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1. **INTRODUCTION: SOURCES OF LAW**

In 1981, the New York State Legislature enacted the Home Energy Fair Practices Act (HEFPA), which established a comprehensive set of statutory rights and protections for residential electric and gas customers.\(^1\) It has been referred to as a utility service “bill of rights”, designed “to insure continued utility service as part of the public weal.”\(^2\) In 1986, the Legislature extended HEFPA protection to consumers served by large private water companies.\(^3\)

In 1991, the Legislature implemented the shared meter law, which was later amended in 1995. The shared meter law extends HEFPA protection to tenants receiving gas and/or electricity by a shared meter, a utility meter that measures the gas and/or electricity inside and outside a tenant’s dwelling and that is not under the tenant’s exclusive use and control.\(^4\) In 2002, the HEFPA statute was modified by the Energy Consumer Protection Act of 2002 (“ECPA”).\(^5\)

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\(^3\) A large water company is one with gross revenues in excess of $250,000. N.Y. Pub. Serv. Law § 50 (Consol.).

\(^4\) Laws 1991, ch. 654, § 1, eff Oct 24, 1991. The Shared Meter Law may be found in Section 52 of the Public Service Law of New York State, PSL § 52. The Public Service Commission’s regulations on shared meters are in 16 N.Y.C.R.R. sections 11.30-11.32.

These modifications made HEFPA protections applicable to the transactions between residential customers and competitive energy suppliers called energy service companies (“ESCOs”).

HEFPA is implemented and interpreted principally through New York Public Service Commission (“PSC”) regulations, PSC decisions and orders, and by the New York State courts. Only a few reported court decisions have arisen from the HEFPA law and its accompanying regulations. The issues addressed by these cases include:

- residential customer termination protections concerning seizure of a utility meter (replevin cases);
- residential customer application protections;
- the validity of a municipal ordinance requiring gas service pipe to be installed on private property by a licensed plumber, which conflicted with Public Service Law

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6 PSL § 30; 16 NYCRR § 11.1.
7 16 NYCRR Part 11, §§ 11.1-11.32. Additionally, 16 NYCRR Part 12, §§ 12.1-14, provides the Commission’s consumer complaint procedures in detail. Other parts of the PSC regulations address various aspects of the relationship between utilities and their customers. These include 16 NYCRR Part 14 (water service supplied by waterworks corporations with annual gross revenues in excess of $ 250,000), 16 NYCRR Parts 90-105 and 136-145 (electric service), and 225-232 and 270-277 (gas service). They address subjects including: meter testing (Parts 92, 226 and 228); residential sub-metering (Parts 96 and 231); contents of bills (Parts 140 and 273); interest on customer overpayments (Parts 145 and 277); insulation standards (Part 233) (upheld in Oil Heat Institute, Inc. v. Public Service Com., 91 Misc.2d 109, 397 N.Y.S.2d 315 (N.Y. Sup. Ct. 1977); and non-residential termination and complaint procedures (Part 13). These will not be examined in detail here.
8 Brooklyn Union Gas Co. v. Richy, 123 Misc.2d 802 (N.Y.C. Civ. Ct. Kings Co., 1984) (holding denied the gas company's applications for an order allowing the city marshal to seize customer’s meters because the affidavits in support of its request for writs of replevin contained hearsay and fact allegations based on “information and belief,” and were insufficient to show its compliance with HEFPA termination procedures); Consolidated Edison Co. v. Jones, 111 Misc.2d 1, 444 N.Y.S.2d 1018 (N.Y. Civ. Ct. 1981) (holding denying the utility’s applications for orders permitting removal of customers’ utility meters because the utility’s affidavit in support of its request for a writ of replevin failed to allege whether defendant customer’s account was commercial or residential, and lacked sufficient facts to demonstrate compliance with HEFPA pre-termination notice requirements and procedures applicable to medical emergencies, the elderly, blind or disabled, or during the cold weather period.
provisions that require utilities, upon a request for service, to extend and install new service lines to buildings on private property.\textsuperscript{10}

The PSC’s HEFPA regulations (16 NYCRR Part 11) govern “the rights, duties and obligations of [utilities] subject to the jurisdiction of the commission...their residential customers and applicants for residential service.”\textsuperscript{11} These regulations establish the legal parameters for utility service from its installation to termination.

An important facet of these regulations concerns the rights of utility customers who file a complaint against its utility provider. The consumer protections afforded by HEFPA are administratively enforced by PSC employees through specific complaint procedures designed by the agency. Although the PSC has the sole authority to resolve utility complaints and disputes brought by customers, utilities must also establish their own complaint handling procedures in compliance with HEFPA, which serve to minimize customer complaints requiring PSC intervention.\textsuperscript{12}

Additionally, when utility service is provided by an ESCO, the PSC has the power to revoke an ESCO’s eligibility to provide electric or gas commodity if an excessive number of legitimate complaints are brought against it. The PSC also evaluates complaint metrics for

\textsuperscript{10} \textit{Consol. Edison Co. of N.Y. v. City of New Rochelle}, 140 A.D.2d 125, 532 N.Y.S.2d 521 (2d Dept. 1988) (holding that the municipality’s requirement imposed additional regulations in an area where the Legislature had evinced its intent to preempt the field).

\textsuperscript{11} 16 NYCRR § 11.2(a).

\textsuperscript{12} For example, PSL § 32.2 requires utilities, prior to terminating services, to notify customers of the utilities’ complaint procedures, in addition to those of the PSC.
utilities it actively regulates and may establish performance incentives or sanctions to address a high complaint rate.\(^{13}\)

The remainder of this chapter will describe and explain the various PSC regulations governing HEFPA rights and protections as applied by the PSC in detail.

2. **APPLICATIONS FOR UTILITY SERVICE**

2.1 **Oral and written applications.** Applications for residential electric or gas service may be made orally or in writing.\(^{14}\) Generally, a utility is required to provide service within 5 business days of receipt of a completed oral or written application for service, so long as the applicant does not owe the utility money for residential service provided to a prior account in his or her name.\(^{15}\) When an applicant applies for service by phone, the application will be considered complete when he or she provides a name, address, telephone number and the address or account number of any prior account.\(^{17}\) Utilities may require reasonable proof of identify and proof of the applicant’s responsibility for service at the premises to be supplied, so


\(^{14}\) PSL § 31(1) and 16 NYCRR § 11.3(a)(1).

\(^{15}\) 16 NYCRR §§ 11.3(a)(2) & 11.3(a)(4). Even if an applicant has prior debt with the utility, the utility cannot deny service to the applicant if he makes full payment of the past debt or agrees to make payments under a deferred payment plan of the past debt; or if he has a billing dispute pending at the Public Service Commission concerning the past debt or the Commission requires the utility to provide service regardless of the prior debt; or if the applicant is a recipient of or an applicant for public assistance, supplemental security income benefits or other State assistance and the utility is notified by the applicant’s local department of social services that he is entitled to receive benefits which will be applied towards the prior debt. 16 NYCRR §§ 11.3(a)(2)(i)-(v).

\(^{16}\) He or she shall be used interchangeably throughout this chapter and the manual to denote gender.

\(^{17}\) 16 NYCRR § 11.3(a)(4)(v).
long as procedures are non-discriminatory, and service can be denied to applicants who refuse to provide reasonable proof of identity.\textsuperscript{18}

A utility may require an applicant to complete a written application \textit{only if}:\textsuperscript{19}

(1) there are arrears at the premises to be served and service was terminated for non-payment or is subject to a final notice of termination;

(2) there is evidence of meter tampering or theft of service;

(3) the meter has advanced and there is no customer of record;

(4) the application is made by a third party on behalf of the person(s) who would receive service; and

(5) the utility notifies the applicant of the written application requirement and its basis for asking for one as soon as practicable after the oral request for service is made, and in no event more than 2 business days after the request. If the utility is unable to contact the applicant by phone, it must send a written notice to the applicant no later than the 2nd business day after the request for service is received.

A written application may require the same information required in an oral application.\textsuperscript{20}

When a written application is required, the utility may require the applicant to provide a copy of a lease, deed, bill of sale or other documentation to confirm the date when the applicant became

\textsuperscript{18} Id. However, the PSC has ruled that a utility company may not refuse service to an applicant who does not provide a social security number when requested to confirm his identity; other forms of ID may be provided. In PSC Case No. 96-M-0706, \textit{Memorandum and Resolution Adopting Amendments to 16 NYCRR Part 11} (Feb. 17, 1998), the Commission determined that “While social security numbers, voluntarily obtained, are one common method to validate identity, it is not and should not be the only one. Companies should not rely solely on any one form of identification. Companies should make every effort to accept a wide range of identifications such as driver’s licenses, non-driver identification cards, Resident Alien Cards and public assistance registration numbers. . . .”) Id. at 5. But see, https://www.usatoday.com/story/news/2017/10/28/no-social-security-number-no-electricity/807471001/; and see, http://law.emory.edu/eilr/content/volume-31/issue-4/article/water-critique-localities-denial-undocumented-immigrants.html.

\textsuperscript{19} 16 NYCRR § 11.3(a)(4)(v)(a)-(d).

