

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on June 2, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-M-0117 - In the Matter of the Implementation
of Chapter 686 of the Laws of 2002, Proposed
Changes to the Requirements Contained in Home
Energy Fair Practices Rules, 16 NYCRR Parts 11
and 12, and in Commission Orders in Cases 28080,
91-M-0744, 91-M-0500 and 88-W-187.

MEMORANDUM AND RESOLUTION
ADOPTING AMENDMENTS TO 16 NYCRR PARTS 11 AND 12

(Issued and Effective June 9, 2004)

BY THE COMMISSION:

INTRODUCTION

On January 27, 2004, the Commission issued for comment
a Notice of Proposed Rulemaking amending the existing Home
Energy Fair Practices (HEFPA) rules (16 NYCRR Parts 11 and 12).
The amendments were required to implement changes to Article 2
of the Public Service Law (PSL) that took effect June 18, 2003
(Chapter 686 of the Laws of 2002). Fifteen entities commented

on the proposed rules.¹ A summary and analysis of their major substantive comments and suggested alternatives are provided herein. The rules we are adopting, set forth in the attached resolution, incorporate corrections and technical changes that clarify the language used in the proposed rules.

DISCUSSION AND ANALYSIS OF COMMENTS

§11.2 - Applicability of rules

Several comments suggest that additional terms be defined in this section (e.g., "termination," "disconnection," "ESCO" (or "energy services companies") and "suspension") and then used consistently throughout Part 11 in order to provide greater clarity as to the applicability of its various sections.

NMPC objects to the inclusion of the words "all or any part of" in §11.2(a)(3)'s definition of applicant.

Central Hudson seeks clarification of whether "utility" (subdivision (a)(1-a)) is only applicable to "building owners."

¹ Public Utility Law Project (PULP), Small Customer Marketer Coalition (SCMC), National Fuel Gas Distribution Corporation (NFG), NYS Office of Temporary & Disability Assistance (OTDA), Energetix, Inc. (Energetix), National Energy Marketers Association (NEM), Central Hudson Gas & Electric Group (Central Hudson), Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Ed/O&R), County of Erie Department of Social Services (Erie County), NYS Energy Research & Development Authority (NYSERDA), NYC Human Resources Administration (HRA), American Association of Retired Persons (AARP), Niagara Mohawk Power Corporation (NMPC), New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG), and The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan).

Discussion

The words "terminate" and "disconnect" have been used in the HEFPA rules since their original promulgation and both are understood to mean the cessation of utility service. The proposed rules continued to use "terminate" or "termination" to refer to the cessation of utility service, regardless of whether the service consists of commodity only, distribution only or bundled commodity and distribution service. The proposed rules also explain and use the words "suspend" and "ESCO" to describe a new activity and entity that are now governed by Public Service Law (PSL) Article 2.

Some commenters express concern that, continuing to use the word "terminate" to refer to the cessation of utility service, regardless of whether the service consists of the provision of commodity only or the provision of bundled service, could be confusing. Others stated that defining additional terms, then using them consistently throughout the rules could help to clarify which entity was responsible for the various activities governed by the rules.

Upon careful consideration of the concerns expressed, and because we previously have established the definitions for the words at issue, we will grant the request for clarification as follows: §11.2 will include subdivisions (1-c) ("ESCO" means an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility),² (1-d) ("terminate" or "termination" means ending

² This definition is consistent with the proposed rules (e.g., §11.4-a describing an ESCO as "a utility that provides commodity supply, but not distribution service") and with our Uniform Business Practices' (UBP) definition (Case 98-M-1343, Uniform Business Practices, January 2004, §1, page 2).

an ESCO's provision of commodity service),³ (1-e)("disconnect" or "disconnection" means ending distribution service (alone or in combination with commodity service) by and solely at the behest of the utility providing such service),⁴ and (1-f)("suspend" or "suspension" means a customer's loss of distribution service at the request of an ESCO).⁵ Providing these definitions at the beginning of the rules, along with their consistent use throughout the rules, responds to the comments requesting such clarification. In particular, the consistent use of "terminate" or "disconnect" or "suspend", alone or in combination, throughout the rules, instead of using "terminate" to encompass all or any of the three terms, as proposed, should eliminate potential confusion as to the activity or entity that is being referenced in rules and will not alter the effect, meaning or purpose of the proposed rules.⁶

NMPC's suggestion to delete "all or any" from the definition of applicant is rejected as it could be seen as

³ This definition is consistent with the proposed rules (e.g., §11.4 ("a utility that provides commodity supply, but not distribution service")) and with Case 98-M-1343, et al, Order on Petitions for Rehearing and Clarification, issued December 5, 2003, p. 2, n. 2 ("December 5th Order").

⁴ This definition is consistent with the proposed rules (e.g., §11.9 "only distribution service was provided by a utility and was terminated solely at the behest of that same utility or (2) distribution service and commodity supply were provided by and terminated by the same utility").

⁵ This definition is consistent with the proposed rules (see e.g., §11.4-a) and with our December 5th Order, p. 2, n. 2.

⁶ The request for clarification by use of the terms "disconnect" (or "disconnection") and "suspend" (or suspension") in addition to or instead of "terminate" (or "termination") has been reflected in §§ 11.4, 11.5, 11.6, 11.7, 11.8, 11.10, 11.12, 11.13, 11.15, 11.17, 11.18, 11.20 and 11.21.

conflicting with the authorizing statute, which expressly contains said words.

In response to Central Hudson's request for clarification whether "utility" (subdivision (a)(1-a)) is only applicable to "building owners," we refer to the determinations made in our December 5th Order (p. 40) and June 20th Order⁷ (p. 6).⁸ There we state that "the management, board of directors, or owners of submetered buildings sell electricity to residential customers" and thus are required to provide them with HEFPA protections.

§11.3 - Applications for residential service

PULP, AARP and HRA assert that the proposed approach for reflecting the amendment at PSL §31(6) restricts §11.3's application to distribution utilities only and thereby denies ESCO customers other applicable PSL §31 protections (e.g., protections set forth in PSL §31(2), (3), (5) and (6)). PULP provides an alternative approach in Attachment A to its comments.

SCMC asks for clarification as to the legal status of the comments set forth in this and other sections.

OTDA and NFG propose changes to the comment following §11.3(a)(2)(iv). OTDA asserts that the comment is incomplete and should be amended to incorporate 18 NYCRR §352.5(f) and (e). NFG requests that the final sentence be rewritten to require

⁷ Case 99-M-0631, et al., Order Relating to Implementation of Chapter 686 and the Laws of 2003 [sic] and Pro-ration of Consolidated Bills, issued June 20, 2003, p.6, n. 11.

⁸ We will correct the language in the rule to eliminate this confusion.

distribution utilities to extend service "when notified" of the applicant's eligibility for social services payments.

NFG also proposes the addition of language identifying an exception to the distribution utility's requirement to provide service when service has been suspended, and expressly requiring ESCOs to continue providing service to customers that move within the same distribution utility service territory and to send out written notices of service denial to applicants. NFG further asks that the word distribution be inserted in subdivision (c) before the word "service" each of the three times that word is used.

OTDA suggests that ESCOs be required to provide service to any applicant on whose behalf an emergency or other public benefit payment is being made.

Central Hudson asks that the reference to "... prevent(ing) shutoff ..." be clarified regarding its applicability to suspension and disconnection.

KeySpan believes that subdivision (a)(2) is not consistent with the Commission's requirement that ESCO arrears must be paid before a distribution utility may provide service to an applicant.

Discussion

The suggested alternatives of (1) extending certain provisions of PSL §31 (e.g., §31(2), (3), (5) and (6)) to ESCOs, and (2) requiring ESCOs to provide service to any applicant on whose behalf an emergency payment is being made, were not incorporated because they would conflict with the PSL §31(6) mandate that "nothing in this section shall require the provision of [gas or commodity only] service" (emphasis added).

Proposed changes to the comment following §11.3(a)(2)(iv) are not incorporated because, upon further consideration, we have withdrawn our proposal to amend the

comment. OTDA and NFG reflect concerns regarding the accuracy and completeness of the proposed comment, and, in any event, the proposal merely attempts to describe information and requirements that are set forth in other binding statutory (Social Services Law §131-s) and regulatory provisions (subdivision 11.3(a)(iv) and 18 NYCRR 352.5).

The request to add an exception to the distribution utility's requirement to provide service when service has been suspended is rejected as it is addressed, to the extent practicable, in the rules at §11.3(a)(4)(v) and §11.9-b(f).

The request to insert the word "distribution" in subdivision (c) before the word "service" is denied because it would make the subdivision incorrect in instances where the distribution utility provides bundled service.

KeySpan's suggested alternative is not incorporated because existing subdivision (a)(2)(i) addresses the concern that distribution utilities not be obligated to provide service where arrears are owed to both a distribution utility and an ESCO.

§11.4 Termination of residential service

Several comments indicate that it is unclear when this section, versus §11.4-a, applies. They suggest clarifying that an ESCO must satisfy the requirements of §11.4 prior to requesting suspension of delivery service pursuant to PSL §32(5) and §11.4-a. In addition, they suggest stating that the contents of the notice required by this section and the contents of a notice required when executing a suspension, are different.

Central Hudson contends that subdivision (d)(2)'s prohibition against termination should be modified to include days when the office of the billing party is closed, if the billing party is collecting customer payments on behalf of the

terminating utility. Central Hudson notes that, under subdivision (i), ESCOs are required to provide notification to social services even though such termination would not result in service shut-off.

ConEd/O&R and NMPC state that this section should take account of the paradigm created when accounts receivable are purchased.⁹

ConEd/O&R assert that the effective date of the ESCO commodity termination should be the meter reading date or the first of the month that occurs at least 15 days after mailing of the termination notice, in order to conform with the Uniform Business Practices (UBP), section 5.

NYSERDA states that this section should be clarified to indicate that it permits and applies to termination of service by entities that submeter electricity for sale to residential customers.

HRA suggests that subdivision (i)(1) be amended to provide that notices be "received" by the social services district not less than "five business days" before an intended termination. HRA contends that §11.4 should incorporate provisions from Commission orders relating to public assistance applicants and recipients, specifically a requirement that an ESCO refrain from terminating a public assistance applicant or recipient "unless and until the appropriate local social services official denies a request for payment or until the ESCO sale agreement expires..."

NYSEG suggests rewriting the section so that it contains three subdivisions - one for termination of service by

⁹ We note that the purchase of accounts receivable is addressed by the rules. The rules, specifically §11.4, require compliance by any utility that seeks to terminate or disconnect utility service due to nonpayment of charges.

a distribution utility, the next for ESCO termination of commodity service and the last for ESCO suspension of distribution service and distribution utilities' recovery of costs associated with suspensions.

KeySpan alleges subdivision (c)(2) should not be limited to the distribution utility.

Discussion

As we noted, *supra*, we are granting the request for clarification via the consistent use of terminology throughout the rules. Accordingly, there are several clarifications to §11.4. First, §11.4's heading now reads "Termination or Disconnection of residential service"; this clarification is carried throughout the section. Second, the introductory paragraph states: "[t]his section sets forth termination and disconnection procedures applicable where..." Third, instead of directing ESCOs seeking suspension "to refer to 11.4-a, below," we state "Where [a]n ESCO seeks suspension ... section 11.4-a also applies."

With regard to the contents of the notice required by this section, we correct the proposed amendment to §11.4(b)(5) as follows: "The final notice of termination from an ESCO shall 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." We also clarify that a disconnection notice must state that it is a final notice of disconnection.

Central Hudson's contention that subdivision (d)(2)'s prohibition against termination should be modified to include days when the office of the billing party is closed, if the billing party is collecting customer payments on behalf of the terminating utility is not incorporated. The proposed alternative does not appear to be necessary in light of the

numerous other restrictions regarding the times and circumstances under which termination or disconnection may proceed.¹⁰

Requiring that the effective date of the ESCO commodity termination should be the meter reading date or the first of the month that occurs at least 15 days after mailing of the termination notice is not incorporated because it is addressed in the UBP and, as an optional arrangement between affected utilities, its inclusion in the rules has the potential to cause unnecessary confusion for the residential customers who read and refer to these rules.

The request for clarification indicating that this section permits and applies to termination of service by entities that submeter electricity for sale to residential customers is not reflected. The rules (e.g., §11.2) indicate that they apply to entities that submeter electricity for sale to residential customers.

The suggestion that subdivision (i)(1) be amended to provide that notices be "received" by the social services district not less than "five business days" before an intended termination is not incorporated in the rules because we interpret the existing language as requiring that such notification must have been actually received by a local social services official.

The suggestion that §11.4 should incorporate provisions from Commission orders relating to public assistance applicants and recipients, specifically a requirement that an ESCO refrain from terminating a public assistance applicant or recipient "unless and until the appropriate local social

¹⁰ The proposed alternative also is not supported by citation to the authorizing statute or Commission Order.

services official denies a request for payment or until the ESCO sale agreement expires..." will not be reflected at this time. Affected entities already are on notice that this limitation exists and that they are required to comply with it.

The suggestion to rewrite the section so that it contains three subdivisions is not incorporated because it is not necessary. The rules as proposed, along with the clarifications adopted herein, should adequately address the concerns that prompted this request.

The assertion that the rules include a provision concerning distribution utilities' recovery of costs associated with suspensions is rejected as the statute, rules (at §11.4-a(c)) and utility tariffs already address this issue.

§11.4-a Suspension of distribution service pursuant to PSL §32(5)

SCMC, NFG and KeySpan ask that each party involved in the suspension process be apprised of each action that must be implemented and by whom. They, along with ConEd/O&R and NMPC, request that clarification be provided as to whether the notice referred to in §11.4-a(b) is the same as, or is in addition to, the notice referred to in §11.4(b)(5). Central Hudson asserts that the requirements of subdivision (a)(3)(an ESCO's notification of §11.4 compliance to the distribution utility) seem duplicative of and contradictory to the Commission's Pro-ration Order; the requirements of subdivision (b)(content of a final suspension notice) seem to be an unnecessary restatement of equivalent requirements in §11.4(c); and the comment following subdivision (c) would be more practical if it stated that an ESCO's suspension notice automatically expired after 60 days.

ConEd/O&R state that subdivisions (a)(2)-(5) are unnecessary and impose an undue burden. ConEd/O&R and NMPC assert that subdivision (a)(3) should parallel the language of §11.4(c). Con Ed/O&R propose that the comment following subdivision (c) be incorporated into the text of the regulation. ConEd/O&R assert that a distribution utility should not be responsible for determining whether any customer for whom it receives a suspension request is eligible for special protection under PSL §32(3) or §11.5. ConEd/O&R request clarification of the consequences flowing from an ESCO's failure to update a suspension notice.

NMPC asks what type of proof would demonstrate that an ESCO termination took place as authorized (time/day) and how could mailing a final notice of termination ever be deemed to satisfy the requirements of §11.4(d).

HRA contends that §11.4-a needs to incorporate provisions from Commission Orders relating to public assistance applicants and recipients, specifically prohibiting an ESCO from "seeking to suspend delivery service to a residential customer who is a public assistance applicant or recipient" and prohibiting a distribution utility from honoring any request from an ESCO that it suspend service of public assistance applicants or recipients (and SSI recipients). HRA asks that the Commission make clear that public assistance "applicant" refers not only to individuals who are in the process of applying for public assistance at the time a suspension notice is issued, but also refers to low-income individuals who receive such a notice and then apply for assistance (including one-time

utility relief) at a public assistance office.¹¹ HRA also states that §11.4-a(a)(6)'s conditions upon which an ESCO must restore commodity supply should be broader and consistent with the ESCO's obligations to restore commodity supply as provided in §11.9-a(a).

KeySpan contends that "authorized forms of notices and other procedures" are missing from the regulations. It also states that the Commission finding that "[a] distribution utility may rely on ESCO representations that it complied with HEFPA ..." bears repeating here.

Erie County states that the proposed regulations do not address the scenario where the ESCO can terminate service and keep service off if it is unwilling to accept funds against a bad debt while being unwilling to offer prospective service.

Discussion

Given our decision to consistently use certain terms throughout the rules, §11.4-a's introductory sentence is now more concise, since it need not state therein the definition of "ESCO." In addition, §11.4-a(b) is clarified to apply to an ESCO's notice of "suspension."

In response to whether the notice referred to in §11.4-a(b) is the same as, or is in addition to, the notice referred to in §11.4(b)(5), they are slightly different in that a suspension notice is required to contain additional information.

SCMC, NFG and KeySpan's request that each party involved in the suspension process be apprised of each action that must be implemented, and by whom, is addressed, where relevant and where practicable, by our decision to clarify terms

¹¹ Since our rules do not define "public assistant applicant," we will defer to HRA's interpretation of this term.

and consistently use them throughout. Additional details concerning any related business transactions between the utilities are not addressed further in the rules because such details are being addressed through revisions to the UBP.¹²

Central Hudson's assertion that the requirements of subdivision (b) unnecessarily restate equivalent requirements in §11.4(c) is not reflected in the rules because it is incorrect. Sections 11.4 and 11.4-a apply to different actions and impose different requirements.

The suggested alternative of revising the comment following subdivision (c) to state that an ESCO's suspension notice automatically expires after 60 days and the request for clarification of the consequences flowing from failure, by an ESCO, to update a suspension notice are not reflected in the rules. These issues were already addressed in our December 5th Order (at 22). Our resolution thereof is reflected in the existing, proposed comment, which states, in relevant part, that an ESCO must send the customer an updated suspension notice after more than 60 days from the date of the suspension notice.

