check is not honored after the expiration of the disconnection notice, the utility can issue a 3-day disconnection notice pursuant to section 10(D)(3) above and require payment by cash or certified check... .” In this situation:

- If a residential customer pays using a check that is not honored by the bank, the utility must attempt to collect the past due amount through alternate means, such as cash. If the utility makes this attempt and the customer fails to make the necessary payment prior to the expiration of the disconnection notice, the utility may proceed with disconnection.
- If the check is not honored after the expiration of the disconnection notice, the utility may issue a 3-day disconnection notice and require payment by cash or certified check.

Section 10(H)(2) of Chapters 815 and 660 states “[i]f a non-residential customer has paid by a check that was not honored by the bank before the expiration of the disconnection notice, the utility may proceed with disconnection... .” In this situation, the utility is not required to attempt to obtain payment by alternate means.

Regarding the utility’s question about debit and ACH payments, the answer is “yes,” a debit or ACH payment made to prevent disconnection can be treated the same as a payment made using a “check” with regards to the requirements of section 10(H)(1) and (2). Payments made by check, debit card or over the phone through the ACH network are essentially the same: a financial transaction in which a utility collects, i.e., debits, an amount directly from a payer’s bank account. The payer authorizes the withdrawal by signing a check, entering a pin number (for a debit card), or verbally over the phone (for ACH payments). Thus, for customer payments made to prevent disconnection using a debit card or ACH payment that are not honored by the bank, either due to insufficient funds or because the customer stops the payment, a utility may proceed according to the provisions of section 10(H).

This is an informal CASD interpretation of Chapters 815 and 660. Any CASD Bulletin shall not constitute res judicata or legal precedent in any subsequent proceeding, nor shall it be binding on any party. In any subsequent enforcement action initiated by the Commission, however, any person’s justifiable reliance upon the bulletin may be considered in mitigation of any penalty sought to be assessed.

If anyone has questions regarding this opinion, please contact me at (207) 287-1596 or at Derek.d.davidson@maine.gov.

DD/kp