

UTILITIES ADVOCACY FOR LOW-INCOME HOUSEHOLDS IN MASSACHUSETTS

Second Edition

Other Books for Counselors and Consumers

NCLC Guide to the Rights of Utility Consumers

NCLC Guide to Surviving Debt

Access to Utility Service with CD-Rom

Foreclosure Prevention Counseling with CD-Rom

UTILITIES ADVOCACY FOR LOW-INCOME HOUSEHOLDS IN MASSACHUSETTS

Second Edition

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Abbreviations Used in This Book

- AMP.** Arrearage Management Program
CMR. Code of Massachusetts Regulations
CSR. Customer service representative (at a utility company)
DHCD. Department of Housing and Community Development
DMH. Department of Mental Health
DPU. Department of Public Utilities¹
DSS. Department of Social Services
DTA. Department of Transitional Assistance (formerly Department of Public Welfare)
DTC. Department of Telecommunications and Cable
EA shelter. Emergency Assistance shelter
EAEDC. Emergency Aid to Elderly, Disabled, and Children
FPL. Federal Poverty Level
HCEC. Housing Consumer Education Centers
IOUs. Investor-owned utilities (such as NGRID, NSTAR, KeySpan)
LIHEAP. Low-Income Home Energy Assistance Program (also known as “fuel assistance”)
Mass Health. Mass Health Basic and Standard (Medicaid)
MGL. Massachusetts General Laws
Munis. Municipal light or gas departments
NCLC. National Consumer Law Center
RAFT. Residential Assistance for Families in Transition
SSI. Supplemental Security Income
TAFDC. Transitional Assistance to Families with Dependent Children

¹ The same agency that was named “Department of Telecommunications and Energy” (DTE) from 1997 through April 11, 2007.

How to Use This Manual

This manual is written both as training material that NCLC distributes to trainees in connection with the basic utility rights trainings we deliver in Massachusetts, as well as a free-standing handbook for those who help clients with their utility problems but who cannot attend the training. While this manual may at first appear too lengthy to read and use when actually assisting clients, it is in fact easier to use than may first appear. For example, the last half of the manual contains the actual forms, sample letters and regulations an advocate would need when assisting a client. The Table of Contents lists each of those appendices so that you can find them quickly as needed. **You don't need to review the appendices unless something in the main text refers you to an appendix.** When helping your clients, focus first on the main text.

Also, the text is divided into a number of subsections, all of those listed in the Table of Contents, to help you find what you need quickly. We recommend that everyone who uses this book become familiar with discussion of the "Three-Step Approach" to working with clients described in Chapter V as this provides a good overview about how to approach most of the utility problems you will encounter.

NCLC maintains an e-mail list serve for those who are interested in keeping up on with the rules and policies regarding utility issues in Massachusetts, and getting advice quickly on individual cases. A list serve is a way that everybody who signs up sees everyone else's e-mail, so that if one person poses a question about a difficult case, everyone on the list sees that e-mail and several people may respond quickly with advice. If you are interested in getting on the list serve, contact Charlie Harak, charak@nclc.org.

NCLC also provides trainings all across Massachusetts on the basic rights of utility customers. If you are interested in scheduling a training in your area, contact Mallory SoRelle, msorelle@nclc.org, or Charlie Harak.

Introduction and Overview

I. The Department of Public Utilities and the Types of Companies It Regulates

Electric and gas companies in Massachusetts are regulated by the state's Department of Public Utilities ("DPU"). As of April 2007, wireline telecommunications companies are regulated by the new Department of Telecommunications and Cable. This manual primarily addresses the rights of customers of electric and gas companies. If you are dealing with problems a telephone customer is having, you should refer specifically to Chapters XII and XIII of this manual.

There are two categories of electric and gas companies in Massachusetts. One category is usually called "investor-owned utilities" or "IOUs." These are the companies such as NSTAR, NGRID, KeySpan, Western Massachusetts Electric Company and Bay State Gas that are corporations, owned by their stockholders. The second category includes municipal light departments or combined light and gas departments, such as the Holyoke Gas & Electric Department or Reading Municipal Light Department. These entities, sometimes called "munis," are owned by the city or town in which they are located.

For purposes of using this manual, there are only two differences between IOUs and munis that you need to know about. First, the munis are allowed to collect a deposit from someone applying for electric or gas service, even if the applicant has a good credit rating and does not owe the muni for prior utility service. IOUs cannot collect deposits. Second, while IOUs are required to offer discount rates to low-income customers (see the discount rate discussion, Chapter VII. A), munis do not have to offer discounts, although one muni, the Belmont Municipal Light Department, voluntarily offers low-income discount rates.

The DPU has a Consumer Division, the division that handles questions from consumers and that attempts to resolve any problems the consumer is having. The Consumer Division may be reached at (617) 305-3531 or (800) 392-6066. However, in almost all instances the Consumer Division will refer you back to the utility company if you have not already tried to resolve the problem directly with the utility company. Therefore, other than in an emergency situation that requires the immediate intervention of the Consumer Division, the best practice is to call the company first, and then call the Consumer Division if you cannot resolve the problem.

Often, customers and even advocates may be reluctant to call the Consumer Division. There are two very different reasons why you should not be reluctant to call. First, the Consumer Division's job is to help resolve disputes, and they often can be very helpful. Second, companies speak to the Consumer Division all the time, and may press on the Division their point of view that too many customers owe too much money and that the companies should be allowed to be aggressive in their collection techniques. Only if advocates call as well will the Consumer Division be regularly reminded that the vast majority of people who do not pay their bills *cannot* pay their bills, due to their limited incomes and the very high energy costs in Massachusetts. Since the job of the Consumer Division is to balance the interest of companies in collecting all amounts owed and the interest of consumers in protecting their utility service, it is important for advocates to speak up and be heard.

IMPORTANT NOTE: As of April 11, 2007, the agency that had been called the "Department of Telecommunications and Energy" from 1997 through 2007 was renamed the "Department of Public Utilities" ("DPU"), the name it had prior to 1997. However, for purposes of the issues addressed in this book, the functions of the DPU remain the same as when the agency was called the DTE. None of the statutes or regulations discussed in this book were changed.

II. Steps in Terminating Service (See 220 CMR 25.02, Appendix A.1)

Utility companies in Massachusetts must send three different bills or notices prior to actually sending out an employee who physically terminates the service.

First, the company must render a bill, based on an actual meter reading or an estimate. (The use of estimates is regulated under 220 CMR 25.02, found in Appendix A.1 of this book.)

Second, the company must send a second reminder notice, no earlier than 27 days after sending the initial bill, which can state that the company intends to terminate service no sooner than 48 days after the initial bill was received.

Third, it must send a “final notice of termination,” which is often printed in red ink and which must be sent no sooner than 72 hours prior to actual termination. This “final notice of termination” is only good for 14 days. For example, if a company sends a notice on April 6 and is not able to get an employee to the house to physically terminate the service by April 20, the termination notice is no longer valid. The company would have to send a new notice if it wishes to proceed with the termination.

Companies can only terminate service Monday through Thursday, 8 a.m. to 4 p.m. A termination cannot be performed on a legal holiday or the day before a legal holiday.

PRACTICAL TIPS

1. Whenever possible, check the date on the termination notice. If it more than 14 days old, it has expired. In order for the company to proceed with a termination, it must send a new termination notice. You could call the company and ask, “What is the status of this account?” if you are in doubt about whether the account is scheduled for termination.

2. You may often have several additional days to protect the utility service, even if a termination notice has been sent. For example, if the notice is received on a Tuesday, the company could not shut off service until the next Monday because even a final termination notice must allow the customer another three days before actually terminating service, and the third day after the notice was received is a Friday. Since the company cannot shut off service on a Friday, Saturday, or Sunday, the earliest service can be terminated is the following Monday. In most cases, this would give the customer or advocate more than enough time to assert any protections against termination that may be available.

III. A Note on Discount Rates and Reading Utility Bills

It is almost always possible to figure out whether a customer is on the discounted rates for electric and gas service simply by reading the utility bill. [See Chapter VII. A for a discussion of discount rates]. Most electric and gas companies in Massachusetts now follow a similar numbering system for their rates, in the format of "R1, R2, R3, R4," or "A1, A2, A3, A4." Whether the first letter is "R" (for residential) or "A", the numbers designate the following:

["A" or "R"] 1: The customer is on the regular (non-discount) rate for non-heating customers.

["A" or "R"] 2: The customer is on discount rate for non-heating customers.

["A" or "R"] 3: The customer is on the regular (non-discount) rate for heating customers.

["A" or "R"] 4: The customer is on discount rate for heating customers.²

All low-income customers should be on the discounted rates 2 or 4, and not on the regular rates 1 or 3. (Note that there are a few companies that may not follow the 1, 2, 3, 4 numbering sequence described above. Any company CSR can quickly determine whether a customer is on the discount rates).

² Note that some companies do not have a separate rate for heating customers and would therefore not have rates 3 or 4.

Obtaining Electric and Gas Service

IV. Issues in Obtaining Service

A. Social Security Numbers and I.D. Issues

In Massachusetts, customers are not required to produce social security numbers (“SSN”) as a condition of getting utility service. In addition, a person’s legal status in the United States is irrelevant when applying for utility service. These two points are particularly important information for immigrants who may be worried about applying for utility service or concerned about being asked to produce a social security number.

While a utility cannot legally insist that an applicant for service provide a SSN, companies will often ask that the applicant produce one. Utility companies often ask for proof of an applicant’s identity to check whether that person owes the company any money for service provided at a prior address. However, that does not mean that the applicant has to produce a SSN. Instead, if there is some question about the customer’s identity (for example, the company claims that the applicant is the same “John Smith” or “Juanita Ramirez” who owes the company money from a prior address), or the company asks for proof of identity as a matter of routine practice, the customer can produce a driver’s license or birth certificate, or records from a prior landlord to prove that the customer did not live at the same address that the company is claiming. Any reasonable proof of identity or prior residence should be sufficient.

On January 12, 2007, Karen Robinson, the Director of the DPU’s Consumer Division, wrote a letter to all Massachusetts electric and gas companies clarifying this issue. She wrote that “Companies should not require that consumers provide a social security

number to initiate service and should accept other forms of identification.”³

B. Deposits

Massachusetts investor-owned utilities (IOUs) are not allowed to collect deposits as a condition of an applicant obtaining new utility service (220 CMR 27.00). This regulation, which prohibits imposing deposits on residential accounts, refers to “any gas or electric utility company.” In practice, the DPU does not apply 220 CMR 27.00 to municipal light or gas departments (“munis”) and munis therefore can and often do charge deposits. However, nothing in the law *requires* a muni to collect a deposit, and a customer being asked to pay an unaffordable deposit should try to negotiate the deposit down to a more affordable amount. While the legal argument can be made that the munis are included in the category of “any gas or electric utility company” and therefore cannot charge deposits, it would take some very aggressive advocacy and also some good luck to prevail on that argument.

C. Bills from a Prior Address

The most common problem low-income customers face when trying to get electric or gas service installed is that they owe money from a prior address. While IOUs cannot charge deposits, they are allowed to seek at least partial payment on bills from a prior address as a condition of providing new service at the new address. (Note, however, that Utility Company A cannot refuse to provide service at a new address because the customer owes Company B money for prior utility service).

This problem is discussed in detail in Chapter VII. B. Here, it is sufficient to note that the company cannot routinely insist on being paid 100% of the prior bill as a condition of providing new service. The customer has the right to sign a so-called “Cromwell waiver” and negotiate a payment plan on the amount due from the prior address.

³ For a copy of this letter, contact Charlie Harak at NCLC.

Restoring and Maintaining Electric and Gas Service

V. *Overview of the “Three-Step Approach” to Restoring and Maintaining Service*

This section of the book will describe a “Three-Step Approach” to restoring and maintaining electric and gas service. The Three-Step Approach runs somewhat counter to the way many front-line staff go about addressing utility problems. Frequently, front-line staff begin their efforts by looking for sources of assistance that can help pay the utility bill. In the Three-Step Approach, finding money is actually the *last* step an advocate should take.

The three steps are as follows:

Step 1: Determine whether the client may be eligible for a “protection” that protects the utility account from being terminated and requires already terminated service to be restored.

Those protections include: (1) serious illness, (2) winter moratorium, (3) infant, and (4) elderly.

If there is such a protection, make sure the utility is aware of the client’s protected status.

Step 2: Reduce the bills as much as possible through application of the discount rates and use payment plans to reduce the monthly payment burden.

Step 3: Only after asserting any available protections and reducing the bills as much as possible, look for sources that will help pay the utility bill.

The reason to follow these three steps is that asserting protections does not require any payments from either the client or any agency assisting the client. In addition, payment assistance sources are so scarce that they should be used only after the account has been protected and the bills reduced as much as possible.

Each of the three steps are described more fully in the following sections. At the outset, however, it is important to note that it is always essential to determine whether anyone in the customer's household is seriously ill; whether there is a child under the age of 12 months; and whether *everyone* in the house is over the age of 65. If these circumstances exist, it is possible that the serious illness, infant, or elderly protections will apply. Moreover, if the date is between November 15 and April 30, it is also possible that the winter moratorium applies.

VI. Step 1: Assert Protections

This section will discuss who is eligible for each of the four protections (serious illness, winter moratorium, infant, and elderly), and what a customer must do in order to successfully assert each protection. In general, the protections work both to stop a threatened or impending termination and to restore service that has already been terminated. However, the rights of those who have not yet been terminated are generally stronger than the rights of those whose service is already terminated. Therefore, it is important to know whether your client's service has already been terminated, or whether it is only at risk of being terminated in the near future. See Chapter II for a discussion of the sequence of billing and notices that leads to a termination.

NOTE: MAKE PAYMENTS EVEN WHEN PROTECTION APPLIES. While asserting a protection will ensure that the utility does not shut off the service so long as the protection remains in place, **THE CUSTOMER STILL OWES THE COMPANY FOR ANY UTILITY SERVICE PROVIDED.**

Asserting a protection in no way eliminates or reduces the amount of money the customer owes; it only stops the company from terminating service. A customer who stops paying the bills because a protection is in place could still be sued in court by the utility and could have those unpaid amounts reported to credit reporting agencies. It is even possible that the utility company would go to court to place a lien on the customer's house, if the customer is a homeowner. It is therefore important for customers to pay what they can afford to pay, even when a protection is in place. Doing so will also make it easier to work out a payment plan with the company, if the protection expires (for example, the serious illness ceases).

A. Serious Illness Protection

Massachusetts law (MGL Ch. 164, section 124A) provides that “no electric company shall shut off or fail to restore gas or electric service in any residence during such time as there is a serious illness therein ... provided that the customer cannot afford to pay any overdue bill because of a financial hardship.” The DPU has spelled out details of how this law works in its regulations, 220 CMR 25.03, which are included in Appendix A of this book.

To assert serious illness protection, the customer must:

1. Obtain a letter from a registered physician or local Board of Health attesting that there is a serious illness in the household and
2. Submit a financial hardship form.

1. *Proving Serious Illness/the Serious Illness Letter*

The Massachusetts law does *not* require the customer to demonstrate that there is some need for the utility service in order to treat the serious illness or protect against a worsening of the illness. For example, the customer does not have to show that electricity is needed to operate a nebulizer used to treat an asthma condition, or that refrigeration is needed to keep medicine at the proper temperature.

Moreover, DPU regulations are very clear that the doctor, not the utility company, decides whether an illness is “serious.” The companies have no discretion to reject letters that they think do not describe a serious illness, as explained in 220 CMR 25.03(3):.

Certification of serious illness ... shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation.

This means that a company that questions a doctor’s serious illness letter must initially accept that letter as valid proof of the existence of the serious illness, and then petition the DPU to investigate whether the illness is in fact “serious.” In practice, companies almost never seek review of doctors’ letters.

Some companies will insist that the customer and doctor wait until the company sends out its own serious illness form for the doctor to complete. This needlessly slows down the process of getting the serious illness protection, as the doctor could immediately draft the letter on his or her own. The DPU Consumer Division, in a letter to all companies dated January 12, 2007, stated that “physicians or local boards of health need *not* use a utility company form to certify a consumer’s serious illness,” and, thus, there is no reason for a doctor to delay in sending in a serious illness letter.

Doctors routinely submit serious illness letters for conditions that are physical (such as pneumonia) or mental/emotional (such as

depression or bipolar disorder). Moreover, an illness need not be life-threatening or disabling to be “serious.” It is not uncommon for doctors to submit letters for someone who has asthma or attention deficit disorder.

The seriously ill person only needs to reside in the household, and does not have to be either the customer or a blood-relative of the customer.

Sometimes, it will be difficult get the doctor to agree to write the serious illness letter. However, nothing in the law requires that the doctor write the letter himself or herself. Other staff in the doctor’s office, such as nurses or assistants, can draft the letter, so long as the doctor signs it. The form that the letters must follow is so simple that advocates can draft the letter as well, and then ask the doctor to sign. The letter should include the patient’s address, so that the utility company can confirm that it is the same as the customer’s address. The letter should include the actual words “serious illness.” It is not entirely clear in the DPU regulations whether the letter must also describe the actual illness. For customers who do not want the utility company to know the exact type of illness, it is worth trying to submit a letter that only includes the words “serious illness” without including further description. As noted above, if a company questions the validity of a serious illness, it must initially accept the letter and then ask the Department to investigate whether a serious illness actually exists. **Sample serious illness letters are included in Appendix B.**

Serious illness letters are valid for 30 days, but can be renewed every 30 days so long as the illness persists. If the illness is chronic, the doctor’s letter should include the word “chronic,” in which case the letters need only be renewed quarterly. Again, the chronic letter can be renewed every quarter as long as the chronic condition persists.

PRACTICAL TIPS

The regulations do allow the Board of Health to certify that someone in the household is seriously ill. This option should be considered, for example, if a particular doctor's office simply refuses to sign serious illness letters, or if a letter cannot be obtained promptly enough from the doctor's office.

Also, some companies may accept letters from those who are not registered physicians, even though the company could insist on a doctor's or board of health letter. For example, some companies will accept letters from a psychologist or licensed clinical social worker to document that a mental illness or emotional problem is a serious illness, but keep in mind that the companies are *not* required to accept these letters.

2. *Proving Financial Hardship*

In order to be eligible for the serious illness protection, "the customer [must be unable to] afford to pay any overdue bill because of a financial hardship." The DPU defines financial hardship, in 220 CMR 25.01, so that any family at or below 200% of the Federal Poverty Level ("FPL") automatically qualifies as having a "financial hardship."⁴ However, families with incomes above 200% of the FPL can also seek "financial hardship" status because the regulation allows the DPU's Consumer Division to "determine that such a finding is warranted" even for families with slightly higher incomes.

In order to document financial hardship, the customer needs to fill out a financial hardship form. Each company uses its own form. Current samples of those forms can be found in Appendix C. Under the DPU rules, financial hardship forms must be renewed

⁴ The most recent FPL is included as Appendix F.

quarterly, although some companies do not strictly enforce this requirement.

3. *Protecting Existing Service v. Restoring Terminated Service*

The serious illness law states that “no gas or electric company shall shut off *or fail to restore* gas or electric service” if there is a serious illness in the household and the household is experiencing financial hardship. Utilities never argue that they can terminate service to a household that has properly documented serious illness with a doctor’s letter and demonstrated financial hardship. But the “fail to restore” language often leads to different interpretations by companies, the DPU, and customers.

Under the interpretation most favorable to customers, the “fail to restore” language allows a seriously ill customer to restore service at any time, even if that customer has been living without utility service for 1, 2 or even more months. The companies, however, generally refuse to restore unless the termination was fairly recent, generally within the month or so. To the extent companies articulate any reason for cutting off a customer’s right to restore service, they will say that “We’ve closed out the account,” or “This person is no longer a customer.”

The DPU has not clearly ruled as to when a seriously ill customer loses the right to restore service. In practice, however, the DPU’s Consumer Division will order service restored up to 90 days after termination, at least in some cases. Therefore, customers and their advocates should be aggressive in asserting this right. There have been a few instances, especially where the customer or someone in the customer’s household is gravely ill, when the company restored service months after the termination occurred. One strategy that has sometimes proved successful is to publicize the customer’s plight in the local newspaper or other media. Companies tend to do the right thing when a public spotlight shines on the customer’s dire situation.

4. *Getting Protection As Quickly As Possible*

There are a few different ways to make sure the serious illness protection works for the customer as quickly as possible.

First, the DPU's rules clearly provide that in the case of serious illness a claim of protection "may initially be made by telephone" from "a registered physician or local board of health official" (220 CMR 25.03). The customer must then make sure to send in the financial hardship form within 7 days, and make sure the doctor's letter is also sent in within 7 days.

Second, while companies are not strictly required to accept an initial phone call from anyone other than the doctor or board health, some companies will protect the account for 7 days if the call comes from a social worker, housing search worker, or other human services staff working with the customer. Even if the company will not do so, the customer or advocate should feel free to call the DPU Consumer Division and ask that the company be ordered to protect the account for 7 days to allow the customer reasonable time to obtain the required serious illness letter. The DPU Consumer Division is sometimes willing to do so, especially if the illness is serious and the customer or advocate can explain why it is not possible for the doctor to call the company immediately.