ConEd/O&R's statement that subdivisions (a)(2)-(5) are unnecessary and impose an undue burden is not reflected because it is incorrect; the provisions are consistent with the authorizing statute.

The request for subdivision (a)(3) to parallel the language of §11.4(c) is not reflected because it would be unduly repetitive given that the sections at issue cross-reference one another. The proposal to incorporate the comment following

¹² Staff is currently working with utilities, marketers and customer groups to develop a new section for the UBP that will detail the distribution utility-ESCO business transactions that are applicable to terminations, disconnections, and suspensions.

subdivision (c) into the text of the regulation is not reflected. The parties are on notice of the information and requirements set forth therein, and are required to comply with any directives therein as they are stated in our December 5th Order (at 21-22).

ConEd/O&R's assertion that a distribution utility should not be responsible for determining whether any customer for whom it receives a suspension request is eligible for special protection under PSL §32(3) or §11.5 is not reflected because it would conflict with our December 5th Order (at 21-22), which determined that both the ESCO and distribution utility would have an obligation to ensure that customers eligible for such protections, in fact receive them.

In response to HRA and Erie County's concerns regarding suspension of public assistance applicants and recipients, we note that ESCOs are already aware that residential customers who are public assistance applicants or recipients cannot be suspended. ESCOs must honor that requirement because it is stated in our HEFPA Orders.¹³ HRA's statement that §11.4-a(a)(6) should be broader and consistent with the ESCO's obligations to restore commodity supply as provided in §11.9-a(a) is not reflected in the rules because it could be unnecessarily duplicative of the requirements set forth in §11.9-a(a).

KeySpan's contention that "authorized forms of notices and other procedures" are missing from the rules is accurate. However, upon further consideration, we find that the need to include such forms and procedures in the rules no longer exists and is being addressed, to the extent necessary, through Staff's

¹³ December 5th Order at 34; June 20th Order at 36.

efforts to amend the UBP and to establish EDI requirements and procedures.

§11.5 Special procedures

PULP and HRA state that subdivisions (a)(4)(renewals of certificates for medical emergencies) and (c)(4)(dormant account review) should not be limited to distribution utilities and that §11.5(c)(4) should also apply to suspended distribution service. NYSEG opines that §11.5 must be revised to apply to suspension and disconnection.

Central Hudson asserts that this section's silence on the matter of ESCOs' obligations with respect to suspensions "seems out of step with" the Commission's December 5th Order on Petitions for Rehearing and Clarification and with PSL §32(3); ConEd/O&R and NMPC echo this concern.

Central Hudson requests clarification whether the customer notification that must be made by a utility upon receipt of an initial certificate of medical emergency is required of all utilities providing service. Central Hudson also states that subdivision (4)(ii)'s requirement of a stay pending determination of a customer's ability to pay is impractical.

ConEd/O&R state that, in subdivision (a)(3), customers should be required to provide each utility with relevant information to support a claim of medical hardship, and that requirements of subdivision (c)(4) (dormant account review) should be limited to disconnections and suspensions, with costs of the latter borne by ESCOs.

AARP states that §11.5 must specifically refer to "suspension" as well as "termination" and must more clearly delineate the respective roles of ESCOs and distribution utilities. AARP supports the provision that requires

distribution utilities to perform the special procedures under §11.5. AARP opines that proposed §11.5(4), referring to a customer renewing a certificate of medical emergency, could be interpreted as depriving the customer of the benefits of an ESCO contract and returning the customer to full service of the distribution utility. AARP posits that a customer who is renewing a medical certificate should not face termination of an ESCO contract as a result.

NMPC asks for clarification whether an ESCO would ever terminate commodity service due to unsafe circumstances (subdivision (c)(5)) given the distribution utility's role as provider of last resort.

KeySpan maintains that "needed clarity would be gained by consistent use of terminology" and that subdivisions (a)(ii) and (b)(4) incorrectly revert to "distribution utility" instead of "utility" or "distribution utility/ESCO," depending on which is terminating service.

Discussion

The comments on this section echo a similar theme - the desire for clarity as to its applicability. At the outset, we note that the proposed addition stating that "[t]his section applies to all or any part of residential utility service, regardless of the type of provider" means that §11.5 applies to each and every Article 2 utility (i.e., distribution utilities, ESCOs or submeterers) and to any and all cessation of utility service, in whole or in part (i.e., commodity only, distribution only or bundled service). These are special protections designed to protect people who may be especially vulnerable. Thus, the possibility of duplicative efforts is outweighed by the importance of ensuring that customers who are entitled to such protections get them. However, as previously determined, we will use the words "suspension" and "disconnection" (in

addition to "termination") as appropriate throughout this section.¹⁴

§11.6 Voluntary third-party notice

ConEd/O&R state that this section should explicitly require the ESCO to provide any third party with copies of its suspension and/or termination notices.¹⁵

Discussion

The proposal to revise this section to explicitly require the ESCO to provide any third party with copies of its suspension and/or termination notices is not incorporated because we anticipate that it will be addressed as part of the efforts to amend the UBP and, as an arrangement between affected utilities, its inclusion in the rules has the potential to cause unnecessary confusion for the residential customers who read and refer to these rules.

§11.7 Service to entire multiple dwellings

Central Hudson states it is not clear how a non-billing party will have the knowledge needed to comply with the requirements of subdivisions (a)(1) and (a)(2).¹⁶

KeySpan asserts that use of the word "termination" is confusing, and should be "termination/disconnection/suspension." KeySpan also asserts that the section should state that the right to maintain service trumps the right of suspension.

¹⁴ §11.5's heading will drop the words "Termination of" leaving "Residential service-special procedures."

¹⁵ §11.6's heading will become "Voluntary third-party notice."

¹⁶ The entity responsible for complying with this provision will need to ensure that applicable requirements are satisfied.

Discussion

The suggestion to revise this section to state that the right to maintain service trumps the right of suspension is unnecessary; a similar statement is already explicitly set forth in the authorizing statute (PSL §32(3)(c)) and thus applies when and where appropriate.¹⁷

§11.8 Service to two-family dwellings

ConEd/O&R comment that this section should be expanded to include ESCO notices of suspension. KeySpan asserts that use of the word "termination" is confusing, and should be "termination/disconnection/suspension."

Discussion

Con Ed/O&R's and KeySpan's requests are granted, since as indicated *supra*, the terms at issue would be defined and consistently used throughout the rules.¹⁸

§11.9 Reconnection of service

PULP suggests a rewrite of the introductory paragraph to apply only to a "distribution utility."

OTDA suggests that reconnection be required "upon the utility's notification and agreement to accept HEAP benefits or SSL §131-s payments."

KeySpan asserts that use of the word "termination" is too limited and that distribution utility compensation should be mentioned herein.

¹⁷ KeySpan reiterates this comment in §11.8; our response is the same.

¹⁸ As a result, §11.8's heading now reads as follows:
[Termination of] Service to two-family dwellings.

Discussion

The suggested rewrite of the introductory paragraph using the term "distribution utility" is not reflected because the suggested rewrite could conflict with our determination that submeterers must provide HEFPA protections to residential customers.¹⁹

OTDA's suggested addition is not reflected because it conflicts with the language of PSL §35(1)(d) and existing subdivision (a)(4).²⁰

KeySpan's first request has been addressed by our consistent use of terminology throughout; here, the result being that "terminate" is replaced by "disconnect."

KeySpan's second request is denied because the current rule does not address such compensation and KeySpan has shown no reason why it should do so now. This is an activity that distribution utilities have traditionally performed and will continue to perform, unaffected by the statutory amendments; as a result, there is no basis for changing the section to address compensation.

§11.9-a Restoration of commodity supply

PULP suggests a rewrite of the introductory paragraph using the term "ESCO."

SCMC asserts that subdivision (b) exceeds our authority.

Energetix and NMPC note that ESCOs are fundamentally unable to restore commodity supply within 24 hours. Energetix requests that this requirement be suspended.

¹⁹ December 5th Order, pp. 40-41; June 20th Order, p. 6.

²⁰ OTDA makes the same suggestion with respect to §11.9-a and §11.9-b; our response also is the same.

HRA suggests that the comment after §11.9(a)(5) be repeated after subdivision (a)(5) in this section.

NMPC questions why the requirements of subdivision (a)(5) exist, given that the distribution utility is required to serve as the provider of last resort.

Discussion

PULP's suggestion is addressed by our consistent use of terminology throughout the rules.²¹

SCMC's comment does not acknowledge (1) that the authorizing statute (PSL §35) was expressly amended to incorporate a reference to ESCO agreements for the provision of commodity, and (2) PSL §53's prohibition against waiving Article 2's requirements.

Energetix and NMPC's observation that ESCOs are fundamentally unable to restore commodity supply within 24 hours is not reflected because it is not dispositive. An ESCO may be physically unable to effectuate the restoration of its commodity supply within 24 hours; however, the statute and rules require that an ESCO "shall take all actions within its control" and allow it to demonstrate "good cause" for failing to meet the 24-hour deadline. Thus, an ESCO may initiate, within 24 hours, a transfer request that would return the customer to its service and make arrangements, during the time that it takes to effectuate the transfer, to ensure that that the customer receives service at the same rate, terms and conditions as it would have received from that ESCO if the customer had not been terminated. There may be additional means of achieving the

²¹ As a result of providing definitions of certain terms earlier in the rules, §11.9-a's introductory sentence is shorter because it no longer contains a definition of the word "ESCO" (which is instead defined in §11.2(1-c)).

requirements of this statutorily-mandated requirement which, as noted above, cannot be waived.

HRA's suggestion that the comment after §11.9(a)(5) be repeated after subdivision (a)(5) in this section is not reflected but it should be noted that both comments in §11.9 contain explanatory information that is relevant to all utilities subject to PSL Article 2.

NMPC questions why the requirements of subdivision (a)(5) exist given that the distribution utility is required to serve as the provider of last resort. In short, the statute requires that all utilities subject to PSL Article 2, which includes ESCOs, reestablish service in the event of a serious impairment to health or safety (PSL §35) and prohibits waivers (PSL §53).

§11.9-b Reconnection of suspended distribution service

Central Hudson requests clarification that the reference to the one-year expiration in subdivision (6) applies to the end of suspension. Central Hudson and KeySpan state that the references to "termination" should be references to "suspension."

ConEd/O&R contend that, in subdivision (2) and (4), "a utility" should be changed to "the ESCO or its utility agent."

NMPC asserts that the language of subdivision (6) is at odds with the statutory language.

Discussion

In response to Central Hudson's request for clarification that the reference to the one-year expiration in subdivision (6) (now (f)) applies to the end of suspension. We note that it does (PSL §32(5)(d)).

In response to NMPC, the language used in subdivision (f) is corrected to reflect the statute; it is also clarified by

consistent use of terminology as follows: "upon the expiration of one year after such termination of commodity service, or upon the receipt of payments by or on behalf of the customer to the ESCO that requested the suspension such that the amount paid by such customer to the ESCO plus the amount previously paid the ESCO plus any charges paid to the distribution utility during the period when such customer's arrears accrued is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the distribution utility during such period." We note that in our December 5th Order, we interpreted this language to mean a payment amount equal to either the amount of combined utility delivery and ESCO commodity charges or the amount of bundled utility or commodity and distribution service, whichever is less.

Central Hudson and KeySpan's statement that the references to "termination" should be "suspension" is incorrect and thus not reflected in the rules.

ConEd/O&R's contention that, in subdivision (2) and (4), "a utility" should be changed to "the ESCO or its utility agent" is not incorporated because, given the definition of "utility," the suggested change would be unnecessarily duplicative.

§11.10 Deferred payment agreements

NFG states that this section should be rewritten.

ConEd/O&R request that subdivisions (a)(3) and (4)(i) be clarified to state that ESCOs are obligated to offer a deferred payment agreement (DPA) only in connection with a threatened termination of commodity service.

HRA and AARP state that the requirements for making reasonable efforts to contact eligible customers or applicants appear to be greater for distribution utilities than for ESCOs

but should be the same for each. HRA also states that the regulations should encourage the use of joint DPAs.

KeySpan asserts that subdivision (a)(1) should refer to "utility" and that subdivision (e)(3) uses "final termination notice" when it should use "termination/disconnection/suspension notice."

Discussion

NFG's statement that this section should be rewritten is too vague and unsupported to be reflected in the rules. Moreover, rewriting the rule is not necessary to implement Chapter 686, which is the objective of this rulemaking.

ConEd/O&R's request that subdivisions (a)(3) and (4)(i) be clarified to state that ESCOs are obligated to offer a DPA only in connection with a threatened termination of commodity service is not reflected because a DPA may also have to be offered under circumstances when an ESCO is required to restore commodity service (PSL §37; June 20th Order at 28).

In response to the concern from HRA and AARP that the requirements for making reasonable efforts to contact eligible customers or applicants appear to be greater for distribution utilities than for ESCOs, we note that they are essentially the same for both; our rules merely recognize that ESCOs may have commodity agreement provisions that might permit other methods of contact, provided such methods are consistent with other PSL Article 2 requirements.

HRA's suggested addition is not reflected because the rules do not discourage the use of joint DPAs.

KeySpan's comments on this section are addressed by our determination to consistently use terminology throughout the rules.

§11.12 Residential service deposits

Central Hudson seeks clarification of the reference to terminated utility service in subdivision (d)(2)(ii) (i.e., whether it refers to terminated commodity-only service).

KeySpan asserts that subdivision (c)(ii) incorrectly refers to "utility" and that subdivision (d)(ii)'s reference to "termination" should be "termination, disconnection and suspension."

Discussion

The comments on this section have been addressed by our previous determination to consistently use certain terms throughout the rules.

§11.13 Meter readings and estimated bills

Central Hudson states that subdivision (h), establishment of procedures to carry out the section's requirements, should be specific to distribution utilities.

Discussion

Central Hudson's statement that the requirements of subdivision (h) should be specific to distribution utilities is not reflected because only those sections that refer to meter reading will be limited to distribution utilities.

§11.15 Late payment and other charges

According to PULP, the rule should expressly state that "a provision of [an ESCO] agreement for commodity supply" is subject to being consistent with the Public Service Law.

SCMC contends that subdivision (a)(3) may conflict with PSL §42(1). Among other things, subdivision (a)(3) prohibits imposition of a late charge on any bill that is the subject of a pending complaint before the utility or the commission but allows imposition of such charge on the balance

due where the final resolution of the complaint directs payment of the entire disputed amount to the utility.

KeySpan asserts that subdivision (c)'s reference to "termination" should be "termination, disconnection and suspension."

Discussion

It is unnecessary to expressly state that a provision of an ESCO agreement for commodity supply must be consistent with the Public Service Law; it is implied by virtue of the application of Article 2 to ESCOs (PSL §30).

The contention that subdivision (a)(3) may conflict with PSL §42(1) is incorrect; the subdivision is consistent with the statute's plain language and Article 2's intent.

KeySpan's comment is addressed by our clarification and consistent use of certain terms throughout the rules.

§11.16 Contents of bills

PULP and HRA note that the first sentence needs to be corrected. PULP, along with Con Ed/O&R, HRA and KeySpan assert that the balance of the section should not be limited to distribution utilities. KeySpan states there should be a cross-reference to the UBP. HRA and AARP specifically assert that ESCOs, and not just distribution utilities, should be required to have or designate local offices where bills may be paid.

Discussion

Except for the correction, the suggested alternatives are not reflected because they could impose unnecessary costs, burden and duplication that is not required by the authorizing statute.

§11.17 Notification requirements

PULP proposes an additional subdivision (a)(9), which would require the distribution utility to provide a single annual notice to customers that receive residential gas or electric service from a distribution utility and one or more other utilities. PULP also suggested additions to existing subdivisions (a)(1), (4) and (7) to reflect service by more than one utility.

KeySpan asserts that subdivisions (a)(2) and (a)(5) should underscore the need for notification of rights relating to termination, disconnection and suspension.

Discussion

The suggested alternatives are not reflected because they are unnecessary and duplicate requirements of the proposed rules.

§11.18 Emergency disconnections of residences

§11.20 Complaints to the Utility

§11.21 Emergency Hotline

KeySpan states that this section should clearly refer to "termination, disconnection and suspension."

Con Ed/O&R comment that the references to "termination" in §11.20 and §11.21 should be enlarged to include "suspension." ²²

²² Con Ed/O&R also comment that an ESCO that has issued a suspension notice should be required to withdraw it and notify the distribution utility if the customer files a complaint with the Department of Public Service. We anticipate that a distribution utility will be notified when a complaint involving a customer served by two or more utilities is filed.

Discussion

KeySpan's and Con Ed/O&R's comments are addressed by our clarification and consistent use of certain terms throughout the rules.

§11.32 Service to Shared Meter Account

According to Con Ed/O&R, it is not clear why this section should be limited to service terminations by distribution utilities. They, along with NMPC, assert that this section should be clarified by an additional provision that addresses what happens when the customer receives service from an ESCO through a shared meter and the customer is subject to ESCO termination or suspension for non-payment.

NMPC asks if this section "mean[s] that a distribution utility can only disconnect service, and that an ESCO cannot terminate and/or suspend commodity service."

KeySpan asserts that this section must be clear in its references to entities and services.

Discussion

Con Ed/O&R's and NMPC's concerns appear to have been addressed in our June 20th Order (at 32). There we determined that distribution utilities will remain responsible for the investigation of shared meter conditions. Decisions regarding the actions and timing thereof by entities that provide service through a shared meter generally will depend upon the results of the investigation of a shared meter condition.

KeySpan's assertions are without merit; the section is clear in its references.