\textsuperscript{20} 16 NYCRR § 11.3(a)(4)(v)(d).
responsible for service.\textsuperscript{21} An applicant can be any household member, and need not be the
person listed on a lease.\textsuperscript{22}

Customers who move within the same utility's service territory and request service within
60 days “shall be eligible to receive service at the different dwelling and such service shall be
considered a continuation of service in all respects, and any existing DPAs will be honored,
provided the prior service was not terminated for nonpayment, meter-tampering or theft of
services. \textsuperscript{23}

\textbf{2.2 Timing of service.} Eligible applicants must receive service within 5 business
days of the completed oral or written application, unless the applicant specifies a later time, or
the utility is precluded from acting by adverse weather conditions, public safety concerns, a labor
strike, inability to gain access, incomplete construction of applicant’s facilities, or when the
applicant does not pay, or does not agree in writing to pay, line extension costs if applicable and
required.\textsuperscript{24} If the utility fails to provide service within 5 days without good cause, it must pay a
$25 per day fine to the applicant.\textsuperscript{25}

\textsuperscript{21} Comment to 16 NYCRR § 11.3(a)(4)(v)(d). The “responsibility for service” requirement does not exist in the
governing statute, PSL § 31. The customer need not be the tenant named in the lease.
\textsuperscript{22} Typically, in an oral application for service, an applicant provides his or her name, address, telephone number and
address of prior account (if any) or prior account number (if any). There is no HEFPA requirement stating that an
applicant needs to provide a lease with his or her name on it. 16 NYCRR § 11.3. Also see, Case No. 96-M-0706,
Memorandum and Resolution Adopting Amendments to 16 NYCRR Part 11 (Feb. 17, 1998).
\textsuperscript{23} PSL § 31(3); 16 NYCRR § 11.3(a)(5). PSL § 32 does not authorize terminations for meter-tampering or theft of
services.
\textsuperscript{24} PSL § 31(5); 16 NYCRR § 11.3(a)(4)(i-iv). The PSC may require applicants for service to buildings located more
than 100 feet from utility lines to pay material and installation costs for their portion of pipes, conduits, wires or
other facilities that must be installed. PSL §31(5).
\textsuperscript{25} PSL § 31(5); 16 NYCRR § 11.3(c). This remedial provision has been narrowly construed in some PSC decisions
which have denied the statutory penalty. In contrast, the statutory penalty for wrongful denial of service has been
broadly held by the Court of Appeals to apply even where the customer has his own generator and was not “actually
suffering from the lack of service.” See Tismer v. New York Edison Co., 228 N.Y. 156 (1920). Cf., Westridge v. Con
However, a utility may potentially be liable for far more than $25 per day, if failure to provide utility services in accordance with HEFPA results in death of the applicant.\textsuperscript{26}

### 2.3 Denial of service

An application not approved in 3 business days is deemed denied.\textsuperscript{27} A utility may only deny residential service if:

1. The applicant owes money for residential service provided to a prior account in his or her name.\textsuperscript{28} However, some applicants with outstanding arrears may still be entitled to service under certain conditions, as discussed in Section 2.4, Prior Arrears, infra.

2. The applicant seeks seasonal or short-term service and has failed to post a lawfully required deposit.\textsuperscript{29}

The utility must give the applicant prompt written notice of its denial within 3 business days of receipt of the application for service.\textsuperscript{30} The written notice must state the reason(s) for the denial and “specify precisely” what the applicant must do to qualify for service; and inform the applicant of his right for investigation and review of the utility’s denial by PSC, and provide the appropriate contact information for the agency.\textsuperscript{31} The written notice must be either hand-delivered upon the applicant or mailed to the applicant’s current address, unless a different


\textsuperscript{27} 16 NYCRR § 11.3(b)(1).

\textsuperscript{28} PSL § 31(1); 16 NYCRR § 11.3(a)(2).

\textsuperscript{29} PSL § 36(1); 16 NYCRR § 11.3(a)(3).

\textsuperscript{30} 16 NYCRR § 11.3(a)(2).

\textsuperscript{31} PSL § 31(2); 16 NYCRR § 11.3(b)(2)(i)-(iii).
address is specified.\textsuperscript{32} If the written notice has to be mailed, the utility must try to contact the applicant by phone immediately.\textsuperscript{33}

2.4 Prior arrears. Generally, a utility can refuse to provide service to an applicant who owes money for residential service provided to a prior account in his or her name,\textsuperscript{34} unless certain exceptions are met. As explained above, some applicants with outstanding debt for residential service provided to a prior account in their name are entitled to service. For example, the utility cannot deny service to the applicant if he makes full payment of the past debt or agrees to make payments under a deferred payment plan of the past debt; or if he has a billing dispute pending at the Public Service Commission concerning the past debt or the Commission requires the utility to provide service regardless of the prior debt; or if the applicant is a recipient of or an applicant for public assistance, supplemental security income benefits or other State assistance and the utility is notified by the applicant’s local department of social services that he is entitled to receive benefits which will be applied towards the prior debt.\textsuperscript{35}

Neither the Public Service Law nor PSC regulations allow utilities to deny service to an applicant because arrears at a location were in someone else’s name, even if the applicant lived (or owns property) at the address where the service was rendered or is a legal or blood relative to the person in whose name the prior account was held.\textsuperscript{36} For example, an applicant may not be

\begin{itemize}
\item \textsuperscript{32} 16 NYCRR § 11.3(b)(3).
\item \textsuperscript{33} \textit{Id}.
\item \textsuperscript{34} PSL § 31(1); 16 NYCRR § 11.3(a)(2).
\item \textsuperscript{35} 16 NYCRR §§ 11.3(a)(2)(i)-(v).
\item \textsuperscript{36} “A distribution utility shall not be obligated to provide service to an applicant who owes the distribution utility money for residential service provided to a prior account in his or her name unless...” (Emphasis added) 16 NYCRR §§ 11.3(a)(2).
\end{itemize}
denied service based on the arrears of a spouse, sibling, parent or roommate. Furthermore, there is no requirement that spouses both be named as customers of record.37

2.5 Line extensions for new hook-ups. Utilities must provide service to new residential customers within 100 feet of gas or electric transmission lines.38 Most applicants for new service are allowed up to 600 feet of free overhead electric line to their residential building (500 feet of overhead distribution line and 100 feet of service line).39 The applicable regulations define "residential building" as including mobile homes, but not vehicles used as a residences.40 The structure must be enclosed and designed for permanent residential occupancy.

A line extension applicant has the choice of paying any extra costs in a lump sum or in installments. If the costs are not paid in full, the applicant must sign an agreement to inform any prospective, subsequent purchaser that the property is subject to a utility surcharge.41 New York Real Property Law requires a seller to give written disclosure of utility surcharges and their terms of payment before accepting a purchase offer.42

3. TERMINATION OF SERVICE

37 See generally, PSL § 30, et seq.; 16 NYCRR § 11 et seq.
38 PSL § 31(4); 16 NYCRR Part 230.
39 16 NYCRR § 98(g).
40 16 NYCRR § 98.1(f).
41 16 NYCRR § 98.3(f).
42 The disclosure must state, “This property is subject to an electric, gas and/or water utility surcharge.” It must also state the type and purpose of the surcharge, the amount of the surcharge and whether the surcharge is payable on a monthly, yearly or other basis. RPL § 242(2)(a). Failure to disclose permits a prospective or actual purchaser to recover actual damages for losses. RPL § 242(2)(b).
Terminations of residential electric and gas service are also governed by the Public Service Law and the PSC regulations implementing the statutes. A utility’s noncompliance with the Public Service Law and the PSC regulations implementing the statutes, will invalidate the termination process, render termination unlawful, and is grounds for a complaint to the utility and to the PSC for appropriate relief, e.g., restoration of service pending issuance of a proper termination notice. Common termination issues include:

- the timing of the notice of termination;
- whether the utility provided proper service prior to termination;
- whether the utility offered the customer a written deferred payment plan to pay any debt prior to terminating service, and
- the applicability of special rules concerning the medically impaired and cold weather.

Termination procedures may be divided into four categories: (1) general procedures; (2) special procedures; (3) procedures for multiple dwelling terminations; and (4) procedures for two-family dwelling terminations.

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43 PSL §§ 32-34 and 46; 16 NYCRR §§11.4 - 11.8. An ESCO seeking to terminate commodity supply must also comply with the Public Service Law and PSC regulations. 16 NYCRR § 11.4(b). ESCOs must notify the distribution utility that commodity supply has been terminated and request the utility to suspend distribution service. The ESCO’s notification must demonstrate its compliance with the HEFPA termination procedures. At the ESCO’s notification and request for suspension of service, the distribution utility is not required to duplicate all HEFPA procedures before terminating distribution, but it must at least determine whether the customer qualifies for special protections. For more detail of a utility’s responsibilities prior to effectuating an ESCO-initiated suspension of service see, 16 NYCRR § 11.4(b) and accompanying Comment.

44 For a detailed explanation on how a customer can file a complaint against a utility with the Public Service Commission for failing to abide by termination procedures, please see PULP’s Law Manual chapter entitled, “Complaint Handling Procedures.”

45 For further detail of termination procedures, refer to PULP’s Law Manual chapter entitled, "Complaint Handling Procedures."
3.1 General Procedures Applicable to All Residential Terminations

3.1.1 Reasons for Termination. A utility has the power to terminate the gas or electric service of a residential customer if: 46

(1) a customer has not paid for gas and/or electric service provided to her at any time during the preceding 12 months. 47 A utility may only terminate service for unpaid bills for service rendered during periods in excess of the 12-month period if:

(a) there is a billing dispute about service provided during the preceding 12-month period;
(b) the customer’s bill was estimated; or
(c) where a delay in termination was not the fault of the utility or was due to the customer's culpable conduct. 48

(2) a customer does not pay amounts agreed to under a deferred payment agreement. 49

(3) a customer does not pay or agree in writing to pay equipment and installation charges relating to initiation of service. 50

(4) a customer does not pay a lawfully required deposit. 51

3.1.2 Notice of Termination. If any of the circumstances listed above exist, the utility may terminate that customer’s service; provided however, that the utility gives the customer proper notice of pending termination. Proper notice requires that the utility mail a customer notice of pending termination no less than 15 calendar days before the termination.

46 A utility may also disconnect service to a residence when an emergency situation threatens the health or safety of a person, the surrounding area or the utility’s distribution system, regardless of the customer’s payment status. Service must be restored to the residence before it can be disconnected for any other reason. PSL § 46; 16 NYCRR § 11.18.