Third, customers can themselves assert the serious illness protection orally, at the time the company employee is actually at the customer's home to shut off the service (220 CMR 25.03(7)). The rule states that if "the occupant claims protection, shut-off shall be postponed for 72 hours in order to allow the customer time to submit documentation supporting his/her claim."

The rules clearly are intended to make sure that customers who can lawfully claim serious illness protection are not shut off while gathering the required documentation. Customers and their advocates should feel free to call upon the DPU Consumer Division for assistance if the company is threatening to go ahead with a

termination while the customer is still in the process of obtaining the serious illness letter or completing the financial hardship form.

STEPS TO TAKE WHEN THERE IS A SERIOUS ILLNESS

If the termination is scheduled to occur soon:

1. A. Have the doctor call the company as soon as possible. This will stop the termination for 7 days, and give the doctor time to write the serious illness letter.

B. If the doctor cannot make the call immediately, the customer or advocate should call the company and ask the company to hold off on the termination for a few days until the doctor can either call or send the serious illness letter. If the company refuses to hold off on the termination, call the DPU Consumer Division and ask that the company be ordered to hold off for a few days.

Whenever there is a serious illness situation, whether or not a termination is imminent:

2. Make sure the doctor signs a serious illness letter. Samples are included in Appendix B. If the illness is chronic, make sure the word "chronic" appears in the letter.

3. Send the letter to the company. If a termination is likely to happen soon, fax the letter to make sure it arrives immediately.

4. Make sure the customer completes and mails in a financial hardship form. Sample forms are included in Appendix C.

5. Make sure to renew the serious illness letter every 30 days (or quarterly, if the illness is chronic).

6. Make sure to renew the financial hardship form quarterly.

CAUTION: See the “NOTE” preceding Chapter VI. A regarding the importance of making some payments even when a protection is in place.

B. Winter Moratorium Protection

1. How to Assert the Protection

State law (MGL Ch. 164, section 124F) provides that “no gas or electric company shall between November fifteenth and March fifteenth shut off gas or electric service to any residential household who cannot pay an overdue charge because of financial hardship, when such gas or electric service is used to provide heat or to operate the heating system.” The DPU has adopted regulations (220 CMR 25.03) that provide the details of how a customer obtains winter moratorium protection.

While the state law and DPU regulations set the winter moratorium period as November 15 to March 15, the DPU has frequently extended the March 15 end date to March 31, April 15, or even April 30. However, the DPU does so simply by asking the utilities to extend the moratorium, not by formally issuing any revised regulation or publishing public notice. Therefore, it is important to check with the DPU early in the spring to determine if the moratorium has been extended.

Establishing winter moratorium protection is fairly simple. All the household needs to do is document that it has a “financial hardship.” There are special rules that help low-income households document that they are eligible for winter moratorium protection, in addition to the ways discussed above (Chapter VI.A) of how to document financial hardship.

First, a company that receives a fuel assistance payment in the prior winter (for example, the winter of November 2005 – March

2006) is required to protect the account through January 1 of the following winter (in this example, from November 2006 through January 1, 2007). The purpose of this regulation, 220 CMR 25.03(3), is to give the customer adequate time to apply and be approved for fuel assistance in the following winter.

Second, the DPU's rules seem to provide that a customer who is seeking winter moratorium protection needs to submit only one (1) financial hardship form between November 15 and March 15, even though financial hardship forms submitted for other purposes (such as serious illness) must be renewed quarterly. 220 CMR 25.03(4). But there is certainly no harm in a customer submitting one financial hardship form on or about November 15, and a second one around February 15, just to ensure that the customer maintains protection from termination throughout the winter.

Third, customers who apply for fuel assistance will almost always get winter moratorium protection without filing a financial hardship form. This is so because the fuel assistance agencies routinely inform the utility companies of which customers have applied for fuel assistance. Since receipt of fuel assistance automatically qualifies a household as having a "financial hardship" (220 CMR 25.01 (2)), utilities code customers as protected by the winter moratorium shortly after they receive notice that the customer receives fuel assistance.

Strictly speaking, the winter moratorium protects customers only for utilities that directly provide heat (such as gas used in a furnace) or that operate the heating system (such as electricity used for thermostats, furnace fans, or hot water circulating pumps) (220 CMR 25.03 (1)).

PRACTICAL TIP

Many companies do not strictly enforce the requirement in the winter moratorium rule that the customer's utility service be used to provide heat or operate the heating system, and they simply protect all low-income customers. Therefore, low-income customers who use natural gas just for cooking, or who have electric service but do not pay for their own heat, should seek winter moratorium protection by submitting a financial hardship form.

WARNING! While the company cannot terminate service while the winter moratorium is in place, the company is still going to send bills each month and expect to be paid. At most, the winter protection lasts a little over five months. Therefore, it is important for customers who assert this protection to continue paying what they can afford. Otherwise, the customer is likely to face termination shortly after the winter moratorium expires.

2. Restoring Terminated Service

Customers rarely have any problem protecting their accounts from termination once they submit a financial hardship form, or once the utility is aware that the customer receives fuel assistance. But the winter moratorium rule also requires a utility to restore service, if it was terminated after the November 15 start of the moratorium period. Therefore, a low-income customer whose service was terminated after November 15, because the company did not know that the customer is low-income, should immediately call the company, state that the customer will submit a financial hardship form, and ask that service be promptly restored. In the event that the company is not willing to restore service promptly, the customer (or advocate) should call the DPU's Consumer Division for assistance.

STEPS TO TAKE TO ASSERT WINTER MORATORIUM PROTECTION

1. The customer should fill out a financial hardship form and submit it to the company shortly before November 15 each winter, and send in a second financial hardship form approximately 3 months thereafter to renew the financial hardship status. This ensures that the company codes the account as protected by the winter moratorium for the entire winter.
2. A customer whose service was terminated after November 15 should call the company, explain that the customer is sending in a financial hardship form, and ask that service be restored promptly.

C. Infant Protection

Massachusetts law provides that “no gas or electric company shall shut off gas or electric service in any residence in which there is domiciled a person under the age of twelve months” if the household is suffering a financial hardship in paying its bills (MGL ch. 164, section 124H). The Department has published regulations that fill in the details of how a customer obtains the benefits of this infant protection rule. Those rules clearly provide that a customer can provide a birth certificate, or letter or official documents from a government official, the Department of Transitional Assistance, a clergyman, or religious institution. Moreover, any certification submitted “shall be conclusive evidence of the existence of the condition claimed” unless the company seeks a hearing from a Department and the Department rules against the customer (220 CMR 25.03 (2) & (3)).

The infant protection applies so long as the infant resides in the household. The infant does not need to be the son, daughter or relative of the customer, nor does the infant’s name have to be

included on any lease with the landlord. For example, if the customer's sister moved in with her a few months ago, and the sister has a three-month-old baby, the infant protection will apply if the household has a financial hardship.

Customers rarely have any problems asserting infant protection. The customer needs to submit reasonable proof of the infant's age – in the form of a birth certificate, hospital or church record, etc. – and proof of financial hardship. (See Chapter VI.A for discussion of proving financial hardship). Submitting these documents will almost always stop a threatened termination. If the shut-off is just about to occur, the customer should call to alert the company that the documents are being sent, and ask the company to hold off on the termination for a few days to allow reasonable time for the documents to arrive. The regulations specifically provide that a “claim of protection may initially be made by telephone,” and the customer must be allowed seven days to submit the written documentation (220 CMR 25.03 (2)).

Customers may encounter some difficulty if the infant protection is raised after the termination has occurred. However, the law very clearly requires the company to restore service if the termination occurred while there was an infant in the house. For example, if a customer with an infant in the home gets a notice that a termination will occur on May 23, but the customer does not know that she should tell the company there is an infant in the home, the company can proceed with the termination on May 23. However, if the customer then learns about the infant rule, the customer can then call the company after May 23 and ask that service be restored, so long as the infant is still under 12 months. However, if the company shuts off service to household with a pregnant mother on May 23, and the mother gives birth two weeks later, she will NOT be able to get service restored based on having an infant, because there was no infant in the household when the shut-off occurred.

STEPS TO TAKE TO ASSERT INFANT PROTECTION

1. [If service has already been terminated or is likely to be terminated in the next few days]: CALL the company immediately. Explain that there is an infant under the age of 12 months in the house and that the household has a financial hardship. If the service is already off, offer to fax in the required documentation and ask when it will be restored. If it is not yet off, ask the company to protect the account for seven days and state that the customer will be sending in the required documentation.
2. Send in reasonable proof of the infant's age, which includes a birth certificate, hospital or church record, proof from a government agency, etc.
3. Send in a financial hardship form (Appendix C). Note that the customer may need to renew the financial hardship form two or three times, as infant protection can last as long as 12 months and financial hardship forms must be renewed quarterly.

WARNING! While the company cannot terminate service if the infant protection is in place, the company is still going to send bills each month and expect to be paid. At most, the infant protection will last for only twelve months. Therefore, it is important for customers who assert this protection to continue paying what they can afford. Otherwise, the customer is likely to face termination shortly after the infant protection expires.

D. Elderly Protection

Elderly protection is different than the other three protections – serious illness, winter moratorium, and infant – in two important aspects. First, elderly households do not need to demonstrate financial hardship to get the protection. The only requirement is

that all members of the household be 65 or older. Second, the elderly protection is not an absolute prohibition against the utility company terminating service. As explained below, it just sets up additional procedural protections that make it very hard for the utility to terminate service.

State law requires the DPU to establish rules governing terminations of accounts serving elderly households. Those rules (220 CMR 25.05) require that the company submit a request to the Department and obtain the permission of the DPU before it can send a termination notice. The company must give a separate notice of this request to the Department of Elder Affairs as well. Before giving its approval, the DPU must investigate the company's request and determine that proper notice has been given to the household; that the company has used other reasonable means to collect on the bills, short of terminating service; and that the company has not refused to enter into a reasonable payment plan with the household. In practice, companies rarely, if ever, request the permission of the Department so that elders who fill out the required forms to claim elder status do not get terminated.

WARNING! While companies do not try to get the Department's permission to terminate service to elderly households, there can be adverse consequences if an elderly household asserts the protection and then does not pay the utility bills. If a senior owns his or her home, the companies routinely go to court; obtain a judgment for the amount owed; and place a lien on the house for the amount of the judgment. The companies do not attempt to force the sale of the house in order to collect on those liens, and they simply wait until the homeowner dies or the house is sold to collect. However, many seniors get upset at the prospect of being sued. It is therefore important to counsel seniors who own their homes that if they assert the elderly protection and do not pay the utility bills, the company may go to court and place a lien on the property.

VII. Step 2: Reduce the Bills/Spread the Payments Out

After a customer asserts any protection that may be available – serious illness, winter moratorium, infant, elderly – the next step is to figure out whether the bills can be reduced by applying for the discount rates that are available and whether the immediate payment obligation can be spread out over time so that the bills are more affordable. The following sections therefore discuss discount rates, payment plans, budget plans, and “arrearage management programs” in detail.

A. Discount Rates

Every IOU in Massachusetts is required to offer its customers discount rates on utility service. The discounts vary by company, but generally are in the range of 10% to 30% off of the utility bill. A customer who has gas service for heating and also has an electric bill could save several hundred dollars each year by getting on the

discount rates. Munis are not required to offer discount rates, although Belmont Municipal Light Department voluntarily offers low-income discounts.

1. Income Eligibility and How to Apply

Any family whose income is at or below 200% of the FPL (the current FPLs are listed in Appendix F) is eligible for the discount. Customers get on the discounts rates through three separate routes: applying for fuel assistance (LIHEAP); receiving assistance from DTA and being enrolled through an electronic match between DTA and utility company files; or applying directly. Each of these routes is described below.

It is very easy to determine whether a customer is already on the discount rates. See Ch. III above. If the customer is not on the discount rates, the customer should determine whether he or she needs to submit an application to be put on the discount rates.

Getting on the discount rates via LIHEAP: When a household applies for LIHEAP, the local agency that processes the LIHEAP application makes every effort to obtain the applicant's gas and electric account numbers and to notify the utility that the household is getting LIHEAP. Receipt of LIHEAP assistance automatically qualifies the household for the discount. The utility will enroll the customer on the discount after hearing from the LIHEAP agency, and the customer need not submit a separate discount application.

CAUTION: If the person who applies for LIHEAP assistance is different than the household member whose name appears on the utility bill, the household will likely NOT get on the discount rate simply by applying for LIHEAP. The household should change the name on the utility bill so that it is the same person who gets the LIHEAP assistance, and should also submit a discount rate application immediately.

PRACTICAL TIP

Even households that do not qualify for LIHEAP for can still apply to LIHEAP in order to qualify for the discount rates. For example, many families who live in public housing but who do not pay their own heating bills are not eligible for LIHEAP payments. But if they apply for LIHEAP and the household income is below 200% of the FPL, the LIHEAP agency will certify the household as income-eligible for LIHEAP but ineligible for actual LIHEAP payments. This certification of income eligibility qualifies the household for the discount rates.

Getting on the discount rate through computer matching: Every three months or so, each utility company shares with DTA computer tapes that include the names of all residential customers. DTA then sends back to the utility company a list of those customers who receive some form of DTA assistance and who therefore should be added onto the discount rates. The customer therefore does not need to send in a separate discount rate application.

CAUTION: Because these computer matches occur only once every three months, many people who receive assistance from DTA will not be added onto the discount rates through the match because they happened not to be receiving DTA assistance in the month the match is run. Also, if one household member's name is on the utility bill but another household member's name is on the DTA account, the match also won't work for that household.

Submitting a direct application to get on the discount rate: Any customer who believes she or he is eligible for the discount, including those who may be uncertain whether they have been automatically enrolled onto the discount rates by applying for LIHEAP or by getting DTA assistance, can submit an application.

Each utility company develops its own forms for applying for the discount rates. Customers who use those forms should be aware that they are not approved or closely reviewed by DPU, and the forms may therefore not fully comply with the law. In particular, many of the forms ask the household to check off which form of public assistance the household receives (such as “TAFDC,” “Food Stamps,” etc.) to demonstrate eligibility for the discount rates. But some of the forms omit certain types of public assistance, simply because the utility companies are not familiar with every type of government assistance program that would qualify a household for the discount rates. Therefore, a customer should always complete the form and send it in, even if it appears from the form that the household cannot check the right boxes or fill in the correct lines. If the company raises any questions about how the customer completed the form or if there is any problem actually getting onto the discount rate, the customer should contact the DPU.

2. *Getting on the Discount Promptly/Applying the Discount Retroactively*

Customers often face delays in getting on the discount rates, from several weeks to several months. Since the discounts can be worth \$100 per month or more during the winter months, it is important for customers to get onto the rates as quickly as possible. This section addresses how to do so, as well as how to get the discounts applied retroactively in some cases.

For customers who fill out a discount rate application, the best way to get onto the rate quickly is to fax the completed form to the company and to include documentation that demonstrates the customer is income-eligible for the discount, along with the application itself.

PRACTICAL TIP

Most of the discount rate application forms do *not* provide a fax number and may *not* suggest that the customer should include any documentation that demonstrates the customer's eligibility for the discount. Therefore, the customer or advocate should call up the company and say, "I have a completed discount rate application form and already have the documentation that shows I'm eligible. Can you give me a number where I can fax this information?"

Under the discount rate law, MGL ch. 164, section 1F(4), a household is eligible for the discount if it receives "any means tested public benefit [including] ... the low-income home energy assistance program [LIHEAP/fuel assistance] for which eligibility does not exceed 200 per cent of the federal poverty level." In practice, this language means that any household that receives help from an income-tested government assistance program – whether food stamps, public housing, Medicaid, free school lunch, etc. – and whose income is at or below 200% of poverty qualifies for the discount rates. Therefore, it should be sufficient documentation for a customer to submit a letter or other document from DTA or some other relevant state agency that the customer is receiving, for example, food stamps or Medicaid or Temporary Assistance for Needy Families. In the case of public housing tenants, it is useful to have the letter also state that the household's income is at or below 200% of the FPL because some families with incomes higher than 200% of the FPL are still eligible for public housing. These higher-income public housing households would not be eligible for the discounts.

Some customers will be able to get on the discount rates retroactively, meaning that the bills will be recalculated as if the customer had been on the discount rate even before the date he or she applied. Each utility company in the state has voluntarily

agreed to do so, on a case-by-case basis, but only if contacted by an advocate working on behalf of the customer. Each company has generally designated one CSR who handles these requests. Customers who call up on their own will most likely not be able to get the discount applied retroactively. If you cannot find an advocate in your area to assist you with this, contact Charlie Harak at NCLC. Retroactive application of the discount can often result in a credit to the customer's bill of \$100 to several hundred dollars, and it is worth pursuing.

PRACTICAL TIP

To get someone onto the discount rate retroactively, you will need to document how long that person has been on the particular form of public assistance that qualifies the household for the discount rate (e.g., food stamps, TAFDC, etc.) To get proof of receipt of food stamps, TAFDC, EAEDC, or Emergency Assistance shelter (or for Medicaid if the client also receives TAFDC or EAEDC), call the income verification hotline at the Department of Transitional Assistance at (617) 348-5506. If you need verification with the start-date of receipt of benefits, call recipient services at (617) 348-5507 or (800) 445-6604. It is fastest if you have the agency fax you or the client the verification. Mailing it can take days or even weeks.

B. Payment Plans

1. For Customers Who Are Not Yet Shut Off from Service

"Payment plans" are arrangements that customers make to pay an overdue bill over a period of time. Under the Department's regulations, 220 CMR 25.01 (2), a "payment plan" is a "deferred payment arrangement applied to an amount of past due charges [which] ... shall extend over a minimum of four months." In the past, there have been many instances of companies not complying with this rule. Therefore, it is important to understand the following:

A customer who has not yet been terminated has the absolute right to a payment plan of no *less* than four months. Therefore, a customer who has not yet been terminated and who has 25% of the overdue amount available can make the first payment on the four-monthly payment plan (25% a month for each of four months), thus making sure that the termination does not occur.

Many CSRs are not well-trained on this rule and will insist that the customer pay 50%, 75%, or an even larger percentage of the bill to avoid a termination. *This is illegal.* While the company has every right to be paid, and can *ask* the customer to pay the entire bill, *it would be illegal for the company to go ahead with a termination if the customer was willing to pay 25% or more of the bill.* If you encounter a CSR who is unwilling to stop the termination, even when the customer has offered to pay 25% or more of the overdue bill, contact the DPU Consumer Division immediately, and try to contact an advocate in your area familiar with utility issues.

2. For Customers Who Are Already Shut Off from Service

The minimum-of-four-months payment plan rule described in the preceding section does not apply to customers who are already shut off. There is no formal rule that specifies how much of an overdue bill a customer has to pay to get terminated service restored. Companies will often ask for 100% of the overdue bill. But even a terminated customer has the right to a “reasonable” payment plan under the DPU’s rules, 220 CMR 25.02 (6).

Customers may need to be very assertive in order to overcome the company’s desire to have 100% of the bill paid before restoring service. The customer should certainly consider asking the DPU’s Consumer Division for assistance if the company insists on getting 100% paid as a condition of restoring service.

The Consumer Division often considers the time of year in deciding how much the customer has to pay. If, for example, the customer is seeking to restore service in October or November, even the Consumer Division may insist that the customer pay 75%

to 100% of the bill, because once November 15 arrives, the customer will likely be protected from termination by the winter moratorium for the next four or five months and will not have to make further payments in order to avoid termination of service during those months. On the other hand, if the customer is trying to get service restored in April or May, the Consumer Division might order the company to accept as little as 25% of the overdue bill and restore service because the company will have six months or so until November 15 to either collect the remaining 75% of the bill, or terminate the customer for failing to comply with the payment plan.

PRACTICAL TIP

Special rules apply to fuel assistance customers. Under contracts that utility companies sign with the fuel assistance agencies, the companies agree that they will restore service to a terminated customer if the fuel agency or customer can pay at least 50% of the overdue bill, regardless of the size of the bill. Ask your local fuel agency for assistance if the company will not agree to restore the utility service in these circumstances.

3. *To Address Bills From a Prior Address*

Companies have the right to refuse service to someone applying for service at a new address, if that person already owes that same company for service provided at a prior address. Under a rule announced by the DPU in *Cromwell v. Boston Edison Company*, DPU 18123 (1974), a company cannot shut off service at a new address even if, after the customer moves in, the company then learns that the person owes them money from a prior address. Therefore, the companies are very careful to screen prospective customers to determine if they already owe money from a prior address. The companies often ask the prospective customer to pay 100% of the prior bill as a condition of having service turned on at the new address.

However, companies can be required to enter into a so-called “Cromwell waiver” with the prospective customer. When the customer signs a Cromwell waiver, this waives the rule announced in the Cromwell case. The customer is basically saying to the company, “You can add that bill from my prior address onto the bills I’ll be getting at my new address, and if I don’t pay the entire bill, you can shut off the service at my new address.” This protects the company and makes it more likely that the company will collect the old bill. If the company and the customer sign the Cromwell waiver, the customer then can try to negotiate a payment plan on the old bill, rather than having to pay 100% of the bill as a condition of getting service. The payment plan principles discussed in the preceding section (B.2) would apply, since the customer is negotiating payments on an account that has already been terminated.