§12.1 Complaints and questions

Central Hudson opines that retaining the words "utility regulated by the Commission" appears to limit complaints to only distribution utility customers.

Discussion

The suggestion to delete the words "utility regulated by the Commission" is not reflected. The Chapter 686 amendments clearly establish that, for the purposes of these rules, the words "utility regulated by the Commission" are no longer limited to distribution utilities and their customers.

§12.3 Continuation of service while a complaint is at the commission

Con Ed/O&R state that the words "termination or suspension," rather than "end," should be substituted for "disconnect."

KeySpan contends that "end" should be replaced with "termination, disconnection and suspension."

NMPC opines that this section should be revisited to address "liability issues" that might arise if a distribution utility "unknowingly suspends service for non-payment of disputed commodity charges."

Discussion

We address KeySpan's and Con Ed/O&R's comments by using "terminate," "disconnect" or "suspend" as those terms are defined in our discussion of §11.2, *supra*, instead of "end."

NMPC's request is not reflected in the rules because the rules envision case-specific resolution of complaints regarding utility service. Moreover, such requests already have been addressed, to the extent possible and appropriate, in our December 5th Order (pp. 26-28).

General comments

NEM states that the Commission should mandate the purchase of accounts receivable, not deem ESCOs as "utilities" in the HEFPA amendments, prohibit assessment of reconnection charges against marketers, unbundle suspension costs from delivery rates, and clarify when partial payment pro-ratio for outstanding arrears will be implemented.

Con Ed/O&R assert that resolution of complaints against ESCOs should not require the cancellation and rebilling of distribution utility accounts.

HRA notes that the Commission's Orders make clear that if an ESCO terminates commodity service, the service should continue seamlessly by the distribution utility as a bundled service, unless the customer contracts for service with another ESCO; it believes this "fundamental concept" should be reflected in the regulations.

NMPC and NYSEG opine that the proposed rules are "not ripe" for final adoption because, for the most part, they "simply track" or "simply parrot" the language of the statute. KeySpan echoes this concern. NMPC seeks clarification whether the rules and UBP require that at least 30 days elapse before an ESCO can request suspension or whether a final termination notice and drop request can issue simultaneously.

Discussion

NEM's comments, for the most part, revive issues that were presented to and addressed by us in our HEFPA Orders; none are issues that are, or should be, addressed in the rules.

Con Ed/O&R raises an issue that should be addressed in the context of a specific complaint or based on a specific set of facts and/or circumstances.

HRA's general concern that we reflect in the rules the concept of a "seamless" provision of commodity for customers

terminated by an ESCO is not incorporated because, as HRA concedes, the concept is clearly set forth in our orders.

With respect to KeySpan, NMPC and NYSEG's opinion that the proposed rules are "not ripe" for final adoption, the rules are ripe for adoption and will permit ESCO suspension of service within the time required by the statute. The objection to the alleged lack of detail in the rules is without merit; in response to the comments, we have clarified the rules to the extent appropriate.

In response to NMPC's request for clarification whether the rules and UBP require that at least 30 days elapse before an ESCO can request suspension or whether a final termination notice and drop request can issue simultaneously, our orders (December 5th Order at 24) and the Chapter 686 amendments (PSL §32(5)(d)) indicate the latter.

Corrections to the Proposed Rules:

Several of the commenters noted corrections that should be reflected in the final rules. They are reflected and consist of the following:

§11.1: citation now reads "L. 2002, ch.686"

§11.2(a): deletes comma after the word "articles"

§11.2(a)(2): deletes extra word "providing"

§11.3: the proposed rewrite of the comment after (a)(iv) is withdrawn.

§11.4-a: missing word ("that") has been inserted in the second sentence of the opening paragraph ("... only such distribution service that is used ...")

§11.4(c)(2) deletes the proposed addition of the word "distribution" preceding the word "utility"

§11.5(c)(2)(ii)(a): reference to non-existing Appendix 16 is deleted

§11.9-a(a)(4): ends with the word "or", not "and"

§11.9-b: (1)-(6) are correctly designated (a)-(f)

§11.13(i): inserts missing word ("customer")

§11.14(d): inserts missing word ("as")

§11.16: corrects the opening sentence to state "Each utility bill to a residential customer shall provide, in clear and understandable form and language, the charges for service."

§11.17(a)(3): after "elderly" in the second line, the punctuation is now a comma, rather than a semi-colon.
Part 12: opening, underlined paragraph now designated "§12.0" and titled ("Applicability of Part 12 Complaint Procedures").

CONCLUSION

The views of all the commentors have been taken into account in developing regulations that will appropriately implement Chapter 686's amendments to PSL Article 2. The resulting regulations, as set forth in the accompanying resolution, are adopted.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

RESOLUTION BY THE COMMISSION

Statutory Authority

Public Service Law, Article 2 (§§30-53), as amended and effective June 18, 2003 (Chapter 686 of the Laws of 2002), and Public Service Law §§4(1), 66 and 80(1).

CASE 03-M-0117 - In the Matter of the Implementation of Chapter 686 of the Laws of 2002, Proposed Changes to the Requirements Contained in Home Energy Fair Practices Rules, 16 NYCRR Parts 11 and 12, and in Commission Orders in Cases 28080, 91-M-0744, 91-M-0500 and 88-W-187.

At a session of the Public Service Commission held in the City of New York on June 2, 2004, the Commission by a unanimous vote of its members present,

RESOLVED:

1. That the provisions of section 202(1) of the State Administrative Procedure Act and Section 101-a(2) of the Executive Law having been complied with, the official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Title 16, Public Service, Chapter I, Rules of Procedure, Subchapter B, Parts 11 and 12 are amended, effective upon publication of a Notice of Adoption in the State Register, to read as appear on the following pages (brackets indicate deleted material and underlining indicates new material):

2. That the Secretary of the Commission is directed to file a copy of this resolution with the Secretary of State.

PART 11

HOME ENERGY FAIR PRACTICES ACT
AND ENERGY CONSUMER PROTECTION ACT—RULES

(Statutory Authority: Public Service Law, art. 2, §§4(1),
[30-51] 30-53, 66, 80(1))

Sec.

- 11.1 Purpose
- 11.2 Applicability of rules
- 11.3 Applications for residential service
- 11.4 Termination or Disconnection of residential service
- 11.4-a Suspension of distribution service pursuant to PSL §32(5)
- 11.5 [Termination of] Residential service-special procedures
- 11.6 Voluntary third-party notice [prior to termination of service]
- 11.7 [Termination of] Service to entire multiple dwellings
- 11.8 [Termination of] Service to two-family dwellings
- 11.9 Reconnection of service
- 11.9-a Restoration of commodity supply
- 11.9-b Conditions for ending suspension of distribution service
- 11.10 Deferred payment agreements
- 11.11 Budget or levelized payment plans
- 11.12 Residential service deposits
- 11.13 Meter readings and estimated bills
- 11.14 Backbilling on residential accounts
- 11.15 Late payment and other charges
- 11.16 Contents of bills
- 11.17 Notification requirements
- 11.18 Emergency disconnection of residences
- 11.19 Inspection and examination of utility apparatus
- 11.20 Complaints to the utility
- 11.21 Emergency hotline

11.22 Waiver

11.23-11.29 (Reserved)

SHARED METER REGULATIONS

11.30 Definitions

11.31 Commission's designee

11.32 [Termination of] Service to shared meter account

§11.1 Purpose.

This Part sets forth the commission's rules implementing the Home Energy Fair Practices Act (L. 1981, ch. 713) and the Energy Consumer Protection Act of 2002 (L. 2002, ch. 686). Those acts establish [That act establishes] as State policy that the continued provision of all or any part of gas, electric and steam service to all residential customers without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest.

§11.2 Applicability of rules.

(a) Notwithstanding any other commission rule or order to the contrary, this Part governs the rights, duties and obligations of every gas corporation, electric corporation, gas and electric corporation, steam corporation and municipality subject to the jurisdiction of the commission by virtue of articles 2, 4 and 4-A of the Public Service Law, their residential customers and applicants for residential service. When used in this Part:

(1a) The term *utility* means any such gas corporation, electric corporation, gas and electric corporation, steam corporation, [or] municipality, or any entity that, in any manner, sells or facilitates the sale, furnishing or provision of gas or electric commodity to residential customers; provided, however, that the term does not include any municipality that is exempt from commission regulation by virtue of section 1005(5)(g) of the Public Authorities Law.

(1-b) The term *distribution utility* means any utility that is authorized under any general or special law, or any charter or franchise, to lay down, erect or maintain pipes, conduits, ducts, mains, poles or other gas or electricity distributing fixtures, in, on, over, or under streets, highways, or public places; provided, however, that the term does not include any municipality that is exempt from commission regulation by virtue of section 1005(5)(g) of the Public Authorities Law.

(1-c) The term *ESCO* means an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility.

(1-d) The terms *terminate* or *termination* mean ending an ESCO's provision of commodity service.

(1-e) The terms *disconnect* or *disconnection* mean ending distribution service (alone or in combination with commodity service) by and solely at the behest of the utility providing such service.

(1-f) The terms *suspend* or *suspension* mean a customer's loss of distribution service at the request of an ESCO.

(2) The term *residential customer* or *current residential customer* includes any person who, pursuant to an application for service or an agreement for the provision of commodity supply made by such person or a third party on his or her behalf, is supplied directly [by a utility] with all or any part of the gas, electric or steam service at a premises used in whole or in part as his or her residence where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who is supplied service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple

Residence Law, shall be considered a residential customer solely because the distribution utility's effective tariff specifies a residential rate;

(ii) such service is primarily used for his or her residential purposes and the customer has so notified the utility;

(iii) the utility knows or reasonably should have known that any of such service is provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part; or

(iv) such person was a residential customer, as defined in the preceding subparagraphs of the same distribution utility within 60 days of making the request, was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services, and has moved to a different dwelling within the distribution utility's service territory so long as such person remains a residential customer as defined in the preceding subparagraphs.

(3) The term *applicant*, when used in this Part, shall include any person who requests all or any part of gas, electric or steam service at a premises to be used as his or her residence or the residence of a third party on whose behalf the person is requesting service, where:

(i) the distribution utility's effective tariff specifies a residential rate for such service; provided, however, that no person who requests service to an entire multiple dwelling or for the common areas of a multiple dwelling as defined in the Multiple Dwelling Law or the Multiple Residence Law, shall be considered a residential applicant solely because the distribution utility's tariff specifies a residential rate;

(ii) such service will primarily be used for the resident's residential purposes and the applicant has so notified the utility; or

(iii) the utility knows or reasonably should know that any of such service will be provided through a single meter to both units of a two-family dwelling, as defined in section 11.8 of this Part.

(b) Nothing in this Part shall modify the commission's rules or orders applicable to the provision of gas, electric or steam service to nonresidential customers.

§11.3 Applications for residential service.

(a) Extension of service. (1) Consistent with the provisions of paragraphs (2)-(4) of this subdivision, every distribution utility shall provide residential service to an applicant upon his or her oral or written request.

(2) 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:

(i) the applicant makes full payment for residential service provided to any such prior account in his or her name;

(ii) the applicant agrees to make payments under a deferred payment plan of any amounts due for service to a prior account in his or her name, pursuant to section 11.10 of this Part;

(iii) the applicant has pending a billing dispute pursuant to section 11.20 of this Part with respect to any amounts due for service to a prior account in his or her name and has paid any amounts required to be paid pursuant to those provisions;

(iv) the applicant is a recipient of or an applicant for public assistance, supplemental security income benefits or

additional State payments pursuant to the Social Services Law, and the distribution utility receives from an official of the social services district in which the applicant resides, or is notified by such an official that it is entitled to receive, payment for services due to a prior account in the applicant's name together with a guarantee of future payments to the extent authorized by the Social Services Law; or

[*Comment:* By law, Social Service must pay up to four months of arrears, if incurred within the prior 10 months, and guarantee future payments for two years, for recipients. DSS may guarantee future payments for two years when a recipient's utility arrears are more than 10 months old. In the case of a person applying for DSS assistance, DSS must pay up to four months arrears incurred immediately prior to the applicant to DSS. Utilities must extend service in such situations.]

(v) the commission or its authorized designee directs the provision of service.

(3) A distribution utility shall not be obligated to provide service to an applicant for seasonal or short-term service who fails to post a lawfully required deposit.

(4) A distribution utility shall be obligated to provide service to any applicant who meets the requirements of paragraphs (1) and (2) of this subdivision within five business days of receipt of a completed oral or written application for service, or such later time as may be specified by the applicant, except:

(i) where prevented by labor strikes or precluded by law;

(ii) where precluded by consideration of public safety;

(iii) where the applicant fails to pay or agree in writing to pay the material and installation costs relating to line extensions as required by Parts 98 and 230 of this Title, or otherwise fails to comply with any applicable requirements of Parts 99, 100, 103 and 233 of this Title, and the commission's minimum insulation standards for gas-heating customers contained in Op. No. 77-10 as described in section 10.3 of this Title (17 NY PSC 546; 17 NY PSC 861); or

(iv) where precluded by physical impediments including:

(a) adverse weather conditions;

(b) inability to gain access to premises in the possession of the applicant or others;

(c) incomplete construction of necessary facilities by the applicant or inspection thereof by the appropriate authorities; or

(d) incomplete construction of necessary facilities by the distribution utility.

The distribution utility shall make reasonable efforts to eliminate conditions preventing extension [or] of service and shall pursue completion of any facilities it must construct with due diligence.

(v) An oral application for service shall be deemed completed when an applicant who meets the requirements of paragraphs (1)-(3) of this subdivision provides his or her name, address, telephone number and address of prior account (if any) or prior account number (if any). A distribution utility may establish non-discriminatory procedures to require an applicant to provide reasonable proof of the applicant's identity. Service may be denied to applicants who fail to provide reasonable proof of identity. A distribution utility may require an applicant to complete a written application if:

(a) there are arrears at the premises to be served and service was terminated, disconnected or suspended for nonpayment or is subject to a final notice of termination, disconnection or suspension;

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

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

(d) the application is made by a third party on behalf of the person(s) who would receive service.

A written application may require the submission of information required in an oral application, and reasonable proof of the applicant's responsibility for service at the premises to be supplied. A distribution utility requiring a written application shall so notify an applicant as soon as practicable after the request for service is made, and in no event more than two business days after such request, and shall state the basis for requiring a written application. A written application containing the required information shall be deemed completed when received by the distribution utility.

Comment: When a written application is permitted, a distribution utility may require the applicant to provide a copy of a lease (if one exists), deed, bill of sale or other documentation to show the date the applicant became responsible for service. A distribution utility must make a diligent effort to notify promptly an applicant who will be required to submit a written application. If a distribution utility is unable to contact the applicant orally, it must, not later than the second business day after the request for service is received, send a written notice to the applicant.

(5) Subject to the requirements of paragraph (4) of this subdivision, whenever a residential customer moves to a different dwelling within the service territory of the same distribution utility and for which the distribution utility's tariff specifies a residential rate, and requests distribution utility service within 60 days, he or she shall be eligible to receive service at the different dwelling, and such service shall be considered a continuation of service in all respects, with any deferred payment agreement honored, and with all rights; provided, however, that such customer's prior service was not terminated, disconnected or suspended for nonpayment, meter-tampering or theft of services.

(6) A distribution utility shall extend service to an applicant for residential service whose application for service has previously been denied within two business days (or such later time as may be specified by the applicant) after the following events:

(i) elimination of all the conditions specified in paragraphs (2)-(4) of this subdivision which resulted in the denial of service; or

(ii) by direction of the commission or its authorized designee, who may require such extension of service to be made within 24 hours.

(b) Denial of application for service--notice. (1) As used in this subdivision, the terms *deny* and *denial* shall mean any determination, by a representative of a distribution utility in response to an application for service, that service will not be initiated as requested. An application for service not approved within three business days shall be deemed denied.

(2) No distribution utility shall deny an application for service without sending to the applicant, within three business

days of receipt of the application for service, written notice which:

(i) states the [reason or] reasons for the denial;

(ii) specifies precisely what the applicant must do to qualify for service; and

(iii) advises the applicant of [his] the right to an investigation and review of the denial by the commission or its authorized designees if the applicant considers the denial to be without justification. The distribution utility shall advise the applicant of the appropriate address and telephone number of the commission, including the commission's hot-line number and the times of its availability.

(3) The notice required by paragraph (2) of this subdivision shall be in writing and shall be either served personally upon the applicant or mailed to the applicant at his or her current address unless a different address is specified. When the written notice is given by mail, the distribution utility shall make a reasonable effort to provide immediate notice orally.

(4) Every distribution utility shall maintain, for a period not less than one year, records of oral or written requests for service that are denied, including the name and address of the applicant, the date of the application and the utility representative(s) who denied it.

(c) Penalty. A distribution utility failing to initiate service within the time required by this section shall forfeit and pay to the applicant the sum of \$25 per day for each day that service is not supplied unless the commission finds that the distribution utility had good cause for not initiating service in the required time.

§11.4 Termination or Disconnection of residential service.

This section sets forth termination and disconnection procedures applicable where (1) a utility provides only distribution service and seeks to terminate the distribution service, (2) the utility provides both distribution service and commodity supply and seeks to terminate them both or (3) an ESCO seeks to terminate commodity supply. Where an ESCO seeks suspension of a residential customer's distribution service due to the customer's non-payment of the commodity portion of a consolidated bill, section 11.4-a also applies.

