



"KNOW YOUR UTILITY RIGHTS!"

***PUBLIC UTILITY LAW PROJECT
OF NEW YORK***

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NYS'S UNAFFORDABILITY CRISIS

- NYS' electric and gas utilities issued 7.2 million shutoff notices in 2014
- 1,037,651 residential customers owed \$800 million in 60-days + arrears in 2015
- Service was terminated as a bill collection measure to 295,797 customers statewide in 2015
 - (Note: a customer = 1 meter which = approx. 3 people)

SOME COMMON ISSUES

- High utility rates
- Termination notices and shutoffs
- Deferred Payment Agreements (“DPAs”)
- Serious Medical Condition
- Denial of Applications for Service
- Public Service Commission (“PSC”) Hotline and Complaint Process
- The Home Energy Assistance Program (“HEAP”)
- Other Assistance Programs
- Energy Service Company (“ESCO”) issues

WE WILL TALK ABOUT...

- Home Energy Fair Practices Act (HEFPA)
 - Art. 2 of the Public Service Law (PSL)
- NYS PSC Hotline
- ESCOs
- Financial Assistance Available to help pay your utilities
 - Social Services Law sec. 131-s Assistance
 - Home Energy Assistance Program (HEAP; Art. 2 PSL)
 - Utility Low-Income Assistance Programs

PART I HOME ENERGY FAIR PRACTICES ACT (HEFPA)

- ART. 2 OF THE PUBLIC SERVICE LAW (PSL)
- PSC REGS PART 11 (16 NYCRR 11 ET SEQ)

***QUESTION:* IF I CAN'T PAY MY UTILITY BILL, WHAT WILL HAPPEN?**

- See, PSL 32-34 & 46; 16 NYCRR 11.4-11.8
- See also, 2003 NY PSC Lexis 336, *17 (2003)
- And see, re Replevin/Meter Seizure Actions, Bklyn Union Gas v. Richy, 123 Misc. 2d 802 (1984); Con Ed v. Church of St Cecilia, 125 Misc 2d. 744 (1984) & Con Ed v. Haymer, 139 Misc 2d. 95 (1988); and see, Case 16-01387, Petition of PULP for an Order in re Con Ed's Replevin Actions (2016)

ANSWER: THE UTILITY WILL ISSUE A FINAL TERMINATION NOTICE & THE CONSUMER BECOMES “ELIGIBLE FOR FIELD ACTION”.

- The utility can take *no action* until your payment is at least 20 days past due.
 - PSL 32(2)(d); 16 NYCRR 11(a)(3)(iii)
- The utility must issue a final termination notice at least 15 days before shut-off.
 - PSL 32(2)(d); 16 NYCRR 11.4(a)(i)(v)
- Therefore, the EARLIEST that a termination can occur is 35 days after the payment due date (20 days + 15 days).

QUESTION:

- When (i.e., What Times & Days) can the utility terminate electric or natural gas service?
 - 16 NYCRR 11.4(a)(4)

ANSWER:

Termination Only Allowed

Monday - Thursday 8:00 AM to 4:00 PM

- 16 NYCRR 11.4(a)(4)

Termination Not Allowed

On any Friday or public holiday (See 11.4(a)(4)(i))

On any day the utility's main office is closed; ...(ii)

During the 2-week period encompassing Xmas and New Year's Day
(See 16 NYCRR 11.4(a)(4)(ii))

QUESTION:

- Are there special procedures for termination of utility service in the winter? (Hint: *New York has no shutoff moratorium!*)
 - **16NYCRR 11.5(c)(2)**
 - ***But see, Proceeding on Motion of the Commission Investigating the Death of an NFG Customer During the Winter of 2000-2001 (“Velma Fordham Case”); 2004 NY PUC LEXIS 288, *11 (2004).***
 - ***And see, In the Matter of an Appeal by NFG, 2003 NY PUC LEXIS 227, *3-5 (2003).***

ANSWER: (16NYCRR 11.5(C)(2) ET SEQ.)