However, many individual CSRs at the companies are not trained about Cromwell waivers and will simply insist on getting 100% of the bill from the prior address paid, before agreeing to start the new account. In that situation, ask to speak to the CSR’s supervisor, or call the DPU’s Consumer Division for assistance.

4. How to Negotiate Successful Payment Plans

The customer’s goals when negotiating a payment plan are to have the company agree to a plan that the customer truly can afford and to strongly resist agreeing to plans the company may propose that require monthly payments that are too large. Company personnel routinely ask customers to pay 50%, 75% or even more of an overdue bill in order not to be terminated. Demanding that much of the bill is often illegal (see section B.1, above) and is usually more than the customer can afford. But customers who are facing termination are in desperate circumstances and will too readily agree to anything that appears likely to stave off a termination. It is best for an advocate to get involved whenever payment plans are being negotiated.

Whether the customer or an advocate is trying to set up the payment plan, the first step is to review the customer’s income and basic, unavoidable expenses, including rent, food, and utilities (and medical, if there are recurring medical expenses). While it is worthwhile to do a more thorough budget work-up for the family, it should at least include the following:

INCOME AVAILABLE EACH MONTH:	
Earned income	_____
Government cash assistance (TAFDC, SSI, etc.)	_____
Value of food stamps	_____
TOTAL INCOME (sum of prior 3 lines)	_____
 BASIC EXPENSES EACH MONTH:	
Rent	_____
Food	_____
Utility customer is having problem with (gas or elect.) (NOTE: include only monthly average bill, not the arrearage/overdue bills)	_____
Other utility (if any)	_____
(Medical expenses, if large/recurring monthly)	_____
TOTAL EXPENSES:	_____
TOTAL INCOME LESS EXPENSES:	_____

If total expenses exceed the income, it is almost impossible to make a payment plan, without first asserting one of the four protections against termination (see Chapter VI), getting retroactive application of the discount rates (see Chapter VII.A.2) and/or finding sources that can help pay some of the amount owed. If the customer can assert a protection and/or reduce the size of the overdue bill through use of the discount rates and by obtaining

outside assistance in paying the bills, then the customer can follow the concepts described immediately below and try to negotiate a payment plan.

If the monthly income exceeds expenses, even by a small amount, the customer's goal is to get the company to agree to that amount. The customer or advocate should stress that the proposed payment plan reflects careful consideration of the household's actual income and expenses, and that asking the customer to pay more each month simply means that the payment plan will fail. When payment plans fail, companies do not collect what they are owed, and customers lose their utility service. It is therefore in the interests of the company, not just the customer, that the company accept payment plans that may spread the payments over many months but that are more likely to succeed.

It is also worth stressing with CSRs that every company in the state now runs an "arrearage management program" ("AMP") in which the company agrees to write off some of the amount the low-income customers owes if the customer simply pays each month's current bill as it comes due (and sometimes a portion of the arrearage that the company is not writing off). While AMPs are relatively new, most companies are pleased with the initial results, which demonstrate that making payments more affordable for the customer creates a win-win situation for the company and the customer. Many CSRs will not be familiar with the pilot AMPs that are now being run. It is therefore worth pointing out to the CSR that high-level managers now support the notion that low-income customers should be given plenty of time to pay back overdue bills, and that the company can actually collect more money if it offers customers reasonable payment plans.

A customer who has just asserted a protection (serious illness, winter moratorium, infant or elderly) is in an excellent position to set up a payment plan of his or her choosing, as the company cannot terminate the service. The company has no choice but to accept any payments that the customer makes. For example, a low-

income customer might have a two-month-old baby and a \$300 overdue bill. If the customer calls up and asks for a payment plan before asserting the infant protection, the company would likely refuse a payment plan offer as low as \$30/month (ten months to pay off the \$300). However, once the customer asserts the protection, it makes good sense for the customer to put in writing that she intends to pay \$30 per month on the arrearage, plus her current bills, because in fact the company cannot terminate service for ten months.

Another example is worth considering. Suppose a low-income customer owes \$640; has a seriously ill child in the house; and feels that she can pay \$80 per month on the arrearage (eight months to pay back the \$640 in full) plus her current bills as they come due. Were the customer to offer an \$80 per month payment plan prior to asserting the serious illness, the company might well refuse and threaten to proceed with the termination. In this scenario, the customer should first assert the serious illness protection (send in the doctor's letter and financial hardship form), and then put in writing, "I offer to pay back \$80 each month of my arrearage of \$640, along with paying my current bills." If the child gets better in, say, two months, and the serious illness protection expires, the customer will have paid only \$160 on the arrearage ($2 \times \$80 = \160), and will still owe \$480. However, if the company were once again threatening termination and refusing to accept a payment plan, the customer would be in a very strong position if she asked the DPU Consumer Division for assistance. She would be able to say to the DPU, "I offered a perfectly reasonable payment plan and actually made two payments of \$80 each at a time when the company was refusing to enter into a reasonable payment plan and could not terminate me. I should be allowed to continue the payment plan I offered, \$80 each month, even if it will still take another six months to complete that plan." In most such cases, the DPU would likely agree.

Customers who receive TAFDC or EAEDC have the option of having DTA pay part of the monthly benefit check directly to the

utility company. Benefits recipients should consider this carefully before agreeing to do so, as the result will be that the recipient will get a smaller check each month. But if the recipient is willing to allow DTA to make these direct payments (called “protective payments” or “vendor payments”), it may be easier to get a good payment plan from the utility company, and with a smaller up-front payment, because the utility company will be more assured that it will get payments in the future.

STEPS TO TAKE TO GET A REASONABLE PAYMENT PLAN

1. If the customer’s service has not yet been shut off, the customer has the absolute right to a payment plan of at least four months’ duration. Do not accept anything shorter than that.
2. Whether or not the service has been shut off, the customer should do a budget work-up to determine the amount of money available each month to pay towards the arrearage. If the customer’s monthly expenses are greater than the monthly income, the customer should determine if any of the four termination protections apply (serious illness, winter moratorium, infant and elderly); apply for discount rates and seek retroactive application of those rates; and seek out any available forms of assistance in paying the overdue bills.
3. The customer should seek a payment plan no greater than the amount determined as available each month from the budget work-up. If the company will not accept that amount, the customer should call upon the DPU for assistance.

C. Budget Plans

Budget plans differ from payment plans in that payment plans are arrangements made on past (overdue) bills, while budget plans are forward-looking arrangements. In a budget plan, the company estimates what the bills will likely be over the next 12 months, and then divides that total by 12. The customer is only obligated to pay that flat amount every month. For example, a gas company might estimate that the bills will total \$2,400 over the next 12 months. Even though some of the monthly summer bills will be as low as \$80 and some of the winter bills may be as high as \$600, the customer need only pay \$200 ($\$2,400/12$) each month.

Budget plans can be a great help to low-income working families who simply cannot afford to pay very high winter heating bills, but who could afford to keep up with the bills if the total annual costs were spread out equally over 12 months. One caution, however, is that budget plans are by definition based on estimates of future bills. Companies will “true-up” these plans every six or 12 months, meaning that the company could send a catch-up bill at some point, if the estimates prove to be lower than the actual bills, or provide the customer a credit, if the estimates were higher than the actual bills. Customers most frequently will get catch-up bills if prices rise faster than the company projected.

D. Arrearage Management Programs

As of 2005, each electric and gas company has been required to offer an “arrearage management program” or “AMP,” under Section 17 of Chapter 140 of the Massachusetts Acts of 2005. Under that law, an arrearage management program is defined as “a plan under which companies work with eligible low-income customers to establish affordable payment plans and provide credits to those customers toward the accumulated arrears where such customers comply with the terms of the program.” In practical terms, this means that the company will make an arrangement with the customer to pay monthly bills as they come due over a long period

of time, generally from 12 to 36 months. The company may also ask the customer to pay back some of the overdue amount as well, with a proportionate fraction of that amount due each month. If the customer keeps up with the arrangement, the company provides credits towards the customer's arrearage.

For example, a customer may have typical monthly bills of \$100, and also owe \$480 at the time she sets up the AMP. The company will offer, "If you pay \$100 each month for your current usage for each of the next 12 months, and you also pay \$20 each month towards the overdue amount (or \$240 in total towards the arrearage, over the next 12 months), we'll write off the other \$240 you owe us. We'll provide that \$240 write-off as a credit on your bill."

Each company has its own variation of the AMP, including the maximum amount the company is willing to write off (often, \$600 per year) and how the credits are provided (for example, a monthly credit, for every month the customer makes the required payment, or a single, lump-sum credit at the end of a year if the customer makes 12 required payments).

Many companies enroll customers on the AMP through the local fuel assistance agency, and interested customers should ask the local fuel assistance agency to find out more details. (The state offers a toll-free number, 800 632-8175, where people can find out which local agency operates the fuel assistance program). However, a few companies, such as Western Massachusetts Electric Company, operate their AMPs directly. In those areas, the customer should contact the company itself for more information.

VIII. Step 3: Finding Assistance in Paying the Bills

The third step in this three-step approach is to find sources that can help pay the utility bills, after any available protections have been asserted, and after the customer has been placed on the discount rates and made the best payment plan arrangement she can.

A. Direct Bill Payment Assistance: Fuel Assistance and Other Programs

1. Fuel Assistance (LIHEAP)

The fuel assistance program, formally known as “Low-Income Home Energy Assistance Program” or “LIHEAP,” provides direct payments to help low-income households pay their heating-related bills. LIHEAP is run by the Department of Housing and Community Development (DHCD). In order to be income-eligible, the household’s income must be at or below 200% of the FPL (see Appendix F).

LIHEAP primarily assists customers with payment of their heating-related energy bills, although it can pay so-called “secondary sources” to a limited extent (for example, make a partial payment on the electric bill of someone who heats with natural gas.) Therefore, gas customers are eligible for payments on their gas bills if they use gas for home heating. But a customer who uses gas only for cooking will not get assistance with the gas bill. Electric customers are eligible for payments on their electric bills if they heat with electricity or use electricity to operate their heating system (such as for blower fans, circulators, and thermostats).

Note that LIHEAP also provides direct payments to tenants whose heat is included in the rent (with the exception of certain public housing/subsidized tenants whose heat is included in the rent, if the rent is capped at 30% or less of the tenant’s income). Therefore, tenants who pay rent and whose landlords provide the heat ARE eligible to apply for fuel assistance.

The maximum amount of payment assistance per household varies each year, and also by the type of housing where the customer lives (private rental v. public/subsidized). Payments in recent years have ranged from a few hundred dollars to \$1,000. To find out where to apply for fuel assistance in your area, call (800) 632-8175 or visit www.mass.gov/dhcd/publications/CRel.pdf.

Households can apply as early as November 1 each year, and the end date is usually in April. Households must reapply each year to get assistance.

Note that LIHEAP payments are NOT countable income for TAFDC, EAEDC, SSI, or Food Stamps, so it will not affect clients' benefit amounts. Further, receipt of any amount of LIHEAP entitles a Food Stamp recipient to receive the full *heating* standard utility allowance ("SUA") deduction against household income. As of 2007, the heating SUA is \$528.⁵ This means that receiving Fuel Assistance could in some cases significantly *increase* the household's Food Stamp allotment or make the household eligible for Food Stamps when it otherwise would not be. Recently, DHCD and DTA introduced the "H-EAT" (also called "Heat and Eat") program that directs \$1 of LIHEAP to food stamp households that otherwise are not receiving fuel assistance payments, for the purpose of qualifying the household for the SUA.

Low-income households not eligible for fuel assistance may be eligible for assistance from a variety of other sources, public and private, described below. However, LIHEAP serves far more households than any other program, and usually with larger payments than available through other programs. Therefore, it is always worth checking whether the household is eligible for LIHEAP assistance.

2. *Other Government Programs: FEMA, RAFT, etc.*

The Federal Emergency Management Agency ("FEMA") administers an **Emergency Food and Shelter Program ("EFSP")**, under which grants are allocated to counties and regions across the United States. In general, the EFSP pays no more than one month's utility bill and requires that the household has received a shut-off notice. In many areas of the state, the same agency that takes LIHEAP applications also administers the EFSP money. If not, the

⁵ See 106 C.M.R. § 364.400(G)(2)(a) & 364.945.

LIHEAP agency would know where a household would need to apply for an EFSP grant.

DHCD has for the past two years run **Residential Assistance for Families in Transition (“RAFT”)**, which has provided substantial help on utility bills (often several hundred dollars to even \$1,000) to approximately 1,000 households. The rules for the program change each year. The FY 2007 rules can be found at www.mass.gov/dhcd/Temp/raft/ProgSum07.pdf.

In general, to get RAFT assistance, the family must be homeless or at risk of homelessness, and the requested utility payments will be made only if they are part of a plan to get the family re-housed or to stabilize an at-risk household. The funds are administered by nine regional non-profit agencies whose contact information appears in Appendix E. During the past two years, funds became available during the summer (July to August) and were completely exhausted by the following winter (January to February). Any household that is considering applying should do so as early in this cycle as possible.

If the client receives TAFDC and is moving out of an emergency shelter and is having trouble getting utilities turned on in the new apartment due to an old arrearage, you should advise the client to apply for **relocation benefits** from DTA. Shelter clients can get up to \$1,000 to pay for expenses related to their new housing, including paying off past utility bills. This will help reduce the arrearage or pay it off entirely.

Various state agencies, such as the DTA or DSS, may every now and again have programs available that can help clients pay their utility bills, or be able on a case-by-case basis to help individual clients with some type of discretionary funds. Any household that receives assistance from a state agency (whether DSS, DTA, DMH, DHCD or any other agency) should ask his or her case worker whether the agency has any ability to help pay overdue utility bills.

3. *Charities and Non-Profit Agencies*

There are any number of charities, churches and non-profit agencies that provide utility bill-payment assistance on an individual and highly discretionary basis or as part of a more wide-spread program. It is always worth asking around locally – at churches, town halls, social service agencies, etc. – which sources are available at the local level. Some of the better-known sources that help with utility or heating bills include the following:

- **The Good Neighbor Energy Fund** generally provides a one-time grant to those with incomes between 200% and 275% of the FPL. For more information, go to www.magoodneighbor.org/assistance.html
- **Citizens Energy Corporation** operates an oil heat assistance program each year, although the exact terms of the program change somewhat year to year. Households who receive fuel assistance are eligible to apply, as well as households with slightly higher incomes. For more information about this program, go to www.citizensenergy.com/APohApply.htm.

For information about Citizens Energy's program for those who heat with natural gas, go to www.citizensenergy.com/APdisApply.htm.

- The **Heating Oil Alliance** program run by **Massachusetts Energy Consumers Alliance ("MassEnergy")**. The Heating Oil Alliance acts like a coop or buyers club, and its members are usually able to purchase oil at approximately 20 to 25 cents less per gallon than the prevailing market price. For more information, contact MassEnergy at 617 524-3950, or go to <http://massenergy.com/Oil.How.html>
- **The Salvation Army, United Way, and Catholic Charities** all provide some level of help with utility bills, but may not accept applications directly. Instead, the household may

have to apply to a local charity or agency that in turn gets its funding from these groups.

- Many **cities and towns** have access to small charitable bequests that residents have provided to help needy residents. It is always worth asking city or town hall if any such funds are available.

B. Indirect Assistance: Weatherization and Energy Efficiency

Heating and cooling bills in many households are too high due to drafts around windows and doors, poor insulation, or inefficient or broken heating units. “Weatherizing” the house or apartment, by fixing places where cold air infiltrates and adding insulation to walls and roofs, and tuning up or replacing old or inoperative heating systems can significantly reduce a household’s energy bills. Throughout the state, there are local organizations that provide weatherization and heating system services to low-income tenants and home owners. These same agencies can also replace old and inefficient refrigerators and other lights or appliances that waste energy. These programs run year-round. Priority is given to households in which someone is elderly, handicapped, Native American, or under the age of 7. To qualify for this assistance, household income must be under 60% of the median household income.

PRACTICAL TIP

Sixty percent of median income is generally higher than 200% of poverty. Therefore, households who are not eligible for fuel assistance (income is above 200% of poverty) may be eligible for weatherization services. To determine 60% of median income in Massachusetts, go to:
www.huduser.org/Datasets/IL/IL07/ma_fy2007.pdf.
Read the income figures on the "30% of median" line and multiply by 2 to get 60% of median.

To find the agency in your area that provides low-income weatherization and heating system repair/replacement services, call DHCD at (800) 632-8175 or read DHCD's "Cold Relief" brochure at www.mass.gov/dhcd/publications/CRel.pdf.

In some circumstances, tenants may be able to use the State Sanitary Code to help reduce wasteful consumption of energy in the tenant's apartment, although the Code sets only the most minimal requirements in terms of energy usage. A property owner is required to provide and maintain a heating system capable of heating the apartment to 68 degrees from 7 A.M. to 11 P.M., and to 62 degrees at night. (See 105 CMR 410.201). Owners must also repair broken windows and ensure that doors close properly. However, the Code does not require that an owner install efficient appliances or add insulation to walls or roofs that have little or no insulation.

A tenant who believes the owner is violating the Code in ways that cause the energy bills to be too high should notify the landlord, and should request that the landlord inspect the premises and make any needed repairs to the heating system, windows, doors, roof, etc. If the landlord does not do so within a few days, the tenant should call the housing inspector in the town or city and ask for an inspection, noting the particular problems that are affecting the heating bills. If the inspector finds violations of the housing

code, the city will require that the landlord make the necessary repairs.

There are steps that low-income households can take themselves to reduce energy bills. Any residential household can request its utility to conduct an energy audit that will help the household reduce wasteful use of energy. If the household is low-income, the utility may refer the request to local community action agency or other program that operates the fuel assistance and weatherization programs. On its own, the household can make sure that heating thermostats are turned down to low (but still comfortable) levels; that water thermostats are set at the low end of the range that provides adequate water temperatures; that windows are kept closed during the winter; and that low-energy compact-florescent light bulbs are installed in lighting fixtures. Homeowners should consider buying appliances that carry the “Energy Star” rating, when old appliances need to be replaced, and tenant should consider asking the owner to install only Energy Star appliances as well. The household’s local fuel assistance or weatherization agency (which can be found at www.mass.gov/dhcd/publications/CRel.pdf) can provide more detailed information on energy conservation measures households can take.

C. Food Stamp Program

Many low-income households are eligible for Food Stamps, and they should be counseled to apply for them. Receiving Food Stamps will save the household money on food, which will free up more money for utility bills. Moreover, low-income clients with heating and cooling bills may qualify for extra Food Stamps in two different ways:

Clients who pay for electricity to run an air conditioner in the summer are entitled to extra income deductions in the Food Stamp program year-round.

Under Food Stamp regulations,⁶ any household which has cooling costs – such as air conditioning, even from a window air conditioner – is entitled to the same FULL Standard Utility Allowance (SUA) that is given to households which incur heating costs. (The SUA is \$528 per month as of 2007⁷). This rule means that using an air conditioner for only a few months in the summer qualifies the household for the maximum utility deduction in calculating Food Stamps eligibility and benefits levels. This rule applies to households which pay either their landlord or a utility company for the electricity to run their air conditioners for any part of the year. Claiming the SUA can increase the household's Food Stamps by several hundred dollars per year. If the household uses any kind of summer cooling device, such as a window air conditioner, the household should report that to DTA so that the Food Stamps can be increased, in the event that the household is not already receiving the full SUA.

Clients who get Fuel Assistance (even in the amount of \$1) are entitled to extra income deductions in the Food Stamps program year-round.

Receipt of Fuel Assistance also entitles a food stamp recipient to receive the full heating SUA deduction against household income – even if the Fuel Assistance program picks up all of their heating costs. Therefore, receiving Fuel Assistance could in some cases *increase* the household's Food Stamp allotment or make the household eligible for Food Stamps when it otherwise would not be.

Under a program just begun in 2007, DTA will be making nominal \$1 fuel assistance payments to Food Stamp households that are otherwise not receiving fuel assistance. These \$1 payments will allow the households to claim the full heating SUA.

⁶ 106 C.M.R. § 364.400(G)(2)(a).

⁷ 106 CMR 364.9454.

D. Public/Subsidized Housing and Utility Allowances

Many tenants who live in public or subsidized housing and who pay their own utility bills are entitled to a “utility allowance,” in the form of a credit against the rent that would otherwise be due to the housing authority or property owner. Because energy prices are volatile and sometimes increase quickly, the utility allowance that any tenant receives can be out of date and inadequate. Tenants who receive utility allowances have the right to seek adjustments in those allowances to bring them more in line with current costs. Whenever the actual utility bills of a public or subsidized housing tenant are, say, 10% or more greater than the utility allowance being offered, the tenant should consider seeking an adjustment in the utility allowance. The process of seeking an increase in utility allowances can be challenging, so any tenants who are interested in doing so should seek the help of the local legal services program or other advocacy agency.