(a) Conditions for termination or disconnection. A utility may terminate or disconnect residential service as provided for in these rules if the customer:

(1) fails to pay charges for services rendered at any time during the preceding 12 months; provided, however, that termination or disconnection of service for bills due for service rendered during periods in excess of the 12-month period is permitted in cases involving billing disputes during the 12-month period, estimated bills, the culpable conduct of the customer or excusable utility delays; and provided further, that the utility shall commence any such billing not more than four months after the resolution of the billing dispute, the adjustment to estimated bills, or the cessation of excusable utility delays or delays caused by the customer's culpable conduct; or

(2) fails to pay amounts due under a deferred payment agreement;

(3) fails to pay or agree in writing to pay equipment and installation charges relating to the initiation of service; or

(4) fails to pay a lawfully required deposit; and

(5) is sent a final notice of termination or disconnection no less than 15 days before the termination or disconnection date shown on the notice.

(b) Final notice [of termination]. A final notice of termination or disconnection shall clearly state or include:

(1) the earliest date on which termination or disconnection may occur;

(2) the reasons for termination or disconnection, including the total amount required to be paid, and the manner in which termination or disconnection may be avoided;

(3) the address and phone number of the office of the utility that the customer may contact in reference to his account;

(4) the availability of utility procedures for handling complaints; and

(5) a summary, prepared or approved by the commission or its authorized designee, of the protections available under this Part, together with a notice that any customer eligible for such protections should contact the utility.

The final notice of termination or disconnection may include any additional information not inconsistent with this Part. The final notice of termination from an ESCO, however, shall 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. In addition, the notice shall have printed on its face, in a size type capable of attracting immediate attention, language conveying the following:

["] THIS IS A FINAL TERMINATION NOTICE. PLEASE REFER TO
[BRING] THIS NOTICE [TO THE ATTENTION OF THE UTILITY] WHEN
PAYING THIS BILL. ["]

or

THIS IS A FINAL DISCONNECTION NOTICE. PLEASE REFER TO THIS NOTICE WHEN PAYING THIS BILL.

(c) Notice of termination or disconnection --time. (1) No utility shall terminate or disconnect service under this Part until at least 15 days after a final notice of termination or disconnection:

(i) has been served personally upon the residential customer; or

(ii) has been mailed to the residential customer at the premises where service is rendered.

(2) If an alternative address for mailing purposes has been previously provided in writing to a utility, no utility shall terminate or disconnect service under this Part until at least 15 calendar days after a final notice of termination or disconnection:

(i) has been mailed to the premises where service is rendered and to the residential customer at the alternative address; or

(ii) has been mailed to the residential customer at the alternative address, and according to procedures filed by the utility with the Office of Consumer Services [division], either:

(a) has been served personally upon an adult resident of the premises where service is rendered;

(b) has been explained by telephone to an adult resident of the premises where service is rendered; or

(c) has been posted in a conspicuous place at the premises where service is rendered.

(3) A utility may not issue or send a final notice of termination or disconnection unless at least 20 days have elapsed from the date payment was due. A utility may specify the date payment is due, provided that such date does not occur

before personal service of the bill or three days after the mailing of the bill.

(d) Termination or Disconnection of service--time. A utility complying with the conditions set forth in this section may terminate or disconnect service to a residential customer for nonpayment of bills only between the hours of 8 a.m. and 4 p.m., Monday through Thursday, provided such day or the following day is not:

(1) a public holiday, as defined in the General Construction Law; or

(2) a day on which the main business office of the utility is closed for business. No utility shall terminate or disconnect service to any residential customer for nonpayment of bills during a two-week period encompassing Christmas and New Year's Day.

(e) No termination or disconnection without verification of delinquent account.

(1) No utility shall terminate or disconnect service for nonpayment of bills rendered, unless:

(i) it shall have verified that payment has not been received at any office of the utility or at any office of an authorized collection agent through the end of the notice period required by this Part; and

(ii) it shall have verified on the day termination or disconnection occurs that payment has not been posted to the customer's account as of the opening of business on that day, or shall have complied with procedures established pursuant to paragraph (f)(2) of this Part.

(2) In the case of a utility which serves a geographic area of this State involving more than six counties the commission may grant a waiver of the requirements of paragraph (1) of this subdivision upon approval by the commission of an alternate

procedure for verification of payments which accomplishes the basic purposes of such paragraph.

(f) Rapid posting of payments in response to notices of termination or disconnection. Every utility shall take reasonable steps to establish procedures to ensure that any payments made in response to final notices of termination or disconnection, when the customer brings the fact that such a notice has been issued to the attention of the utility or its collection agents:

(1) are posted to the customer's account on the day payment is received; or

(2) are processed in some manner so that termination or disconnection will not occur.

(g) Payment to utility personnel. If a residential customer offers payment of the full amount that forms the basis for a scheduled termination or disconnection at the time of termination or disconnection, the utility's representative shall be obliged to accept such payment and shall not terminate or disconnect service. Whenever such payment is made, the utility representative shall provide the customer a receipt showing the date, account, name, address and amount received.

(h) No additional notice required when payment by check is subsequently dishonored. Receipt of a subsequently dishonored negotiable instrument in response to a notice of termination or disconnection or tendered to a utility representative shall not constitute payment of a residential customer's account and no utility shall be required to issue additional notice prior to termination or disconnection.

(i) Special notification of social services official.

(1) After a utility has sent a final notice of termination or disconnection to a residential customer who it knows is receiving public assistance, supplemental security income

benefits or additional State payments pursuant to the Social Services Law, and for whom the utility has not received a guarantee of future payment from the local social services commissioner, it shall, not more than five days nor less than three days before the intended termination or disconnection, notify an appropriate official of the local social services district that payment for utility services has not been made. Such notification shall state that the customer has been sent a final notice of termination or disconnection, specify the amount of arrears, and state the earliest date on which termination or disconnection may occur.

(2) In the case of a customer for whom the utility has received a guarantee of future payment from the local social services commissioner, the utility shall send a notice of nonpayment stating that payment has not been made and indicating the amount of the arrears to the recipient and to the local social services commissioner at the time the account would otherwise be subject to a final notice of termination or disconnection.

(3) If the notification required by paragraph (1) of this subdivision is made orally, the utility shall within one business day mail a written notification to such social services official.

(4) Each utility shall, after consultation with an appropriate official in the social services district of each county served by the utility in whole or in part, compile and maintain a list of the social services officials who are to receive such notifications.

(5) A utility may notify an appropriate social services official that a customer it knows is receiving public assistance, supplemental security income benefits or additional State payments has failed to make timely payment for utility

service, whenever it believes special circumstances affecting such customer should be brought to the immediate attention of the social services official. Such notification shall describe the special circumstances observed, specify the amount of arrears, and state the scheduled date of termination or disconnection, if one has been set.

§11.4-a Suspension of distribution service pursuant to PSL §32(5).

This section sets forth procedures applicable where an ESCO seeks suspension of a residential customer's distribution service due to the customer's non-payment of the commodity portion of a consolidated bill. Suspension pursuant to PSL §32(5) of a residential customer's distribution service and any related services provided by the distribution utility shall be limited to only such distribution service that is used to distribute (or is related to) the commodity (1) that is or was supplied by the requesting ESCO and (2) for which the customer is in arrears.

(a) When requested by an ESCO, a distribution utility shall suspend its distribution service and any other related services the distribution utility may provide to a residential customer or multiple dwelling or two-family dwelling, if:

(1) the ESCO that was providing commodity supply to such customer has terminated the customer's commodity supply in compliance with all applicable provisions of section 11.4, above;

(2) the ESCO that was providing commodity supply to such customer notifies the distribution utility that commodity supply has been terminated in compliance with section 11.4, above;

(3) the ESCO's notification to the distribution utility demonstrates compliance with section 11.4 (such demonstration shall include, but not be limited to, providing a copy of the

termination notice, proof that the termination notice was timely sent and was received by the customer or the customer's representative, and proof that termination took place at a permissible time, as specified in section 11.4(d));

(4) Except in the case of a service to a multiple dwelling pursuant to section thirty-three of the Public Service Law, the ESCO demonstrates that such customer was billed using a consolidated bill;

(5) the distribution utility provided distribution service to the customer at the time the ESCO terminated its commodity supply;

(6) the ESCO confirms that it is able to and will take all actions within its control necessary to restore commodity supply to such customer in accordance with the agreement for such service between the ESCO and the customer, if the customer makes full payment of the arrears that were the basis for the termination of commodity supply;

(7) the ESCO has not assigned its right to obtain payment of the arrears to an entity that is not a utility for purposes of Article 2 of the Public Service Law; and

(8) less than one year has elapsed since the commodity supply was terminated.

(b) The final notice of suspension from or on behalf of an ESCO shall 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, and shall state the amounts which must be paid to (i) restore commodity supply and, (ii) if different, to end suspension of distribution service.

(c) The distribution utility shall make its best efforts to institute such suspension of distribution service promptly, consistent with applicable commission policies and practices,

and shall receive reasonable compensation from the ESCO, as determined by the commission, for any costs associated with such suspension of distribution service.

Comment: Distribution utilities are not required to duplicate all HEFPA procedures, such as suspension notices, negotiations of deferred payment agreements or other related tasks, when effectuating an ESCO-initiated suspension of service; however, the distribution utility must (1) determine whether the customer or a resident at the customer's premises qualifies for special protections under PSL §32(3) and 16 NYCRR §11.5 and (2) collect from the customer, if possible, at the time of suspension, the amount necessary to avoid suspension.

An ESCO requesting suspension more than 60 days from the date of its original suspension notice to the customer or when suspension does not occur within 60 days from the date of the suspension notice to the customer, must send another customer suspension notice containing updated payment information or it must inform the distribution utility that it no longer seeks to suspend service.

Further, when the ESCO seeks suspension of distribution service, two notices are required: (1) a notice to the customer stating that its service is subject to suspension after 15 days, the amount to be paid to avoid suspension, the amount to be paid to resume service after suspension and, if different, the amount necessary to end suspension; and (2) a notice to the utility requesting suspension of the customer's distribution service and certifying that the provisions of PSL §32(5)(a) have been satisfied.

§11.5 [Termination of] Residential service--special procedures.

This section provides special protections for specified residential customers regarding the termination, disconnection or suspension and restoration of utility service in cases involving medical emergencies, the elderly, blind or disabled, and terminations, disconnections or suspensions during periods of cold weather. This section applies to all or any part of residential utility service, regardless of the type of provider.

(a) Medical emergencies. (1) No utility shall terminate, disconnect or suspend or refuse to restore service when a medical emergency, as certified by a medical doctor or local board of health, exists; provided, however, that a demonstration of the customer's inability to pay charges for service shall be required before a certificate of medical emergency can be renewed.

(2) A medical emergency exists when a resident of a customer's residence suffers from a serious illness or a medical condition that severely affects his well-being. An inability to pay charges for service is demonstrated when a customer is unable to pay past due and current utility bills because of insufficient liquid assets and current income, considering other necessary and reasonable expenses of the customer such as food, shelter and medical expenses as documented by provision of the information required in the form set forth in Appendix A-3 of this Title, or such other form approved by the commission.

(3) Certification. An initial certification of a medical emergency by a medical doctor or local board of health may be made by telephone and shall remain effective if written certification is provided thereafter to the utility within five business days. If written certification of a medical emergency is provided to a utility that uses or appears on a consolidated bill, that utility shall notify any other utility that uses or

appears on the consolidated bill immediately upon receiving such certification. Any certification of a medical emergency shall be submitted on stationery of the medical doctor or local board of health, shall be signed by the medical doctor or an official of the local board of health qualified to make a medical judgment and shall state the name and address of the certifying medical doctor or local board of health, the doctor's State registration number, the name and address of the seriously ill person, the nature of the serious illness or medical condition and an affirmation that the illness or condition exists or will be aggravated by the absence of utility service. The certificate shall be effective for 30 days from the time the utility receives an oral or written certification, whichever occurs earlier. In deciding whether the conditions for a medical emergency are met, the medical doctor or qualified official of the local board of health should use his or her best medical judgment. A utility receiving an initial certificate shall promptly so notify the customer in writing and shall provide information on renewal of certificates, including the form set forth in Appendix A-3, infra, or such other form approved by the commission.

(4) Certificate renewal. If the medical condition is likely to continue beyond the expiration of an initial certification, a certificate may be renewed, provided:

(i) a medical doctor or qualified official of the local board of health states in writing to the utility the expected duration of the medical emergency and explains either the nature of the medical emergency or the reason why the absence of utility service would aggravate the medical emergency; and

(ii) the customer demonstrates an inability to pay charges for service.

A customer shall, before the expiration of the initial certification, submit to the utility, the information required in the form set forth in Appendix A-3, infra, or such other form approved by the commission, for the purpose of demonstrating an inability to pay charges for service. A distribution utility shall, within five days of submission of such information, determine whether the customer's liquid assets and current income are insufficient to pay utility bills, considering other necessary and reasonable expenses of the customer such as food, shelter and medical expenses. Whenever a distribution utility determines that a customer has not demonstrated a financial hardship, it shall provide the customer with written notice of the determination and the customer's right to a review of the determination by the commission or its authorized designee. A distribution utility shall stay any [termination] disconnection or suspension activity pending its determination on the customer's ability to pay and any review of such determination by the commission or its authorized designee. A renewed certificate shall remain in effect for 30 days, provided that in cases certified as chronic by a medical doctor or qualified official of the local board of health, the renewed certificate shall remain in effect for 60 days or such longer period as may be approved by the commission or its designee. The statement of financial hardship shall be completed and submitted to the distribution utility whenever a certificate is renewed.

(5) Special rule for life support systems. 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 an iron lung or a dialysis machine, certification by a medical doctor or qualified official of a local board of health shall remain effective until terminated by the commission or its designee, provided the residential

customer demonstrates an inability to pay charges for service providing the information required by Appendix A-3, infra, or such other form approved by the commission, on not less than a quarterly basis. Every utility shall maintain a special file on such residential customers and an appropriate identification on the meters of such customers for the purpose of ensuring that utility service is provided as long as the medical emergency and customer inability to pay continue, as determined by the commission. In addition to other applicable requirements, a utility shall provide 15 days' written notice to the commission before terminating, disconnecting or suspending service to any such customer.

(6) No utility shall terminate, disconnect or suspend service to a residential customer after the expiration of a certification of medical emergency or after the utility determines that the customer has an ability to pay charges for service without first sending the customer a final notice of termination or disconnection or suspension 15 days prior to the date of termination, disconnection or suspension.

(7) While certification of medical emergencies remain in effect, customers shall remain liable for payment of utility service and shall make reasonable efforts to pay charges for such service. The authorized designees of the commission shall be available to offer assistance to utilities and customers for working out equitable payment arrangements in order to avoid substantial arrearages at the end of a medical emergency.

(b) Customers who are elderly, blind or disabled. (1) No utility shall terminate, disconnect or suspend or refuse to restore service where a residential customer is known to or identified to the utility to be blind, disabled, or 62 years of age or older, and all the remaining residents of the household are 62 years of age or older, 18 years of age or under, or blind

or disabled, without complying with the procedures specified in this subdivision. A person shall be considered disabled if the person has a disability, as that term is defined in the Human Rights Act (Executive Law, §292(21)). A person shall be considered blind if the person has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

(2) In such cases, a utility shall make a diligent effort to contact by telephone, or in person if telephone contact is unsuccessful, an adult resident at the customer's premises at least 72 hours prior to termination, disconnection or suspension of service for the purpose of devising a plan that would preclude termination, disconnection or suspension and arrange for payment of bills. The plan may include a deferred payment agreement, and payment or a guarantee of payment by any governmental, social welfare agency or private organization. Where a utility and such customer are unable to devise a plan after such contact, the utility shall notify the local department of social services of the name and address of the customer and the date of termination, disconnection or suspension in order that social services may help to develop a plan for such customers. The utility shall continue to provide service for not less than 15 business days from the time it makes the referral, unless notified by the local department of social services that acceptable payment or other arrangements have been made. In any such case, the customer may seek the assistance of the commission's authorized designees in developing such a plan.

(3) In cases where service has been terminated, disconnected or suspended and the utility is subsequently notified by the customer or a third party on his or her behalf that he or she would be entitled to the protections established under this subdivision, the utility shall within 24 hours of such notification make a diligent effort to contact by telephone or in person an adult resident at the customer's premises for the purpose of devising a plan, as set forth in paragraph (2) of this subdivision, that would restore service and arrange for payment of bills. A utility unable to contact such person within 24 hours shall make reasonable effort to achieve contact as soon as practicable. Where a utility and such customer are unable to devise such a plan, the utility shall notify the local department of social services of the name and address of the customer and the date of termination, disconnection or suspension in order that social services may help to develop a plan for protecting such customer.

(4) In cases where a utility has terminated, disconnected or suspended service in compliance with the provisions of paragraph (2) of this subdivision, it shall within 10 days following termination, disconnection or suspension make a diligent effort to contact, by telephone or in person, an adult resident at the customer's premises for the purpose 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.

(c) Special procedures during cold weather periods. (1) Every utility shall develop and maintain methods to identify all residential households in its service territory whose utility service is heat-related. As used in this subdivision, *heat-related service* means utility service provided under a rate

classification applicable to residential space heating or utility service necessary to start or operate the primary heating system. *Heat-related service* shall also include a safe, supplemental electrical heating device, provided the residential customer has informed the utility within the last 12 months in writing that such device is needed because inadequate heat is provided by a third party who controls the primary heating system. In other respects, the residential households covered by this subdivision do not include the dwelling units covered by sections 33 and 34 of the Public Service Law and sections 11.7 and 11.8 of this Part (*i.e.*, multiple dwellings and residences, and two-family houses) where payment for heat-related service is not the responsibility of the residential customer.

