

**State of Minnesota**  
**Before the Public Utilities Commission**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Shuerger	Commissioner
Joseph Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of an Inquiry into Actions by Electric  
and Natural Gas Utilities in Light of the COVID-19  
Pandemic Emergency

Docket No. E,G-999/CI-20-375

**Joint Comments of the Citizens Utility Board of Minnesota, the Legal Services Advocacy  
Project, Energy CENTS Coalition, and Home LINE**

The Citizens Utility Board of Minnesota (“CUB”), the Legal Services Advocacy Project (“LSAP”), Energy CENTS Coalition (“ECC”), and HOME Line (collectively, “Consumer Advocates”) respectfully submit these joint comments regarding the Minnesota Housing and Finance Agency’s (“MHFA”) request to prohibit utility disconnections for customers with a pending application for RentHelpMN in the Minnesota Public Utilities Commission (“Commission”) Docket No. E,G-999/CI-20-375.

CUB is a nonprofit organization that advocates on behalf of Minnesota consumers for clean, affordable, and reliable energy and utility services. LSAP represents the six regional civil legal services programs (Legal Aid) in Minnesota to advocate on behalf of low-income Minnesotans, elder Minnesotans, and Minnesotans with disabilities in administrative and legislative forums. ECC is a nonprofit organization that promotes affordable utility service for low- and fixed-income Minnesotans. HOME Line is a nonprofit organization that provides free legal, organizing, educational and advocacy services to tenants throughout Minnesota.

In summary, the Consumer Advocates agree that the problem underlying the MHFA petition warrants the Commission’s urgent attention. However, we do not believe MHFA’s proposed solution adequately addresses the problem. We offer observations and recommendations about how the Commission, utilities, and MHFA can more effectively protect vulnerable tenants eligible to receive RentHelpMN assistance from being subject to utility service disconnections.

**I. Background**

In late 2020 and early 2021, Congress allocated approximately \$46 billion in federal relief to assist renters nationwide struggling to navigate the COVID-19 pandemic.<sup>1</sup> The Minnesota Housing and Finance Agency (“MHFA”) is responsible for implementing the statewide Emergency Rental Assistance (“ERA”) programs funded through this allocation. Minnesota received \$289 million of this federal funding in January 2021 and expects to receive an additional \$229 million.<sup>2</sup> Minnesota households

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<sup>1</sup> See Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. § 501(c)(1)-(2) (2020); American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 3201 (2021).

<sup>2</sup> Minnesota Housing and Finance Agency (“MHFA”), Letter (Sep. 9, 2021) [hereinafter MHFA Letter].

eligible to receive ERA assistance include renters whose income is not more than 80% of the median income, have experienced financial hardship or a reduction in household income as a result of the COVID-19 pandemic, and who can “demonstrate a risk of experiencing homelessness or housing instability.”<sup>3</sup>

Meanwhile, on March 13, 2020, Governor Walz issued Emergency Executive Order 20-01 establishing a peacetime emergency in response to the developing COVID-19 pandemic (the “Peacetime Emergency”).<sup>4</sup> On March 25, 2020, the Commission and the Minnesota Department of Commerce (“Department”) jointly sent a letter to Minnesota utilities requesting that they voluntarily extend consumer protections for the duration of the Peacetime Emergency.<sup>5</sup> These protections included “restricting disconnections of residential customers for non-payment of utility bills and reconnecting customers who have been disconnected for the duration of the national security or state Peacetime Emergency.”<sup>6</sup>

On May 26, 2021, the Commission issued an Order (the “May 26, 2021 Order”) addressing utility transition plans, including (i) the timeline for resuming disconnections following the conclusion of the Peacetime Emergency and (ii) which customers would be subject to disconnections once they resumed.<sup>7</sup> As part of its Order, the Commission established a start date of August 2, 2021 for resuming customer disconnections, but provided consumer protections for certain classes of individuals. Specifically, the Commission included the following as Order Point 5: “The Commission prohibits disconnections of customers with past due balances who have a pending application or have been deemed eligible for LIHEAP/EAP assistance for the duration of the transition period (April 30, 2022)” (“Order Point 5”).<sup>8</sup>

The Minnesota Legislature has also enacted an eviction moratorium that accounts for the pending status of COVID-19 emergency rental assistance applications.<sup>9</sup> Eviction actions premised on nonpayment of rent are prohibited through June 1, 2022 when the tenant “has a pending application for assistance through an emergency rental assistance program.”<sup>10</sup> However, landlords may file an eviction action against a tenant that, while eligible for assistance, “refuses to apply for assistance through the program . . . or refuses to provide . . . proof that the tenant applied for assistance through the program.”<sup>11</sup> Evictions are also permitted when a tenant has materially breached a lease for reasons other than nonpayment of rent.<sup>12</sup> As that eviction moratorium is phased out, evictions are permitted “for those with outstanding rent who are ineligible for rental assistance through a COVID-19 emergency rental assistance program” starting on September 12, 2021.<sup>13</sup>

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<sup>3</sup> Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. § 501(k)(3).