47 PSL § 32(2)(a); 16 NYCRR § 11.4(a)(1)(i).

48 PSL § 32(2)(b); 16 NYCRR § 11.4(a)(1)(ii). See Section 5, Deferred Payment Agreements, infra.

49 PSL § 32(2)(c); 16 NYCRR § 11.4(a)(1)(iii).

50 16 NYCRR § 11.4(a)(1)(iv). Although PSL § 32(2) does not authorize termination on this ground, PSL § 36(1) permits utilities to require seasonal, short term and delinquent customers to post security deposits as a “condition of service.” PSL § 36(1); 16 NYCRR § 11.12(d)(1)-(2). See Section 6, Security Deposits, infra.
date shown on the notice.\textsuperscript{52} Additionally, a utility may not send a customer a final notice of termination unless at least 20 days have passed since the date the payment was due.\textsuperscript{53} This means that the earliest the utility can terminate a residential customer’s account is 35 days (20 + 15) from the date payment was due on a bill. Actual termination may only occur between the hours of 8 a.m. and 4 p.m., Monday through Thursday, so long as the termination day or the following day is not a public holiday or a day on which the main business office of the utility is closed. Finally, termination can never occur during the two-week period encompassing the Christmas and New Year’s holidays.\textsuperscript{54}

\textit{Notice contents.} Additionally, in order for termination to be lawful, the notice of termination must state clearly the following:\textsuperscript{55}

\begin{enumerate}
  \item the date on which termination may occur;
  \item the reasons(s) for termination, total owed and how termination may be avoided;
  \item the utility’s address and telephone number;
  \item the availability of utility complaint handling procedures;
  \item a PSC-approved summary of the customer protections provided by state law (HEFPA) together with a notice that any customer eligible for such protections should contact the utility\textsuperscript{56}; and
  \item a statement printed on the front of the notice in size type capable of attracting immediate attention stating: "THIS IS A FINAL TERMINATION NOTICE. PLEASE REFER TO THIS NOTICE WHEN PAYING THIS BILL" Or “THIS IS
\end{enumerate}

\textsuperscript{52} PSL § 32(2)(d); 16 NYCRR § 11.4(a)(1)(v).
\textsuperscript{53} PSL § 32(2)(d); 16 NYCRR § 11.4(a)(3)(iii). A utility may specify a payment due date that is no earlier than the date the bill is personally served or 3 days after it is mailed. 16 NYCRR § 11.4(a)(3)(iii).
\textsuperscript{54} PSL § 32(2)(d); 16 NYCRR § 11.4(a)(4).
\textsuperscript{55} PSL § 32(2)(d); 16 NYCRR § 11.4(a)(2)(i)-(v).
\textsuperscript{56} A final notice of termination from an ESCO must inform the customer that suspension of the customer’s distribution service can accompany the ESCO’s commodity termination, even if the customer’s account for distribution service is current. PSL § 32(2)(d); 16 NYCRR § 11.4(a)(ii).
A FINAL DISCONNECTION NOTICE. PLEASE REFER TO THIS NOTICE WHEN PAYING THIS BILL.

Deferred Payment Agreement. Whenever a customer is in arrears, the utility must provide the customer an opportunity to pay her debt prior to terminating the account. What this means is that the utility must offer the customer an opportunity to pay back his or her debt according to a “deferred payment agreement” (“DPA”). A deferred payment agreement or payment agreement is a written agreement for the payment of outstanding charges over a specific period of time, signed by both the utility and the customer or applicant.\(^\text{57}\) To satisfy this requirement under HEFPA, first, the utility must make reasonable efforts to contact the customer by phone, mail or in person to negotiate a DPA specifically tailored to the customer's financial circumstances. A DPA that is fair and equitable given a customer's fiscal constraints, in all likelihood, will be more favorable than a DPA prepared by the utility alone.\(^\text{58}\) If the utility is unable to reach the customer, the utility must mail the customer a utility prepared DPA at least 10 days before the scheduled termination date. (Please refer to Section 5, Deferred Payment Agreements for further specifics.)\(^\text{59}\)

Special Rules. The utility must record all payments on the day received, or process them in some manner so that termination does not occur.\(^\text{60}\) At the time of termination, if a customer offers full payment of the amount that forms the basis for the termination, the utility's field

\(^{57}\) 16 NYCRR § 11.4(a)(1).

\(^{58}\) PSL § 37; 16 NYCRR §§ 11.10(a)(1) and (a)(5).

\(^{59}\) The only instance when a utility does not have to send a written DPA to a customer is when that person has been determined to have the resources to pay the bill. PSL § 37(1).

\(^{60}\) 16 NYCRR §§ 11.4(a)(6).
representative must accept payment and shall not terminate service. Whenever such payment is made, the utility representative shall provide the customer a receipt showing the date, account, name, address and amount received. If a subsequently dishonored check is issued in response to a notice of termination or to a utility representative to prevent a termination, it will not constitute payment and the utility need not issue additional notice before terminating service.

If a customer has previously written the utility and provided an alternate address for mailing purposes, then before it may terminate service the utility must either: (i) mail duplicate termination notices to the service address and to the alternate mailing address, or (ii) send a termination notice to the alternate mailing address and personally notify an adult living at the service address, or notify an adult resident at the service address by telephone or by posting a conspicuous notice of termination at the premises where service is rendered.

3.2 Termination of Service to Entire Multiple Dwellings

3.2.1 Notice of Termination. No utility may terminate electric, gas or steam service to an entire multiple dwelling anywhere in New York, for nonpayment of bills rendered for service unless the utility has given notice of its intention to terminate service to the building. Appropriate notice requires:

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61 16 NYCRR § 11.4(a)(7).
62 Id.
63 16 NYCRR § 11.4(a)(8).
64 16 NYCRR § 11.4(a)(2)(a)-(b).
65 Termination in this section-refers to a utility-initiated termination. If a utility fails to comply with any of the HEFPA requirements detailed in this section, that utility may be subject to penalties. PSL § 33(3).
66 A “multiple dwelling” is “a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other.” Multiple Dwelling Law (“MDL”) § 4.
67 16 NYCRR § 11.7(a).
(1) The utility to personally deliver written notice at least fifteen (15) days before the planned termination, to the owner of the building, or the company that is named on the bill of service and has previously paid bills, and also, to the superintendent or other person in charge of the building, if there is one. If the utility won’t or can’t provide notice in person, then, it can mail written notice to the owner at least eighteen (18) days before the planned termination.\textsuperscript{68} And:

(2) The utility to display a written notice in the public areas of the building for at least 15 days prior to the planned termination.\textsuperscript{69}

(3) The utility to mail notice to each occupant of the building at least eighteen (18) days prior to the planned termination\textsuperscript{70} and;

(4) The utility to mail notice to specified public officials at least eighteen (18) days prior to the planned termination.\textsuperscript{71} The notice must be repeated to most of these officials between 2 and 4 days before service is scheduled to be terminated.\textsuperscript{72}

During the cold weather period\textsuperscript{73}, a utility intending to terminate heat-related service to a building must provide at least thirty (30) days’ notice to owner, occupants, and public officials.\textsuperscript{74}

3.2.2 Contents of Notice The written notice to the occupants must contain the intended service termination date, the amount due for service, and a notice of the procedures required to avoid termination, including the name and telephone number of a utility

\textsuperscript{68} 16 NYCRR § 11.7(a)(1) and (2).
\textsuperscript{69} 16 NYCRR § 11.7(a)(3).
\textsuperscript{70} 16 NYCRR § 11.7(a)(3).
\textsuperscript{71} 16 NYCRR § 11.7(a)(3).
\textsuperscript{72} PSL § 33; 16 NYCRR § 11.7(a)(3). Notice must be given to the local health officer and director of the local department of social services. If the multiple dwelling is located in a city or village, notice must be given to the mayor or manager. If the multiple dwelling is located in a town, notice must be given to the town supervisor and to the county executive of the county in which the multiple dwelling is located, or if there is no county executive, then to the chairperson of the county’s legislative body. If the multiple dwelling is located in New York City, notice must be given to the Department of Housing Preservation and Development.
\textsuperscript{73} See, PULP Manual Chapter 1 (“HEFPA”), Section 3.4.3.
\textsuperscript{74} 16 NYCRR § 11.7(a)(4).

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representative who is available to meet with occupants to work out a mechanism to avoid termination, if the owner fails to make required payments. The notice shall also advise the occupants that the PSC is available to help them negotiate a payment agreement with the utility, and of tenants' rights under the New York Real Property Law §235-a to offset certain utility payments against rent.75

3.2.3 Rights of Occupants of Multiple Dwellings If a landlord has agreed in a lease to provide utilities to a building and fails to pay the bill(s), then a utility cannot terminate service to the building if the tenants continue to make payments according to the procedures established by the PSC.76 Additionally, if a landlord intentionally withholds utility service from its building tenants, he may be subject to criminal liability and civil remedies may be available at a court of law. Tenants with complaints against landlords should seek advice from an attorney conversant in landlord-tenant law and real property law. The PSC is only authorized to resolve disputes involving a utility and tenant. When occupants of a multiple dwelling elect to make payments to prevent termination, a utility may not require them to pay anything more than the current charges incurred by the owner/customer.77 In this context, "current charges" are defined

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75 16 NYCRR § 11.7(b). See also, generally, New York RPL sec. 235(a): 1. In any case in which a tenant shall lawfully make a payment to a utility company pursuant to the provisions of sections thirty-three, thirty-four and one hundred sixteen of the public service law, such payment shall be deductible from any future payment of rent.
2. Any owner (as defined in the multiple dwelling law or multiple residence law) of a multiple dwelling responsible for the payment of charges for gas, electric, steam or water service who causes the discontinuance of that service by failure or refusal to pay the charges for past service shall be liable for compensatory and punitive damages to any tenant whose utility service is so discontinued.
3. Nothing contained in this section and no payment made pursuant to this section shall be deemed to discharge the liability of a renter with an interest in real property pursuant to subdivision two of section three hundred four of the real property tax law from taxes levied on such interest.
76 16 NYCRR § 11.7(b).
77 16 NYCRR § 11.7(5)(c).
as the amount properly billed the owner for utility service used only during the most recent
service billing period covered by the first bill rendered on or after the date when the termination
notice is issued. The “current charges” may not include any arrears for earlier billing periods
that may appear on the bill.\textsuperscript{78} The occupants may deduct the utility payments they make from
their future rent payments.\textsuperscript{79}

If occupants in a multiple dwelling cannot reach an agreement with the utility to prevent
the termination of service, they may contact the PSC, which will attempt to negotiate such an
agreement with the utility.\textsuperscript{80} The PSC may stay a threatened termination to an entire multiple
dwelling where it concludes that good faith efforts are being made by the occupants to arrange
for the payment of current bills.\textsuperscript{81}

Twice a year, the department charged with enforcing the Multiple Dwelling Law prepares
or revises a list of all multiple dwellings in its jurisdiction and provides a copy to the utilities in
its jurisdiction.\textsuperscript{82}

\subsection*{3.3 Termination of Service to Two-Family Dwellings}

A two-family dwelling is one that is designed and legally occupied by two families
independent of each other, regardless of whether the utility bills the dwelling for service at a

\textsuperscript{78} PSL § 33.5; 16 NYCRR § 11.7(c). PSL § 33(5) allows multiple dwelling occupants to pay not more than two
months of arrears.
\textsuperscript{79} RPL § 235-a(1).
\textsuperscript{80} 16 NYCRR § 11.17(d).
\textsuperscript{81} PSL § 33(5), 16 NYCRR § 11.7(e).
\textsuperscript{82} PSL § 33(2).
residential or commercial rate. The utility must keep a record of two-family dwellings that are not separately metered.