(2) During the period beginning November 1st of each year and ending April 15th of the following year, every utility shall observe, at a minimum, the following procedures with respect to residential customers receiving heat-related utility service:

(i) A utility shall attempt to contact, by telephone or in person, the customer or an adult resident of the customer's premises at least 72 hours before the intended termination, disconnection or suspension, for the purpose of ascertaining whether a resident is likely to suffer a serious impairment to health or safety as a result of termination, disconnection or suspension. At a minimum, a utility shall attempt to make such contact with the customer or other adult resident by telephone (if the customer has one) once during normal business hours, and if unsuccessful, during reasonable nonbusiness hours (6 p.m.-9 p.m. on weekdays or 9 a.m.-5 p.m. on Saturdays and Sundays), and if both telephone contacts are unsuccessful or the customer does not have a telephone, by an onsite personal visit. At the time of termination, disconnection or suspension, a utility shall also 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, disconnection or suspension. During such contacts, the utility's representatives shall fully explain the reasons for termination, disconnection or suspension and provide customers with information on the protections available under this Part. If communication with the person contacted is not possible because of an apparent language barrier, the utility shall take steps to assure communication before termination, disconnection or suspension.

(ii) No utility shall terminate, disconnect or suspend heat-related service for nonpayment where the utility ascertains that a resident is likely to suffer a serious impairment to human health or safety as a result of termination, disconnection or suspension, unless it has complied with subparagraph (i) of this paragraph and:

(a) the utility notifies the local social services commissioner orally and within five days in writing, on forms prescribed or accepted by the commission [(Appendix 16 contains the suggested form)], that a resident is likely to suffer a serious impairment to health or safety as a result of termination, disconnection or suspension; and

(b) the local social services commissioner, after 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.

During any such continuation of service, customers shall remain liable for payment of utility service and shall make reasonable efforts to pay charges for such service. A utility notifying the local social services commission shall

so inform the customer and shall explain the purpose of the referral. A utility may exercise its discretion with respect to terminating, disconnecting or suspending service to the customer in the event it does not receive an oral or written report from the local social services commissioner within 15 business days after the written referral of the matter by the utility to the commissioner.

(iii) For the purposes of this section, a person is likely to suffer a serious impairment to health or safety if the person appears to be seriously impaired and may, because of mental or physical problems, be 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. Indications of serious impairments 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, as such terms are used in subdivision (b) of this section; and
- (e) any other factual circumstances which indicate severe or hazardous health situations.

The above criteria are general standards and the utility's field personnel must be trained to exercise discretion, sound judgment and common sense in ascertaining whether a serious impairment to health or safety is likely to result.

(iv) If a utility terminates, disconnects or suspends service to a customer, and the customer or a resident 18 years or older was not personally contacted by the utility before

termination, disconnection or suspension of service and the customer has not contacted the utility for the purpose of requesting reconnection before 12 noon on the day following termination, disconnection or suspension of service, the utility shall immediately attempt to determine, by onsite inspection, direct personal contact at the premises with the residential customer or other adult resident, or other reasonable measures, whether there is continuing occupancy and whether a serious impairment to health or safety is likely to result. If the utility determines that a serious impairment would result, it shall immediately restore service and comply with the requirements of subparagraph (iii) of this paragraph. If the utility is unable to obtain personal contact with the customer or an adult resident, and does not have reasonable grounds to believe that the customer has vacated the premises, it shall immediately refer the name and address of the customer to the local commissioner of social services, in accordance with the procedures set forth in subparagraph (iii) of this paragraph.

(v) Every utility shall designate an employee(s) to serve as a liaison with local social services departments.

(vi) Every utility shall file with the commission for its review the procedures to be followed by the utility's personnel in complying with these special procedures.

(3) If a utility decides to terminate, disconnect or suspend service to a residential customer because of a potential health or safety problem where the meter or service laterals have been tampered with or a theft of service has occurred, it shall determine, according to the procedures set forth in subparagraphs (2)(i) and (iii) of this subdivision, whether a resident is likely to suffer a serious impairment to health or safety as a result of termination, disconnection or suspension. If the utility ascertains that a resident is likely to suffer a

serious impairment, it shall observe the procedures set forth in subparagraphs (2)(ii) and (iv) of this subdivision; provided, however, that the requirement of continued service shall not apply in the event it is impractical for the utility to eliminate an unsafe condition. In any cases where a resident is likely to suffer a serious impairment and the utility terminates, disconnects or suspends service to preclude the continuation of an unsafe condition, it shall specially notify the local social services commissioner on the same day service is terminated, disconnected or suspended and request an immediate consideration of the case.

Comment: If a distribution utility discovers a meter-tampering or theft situation and determines that a resident is likely to suffer a serious impairment, it should continue service, pending DSS review by the official or agency designated by the Social Services Law, provided that service can be rendered safely. For example, if a distribution utility discovers that the meter of a locked account is advancing, it should, in most circumstances, be able to continue service in a safe manner. In other theft cases, particularly those involving gas service, the need for rendering the condition safe may preclude the continuation of service. For example, if a gas distribution utility discovers unsafe piping, an unsafe meter bypass or substantial damage to the meter, [termination] disconnection may be the best method of eliminating the unsafe condition. If the distribution utility cannot readily repair the unsafe condition or, in the case of a gas company, cannot obtain access to the pilot lights (which would have to be relit), immediate restoration of service would not be practical. The distribution utility should specifically note, in its

referrals [to DSS] pursuant to Social Services Law, those cases where heat-related service is not restored or continued so that [DSS] the official or agency designated by the Social Services Law may give immediate attention to them.

(4) Not earlier than September first nor later than November first of each year, every distribution utility shall conduct a survey of all former residential customers, including qualifying supplemental heating customers whose utility service is heat-related and was [terminated] disconnected or suspended during the 12-month period ending on November first of that year, and has not been restored, except for abandoned buildings and customer-requested turnoffs. The purpose of the survey is to determine whether the former customer or other resident is likely to suffer a serious impairment to health or safety from a continued lack of service. If the distribution utility determines that a former customer or other resident is likely to suffer a serious impairment, it shall restore service immediately and comply with the requirements of subparagraphs (2)ii) and (iii) of this subdivision, unless the customer refuses to permit service restoration or, in theft or tampering situations, unless it is impractical for the distribution utility to eliminate an unsafe condition. If the distribution utility is unable to obtain personal contact with the customer or an adult resident, or the customer refuses service restoration, it shall immediately refer the name and address of the former customer to the local commissioner of social services in accordance with the procedures set forth in subparagraph (2)(ii) of this subdivision, unless the [corporation] distribution utility has reasonable grounds to believe that the former customer has permanently vacated the premises.

(5) Special rule for customers threatened by neglect or hazardous situations. During the cold weather period defined above, every utility shall continue utility service as prescribed herein to a residential customer where a serious impairment to health or safety is likely to result from termination, disconnection or suspension of service and the customer is unable because of mental or physical problems to manage his or her own resources or to protect himself or herself from neglect or hazardous situations without the assistance of others. Every utility shall provide the protections set forth in this paragraph to a residential customer who is identified as likely to suffer a serious impairment, as described in this subdivision, in a response to the annual notification of rights required under section 11.17 of this Part; by a local social services office, office for the aging, board of health, or other responsible agency or person; or by any utility personnel. In such situations, the utility shall transmit an oral or written notification to the local social services commissioner that explains fully the nature of the serious impairment to health or safety, including the basis for the determination that the customer is unable to protect himself or herself from neglect or hazardous situations without assistance from others. The utility shall continue service to such customer for a period not less than 15 business days from the date of the oral or written referral, unless notified by the social services office that acceptable payment or other arrangements have been made. Doubts shall be resolved in favor of continued service. During any such continuation of service, customers shall remain liable for payment of utility service and shall make reasonable efforts to pay charges for such service.

§11.6 Voluntary third-party notice [prior to termination of service].

Every utility shall permit a residential customer to designate a third party to receive all notifications relating to termination, disconnection or suspension of service or other credit actions sent to such residential customer, provided that the designated third party agrees in writing to receive such notices. The utility shall inform the third party that the authorization to receive such notices does not constitute acceptance of any liability on the third party for service provided to the customer. The utility shall promptly notify the residential customer of the refusal or cancellation of such authorization by the third party.

§11.7 [Termination of] Service to entire multiple dwellings

(a) No utility shall terminate, disconnect or suspend service to an entire dwelling (as defined in the Multiple Dwelling Law or the Multiple Residence Law) where the owner, person, firm or corporation to whom or which the last preceding bill has been rendered, or from whom or which the utility has received payment therefor, has failed to pay such utility bills, until it has complied with the following procedures:

(1) The utility shall give 15 days' written notice of its intention to so terminate, disconnect or suspend by personally serving such notice on the owner of the premises affected or on the person, firm or corporation to whom or which the last preceding bill was rendered, or from whom or which the utility has received payment therefor, and on the superintendent or other person in charge of the building, if it can be readily ascertained that there is such superintendent or other person in charge.

(2) The utility shall give 18 days' written notice to the owner, person, firm or corporation specified in paragraph (1) of

this subdivision if such notice is mailed in a postpaid wrapper to the address of such person, firm or corporation.

(3) In addition to the notice prescribed by paragraphs (1) and (2) of this subdivision, 15 days' written notice shall be posted in the public areas of such multiple dwelling, and 18 days' notice shall be mailed to the occupant of each unit in that multiple dwelling, to the local health officer and director of the social services district for the political subdivision in which the multiple dwelling is located; if the multiple dwelling is located in a city or village, to the mayor thereof; or if there be none, to the manager; or, if the multiple dwelling is located in a town, then to the town supervisor; and to the county executive of the county in which the multiple dwelling is located; or if there be none, then to the chairman of such county's legislative body; and, if the multiple dwelling is located in New York City, to the Department of Housing Preservation and Development. Notice to mayors, managers, town supervisors, county executives and chairmen of county legislatures may be mailed to the persons specified therein or to their designees. Notice to health officers, directors of social services, mayors, managers, supervisors, county executives and chairmen of county legislatures shall be repeated not more than four working days nor less than two working days prior to such termination, disconnection or suspension.

(4) During the cold weather period, defined in section 11.5(c)(2) of this Part, a utility intending to terminate, disconnect or suspend heat-related service, as that term is defined in section 11.5(c)(1) of this Part, to an entire multiple dwelling shall provide the written notices required under paragraphs (1)-(3) of this subdivision not less than 30 days before the intended termination, disconnection or suspension.

(5) Whenever a notice of intention to terminate, disconnect or suspend service has been made pursuant to the provisions of this section and obligations owed the utility have been satisfied, the utility shall notify, in the same manner as it gave such notice of intention, the occupant of each unit that the intention to terminate, disconnect or suspend service no longer exists.

(b) Notwithstanding the provisions contained in subdivision (a) of this section, no utility shall terminate, disconnect or suspend service to a multiple dwelling, where the owner, person, firm or corporation responsible for making payment fails to pay utility bills, as long as occupants of such multiple dwellings continue to make timely payments for such service in accordance with procedures filed by the utility and approved by the Public Service Commission. All notices referred to in subdivision (a) of this section shall contain the intended date of discontinuance of service and a utility contact, including a telephone number, who will advise occupants of the amount due for service and who will arrange meetings with occupants to attempt to work out a mechanism for avoiding termination, disconnection or suspension of service in the event that the owner continues to fail to make requisite payments or arrangements for such payments. The notice shall inform occupants that they may seek the assistance of the commission or its authorized designee in negotiating an agreement with the utility to prevent termination, disconnection or suspension. The notice shall also refer to the provisions contained in subdivision (1) of section 235-a of the New York Real Property Law authorizing occupants to set off, against their rent, payments to utilities in such circumstances.

(c) A utility following the procedure outlined in subdivision (b) of this section, may require occupants in a multiple

dwelling to pay no more than the current charges incurred by the owner, person, firm or corporation to whom or which the last preceding bill has been rendered or from whom or which the utility has received payment therefor. A *current charge* for purposes of this section means the amount properly billed the owner, etc., for utility service used during the most recent service billing period covered by the first bill rendered on or after the date when the termination, disconnection or suspension notice is issued. The current charges will not include any arrears for earlier billing periods that may appear on such a bill.

(d) If occupants in a multiple dwelling find they are unable to reach an agreement with the utility to avoid termination, disconnection or suspension of service, they may contact the authorized designees of the commission. After such a request is received, an authorized designee will attempt to work out such an agreement and will, if necessary, arrange a meeting with occupant representatives, the utility, and the owner, person, firm or corporation responsible for making payment for service; provided, however, that such a meeting will be required only if the authorized designee receives a written petition signed by at least 25 percent of the occupants in a multiple dwelling.

(e) The authorized designee may stay a threatened termination, disconnection or suspension of service 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.

(f) Subdivisions (d) through (h) of section 11.4 of this Part shall be applicable with respect to the termination, disconnection or suspension of service to entire multiple dwellings.

(g)(1) Special rules for multiple dwellings in cities of more than one million people.

(i) During the cold weather period, defined in paragraph (c)(2) of section 11.5 of this Part, a utility intending to terminate, disconnect or suspend heat-related service, as that term is defined in paragraph (c)(1) of section 11.5 of this Part to an entire multiple dwelling located in a city of more than one million people shall, not less than 10 days prior to the earliest date termination, disconnection or suspension may occur, provide each occupant with a written notice, prepared or approved as to substance by the Public Service Commission or its staff, advising that 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 the loss of heat service he should immediately contact the New York City Heatline. The notice shall provide the address and telephone number of the heatline. An approved form of the notice is contained in Appendix A-4, *infra*.

(ii) Whenever, during the cold weather period, a utility is notified by the Human Resources Administration that a claim has been received that the loss of heat-related service is likely to result in a serious impairment to health or safety, it shall continue service to the building for a period not less than 15 business days from the date of the oral or written notification from the Human Resources Administration. A utility shall not thereafter terminate, disconnect or suspend heat-related service to the dwelling during the cold weather period unless it is informed by the Human Resources Administration that appropriate alternative arrangements to preclude a serious impairment to health or safety have been made or that the claim of serious impairment is without merit. A utility thereafter intending to terminate, disconnect or suspend service shall

provide at least five days written notice to the occupants that heat-related service will be terminated, disconnected or suspended, and shall, if so notified by the Human Resources Administration, inform the individual of the finding of no serious impairment. Such notice shall state that any occupant may seek further review by the Public Service Commission.

(iii) If a utility is notified by the Human Resources Administration that an occupant in a multiple dwelling where the heat-related service has been terminated, disconnected or suspended by the utility is likely to suffer a serious impairment to health or safety, it shall reconnect heat-related service and continue such service as provided for in subparagraph (ii) of this paragraph.

(2) Special rules for multiple dwellings outside cities of more than one million people.

(i) During the cold weather period, defined in paragraph (c)(2) of section 11.5 of this Part, a utility intending to terminate, disconnect or suspend heat-related service, as that term is defined in paragraph (c)(1) of section 11.5 of this Part, to an entire multiple dwelling located outside a city of more than one million people shall, not less than 10 days prior to the earliest date termination, disconnection or suspension may occur, provide each occupant with a written notice, prepared or approved as to substance by the Public Service Commission or its staff, advising the occupant that if any occupant in his apartment has a serious illness or medical condition that is likely to result in a serious impairment to health or safety by the loss of heat service he should immediately contact the utility. The notice shall provide the name and telephone number of a utility contact person. An approved form of the notice is contained in Appendix A-5, *infra*. Whenever an occupant so notifies a utility, the

utility shall forthwith conduct an on-site interview for the purpose of ascertaining whether the occupant is likely to suffer a serious impairment to health or safety. A utility shall refer cases of likely serious impairment to the local department of social services and request the agency to investigate the cases in accordance with established procedures.

(ii) A utility referring a likely impairment case to the Department of Social services shall continue heat-related service to the multiple dwelling or otherwise provide heat to the person likely to suffer a serious impairment for at least 15 business days after the referral. A utility that has referred such a case shall not thereafter terminate, disconnect or suspend heat-related service to the dwelling during the cold weather period unless it otherwise provides heat to the person likely to suffer a serious impairment, or unless it is informed by the local department of social services that appropriate alternative arrangements to preclude a serious impairment to health or safety have been made or that the claim of serious impairment is without merit. A utility thereafter intending to terminate, disconnect or suspend service shall provide at least five days written notice to the occupants that heat-related service will be terminated, disconnected or suspended, and shall, if so notified by the Department of Social Services, inform the individual of the finding of no serious impairment. Such notice shall state that any occupant may seek further review by the Public Service Commission.

(iii) If a utility is notified by the local department of social services that an occupant in a multiple dwelling where the heat-related service has been terminated, disconnected or suspended by the utility is likely to suffer a serious impairment to health or safety, it shall reconnect heat-related service, or otherwise provide heat to such person, and continue

such service as provided for in subparagraph (ii) of this paragraph.

§11.8 [Termination of] Service to two-family dwellings.

(a) For the purpose of this section, the term two-family dwelling shall mean a building designed and occupied pursuant to local building codes exclusively by two families living independently of each other, irrespective of whether the building receives a residential or commercial rate under the utility's tariff. If a utility knows that any utility service is provided to both units of a two-family dwelling through a single meter, the utility shall not terminate, disconnect or suspend such service unless the utility complies with the requirements of this section. A utility shall be deemed to know that a two-family building contains units that are not metered separately where it is notified by the customer, occupant or other person that the building is a two-family dwelling. Each utility shall keep a record of such two-family dwellings where service is not metered separately.