Other Problems That Arise in Protecting Utility Service

IX. Bills in Someone Else's Name

Sometimes an individual may have difficulty maintaining or restoring utility service due to bills that were actually rendered in someone else's name. This arises most commonly when two or more people reside in the same household (for example, husband and wife, or roommates) but the bills come in one person's name. The situation can also arise when one person (for example, a parent) puts the bill in someone else's name (for example, a child or other relative) without that person's knowledge or permission. In Massachusetts, only the "customer of record", that is, the customer whose name is on the bill, is responsible for paying for those bills. Generally, spouses, roommates or children are not responsible for the utility bills that are in someone else's name, even though that spouse or child or roommate lived in the household and benefited from having utility service in the apartment or home.

A. Surviving Spouse/Deserted Spouse

When one spouse's name is on the utility bill and that spouse dies, the surviving spouse is usually not held responsible for the bills that may have accumulated in the deceased spouse's name. For example, if the bills were in Jose Pena's name and he ran up an arrearage of \$500 just before he died, the utility company may try to hold his wife Maria Pena responsible for those bills. Maria should promptly call the utility; ask that a new account be opened in her name; and make sure not to agree that she is responsible for her bills – unless of course she wants to agree to be responsible. (Note, however, that if Jose left an "estate" when he died – money or other things of value – the estate would be responsible for the bills, and Maria would often be the beneficiary of her husband's estate).

However, according to an old law that is still in effect, a married woman is responsible for bills rendered in her husband's name — if the goods or services were “necessaries” such as utilities and if she has property worth more than \$2,000⁸ — but even then she is only liable to a maximum of \$100 “in each case.” It is unclear whether “in each case” means there is a \$100 cap for each monthly bill that is owed, or a \$100 cap on the recovery for the entire utility account. In either case if the utility seeks to hold the surviving spouse liable but the surviving spouse does not have property in the amount of \$2,000 or more, the spouse should insist that the deceased spouse's debt not be added to the new account. The surviving spouse should make this request as quickly as possible after the other spouse's death.

Similar rules apply when one spouse has deserted the household or been forced out by a court order. For example, if the bills were initially in the husband's name and he deserts the family leaving an arrearage of \$700 on the utility account, the wife should be able to call up the utility company; ask the company to set up a new account in her own name; and not be required to pay the husband's \$700 bill.

In either the surviving spouse or deserted spouse situation, the customer may need to call upon the assistance of an advocate or of the DPU's Consumer Division, in the event the company does not readily agree to keep the arrearage off of the new account.

B. Roommates

Similarly to the situation of two spouses, when one roommate who is the customer named on the utility bill moves out of an apartment, the remaining roommate is not responsible for the departed roommate's bills.

⁸ Mass. Gen. Laws c. 209, § 7.

X. Cross-Metering

The State Sanitary Code requires that the property owner pay for the utility bills (gas or electric), unless there is a separate meter that measures only the usage in the tenant's apartment and no other usage (105 CMR 410.354). For example, if a gas meter measures the usage in one tenant's apartment, but that same meter also measures consumption of a water heater that serves three units in the building, that metering arrangement is illegal. Any other situation where one tenant's meter measures that tenant's own consumption and any other usage in the building (for example, common laundry facilities in the basement, or hallway lighting, or part of someone else's apartment) is also illegal.⁹

If a customer believes that the owner has violated the provisions of the sanitary code regarding metering requirements, call the local board of health (or code inspection agency) and ask for an inspection. Make sure to tell the board of health that the customer believes there is a cross-metering problem, as the board may want to bring along the wiring or plumbing inspector.

If the board of health says that there is a metering problem, give a copy of the board's report to the utility company within sixty days. The law requires the utility company to switch the customer's entire bill to the landlord's name until the board of health certifies that the problem has been fixed. The company will usually have to refund all of the customer's utility bills that were paid during the period of improper metering, up to two years, if the customer paid for the heating, hot water, air conditioner, dryer, refrigerator, or freezer usage in another apartment or common area. If the incorrect metering only resulted in the customer paying for a common area light, door bell, smoke alarm, or fire alarm, the company will refund a total of \$10 per month for the relevant

⁹ There is an exemption for buildings with three or fewer units that allows the owner to put common hallway lighting on one tenant's meter, if the owner and tenant sign a written agreement acknowledging that the tenant must pay for the common area lighting. 105 CMR 410.254(B).

period. The company will then require the landlord to pay the remainder of the back bills.¹⁰

There is another kind of cross-metering in which the meters of two apartments are completely crossed. In this situation, each tenant is being billed for the utilities used by the other apartment. The DPU has ruled that this kind of cross-metering is the fault of the utility company, because the company has an obligation to test which meter belongs to which apartment and to get this right before sending the bills. If a customer thinks that he or she has been billed for someone else's energy use, call the utility company and ask the company to check whether the account numbers and meters in the company's records properly match up with the apartment units in the building. If it turns out that a customer's meter has been crossed with someone else's and that the customer has been overcharged, the company may have to refund all (or a portion) of the bills for the relevant period.

XI. Landlord-Tenant Situations

Sometimes, a property owner pays the utility bills for usage within a tenant's apartment. For example, the tenants may live in an old building that has only one gas-fired boiler or furnace, and the owner pays the gas heating bills. Or the tenants may live in an old building that has one "master meter" for all of the electricity in the entire building.

The Department has special rules that apply when the utility company terminates service to a property owner's account, if that termination will ultimately affect tenants living in the building. Those rules are contained in 220 CMR 25.04 (Appx. A.1). Companies are required to take reasonable steps to identify buildings where a property owner is paying for service to a residential building, and to identify the tenants by apartment number and address who would be affected by a termination. Prior to terminating service to the owner, the company must give

¹⁰ See 220 C.M.R. §§ 29.01-29.13 in Appendix A.2.

notice at least 30 days in advance to the tenants. This notice must include a “projected bill” (an estimate of the usage and billing for the next billing period) and clear notice of the right of the tenants to continue the utility service by paying the projected bills as they come due. The company cannot terminate the service, even if the tenants do not pay the entire projected bill, without first giving notice to the Department, and the Department will consider a variety of relevant facts in deciding whether to allow a termination to proceed, including: any amount the tenants have actually paid, relative to the projected bill; the number of vacant units in the building; whether the tenants are engaged in rent withholding; weather conditions; whether any of the tenants are seriously ill; the age of persons residing in the building; and other factors.

As this list makes clear, the Department is required to make the decision whether to allow termination of a tenanted building based on several factors unique to that building. Whenever tenants receive a notice that the owner’s service may be terminated for non-payment, the tenants should contact the Department’s Consumer Division as soon as possible, so that the Consumer Division can begin to gather all of the relevant facts. The tenants should also seek out the assistance of a local legal services program or tenant advocacy group, as negotiating with the Consumer Division as to the size of the payments that will be required can be a complicated process.

Issues Relating to Telephone Service

Local telephone service companies, like electric and gas companies, are now regulated by the Department of Telecommunications and Cable (as of April 11, 2007). As the result of a consumer lawsuit against NYNEX (now Verizon), DPU (which previously regulated phones) created a set of rules which directly governs Verizon's practices and must be used as a model for other companies' procedures. A copy of these rules (DPU 18448) can be found in Appendix H. The rules provide certain protections against disconnection of service and refusal to restore service. Other wireline companies are supposed to adopt similar rules, but you will probably have to ask the company to provide you with a copy of those rules as they may be not publicly available. Note that the telephone rules discussed below do not apply to wireless service.

XII. Lifeline/Link-Up Discounts¹¹

Local phone companies are required to offer programs for discounting service to low-income households. Verizon offers a discount called "Lifeline Telephone Assistance" to customers who receive TAFDC, EAEDC, SSI, Mass Health/Medicaid, Food Stamps, and Fuel Assistance/LIHEAP. This discount is a flat rate reduction, worth approximately \$18 per month. Application forms for the discount can be obtained from the company, although it can prove quite difficult to do so. Because Verizon can take a long time to process Lifeline applications, it is best for you to fax your client's application, along with verification that she or he receives a qualifying benefit, directly to the Lifeline office and follow up with a phone call to ensure that your client will start receiving the discount right away.

¹¹ Details of these programs are available at www.lifelinesupport.org/li/low-income/lifelinesupport/states/ma/verizonma.asp.

Verizon does not offer Lifeline discounts on all of its many calling plans. Customers who have some of the more expensive monthly plans may be told that they are not eligible because they get “enhanced” services (such as call waiting, 3-way calling, etc.) or have an expensive plan for which Lifeline rates aren’t available. In those instances, the customer should consider switching to a different plan in order to get the Lifeline discount, although the monthly bill might actually increase overall depending on the customer’s calling patterns and the plan chosen.

Local phone companies such as Verizon also offer the Link-Up America program, which allows eligible customers to get their phones connected or reconnected at half the normal cost, with the option of paying the half-price fee in installments over twelve months. Eligibility criteria are the same as for the Lifeline program. If your client’s phone was disconnected due to overdue bills, the company should reconnect the phone service at half the normal fee and work out a payment plan for the overdue arrearage.

If your client’s local phone service is or would be provided by another company, call the company to find out about its low-income assistance programs.

Finally, some charitable organizations and domestic violence programs will provide money towards overdue phone bills. There are also agencies that help homeless people set up voice mail boxes at no charge.

XIII. Personal Emergency, Serious Illness and Elder Protections

A. Personal Emergency

The company cannot terminate service if the customer can demonstrate that he or she is unable to pay the bill and that a personal emergency exists. DPU 18448, Rules 5.17 (Appendix H). If these conditions exist and the service already has been

terminated, the company must restore service. Situations involving domestic violence and a wide range of other problems should qualify as a personal emergency, because the customer or someone in the customer's household may need to be able to call 911, the police, a doctor, members of a support network, social service agencies, etc. In order to get this protection from termination of service, the customer simply has to write the company a letter explaining the nature of the emergency and why he or she cannot pay the bill. If the company refuses to provide this protection, the customer should contact the Department of Telecommunications and Cable ("DTC") for assistance at (617) 305-3531 or (800) 392-6066. The protection is only valid for 30 days.

B. Serious Illness (Rules 5.15–5.16)

A local phone service company cannot disconnect residential telephone service if someone in the household is seriously ill, needs the telephone service because of the illness, and cannot pay the bill due to financial hardship. If phone service has been terminated and these circumstances exist, the company must restore service. A customer in this situation should ask his or her physician to call the local phone company's business office and explain that a serious illness exists. The doctor's certification of the illness by telephone is initially sufficient to protect the phone service for 7 days.

To keep phone service on for longer than a week, the customer will need to provide a letter from the physician stating that a serious illness exists. The company is only required to accept the letter as proof of illness for thirty days. In order to keep service on longer than that, a new doctor's letter must be provided every thirty days. The protection may not be renewed more than twice. This restriction means that the maximum allowable period of protection is ninety days, i.e. the initial thirty day period plus two thirty day renewals.

Since the protection lasts 90 days at most, the customer at some point will have to fully catch up with any unpaid bills, or work out a payment arrangement with the company. (Rule 5.19, App. H). If

the telephone company refuses to agree to a reasonable payment plan , the customer should call the DTC consumer complaint line at (617) 305-3531 or (800) 392-6066 and ask for assistance.

C. Households in Which Everyone Is 65 or Older (Rules 8.1-8.4)

If every adult living in a household is 65 or older, local phone service companies cannot terminate service without the permission of the DTC. The DTC will not give this permission unless the company can show that it provided proper notice to the household, that it has made an attempt to secure payment “by reasonable means other than discontinuance,” and that it has not refused to accept any payment plan that is “just and equitable.” If the company refuses to accept an equitable payment plan, you or your client should call DTC for assistance because your client has the right to appeal to the DTC.

Issues Relating to Water and Sewer Service

XIV. Landlord-Tenant Issues

Under a law that first went into effect March 2005,¹² property owners now can require the tenants to pay for the water they consume in their apartment units, but only if several conditions are met. The owner must make sure that individual meters are installed by a licensed plumber in each unit where the tenants will be required to pay for the water. The owner must also make sure that low-flow showerheads and toilets are installed. The owner cannot require existing tenants (tenants who were living in the unit as of March 15, 2005) to pay for the water, even if the tenant renews a lease after that date; only truly new tenants can be required to pay for water. The owner must enter into a written agreement, signed by both the tenant and owner, clearly stating that the tenant is responsible for the water bills, and what the billing arrangements are.

Because an owner must meet *all* of these requirements, very few owners have switched over to sub-metering systems which would allow the owner to charge the tenant for water. If you hear of any such situations, please contact Charlie Harak at NCLC, charak@nclc.org.

¹² MGL ch. 186, § 22.

PRACTICAL TIP

In most areas of the state, water is provided by the local city or town. These municipal water departments are not regulated by the state as to their prices, terms or conditions. However, in areas where water is provided by privately owned companies, those companies are subject to the DPU's Billing and Termination Regulations, which appear in Appendix A of this book. See 220 CMR 25.01 (1), which defines those entities covered by the Billing and Termination Regulations.

How to Advocate

XV. Gather Facts; Call the DPU; Get the Help You Need

As Woody Allen once said, “Eighty percent of success is just showing up.” And at least 80% of succeeding on utility advocacy is simply gathering the relevant facts and making a few phone calls. A few pointers about how to do that follow.

First, always make sure to call the company before you call the DPU. If you do call the DPU first, the pre-recorded message makes it clear that you should call the company before asking the DPU to get involved.

Second, gather the relevant facts before calling the utility company, the DPU or any other agencies. At a minimum, if you are an advocate or social services worker helping the customer, make sure to have the customer’s name, address, and account number. Try to determine how large the monthly bills are, both for the bill that the customer is asking you to help with (e.g., a high gas bill) and any other utility bill that is not the customer’s immediate concern (e.g., the electric bill). Find out how large the arrearage is, and what the customer’s payment history has been (e.g., paid nothing for several months, or paid small amounts but slowly fallen behind, etc.).

Because the first step in protecting or restoring utility service is to assert any available protections, make sure to find out the ages of all household members and whether anyone has any physical, emotional or mental illness. Check whether the household is already on the discount rates and receiving fuel assistance.

These are the basic facts you will need in almost every case. Of course, other facts will be relevant depending on the individual situation. But regardless of the exact situation, you are more likely

to succeed when speaking to the utility or the DPU if you have a good grasp of the relevant facts.

Third, don't give up just because the first call you make does not succeed in solving your client's problem. For example, if you are speaking to a utility company customer service representative and that person says something you think is contrary to the law (for example, demands 75% of an overdue bill to prevent a termination of an existing account), you should ask for that person's supervisor. If you still believe that the company is taking a position that is contrary to law or simply the wrong thing to do, call on the DPU's Consumer Division for assistance.

Fourth, call upon help if you think you need it. The easiest way to get help quickly is to sign up for the utility "list serve" hosted by NCLC. The list serve is a means to communicate by e-mail with a large number of advocates, social workers, state agency employees, etc., who work on utility problems. By posting a question on the list serve, you are very likely to get a quick response. For information about how to join the list serve, contact Charlie Harak, charak@nclc.org. Also, in each area of the state, there are legal services programs that have agreed to provide advice on utility matters. To find out who the legal services backup is in your area, also contact Charlie Harak.

Appendix A.

Selected Massachusetts Utility Regulations

A.1 Billing and Termination Procedures of the Department of Telecommunications and Energy (220 CMR 25.00)

- 25.01: Applicability and Definitions
- 25.02: Billing and Termination Procedures for Residential Customers
- 25.03: Termination of Service to Customers During Serious Illness
- 25.04: Termination of Service to Accounts Affecting Tenants
- 25.05: Termination of Service to Elderly Persons
- 25.06: Construction

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the 20 days after the date of service of said decision, order or ruling. (M.G.L. c. 25, § 5 as most recently amended by St. 1971, c. 485.)

25.01: Applicability and Definitions

(1) **Application.** 220 CMR 25.00 shall apply to all gas, electric and water utility companies subject to the jurisdiction of the Department of Telecommunications and Energy and all municipal gas and electric departments, corporations and plants. Excluded from the application of 220 CMR 25.00 are the following: industrial accounts, commercial accounts not affecting tenants, and accounts affecting nursing homes, hotels, and motels.

220 CMR 25.00 supersedes all prior regulations of the Department of Telecommunications and Energy governing billing and termination procedures for gas, electric and water utilities.

If any part of the terms and conditions of any company are in conflict with 220 CMR 25.00, 220 CMR 25.00 shall be controlling.

(2) **Definitions.** The following terms, as used in 220 CMR 25.00 shall have the following meanings:

Bill, a written statement from a company to a customer setting forth the amount of gas, electricity or water consumed or estimated to have been consumed for the billing period set forth in the company's tariff and the charges therefor.

Budget Plan, an equalized payment arrangement whereby the customer's gas or electric usage is projected for a period, equal monthly charges are calculated and billed for said period, and said charges are reconciled with actual usage in the final billing for said period.

Company, a gas or electric company as defined in M.G.L. c. 164, a water company as defined in M.G.L. c. 165, or a municipal gas or electric department, corporation or plant established pursuant to any general or special law.

Customer, any user of gas, electricity or water billed on a residential rate as filed with the Department.

Department, the Department of Telecommunications and Energy, Commonwealth of Massachusetts.

Financial Hardship, shall exist when a customer is unable to pay an overdue bill and such customer meets income eligibility requirements for the Low-Income Home Energy Assistance program administered by the Massachusetts Department of Housing and Community Development, or its successor, or when the Director of the Department's Consumer Division, or his designee, determines that such a finding is warranted.

Heat Related Account, an account for gas or electric service which service supplies fuel or energy, as the case may be, to a space heating system or is used to activate the space heating system, of a customer or landlord customer.

Landlord Customer, one or more individuals or an organization listed on a gas, electric or water company's records as the party responsible for payment of the gas, electric or water service provided to one or more residential units of a building, of which building such party is not the sole occupant.

Payment Plan, a deferred payment arrangement applied to an amount of past due charges. Said arrangement shall extend over a minimum of four months, or such other period approved by the Department's Consumer Division, whereby equal payments of said past due charges in addition to currently due charges are billed to the customer.

Projected Bill, a written statement of the amount which would be owed if the same quantity of gas, electricity or water were supplied at current rates as was supplied for the same billing period during the previous year; but, if no service was rendered to the account during the same billing period for the previous year or if the demand for such service is significantly different from that of the previous year, such written statement shall be based upon a reasonable method of estimating charges for usage approved by the Department.

Receipt, in the case of a bill or notice required by 220 CMR 25.00, shall be presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

Residential Building, a building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

Service, gas, electric or water service.

Tenant, any person or group of persons whose dwelling unit in a residential building is provided gas, electricity, or water, pursuant to a rental arrangement, but who is not the customer of the company which supplies such gas, electricity or water.

25.02: Billing and Termination Procedure for Residential Customers

(1) **Billing and Payment.** All bills shall be payable upon receipt. However, no bill shall be considered “due” under applicable law or 220 CMR 25.00 in less than 45 days from receipt or in the case of gas and electric companies in less time than has elapsed between receipt of such bill and receipt of the most recent previous bill for the company’s services, whichever period is greater.

The initial bill after commencement of service shall not be “due” in less than 45 days from receipt, or in less time than has elapsed between receipt of such bill and the day upon which service was initially extended, whichever is greater.

No disputed portion of a bill which relates to the proper application of approved rates and charges, or the company’s compliance with 220 CMR 25.00, shall be considered “due” during the pendency of any complaint, investigation, hearing or appeal under 220 CMR 25.00.

(2) Actual Meter Reading and Estimated Bills

(a) A company shall make an actual meter reading at least every other billing period. A company may estimate a customer’s consumption of gas, electricity or water only if:

1. The procedure used by the company for calculating estimated bills has been previously approved by the Department;

2. The company clearly indicates that the bill is an estimate by use of the word “ESTIMATE” on the face of the bill, in close proximity to the amount thereof, and in a manner previously approved by the Department; and

3. The company has either scheduled readings for times other than normal business hours, or attempted by mail or by telephone to make an appointment with the customer, and provided cards on which the customer may record the reading; and

4. The company has not rendered an estimated bill to the customer for the billing period immediately preceding that for which the estimate is made.

(b) Notwithstanding the provisions of the 220 CMR 25.02(2)(a) the company may render an estimated bill for any billing period in which:

1. The customer has knowingly or willfully denied reasonable access to the company’s representatives for the purpose of taking an actual reading of the meter; or

2. The customer has otherwise made an actual reading of the meter unnecessarily difficult; or

3. Circumstances beyond the control of the company make an actual reading of the meter extremely difficult.

(3) **Termination of Service.** Except as elsewhere provided herein, service may be terminated only if:

(a) A bill is not paid within 45 days from receipt, or such longer periods as may be permitted by 220 CMR 25.02(1); and

(b) The company, not earlier than 27 days after the rendering of the bill (i.e. first request for payment), renders a second request for payment, stating its intention to terminate on a date not earlier than 48 days after the receipt of the bill in the case of gas and electric companies, and 46½ days in the case of water companies; and

(c) The company renders a final notice of termination not earlier than 45 days after receipt of the bill. Such notice must be rendered at least 72 hours, but in no event more than 14 days, prior to termination in the case of gas and electric companies; and at least 36 hours prior to termination in the case of water companies; and

(d) The bill remains unpaid on the termination date indicated on the notice. In no event shall service to a customer be terminated for failure to pay a portion of any bill which is the subject of a dispute pursuant to 220 CMR 25.02(4). However, a customer shall be responsible for and accordingly shall be subject to termination for non-payment of any portion of any bill which is not the subject of a dispute pursuant to 220 CMR 25.02(4).

