

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
on its Own Motion	)	
	)	Docket No. 20-0309
In the Matter of Moratorium on Disconnection	)	
of Utility Services during the Public Health	)	
Emergency Declared on March 9, 2020	)	
pursuant to Sections 4 and 7 of the	)	
Illinois Emergency Management Agency Act	)	

**VERIFIED EMERGENCY MOTION OF  
COMMUNITY ORGANIZING AND FAMILY ISSUES AND ALLEN CHERRY  
TO EXTEND THE MORATORIUM ON UTILITY SHUT OFFS AND OTHER RELIEF**

Community Organizing and Family Issues (COFI), through its attorney, the National Consumer Law Center; and Allen Cherry hereby request that the Illinois Commerce Commission (the Commission) take immediate action to halt all electric, gas and water utility shut offs and the imposition of late fees until March 31, 2021 due to the emergency public health crisis triggered by the COVID-19 pandemic. The undersigned parties also request a status hearing in order for the utilities to report how many customers have been disconnected and reconnected since the end of the voluntary moratorium that was in place, and to determine what steps need to be taken to immediately reconnect disconnected customers. In support of this motion, the COFI and Mr. Cherry state as follows:

**Background**

1. On March 18, 2020, the Commission issued an Emergency Interim Order (“Emergency Order”) that, among other actions, required a moratorium on investor-owned electric, gas and water utility shut offs, late fees and penalties due to a customer’s inability to pay, following Governor Pritzker’s March 9, 2020 state of emergency declaration due to the

COVID-19 pandemic. The Emergency Order further required the utilities to file “proposed credit and collections procedures in this proceeding for the Commission’s consideration and approval”<sup>1</sup> by March 27, 2020. Joint Consumer Parties, and the ICC Staff (“Staff”) filed responsive Comments on April 6, 2020, and all parties and Staff filed Reply Comments on April, 10, 2020. A Proposed Order was issued by the Administrative Law Judges on April 20, 2020. Following the filing of Briefs on Exceptions on April 23, 2020, the parties and Staff then began several weeks of negotiations that culminated in the filing of two stipulations – one involving the larger, investor-owned utilities (“IOUs”)<sup>2</sup> and another involving several small electric, gas and water IOUs.<sup>3</sup> The Commission approved both stipulations in a June 18, 2020 Order in this proceeding.

2. In addition to the provision of robust consumer protections involving extended deferred payment arrangements, reconnection of previously disconnected customers, new bill payment assistance programs and other consumer protections, the Stipulations extended the Moratorium period until “until the earlier of: (1) the day on which all Restore Illinois Health Regions have moved to Phase 4 (Revitalization) under Governor Pritzker’s May 5, 2020 Restore Illinois plan (Plan); or (2), in the absence of a Commission determination to the contrary, August 1, 2020.”<sup>4</sup> The Large Utility Stipulation further provided that if all Restore Illinois Health Regions have not moved to Phase 4 (Revitalization) on or before August 1, 2020, the Commission may, conditional upon the presence and status of the COVID-19 public health

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<sup>1</sup> Emergency Order at 4, 5.

<sup>2</sup> These utilities include Aqua Illinois, Inc. (Aqua), Illinois-American Water Company (Illinois-American), and Utility Services of Illinois, Inc. (Utility Services), Ameren Illinois Company d/b/a Ameren Illinois (Ameren Illinois), Northern Illinois Gas Company d/b/a Nicor Gas Company (Nicor Gas), North Shore Gas Company (North Shore), and The Peoples Gas Light & Coke Company (Peoples Gas), Ameren Illinois and Commonwealth Edison Company (ComEd) (collectively, the Stipulation Utilities).

<sup>3</sup> These utilities included Consumers Gas Company (“Consumers Gas”), Illinois Gas Company (“IGC”), Liberty Utilities (Midstates Natural Gas) Corp. (“Liberty”), MidAmerican Energy Company (“MEC”), and Mt. Carmel Public Utility Company (“Mt. Carmel”) (collectively, the “Small Stipulation Utilities).