Yes. For the period November 1st through April 15th, the utility:

- Can take *no action* until a payment is at least 20 days past due.
- Must issue a final notice of termination at least 15 days before the shut-off.
- Must try to contact an adult resident by telephone or in person at least 72 hours before the shut-off, to see if a medical emergency exists.
- Must try to contact an adult resident by telephone or in person at the time of shut-off.

QUESTION:

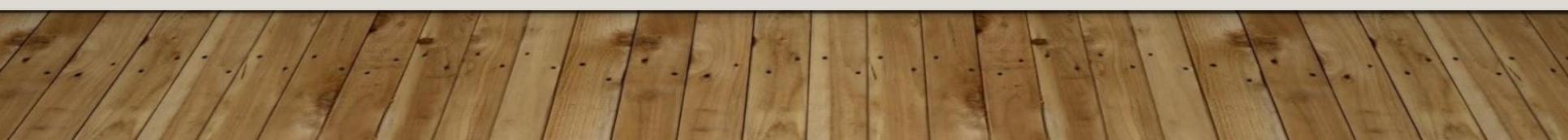
- What are the protections from termination for people with medical problems?
 - PSL 32(3)(3)(a-c); (16 NYCRR 11.5(a)(1)-(7))
 - And see, Complaint of Nobody Leaves Mid-Hudson v. Central Hudson Gas & Electric Concerning Collection Practices, 2017 NY PUC LEXIS 497, *19-20 (2017), Case 15-M-0756.

ANSWER:

If the customer or household member has a serious medical condition that will be aggravated by termination, service can be continued if:

- See, PSC 32(3)(a)-(c)
- The doctor calls the utility and advises them of the emergency condition. (Telephone certification is good for 5 days – must be followed by a written certification.)
 - 16 NYCRR 11.5(a)(2)-(3)

MORE



ANSWER CONT'D:

- A written certification is good for 30 days and must contain:
 - PSL 32(3)(a); 16 NYCRR 11.5(a)(2)-(4)
 - doctor's name, address and state registration number
 - name and address of utility customer
 - nature of serious illness or medical condition
 - statement that the illness or condition will be aggravated by termination of utility service with reasons supporting the conclusion.

QUESTION:

- What is a Deferred Payment Agreement (DPA) and how does it work?
 - See 16 NYCRR 11.10 et seq.

ANSWER:

A DPA is a written agreement to pay arrears for past utility service over time. Some of the requirements are:

- must be in writing, signed by the customer and a utility representative; 16 NYCRR 11.10(a)
- a down payment may be required 11.10(c)
- must be tailored to customer's financial circumstances; 11.10(a)(1)
- may be amended if customer's financial circumstances change. 11.10(a)(5)
- PSC Hotline & Complaint Process Available

DEFERRED PAYMENT AGREEMENTS:

- A utility cannot terminate service, deny an application for service due to arrears, or refuse to reconnect unless it has 1st offered a DPA
 - See, PSL 37(1); 16 NYCRR 11.10(a)(4)
- Failure to offer the DPA is unlawful and grounds for a complaint to restore service
 - See, 16 NYCRR 11.20

QUESTION:

- Must a public utility provide service to customers?
 - Spoiler Alert! ... YES.

GETTING & KEEPING SERVICE:

- Public Utilities have a duty to serve arising in part from use of the public rights-of-way, from common law, and also from 100 years of litigation
 - See, e.g., *Perceval v. Public Service Commission*, 148 N.Y.S. 583 (1st Dept. 1914).
- *An energy utility must provide service except for certain narrow exceptions, where it can require a writing or deposit, but must still provide service.*
- **See also, 1998 NY PUC LEXIS 90 (1998), Case 96-M-0706;** which provided that a utility may establish non-discriminatory procedures to require an Applicant to provide reasonable proof of identity, but a SSN cannot be required & service denied on failure to provide t

QUESTION:

- When can a utility require a written application for service to a new account?
 - 16 NYCRR 11.3(a)(4)(v)
 - See also, 1998 NY PUC LEXIS 90, *20 (1998)

ANSWER:

A written application can be required when:

- Service is terminated (or subject to termination) for non-payment of arrears.
 - 11.3(a)(4)(v)(a)
- Evidence of meter tampering or theft of service.
11.3(a)(4)(v)(b)
- Meter advanced with no customer of record.
11.3(a)(4)(v)(c)
- Application made by a third person. ...(d)

QUESTION:

- If an application is denied, what notice must the utility provide to the applicant?
 - 16 NYCRR 11.3(b) et seq.