(b) The utility shall give 15 days' written notice of its intention to terminate, disconnect or suspend service to a two-family dwelling that it knows contains units where service is not metered separately by mailing a copy of the notice to the owner of the premises or to the recipient of the last preceding service bill, mailing or otherwise delivering a copy of the notice to each occupied unit, and, unless precluded by physical circumstances, posting a copy of the notice in a conspicuous place at or within the dwelling.

(c) The notice shall provide the information required by paragraphs (b)(1)-(4) of section 11.4 of this Part, state that there are special protections for occupants of two-family dwellings where service is not metered separately, that the commission staff may be contacted for information and advice,

and that subdivision (1) of section 235-a of the Real Property Law authorizes occupants to set off against their rents payments to utilities in such circumstances.

(d) Any occupant of a two-family dwelling that contains units where service is not metered separately may prevent termination, disconnection or suspension of service if:

(1) an occupant eligible for service under section 11.3 of this Part applies for and receives service, thereby making himself or herself liable for future payments, provided that such person is not an agent of the recipient of the last preceding service bill; or

(2) an occupant who chooses to pay current charges shall not be liable for any future bills rendered for utility service. In the event of such payment, the utility shall continue to render all bills to the customer of record with a copy to be sent to any occupant upon request. If billing for the service which is not metered separately is on a monthly basis, *current charges* shall be defined as an amount not to exceed that due for billed service provided during the two months preceding the termination, disconnection or suspension date set forth in the notice. If the billing for the service which is not metered separately is on a bimonthly basis, then *current charges* shall be defined as an amount not to exceed the most recent bill for service.

(e) The commission's authorized designees shall be available to advise occupants of two-family dwellings of the protections provided by this section.

(f) Whenever a final notice of termination, disconnection or suspension of utility service has been provided under this section and the past-due bills owed to a utility for service to a two-family dwelling in which service is provided through a single meter have been satisfied, the utility shall so notify

the occupants of the dwelling by mailing or otherwise delivering such notice to the occupants of such dwelling or posting such notice in a conspicuous place at or within the dwelling.

(g) During the cold weather period, defined in section 11.5(c)(2) of this Part, a utility intending to terminate, disconnect or suspend heat-related service, as that term is defined in section 11.5(c)(1), to a two-family dwelling shall provide the written notices required under subdivisions (b) and (c) of this section not less than 30 days before the intended termination, disconnection or suspension.

(h) During the cold weather period defined in section 11.5(c)(2) of this Part, a utility intending to terminate, disconnect or suspend service to a two-family dwelling shall comply with either the requirements set forth in section 11.5(c) or in section 11.7(g) of this Part.

§11.9 Reconnection of service

This section sets forth procedures applicable where:

(1) only distribution service was provided by a utility and was disconnected or (2) distribution service and commodity supply were provided by and disconnected by the same utility.

(a) A utility shall reconnect [terminated] disconnected residential service within 24 hours, unless prevented by circumstances beyond the utility's control or unless a customer requests otherwise, in the following situations:

(1) receipt by the utility of the full amount of arrears for which service was [terminated] disconnected;

(2) agreement by the utility and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;

(3) upon the direction of the commission or its designee;

(4) upon the receipt by the utility of a commitment of a direct payment or written guarantee of payment from the social

services official of the social services district in which the customer resides; [and] or

(5) where a utility has 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 shall be resolved in favor of reconnection.

Comment: A utility may not insist upon payment of lawful charges that did not provide the basis for [termination] disconnection before restoring service under this subdivision. Similarly, under paragraph (a)(2) of this section, a utility may not insist on a downpayment in excess of one half the arrears which formed the basis for the [termination] disconnection or three months' billing, whichever is less. In these circumstances, payment of other lawful charges that did not form the basis for [termination] disconnection should be part of the installment plan, unless the customer elects to pay such charge immediately.

(b) Whenever circumstances beyond the utility's control prevent reconnection of service within 24 hours of any of the events specified in subdivision (a) of this section, service shall be reconnected within 24 hours after those circumstances cease to exist.

(c) Where any utility is required under these rules to reconnect service within 24 hours and fails or neglects to do so without good cause as determined by the commission or its designee, it shall forfeit to the customer the sum of \$50 per day for each day or portion thereof that service is not supplied after the date that service should have been supplied, in cases involving medical emergencies (section 11.5(a) of this Part), the elderly, blind or disabled (section 11.5(b)), heat-related

service during cold weather periods (section 11.5(c)(1), (2) and (3)), or in cases where the utility has notice that the failure to reconnect service is likely to result in a serious impairment to health or safety (section 11.9(a)(5)). In all other cases where the utility fails or neglects to reconnect service within 24 hours as required under these rules, it shall forfeit to the customer the sum of \$25 per day for each day or portion thereof that service is not supplied after the date that service should have been supplied. In any case, the burden of showing good cause for any failure to reestablish service within 24 hours shall be upon the utility.

Comment: Generally, a utility will be deemed to have met its burden where it demonstrates that timely reconnection was precluded by adverse weather conditions, serious physical impediments, health or safety considerations, new construction requirements, labor disputes, inability to obtain access, or legal constraints.

§11.9-a Restoration of commodity supply

This section sets forth procedures applicable where commodity was provided by and terminated by the same ESCO.

(a) An ESCO shall take all actions within its control and, where applicable, consistent with provisions of its agreement to supply commodity, to restore terminated residential service within 24 hours in the following situations:

(1) receipt by the ESCO of the full amount of arrears for which service was terminated;

(2) agreement by the ESCO and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;

(3) upon the direction of the commission or its designee;

(4) upon the receipt by the ESCO of a commitment of a direct payment or written guarantee of payment from the social

services official of the social services district in which the customer resides; or

(5) where an ESCO has notice that a serious impairment to health or safety is likely to result if service is not restored. Doubts as to whether restoration of service is required for health or safety reasons shall be resolved in favor of restoration.

(b) Where any ESCO is required under these rules to restore service within 24 hours and fails or neglects to do so without good cause as determined by the commission or its designee, it shall forfeit to the customer the sum of \$50 per day for each day or portion thereof that service is not supplied after the date that service should have been supplied, in cases involving medical emergencies (section 11.5(a) of this Part), the elderly, blind or disabled (section 11.5(b)), heat-related service during cold weather periods (section 11.5(c)(1), (2) and (3)), or in cases where the ESCO has notice that the failure to restore service is likely to result in a serious impairment to health or safety (section 11.9-a(a)(5)). In all other cases where the ESCO fails or neglects to restore service within 24 hours as required under these rules, it shall forfeit to the customer the sum of \$25 per day for each day or portion thereof that service is not supplied after the date that service should have been supplied. In any case, the burden of showing good cause for any failure to reestablish service within 24 hours shall be upon the ESCO.

§11.9-b Conditions for ending suspension of distribution service.

This section sets forth the conditions for ending the suspension of a residential customer's distribution service. Suspension of distribution service shall end upon the occurrence of any of the following conditions:

(a) receipt by a utility of the full amount of arrears for which service was terminated;

(b) agreement by a utility and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;

(c) upon the direction of the commission or its designee;

(d) upon the receipt by a utility of a commitment of a direct payment or written guarantee in accordance with the Social Services Law;

(e) where a utility has 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 shall be resolved in favor of reconnection; or

(f) upon the expiration of one year after such termination of commodity service, or upon the receipt of payments by or on behalf of the customer to the ESCO that requested the suspension such that the amount paid by such customer to the ESCO plus the amount previously paid the ESCO plus any charges paid to the distribution utility during the period when such customer's arrears accrued is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the distribution utility during such period.

§11.10 Deferred payment agreements

(a) Utility Obligations.

(1) A distribution utility must make reasonable efforts to contact eligible customers or applicants by phone, mail or in person for the purpose of offering a deferred payment agreement and negotiating terms tailored to the customer's financial circumstances, prior to making the written offer of a deferred payment agreement required under paragraph (a)(4) of this section. Consistent with provisions of its agreement to supply

commodity, if applicable, and provided such provisions are consistent with other requirements of the Public Service Law, a utility must make reasonable efforts to contact eligible customers or applicants for the purpose of offering a deferred payment agreement and negotiating terms tailored to the customer's financial circumstances, prior to making the written offer of a deferred payment agreement required under paragraph (a)(4) of this section. A *deferred payment agreement* or *payment agreement* (also referred to as *the agreement* in this section) 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.

(i) A utility must negotiate in good faith with any customer or applicant with whom it has contact so as to achieve an agreement that is fair and equitable considering the customer's financial circumstances.

(ii) A utility may require that a customer or applicant complete a form showing assets, income and expenses, and provide reasonable substantiation of the information on that form, provided that all such information shall be treated as confidential.

(iii) A payment agreement must provide for installments as low as \$10 per month and no down payment, when the customer or applicant demonstrates financial need for such terms, but need not provide for monthly installments of less than \$10.

(iv) A payment agreement may provide for any size or no down payment, and installments on any schedule over any period of time if mutually agreed to by the parties.

(2) At the time a utility notifies a customer of his or her right to an installment payment plan under section 11.13(f) or 11.14(a) or (c) of this Part, the utility must also make

reasonable efforts to negotiate terms tailored to the customer's financial circumstances, in accordance with paragraph (a)(1) of this section.

(3) A utility may postpone a scheduled termination, disconnection or suspension of service up to 10 calendar days after the date stated in the final notice of termination, disconnection or suspension for the purpose of negotiating payment agreement terms, provided that the customer is clearly advised of such postponement.

(4) 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 for payment and signed by the utility to an eligible customer or applicant at the following times:

(i) not less than seven calendar days (10 days, if mailed) before the earliest date on which termination, disconnection or suspension may occur, which is either the date stated in a final notice of termination, disconnection or suspension or a date, up to 10 days thereafter, to which the [company] utility has postponed the [physical] termination, disconnection or suspension of service while negotiating a payment agreement pursuant to paragraph (a)(3) of this section:

(ii) when payment of outstanding charges is a requirement for acceptance of an application for service, in accordance with section 11.3 of this Part;

(iii) when payment of outstanding charges is [a] required [for reconnection,] in accordance with section(s) 11.9 and/or 11.9-a of this Part; and

(iv) as required after a broken payment agreement in accordance with paragraph (e)(3) of this section.

(5) A utility must renegotiate and amend a payment agreement if the customer or applicant demonstrates that his or

her financial circumstances have changed significantly because of conditions beyond his or her control.

(6) A utility must develop written payment agreement procedures and forms for evaluating the financial need of a customer or applicant, for assuring the confidential handling of such information, for arriving at fair and equitable payment terms and for training [company] its personnel, which procedures shall be filed with the Office of Consumer Services [Division].

(7) The commission or its authorized designee may order a utility to offer a payment agreement in accordance with this section where the parties have been unable to reach agreement or where an agreement is necessary for the fair and equitable resolution of a complaint.

(b) Eligibility.

(1) A customer or applicant is eligible for a payment agreement and must be offered one in accordance with subdivision (a) of this section, unless:

(i) the customer has broken an existing payment agreement, except as provided in paragraph (e)(3) of this section; or

(ii) the commission or its designee determines that the customer or applicant has the resources available to pay the bill.

(2) If the utility believes that a customer or applicant is not eligible for a payment agreement because he or she has the resources to pay the bill, it may seek a determination from the commission or its designee, in accordance with the following procedures:

(i) the utility must notify the customer or applicant and the commission or its designee in writing of the reason for its belief;

(ii) the utility must give the customer or applicant written notice summarizing the procedures under this paragraph in clear and understandable language;

(iii) the commission or its designee will forthwith make a determination as to whether the customer or applicant has the resources available to pay the bill;

(iv) until such a determination is made by the commission or its designee, the utility must postpone any termination, disconnection or suspension activity, restore service or provide service, as applicable, as long as the customer or applicant pays current bills, and a down payment and monthly installments consistent with subparagraph (c)(2)(ii) of this section, or such other amounts established by the commission or its designee.

(c) Terms of agreement.

(1) A payment agreement shall obligate the customer to make timely payments of all current charges.

(2) A payment agreement shall either contain:

(i) the specific terms for payment of the amount covered by the agreement mutually agreed upon by the utility and the customer or applicant after negotiation pursuant to paragraph (a)(1) of this section; or

(ii) a down payment up to 15 percent of the amount covered by the payment agreement or the cost of one half of one month's average usage, whichever is greater; unless such 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; and monthly installments up to the cost of one half of one month's average usage or one tenth of the balance, whichever is greater.

(3) the cost of one month's average usage shall be calculated by averaging the cost of service over the prior 12 months.

(d) Form of agreement. A payment agreement form shall in clear and understandable language and format contain the following information:

(1) that the utility is required to offer a payment agreement that the customer or applicant is able to pay, considering his or her financial circumstances, and that the agreement should not be signed if the customer or applicant is unable to pay its terms;

(2) that if the customer or applicant demonstrates financial need, alternate terms will be available, a down payment may not be required and installments may be as low as \$10 per month above current bills;

(3) that assistance to pay utility bills may be available to recipients of public assistance or supplemental security income from a local social services office;

(4) that if the customer or applicant is unable to pay the terms of the agreement, or if for any other reason the customer or applicant wishes to discuss the agreement, the customer or applicant should call the utility at a specified telephone number and that if any further assistance is needed, the customer or applicant should call the commission at a specified telephone number;

(5) that by signing and returning the form together with any required down payment to the utility within the required time period, the customer or applicant will be entering into a payment agreement, and by doing so, will avoid termination, disconnection or suspension of service;

(6) the date by which the copy signed by the customer, and any applicable down payment, must be received by the utility in order to avoid termination, disconnection or suspension of service, if applicable, provided, however, that such date may not be less than six business days after the agreement is sent by the utility;

(7) the utility's policy if the agreement is not signed and returned as required;

(8) the total amount due, the required down payment, if any, and the exact dollar amount and due date of each installment;

(9) that if the customer or applicant fails to comply with the terms of the payment agreement, the utility will take steps to terminate, disconnect or suspend service;

(10) that the customer or applicant has a right to immediate enrollment on a levelized payment plan. This notice must be placed close to the signature line, include a conspicuous check-box option, and give a specified telephone number to call the utility for more information. A brief explanation of the levelized payment plan, consistent with section 11.11 of this ¶, must accompany the agreement; and

(11) that if the customer or applicant later can demonstrate that his or her financial circumstances have changed significantly because of conditions beyond his or her control, the utility must amend the terms of the agreement to reflect such changes.

(e) Broken agreements.

(1) If a customer fails to make timely payment in accordance with a payment agreement, the utility must send a reminder notice at least eight calendar days prior to the day when a final notice of termination, disconnection or suspension will be sent, stating in conspicuous bold type that:

(i) the customer must meet the terms of the existing payment agreement by making the necessary payment within 20 calendar days of the date payment was due or a final termination, disconnection or suspension notice may be issued;

(ii) if the customer can demonstrate that he or she is unable to make payment under the terms of the payment agreement because his or her financial circumstances have changed significantly because of conditions beyond his or her control, the customer should immediately contact the utility at a specified telephone number because a new payment agreement may be available.

(2) If by the 20th calendar day after payment was due, the utility has nether received payment nor negotiated a new payment agreement, the utility may demand full payment of the total outstanding charges and send a final termination, disconnection or suspension notice in accordance with section 11.4 and/or 11.4-a of this Part stating in conspicuous bold type:

(i) if the customer can demonstrate that he or she is unable to make payment under the terms of the payment agreement because his or her financial circumstances have changed significantly because of conditions beyond his or her control, the customer should immediately contact the utility at a specified telephone number because a new payment agreement may be available;

(ii) that assistance to maintain utility service may be available from a local social services office;

(iii) that before the social services office will provide assistance, the customer generally must provide the utility with information showing assets, income and expenses to evaluate whether the customer is entitled to a new payment agreement; and

(iv) either the address and telephone number of the appropriate social services office, or the local social services information number.

(3) Any final termination, disconnection or suspension notice sent because the customer has broken an agreement negotiated pursuant to paragraph (a)(1) of this section and which required payment over a shorter period than the subparagraph (c)(2)(ii) of this section standard agreement for that customer would allow, must also be accompanied by a written offer of a new agreement to pay the outstanding balance in monthly installments calculated in accordance with subparagraph (c)(2)(ii) of this section.

§11.11 Budget or levelized payment plans

(a) General. Every utility shall offer residential customers a voluntary budget billing or levelized payment plan for the payment of charges. The plan shall be designed to reduce fluctuations in customers' bills due to seasonal patterns of consumption. Any such plan shall also be offered to customers who are condominium associations or cooperative housing corporations.

(b) Criteria. Unless otherwise authorized by the commission, each such plan shall be based on the customer's recent 12-month experience, adjusted for known changes. If 12 months of billing data are not available for the customer then 12 months of billing data for the premises shall be used. If 12 months of billing data are not available for the premises then the utility shall estimate future consumption over the next 12-month period. Each such plan shall provide that bills clearly identify consumption and state the amounts that would be due without levelized or budget billing; such information need not be supplied on interim bills for customers billed on a bimonthly

basis. Each such plan shall provide that bills be subject to regular review for conformity with actual billings.

(c) Commission approval. Each such plan shall be filed with the commission and any significant changes in the plan shall be submitted to the commission for review before implementation.

§11.12 Residential service deposits

(a) For the purposes of this section, a *new residential customer* is an applicant. 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. A *short-term customer* is a person who requires service for a specified period of time that does not exceed one year. A customer who receives continuous utility service for more than one year shall not be considered a seasonal or short-term customer.

(b) Unless authorized by the commission under subdivision (e) of this section, no utility shall require any new residential customer to post a security deposit as a condition of receiving utility service, unless such new customer is a seasonal or short-term customer.