<sup>4</sup> *Id.*, Appendix 1 at 2, Appendix 1 at 2.

emergency in Illinois, extend the Stipulated Moratorium Period.<sup>5</sup> The Stipulated Moratorium Period in both stipulations further provided that the moratorium would not extend beyond the date that all Restore Illinois Health Regions moved to Phase 4 (Revitalization), except that the movement of one or more Regions to an earlier Phase of the Plan shall trigger a request by the Stipulation Parties<sup>6</sup> for a status hearing in this Proceeding to assess whether the terms of this Stipulation need to be revised.

3. Because all regions of the State moved to Phase 4 of the Governor's Restore Illinois reopening plan on June 26, 2020, the moratorium on disconnections lifted on July 26, 2020, pursuant to the terms of the Stipulation. However, following an informal request from the ICC, the large utilities voluntarily agreed to extend the moratorium until September 1, 2020. During late August, the Commission again asked the IOUs to extend the moratorium until October 1, 2020. Peoples Gas, North Shore Gas and Nicor voluntarily agreed to extend the moratorium until October 1, 2020. ComEd and Ameren, however, limited their voluntary extension until September 10, 2020.

4. On September 4, 2020, the Commission issued a letter, via email to the "Regulatory Representatives of Illinois Public Utilities" requesting that the companies "take immediate steps to cease residential customer disconnections for non-payment until March 31, 2020." *See* ICC Letter, attached as Exhibit A. In doing so, the letter acknowledged that "(w)hile Illinois moved to Phase 4 of the Restore Illinois Plan on June 26, 2020, as of today, the Illinois Department of Public Health reports over 240,000 confirmed COVID-19 cases" and that "30 Illinois counties currently stand at a warning level for uptick in COVID-19 cases. The

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<sup>5</sup> *Id.*, Appendix 1 at 2.

<sup>6</sup> The Large Utility Stipulation states that the request would come from the Stipulation Parties. The Small Utility Stipulation provided that the request would come from the Small Utilities signing the agreement.

letter further notes that Illinois Regions 4<sup>7</sup> and 7 have been compelled to implement more restrictive mitigation measures due to a resurgence of COVID-19 cases in these areas.” Upon information and belief, not all of the utilities agreed to the requested moratorium.

5. On September 17, 2020, ICC Executive Director Christy George sent an email to the IOUs requesting that the utilities extend the moratorium on disconnections “for residential customers who are low income, as defined in the stipulated agreements in Docket No. 20-0309, and for those who are experiencing a financial or COVID-19 hardship through March 31, 2021.”<sup>8</sup> The request sought responses from the utilities by close-of-business, September 18, 2020. On September 22, 2020, the Commission issued a press release stating the following:

At the request of the ICC, the following utilities have committed to extending the moratorium on utility disconnections for low-income (Low Income Home Energy Assistance Program qualified) residential customers and those financially impacted by COVID-19 until March 31, 2021: Ameren Illinois, Aqua Illinois, Illinois American Water, Commonwealth Edison, Peoples Gas and North Shore Gas, and Utility Services of Illinois. MidAmerican will voluntarily extend the moratorium on disconnections for Low Income Home Energy Assistance Program qualified residential customers through March 31, 2021 and is further considering additional options to help their customers during this unprecedented time. Additionally, Nicor Gas and Liberty Utilities have agreed to extend the moratorium on disconnections for all residential customers until March 31, 2021.<sup>9</sup>

6. IDPH makes clear in new guidance that the agency “is monitoring key indicators to identify early but significant increases of COVID-19 transmission in Illinois, potentially

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<sup>7</sup> As of October 9, 2020, Region 4 — the Metro East — has reached the threshold to lift mitigations following three consecutive days with a rolling positivity rate below 6.5%. See <https://www2.illinois.gov/Pages/government/execorders/executive-orders.aspx#ExecOrder>

<sup>8</sup> ICC Executive Director Christy George email to investor-owned utilities dated September 17, 2020.