Service shall not be terminated for any reason other than failure to pay a bill, unless the Department certifies its approval after giving both parties an opportunity to be heard. Such a hearing shall not be construed to be an “adjudicatory proceeding” as defined by M.G.L. c. 30A.

Nothing in 220 CMR 25.00 shall be construed to prevent termination for reasons of safety, health, cooperation with civil authorities or any other reason for which termination power is specifically granted in the Massachusetts General Laws.

When service to a customer has been terminated, the Director of the Department’s Consumer Division or the Director’s designee, may order resumption of service pending an investigation pursuant to 220 CMR 25.02(4).

Termination of service under 220 CMR 25.02 may be effected between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, provided that such day is not a holiday as defined in M.G.L. c. 4, § 7, cl. (18) or the day before such a holiday.

All bills shall contain, or be accompanied by, a brief explanation of the customer’s rights pursuant to 220 CMR 25.02(4). All second requests for payment referred to in 220 CMR 25.02(3)(b) and all termination notices referred to in 220 CMR 25.00 shall be accompanied by a brief explanation of the customer’s rights pursuant to 220 CMR 25.00.

(4) **Investigation and Appeal.** If any matter relating to the proper application of approved rates and charges, or the company’s compliance with 220 CMR 25.00, is subject of a complaint by the customer, the following procedure shall apply:

(a) The customer shall notify the company of the dispute by telephone, mail or in person. The company shall refer this matter to an employee assigned to investigate billing complaints. Such employee shall investigate and make a substantial effort to resolve the customer's complaint.

The customer shall be notified in writing as to the resolution of the complaint and the company shall keep a record of said correspondence for three years. Such notice shall also include the following statement: "If you still consider your bill to be inaccurate or if you continue to dispute the time over which your arrearage is to be paid, you have a right to appeal to the Department of Telecommunications and Energy.

Write:

Consumer Division
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110

or Call:

(617) 727-3531 or Toll-Free 1-800-392-6066
TTY (for the hearing impaired only): 1-800-323-3298

(b) If the customer disputes the company's written notice of decision, the customer shall notify the Department of Telecommunications and Energy Consumer Division that he wishes to appeal. A representative of the Department shall notify the company and thereafter shall conduct an investigation. Such investigation shall include an opportunity for each side in the dispute to be heard and may include a pre-hearing conference. Such hearing shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department representative shall rule promptly upon the appeal and notify the customer and company of his decision and of the right to appeal the decision to the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

(c) Within seven days of being notified of the decision of the Department's representative the customer and/or the company may request a hearing under M.G.L. c. 30A.

(5) **Orders.** Pending final determination of a dispute, the Director of the Department's Consumer Division or his designee may enter any temporary orders which he deems just and equitable including but not limited to restoration of service and payment plan arrangements.

Upon final determination of the dispute by the Department, the Department shall order service to be continued, restored, or terminated upon such terms and conditions as it deems equitable to both the customer and the company.

(6) **Payment and Budget Plans.** Each company shall make available payment plans and budget plans as an option to all customers for payment of accumulated arrearages and/or prospective billings, as the case may be.

All bills and notices specified by the Department shall contain language, approved by the Department, advising customers of the availability of the aforementioned plans.

(7) **Violation, Complaint.** Any customer or company aggrieved by any action in violation of 220 CMR 25.00 may at any time request a hearing before the Department by making a complaint in writing to the Department, provided that such matter has not been previously investigated by the Department.

(8) **Multiple Meters.** No company may bill any residential unit in a multiple residence on the basis of an estimated allocation of charges made from a reading from a single meter in such multiple residence.

(9) **Rate Classification.** Each customer shall receive, either through the mail or by hand delivery, no later than the initial billing on his or her account, a notice describing the rate on which he or she is charged. This notice shall include:

- (a) A statement that specific rates are available for particular uses, e.g., residential, heating, all-electric, commercial, time-of-use;
- (b) A statement that the customer should notify the company immediately if he or she is not charged at the most advantageous rate; and
- (c) A telephone number at the company which the customer may use to obtain additional information about available rates.

(10) **Customer of Record.** Whenever a new account is created for any service address, the company shall, at the time of the initial billing on this account, send separately to each listed customer of record a notice that such person is a customer of record. The notice shall include:

- (a) A listing as the customer appears on company records;
- (b) A statement that a customer of record is liable for all bills rendered on said account; and
- (c) A telephone number at the company which the customer may call to change his or her status with relation to this account, or to make corrections in the company's listing of name and address.

(11) **Form of Notices.** All written notices required by 220 CMR 25.00 shall contain such language and be in such form as shall be approved by the Department subsequent to the adoption of 220 CMR 25.00. The Department may require that such notices be written in languages other than English.

(12) **General Applicability.** The foregoing provisions of 220 CMR 25.02 shall apply to all billing and termination matters under 220 CMR 25.00 unless otherwise indicated.

25.03: Termination of Service to Customers During Serious Illness, Infant, and Winter Protection

(1) Statement of Protection from Shut-off due to Financial Hardship.

No company may shut off or refuse to restore utility service to the home of any customer if:

(a) It is certified to the company:

1. That the customer or someone living in the customer's home is seriously ill; or
2. That there is domiciled in the home of the customer a child under the age of 12 months and the customer's service has not been shut off for nonpayment before the birth of the child; or

3. Between November 15 and March 15, that the customer's service provides heat or operates the heating system and that the service has not been shut off for nonpayment before November 15; and

(b) The customer is unable to pay any overdue bill, or any portion thereof, because of financial hardship, as defined in 220 CMR 25.01(2).

(2) Procedure for Certifying Protections.

A claim of protection under 220 CMR 25.03(1) may initially be made by telephone. The telephone certification shall remain valid until the filing time periods specified hereunder have expired. In the case of serious illness, the telephone call must be made by a registered physician or local board of health official. In response to a claim of protection, the company shall forward to the customer a financial hardship form in such a form as shall be approved by the Department and shall instruct the customer or party acting on behalf of the customer that the financial hardship form forwarded to the customer must be filled out and returned to the company within seven days from the date of receipt. The company shall also, where applicable to the particular claim:

(a) Inform the customer or party acting on behalf of the customer that a registered physician or local board of health must forward to the company a certificate of serious illness within seven days from the date of notice. Said certificate shall state the name and address of the seriously ill person, the nature of the illness and the business address and telephone number of the certifying physician or local board of health; or

(b) Inform the customer or party acting on behalf of the customer that written certification must be forwarded to the company within seven days from the date of notice stating the name, birthdate and domicile of the child claimed to be under the age of 12 months. Certification may be in the form of a birth certificate, or a letter or official documents issued by a registered physician, local board of health, hospital or government official, Department of Transitional Assistance, clergyman, or religious institution. The company, in turn, shall determine within seven days from the date all certifications were due back whether all claims have been appropriately certified. If the company determines that any claim has not been certified, the company shall so notify the customer in accordance with the provisions of 220 CMR 25.03(8)(c). Notice to the customer shall include a statement of the customer's right to dispute the company's

determination by contacting the Department within seven days from the date of receipt of such notice.

(3) Conclusive Effect of Certificates. Certification of serious illness and infancy shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation.

A company which received fuel assistance payments in the prior winter season on behalf of a customer shall presume that customer meets the financial hardship guidelines set out in 220 CMR 25.01(2) and shall protect the account from November 15 through January 1, in order to give the customer sufficient time to apply for fuel assistance for the current winter season. If application for fuel assistance or other certification of financial hardship is not made by January 1 the company may pursue normal collection activity consistent with 220 CMR 25.00. For all customers, the company must provide financial hardship forms and appropriate instructions for completion on or before November 15.

A signed statement by the customer showing that his/her income falls within the financial hardship guidelines as set out in 220 CMR 25.01(2) shall be considered presumptive evidence of financial hardship unless otherwise determined by the Department.

(4) Renewal of Certification. In all cases where service is continued or restored pursuant to a claim under 220 CMR 25.03(1), the customer shall renew the financial hardship form quarterly. If the financial hardship is shown to be ongoing for the period November 15 to March 15, renewal shall be waived for that period. However, the provisions of 220 CMR 25.03(3) shall govern where certification of financial hardship occurs due to participation in a fuel assistance program the prior winter.

Certifications of serious illness shall be renewed monthly, except that where illness is certified as chronic, the serious illness certificate shall be renewed quarterly.

Certification of infancy shall remain in effect without renewal until the child reaches the age of 12 months.

(5) Notices. Collection notices shall be in such form as approved by the Department.

All arrearage notices shall be accompanied by a prominent written notice of the protections afforded by 220 CMR 25.03(1). No notice threatening termination of service shall be issued between November 15 and March 15 to any customer who has provided the company with a notice of financial hardship in accordance with 220 CMR 25.00, unless otherwise authorized by the Department.

(6) Appeal, Investigation and/or Hearing. If a company determines that a customer is not entitled to protection under 220 CMR 25.03(1) and the customer disputes this determination as provided in 220 CMR 25.03(2), the Company shall not terminate service pending resolution of the dispute. The Department shall

investigate and may order service to be continued, restored or shut off upon such terms or conditions as are just and equitable and consistent with 220 CMR 25.00.

Upon a finding by the Consumer Division of the Department that any company has failed to adhere to any of the provisions of 220 CMR 25.00 or to appropriately screen the accounts it pursues for termination between November 15 and March 15, it may require said company to obtain individual written permission from the Department, under terms the Department shall set, for each account or type of account that it desires to shut off.

(7) Procedure for Terminating Service. Upon entering any premises to shut off service to any customer therein pursuant to the provisions of 220 CMR 25.00, the company representative must, before shut-off, state to an occupant that service is to be shut off. He shall also present such occupant with a notice of the protections afforded customers under 220 CMR 25.03(1) and a financial hardship form. If the occupant claims protection, shut-off shall be postponed for 72 hours in order to allow the customer time to submit documentation supporting his/her claim or to obtain telephone certification from a physician, governmental agency, or religious institution as provided generally in 220 CMR 25.03(2). In the case of telephone certification, the company shall inform the calling party of the seven day deadline for submission of appropriate documentation as provided in 220 CMR 25.03(2).

If service is terminated to a home when none of its occupants is present, or when entry is not allowed by the occupant, the company shall leave a notice describing serious illness, infant and winter protections and a financial hardship notice at or under the occupant's door.

If, after having postponed termination due to an oral assertion of protection under 220 CMR 25.00, the company determines pursuant to 220 CMR 25.03(2) that a customer has not appropriately certified his or her claim for protection under 220 CMR 25.03(1) and the determination has not been appealed within seven days as set out in 220 CMR 25.03(8), the company may terminate service in accordance with 220 CMR 25.03(8).

During the period November 15 to March 15, in addition to the requirements set out above, the company shall give heating account customers telephone or personal notice of the impending shut-off no earlier than three days before the shut-off.

(8) Procedure for Terminating Service after Postponement.

Notwithstanding the provisions of 220 CMR 25.03(1) and 25.03(7), shut-off need not be postponed where a customer has not appropriately certified his or her claim for protection, and the company's determination that the customer does not qualify for protection has not been appealed within seven days as set out in 220 CMR 25.03(2). However, the right to shut off service shall arise only after the company has given the customer written notice of:

- (a) The proposed termination date and the reason therefor;
- (b) The protections afforded by 220 CMR 25.03(1); and

(c) The right to dispute any company decision adverse to the customer's claim for protection under 220 CMR 25.03(1) by writing or calling the Department within seven days of receipt of notice and the customer has failed to contact the Department within the allotted time. The Department's address and telephone numbers shall be provided in all notices as approved by the Department.

(9) **Violation of Regulations.** Willful violation of 220 CMR 25.03(1) through (8), as determined after hearing as provided in 220 CMR 25.02(4), by any gas, electric or water utility company subject to the Department's jurisdiction, or any municipal gas or electric corporation, shall result in the imposition of a penalty of \$100 for each violation.

25.04: Termination of Service to Accounts Affecting Tenants

(1) **Identifying Customers.** Each company shall devise procedures reasonably designed to identify, before termination of service for non-payment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E and 220 CMR 25.05.

(2) **Identifying Affected Tenants.** Each company shall devise procedures reasonably designed to identify the number and addresses, including apartment numbers, of tenants who may be affected by a planned termination of service to an account of a customer who has been determined, pursuant to procedures adopted under 220 CMR 25.04(1) to be a landlord customer. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E.

(3) **Termination of Service.** No company shall terminate service to any landlord customer for non-payment except in accordance with 220 CMR 25.03(1) and 220 CMR 25.04.

(4) **Pre-termination Notice to Landlord Customers.** Prior to the termination of service to any landlord customer for non-payment, the company shall give the landlord customer prior written notice of termination as required by M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E. Such notice shall contain the following information:

(a) The amount owed the company by the landlord customer for each affected account;

(b) The date on or after which service will be terminated, such date to be not less than 37 days after the date on which notice is first given to the landlord

customer;

(c) The date on or after which the company will notify the tenants of the proposed termination of their rights under 220 CMR 25.00, including their rights to withhold rent;

(d) The right of the landlord customer to avoid a termination of service by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the company to pay the balance; and

(e) The right of the landlord customer to invoke the procedures set forth in 220 CMR 25.02(4) and 220 CMR 25.03(1).

(5) Investigation and Appeal for Landlord Customers. The provisions of 220 CMR 25.02(4) shall be applicable to all disputes involving landlord customers.

In any proceeding pursuant to 220 CMR 25.02(4) the Department may require, among other things, that the landlord customer provide the names, addresses, and apartment numbers of each of the tenants who may be affected by a termination of service.

(6) Notice to Tenants. The company shall give a written notice, or notice in such form as is approved by the Department, of the proposed termination for non-payment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall not be rendered earlier than seven days following notification to the landlord customer pursuant to 220 CMR 25.04(4). However, if the landlord customer commences a proceeding pursuant to 220 CMR 25.04(5), such notice shall not be rendered until such proceeding has been concluded. In no event shall such notice be served upon the tenants less than 30 days prior to the termination of service to the landlord customer on account of non-payment. Upon affidavit, the Department may, for good cause shown by the company, reduce the minimum time between notification of the landlord customer and notification of the tenants.

The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

(a) The date on which the notice is rendered;

(b) The date on or after which service will be terminated;

(c) The circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in 220 CMR 25.04(7);

(d) The projected bill as described in 220 CMR 25.04(7);

(e) The statutory rights of a tenant:

1. To deduct the amount of any direct payment to the company from any rent payments then or thereafter due;

2. To be protected against any retaliation by the landlord for exercising such statutory right; and

3. To recover money damages from the landlord for any such retaliation.

(f) A telephone number at the company and at the Department which a tenant may call for an explanation of his rights.

The information in 220 CMR 25.04(6)(a) through 25.04(6)(f) shall be posted not less than 30 days prior to termination of service to the landlord by the company in those common areas of the building where it is reasonably likely to be seen by the affected tenants.

(7) Rights of Tenants to Continued Service

(a) At any time before or after service is terminated on account of non-payment by the landlord customer, tenants may apply to the company to have service continued or resumed. The company shall not terminate service or shall resume service previously terminated if it receives from the tenants an amount equal to a projected bill for the 30 day period commencing on the later of the date of the planned termination or the date service is resumed, whichever is later.

(b) Thereafter, the company shall notify each tenant of the total amount of the projected bill for the second and each succeeding period of 30 days or less. If the tenants fail to make payment of any projected bill before the start of the period for which the bill is projected, the company may commence termination procedures; provided that no such termination may occur until 30 days after each tenant has received written notice of the proposed termination. Such notice shall contain:

1. The date on or after which service will be terminated;
2. The amount due, which shall include the arrearage on any earlier projected bill due from tenants;
3. A telephone number at the company and at the Department which a tenant may call for an explanation of his rights; and
4. The right of a tenant, within seven days of the notice, to invoke the procedure for investigation and hearing set forth in 220 CMR 25.02(4).

(c) Tenants shall be considered customers for purposes of 220 CMR 25.02(4) and 25.02(5) and shall be entitled to dispute any matter relating to a projected bill in accordance with the provisions of 220 CMR 25.02(4).

(d) Notwithstanding anything contained elsewhere in 220 CMR 25.00, prior to any termination for non-payment which would affect tenants, the company shall notify the Department's Consumer Division by telephone of the proposed termination. Upon notice of such proposed termination, or during any hearing pursuant to 220 CMR 25.02(4), the Department may make inquiry of the parties as to the following matters, among others:

1. The amount the tenants have paid to the company in relation to the amount equal to one month's projected bill;
2. The number of vacant units in the building;
3. The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of Public Assistance checks, direct rent payments by the Department of Transitional Assistance to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;
4. Whether the tenants are engaged in rent withholding against their landlord;
5. The amount of payments recently received by the company from the

landlord and the size of the past due bill of the landlord;

6. Whether the company has pursued collection remedies, other than threatened termination of service, against the landlord;

7. Weather conditions;

8. The existence of illness of tenants in the affected units;

9. The ages of the persons residing in the affected units;

10. The availability of other housing to the tenants; and

11. The existence of, or potential for, terminations of service by other companies.

The Department may consider and give due weight to the above matters in any decision rendered pursuant to 220 CMR 25.02(5).

(8) Payment of Arrearage by the Tenants. For good cause shown upon affidavit of the company, the Department may hold a hearing and thereafter may require the tenants to pay a portion of the arrearage of the landlord customer's account deemed just and reasonable. The Department shall notify the landlord customer, the tenants and the company in writing of the date, time and place of the hearing. Payment of any portion of an arrearage may be required only if the company proves by substantial evidence that:

(a) The total monthly rent due the landlord from the tenants is greater than the projected bill for the same period of time;

(b) The tenants are not engaged in rent withholding against their landlord for any reason other than for the payment of the projected bill;

(c) There are no claims of other companies against the withheld rent; and

(d) Such a requirement will not impose an undue burden upon the tenants.

If more than one company claims the withheld rent, such companies, by mutual agreement, may join together in a single proceeding under 220 CMR 25.04.

(9) Larceny and Unauthorized Use of Gas, Electricity and Water. No company shall terminate service supplied through any meter or meter bypass to a residential building on account of larceny or unauthorized use thereof unless:

(a) The company has attempted to identify and collect from the proper party to be billed; and

(b) The company has given written notice to the tenants.

Such notice shall state:

1. The date on which the notice is rendered;

2. The date on or after which service will be terminated, such date to be not less than 30 days after the date of receipt of such notice;

3. That service will continue to a qualified party who agrees to pay for such service; and

4. That service will be continued through a master meter if the conditions established in 220 CMR 25.04(7) for continued service are met.

(10) Termination of Service for Reasons Other than Non-Payment.

Nothing in 220 CMR 25.00 shall be construed to prevent terminations for reasons

of safety, health, cooperation with proper civil authorities or any other proper reasons for which termination power is specifically granted in the General Laws.

Where service to a residential building is terminated on account of public health or safety, the company shall post a notice in a common hallway of the building stating the reason for the termination and the fact that service will be resumed if the danger to public health or safety is removed. The notice shall also include a telephone number at the company and at the Department which a tenant may call for an explanation of the situation and his rights. If any tenant disputes the existence of an unsafe condition, he may apply to the Department for an immediate determination of that issue.

The company shall notify the Department immediately, when feasible, of any termination required by public safety or health and, in any event, within 24 hours of such termination, excluding Saturdays, Sundays and holidays.

25.05: Termination of Service to Elderly Persons

(1) **Identifying Elderly Persons.** Each company shall devise procedures and methods reasonably designed to identify, before termination of service for non-payment, accounts affecting households in which all residents are 65 years of age or older. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by written notification, such modifications of the company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(2) **Third Party Notification.** If a customer 65 years of age or older so desires, the company shall provide to a third person designated by such customer notification of all past due bills [see 220 CMR 25.02(1)], notices of termination of service, and notices of right to a hearing at before the Department. In no event shall the third party so notified be liable for the account of the customer.

Each company shall devise procedures reasonably designed to provide a voluntary system of third party notification for all customers 65 years of age or older. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(3) **Termination Notice.** A company may terminate service to a household in which all residents are 65 years of age or older only after such company first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the company shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to 220 CMR 25.05(2) and the residents of such household. Such written notice shall state that an application to terminate has

been filed with the Department and shall set forth the rights of the residents of the affected household to a hearing before the Department pursuant to 220 CMR 25.05(4). Prior to approval by the Department of such application, no company may send notices threatening termination of service to any household which has notified the company that all residents of the household are 65 years of age or older.

The notices required by 220 CMR 25.05 shall contain language in accordance with 220 CMR 25.05(5) and shall be in such form as shall be approved by the Department prior to its use.

(4) **Investigation and Hearing.** The Department shall not approve an application for termination of service to a household in which all of the residents are 65 years of age or older unless the following facts have been established in the course of an investigation:

(a) The residents of the household, the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), and any third person designated pursuant to 220 CMR 25.05(2) have received proper notification of termination pursuant to 220 CMR 25.00.

(b) The company has in good faith attempted to secure payment by reasonable means other than termination; and

(c) The company has not refused to accept any monthly installment payment agreement which is just and equitable.