When the utility knows that a single meter measures utility service to both units of a two-family dwelling, it must comply with the following procedures before terminating service:

(1) Give notice of termination 15 days before the scheduled termination (30 days during the cold weather period), either by mail or personal service, to the owner of the premises or to the recipient of the last, preceding service bill, and to the occupant of each occupied unit; and

(2) The utility shall notify the occupants of the dwelling by mailing or otherwise by posting notice of its intent to terminate service in a conspicuous place at or within the dwelling.

3.3.1 Contents of the Notice The notice must include the following information:

the intended termination date, the amount due, the special protections are available for occupants, the availability of PSC staff for advice, the steps required for occupants to make payment or actions they may take to avoid termination of service, and their rights to deduct utility payments that they make to prevent termination from their future rent payments, under Real Property Law §235-a.

3.3.2 Rights of Occupants Where service is not metered separately, any occupant of a two-family dwelling may prevent termination of service by applying for service and making herself liable for future payments on that account, so long as that occupant is not an agent of the

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83 16 NYCRR § 11.8(a).
84 16 NYCRR § 11.8(a).
85 PSL § 34(1); 16 NYCRR §§ 11.8(b) and (g).
86 16 NYCRR §§ 11.8(f).
87 PSL § 34(2); 16 NYCRR §§ 11.8(c).
recipient of service on the preceding unpaid service bill.\textsuperscript{88} Or, the occupant may choose to pay current unpaid charges without taking responsibility for future bills.\textsuperscript{89} The current charges cannot exceed more than two months’ worth of arrears.\textsuperscript{90} Future bills continue to be issued to the customer of record, with a copy to be sent to any occupant upon request.\textsuperscript{91} Any payments made by the occupant may be set off against his or her rent.\textsuperscript{92}

3.4 Special Procedures for Termination of Service to Vulnerable Populations

HEFPA requires the PSC to safeguard against residential termination or to restore service despite a customer’s debt when residents could suffer from serious impairments to health or safety as a result of such termination or failure to restore services.

HEFPA requires the PSC to safeguard against utility service terminations in the following three situations: (1) in medical emergencies; (2) to elderly, blind or disabled customers; and (3) in designated cold weather periods.\textsuperscript{93} When utility service must be restored or continued pursuant to these special procedures, the customer remains liable for the costs of service and must make reasonable efforts to pay.\textsuperscript{94}

\textsuperscript{88} 16 NYCRR § 11.8(d)(1).
\textsuperscript{89} 16 NYCRR § 11.8(d)(2).
\textsuperscript{90} 16 NYCRR § 11.8(d)(2).
\textsuperscript{91} 16 NYCRR §§ 11.8(d)(2).
\textsuperscript{92} RPL § 235-a.
\textsuperscript{93} PSL § 32(3)(a)-(c); 16 NYCRR § 11.5(a) (medical emergencies); 16 NYCRR § 11.5(b); §11.5(c) (special procedures during cold weather).
\textsuperscript{94} 16 NYCRR § 11.5(a)(7) (medical emergencies); 16 NYCRR § 11.5(b)(2) (customers who are elderly, blind or disabled); §11.5(c)(2)(ii)(b) (cold weather suspected serious impairment situations), §11.5(c)(5) (cold weather neglect or hazardous situations).
3.4.1 Medical Emergencies A utility must continue or restore utility service at a residence where a medical emergency exists.\(^95\) A medical emergency exists when a resident at the customer's premises suffers from a serious illness or a medical condition that severely affects his or her well-being.\(^96\) A utility customer may invoke the protections of the medical emergency rules by following these procedures:

1. Obtaining an initial certification of medical emergency from a doctor or local health board official.\(^97\)

2. The initial certification may be oral (by telephone) or in writing. If made orally, it will be effective for 5 business days, but will lapse if written certification is not provided within that time.\(^98\)

3. The doctor's or health board official's written certification must be signed and prepared on letterhead stationery and include:

   (i) the certifying entity's name and address and State registration number;

   (ii) the name and address of the utility customer and nature of the serious illness or medical condition; and

   (iii) an affirmation that the illness or condition exists or will be aggravated by the absence of utility service;\(^99\)

4. The certification is effective for 30 days from the time that the utility receives the oral or written certification, whichever is earlier.\(^100\)

5. The utility must notify the customer in writing that it received initial certification and must provide information about renewal certificates.\(^101\)

\(^95\) PSL § 32(3)(a); 16 NYCRR § 11.5(a).
\(^96\) 16 NYCRR § 11.5(a)(2).
\(^97\) 16 NYCRR § 11.5(a)(1).
\(^98\) 16 NYCRR § 11.5(a)(3).
\(^99\) 16 NYCRR § 11.5(a)(3).
\(^100\) 16 NYCRR § 11.5(a)(3).
\(^101\) 16 NYCRR § 11.5(a)(3).
Renewal Certificates. The certificate may be renewed, for 30 days provided:

(a) a medical doctor or health board official states in writing (i) the expected duration of the emergency, (ii) the nature of the emergency or why the absence of service would aggravate the emergency; and

(b) the customer demonstrates an inability to pay charges for service by submitting a PSC-approved form statement of financial hardship, before the initial certificate expires. The form requires the customer to disclose assets, income, expenses and other relevant financial information.\(^\text{102}\)

Special Rules for chronic cases and life support systems. If a doctor or local board of health certifies a case as chronic, the renewed certificate is effective for 60 days, unless the PSC approves a longer period.\(^\text{103}\) If a customer or a resident of the customer’s premises suffers from a medical condition requiring utility service to operate a life-sustaining device, such as a ventilator or dialysis machine, and provided the customer demonstrates an inability to pay, the certification remains effective until it is terminated by the PSC.

Utilities must send all customers an annual mailing with a form that they may return to notify the utility if any resident uses life support equipment. Utilities are required to maintain a current list of customers who use life support, to include them in system-wide emergency plans, and to identify the meters of such customers.\(^\text{104}\)

\(^{102}\text{PSL § 32(3)(a); 16 NYCRR § 11.5(a)(4). If the utility and customer disagree on the ability to pay, the customer may utilize the PSC Complaint Handling Procedures.}\)

\(^{103}\text{16 NYCRR § 11.5(a)(4). The rules do not specify the procedure to obtain such approval. The advocate should try contacting the PSC’s Consumer Services Division. If initial contact with the PSC is by phone, the advocate should follow-up with a written request.}\)

\(^{104}\text{PSL § 65(11); 16 NYCRR § 11.5(a)(5).}\)
Termination after certificate expiration. A utility must give 15 days’ notice to the customer before terminating service, either after the certificate of medical emergency expires, or after the utility determines that the customer can pay the charges. Additionally, a utility must give 15 days’ notice to the PSC before terminating service to any customer who is on life support.

3.4.2 Elderly, Blind or Disabled Customers

In addition to the general procedures applicable to all residential terminations, a utility must follow special procedures before terminating or refusing to restore service to customers who are identified as blind, disabled or 62 years of age or older. However, such protections only apply if all the remaining household residents are blind, disabled, age 62 or older, or age 18 or younger.

When these circumstances are known, the utility must diligently try to contact an adult resident at the premises by telephone or, if unsuccessful, in person, at least 72 hours before terminating service, to devise a plan to prevent termination and to pay the bills. Payment may be accomplished through a DPA, or by payment or guarantee of payment by any governmental or social welfare agency or private organization.

105 16 NYCRR § 11.5(a)(6).
106 16 NYCRR § 11.5(a)(5).
107 PSL § 32(3)(b); 16 NYCRR § 11.5(b)(1). The regulations define disability by reference to the Human Rights Act, which defines the term ‘disability’ as “(a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment...” See, Executive Law §292(21). Blindness is defined in the PSC regulations as “central visual acuity of 20/200 or less in the better eye with the use of a correcting lens, or, limitation in the fields of vision such that the widest diameter of the visual field subtends to an angle no greater than 20 degrees.” See, 16 NYCRR § 11.5(b)(1).
108 16 NYCRR § 11.5(b)(1).
109 PSL § 32(3)(b); 16 NYCRR § 11.5(b)(2).
110 PSL § 32(3)(b); 16 NYCRR § 11.5(b)(2).
the utility must notify the local department of social services of the name and address of the customer and date of planned termination, so that the county social services department may assist in developing a plan for the customer. The utility must continue the service for at least 15 business days after it makes the referral, unless it is notified by social services that acceptable payment or other arrangements have been made. The customer may also seek help from the PSC to develop a payment plan.

In cases where service has already been terminated, and the utility is thereafter notified that the customer is entitled to the elderly, blind or disabled protections, the utility is required to make a diligent effort to contact an adult resident at the customer’s premises, by telephone or in person, within 24 hours of its receipt of such notice for the purposes of devising a payment plan that would restore service and arrange for payment of bills. If a utility and a customer are unable to devise such a plan, the utility must notify the local social services department of the name and address of the customer and the date of termination so that social service may help to develop a plan for protecting such customer.