<sup>9</sup> ICC Press Release of September 22, 2020. It is also COFI’s understanding that MidAmerican has revised its position to extend the moratorium to all residential customers until March 31, 2021.

signifying resurgence”<sup>10</sup> for eleven *newly described Illinois regions*. IDPH will monitor if these indicators show an increase in COVID-19 disease burden with a simultaneous decrease in hospital capacity or if there are three consecutive days greater than or equal to 8% test positivity rate (7 day rolling).<sup>11</sup> These indicators, IDPH states, can be used to determine whether additional community mitigation interventions are needed for a region to control the further spread of COVID-19. Once a region meets resurgence criteria, new mitigation measures will be implemented.

7. In short, the State has adjusted COVID-related responses due to COVID-19 case upticks using actions – “mitigation measures” – that were not contemplated in the original Restore Illinois Plan and, consequently, in either the Large Utility or the Small Utility stipulation provisions that defined when a return to a shut off moratorium status would or could be triggered.<sup>12</sup> Likewise, the State’s Restore Illinois plan now divides Illinois into 11 regions rather than the five established in the original Restore Illinois plan and referenced in the Large and Small Utility stipulations approved by the Commission for purposes of establishing the end of the moratorium period.

8. Since the Commission’s September letter, the state ordered additional mitigation measures in Illinois Region 1, which includes the northwest portion of the state, including the City of Rockford and Northern Illinois University in DeKalb.<sup>13</sup> The Governor announced that the region will see new mitigation efforts beginning October 3, 2020 due to an increase in its seven-day average of positive cases. Importantly, IDPH Director, Dr. Ngozi Ezike stated at

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<sup>10</sup> See <https://www.dph.illinois.gov/regionmetrics?regionID=1>

<sup>11</sup> *Id.*

<sup>12</sup> See also <https://www.chicagotribune.com/coronavirus/ct-coronavirus-illinois-chicago-six-months-20200914-s4wddfyguzedngamwyq7zvqefm-story.html>

<sup>13</sup> See <https://www.chicagotribune.com/politics/ct-coronavirus-illinois-tighter-restrictions-rockford-20200929-ipjldfekbna2hrggfjxqveos4-story.html>

the time, "As the pandemic continues, so must our fight against it: Please, don't hold or attend large events or mass gatherings, wear your face covering, and keep six feet of distance between you and others."<sup>14</sup>

9. The IDPH further reported on October 9, 2020 that 26 Illinois counties “are considered to be at a warning level for novel coronavirus disease (COVID-19).”<sup>15</sup> A county enters a warning level when two or more COVID-19 risk indicators that measure the amount of COVID-19 increase.<sup>16</sup> The IDPH reported that same day that 3059 new cases were registered the day prior. The number of positive cases in Illinois has risen to 313, 518 – a 31% increase since the Commission’s noted 240,000 number reported in its September 4<sup>th</sup> letter.<sup>17</sup>

10. In addition, as shown in the Table below, *new* COVID-19 cases are on the rise in the state as compared to when the Commission issued its June Order in this docket:

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<sup>14</sup> See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=22149>