(c)(i) As of September 1, 1982, no distribution utility shall, unless authorized by the commission under subdivision (e) of this section, require a current residential customer, other than a delinquent customer, to post a security deposit, and deposits held on that day shall be returned promptly to nondelinquent residential customers, and in no event later than the next bill for service.

(c)(ii) As of June 18, 2003, no utility shall, unless authorized by the commission under subdivision (e) of this section, require a current residential customer, other than a delinquent customer, to post a security deposit. Deposits held from current, nondelinquent customers whose agreement for the

provision of commodity was renewed on or continued on or after June 18, 2003 shall be returned promptly to such customers, and in no event later than the next bill for service.

(d) Notwithstanding the requirements of subdivision (c):

(1) a utility may continue to demand deposits as a condition of receiving utility service from customers who are seasonal customers or short-term customers as defined in subdivision (a) of this section; and

(2) a utility may require a deposit from a residential customer as a condition of service if that customer is delinquent in payment of his or her utility bills. A current customer is delinquent for the purpose of a deposit assessment if such customer:

(i) accumulates two consecutive months of arrears without making reasonable payment, defined as one half of the total arrears, of such charges before the time that a late payment charge, as described in section 11.15 of this Part, would become applicable, or fails to make a reasonable payment on a bimonthly bill within 50 days after the bill is due, provided that the utility requests such deposit within two months of such failure to pay; or

(ii) had utility service terminated, disconnected or suspended for nonpayment during the preceding six months.

A utility intending to require a deposit under subparagraph (i) of this paragraph shall provide a customer written notice, at least 20 days before it may assess a deposit, that the failure to make timely payment will permit the utility to require a deposit from such customer.

(3) If a utility requires a deposit from a current residential customer who is delinquent by virtue of his or her failure to make a reasonable payment of arrears, as provided in paragraph (2) of this subdivision, it shall permit such customer

to pay the deposit in installments over a period not to exceed 12 months.

(4) A utility may require deposits as a condition of receiving utility service from new residential customers who fail to provide reasonable proof of identity pursuant to section 11.3 of this Part, provided a hearing has been held pursuant to Public Service Law, section 36(2) and required findings have been made by the commission.

(e) Notwithstanding the requirements of subdivisions (b) and (c) of this section, a utility may demand and hold deposits from new or current residential customers as a condition of utility service if the commission after investigation and hearing so authorizes such practice, upon a finding that the collection and maintenance of such deposits is cost-effective for the utility as a whole without regard to the utility's cash flow and the availability of capital to the utility.

(f) No utility shall require any person it knows to be a recipient of public assistance, supplemental security income, or additional State payments, to post a security deposit.

(g) 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.

(h) In any case where customer deposits are authorized by this section, a utility may require a new or current residential customer to deposit a reasonable amount of money not greater than twice the average monthly bill for a calendar year, except in the case of electric or gas space heating customers, where deposits may not exceed twice the estimated average monthly bill for the heating season, in order to secure payment for services actually rendered or for the rental of fixtures, instruments and

facilities actually supplied. Every utility shall allow every customer from whom a deposit is required, interest on the amount deposited at a rate prescribed annually by the commission in light of the current economic conditions and current charges paid for moneys borrowed by such utility, taking into account the expenses incurred by such utility in obtaining, handling, returning or crediting the sum deposited. Such interest shall be paid to the customer upon the return of the deposit, or where the deposit has been held for a period of one year, the interest shall be credited to the customer on the first billing for utility service rendered after the end of such period. If any customer is not delinquent in the payment of bills, as defined in paragraph (d)(2) of this section, during the one-year period from the payment of the deposit, the deposit shall be refunded promptly without prejudice to the utility's right to require a future deposit in the event that the customer thereafter becomes delinquent.

§11.13 Meter readings and estimated bills

(a) A utility may render an estimated bill for any billing period if:

(1) the estimated bill is calculated in accordance with a procedure approved by the commission and clearly states that it is based on an estimated reading; and

(2) the distribution utility has made a reasonable effort to obtain an actual meter reading; or

(3) circumstances beyond the control of the distribution utility made an actual reading of the meter extremely difficult;

(4) circumstances indicate a reported reading is likely to be erroneous;

(5) an estimated reading has been prescribed or authorized by the commission for a billing period between periods when actual meter readings were scheduled; or

(6) the customer is a seasonal or short term customer, as those terms are defined in subdivision 11.12(a) of this Part. For such customers, an actual meter reading shall be taken upon [termination] disconnection or suspension of service.

(b) When a utility has rendered estimated bills to a residential customer for a period of four months or two billing periods, whichever is greater, the distribution utility shall take reasonable actions to obtain an actual meter reading. Such actions may include, but are not limited to:

(1) making an appointment with the customer or such other person who controls access to the meter for the reading at a time other than during normal business hours;

(2) offering the customer the opportunity to phone in a meter reading; or

(3) providing a card to the customer on which he or she may record the reading and mail it to the distribution utility.

(c) When a distribution utility has not obtained an actual meter reading after bills representing six months or three billing periods of estimated bills, whichever is greater, have been rendered, it shall, unless otherwise authorized by the commission, send a notice to the customer and to the person who controls access to the meter offering a special appointment for a meter reading both during and outside of business hours.

(d) If the distribution utility receives no response after bills representing eight months or four billing periods, whichever is greater, it may send another letter advising the recipients that if no appointment is made, a charge not to exceed \$25 will be added to the next bill rendered to the person who controls and refuses to provide access, but that no charge will be imposed if an appointment is arranged and kept.

(e) If the person who controls access fails to arrange an appointment in response to a second request and the distribution

utility is unable to obtain a meter reading, it may add a charge not to exceed \$25 to the bill of such person. If the distribution utility intends to obtain a court order to gain access to the meter, it shall so inform such person, by certified or registered letter. The letter shall state that the purpose of obtaining such a court order is to replace a meter or, if physically feasible, to relocate the meter or install a remote reading device. The letter shall state that the court costs and the costs of relocation will be paid by the person who controls access to the meter.

(f) Where a utility has submitted an estimated bill or bills to a residential customer that understate the actual amount of money owed by such customer for the period when estimated bills were rendered by more than 50 percent or \$100, whichever is greater, the utility shall notify the customer in writing that he or she has the right to pay the difference between the estimated charges and the actual charges in regular monthly installments tailored to the customer's financial circumstances over a reasonable period.

(g) The commission may grant distribution utilities waivers from the requirements of subdivisions (c)-(e) of this section upon a showing of good cause. Waivers previously granted utilities in Case 26629, to the extent not inconsistent with subdivisions (a), (b) and (f) of this section, shall remain in full force and effect.

(h) Each utility shall establish procedures for carrying out the requirements of this section and shall submit such procedures and any subsequent amendments to the commission for approval. A utility may establish other reasonable procedures designed to reduce the number of estimated bills that do not conflict with the requirements of this section.

(i) Where a distribution utility gains access to a gas meter through the use of a court order but cannot restore full service because the terms of the court order do not permit the distribution utility access to all areas of the premises to relight pilot lights, the distribution utility shall lock the meter. The distribution utility shall leave written notification informing the customer how service can be promptly restored. If the customer fails to contact the distribution utility to have service restored, the distribution utility shall attempt to contact the customer, on no less than a weekly basis, until such service is restored. During the period November 1 to April 15, inclusive, court orders obtained under this section shall not be enforced against any residential gas-heating customer if such enforcement would result in the [termination] disconnection of service or in an unsafe condition.

(j) A duly authorized agent of the distribution utility may enter any residential dwelling supplied with service by the utility at all reasonable times for the purpose of reading a meter to ascertain the quantity of gas or electricity supplied, provided such agent exhibits a photo-identification badge and written authority as prescribed in section 65(9) of the Public Service Law.

§11.14 Backbilling on residential accounts

(a) No utility shall charge a residential customer for service rendered more than six months prior to the mailing of the first bill for service to the residential customer unless the failure of the utility to bill at an earlier time was not due to the neglect of the utility or was due to the culpable conduct of the customer. If the customer remains liable for any such service and the delay in billing was not due to the culpable conduct of the customer, the utility shall explain the reason for the late billing and shall notify the customer in writing that payments

may be made under an installment payment plan tailored to the customer's financial circumstances.

(b) A utility may not adjust upward a bill previously rendered to a residential customer after 12 months from the time the service to which the adjustment pertains was provided unless:

(1) failure to bill correctly was caused by the customer's culpable conduct;

(2) failure to bill correctly was not due to the neglect of the utility;

(3) such adjustment is necessary to adjust a budget payment plan or levelized payment plan as described in section 11.10 of this Part; or

(4) there was a dispute between the utility and the customer concerning the charges for service during the 12-month period.

(c) A utility issuing a billing adjustment increase of \$100 or more under paragraphs (2), (3) and (4) of subdivision (b) of this section shall notify the customer in writing that he or she has the right to pay the adjusted bill in regular monthly installments tailored to the customer's financial circumstances over a reasonable period. An adjustment to increase previously rendered bills more than 12 months after the time service was provided, pursuant to paragraphs (b)(2), (3) and (4) of this section, shall be made within four months of the final resolution of the billing dispute.

(d) A utility adjusting any charge for service rendered 12 or more months prior to the date of issuance shall include with the bill a notice giving the reason for the adjustment.

(e) No utility may render a bill for previously unbilled service or adjust upward a bill previously rendered to a residential customer after the expiration of 24 months from the time the service to which the new billing or adjustment pertains

was provided unless the culpable conduct of the customer caused or contributed to the failure of the utility to render a timely or accurate billing.

§11.15 Late payment and other charges

(a) Late payment charges. A utility may impose a one-time or continuing late payment charge, not in excess of 1 ½ percent per month on the unpaid balance of any bill for service including any interest thereon, provided the utility:

(1) clearly shows on each bill the amount billed, whether any charge will be imposed for late payment, when the late payment charge becomes applicable, and the time period during which the bill may be paid without the imposition of the late payment charge;

(2) does not impose a late payment charge for any bill or portion thereof which is paid within 20 days of the date payment was due, according to the standard set forth in paragraph (c)[(2)] of section 11.4 of this Part;

(3) does not impose such charge on any bill that is the subject of a pending complaint before the utility or the commission; provided, however, that a late payment charge may be imposed on the balance due where the final resolution of the complaint directs payment of the entire disputed amount to the utility; and provided further, that no such charge may be imposed for more than two months of the pendency of the complaint unless authorized by the commission or its designee.

(b) Every utility shall offer residential customers on fixed incomes the opportunity to pay their bills on a reasonable schedule that is adjusted for such customer's periodic receipt of income without such customers incurring late payment charges; provided, however, that any such offer may prescribe a late payment charge, consistent with the standards set forth in

subdivision (a) of this section, where payment is not made within 20 days of the scheduled due date.

(c) Other charges. Except as provided in subdivision (a) of this section, no utility may charge any residential customer a late payment charge, penalty, fee, interest or other charge of any kind for any late payment, collection effort, service termination, disconnection or suspension or deferred payment agreement occasioned by the customer's failure to make timely payment for services. Nothing in this section shall prohibit a utility from imposing a reasonable charge pursuant to its tariff or, where applicable, its agreement for commodity supply, for other lawful purposes.

Comment: A utility eligible to request suspension pursuant to PSL §32(5) is prohibited from recovering from a residential customer any charge paid by said utility to the distribution utility for any costs associated with suspension of distribution service.

§11.16 Contents of bills

Each utility bill to a residential customer shall provide, in clear and understandable form and language, the charges for service. Each distribution utility bill to a residential customer shall include:

(a) the name, address and account number of the customer, dates of the present and previous meter readings, whether estimated or actual, amount consumed between present and previous readings, amount owed for the latest period, the date by which payments for the latest period may be paid without penalty, the penalty charge for late paid bills, credits from past bills and any amounts owed and unpaid from previous bills;

(b) the customer's service classification, the billed demand, the meter-multiplier constant (if applicable), and any charges or credits which are adjustments to the base charges

imposed by the [company's] distribution utility's tariff for the rate classification of that customer;

(c) if the bill is issued under a budget or levelized billing plan, an identification of the type of plan, the total of the year's budget or levelized amounts billed to the end of the period covered by the current bill, the dollar amount billed for tariff items during such period, and the debit or credit balances; and

(d) an explanation of how the bill may be paid, including one or more local [company] distribution utility offices at which it may be paid, and a statement that bills may be paid at other authorized offices or payment agencies. Nothing in this section shall preclude a distribution utility from providing pertinent messages and information on the bill, provided such information does not interfere with the presentation of the information required by this section.

§11.17 Notification requirements

(a) Annual notification of rights. Every utility shall, at the time service is initiated to a residential customer and at least annually thereafter, by a notice accompanying a regular bill or in a separate mailing, provide residential customers with a summary of their rights and obligations under the Home Energy Fair Practices Act, the Energy Consumer Protection Act of 2002 and this Part. At a minimum, the summary shall include the following:

(1) a description of the complaint-handling procedures available at the utility and the commission;

(2) the rights and obligations of residential customers relating to payment of bills, termination, disconnection and suspension of service and reconnection of service;

(3) a description of special protections afforded the elderly[;], blind and disabled; persons with medical

emergencies; persons receiving public assistance, supplemental security income benefits or additional State payments; and persons in two-family dwellings;

(4) a request that residential customers who qualify for the protections referred to in subdivisions (b) and (c) of section 11.5 of this Part voluntarily so inform the utility;

(5) the right of a customer to designate a third party to receive copies of all notices relating to termination, disconnection and suspension of service or other credit notices;

(6) appropriate forms that customers claiming the protections of paragraph (3), (4) or (5) of this subdivision may fill out and return;

(7) a description of the customers' rights in regard to deferred payment plans and the holding and demanding of security deposits by the utility; and

(8) a description of the [company's] utility's budget or levelized payment plans.

(9) If a residential customer receives residential gas or electric service from two or more utilities, the residential customer need not be notified by each such utility. The distribution utility shall provide a single annual notice to residential customers.

(b) Billing information in non-English language. Every utility providing service to a county where, according to the most recent Federal census, at least 20 percent of the population regularly speaks a language other than English, shall, at the request of a customer residing in such county, send its messages on bills and notices in both English and such other language to such customer. At least once a year, every utility shall supply, to all residential customers in such county, a notice in such other language spoken regularly by at

least 20 percent of the population in such county of the right to request messages on bills and notices in such other language.

(c) Notification for customers billed on time-of-use rates. Every utility which offers time-of-use rates shall provide the following information, at least twice per year, by a notice accompanying a regular bill or in a separate mailing to its customers billed on such rates:

(1) a description of the hours for which these rates are available for both standard and daylight standard time;

(2) if resetting the electric time-of-use meter is necessary to restore the effective hours of the time-of-use rates following an interruption of service, a description of procedures such customers shall follow in order to have their time-of-use electric meter reset; and

(3) if resetting the electric time-of-use meter is necessary, when the utility has knowledge of an outage, a statement within 60 days of such outage that the time-of-use rate may not be applied at the previously stated times until the time-of-use electric meter is reset.

§11.18 Emergency disconnections of residences

A distribution utility may disconnect service to a residence when an emergency may threaten the health or safety of a person, a surrounding area or the utility's distribution system. The distribution utility shall act promptly to assure restoration of service as soon as feasible. Service shall be restored to any residence before it may be [terminated] disconnected for any other reason.

§11.19 Inspection and examination of distribution utility apparatus

(a) A duly authorized agent of the distribution utility may enter any dwelling, building or other location supplied with service by the distribution utility for the purposes of

inspecting and examining the meters, pipes, fittings, wires and other apparatus for regulating, supplying and/or ascertaining the quantity supplied on a nonholiday workday between 8 a.m. and 6 p.m., or at such other reasonable times as requested by a customer. At such time, the agent shall exhibit a photo-identification badge and written authority signed by the president or vice-president and secretary or assistant secretary of a distribution utility corporation, or by the mayor or clerk of a municipal corporation or by the chairman and secretary of a municipal board in control of a municipal utility.

(b) The provisions of subdivision (a) of this section shall not apply to the inspection and examination of any such equipment where an emergency may threaten the health and safety of a person, the surrounding area, or the distribution utility's distribution system.

(c) Inspection and examination of any such equipment may be conducted between the hours of 8 a.m. and 9 p.m. on any day when there is evidence of meter tampering or theft of services.

(d) An agent of the distribution utility, otherwise duly authorized to inspect and examine apparatus, may not enter locked premises without the permission of the person lawfully in control on the premises, nor use any manner of force to carry out inspection and examination, except when an emergency may threaten the health or safety of a person, the surrounding area, or the distribution utility's distribution system, or where authorized by a court order.

§11.20 Complaints to the utility

Customer complaints about bills for utility service, deposit requests or other service problems shall first be made to the utility. The utility shall allow complaints to be accepted and processed in a simple manner and form. Every utility shall promptly investigate any complaint in a fair manner and report

the results to the complainant. If the report of the investigation is made orally, the utility shall offer the complainant, upon written request, the opportunity to receive the report in writing. A utility resolving a complaint in whole or in part in its favor shall inform the complainant of the availability of the commission's complaint handling procedures, including the commission's address and telephone number. Every utility shall file with the commission its procedures for fulfilling the requirements of this section, and any changes in such procedures must be filed at least 30 days prior to implementation. A utility shall refrain from terminating, disconnecting or suspending service for nonpayment during the pendency of a complaint before the utility or the commission and for 15 days after resolution by the utility, or by the commission or its authorized designee, unless otherwise provided by the commission or its authorized designee; provided, however, that as a condition of continued service during the pendency of such dispute, a customer shall pay the undisputed portions of any bill for service, including bills for current usage, or such amounts as the commission or its authorized designee determines reasonably reflect the cost of usage to such customer.