The scope of the investigation need not be limited to the issue cited above, but may include any matters relating to a billing dispute brought to the Department's attention.

In appropriate cases, the Department may hold a hearing as part of the investigation. However, such investigation need not include a hearing unless requested by a resident or a third person designated pursuant to 220 CMR 25.05(2). If a hearing is held as part of the investigation, it shall be conducted before a Department representative, but shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department shall notify the company, the residents and any third person designated pursuant to 220 CMR 25.05(2), and the Executive Office of Elder Affairs (or any agency designated by Executive Office of Elder Affairs for such purposes) of the results of the investigation and of the right of the company or residents to appeal the decision of the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

Within seven days of being so notified, the company, the residents, or any third person designated pursuant to 220 CMR 25.05(2) may request a hearing under M.G.L. c. 30A. If such a hearing is requested, no termination of service may occur until the proceeding has been concluded and a final order entered.

(5) **Special Information Notice.** All second requests for payment, notices of

termination of service, notices of right to a hearing before the Department and all other written communications by a company to a residential customer regarding bills for service shall contain on their face or include the following notice:

“If all residents in your house are 65 years of age or older, the company cannot terminate your service for failure to pay a past due bill without approval of the Massachusetts Department of Telecommunications and Energy (DTE). If you cannot pay your bill all at once, you may be able to work out a payment plan with the company. You have a right to a hearing at the DTE before termination. If you have any questions or want further information, call the company at (insert number) or the DTE Consumer Division at (617)-727-3531, Toll-free 1-800-392-6066 or TTY (for the hearing impaired only) 1-800-323-3298.”

(6) **Shut-off.** Upon entering any building to make a shut-off of service to any customer therein, pursuant to M.G.L. c. 164, § 124 and M.G.L. c. 165, § 11A, the company’s representative shall, prior to execution of the shut-off, state to an occupant of the home affected thereby that service is to be terminated. He shall also present such occupant with a notice as described in 220 CMR 25.05(5). If the company’s representative is told that all of the occupants of the household are 65 years of age or older, service shall not be terminated unless such termination has been approved by the Department. If the occupant is not present or denies entry, the company’s representative shall leave a notice as described in 220 CMR 25.05(5) at or under the occupant’s door.

25.06: Construction

Liberal Construction. 220 CMR 25.00 shall be liberally construed and in those instances where notice(s) or any other act(s) is (are) required, 220 CMR 25.00 shall be deemed to read in the aggregate.

A.2 Billing Procedures for Residential Rental Property Owners Cited for Violation of the State Sanitary Code 105 CMR 410.354 or 105 CMR 410.254 (220 CMR 29.00)

29.01: Scope and Purpose

29.02: Applicability

29.03: Definitions

29.04: Citation of Sanitary Code Violation

29.05: Tenant Customer Responsibility

29.06: Utility Company Responsibility

29.07: Determination of Retroactive Time Period and Amount of Property Owner’s Responsibility

29.08: Determination of Minimal Use Violation

- 29.09: Dispute and Hearing Procedure
- 29.10: Tenant Customer Refund
- 29.11: Due Dates
- 29.12: Exclusion
- 29.13: Waiver

29.01: Scope and Purpose

The purpose of 220 CMR 29.00 is to establish rules to implement the requirements of 105 CMR 410.354 and 105 CMR 410.254 of the State Sanitary Code and to establish procedures which allow electric and gas companies to bill owners of residential rental property for past utility service improperly billed to tenant customers in instances where an authorized agency has certified that a violation(s) of the State Sanitary Code existed during the occupancy of the tenant customer and such violation(s) pertained to the metering of electricity and/or gas.

29.02: Applicability

- (1) 220 CMR 29.00 applies to all investor-owned electric and gas companies and to all municipal electric and gas departments, corporations and plants subject to the jurisdiction of the Department of Public Utilities.
- (2) If any provision of the terms and conditions of any electric or gas company is in conflict with 220 CMR 29.00, 220 CMR 29.00 shall be controlling.
- (3) 220 CMR 29.00 is not intended to supersede or limit any rights or remedies available under the laws of the Commonwealth of Massachusetts.

29.03: Definitions

The terms set forth below shall be defined as follows in 220 CMR 29.00:
Certifying Agency, a state, city or town agency mandated to enforce the Sanitary Code regulations pursuant to 105 CMR 410.354 and 105 CMR 410.254.

Citation, a written report issued by a certifying agency for violation of 105 CMR 410.354 or 105 CMR 410.254.

Consumer Division, a division within the Department of Public Utilities. The Consumer Division may conduct informal hearings pursuant to 220 CMR 25.02(4)(b).

Correction Notice, a written report of correction of the Sanitary Code citation issued by the Certifying Agency.

Department, the Department of Public Utilities. The Department may conduct adjudicatory proceedings pursuant to M.G.L. c. 30A.

Minimal Use Violation, A Sanitary Code violation(s) pursuant to 105 CMR 410.354 or 105 CMR 410.254 that individually or in the aggregate includes interior and/or exterior common area illumination (excluding exterior flood

light(s)), smoke, fire and/or security alarm(s), door bell(s), cooking range, and common area electrical outlets, provided that the violation(s) does not also include the wrongful connection to the meter serving the dwelling unit of the tenant customer of heating, air conditioning, hot water heating, electrical pump(s), clothes dryer, refrigerator or freezer.

Property Owner, any person who alone or severally with others has legal title to any residential rental dwelling, dwelling unit, mobile dwelling unit, including a mobile home park; or any person who has care, charge or control of any dwelling, dwelling unit or mobile dwelling unit or mobile home park in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of title, or mortgagee in possession or agent, trustee or other person appointed by the courts, or any officer or trustee of the association of unit owners of a condominium.

Receipt, in the case of a bill or notice required by 220 CMR 29.00, receipt shall be presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

Sanitary Code, the regulations governing the metering of electricity and gas pursuant to 105 CMR 410.354 and 105 CMR 410.254.

Tenant Customer, an electric or gas company's current or former customer of record who was billed for electric or gas service for a period during which a Sanitary Code violation(s) existed as cited by a Certifying Agency.

Utility Company, an investor-owned electric or gas company or a municipal electric or gas department, corporation or plant subject to the jurisdiction of the Department.

29.04: Citation of Sanitary Code Violation(s)

(1) **Validity.** A citation issued by a Certifying Agency to the property owner shall be presumed accurate and the accuracy of the citation shall not be contested before the Department.

(2) **Effective Date of Citation.**

(a) The effective date of the citation shall be the actual date of inspection of the dwelling as referenced in the citation.

(b) If the actual date of inspection is not referenced in the citation, the effective date of the citation shall be the date that appears on the face of the citation issued to the property owner.

(3) **Effective Date of Correction of Violation.**

(a) The effective date of correction of the violation(s) set forth in the citation shall be the actual date of reinspection of the dwelling as referenced in the written correction notice issued by the Certifying Agency to the property owner. The property owner shall give such correction notice to the utility company pursuant to 220 CMR 29.06(3)(e);

(b) If the actual date of reinspection is not referenced in the correction notice, the effective date of correction of the violation(s) set forth in a citation, shall

be the date that appears on the face of the correction notice issued to the property owner;

(c) If more than 30 days elapse between the effective date of correction and the date of notice to the utility company of such correction, the property owner shall be responsible for paying for the electric or gas service provided to the tenant customer until the date that the property owner provides a copy of the correction notice to the utility company.

29.05: Tenant Customer Responsibility

(1) **Rental Agreement.** When a tenant customer is identified by the company as its customer of record, it will be presumed that the property owner and the tenant customer established a rental agreement that provides for the tenant customer to pay for the electricity or gas used in the dwelling unit which is the subject of the violation.

(2) **Obligation.** A tenant customer, within 60 days of receipt of a Sanitary Code citation pursuant to 105 CMR 410.354 and/or 105 CMR 410.254, shall provide the utility company with a copy of the citation and shall inform the utility company of the name and current address of the property owner subject to the citation. Failure of the tenant customer to provide the utility company with a copy of the citation within 60 days of its receipt shall bar the tenant customer from obtaining a refund pursuant to 220 CMR 29.00.

(3) **Occupancy.** A tenant customer may submit a copy of the citation to the utility company even if the tenant customer is not currently occupying the dwelling unit which is the subject of the citation. However, the tenant customer must have been an occupant of the dwelling unit and a tenant customer of the utility company at the time that the dwelling unit was inspected by the Certifying Agency and cited for a violation(s) pursuant to 105 CMR 410.354 and 105 CMR 410.254.

29.06: Utility Company Responsibility

(1) **Obligation.** Upon receiving a copy of a citation pursuant to 105 CMR 410.354 or 105 CMR 410.254, the utility company shall:

(a) Determine, pursuant to 220 CMR 29.08, whether the Code violation(s) meets the requirements of minimal use;

(b) Determine, pursuant to 220 CMR 29.07(1), the property owner's time period of responsibility for electric and/or gas service previously billed to the tenant customer;

(c) Determine, pursuant to 220 CMR 29.07(2) or 220 CMR 29.08(1), the amount previously billed to the tenant customer for the time period established pursuant to 220 CMR 29.07(1);

(d) Place in escrow the amount of money paid by or on behalf of the tenant

customer during the time period of the existence of the Sanitary Code violation as determined pursuant to 220 CMR 29.07 or 220 CMR 29.08(1); and

(e) Transfer the account of the tenant customer into the name of the property owner.

(2) **Notice To Tenant Customer.** Within 30 days of receipt of a Sanitary Code citation, a utility company shall inform the tenant customer in writing that:

(a) The account has been transferred into the name of the property owner;

(b) The amount incorrectly billed and paid by or on behalf of the tenant customer during the time period of the existence of the Sanitary Code violation pursuant to 105 CMR 410.354 and/or 105 CMR 410.254 as determined pursuant to 220 CMR 29.07(2)(a) or 220 CMR 29.08(1) has been placed in escrow;

(c) The tenant customer shall not be responsible for the cost of electric or gas service to the dwelling unit which is the subject of the violation, until the effective date of correction of the violation pursuant to 220 CMR 29.06(3)(d); and

(d) The tenant customer may dispute the dollar amount and/or the amount of time for which the property owner is responsible for electric or gas service previously billed to the tenant customer, by contacting the Consumer Division pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06.

(3) **Notice to Property Owner.** Within 30 days of receipt of a citation, an electric and/or gas company shall inform the property owner in writing that:

(a) The property owner's name shall appear as the customer of record on the account for the dwelling unit subject to the violation as of the effective date of the citation;

(b) The property owner is responsible for the cost of electric or gas service to the dwelling unit which is the subject of the violation, for the time period determined pursuant to 220 CMR 29.07(1);

(c) The property owner is currently responsible for paying the amount specified as determined pursuant to 220 CMR 29.07(2)(a) or 220 CMR 29.08(1).

(d) The property owner is responsible for paying for electric or gas service provided to the tenant customer until the effective date of correction of the Sanitary Code violation pursuant to 220 CMR 29.04(3);

(e) Upon correction of the Sanitary Code violation(s), the property owner must obtain a written correction notice from the Certifying Agency that the violation(s) has been corrected and the property owner must provide the utility company with a copy of such notice of correction within 30 days of the date of correction pursuant to 220 CMR 29.04(3);

(f) Upon receipt of the correction notice, a utility company shall remove the property owner's name from the account for the dwelling unit subject to the violation and the property owner shall no longer have financial responsibility for this account; and

(g) The property owner may dispute the dollar amount or the amount of time for which the property owner is responsible for electric or gas service previously billed to the tenant customer by contacting the Consumer Division of the Department pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06.

29.07: Determination of Retroactive Time Period and Amount of Property Owner's Responsibility

(1) **Time Period.** A utility company shall determine the time period of the property owner's responsibility for paying for service previously billed to the tenant customer resulting from the Sanitary Code violation(s) pursuant to 105 CMR 410.354 and/or 105 CMR 410.254 as the lesser of (a), (b) or (c):

(a) By calculating back two years from the effective date of the citation, pursuant to 220 CMR 29.04(2); or

(b) By referencing back to the date that the tenant customer became customer of record for service to the dwelling unit that is the subject of the violation; or

(c) By reviewing billing history for the dwelling unit that is the subject of the violation over a two year period back from the effective date of the citation, pursuant to 220 CMR 29.04(2) to determine the approximate date of commencement of the Sanitary Code violation(s).

(2) Amount.

(a) Unless calculating the property owner's responsibility on the basis of minimal use pursuant to 220 CMR 29.08(1), a utility company shall calculate the amount of the property owner's responsibility by determining the amount previously billed to the tenant customer for the time period established pursuant to 220 CMR 29.07(1).

(b) The property owner also shall be responsible for electric and/or gas service provided to the tenant in the dwelling unit subject to the violation(s) from the effective date of the citation pursuant to 220 CMR 29.04(2) to the effective date of correction pursuant to 220 CMR 29.04(3).

(c) A utility company shall not collect from a customer on account of failure to pay any bill due for gas or electricity furnished for domestic purposes any charges as, or in the nature of, a penalty pursuant to M.G.L. c. 164, § 94D.

29.08: Determination of Minimal Use Violation(s)

(1) **Minimal Use Violation(s).** A Code violation(s) that individually or in the aggregate includes interior and/or exterior common area illumination (excluding exterior flood light(s)), smoke, fire and/or security alarm(s), door bell(s),

cooking range, and common area electrical outlets. If any one or all of these energy users are cited by the Certifying Agency as wrongfully connected to the meter serving the dwelling unit of the tenant customer, provided the Certifying Agency has not also cited the wrongful connection of heating, air conditioning, hot water heating, electrical pump(s), clothes dryer, refrigerator or freezer on the meter serving the dwelling unit, the utility company shall bill the property owner \$10.00 per month for the retroactive time period determined pursuant to 220 CMR 29.07(1).

(2) **Dispute.** A tenant customer may dispute the utility company's classification of a Code citation as a minimal use violation(s) by contacting the Consumer Division of the Department pursuant to 220 CMR 25.02(4)(b) and 220 CMR 29.09(1) within 60 days of the date of the utility company's written notice issued pursuant to 220 CMR 29.06(2).

29.09: Dispute and Hearing Procedure

(1) The property owner or tenant customer may dispute the utility company's classification of a Code citation as a minimal use violation, or may dispute the time period and/or the dollar amount for which the property owner is responsible for electric or gas service provided to the tenant customer by contacting the Consumer Division of the Department, pursuant to 220 CMR 25.02(4)(b), 220 CMR 29.06(2)(d), 220 CMR 29.06(3)(g), and/or 220 CMR 29.08(2) within 60 days of the date of the written notice from the utility company pursuant to 220 CMR 29.06(2) and 220 CMR 29.06(3). The Consumer Division shall investigate the dispute and make findings.

(2) After the Consumer Division has informed the property owner, tenant customer and utility company of its findings, either the property owner, tenant customer or utility company may request an informal hearing before the Consumer Division. The request for an informal hearing must be filed in writing with the Consumer Division within 14 days of the date of notification of the findings of the Consumer Division's investigation.

(3) When an informal hearing is conducted, the Consumer Division shall issue a written decision. The property owner, tenant customer or utility company may, within 14 days, appeal the written decision to the Commission of the Department pursuant to 220 CMR 25.02(4)(c).

29.10: Tenant Customer Refund

(1) The utility company must refund to the tenant customer that amount which was incorrectly billed and paid by or on behalf of the tenant customer as determined pursuant to 220 CMR 29.07(2). Such refund may first be credited to any

outstanding balance on the tenant customer's account with the utility company for electric or gas service and any remaining refund amount shall be distributed to the tenant customer.

(2) Third party payments made by social service agencies or other charitable organizations on behalf of the tenant customer which form part of the refund amount may first be credited to any outstanding balance on the tenant customer's account with the utility company for electric or gas service and any remaining refund amount shall be distributed to the tenant customer.

(3) The utility company shall render a refund to the tenant customer no later than 30 days after the expiration of any applicable time period set forth in 220 CMR 29.00.

(4) When a written decision of the Consumer Division is appealed to the Commission of the Department, no monies shall be refunded until a final adjudicatory decision has been rendered.

(5) In no event shall an electric or gas company withhold the tenant customer's refund until the debt is collected from the property owner.

29.11: Due Dates

Failure to adhere to the applicable notice, dispute and hearing procedure dates set forth in 220 CMR 29.00 by either the property owner, tenant customer or the electric or gas company shall bar claims under 220 CMR 29.00 by the party who failed to adhere to the dates as set forth herein.

29.12: Exclusion

When it is shown that some of the electricity and/or gas used in a dwelling unit was registered by a meter other than the meter serving the dwelling unit which is the subject of the violation, and the electric or gas company's records show that the tenant customer was not billed for such usage, the tenant customer shall not recover a reimbursement of utility payments on the basis of a Code citation as contemplated by 220 CMR 29.00.

29.13: Waiver

The Department may, where appropriate, grant an exception to any provisions of 220 CMR 29.00.

Appendix B.

Sample Serious Illness Letters

I. Temporary Illness

A. Template

To Whom It May Concern:

[Name of patient] who resides at [address] is a patient of mine [or: is under my care]. [Name of patient] is being treated for [describe illness or condition], a serious illness.

Sincerely,
[Doctor's name and contact information]

B. Sample

To Whom It May Concern:

Graciela Ramos, who resides at 13 Wenwood Drive in Fairhaven, is currently under my care. I am treating her for bronchitis, a serious illness.

Sincerely,

Sharon Widmark, MD
273 Grandview Blvd.
Fairhaven, MA

508 652-0983

II. Chronic Illness

A. Template

To Whom It May Concern:

[Name of patient] who resides at [address] is a patient of mine [or: is under my care]. [Name of patient] is being treated for [describe illness or condition], a chronic illness.

Sincerely,
[Doctor's name and contact information]

B. Sample

To Whom It May Concern:

Graciela Ramos, who resides at 13 Wenwood Drive in Fairhaven, is currently under my care. I am treating her chronic depression, an illness of indefinite duration.

Sincerely,

Sharon Widmark, MD
273 Grandview Blvd.
Fairhaven, MA

508 652-0983

Appendix C.
Financial Hardship Forms

Appendix D.

Sample Letter to Utility that Refuses to Accept Serious Illness Letter

July 1, 2007

Rudy Representative
Powerful Power Company
Mudville, Mass.

Dear Mr. Representative:

My client, Belinda Jones, recently submitted a letter to the Company from her doctor stating that she is ill and under the doctor's care. I understand from our conversation that the Company is refusing to protect her account under the serious illness rules, apparently because the Company thinks that the letter does not include enough medical detail about my client's condition or because the Company thinks she isn't ill enough to justify protecting her account.

Please note that the regulations of the Department of Telecommunications and Energy completely preclude the option of a regulated company refusing to accept a serious illness letter or refusing to protect an account once a letter is submitted. 220 CMR25.03(3) specifically provides:

"Conclusive Effect of Certificates:
Certification of serious illness and infancy shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation."

This very plain language means that if the Company wishes to challenge my client's serious illness letter, it must petition the Department for review of the letter. In the interim, the letter is unquestionably valid and my client's account must be protected.

If you do fail to immediately protect this account, I, acting on behalf of my client, will pursue all legal options available.

Sincerely,

Sue N. Court, Esq.

Appendix E. Housing Consumer Education Centers' Coverage by Town/City

Berkshire Housing Development Corporation
74 North Street
Pittsfield, MA 01201
413-499-1630

Service Area: Berkshire County
www.berkshirehousing.org

Adams	Lanesborough	Pittsfield
Alford	Lee	Richmond
Becket	Lenox	Sandisfield
Cheshire	Monterey	Savoy
Clarksburg	Mount	Sheffield
Dalton	Washington	Stockbridge
Egremont	New Ashford	Tyringham
Florida	New Marlborough	Washington
Great Barrington	North Adams	West Stockbridge
Hancock	Otis	Williamstown
Hinsdale	Peru	Windsor

Community Teamwork, Inc.