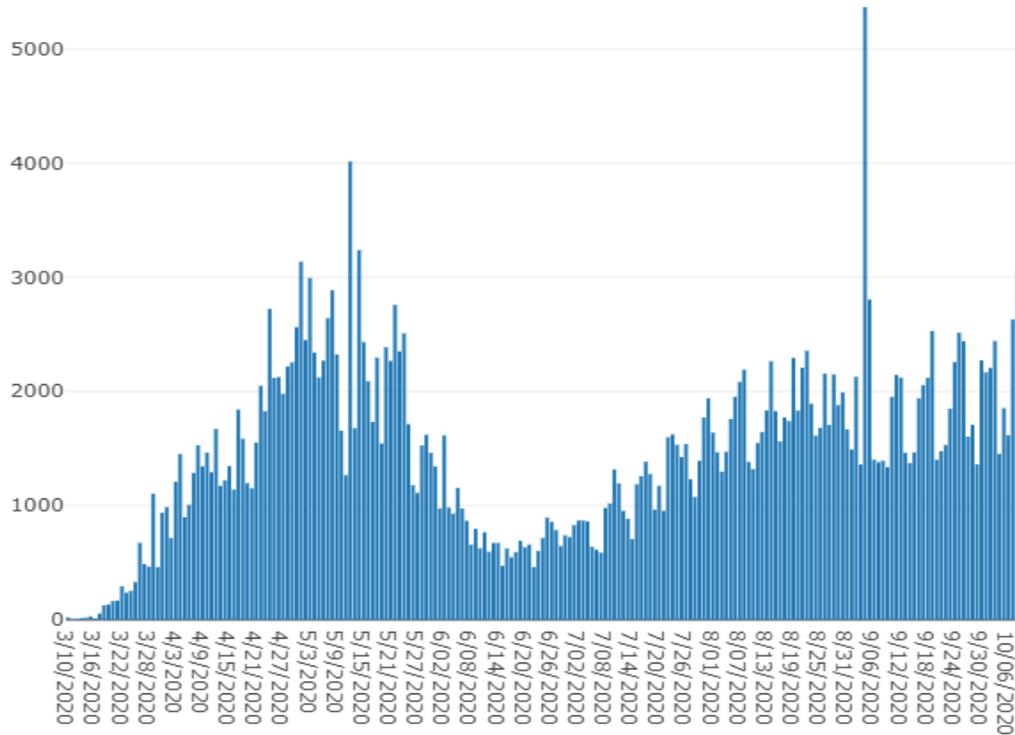
<sup>15</sup> See <http://dph.illinois.gov/news/26-illinois-counties-warning-level-coronavirus-disease>

<sup>16</sup> *Id.* A county is considered at the warning level when at least two of the following metrics triggers a warning:

- **New cases per 100,000 people.** If there are more than 50 new cases per 100,000 people in the county, this triggers a warning.
- **Number of deaths.** This metric indicates a warning when the weekly number of deaths increases more than 20% for two consecutive weeks.
- **Weekly test positivity.** This metric indicates a warning when the 7-day test positivity rate rises above 8%.
- **ICU availability.** If there are fewer than 20% of intensive care units available in the region, this triggers a warning.
- **Weekly emergency department visits.** This metric indicates a warning when the weekly percent of COVID-19-like-illness emergency department visits increase by more than 20% for two consecutive weeks.
- **Weekly hospital admissions.** A warning is triggered when the weekly number of hospital admissions for COVID-19-like-illness increases by more than 20% for two consecutive weeks.
- **Tests performed.** This metric is used to provide context and indicate if more testing is needed in the county.
- **Clusters.** This metric looks at the percent of COVID-19 cases associated with clusters or outbreaks and is used to understand large increase in cases.

<sup>17</sup> See <https://dph.illinois.gov/covid19/covid19-statistics>

**ILLINOIS COVID-19 CASES, AS REPORTED BY  
THE ILLINOIS DEPARTMENT OF HEALTH, 10/9/20:**



These reported positive COVID-19 test result numbers make clear that daily numbers of positive cases are rising in some areas of the state since the Commission entered its Order on June 18, 2020. The bottom line is that the public health of the state’s residents remains vulnerable – particularly if people are forced to leave their homes due to a lack of essential utility service.

## **The Commission Should Order a Full Moratorium on Residential Utility Shut offs and Late Fees**

11. While the Commission's acceptance of a voluntary moratorium that protects LIHEAP-designated customers and those who call the utility and claim "financial hardship" may appear sufficient to protect financially troubled customers from losing their essential utility service, the reality on the ground is quite different and troubling. New information obtained from the Department of Commerce and Economic Opportunity (DCEO), the state agency that oversees LIHEAP distribution, suggests that utility customers may be being both disconnected in significant numbers and struggling to adjust to remote LIHEAP processing.

For example, DCEO reports that processing of LIHEAP grants -- which provides protection from disconnection under the terms of the Commission's voluntary moratorium request to the utilities -- has been modified from the usual 30-day period to 60 days in order to accommodate both the closure of agency offices to the public and the difficulties associated with remote processing of LIHEAP client eligibility information. It is unclear how quickly Reconnection Assistance grants, which are provided to customers who have received disconnection notices or have already been disconnected, are being processed. Regardless, financially struggling utility customers' ability to retain essential utility service is impacted by both the number of customers who are receiving disconnection notices or have already been disconnected, and the difficulties that many applicants experience in completing the application process remotely.