Even when a utility has legally terminated service according to all the requirements under HEFPA, a utility must attempt to contact by telephone or in person an adult resident at the

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111 PSL § 32(3)(b); 16 NYCRR § 11.5(b)(2).
112 16 NYCRR 11.5(b)(2). Department of Social Services regulations require that the LDSS, upon receiving a such a referral from the utility, to (i) identify whether the person referred is a recipient of public assistance; (ii) where the utility has contacted the customer but no plan has been devised to prevent termination, the LDSS sends a letter to the referred household explaining how it may apply for emergency assistance, and identify the date by which such application for assistance must be made, in order to prevent utility service termination; (iii) ensure that support services are involved to coordinate emergency assistance applications. 18 NYCRR § 394.3(e). See, generally, 18 NYCRR 394.3, Residential utility service termination—special protection for aged, blind or disabled.
113 16 NYCRR § 11.5(b)(2).
114 16 NYCRR 11.5(b)(3).
115 16 NYCRR 11.5(b)(3).
customer’s premises within 10 days following termination for the purposes of determining whether alternative arrangements have been made for the provision of utility service, and if none have been made, attempt to devise a plan that would restore service and arrange for payment of bills. 116

3.4.3 Cold Weather Periods Cold weather periods begin November 1st of each year and end on April 15th of the following year. 117 HEFPA requires the PSC to establish special procedures for utilities to comply with in supplying heat-related utility service to residential customers during cold weather periods. 118 Each utility must identify residential households within its service territory whose utility service is heat-related. 119 Heat-related service is provided under a rate classification applicable to residential space heating, or to the service necessary to start or operate the primary heating system. 120 Heat-related service also includes a safe, supplemental electrical heating device (space heater), provided the residential customer informed the utility in writing within the last 12 months that such a device is needed because the third party (e.g., landlord) who controls the primary heating system provides inadequate heat. 121

The purpose of these procedures is to safeguard against a person suffering a serious impairment to health or safety as a result of termination during a cold weather period because the person appears to be seriously impaired and may, because of mental or physical problems, be

116 16 NYCRR 11.5(b)(4).
117 16 NYCRR § 11.5(c)(2).
118 PSL § 32(3)(c); 16 NYCRR § 11.5(c).
119 16 NYCRR § 11.5(c)(1).
120 16 NYCRR § 11.5(c)(1).
121 Id.
unable to manage his or her own resources, carry out activities of daily living or protect oneself from neglect or hazardous situations without assistance from others.\textsuperscript{122} These procedures vary, depending on whether a customer is living in a single-family dwelling, or whether they are a resident of a multiple dwelling unit or two-family house.

*Heat-Related Service to Single Family Dwellings.* During the cold weather period, every utility must, at a minimum, follow these procedures with respect to residential customers receiving heat-related utility service in a single-family dwelling:

- The utility must try to contact the customer or an adult resident at the customer, by phone or in person, at least 72 hours before the intended termination for the purpose of ascertaining whether a resident is likely to suffer a serious impairment to health or safety as a result of termination;\textsuperscript{123} and
- At the time of termination, a utility must again attempt to contact, in person, the customer or other adult resident for the purpose of ascertaining whether a resident is likely to suffer a serious impairment to health or safety as a result of termination. The utility’s representative must fully explain the reasons for termination and provide customers with information on HEFPA protections. If communication is not possible because of an apparent language barrier, the utility must take steps to assure communication has been relayed before termination occurs.\textsuperscript{124}

In addition to the above requirements, if a utility learns that a resident is likely to suffer a serious impairment to health or safety as result of termination of heat-related utility service, it must notify the local department of social services commissioner orally, and provide written notice within 5 days, that a resident is likely to suffer a serious impairment to health or safety as a result

\textsuperscript{122} 16 NYCRR § 11.5(c)(iii). Indications of serious impairment include but are not limited to: (a) age, infirmity or mental incapacitation; (b) use of life support systems, such as dialysis machines or iron lungs; (c) serious illness; (d) physical disability or blindness, (e) any other factual circumstances which indicate severe or hazardous health situations.

\textsuperscript{123} 16 NYCRR § 11.5(c)(2)(i). Initial contact must be made during normal business hours, and if unsuccessful, then during reasonable non-business hours (6 pm - 9 pm weekdays or 9 am - 5 pm weekends). If telephone contact is unsuccessful, the utility must make an onsite, personal visit.

\textsuperscript{124} 16 NYCRR § 11.5(c)(2)(i).
of termination.¹²⁵ The utility will not be able to terminate heat-related service to a single-family dwelling where a resident is likely to suffer a serious impairment to health or safety as result of termination unless the local department of social service, following an investigation, informs the utility that the reported condition is not likely to result in a serious impairment to health or safety, or that an alternative means for protecting the person's health or safety has been devised.¹²⁶

If the utility terminates service during the cold weather period without first making the required contact with the customer and the customer does not contact the utility by 12 noon on the following day to request reconnection, the utility must immediately make an on-site visit to the customer's home to determine whether there is continued occupancy and whether the continued lack of utility service may cause a serious impairment to health or safety.¹²⁷ If the utility so determines, it must immediately restore service. If no personal contact can be made and there are no reasonable grounds to believe the premises are vacant, the utility must immediately refer the case to the local LDSS.¹²⁸

If a utility decides to terminate service during the cold weather period because of a potential health or safety problem due to meter tampering or theft of the meter, it must observe the same procedures set forth above under Heat-Related Service to Single Family Dwellings.¹²⁹

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¹²⁵ 16 NYCRR § 11.5(c)(2)(ii)(a).
¹²⁶ 16 NYCRR § 11.5(c)(2)(ii)(b)(i). A utility may use its discretion whether to terminate the service if it does not receive any report from the LDSS within 15 business days after its written referral to the LDSS.
¹²⁷ 16 NYCRR § 11.5(c)(2)(iv).
¹²⁸ 16 NYCRR §§ 11.5(c)(2)(iv).
¹²⁹ 16 NYCRR § 11.5(c)(3).
Heat-Related Service to Multiple Dwellings. Before terminating service to an entire multiple dwelling during the cold weather period, the utility must follow the same procedures outlined above in Section 3.2, Termination of Service to Entire Multiple Dwellings, but it must provide the required written notices at least 30 days before the intended termination.130

Heat-Related Service to Two-Family Dwellings. Before terminating service to a two-family dwelling during the cold weather period, the utility must provide written notice at least 30 days before the intended termination and follow the procedures applicable to single family dwellings or the requirements applicable to multiple dwellings.131

3.4.4 Special Rules for Multiple Dwellings in Cities of More than One Million People

During the cold weather period, a utility intending to terminate heat-related service to an entire multiple dwelling located in cities of more than one million persons (i.e., New York City), must provide written notice to each occupant at least 10 days before the earliest termination date, directing them to contact the New York City Heat Line if any occupant in the apartment has a serious illness or medical condition that would result in a serious impairment to health or safety by loss of heat-related service.132

Whenever, during the cold weather period, a utility is notified by the Human Resources Administration (HRA) that it has received a claim that loss of heat-related service is likely to

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130 16 NYCRR § 11.7(a)(4). In comparison, only 15 days’ notice is required during months that fall outside the cold weather period.
131 16 NYCRR §§ 11.8(g) and (h).
cause a serious impairment to health or safety, the utility must then continue service to the building for at least 15 business days from the date of the HRA's oral or written notice.133 Thereafter, the utility must continue heat-related service to the dwelling during the cold weather period unless it is informed by the HRA that appropriate alternative arrangements have been made to preclude serious impairment to health or safety, or that the claim is without merit.134 At that point, the utility may terminate service after giving at least 5 days written notice to the occupants that heat-related service will be terminated and if applicable, inform the individual of the HRA’s finding of no serious impairment and state that any occupant may seek further review by the PSC.135

Where heat-related service has already been properly terminated, the utility must restore service if it is notified by HRA that a serious impairment to health or safety is likely to result.136

3.4.5 Neglect or Hazardous Situations During the Cold Weather Period

The PSC has established a special rule to safeguard against termination during the cold weather period when customers are threatened by neglect or hazardous situations. This special rule protects against the termination of heat-related, and non-heat related utility service if serious impairment to health or safety is likely to result from termination and the customer is unable because of mental or physical problems to manage his or her own resources or to protect himself from neglect or hazardous situations without the assistance of others.137 In such situations, the

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133 16 NYCRR §11.7(g)(1)(ii).
134 16 NYCRR §11.7(g)(1)(ii).
135 16 NYCRR § 11.7(g)(1)(ii).
136 16 NYCRR § 11.7(g)(1)(iii).
137 PSL § 32(3)(c)(ii); 16 NYCRR § 11.5(c)(5).
utility must provide oral or written notification to the local social services commissioner that fully explains the nature of the serious impediment to health or safety, including the basis for determination that the customer is unable to protect himself from neglect or hazardous situations without assistance of others. The utility must continue to provide service to such customer for at least 15 days from the date of the oral or written referral to the local social services department, unless notified by the social services office that acceptable payment or other arrangements have been made. During such continuation of service, customers remain liable for payment for utility service and should make reasonable efforts to pay charges for such services. 138.

4. RECONNECTION OF SERVICE

A utility must reconnect terminated residential utility service within 24 hours (unless it is prevented from doing so by circumstances beyond its control or the customer requests otherwise) in the following situations: 139

1. the customer pays the full amount of arrears that were the basis for the termination;

2. the utility and the customer agree on a reasonable DPA 140 and any down payment based on criteria established by the PSC, provided that no down payment can exceed one-half of the amount of debt on account, or the equivalent of three months billing, whichever is less; 141

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138 PSL § 32(3)(c)(ii); 16 NYCRR § 11.5(c)(5).
139 PSL § 35(1); 16 NYCRR § 11.9(a).ESCOs are subject to the same rules. 16 NYCRR § 11.9(b).
140 In restoring service to a customer who wishes to pay arrears, a utility may only require payment of the charges that were the basis of the termination. It may not withhold reconnection for nonpayment of any charges which did not form the basis for termination. Instead, these arrears should be part of the DPA, unless the customer elects to pay them immediately. See, 16 NYCRR § 11.9(a).
141 See, Section 5, Deferred Payment Agreements, infra.
(3) the PSC or its designee direct reconnection;

(4) the utility receives a commitment of a direct payment or written guarantee of payment from the local social services department where the customer resides;\(^{142}\) or

(5) the utility is on notice that a serious impairment to health or safety is likely to result if service is not reconnected. Doubts as to whether reconnection of service is required for health or safety reasons must be resolved in favor of reconnection.

Additionally, the PSC has ordered in at least one circumstance in the 1990s that low-income customers (those receiving public assistance of any kind including SSI, HEAP, Food Stamps, Medicaid) are exempt from reconnection charges for reconnection of service to the same customer at the same address within 12 months of termination.\(^{143}\) Subsequently, similar policies have been put into place on the large energy utilities through settlements in rate cases.

If the utility fails or neglects to reconnect service within 24 hours without good cause, it must pay the customer $25-$50 per day, or partial day, as determined by the PSC. The burden is on the utility to show good cause for noncompliance with the statute.\(^{144}\)

5. **DEFERRED PAYMENT AGREEMENTS**

As briefly explained in Section 3 above, a deferred payment agreement is a written agreement for the payment of outstanding charges over a specific period of time, signed by both the utility and the customer or applicant. Before a utility may terminate, deny an application for


\(^{143}\) See, Order issued and effective December 14, 1994, in Cases 93-E-1123, 93-E-0785 and 93-G-0786 concerning Long Island Lighting Co. tariff filings. PSC Case 96-E-1020.