167 Dutton Street
Lowell, MA 01852
978-459-0551, 800-698-0551

Service Area: North Middlesex and Essex Counties
www.comteam.org

Amesbury	Essex	Lynnfield
Andover	Georgetown	Manchester-by-
Beverly	Gloucester	the-Sea
Billerica	Groveland	Marblehead
Boxford	Hamilton	Merrimac
Chelmsford	Haverhill	Methuen
Danvers	Ipswich	Middleton
Dracut	Lawrence	Nahant
Dunstable	Lowell	Newbury

UTILITIES ADVOCACY FOR LOW-INCOME HOUSEHOLDS IN MASSACHUSETTS

Newburyport	Salem	Topsfield
North Andover	Salisbury	Tyngsborough
Peabody	Saugus	Wenham
Rockport	Swampscott	West Newbury
Rowley	Tewksbury	Westford

Franklin County Regional Housing and Redevelopment Authority

42 Canal Road

Turners Falls, MA 01376

413-863-9781

Service Area: Franklin County

www.fchra.org

Ashfield	Greenfield	Orange
Bernardston	Hawley	Rowe
Buckland	Heath	Shelburne
Charlemont	Leverett	Shutesbury
Colrain	Leyden	Sunderland
Conway	Monroe	Warwick
Deerfield	Montague	Wendell
Erving	New Salem	Whately
Gill	Northfield	

HAP, Inc. dba Hampden Hampshire Housing Partnership

322 Main Street

Springfield, MA 01105

HCEC: 413-233-1600, 800-332-9667

Service Area: Hampden and Hampshire Counties

www.haphousing.org

Agawam	Granby	Montgomery
Amherst	Granville	Northampton
Belchertown	Hadley	Palmer
Blanford	Hampden	Pelham
Brimfield	Hatfield	Plainfield
Chester	Holland	Russell
Chesterfield	Holyoke	South Hadley
Chicopee	Huntington	Southampton
Cummington	Longmeadow	Southwick
East Longmeadow	Ludlow	Springfield
Easthampton	Middlefield	Tolland
Goshen	Monson	Wales

Ware
West Springfield
Westfield

Westhampton
Wilbraham
Williamsburg

Worthington

Housing Assistance Corporation

460 West Main Street

Hyannis, MA 02601

508-771-5400, 877-852-9317

Service Area: Cape Cod and the Islands

www.haconcapecod.org

Barnstable

Bourne

Brewster

Chatham

Chilmark

Dennis

Eastham

Edgartown

Falmouth

Gay Head

Gosnold

Harwich

Mashpee

Nantucket

Oak Bluffs

Orleans

Provincetown

Sandwich

Tisbury

Truro

Wellfleet

West Tisbury

Yarmouth

Metropolitan Boston Housing Partnership, Inc.

125 Lincoln Street

Boston, MA 02111-2503

HCEC: 617-425-6700, 800-272-0990

Service Area: Greater Boston

www.mbhp.org

Arlington

Bedford

Belmont

Boston

Braintree

Brookline

Burlington

Cambridge

Chelsea

Everett

Lexington

Lynn

Malden

Medford

Melrose

Milton

Newton

North Reading

Quincy

Reading

Revere

Somerville

Stoneham

Wakefield

Waltham

Watertown

Wilmington

Winchester

Winthrop

Woburn

RCAP Solutions (formerly Rural Housing Improvement, Inc.)

205 School Street

Gardner, MA 01440

978-630-6600, 800-488-1969

Service Area: Worcester County and parts of Norfolk and Middlesex

www.rcapsolutions.org

Ashburnham	Harvard	Royalston
Ashby	Holden	Rutland
Athol	Hopedale	Shirley
Auburn	Hubbardston	Shrewsbury
Ayer	Lancaster	Southborough
Barre	Leicester	Southbridge
Bellingham	Leominster	Spencer
Berlin	Lunenburg	Sterling
Blackstone	Mendon	Sturbridge
Bolton	Milford	Sutton
Boylston	Millbury	Templeton
Brookfield	Millville	Townsend
Charlton	New Braintree	Upton
Clinton	North Brookfield	Uxbridge
Douglas	Northborough	Warren
Dudley	Northbridge	Webster
East Brookfield	Oakham	West Boylston
Fitchburg	Oxford	West Brookfield
Franklin	Paxton	Westborough
Gardner	Pepperell	Westminster
Grafton	Petersham	Winchendon
Groton	Phillipston	Worcester
Hardwick	Princeton	

South Middlesex Opportunity Council, Inc.

300 Howard Street

Framingham, MA 01702

800-296-6776, Home Center: 508-620-2675

Service Area: Greater Framingham and Metro West

www.smoc.org

Acton	Boxborough	Concord
Ashland	Canton	Dedham
Avon	Carlisle	Dover

Foxborough	Medway	Stow
Framingham	Millis	Sudbury
Holliston	Natick	Walpole
Hopkinton	Needham	Wayland
Hudson	Norfolk	Wellesley
Lincoln	Norwood	Weston
Littleton	Plainville	Westwood
Marlborough	Sharon	Wrentham
Maynard	Sherborn	
Medfield	Stoughton	

South Shore Housing Development Corporation

169 Summer Street

Kingston, MA 02364

781-422-4241, 800-242-0957

Service Area: Plymouth and Bristol Counties

www.southshorehousing.org

Abington	Hingham	Rehoboth
Acushnet	Holbrook	Rochester
Assonet	Hull	Rockland
Attleboro	Humarock	Scituate
Berkley	Kingston	Seekonk
Bridgewater	Lakeville	Somerset
Brockton	Manomet	Swansea
Bryanville	Mansfield	Taunton
Carver	Marion	Wareham
Cohasset	Marshfield	West Bridgewater
Dartmouth	Middleboro	Westport
Dighton	Mattapoisett	Weymouth
Duxbury	New Bedford	White Horse Beach
East Bridgewater	North Attleboro	Whitman
East Freetown	North Easton	
Easton	Norton	
Fairhaven	Norwell	
Fall River	Ocean Bluff	
Freetown	Onset	
Green Harbor	Pembroke	
Greenbush	Plymouth	
Halifax	Plympton	
Hanover	Randolph	
Hanson	Raynham	

Appendix F. 2007 HHS Poverty Guidelines*

Size of family unit	100% of guidelines	175% of guidelines	200% of guidelines
1	\$10,210	\$17,868	\$20,420
2	13,690	23,958	27,380
3	17,170	30,048	34,340
4	20,650	36,138	41,300
5	24,130	42,228	48,260
6	27,610	48,318	55,220
7	31,090	54,408	62,180
8	34,570	60,498	69,140
For each additional person, add	3,480	6,090	6,960

*Excluding Alaska and Hawaii.

These poverty guidelines are updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). The 2007 guidelines can be found on the Internet at <http://aspe.hhs.gov/poverty/07poverty.shtml>. Future updates to the guidelines will likely be available at <http://aspe.hhs.gov/poverty>.

Appendix G.

Discount Rate Applications

Fitchburg Gas and Electric Company/UNITIL

English:

http://services.unitil.com/content/pdf/Residential_discount.pdf

Spanish:

http://services.unitil.com/content/pdf/Residential_discount_spanish.pdf

Keyspan

www.keyspanenergy.com/docs/customer/billing/MADiscountRateApp.pdf

NGRID/Massachusetts Electric Company

www.nationalgridus.com/non_html/shared_low_income_appl.pdf

NStar Electric/NStar Gas

https://www.nstaronline.com/secure/nstarsecure3/residential/financial_assistance/discount_rate_app.asp

Western Massachusetts Electric Company

English:

[http://nuwnotes1.nu.com/apps/wmeco/webcontent.nsf/AR/discount_english/\\$File/discount_english.pdf](http://nuwnotes1.nu.com/apps/wmeco/webcontent.nsf/AR/discount_english/$File/discount_english.pdf)

Spanish:

[http://nuwnotes1.nu.com/apps/wmeco/webcontent.nsf/AR/discount_spanish/\\$File/discount_spanish.pdf](http://nuwnotes1.nu.com/apps/wmeco/webcontent.nsf/AR/discount_spanish/$File/discount_spanish.pdf)

Bay State Gas Company

(800) 688-6160

Fall River Gas Company (NE Gas)

(800) 544-4944

Berkshire Gas Company

(800) 292-5012

Appendix H.

Rules and Practices Relating to Telephone Service to Residential Customers

Any provider of intrastate telecommunications services in Massachusetts must comply with certain billing and termination practices for presubscribed residential customers, similar to those adopted by the Department for use by NYNEX - New England Telephone Company in docket D.P.U. 18448 (1977). These practices relate to billing and bill collection, residential telephone service termination, security deposit requirements and the rights of residential telephone customers to be heard on billing matters in dispute with their telecommunications company.

Companies who propose to provide telecommunications services to presubscribed residential customers should use the enclosed copy of RULES AND PRACTICES RELATING TO TELEPHONE SERVICE TO RESIDENTIAL CUSTOMERS as a template in preparing their own billing practices. To make the tariff process move along quicker in regard to residential billing and termination practices, a company may simply add the following to its Billing and Termination Practices section: The company will comply with D.P.U. 18448 in regard to its residential billing and termination procedures. A company may revise certain terminology and rules, or request exemption(s) from certain requirements, if such provisions, terms or rules are not applicable, as long as the change(s) and/or exemption(s) are not considered by the Department to result in substantive changes in a residential customer's rights.

D.P.U. 18448

RULES AND PRACTICES RELATING TO TELEPHONE SERVICE TO RESIDENTIAL CUSTOMERS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

Rule 1.1. Definitions.

- (a) "Adult" means any person eighteen years of age or older.
- (b) "Billing period" means a telephone service consumption period of not less than 26 nor more than 35 days.
- (c) "Company" means New England Telephone Company.
- (d) "Customer" means any past or present purchaser of telephone service supplied by the Company for residential purposes.

(e) "Delinquent account" means an account for residential telephone service which remains unpaid for at least 30 days after receipt of a bill prepared and delivered in accordance with these Rules.

"Department" means the Department of Public Utilities of the Commonwealth of Massachusetts.

(g) "Discontinuance of service" means a temporary cessation of telephone service caused by the Company and not voluntarily requested by a customer.

(h) "New service" means residential telephone service provided to a person who, at the time of application for the service, is not a person in whose name residential telephone service is currently being provided and who has not had his or her account removed for nonpayment within the preceding six months.

(i) "Personal emergency" means any situation in which lack of access to telephone service endangers the health or safety of a customer or a member of the household to which the service is furnished.

"Receipt", in the case of a written communication which these Rules require to be transmitted to a customer, shall be presumed to be three days after the date of mailing or, if such written communication is delivered rather than mailed, on the date of delivery.

(k) "Removal of account" means a permanent cessation of telephone service caused by the Company and not voluntarily requested by a customer.

(l) "Subsequent service" means residential telephone service provided to a person whose previous residential account has been removed for nonpayment within the six-month period immediately preceding the time at which application for service is made.

(m) "Transferred service" means residential telephone service provided at a new address to a person in whose name residential telephone service, at the time of the change of address, is currently being provided.

Rule 1.2. Written Communications. All written communications required by these Rules to be transmitted to a customer shall be sent only to the person and address specified by the customer. If the customer specifies a person or address different from the person to whom or the address at which service is to be provided, the Company shall then inform the customer that it will send all written communications to the specified person and address only.

PART 2. CUSTOMER INFORMATION ON RATES, SERVICES AND THE PROVISION OF THESE RULES

Rule 2.1. At the time any person applies for residential telephone service or for the conversion of one type of residential telephone service to another, a representative of the Company shall first explain the lowest-priced service and equipment available to residential customers in the area in which service is desired, together with all associated charges.

In addition, the Company representative shall advise each applicant for residential telephone service that a general description of services and equipment is available in the Introductory pages of each directory.

Rule 2.2. Prior to installation or conversion, each applicant shall be given a clear, complete and informative explanation, including charges, of all residential services and equipment available to customers in the exchange in which service is to be provided.

Rule 2.3. The Company shall print, in a conspicuous place in the introductory pages of all residential telephone directories furnished by the Company, (a) a description of all residential customer rights and responsibilities under these Rules and (b) a general description of available services and equipment.

Rule 2.4. The Department shall have power to disapprove, in whole or in part, the form and content of all written communications required by this Part 2, and to require amendments, deletions, or additions to such communications.

PART 3. BILLING AND PAYMENT STANDARDS

Rule 3.1. Billing Frequency. The Company shall render, on a monthly basis, a bill to every customer for all lawful charges that have been incurred by the customer in the billing period for which the bill is rendered. The bills required by this Rule 3.1 shall be sent to the customer not sooner than one day nor later than fifteen days after the close of said billing period. The Company may, for administrative reasons, render the first bill or the final bill for a residential account based on service provided for a period of less than twenty-six days. The Company may also, for administrative reasons, render a bill for a residential account on the basis of service provided for a period of less than twenty-six days or more than thirty-five days in the case of a change in the customer's telephone number or a change of an entire central office to a different billing cycle.

Rule 3.2. Payment of Bills. The Company shall allow each customer at least thirty calendar days, from the date of receipt of each bill, for payment in full. In the event a bill is not rendered with the frequency required by Rule 3.1 hereof, the Company shall allow, for payment in full, additional days equal to the number of days by which the date of receipt of the bill exceeds the billing frequency required by that Rule.

Rule 3.3. Computation of Payment Period. The date of receipt of a bill shall be as provided in Rule 1.1(j) hereof. If the actual receipt of a bill is disputed by a customer at a Department hearing under these Rules, such disputed issue shall be decided by the Department based on evidence presented at the hearing.

If the last calendar day for remittance falls upon a day when the offices of the Company regularly used for the payment of customer bills are closed to the general public, the final payment date shall be extended through the next business day.

Rule 3.4. Billing Information. Every bill rendered by the Company for residential telephone service shall be in writing and shall state clearly:

- (a) The beginning and ending dates of the current billing period;
- (b) The date by which payment in full must be made in order to prevent delinquency of the account;
- (c) The amount of all charges remaining unpaid for more than thirty days since receipt of a previous monthly bill, labelled **delinquent** as of a stated date;
- (d) The amount of all payments made to the account during the current billing period, labelled **payments and adjustments**;
- (e) The amount of the previous balance remaining unpaid as of the date of preparation of the current bill, labelled **outstanding balance before new charges**;
- (f) All new charges, including a clearly labelled statement of regular monthly charges, taxes imposed on services, and toll calls (including date of call, time of day at which call began, length of call, place and telephone number called, whether or not the call was rated as operator-assisted or direct-dialed, charge for the call and, if the call was made from any telephone number other than that to which it is billed, the area code and telephone number from which the call was made); and
- (g) The total outstanding balance in the account on the ending date of the current billing period, labelled **new balance**.

Rule 3.5. Charges and Billing for Installation, Connection and Restoration of Service.

(a) At the option of the customer, the Company shall prorate the charges for connection, installation, restoration, or reconnection of service in four equal portions over four monthly billing periods, with each equal portion of such charge appearing on each monthly bill. At the time any connection, installation, restoration, or reconnection is requested, the Company shall make known to the customer his or her right to have the charges for such services prorated.

(b) No customer shall be required to pay any part of such charge prior to the time that the customer receives the first monthly bill for services after such charge is incurred.

(c) No customer shall be required to pay any reconnection fee or other charge for restoration of service if service was discontinued by the Company in error or in violation of any provision of these Rules.

(d) If service to any customer is discontinued, either at the customer's request or pursuant to these Rules, prior to payment in full of any lawful charges prorated pursuant to this Rule 3.5, the entire amount of such charges shall thereupon be due and payable in full.

(e) Whenever a customer requests that service be transferred from one location to another, the Company may require payment of any undisputed delinquent charges as a condition of such transferred service.

Rule 3.6. Customer Protection Notices. All bills and notices of proposed discontinuance of service sent by the Company to a customer shall contain the following notices:

(a) **Right to Dispute Bill.** The following legend shall be printed on the front of the bill, in print no smaller than 1/8 inch in height, "RIGHT TO DISPUTE YOUR BILL-SEE REVERSE (or INSERT) FOR DETAILS."

The following message shall be included with the bill according to the form and manner set out below:

RIGHT TO DISPUTE YOUR BILL

If for any reason you believe your bill is wrong, you may call or write a Company representative and explain the amount you believe to be in error and the reason you believe there has been an error.

If, when you receive the decision of the Company representative, you still consider the bill wrong or are not satisfied, you have the right to appeal to the Massachusetts Department of Public Utilities by calling or writing the Department to request a hearing. Call or write:

CONSUMER DIVISION
DEPARTMENT OF PUBLIC UTILITIES
One South Station
Boston, Massachusetts 02110
Telephone (617) 727-3531 or 1(800) 392-6066

Your telephone service will not be shut off for failure to pay the portion of your bill which you are disputing.

If you need more time to pay, call the Company at the business office number shown on the front of the bill.

Rule 3.6.

(a) An explanation of customer rights and responsibilities is contained in the introductory pages of the telephone directory.

(b) **Bilingual Notice.** The Company shall print on the face of all bills and written notices required by these Rules to be transmitted to a customer the following legend in Spanish, Portuguese and in any other language which has been determined by the Company or the department to be the primary language of a substantial number of customers of the Company:

THIS BILL (NOTICE) IS IMPORTANT.
TRANSLATE IMMEDIATELY.

PART 4. SECURITY DEPOSITS AND GUARANTEES

A. Deposits.

Rule 4.1. New Service. The Company may require a deposit as a condition of new service only if the customer has an outstanding bill from previous telephone service and the bill is not in dispute. In addition, the Company may require payment of the outstanding bill or a satisfactory payment of arrangement therefor as a condition of such service.

Rule 4.2. Restoration of Discontinued Service. The Company may require a deposit as a condition of the restoration of service that has been discontinued. In addition, the Company may require payment of any undisputed delinquent charges as a condition of such restoration.

Rule 4.3. Subsequent Service. The Company may require a deposit as a condition of subsequent service. In addition, the Company may require payment of any undisputed delinquent charges as a condition of such service.

Rule 4.4. Other Standards Prohibited. The Company shall not require a deposit as a condition of service except in the circumstances prescribed in Rules 4.1, 4.2 and 4.3 hereof. In no case in which a deposit is permitted by these Rules, shall the Company base a determination to require such deposit upon residential location, race, color, creed, sex, age, national origin or any other criteria not authorized by these Rules.

B. General Deposit Conditions.

Rule 4.5. Terms and Conditions of Deposits.

(a) A deposit required by the Company as a condition of new service shall not exceed the amount of \$50.

(b) A deposit required as a condition of the restoration of service which has been discontinued or as a condition of subsequent service shall not exceed an amount equal to two times the average bill during the preceding six-month period for service at the customer's premises.

(c) Six months following the date on which a deposit has been made, and each month thereafter, the Company shall analyse the customer's account. If satisfactory credit has been established in accordance with Rule 4.5(f) hereof, the deposit shall be refunded. If satisfactory credit has not been established, the deposit may be retained and the Company shall make a determination whether the deposit held is inadequate or excessive. A deposit shall be deemed adequate if it equals two times the customer's average bill for the preceding six months, within a \$10 tolerance. If the deposit exceeds this figure, a refund of the excess shall be made. If the deposit is less than this figure, the Company may request an additional sum equal to the amount of the inadequacy.

(d) Interest at the rate of 6% per annum shall be payable on all deposits. Interest shall be credited semi-annually to the service account of the customer or paid upon the return of the deposit, whichever occurs first.

(e) Upon termination of service, the deposit, with accrued interest, shall be credited to the final bill, and any credit balance shall be returned promptly to the customer.

(f) The credit of a customer shall be established as satisfactory and any deposit and accrued interest shall be refunded promptly by the Company upon timely payment by the customer of all proper charges for telephone service for a period of six successive months. For purposes of this Rule 4.5 (f), payment shall be deemed timely if made prior to the issuance of a notice of discontinuance of service for nonpayment in at least four of the preceding six months and if there has been no discontinuance for nonpayment in accordance with these Rules during the same period.

(g) The Company shall maintain a detailed record of all deposits received from customers, showing the name of each customer, the address of the customer at the time of making the deposit, the customer's current address, the date of making and amount of deposit, and the date and amounts of interest paid.

(h) At the time of making a deposit, each customer shall receive a written receipt containing at least the following information:

- i. Name of customer;
- ii. Place of payment;
- iii. Date of payment;
- iv. Amount of payment;
- v. Identifiable name and signature of the Company employee receiving payment; and
- vi. Statement of the terms and conditions governing the receipt, retention and return of deposit funds.

(i) A customer's failure to produce the deposit receipt described in Rule 4.5(h) hereof shall not deprive the customer of the right to the refund to which the customer is otherwise entitled.

(j) The Company may withhold the deposit pending the resolution of a discontinuance of service for nonpayment that is disputed under these Rules.

C. Guarantees.

Rule 4.6. The Company may, at its option, accept a written payment guarantee in lieu of a deposit authorized by Part 4 hereof. The Company may not require a written payment guarantee from any customer ready, willing and able to make a deposit as authorized by these Rules. The company shall develop policies which specify the circumstances in which it will accept a written payment guarantee in lieu of a deposit, shall make those policies known to all customers and service applicants upon whom deposit demands are made, and shall apply those policies uniformly.

D. Right to Appeal Company Decisions Concerning Deposits.

Rule 4.7. All decisions by the Company concerning the propriety of requiring a deposit and the amount of any such deposit shall be appealable in accordance with the provisions of Part 6 hereof.

E. Refunds of Existing Deposits and Termination of Guarantee Agreements.

Rule 4.8. Within sixty days of the effective date of these Rules, the Company shall refund, with accrued interest, all deposits held as security on residential accounts and terminate all guarantee agreements that are inconsistent with these Rules. The Company may credit to the undisputed delinquent account of a customer the amount of any refund due that customer under the provisions of this Rule 4.8. The Company shall notify each customer that the refund or credit to the customer's account was made in accordance with these Rules.