12. Customers who did not get the message to call the utility *before* disconnection to claim financial hardship will not be automatically reconnected if they call after disconnection and communicate that they are in financial difficulty. At that point, customers typically must

secure some percentage of the arrearage owed, to be paid to the utility, to obtain reconnection. That requires quick, successful obtainment of a LIHEAP vendor payment for low income customers who lack the means to provide that payment. It should be noted that Nicor Gas and Liberty Utilities are *not* and will not be disconnecting customers through March 31, 2021, as noted in paragraph 5 above.

13. As the Commission notes in its September 4, 2020 letter, Illinois' economy and the financial health of the state's utility customers remains impaired due to the pandemic. The Commission noted that unemployment for the State stands at 11.3%. The most recent published statistic put the unemployment rate at 11.0%.<sup>18</sup> The employment outlook in Illinois remains grim. The latest survey from the U.S. Census Bureau related to Expected Loss in Employment Income, detailed by U.S., individual states and metro areas, reports that 26.7% of Illinois adults expect someone in their household to have a loss in employment income in the next 4 weeks.<sup>19</sup> The Commission correctly observed that "disconnection of vital utility service for non-payment now and throughout the upcoming fall and winter months poses an untenable burden on the very people we are charged to protect."<sup>20</sup>

14. Indeed, disconnection of customers who lack the financial means to pay both current bills and accumulated arrearages during a pandemic will have extreme and life-threatening consequences. Residents who continue to be told by health and government officials to limit travel, socializing and other activities must continue to have access to reside safely in their homes. Residences that lack utility service are uninhabitable – period. School and day care closures, job furloughs, permanent job losses, closed assistance agencies, and COVID-19-related

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<sup>18</sup> See U.S. Bureau of Labor Statistics, <https://www.bls.gov/regions/midwest/illinois.htm#eag>

<sup>19</sup> See <https://www.census.gov/data-tools/demo/hhp/#/>

<sup>20</sup> See attached Exhibit A.

health crises are just a sampling of the life changes low-income families, in particular, are experiencing.

15. Of course, children and young adults now engaged in e-learning due to school closures must have access to essential electricity and heat in order to participate in online instruction. Disconnections of households threatens the educational future of all children whose parents and guardians simply lack the funds to afford essential utility service.

16. Utility disconnections not only stop the provision of essential services that promote the public’s health, welfare and safety, but these disconnections also undermine Illinoisans’ housing security. Energy insecurity and housing insecurity are inextricably linked. Utility disconnections threaten housing stability for many, especially extremely low-income tenants. Tenants whose rent is subsidized by the Housing Choice Voucher (“HCV”) Program (a.k.a. “Section 8”) are often responsible for ensuring continuous utility service in their residences. *See e.g.* Chicago Housing Authority, Housing Choice Voucher Program, Admin. Plan (eff. Feb. 1, 2020), § 12-1.D, ¶ 16. Tenants in the HCV Program whose leases require tenant-paid utilities who are unable to maintain service are considered in violation of the program rules and can face termination of their housing assistance. *See* 24 C.F.R. §§ 982.404(b)(1)(i), (b)(3).

17. Likewise, tenants living in Rental Assistance Demonstration (RAD) Properties – another type of housing subsidy – “must obtain and maintain utility connections throughout tenancy. . . . Failure to maintain the utility connection is a serious violation of the lease, subject to lease termination.” CHA, HCVP, Admin. Plan, § 18-IV.Q(2)(a). Some public housing authorities, are able to monitor the status of tenants’ utility connections. For instance, under its RAD policies, the CHA requires that “[w]hen a resident applies for utility service, the resident

must sign a third-party notification agreement so that the CHA is notified . . . if the utility service will be disconnected.” *Id.* at § (2)(c). Also, in many private market leases<sup>21</sup> in Illinois, tenants are responsible for utilities and failure to maintain utility service can be considered a breach of the lease and grounds for terminating the tenancy and filing an eviction action in court.