\(^{144}\) PSL § 35(2); 16 NYCRR §§ 11.9(a)(3); 11.9(a)(3)(b)(2).
service, or refuse to reconnect service because of a customer’s arrears, it must first offer a DPA to the residential applicant or customer.\textsuperscript{145} The utility must first attempt to contact the customer and negotiate a DPA that is fair and equitable considering the customer’s financial circumstances.\textsuperscript{146} So long as the utility keeps the information confidential, the utility may require the customer to complete a confidential, financial disclosure form to document assets, income and expenses in order to verify that customer’s financial circumstances.\textsuperscript{147} A DPA can allow for monthly payments as low as $10 per month with no down payment, when the customer or applicant demonstrates financial need for such terms.\textsuperscript{148}

A common complaint among customers is whether the utility actually offered him or her a HEFPA-compliant DPA, and if so, whether that DPA was reasonable and affordable.\textsuperscript{149} Failure to offer a DPA before terminating service to a customer makes the termination unlawful and is grounds for a complaint to both the utility and to the PSC. While a complaint is pending before the PSC, a utility cannot terminate, disconnect, or suspend a customer’s service for nonpayment.\textsuperscript{150} Please refer to the PULP Law Manual chapter 6, entitled “Complaint Handling Procedures,” for specific instructions on how to file a complaint against a utility with the PSC.

\textbf{5.1 DPA Content}

\textsuperscript{145} PSL § 37(1); 16 NYCRR § 11.10(a)(4). The only exceptions to this rule are if the customer has broken an existing payment agreement or the PSC has determined that the customer has the resources to pay the bill. In only these instances would the utility be able to terminate a customer’s account for failure to pay a bill without offering a written DPA beforehand. 16 NYCRR § 11.10(b)(1)(i)-(ii).
\textsuperscript{146} 16 NYCRR § 11.10(a)(1)(i).
\textsuperscript{147} 16 NYCRR § 11.10(a)(1)(ii). See, DSS Form 3596.
\textsuperscript{148} 16 NYCRR § 11.10(a)(1)(i).
\textsuperscript{149} 16 NYCRR § 11.10(a)(1)(iii)-(iv).
\textsuperscript{150} As a condition of continued service during the pendency of any dispute, a customer must continue to pay any undisputed portions of his or her bill for service; 16 NYCRR § 11.20.
The DPA must be signed by the utility and the applicant or customer. In addition, the DPA must:

1. specify the payment terms, including down payment, if any in clear and understandable language and format;
2. state that the utility must offer an affordable DPA and that the DPA should not be signed if the applicant or customer is unable to pay under its terms;
3. state that alternate terms may be available if financial need is shown, including a waiver of any down payment and installment payments as low as $10 per month;
4. state that PA and SSI recipients may receive help from a local district social services office;
5. provide telephone numbers to reach the utility and the PSC if the applicant or customer is unable to pay under the DPA, or to discuss the DPA, and for further customer assistance;
6. state that signing and returning the DPA together with any required down payment within the prescribed time will avoid termination of service;
7. specify a date six or more business days after the utility sends out the DPA, by which the signed DPA and any required down payment must be received in order to prevent termination;
8. state the utility's policy if a signed DPA is not returned;
9. state the total amount due, the amount of any required down payment, and the exact amount and due date of each installment;

16 NYCRR § 11.10(d)(1).
16 NYCRR § 11.10(d).
16 NYCRR § 11.10(d)(1).
16 NYCRR § 11.10(d)(2).
16 NYCRR § 11.10(d)(3).
16 NYCRR § 11.10(d)(4).
16 NYCRR § 11.10(d)(5).
16 NYCRR § 11.10(d)(6).
16 NYCRR § 11.10(d)(7).
16 NYCRR § 11.10(d)(8).
warn that a customer’s failure to comply with the terms of the DPA may lead to termination;\textsuperscript{161}

(11) inform the applicant or customer of their right to immediately enroll in a levelized billing plan, explain the plan and provide a telephone number where additional information may be obtained;\textsuperscript{162}

(12) inform the applicant or customer of their right to an amended DPA, in the event there is a significant change in their financial circumstances outside of their control.\textsuperscript{163}

\section*{5.2 DPA Down Payments}

A down payment may be required as part of a DPA. The maximum down payment is equal to 15\% of the unpaid bill, or the cost of one-half of one month’s average use, whichever is greater, unless that amount is less than the cost of one half of one month’s average usage, in which case the down payment may be up to 50 percent of such amount with monthly installment up to the cost of one half of one month’s average usage or one tenth of the balance, which is greater.\textsuperscript{164} The cost of one month’s average is calculated by averaging the cost of service over the prior 12 months.\textsuperscript{165}

\section*{5.3 DPA Procedure}

A utility must make a written offer of a payment agreement by providing two copies of the payment agreement form setting forth the specific terms of payment and signed by the utility to the customer or applicant.\textsuperscript{166} This written offer must be provided to a customer not less than seven calendar days (10 if mailed) before the earliest date

\textsuperscript{161} 16 NYCRR § 11.10(d)(9).
\textsuperscript{162} 16 NYCRR § 11.10(d)(10).
\textsuperscript{163} 16 NYCRR § 11.10(d)(11).
\textsuperscript{164} 16 NYCRR § 11.10(c)(2)(i)-(ii). PSL §§ 31 and 37 set a statutory maximum of a down payment no more than half the arrears or three months’ usage.
\textsuperscript{165} 16 NYCRR § 11.10(c)(3).
\textsuperscript{166} 16 NYCRR § 11.10(a)(4).
on which termination, disconnection, or suspension may occur, which is either the date stated in a final notice of termination, or up to 10 days thereafter, upon the utility’s postponement while it is negotiating a payment agreement with the customer.\textsuperscript{167}

5.4 Late Payment Fees and Interest Charges

A utility may not charge interest or late fees on the accrued arrears that comprise the amount due in a DPA.\textsuperscript{168} However, utilities may assess a 1.5\% per month charge on DPA installments if the customer fails to pay such installments on a timely basis.\textsuperscript{169}

5.5 Negotiated DPAs

Before sending a written DPA to any eligible applicant or customer, the utility must make "reasonable efforts" to contact the applicant or customer by phone, mail or in person, to try to negotiate a DPA.\textsuperscript{170} The utility must negotiate in good faith, to reach a payment agreement that is fair and equitable in light of the customer's/applicant’s financial circumstances.\textsuperscript{171} The PSC regulations explicitly provide that the negotiated DPA must allow installment payments as low as $10 per month with no down payment required, if the customer's/applicant’s financial condition merits such terms.\textsuperscript{172} A utility must also renegotiate an existing DPA if the customer demonstrates that their financial condition has changed significantly due to circumstances beyond their control.\textsuperscript{173} If the customer is unable to negotiate

\begin{itemize}
  \item \textsuperscript{167} 16 NYCRR § 11.10(a)(4)(i) and 16 NYCRR § 11.10(a)(5).
  \item \textsuperscript{168} PSL § 42.2. In a December 2007 order applicable to all electric and natural gas utilities and large water companies in the state, the PSC reiterated its ruling that late payment charges may not be assessed on DPA balances. Case No. 99-M-0074, Order Rejecting Late Payment Charges and Denying Petitions for Rehearing (Dec. 21, 2007).
  \item \textsuperscript{169} PSL § 42.1.
  \item \textsuperscript{170} 16 NYCRR § 11.10(a)(1).
  \item \textsuperscript{171} 16 NYCRR § 11.10(a)(1)(i).
  \item \textsuperscript{172} 16 NYCRR § 11.10(a)(1)(iii).
  \item \textsuperscript{173} 16 NYCRR § 11.10(a)(5).
\end{itemize}
a fair and equitable DPA with the utility, he or she may seek assistance from the PSC and, if necessary, a written determination.\textsuperscript{174}

### 5.6 Standard DPAs

If a negotiated DPA is not achieved, the utility must provide a written “standard” DPA.\textsuperscript{175} If mailed, the DPA must be sent at least 10 days before the earliest termination date.\textsuperscript{176}

The standard DPA requires a down payment of up to 15\% of the total amount covered by the DPA, or the cost of one-half of one month's average bill, whichever is greater.\textsuperscript{177} If the amount of arrears is small, however, and totals no more than one-half of one month's average bill, the down payment may be up to one-half the arrears.\textsuperscript{178} The standard DPA monthly installments may be up to one-half of one month's average billing, or 10\% of the balance owed (after subtracting the down payment), whichever is greater.\textsuperscript{179} Even if the applicant or customer has received a “standard DPA” from the utility, he or she may still negotiate a DPA with different terms, based on financial circumstances.\textsuperscript{180}

\textsuperscript{174} PSL § 43(2), 16 NYCRR § 11.10(a)(7); (d)(4). \textit{See}, PULP Law Manual chapter, “Complaint Handling Procedures.”

\textsuperscript{175} 16 NYCRR § 11.10(a)(1); 16 NYCRR § 11.10(a)(4).

\textsuperscript{176} 16 NYCRR § 11.10(a)(4)(i).

\textsuperscript{177} 16 NYCRR § 11.10(c)(2)(ii). For example, to calculate the down payment for a DPA to repay $500 in arrears:

1. Determine 15\% of the total arrears ($500 \times 15\% = $75);
2. Determine the cost of ½ of one month’s billing. If the previous year’s annual billings totaled $1,440, then the one-month average is $120 ($1,440 \div 12 = $120). One-half of one month’s average billing is $60 ($120 \div 2 = $60).
3. The standard down payment is therefore $75 (15\% of the arrears), because it is greater than ½ of one month’s average billing ($60).

\textsuperscript{178} Id.

\textsuperscript{179} 16 NYCRR § 11.10(c)(2)(ii).

\textsuperscript{180} 16 NYCRR § 11.10(a)(1).
5.7 Broken Agreements

If a customer fails to meet the terms of the DPA, the utility will be permitted to terminate that customer’s account provided that it gives proper notice. Proper notice requires that the utility send a reminder notice to the customer at least eight days prior to the day when a final notice of termination will be sent. This reminder notice must state in conspicuous bold type that:

(a) the terms of the DPA may be met by making the necessary payment within 20 calendar days of the date payment was due, and if such payment is not sent, a final termination notice may be issued\(^\text{181}\);

(b) a new DPA can be negotiated if the customer can demonstrate that he or she is unable to make payment because his or her financial circumstances have changed significantly because of conditions beyond his or her control.