PART 5 DISCONTINUANCE OF SERVICE AND REMOVAL OF ACCOUNTS

A. Grounds for Discontinuance of Service and Removal of Account.

Rule 5.1. Subject to the requirements of these Rules, the Company may discontinue service to a customer and remove the account of said customer for any one or more of the following reasons:

- (a) Nonpayment of a delinquent account amounting to \$25 or more;
- (b) Failure to make and maintain a deposit authorized by Part 4 hereof;
- (c) Use of the telephone service in a manner which is unlawful under the laws of the Commonwealth of Massachusetts or of the United States, or which is in violation of any tariff approved by the Department;
- (d) Failure to comply with the terms and conditions of a deferred payment agreement made or established in accordance with the provisions of Part 7 hereof;
- (e) Refusal to grant a duly authorized representative of the Company access to equipment upon the premises of the customer at reasonable times for the purpose of inspection, maintenance or replacement; and
- (f) Misrepresentation of identity for the purpose of obtaining telephone service.

Rule 5.2. Notwithstanding the provisions of Rule 5.1(a) hereof, the Company shall not discontinue service or remove an account where the total amount of the most current bill is less than the amount of any deposit held by the Company in connection with the service sought to be discontinued or the account sought to be removed.

Rule 5.3. Neither of the following shall constitute sufficient cause for the Company to discontinue service or remove an account:

- (a) The failure of the customer to pay for concurrent service received under separate account or at a separate residence or at a separate location; nor
- (b) The failure of any person, other than the customer against whom discontinuance of service or removal of account is sought, to pay any charges due to the Company.

B. Notices of Discontinuance of Service.

Rule 5.4. Except as provided in Rule 7.4 hereof, the Company shall not discontinue service pursuant to Rule 5.1 hereof unless written notice by first class mail is sent to the customer or personally served at least fifteen days prior to the date of this proposed discontinuance. Service of notice by mail shall be complete upon mailing. The Company shall maintain an accurate record of the date of mailing of all discontinuance notices.

Rule 5.5. A notice of discontinuance of service for nonpayment of a delinquent account shall not be issued until the account has become delinquent as defined in these Rules.

Rule 5.6. A notice of discontinuance of service shall not be issued for nonpayment of a delinquent account if the entire amount of such delinquent account is the subject of a pending complaint pursuant to Part 6 hereof. The Company, however, may issue a notice of discontinuance of service with respect to that portion of any delinquent account that is not the subject of a pending complaint pursuant to Part 6 hereof. Should service be discontinued, the Company shall defer removal of the account until the dispute has been resolved.

Rule 5.7. Except as provided in Rule 7.4 hereof, notices of discontinuance of service shall contain the following information:

(a) The telephone number, name and address of the customer and the delinquent amount;

(b) A clear and concise statement of the reasons for the proposed discontinuance of service;

(c) The date on or after which service will be discontinued unless the customer takes appropriate action;

(d) A statement of the appropriate action the customer may take to prevent discontinuance;

(e) The customer protection notices required by Rule 3.6 hereof;

(f) The serious illness and personal emergency notice required by Rule 5.20 hereof;

(g) A statement concerning the protection provided to elderly persons by Part 8 hereof; and

(h) A statement that if service is discontinued, the customer may be required to pay, as a condition of the restoration of such service, the delinquent balance, the appropriate charge for restoration of service (under the terms and conditions specified in Rule 3.5 hereof) and any deposit authorized by Part 4 hereof.

Rule 5.8. In addition to the notices required by Rules 5.4 and 5.7 hereof, the Company shall not discontinue service without first mailing to the customer a reminder of discontinuance notice. Such notice shall be mailed five days prior to the discontinuance date specified in the notice of discontinuance and shall contain the information required by Rule 5.7 hereof.

Rule 5.9. Two days prior to the discontinuance date, the Company shall make a telephone call to remind the customer of the proposed discontinuance. If the Company is unable to reach the customer, no additional call need be made.

Rule 5.10. Service shall not be discontinued, pursuant to Rule 5.1 hereof, on a day, or a day immediately preceding a day when the services of the Company are not available to the general public for the purpose of reconnecting discontinued service. Notwithstanding any other provision of these Rules, the Company shall not discontinue service on any day, except during the hours between 8:00 a.m. and 4:00 p.m.

The Company shall discontinue service only within a ten-day period after the date specified pursuant to Rule 5.7(c) hereof. Thereafter, the Company may discontinue service only after another notice of discontinuance of service has been issued in accordance with Rules 5.4 and 5.7 hereof.

In the event the Company has agreed to extend the time for payment, and the customer does not pay as promised, service may be discontinued after the Company has provided a three-day notice of discontinuance to the customer.

If the last day of the three-day notice period required by the preceding paragraph of this Rule 5.10 fails upon a day on which the postal service does not deliver mail, then that notice period shall be extended through the next day on which mail is delivered.

C. Removal of Account.

Rule 5.11. The Company shall not remove an account pursuant to Rule 5.1 hereof unless written notice by first class mail is sent to the customer or personally served at least ten days prior to the date of the proposed removal. Service of notice by mail shall be complete upon mailing. The Company shall maintain an accurate record of the date of mailing of all notices of removal of account.

Rule 5.12. A notice of removal of account shall not be issued until service to the account has been discontinued pursuant to Section B of Part 5 hereof.

Rule 5.13. A notice of removal of account shall not be issued for nonpayment of a delinquent account if any portion of such delinquent account is the subject of a pending complaint pursuant to Part 6 hereof.

Rule 5.14. Notices of removal of account shall contain the following information:

- (a) The telephone number, name and address of the customer,
- (b) A clear and concise statement of the reasons for the proposed removal of account;
- (c) The date on which service to the account was discontinued;
- (d) A statement that the customer may have service restored by making satisfactory arrangements, within ten days from the date of notice of removal of

account for the payment of the delinquent balance, the appropriate charge for restoration of service (under the terms and conditions specified in Rule 3.5 hereof) and any deposit authorized by Part 4 hereof.

(e) A statement that if the customer fails, within ten days, to make the arrangements specified in Rule 5.14(d) hereof, the account will be removed, and the customer will be required to re-apply for service and to pay, as a condition of such service, the delinquent balance, the appropriate service installation charge, and any deposit authorized by Part 4 hereof.

(f) The customer protection notices required by Rule 3.6 hereof;

(g) The serious illness and personal emergency notice required by Rule 5.20 hereof; and

(h) A statement concerning the protection provided to elderly persons by Part 8 hereof.

D. Serious Illness and Personal Emergency.

Rule 5.15. Notwithstanding any other provision of these Rules, if the customer claims that there is a seriously ill person residing in the household Where service is provided, the Company shall postpone discontinuance of service if the customer can demonstrate that he or she is unable to pay an outstanding bill for telephone service and that continued access to the telephone is required because of the serious illness. If service has already been discontinued, it shall be restored. Such postponement or restoral shall be predicated on the receipt of certification of the illness by a registered physician. The certificate shall state the name and address of the seriously ill person, the nature of the illness, and the physician's office address and telephone number.

Certification shall be valid for the duration of the illness or thirty calendar days, whichever is less, and shall be renewable twice under The same conditions.

Rule 5.16. A certification of serious illness shall be sufficient if initially made by telephone. In such event, the Company shall inform the certifying physician that a written certificate setting forth the information required by Rule 5.15 hereof must be forwarded to the Company within seven days. If the Company does not receive written certification of the serious illness within seven days, it shall make its best efforts to contact the customer and the certifying physician prior to discontinuing service.

Rule 5.17. If the customer claims in writing and can demonstrate that he or she is unable to pay an outstanding bill for telephone service and that a personal emergency exists, the Company shall postpone discontinuance of service or shall restore service if it has already been discontinued. The period of postponement of discontinuance of service shall not exceed thirty days; and if service has been discontinued it shall be restored for a period not to exceed thirty days.

Rule 5.18. Any decision by the Company to deny a postponement of discontinuance of service or to refuse to restore service, purporting to be made pursuant to Rules 5.15, 5.16 or 5.17 hereof, shall be appealable in accordance with Part 6 hereof.

Rule 5.19. In cases where telephone service is continued or restored pursuant to Rules 5.15, 5.16 or 5.17 hereof, the customer must, no later than the end of the postponement or restorable period, (a) pay all undisputed delinquent amounts in full, (b) enter into a deferred payment agreement for such amounts pursuant to Part 7 hereof, or (c) request the department to establish a deferred agreement for such amounts pursuant to Part 7 hereof. If the customer fails to make one of such payment arrangements, the Company may discontinue service.

Rule 5.20. All notices of discontinuance of service and all notices of removal of account shall contain the following message according to the form, letter size, boldness and manner set out below (underlined words shall be in bold print):

**RIGHT TO TELEPHONE SERVICE
DURING SERIOUS ILLNESS AND
PERSONAL EMERGENCY**

If you or anyone living in your home is **SERIOUSLY ILL** and you can demonstrate that continued access to the telephone is required due to that illness and that you are unable to pay your bill, we will continue or restore your telephone service during such illness for a period up to 30 days. In order to have service continued or restored, you must have a registered physician certify, in writing to us, that such illness exists.

If the **SERIOUS ILLNESS** continues beyond 30 days, service may be continued for an additional 30 days upon receipt of a second certificate from your physician. If the **SERIOUS ILLNESS** continues beyond this additional 30 days, service may be continued for a final 30-day period upon receipt of a third certificate from your physician.

If there is **SERIOUS ILLNESS**, please call or have your physician call our Business Office immediately.

* * * * *

If you can demonstrate that there is a **PERSONAL EMERGENCY** which endangers the health or safety of someone in your household and you require continued access to telephone service and are unable to pay your bill, we will continue your telephone service for a period not to exceed 30 days. You must inform the Company, in writing, of the reason why you are unable to pay your bill and the nature of the emergency.

* * * * *

Before the end of any extension period granted because of **SERIOUS ILLNESS** or **PERSONAL EMERGENCY**, you must either pay your past due bills in full or enter into a payment arrangement satisfactory to you and the Company.

You may appeal any refusal of the Company to furnish service where a **SERIOUS ILLNESS** or **PERSONAL EMERGENCY** exists by contacting the

CONSUMER DIVISION
DEPARTMENT OF PUBLIC UTILITIES
One South Station
Boston, Massachusetts 02202
Telephone: (617) 727-3531 or XXXX

PART 6. COMPLAINTS AND DISPUTED CLAIMS

Rule 6.1. If any matter relating to a bill is disputed by the customer, the following procedure shall apply:

(a) The customer shall notify the Company of the dispute by telephone, mail or in person. The Company shall refer this matter to an employee assigned to investigate billing complaints. Such employee shall investigate and make a substantial effort to resolve the customer's complaint.

If the customer notifies the Company by telephone or in person of a complaint concerning charges billed to his or her account, and such complaint is resolved to the customer's satisfaction during the Initial telephone or personal contact, no written notification to the customer shall be necessary unless requested by the customer.

In situations involving customer complaints that require further Investigation, the customer shall be notified in writing in all cases where the results of the Investigation are not favourable to the customer. Such notice shall include

the following:

If you still consider your bill to be inaccurate in any respect or if you have any other complaint pertaining to this matter, you have a right to appeal to the Department of Public Utilities within three months of receipt of this notice.

WRITE:

CONSUMER DIVISION
DEPARTMENT OF PUBLIC UTILITIES
One South Station
Boston, Massachusetts 02202

Telephone: (617) 727-3531 or 1.800.392.6066
TTY 1.800.323.3298

Decisions favourable to the customer may be communicated by telephone.

(b) If the customer disputes the Company's written notice of decision, the customer may notify the Department's Consumer Division within three months of receipt of such notice that he or she wishes to appeal. A representative of the Department shall notify the Company and thereafter shall conduct an investigation. Such investigation shall include the opportunity for each side in the dispute to be heard, but such hearing shall not be construed to be an adjudicator proceeding as defined by Chapter 30A of the General Laws.

The Department representative shall rule promptly upon the dispute and notify the customer and Company of the decision and of the right to appeal the decision in an adjudicatory proceeding of the Department under Chapter 30A of the General Laws.

(c) Within seven days of being notified of the decision of the Department's representative, the customer and/or the Company may request a hearing under Chapter 30A of the General Laws.

Rule 6.2. Pending final determination of a dispute, the Department may enter any temporary order that It deems just and equitable.

In the absence of an order by the department to continue service, the Company may discontinue service for nonpayment of any undisputed amount in accordance with Part 5 hereof.

Upon final determination of the dispute by the Department, the Department shall order service to be continued, restored or discontinued, or the account removed upon such terms and conditions as it deems equitable to both the customer and the Company.

Rule 6.3. Any party aggrieved by any action in violation of these Rules may at any time request a hearing before the Department by making a complaint in writing to the Department, provided that such matter has not been previously investigated by the Department. For good cause shown, the Department may re-open a matter previously investigated.

Rule 6.4. If a customer requests a hearing before the Department, the customer shall pay to the Company an amount equal to that part of the bill which is not in dispute. Failure of the customer to pay the amount not in dispute, or failure of the customer to pay in accordance with a deferred payment agreement entered into or established pursuant to Part 7 hereof, with respect to the amount not in dispute, on or before the date set by the Department to hear the complaint, shall constitute a waiver of the customer's rights to continued service pending resolution of the dispute. The Company may then proceed to discontinue service as provided in Part 5 hereof.

Rule 6.5. At the hearing, the Department representative shall decide, after hearing argument from all parties, whether the matter in dispute involves (a) disagreement as to the facts of a customer's case, (b) disagreement as to the proper application of the Company's tariff or any order or regulation of the Department to the facts of the customer's case, or (c) disagreement with the Company's tariff or any order or regulation of the Department. If the Department representative concludes that the dispute involves any matters set forth in (a) or (b) above, the Company shall not discontinue service to the customer until final resolution of the dispute by the Department. If, however, the Department representative concludes that the dispute involves solely matters described in (c) above, he or she shall immediately inform all parties that the Company may forthwith discontinue service as prescribed in Part 5 hereof.

Rule 6.6. With respect to any hearing held by a Department representative following this Part 6, both the customer and the Company should have the right:

- (a) To represent themselves or to be represented by counsel or other person of their choice;
- (b) To present evidence, testimony, and oral and written argument; and
- (c) To confront, question and cross-examine witnesses appearing on behalf of the other party.

Rule 6.7. In all cases in which discontinuance of service or removal of account may result from a decision by the Department, the Company shall bear the burden of proof that grounds for such action, as set forth in Rule 5.1 hereof, in fact exist.

Rule 6.8. A hearing held pursuant to Rule 6.1(b) hereof need not be recorded or transcribed, and all evidence relevant to the dispute shall be received. The formal rules of evidence shall not apply.

Rule 6.9. Upon the closing of the record, the Department representative shall state his or her findings and decision orally and shall issue a complaint determination in a form approved by the Department. Such complaint determination shall contain the following and become a part of the record:

- (a) A concise **summary** of the evidence and argument presented by the parties, and
- (b) The decision of the Department representative and the reason therefor.

Rule 6.10. Prior to the issuance of a complaint determination, the Department representative may propose to the parties a settlement of all matters in dispute. Acceptance of the proposed settlement by both parties shall be binding upon them. The agreement shall be reduced to writing, signed by both parties in the presence of the Department representative and made part of the hearing record.

Rule 6.11 The complaint determination shall be binding upon the parties unless appealed as provided in these Rules.

PART 7. DEFERRED PAYMENT

Rule 7.1.

(a) If the customer claims inability to pay an outstanding bill in full, the Company shall inform the customer of the Company's policies with respect to deferred payment agreements.

(b) A deferred payment agreement shall be in writing and signed by the customer or his or her representative and a Company representative authorized to enter into the agreement. An agreement reached by telephone shall be confirmed by the Company in writing and mailed to the customer with instructions to sign a confirming copy and return it in a prepaid, self-addressed envelope as provided.

Rule 7.2. A deferred payment agreement may not include a finance charge.

Rule 7.3. If the parties cannot agree to a deferred payment plan, the Company shall notify the customer of his or her right to request a Department hearing on the matter, and service may not be discontinued, except as provided in Part 5 hereof. Either party may request a hearing at the Department as provided in Part 6 hereof. The Department shall have the authority to establish between the parties a binding deferred payment agreement containing reasonable conditions. For purposes of determining conditions under this Rule, the Department shall consider:

- (a) The size of the account;
- (b) The customer's ability to pay;

- (c) The customer's payment history;
- (d) The time the debt has been outstanding;
- (e) The reasons why the debt has been outstanding; and
- (f) Any other relevant factors concerning the circumstances of the customer.

Notwithstanding any other provision of this Rule, the Department shall establish a deferred payment agreement only if (a) the customer demonstrates that he or she is faced with financial hardship; (b) no other such agreement between the parties is outstanding; and (c) the customer agrees to pay all other bills from the Company as they become due; provided, however, the Department or the parties may reconsider a previous agreement because of changed circumstances or information which was not reasonably available at the time the agreement was reached. In no event shall the Department establish a deferred payment agreement providing for payments, which extend for a period exceeding eight months.

Rule 7.4. The Company may discontinue service to any customer due to the customer's failure substantially to comply with the terms and conditions of a deferred payment agreement. Said right shall arise, however, only after the Company gives the customer five days' written notice of the proposed discontinuance and the reasons therefor.

In the last day of the notice period required by this Rule 7.4 fails upon a day on which the postal service does not deliver mail, then that notice period shall be extended through the next day on which mail is delivered.

PART 8. TELEPHONE SERVICE OF ELDERLY PERSONS

Rule 8.1. Identifying Elderly Persons. Within thirty days after the effective date of these Rules, the Company shall devise procedures reasonably designed to identify, before discontinuance of service for nonpayment, accounts affecting households in which all adult residents are sixty-five years of age or older. Such procedures shall be submitted by the Company in writing to the Department for approval.

A customer may request the protection afforded by this Part 8 by submitting to the Company, on a form supplied by the Company, the account number, service address and the name and date of birth of each adult resident of the household. Such forms shall be sent to all customers annually.

If a customer in a household in which all adult residents are sixty-five years of age or older desires, the Company shall provide to a third person designated by such customer notices pertaining to discontinuance of service and removal of account. In no event shall the third person so notified be liable for the bills of the customer.

Rule 8.2. Notification. Upon receipt of the form described in Rule 8.1 hereof, the Company shall verify the information and immediately identify the account. The Company shall then send to the household, in the name of the customer, the following notification:

We have noted on our records that all adults residing in your household are 65 years of age or older.

This means that, for as long as this situation exists, the Telephone Company will not discontinue your service for failure to pay a past due bill without the approval of the Massachusetts Department of Public Utilities. If you cannot pay your bill all at once, you may be able to work out a deferred payment arrangement with the Company. You have a right to a hearing before discontinuance.

If you have any questions or want further information, call the Company at the Business Office number shown on your bill or contact:

CONSUMER DIVISION
DEPARTMENT OF PUBLIC UTILITIES
One South Station
Boston, Massachusetts 02202

Telephone: (617) 727-3531 or 1.800.393.6066

Rule 8.3. Application for Approval to Discontinue Service. The Company may discontinue service to a household in which all adult residents are sixty-five years of age or older only after it first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the Company shall concurrently give written notices to the adult residents of such household, any third person designated pursuant to Rule 8.1 hereof and the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes). Such written notice shall state that an application for approval to discontinue service has been filed with the Department and shall explain the provisions for a Department Investigation of the matter pursuant to Rule 8.4 hereof.

The notices required by this Rule 8.3 shall include the information set forth in the notice required by Rule 8.2 hereof and shall be in such form as shall be approved by the Department prior to its use.

Rule 8.4. Investigation and Hearing. Upon receipt of an application for approval to discontinue service in accordance with Rule 8.3 hereof, the Department shall verify that the household qualifies under Rule 8.1 hereof. The Department shall not approve an application for discontinuance of service to a household in which all adult residents are sixty-five years of age or older unless the following facts have been established in the course of an investigation:

(a) The adult residents of the affected household, any third person designated pursuant to Rule 8.1 hereof and the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes) have received proper notice of the application for approval of discontinuance pursuant to these Rules.

(b) The Company has in good faith attempted to secure payment by reasonable means other than discontinuance.

(c) The Company has not refused to accept any payment arrangement which is just and equitable.

The scope of the investigation need not be limited to the issues cited above but may include any matters relating to a billing dispute brought to the Department's attention.

In appropriate cases, the Department may hold a hearing as part of the investigation. However, such investigation need not include a hearing unless one is requested by an adult resident of the affected household, any third person designated pursuant to Rule 8.1 hereof, the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes) or by the Company. If a hearing is held as part of the investigation, it shall be conducted before a Department representative but shall not be construed to be an adjudicatory proceeding as defined by Chapter 30A of the General Laws.

The Department shall notify the adult residents of the affected household, any third person designated pursuant to Rule 8.1 hereof, the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes) and the Company of the results of the investigation and of their right to appeal the decision in an adjudicatory proceeding of the Department under Chapter 30A of the General Laws.

Within seven days of being so notified, the adult residents of the affected household, any third party designated pursuant to Rule 8.1 hereof, the Department of Elder Affairs (or any agency designated by the Department of Elder Affairs for such purposes) or the Company may request a hearing under Chapter 30A of the General Laws. If such a hearing is requested, no discontinuance of service may occur until the proceeding has been concluded and a final order entered.

PART 9. ADOPTION OF ADDITIONAL PRACTICES

Rule 9.1. The Company may adopt such other reasonable practices governing its relations with customers as are necessary and appropriate and consistent with these Rules. The Company shall file a copy of such practices, including all revisions thereto, with the Department of Public Utilities.

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