18. It is within this public health and economic context that the Commission should act to reissue its moratorium for *all* residential customers of March 18, 2020, and not simply *request* that the utilities voluntarily refrain from disconnecting customers who have successfully jumped through the hoops of LIHEAP processing or making a call to the utility *before* disconnection to claim financial hardship. Clearly, not every customer is aware that a call prior to disconnection will prevent disconnection. Neither the utilities nor the Commission can guarantee that that message has been heard loud-and-clear by financially struggling customers.

19. The Commission has the same authority now that it had on March 18th. As the Commission noted at page 3 of its March 18, 2020 Emergency Order, Section 8-505 of the Public Utilities Act (the Act) provides broad authority to the Commission in monitoring utility operations and take the requested action:

The Commission shall have power, after a hearing or without a hearing as provided in this Section and upon its own motion, or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

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<sup>21</sup> See generally [https://www.apartmentsource.com/downloads/Chicago\\_Residential\\_Lease\\_2020.pdf](https://www.apartmentsource.com/downloads/Chicago_Residential_Lease_2020.pdf), ¶ 18; <https://www.champaignurbanahomerental.com/wp-content/uploads/2017/01/Sample-Lease.pdf>, ¶ 7;

220 ILCS 5/8-505. As the Commission aptly note then, “(i)n this state of emergency for the people of the State of Illinois, the Commission is charged with requiring the performance of any ...act which the health or safety of its ...customers or the public may demand.” *Id.* On October 9, 2020, the Governor re-authorized his State of Emergency Order due to the COVID-19 pandemic.<sup>22</sup> For the Commission not to act and instead rely on the state’s investor-owned utilities to voluntarily cease disconnections only for people who have successfully navigated the remote, in some instances more challenging LIHEAP enrollment process, or knew enough to call the utility *before* disconnection is to place the residents of the State in danger, and the public health at risk.

20. The prohibition against disconnections for non-payment during the winter months of December 1 through March 31, pursuant to Section 8-205 of the Act, is less than two months away. In effect, then, the Commission’s issuance of another moratorium will provide a short reprieve from disconnection anxiety until that prohibition is triggered, and aligns with the policy goal of protecting the health and safety of the public that the General Assembly established when it enacted the winter prohibition.

21. In addition, the Commission should extend a prohibition on utilities assessing late fees during the extended moratorium period. The financial fallout of the coronavirus pandemic will leave customers with little to no discretionary income. Demanding late fees/penalties on top of payment of current bills and accumulating arrearages is both unnecessary and punitive during a recognized moratorium. COFI and Mr. Cherry urge the Commission to prohibit utilities from assessing late fees throughout any extended moratorium period, as it did in its March 18, 2020 Emergency Order.

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<sup>22</sup> See Governor Pritzker’s Executive Order of October 9, 2018. <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-58>.

22. The undersigned parties also request that the Commission set an immediate status hearing to determine how many customers have been disconnected and reconnected to date, since the end of the voluntary moratorium that was in place, and what steps should be taken to immediately reconnect those customers who remain disconnected.

23. In order to quickly resolve the issues raised in this Emergency Motion, the undersigned parties propose the following schedule for Responses and Replies:

Responses due: Friday, October 16, 2020

Replies due: Monday, October 19, 2020

24. Finally, while the Commission does not regulate cooperatives and municipal utilities in the State, COFI and Mr. Cherry urge the Commission to once again encourage these unregulated utilities to mirror the moratorium that the Commission would put in place for the IOUs. Customers of these utilities deserve the same protections from disconnection as regulated utility customers.

WHEREFORE, the Joint Consume Parties respectfully request that the Commission (1) reissue its previous moratorium on utility shutoffs and late fees, first established earlier this year, and (2) set a status hearing to assess how many utility customers have been disconnected since September, how many have been reconnected and to determine what steps need to be taken to reconnect customers who were disconnected in the last month.

Dated: October 14, 2020

Respectfully submitted,

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