If by the 20\(^{\text{th}}\) calendar day after payment was due, the utility has still not received payment under the original DPA, and no new DPA has been negotiated, the utility may demand full payment of the outstanding charges and send a final termination notice to the customer. In that final notice the utility must inform the customer, in conspicuous, bold type that:

(a) a new DPA may be available if the customer can demonstrate that he or she is unable to make payment under the terms of the original DPA because his or her financial circumstances have changed significantly because of reasons beyond his or her control\(^\text{182}\) and that

(b) public assistance may be available from a local social service office, and provide contact information for the appropriate agency, but inform the customer that before public assistance is available, the customer will generally be required to make certain financial disclosures to the utility, which will be used to evaluate eligibility for a new DPA\(^\text{183}\).

\(^{181}\) 16 NYCRR § 11.10(e)(1)(i)-(ii).
\(^{182}\) 16 NYCRR § 11.10(e)(2)(i).
\(^{183}\) 16 NYCRR § 11.10(e)(2)(ii)-(iv).
6. **SECURITY DEPOSITS**

No electric or gas corporation or municipality may require a new residential customer, other than a seasonal or short-term customer, to pay a security deposit as a condition of receiving utility service. Also, persons known to be receiving needs-based government cash benefits are not required to pay a security deposit as a condition of receiving utility service. Utilities also cannot require a security deposit from someone 62 years of age or older as a condition of service, unless the customer or applicant for service is a bad credit risk.

HEFPA does allow a utility to require a deposit from a current residential customer as a condition of service if the customer is delinquent in paying utility bills. However, before a utility may assess a security deposit, it must first give the customer at least 20 days written notice.

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184 A seasonal customer is a person who applies for and receives utility service periodically each year, intermittently during the year, or at other irregular intervals. 16 NYCRR § 11.12(a).

185 A short-term customer is a person who requires service for a specified period of time that does not exceed one year. 16 NYCRR § 11.12(a). A customer who is a “month-to-month” tenant with no lease, or who has a lease that is for a period of less than one year, is not a short-term customer and utilities may not require such customers to post security deposits. “[T]he term of a lease as mandated by a landlord is a poor indicator of the period of time for which a customer ‘requires’ utility service, and, accordingly, lease terms alone should not be used to characterize a customer as ‘short term’ under the statute and rules . . . .” PSC Case No. 03-M-0772, Order on Residential Security Deposits (Mar. 25, 2004).

186 PSL § 36(1); 16 NYCRR § 11.12(b). Former customers who have not had utility service in their own names within the past 60 days are considered new customers and may not be assessed a security deposit, even if they owe arrears on the former account. PSC Case No. 03-M-0772, Declaratory Ruling on Petition of Niagara Mohawk Power Corp. for Authorization to Request Security Deposits (Nov. 16, 2004).

187 PSL § 36(3). The accompanying regulations clarify that “No utility shall demand or hold a deposit from any new or current residential customer it knows is 62 years of age or older unless such customer has had service terminated, disconnected or suspended by the utility for nonpayment of bills within the preceding six months.” 16 NYCRR § 11.12(g). Reading the law and regulations together, it appears that utilities can treat as a “bad credit risk” a customer that has had “service terminated, disconnected or suspended by the utility for nonpayment of bills within the preceding six months.”

188 PSL § 36(1).
that failure to make timely payments will permit the utility to demand a security deposit. For the purpose of a security deposit, a delinquency occurs if a customer:

1. accumulates two consecutive months of arrears without making reasonable payment (defined as one-half of the total arrears) before the time that a late payment charge would accrue (20 days after payment is due), or fails to make a reasonable payment on a bimonthly bill within 50 days after payment is due. In either event, the utility must request a deposit within two months of such failure to pay; or

2. had utility service terminated for nonpayment during the preceding six months or is 62 years of age or older.

6.1 Deposit amount and duty to serve

HEFPA authorized security deposits must be reasonable and cannot exceed the cost to supply the customer or applicant for service for two months. Delinquent customers assessed a security deposit may pay the deposit in installments over a period of up to 12 months. The amount of the deposit cannot exceed twice the average monthly bill for a calendar year. In the case of electric or gas space heating customers, a deposit may not exceed twice the estimated average monthly bill for the heating

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190 16 NYCRR § 11.12(d)(2).
191 16 NYCRR § 11.12(d)(2)(i). A utility intending to require a deposit under this provision must provide a customer written notice, at least 20 days before it may assess a deposit, that failure to make timely payment will permit the utility to require a deposit from such customer.
192 16 NYCRR § 11.12(d)(2)(ii).
193 PSL § 36(3); 16 NYCRR § 11.12(g). A deposit may be required from a customer 62 years of age or older if the customer's service was terminated for non-payment of bills within the preceding six months, or if the customer or applicant is a bad credit risk according to standards set by the PSC. PSL § 36(3).
194 PSL § 36(3).
195 16 NYCRR § 11.12(d)(3).
196 16 NYCRR § 11.12(h).
season. Additionally, no security deposit may be assessed against a customer who has entered into a DPA to satisfy the arrears on which the security deposit is based.

A utility must continue service to a customer or extend service to an applicant who disputes the deposit requirement. However, while the complaint is pending, current bills for service rendered must be paid. If the dispute involves only the amount of the deposit, the applicant or customer must pay a "reasonable" amount as a deposit, pending resolution of the dispute.

6.2 Interest and disposition
Customers required to post security deposits are entitled to interest on the amount deposited at a rate set annually by the PSC. The accumulated interest must be paid to the customer when the deposit is returned. If the deposit has been held for one year, the interest must be credited to the customer on the first billing for utility service rendered after the end of the year. If the customer has not been delinquent in the payment of bills during the one year period, the deposit must be refunded promptly.

7. METERS AND BACK BILLING

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197 Id.
199 16 NYCRR §§ 90.10 (electric) and 225.10 (gas).
200 Id.
201 PSL § 36(3). 16 NYCRR §§ 90.3 (electric) and 225.3 (gas), and § 91.1 (municipal utilities).
202 PSL § 36(3).
203 Id.
204 16 NYCRR § 11.12(h).
7.1 **Back billing**  No utility may bill a residential customer for gas or electric service rendered more than six months before the utility mailed the customer its first bill for that service, unless the utility's failure to bill earlier was not due to its own neglect, or was due to the customer's culpable conduct.\(^{205}\) If the customer remains liable for amounts owed more than six months before the bill was mailed, and was not culpable for the delay, the utility must explain the reason for the late billing and notify the customer in writing of their right to pay the adjusted bill in monthly installments tailored to their financial circumstances.\(^{206}\) The installment plan may require a down payment of the lesser of up to one-half of the amount due, or three month’s average billing, whichever is less.\(^{207}\)

A utility may not adjust upward a bill previously rendered to a residential customer (e.g., to correct estimated bills) more than 12 months after the service to which the adjustment pertains was rendered, unless one or more of the following conditions exist:

1. the incorrect billing was a result of customer's culpable conduct;
2. the incorrect billing was *not* a result of the utility's own neglect;
3. the adjustment is necessary to adjust a budget or levelized payment plan; or

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\(^{205}\) PSL § 41(1); 16 NYCRR § 11.14(a).  
\(^{206}\) PSL § 41(1); 16 NYCRR § 11.14(a). Note, however, that neither the Public Service Law nor PSC regulations contemplate installment payment agreements for amounts owed which accrued during the six-month period. However, remember that all customers have the option of asking to pay unpaid debt on an account under a deferred payment agreement (DPA) before termination. Basically, this means that if a utility back bills a customer’s account for amounts owed during the immediate six-month period, and a customer becomes unable to financially afford the bills, and debt is accumulated on the account then, she could seek to pay the outstanding amount due to the utility by establishing a DPA. However, if a utility back bills a customer’s account for amounts owed *beyond* the past six-month period, then the customer is automatically given the option to pay those amounts according to an installment plan.  
\(^{207}\) PSL §41(1).
(4) there was a dispute between the utility and the customer concerning the charges for service during the 12-month period.\(^\text{208}\)

If one of the above-listed conditions is present, the utility may back bill beyond the 12-month period with appropriate notice given stating the reason for the late bill.\(^\text{209}\) When back billing for any allowable period will result in an increase of over $100, and provided the back billing is not a result of the customer’s culpable conduct, the utility must notify the customer that he or she has a right to pay the adjusted bill in regular monthly installments tailored to his or her financial circumstances over a reasonable period of time.\(^\text{210}\)

A utility may not issue a bill for previously unbilled service, or increase a bill previously sent to a residential customer more than 24 months from the time the service was provided, unless the customer's culpable conduct caused or contributed to the utility's failure to render a timely or accurate billing.\(^\text{211}\) When under-billing results from a customer’s culpable conduct, a utility may back bill for a period of up to six years.\(^\text{212}\)

\(^{208}\) PSL § 41(2); 16 NYCRR § 11.14(b). See also, Consol. Edison Co. of N.Y., Inc. v. Gallagher, 244 A.D.2d 447; 664 N.Y.S.2d 125 (2d Dep’t 1997) (holding that unpaid bills upon which termination was based that were more than 12 months old, were proper under PSC law and regulations because they were the subject of continued billing disputes between the parties during the 12-month period that preceded termination).

\(^{209}\) PSL § 41(2); 16 NYCRR § 11.14(d).

\(^{210}\) PSL § 41(2); 16 NYCRR § 11.14(c). When an increase is not a result of a utility’s neglect, is necessary to adjust a budget payment plan or levelized payment plan; or the amount was subject to a dispute between the utility and the customer concerning the charges for service during the 12-month period, then, the utility can demand payment be made within four months of the final resolution of the billing dispute. 16 NYCRR § 11.14(c).

\(^{211}\) PSL §41(3); 16 NYCRR § 11.14(e). Gansevoort Holding Corp. v. Consol. Edison Co. of N.Y., Inc., 167 A.D.2d 648, 562 N.Y.S.2d 871 (3rd Dept. 1990) (holding that utility has right to collect under-billed amounts from a commercial customer when the customer prevented actual meter readings).