<sup>4</sup> Minn. Exec. No. 20-01 (Walz), *Emergency Executive Order 20-01 Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020).

<sup>5</sup> Minnesota Pub. Utils. Comm'n & Minnesota Dep't of Commerce, Letter, *In the Matter of the Inquiry into Actions by Electric and Natural Gas Utilities in Light of the COVID-19 Pandemic Emergency*, Docket No. E,G-999/CI-20-375 (Mar. 25, 2020).

<sup>6</sup> *Id.* at 1.

<sup>7</sup> Order Adopting Broad Transition Plan Proposal, Suspending Negative Reporting, and Establishing Notice and Communication Requirements, Docket No. E,G-999/CI-20-375 (May 26, 2021) [hereinafter May 26, 2021 Order].

<sup>8</sup> *Id.* at 7; see also Minnesota Department of Commerce, Letter (Mar. 25, 2021).

<sup>9</sup> See 2021 Minn. Sess. Law Serv. 1st Sp. Sess., Ch. 8 (H.F. No. 4), Art. 5 (West) [hereinafter Eviction Moratorium Phaseout].

<sup>10</sup> *Id.* at § 4.

<sup>11</sup> *Id.* at § 2(b)(2)(iv).

<sup>12</sup> *Id.* at § 2(b)(1)(iii).

<sup>13</sup> *Id.* at § 2(b)(2)(iv).

On September 9, 2021, MHFA filed a letter with the Commission requesting that the Commission modify Order Point 5 to “include the COVID-19 Emergency Rental Assistance program as a listed program alongside LIHEAP/EAP prohibiting disconnections of customers with past due balances who have a pending application or have been deemed eligible for assistance for the duration of the transition period.”<sup>14</sup>

The Commission subsequently issued a Notice of Comment Period to address the following issue: “Should the Commission approve the request by the MHFA to prohibit utility disconnections until April 30, 2022, for customers with a pending application for RentHelpMN?”

## II. Discussion

We share MHFA’s concern about the problem underlying its petition: we, too, believe renters with pending applications for RentHelpMN assistance should be protected from utility disconnections. However, we believe the action proposed in the Petition does not appropriately address this problem. It is our understanding that, while the utilities are not opposed to extending disconnection protection to customers eligible for RentHelpMN assistance, it is impractical for the utilities to facilitate this protection without transparency into which of their customers have applied for, or been approved, for that assistance. We offer a few additional observations and recommendations below.

### a. The Consumer Advocates support extending disconnection protections to RentHelpMN applicants.

In recent weeks, we have heard from *numerous* consumers who have expressed concern about their utilities being shut off, despite having pending applications for RentHelpMN assistance. Disconnection of utility services under these circumstances seriously negates the purpose of the federal government’s Emergency Rental Assistance allocation and the benefits RentHelpMN assistance is meant to provide. The Department argued in its letter supporting consumer protections for LIHEAP and EAP eligible customers that “[d]isconnecting customers who are likely to receive future energy assistance is both unreasonable and impractical.”<sup>15</sup> We believe the same principle applies to renters likely to receive assistance through RentHelpMN. This is clearly an important issue that warrants the Commission’s urgent attention. But (as discussed in more detail in section b, below), the utilities, alone, cannot be deemed solely responsible for solving this problem.

RentHelpMN funding is available to “provide financial assistance and housing stability services to eligible households,” which includes “utilities and home energy costs” and arrears.<sup>16</sup> Eligible households include renters whose income is not more than 80% of the median income, have experienced financial hardship or a reduction in household income as a result of the COVID-19 pandemic, and who can “demonstrate a risk of experiencing homelessness or housing instability.”<sup>17</sup> According to MHFA, “renters have submitted applications for nearly \$14 million in electric, gas and bulk fuel costs” as of August 26, 2021, with “[t]wo-thirds of applicants hav[ing] extremely low incomes.”<sup>18</sup>

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<sup>14</sup> MHFA Letter.

<sup>15</sup> Minnesota Department of Commerce, Letter (Mar. 25, 2021).