§11.21 Emergency hotline.

(a) Emergency hotline at the commission. The commission has established a toll-free telephone number that residential customers may call regarding initiation, termination, disconnection, suspension, or reconnection of service. 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.

(b) Commission authority to order provision of service. During times that the hotline is attended, and in response to calls, an employee of the commission shall have the authority to order the reconnection, continuation or initiation of utility

service whenever a reasonable question regarding the circumstances of a termination, disconnection, suspension or refusal of service exists or whenever the health or safety of a person is involved.

(c) Utility responsibility. Every utility shall submit to the commission the names and telephone numbers of employees authorized to direct compliance with orders issued under subdivision (b) of this section. Every utility shall adopt procedures necessary to comply with such orders.

§11.22 Waiver

Unless otherwise precluded by article 2 of the Public Service Law or other applicable law, the commission may, for good cause shown or upon its own motion, waive any requirement of this Part.

§§11.23-11.29 reserved

§11.30 Definitions.

(a) Extraordinary cost means the cost, as determined by a qualified professional and shown in a written estimate signed by that professional, which also shows all relevant license numbers or professional qualifications, of installing equipment necessary to eliminate a shared meter in a dwelling or part of a dwelling which is in excess of the amount of rent for four months rental of such dwelling, or two months rental of such dwelling if the amount of service measured by the shared meter, that is used outside the shared meter customer's dwelling, is less than twenty percent of the average total monthly consumption recorded on the meter for the immediately preceding 12 month period (or if insufficient history is available, based on the best available information).

(b) Qualified professional means a person who is permitted to install or repair gas, steam or electric equipment, including

rewiring or repiping, by the local code of the municipality where the meter in question is located.

(c) Legal impediment means a restriction which prevents separate metering, rewiring, or repiping due to zoning ordinances, which limit the number, type or location of meters in a building, or due to the historical significance of the structure, or any other legal prohibition against elimination of the shared meter condition.

(d) Minimal service. Whenever the quantity of service on a shared meter, that is used outside of the tenant's dwelling, is estimated to be less than ten percent of the total monthly consumption recorded on the meter, based on average monthly service for the immediately preceding 12 month period (or if insufficient history is available, based on the best available information), or 75 kwh/month of electricity, 5 therms/month of gas or 1 mlb/month of steam, whichever is greater, the owner, tenant and any third party whose utility service was to be measured through another meter and had caused or benefitted from the shared meter condition, may negotiate a mutually acceptable agreement for the responsibility for the cost of such shared meter consumption. When the interested parties are unable to negotiate a mutually acceptable arrangement, the commission or its designee may order a remedy for a shared meter customer that it deems fair and equitable based on costs incurred and benefits received by the various parties.

§11.31 Commission's designee.

The commission's designee, for the purpose of this section and Public Service Law, section 52, is the director of the department's Office of Consumer Services [division].

§11.32 [Termination of] Service to shared meter account.

(a) Only a distribution utility may disconnect service to a shared meter account. A distribution utility may not

[terminate] disconnect service to an occupied building at the owner's request unless a new account will be opened and [termination] disconnection of the owner's shared meter account will not result in interruption of service.

(b) A distribution utility shall not [terminate] disconnect service to a shared meter account for nonpayment unless [the utility] it complies with the requirements of this section.

(1) The distribution utility shall give 15 days' written notice of its intention to [terminate] disconnect service to a shared meter account by mailing a copy of the notice to the owner of the premises or to the recipient of the last preceding service bill, mailing or otherwise delivering a copy of the notice to each affected dwelling unit, and, when common areas of the building will be affected, and unless precluded by physical circumstances, posting a copy of the notice in a conspicuous place at or within the building.

(2) The notice shall provide the information required by section 11.4(b)(1)-(4) of this Part, state that there are special protections for occupants of premises receiving service through a shared meter account, that the department staff may be contacted for information and advice, and that subdivision (1) of section 235-a of the Real Property Law may authorize occupants of multiple dwellings who make utility payments [to the utility] to prevent [termination] disconnection of service on a shared meter account to deduct such payments from their rent.

(3) Any occupant who would be affected by [termination] disconnection of a shared meter account may prevent [termination] disconnection of service by paying the current charges for such service. An occupant who chooses to pay current charges shall not be liable for any future bills rendered for utility service through the shared meter. In the

event of such payment, the utility that issues the bills shall continue to render all bills to the owner and to send a copy to any occupant upon request. Current charges shall be defined as an amount not to exceed that due for billed service provided during the two months preceding the [termination] disconnection date set forth in the notice.

(4) The department's staff shall be available to advise occupants who would be affected by [termination] disconnection of shared meter accounts of the protections provided by this section.

(5) Whenever a final notice of [termination] disconnection of utility service has been provided under this section, and [termination] disconnection has been avoided, the distribution utility shall so notify the affected occupants by mailing or otherwise delivering such notice to the occupants or posting such notice in a conspicuous place at or within the building.

(6) During the cold weather period, defined in section 11.5(c)(2) of this Part, a distribution utility intending to [terminate] disconnect heat-related service, as that term is defined in section 11.5(c)(1) of this Part, to a shared meter account shall provide the written notices required under paragraphs (1) and (2) of this subdivision not less than 30 days before the intended [termination] disconnection.

(7) During the cold weather period defined in section 11.5(c) of this Part, a distribution utility intending to [terminate] disconnect service to a shared meter account shall comply with the requirements set forth in sections 11.5, 11.7 and 11.8 of this Part.

§§11.33-11.39 repealed

PART 12

CONSUMER COMPLAINT PROCEDURES

(Statutory authority: Public Service Law, §§20, 43(2), 50, 65(1), 66, 67, 79, 80, 89-b, 89-c, 89-d, 91, 94, 96, 98)

Sec.

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§12.0 Applicability of Part 12 Complaint Procedures

When used in this Part, the term utility includes any such gas corporation, electric corporation, gas and electric corporation, steam corporation, municipality, or any entity that, in any manner, sells or facilitates the sale, furnishing or provision of gas or electric commodity to residential customers, including energy services companies and owners of submetered residential buildings; provided, however, that the term does not include any municipality that is exempt from commission regulation by virtue of section 1005(5)(g) of the Public Authorities Law.

§12.1 Complaints and questions

(a) Filing. Any utility customer may file a complaint with, or ask a question of, the commission relating to his or her electric, gas, steam, telephone or water service, when the customer believes he or she has not obtained a satisfactory resolution of a dispute with a utility regulated by the commission. Complaints may involve bills for utility service, deposit requests, negotiations for deferred payment agreements, service problems, and other matters relating to utility service.

(b) Department offices. A complaint or question may be filed by telephone, letter, electronically, or in person at the commission's office in New York City, Albany or Buffalo.

(c) Complaint submissions. Once a customer has filed a complaint and provided basic information to the commission's Office of Consumer Services [Division] so the complaint can be investigated, the utility will be notified of the complaint and will be required to submit information regarding the merits of the complaint. This submission should explain its actions in the disputed matter and the extent to which those actions were consistent with the utility's procedures and tariff, commission rules, regulations, orders and opinions, and applicable State laws. The utility may be required by staff to provide copies of

bills, billing statements, field reports, written documents, or other information in the possession of the utility which may be necessary to make a decision on the complaint. A customer making a complaint is responsible for providing staff with any facts that he or she possesses in support of his or her position.

(d) Inspections and tests. Should staff determine that an onsite inspection or test is required, he or she may order a test or inspection. This work may be done by staff and/or by utility staff at the direction of commission staff, depending on the nature of the complaint, time considerations and staff availability.

(e) Investigation. Staff will investigate each complaint or question and will respond to the customer, or, if possible, suggest the name, address and/or telephone number of a person or agency who might be able to respond.

§12.2 Complaint files

(a) A complaint file will be maintained at one of the commission's offices. It will contain all information in the commission's possession relating to a complaint.

(b) Customers, utilities or their representatives may look at and copy complaint files concerning cases to which they are a party. Staff will provide copies of the documents in accordance with the fee schedules in the commission's Administrative Manual. One free copy of the file will be made for those customers who state that they are unable to pay for reproduction costs.

(c) Complaint files shall be kept for at least one year after a case is closed.

§12.3 Continuation of service while a complaint is at the commission.

(a) A utility shall not terminate, disconnect, or suspend a customer's service, based on amounts billed that have not been paid and which are in dispute, from the time that a complaint or an appeal of a complaint is filed with the commission until 15 days after the decision is mailed or personally communicated to the customer or his or her representative.

(b) In order to continue service during the time a complaint or an appeal of a complaint is at the commission, the utility may require the customer to pay amounts of bills not in dispute. If the undisputed amount is not paid, the utility may be entitled to terminate, disconnect, or suspend the customer's service. Should there be any question as to the amount in dispute, staff will make a reasonable estimate, establishing the disputed amount.

§12.4 Initial decision on complaint

(a) When necessary information has been obtained, a staff member will make an initial decision on the complaint, based on his or her findings, applicable State laws, commission rules, regulations, orders and opinions, and utility tariffs.

(b) Staff shall call or write the customer or his or her representative to inform him or her of the decision, the reasons for the decision, and what actions must be, or may be, taken by the customer or the utility. The utility will be notified of the disposition of the complaint and of any action which it must take. A customer or utility may request a written copy of the initial decision. If the decision is communicated orally, the customer will be informed that he or she may receive the decision in written form.

§12.5 Requests for informal hearing or review

(a)(1) If the customer or the utility objects to the initial decision, a request for an informal hearing or review may be made to the commission's Office of Consumer Services [Division] in writing, by telephone or in person, explaining the basis for the request. The request should be received within 15 days after the initial decision is mailed or personally communicated.

(2) A request for an informal hearing may be denied if the relief sought by the customer or utility is beyond the power of the informal hearing officer to provide. In this case, the person requesting the hearing shall be notified as to the reason why a hearing cannot resolve the complaint, and shall be advised of the appropriate authority to address the complaint, if known. If the person requesting the hearing contends that the hearing officer does have the authority to decide the complaint, he or she may appeal to the commission in accordance with section 12.13 of this Part.

(b) A utility which appeals a staff decision must accept an informal review unless the customer agrees to participate in an informal hearing. A customer may choose either an informal hearing or review.

(c) Upon receiving a request for an informal hearing or an informal review, the customer and the utility will be notified in writing:

(1) of the date, time and location of the informal hearing at least 10 days before the date of the hearing, or that an informal review will be held;

(2) that any documents in support of their position should be brought to the informal hearing or sent to the informal reviewer within 15 days, or longer if the reviewer finds it reasonable to extend the time period, after receiving notice that a review will be conducted; and

(3) that the customer may be represented by a person of his or her choice or may request that the commission's Office of Consumer Services [Division] assign an advocate, free of charge, if available.

§12.6 Description of informal hearings and reviews

(a) Informal hearings. (1) An informal hearing is a procedure at which [both] the utility and the customer, and/or his or her representative, appear and are provided with the opportunity to present information, discuss and resolve the complaint before an informal hearing officer. Hearings normally will be held at commission offices; however, a customer may request that an informal hearing be conducted by telephone conference call.

(2) The hearing officer is an impartial member of the commission staff who has not had previous contact with the complaint. The hearing officer will consider the statements made by the parties at the hearing and review relevant information in the complaint file. The hearing officer will then make an independent decision and provide the customer and utility with a written statement explaining the reasons for the decision.

(b) Informal review. An informal review is a further review of the complaint by a staff member who has not previously worked on the complaint. An informal review does not require the presence of either the customer or the utility. It is an option available to the customer who disagrees with the initial decision, but who is unable or prefers not to participate in an informal hearing. Staff will review the complaint record, make an independent decision and provide the customer and the utility with a written statement explaining the reasons for the decision.

§12.7 Rights of parties

(a) Informal hearing rights. The parties to an informal hearing shall have the following rights:

(1) To represent themselves or to be represented by counsel or other person of their choice. At the request of a customer, the commission's Office of Consumer Services [Division] may assign an advocate, free of charge, if available, to assist the customer in preparing and presenting his or her complaint during an informal hearing.

(2) To examine the documents in the complaint file before the informal hearing.

(3) To have a reasonable opportunity during an informal hearing to present evidence and arguments concerning the complaint, and to challenge the evidence of and question the other party.

(4) To have the commission tape-record the hearing, with the consent of the customer. The commission will retain such tape for at least four months after the complaint is closed. The hearing officer shall inform the parties that either party may review the recording at the commission office or make a copy of the tape at his or her own expense.

(5) To have an interpreter at the hearing. If the party in need of such services is unable to obtain an interpreter, the commission will provide an interpreter where feasible, provided that the customer makes the request at least five days before the hearing.

(6) To request that information relevant to the complaint possessed by the other party be provided. The request can be made directly or through the hearing officer.

(b) Informal review rights. The parties to an informal review shall have the following rights:

(1) To present evidence and written arguments concerning the complaint. At the request of a customer, the commission's Office of Consumer Services [Division] may assign an advocate, free of charge, if available, to assist the customer in preparing his or her submission for the informal review.

(2) To examine the documents in the complaint file.

(3) To examine the evidence and arguments submitted by the other party and to submit a response to the evidence and arguments of the other party.

(4) To request the information relevant to the complaint possessed by the other party be provided. The request can be made directly or through the hearing officer.

§12.8 Powers and duties of hearing officers and reviewers.

(a) Informal hearing officers and reviewers shall conduct fair and impartial hearings or reviews, and may, in carrying out this responsibility:

(1) (i) Order utilities to provide copies of information in their possession and state the form in which certain information is to be provided.

(ii) Request customers to provide information in their possession which is necessary to prove any facts that the customer offers in support of his or her position. The customer's failure to provide any such information may influence the hearing officer's decision regarding that particular fact.

(2) Order the utility to conduct meter tests and inspections, diversion of service inspections and other test necessary for the resolution of the complaint.

(3) Regulate the course of hearings and the conduct of the parties and their representatives. In executing this responsibility, the hearing officer may allow the attendance of the media if he or she believes that this will not disrupt the hearing, and [both] parties agree to such attendance.

(4) Question participants directly and inquire into all matters related to the case.

(b) Informal hearing officers and reviewers shall provide a party with any information regarding the merits of the case exchanged between the hearing officer and any other party, and an opportunity to respond to the hearing officer regarding such information.

(c) The hearing officer may permit any party to submit further information, documentation or arguments that may aid the officer in reaching a determination within 15 days after an informal hearing. The hearing officer shall ensure that this information is provided to the other party, who will have an opportunity to respond. The hearing officer may grant reasonable requests to extend the time period to submit information.

§12.9 Hearing postponement

(a) The hearing officer may grant initial requests for a hearing postponement. A party requesting a second postponement will be required to provide reasonable justification for the postponement. If a party does not provide reasonable justification, as determined by the hearing officer, a new hearing date will not be set and an informal review will be conducted.

(b) The hearing officer may, at his or her own discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is postponed, adequate notice will be provided to the parties.

§12.10 Failure to appear

If a customer or the utility does not appear for a scheduled hearing, without good cause, the hearing officer will accept information from the attending party, and make a determination on the dispute.

§12.11 Settlement agreement

(a) If, at any point during the informal hearing, the utility and the customer agree to settle their dispute, the agreement shall be in writing and signed by the customer, the utility representative and the hearing officer. The agreement shall state that it is binding on [both] parties and may not be appealed.

(b) A settlement of an informal review shall be confirmed by letter from the reviewer to [both] parties.

§12.12 Informal hearing or review decision

(a) If the parties have not been able to settle their dispute, the hearing officer or informal reviewer will make a written decision. In reaching the decision, the hearing officer shall give consideration to the evidence and facts of the case, and base the decision on his or her findings, applicable State law, commission rules, regulations, orders and opinions, and utility tariffs. The decision shall summarize the positions and arguments of the customer and the utility, the facts as established, the reasons for the decision, and, where appropriate, include a statement of what actions must be taken by the parties.

(b) The hearing officer or reviewer shall promptly notify the parties, by first class mail, of the decision and of the parties' right to appeal in writing to the commission and the time by which an appeal must be filed.

§12.13 Appeals to the commission

(a) Filing of appeals. If a customer or utility disagrees with the decision rendered in the informal hearing or review, the customer or utility may appeal to the commission by writing to the Office of the Secretary to the Public Service Commission, 3 Empire State Plaza, Albany, N.Y. 12223-1350. The appeal should

be filed within 15 days after the informal hearing or review decision is mailed.

(b) Requirements for appeals. An appeal must be in writing and be based on one or more of the following grounds:

(1) The hearing officer or reviewer made a mistake in the facts in the case or in the interpretation of laws or regulations which affected his or her decision.

(2) The hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision.

(3) New facts or evidence, not available at the time of the hearing or review, have become available which would have affected the decision on the complaint.

§12.14 Commission determination

(a) [Both] Parties will be notified of the commission's receipt of the appeal, and a staff member, who has not previously worked on the complaint, will be assigned to review the request. The staff member will examine all papers submitted in connection with the appeal and advise the commission on the appeal.

(b) The commission will decide the appeal and may uphold, change, reject or return the decision to the informal hearing officer or reviewer for additional consideration. If there is a factual or legal dispute, the commission may order a formal evidentiary hearing on the complaint or make such other decision as it deems appropriate.

(c) The Secretary to the Commission will notify [both] the customer and the utility in writing of the commission's decision and action.