\(^{212}\) This policy has been enunciated in PSC decisions, apparently based upon common law contract principles, but no such regulation exists. See, PSC Case 03-E-0058, Vetrromile v. Con Edison (Dec. 14, 2007) (“the culpable conduct of the complainant caused the utility’s failure to bill correctly and warrants backbilling for a six-year period”); PSC Case 92-G-1167, Julie and Jack Laundromat, Inc. v. Bklyn Union Gas (Nov. 17, 1994) (citing the PSC’s six-year backbilling policy established in Kahn v. NYSEG, (Jan. 13, 1986), Robert Reynolds, No. E503698 (Oct. 20, 1989) and Donald Johnson, No. 959005 (July 15, 1991).
7.2 Meters and tampering

7.2.1 Meter testing
Electricity and gas meters used for billing customers must be tested by a meter testing facility certified by the PSC or its designee. All new electricity meters must be tested and adjusted to as near to 100% accuracy as possible. Gas meters used to provide domestic gas service must be tested at least once every seven years. Both electricity and gas meters must be inspected, at least once, in response to a consumer complaint.

7.2.2 Meter inspection
A duly authorized agent of a utility may enter any residency for the purposes of inspecting its meters, or associated equipment. Such inspection must take place on a non-holiday workday between 8 a.m. and 6 p.m., or at a reasonable time as requested by a customer. Inspection of equipment can be conducted between the hours of 8 a.m. and 9 p.m. on the day there is evidence of meter tampering or theft. Regardless of whether the inspection is routine, or due to evidence of meter tampering or theft, no agent may enter a locked premises without the permission of the person in control of the premises. However, the utility can enter any residence, locked or unlocked, at any time to inspect meters

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213 Meter tampering issues may also involve violations of the Shared Meter Law, PSL § 51. See the “Shared Meters, Diversion and Theft of Services” chapter of this Manual.
214 16 NYCRR §§ 92.1; 92.2 (electricity); 16 NYCRR §§ 226.2(c); 226.4 (gas).
215 16 NYCRR § 92.7.
216 16 NYCRR § 226.81.
217 16 NYCRR § 92.9; PSL § 67(3) (electricity); 16 NYCRR § 228.2; PSL § 67(3) (gas).
218 PSL § 47(1)(a); 16 NYCRR § 11.19(a).
219 PSL § 47(1)(b); 16 NYCRR § 11.19(a).
220 16 NYCRR § 11.19(c).
221 PSL § 47(2); 16 NYCRR § 11.19(d).
when there is an emergency that may threaten the health and safety of a person, the surrounding area, or the utility’s distribution system. 222

7.2.3 Meter tampering and back billing “Where the evidence shows that a meter was tampered with, the question of who did the tampering is a nonissue. The only issue is whether or not the customer received unbilled service. If he did, he must pay for it.” 223

7.2.4 Proof of meter tampering The law creates a presumption that the person who accepts or receives utility service that has been intentionally diverted or intentionally prevented from being properly metered and billed, does so with knowledge of the tampering. 224 If a person consumes utility services being supplied to a residence, knowing that he has not established an account with a utility company, and knowing that the utility company is not billing him or anyone else at the property, then, that person will likely be liable for conversion of property (i.e.: theft). 225 To recover money for unauthorized use of service, a utility must prove the amount of compensatory damages to which it is entitled. In addition to nominal damages, a utility company may be awarded punitive damages when a person’s conduct reflects a “high degree of moral turpitude.” 226

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222 PSL § 47(2); 16 NYCRR § 11.19(b).
225 *Brooklyn Union Gas Co. v. Diggs*, 2003 NY Slip Op 50000(U), ¶ 14 (Civ. Ct. January 2, 2003) (“Although there was no detailed direct evidence as to the precise manner in which the service had been diverted to 369 Euclid, the evidence established that the service was provided through the Gas Company’s pipes, but neither by, nor with the authority of, the Gas Company. Mr. Diggs consumed the gas being supplied, knowing that he had not established an account with the Gas Company, and knowing that the Gas Company was not billing him or anyone else at the property. [*20] This is enough to establish Mr. Diggs's liability for conversion and in quasi-contract. If some additional awareness of the diversion is required, that awareness can be inferred from the evidence, aided by the statutory presumptions.”).
7.2.5 Criminal implications of meter tampering. The Penal Law §165.15 makes theft of services (tampering with electrical or other utility services) a class A misdemeanor. In addition, theft of utility service constitutes as two separate crimes, theft of services and larceny, and a defendant in a meter tampering case may be convicted of both crimes. As with all crimes, proof of theft must be proved beyond a reasonable doubt.

8. MISCELLANEOUS PROVISIONS

In addition to the specific HEFPA provisions summarized in the preceding sections of this chapter, HEFPA also contains several other consumer-oriented provisions.

These include:

- budget or levelized payment plans, based on the customer's recent 12 months experience, or, if none, then on estimated future usage;
- meter reading and estimated bills;
- voluntary notice to third-party before termination of service;

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227 N.Y. Penal Law § 165.15 refers to all types of thefts from a supplier of service, including utility service. Most will be treated as Class A misdemeanors. Exceptions are noted in the statute. For example, first time offense of theft of cable television service having a value not in excess of one hundred dollars is a violation and theft of services of any telephone service having a value in excess of one thousand dollars or repeat offense of theft of services by someone previously convicted, is a class E felony. A Misdemeanor is an offense other than traffic infraction of which a sentence in excess of 15 days but not greater than one year may be imposed (New York State Penal Law, Article 10). Upon conviction of a Class “A” misdemeanor, a court may sentence an individual to a maximum of one year in jail or three years’ probation. In addition, a fine of up to $1,000 or twice the amount of the individual’s gain from the crime may be imposed.

228 People v. McLaughlin, 93 Misc. 2d 980, 986; 402 N.Y.S.2d 137, 141 (Sup. Ct. Queens County 1978).

229 PSL § 38; 16 NYCRR § 11.11. Customers age 62 years and older may pay quarterly if their average annual bill is $150 or less. Under utility tariffs, budget plan amounts may be adjusted to reflect price changes.

230 PSL § 39; 16 NYCRR § 11.13.

231 PSL § 40. This provision may be useful to disabled and elderly customers. The party receiving the notice does not become liable for the bill.

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requirements for the form and content of bills, and annual notification to customers of their rights and obligations;\(^{232}\)

utility designation of payment agencies;\(^{233}\)

an emergency Hotline to the PSC for residential customers to call regarding (1) service initiation, (2) service termination or (3) service reconnection, or (4) for questions regarding termination or refusal of service when the health and safety of a person is involved;\(^{234}\)

residential steam service rights and responsibilities;\(^{235}\) and

the PSC has reserved the right, for good cause shown or upon its own motion, to waive any requirement of 16 NYCRR Part 11, except where the waiver is precluded by the Public Service Law or other applicable law.\(^{236}\)

Additionally, customers are entitled to interest on overpayments caused by an erroneous utility billing that is not refunded within 30 days of the overpayment.\(^{237}\) Protections concerning shared utility meters,\(^{238}\) complaint handling procedures,\(^{239}\) and residential water service\(^{240}\) are addressed in separate chapters of the PULP Law Manual.

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\(^{232}\) PSL § 44; 16 NYCRR §§ 11.16 and 11.17. At the request of a customer, a utility must send its messages in English and in such non-English language as is appropriate according to the most recent Federal census population data.

\(^{233}\) PSL § 45. Under this provision, utilities may permit customers to pay their bills to a payment agent.

\(^{234}\) PSL § 48; 16 NYCRR § 11.21. The number is 1 (800) 342-3355 and customers may call on any business day between 7:30 a.m. and 7:30 p.m.

\(^{235}\) PSL § 49; 16 NYCRR Part 400. These are "substantially comparable" to those for electric and gas customers.

\(^{236}\) 16 NYCRR § 11.22.

\(^{237}\) 16 NYCRR §§ 145 (electric utilities); 277 (gas utilities); 435 (steam utilities); 534 (water utilities).

\(^{238}\) PSL § 52; 16 NYCRR §§ 11.30; 11.37.

\(^{239}\) PSL § 43; 16 NYCRR § 11.20.

\(^{240}\) PSL § 50.
9. **MUNICIPAL ELECTRIC SERVICE**

HEFPA does not apply to any municipality that is exempt from PSC regulation by virtue of Public Authorities Law (PAL) §1005(5)(g). Consequently, municipal electric utilities that receive substantially all of their power from the New York Power Authority (“NYPA”) are excluded from HEFPA coverage. A list of all the electric utilities under regulation by the Public Service Commission is available at the Department of Public Services website.

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241 Laws of 1939, chapter 870.
242 16 NYCRR § 11.2. The New York Power Authority (“NYPA”) is a state-owned electric power utility that operates power generating facilities and transmission lines and sells power to community-owned electric systems and rural electric cooperatives. See also, Lathrop v Bath, 112 A.D.2d 749, 492 N.Y.S.2d 247, 1985 N.Y. App. Div, LEXIS 56115 (N.Y. App. Div. 4th Dep’t 1985).
To the extent that the PSC regulates municipal utilities, HEFPA, the PSC HEFPA rules 16 NYCRR Parts 11 and 12), and relevant parts of PSC regulations are operative.

If the municipality does receive most of its power from NYPA, then, customers are protected under NYPA’s regulations.

These regulations include customer service protections which are similar to, but not as comprehensive as, HEFPA. These regulations are found at 21 NYCRR Parts 451 (consumer deposits), 452 (resale rates), 457 (late payment charges) and 459 (procedures for discontinuance).

If a customer has a dispute concerning his bill, he should address the issue with the utility, or request an opportunity to be heard as to the amount of the bill. If the customer makes a request to be heard on the bill amount, NYPA investigates the complaint to reconsider the charges and advise the customer of its determination after a hearing. The bill as finally rendered must be paid within 30 days after the date of service of such a determination. If the customer is dissatisfied with NYPA’s resolution of the complaint, he or she may take legal action.

244 16 NYCRR Parts 90-105 and 136-145 (electric service), and 225-232 and 270-277 (gas service).
245 See, e.g., 16 NYCRR Parts 91 (municipal utility consumer deposits), 138 (municipal electric bills and penalties) and 272 (municipal gas bills and penalties). However, as noted in the Introduction to this section, the PSC HEFPA regulations prevail over any inconsistent provisions in these other parts. 16 NYCRR § 11.2(a).
246 For example, there are no comparable regulations concerning application, budget plans and backbilling, annual notification of rights and complaint procedures.
247 NYPA can be contacted by writing: New York Power Authority, 123 Main Street, Corporate Communications, Mail Stop 10 B, White Plains, NY 10601-3170, or by telephone, 914-681-6200.
248 21 NYCRR § 450.1.
249 Id.