<sup>16</sup> Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. § 501(c)(1)-(2) (2020).

<sup>17</sup> *Id.* at § 501(k)(3).

<sup>18</sup> MHFA Letter.

Several of the consumers who have contacted us about this issue have noted that they have been waiting for weeks, or months, for their RentHelpMN applications to be processed. According to African Career, Education, and Resource Inc. (“ACER”), it takes an average of three months to complete a RentHelpMN application.<sup>19</sup> We have also identified current eviction filings where a landlord alleged a material violation/breach of lease for either unpaid utilities or a utility disconnection. As a result, without extended utility consumer protections, tenants are and will continue to be evicted over unpaid utility bills or disconnections even in situations where they have a pending RentHelpMN application.

Extending utility disconnection protections to renters eligible to receive RentHelpMN assistance would be consistent with the public policy underlying Minnesota’s eviction moratorium, and the Commission’s May 26, 2021 Order. Such an action would serve to protect the “health and well-being of Minnesotans”<sup>20</sup> by allowing federal funds to be distributed to those most heavily impacted by the COVID-19 pandemic. For this reason, we think it is highly important for the Commission to consider whether and how it can extend consumer protections to Minnesotans eligible for RentHelpMN assistance.

- b. Methods of verification must be made available to utilities to protect customers who have applied to, or who are eligible for, emergency rental assistance programs.

While sharing MHFA’s concerns about the problem underlying their petition, we disagree somewhat with MHFA’s proposed solution. We are sensitive to concerns utilities have raised about the difficulty they face verifying the existence and status of RentHelpMN applications. Utilities’ interaction with the RentHelpMN program differs from their interaction with LIHEAP/EAP in that the utilities do not currently have direct access to data on which of their customers have applied for, or are deemed eligible to receive, RentHelpMN assistance. Therefore, we do not believe the underlying problem is adequately addressed simply by modifying the Commission’s prior Order Point 5 in the manner MHFA proposes.

More transparency into the RentHelpMN application process is crucial to address this problem. Therefore, we strongly recommend that MHFA proactively work to make RentHelpMN application and eligibility data directly accessible to utilities. Doing so is an imperative first step to enable the Commission to take meaningful action on MHFA’s petition. If it is not possible for MHFA to implement a portal, similar to Minnesota’s e-heat system for LIHEAP applicants, then MHFA should notify utility companies when RentHelpMN applications are received for utilities’ respective customers. Further, MHFA should provide contact information for all local administrators of the rental assistance funds to the utilities. Only in this way will utility companies know which customers to protect against service disconnection.

*If* the Commission determines utilities have a reasonable opportunity to review the status of a customer’s RentHelpMN application, *then* we recommend the Commission issue a new Order (rather than modify its May 26, 2021 Order) with language that prohibits utility disconnections of customers with pending or approved RentHelpMN applications through April 30, 2022.

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<sup>19</sup> African Career, Education, and Resource Inc. (“Acer”), Letter, *In the Matter of the Inquiry into Actions by Electric and Natural Gas Utilities in Light of the COVID-19 Pandemic Emergency*, Docket No. E,G-999/CI-20-375 (Sep. 13, 2021).

<sup>20</sup> Minnesota Pub. Utils. Comm’n & Minnesota Dep’t of Commerce, Letter, *In the Matter of the Inquiry into Actions by Electric and Natural Gas Utilities in Light of the COVID-19 Pandemic Emergency*, Docket No. E,G-999/CI-20-375 (Mar. 25, 2020).

Finally, while MHFA continues to process RentHelpMN applications, MHFA should help amplify existing utility programs that protect tenants from disconnection. For example, MHFA should direct local administrators of its rental assistance funds to: (i) recommend that all tenants seeking information on RentHelpMN also apply for assistance through LIHEAP/EAP and (ii) inform such tenants of protections offered through the Cold Weather Rule (“CWR”). Given that the CWR period begins on October 1<sup>st</sup> and extends through April 2022, the MHFA (and the Commission) should consider whether CWR protections accomplish MHFA’s goal in a more systematic and cost-effective manner than other strategies meant to address the problem underlying MHFA’s petition.

### **III. Conclusion**

The Consumer Advocates appreciate the Commission’s accelerated consideration of this issue and its continued efforts to ensure the health and well-being of Minnesota consumers. We believe that with the appropriate level of transparency, it is both reasonable and in the public interest to extend disconnection protections to those Minnesotans eligible for federal Emergency Rental Assistance funding. Thank you for the opportunity to comment.

Sincerely,

September 15, 2021

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