ANSWER:

Within 3 days of making the application, the utility must provide written notice including:

- The reason for denial. (11.3(b)(2)(i))
- The precise steps needed to qualify for service (such as agreeing to a DPA). 16 NYCRR 11.3(b)(2)(ii)
- The applicant's right to request review by the PSC. ...(iii)

QUESTION:

- Can I be required to pay a security deposit to get utility service?

ANSWER:

No, not unless you are a short-term or seasonal customer.

- 16 NYCRR 11.3(a)(3)
- But see, PSL 36(2), which allows the PSC, after an investigation and hearing, to authorize a utility to collect security deposits if such action is cost effective to the utility as a whole; and see, 2004 NY PUC LEXIS 121, *9-10, regarding Niagara Mohawk's petition for such authority

QUESTION:

- Can a customer who owes the utility money from an old closed account get service to a new account?
 - PSL 31(1)(a); 16 NYCRR 11.3(a)(2)(i)

ANSWER:

Yes, if you enter into a Deferred Payment Agreement (DPA) or pay in full

Utilities must offer a DPA before they can deny service to applicants with balances due from accounts previously closed.

- PSL 31(2); 16 NYCRR 11.3(b)(2)

QUESTION:

- Can current customers be asked for security deposits as a condition of continuing service?
 - 16 NYCRR 11.12 et seq.

ANSWER:

- Only if they are delinquent in paying bills. Customers are delinquent if:
 - They have 2 consecutive months of arrears and have not made a reasonable payment, (see, 11.12(d)(i))
 - **OR**
 - They had utility service terminated for nonpayment in the past 6 months. (see, 11.12(d)(ii))

PSC HOTLINE 1-800-342-3355

- Open until 7:30 PM
- Is not the Complaint line
- Can direct the utility to continue or restore service within 24 hours “***whenever a reasonable question regarding the circumstances of a termination or refusal of service exists or whenever the health and safety of a person is involved.***”

PART II NYS PSC COMPLAINT HANDLING PROCESS

PSC REGULATIONS PART 12

&

PSC QUICK RESPONSE SYSTEM

QUESTION:

- How does a customer initiate a complaint against a PSC regulated telephone or electric/gas provider and obtain a decision?



ANSWER:

First, complain to the utility. If the provider does not resolve the complaint, then...

Call the Public Service Commission Complaint Line
– 1 (800) 342-3377

Or, file a complaint online at

[http://www3.dps.state.ny.us/ocs/itgate.nsf/
\(webDPS_welcome\)?OpenForm](http://www3.dps.state.ny.us/ocs/itgate.nsf/(webDPS_welcome)?OpenForm)

QUESTION:

- What happens after a complaint against a utility is lodged with the PSC?
 - See PSCNY QRS manual pp. 3 & 6; see also www.dps.ny.gov/QRS_Guide_Service_Providers.pdf

ANSWER

- Under the Office of Consumer Services “QRS” system, most complaints are not investigated, and are referred back to the utility with direction to review the customer complaint and respond to the customer.

QUESTION:

- How quickly must a utility respond once the PSC has referred the complaint back to them?

ANSWER:

- If the complaint is related to the provision of service, the utility should contact the customer within two business hours
- If the complaint is related to billing or another matter, the utility should contact the customer by the close of the following business day

QUESTION:

- What happens if the utility does not respond or if the issue remains unresolved?

ANSWER:

- The customer must again contact the PSC a second time to have the complaint “*escalated*,” meaning that the agency staff will now be involved to further investigate the complaint and make an initial determination on the merits of the dispute.

QUESTION:

- What if the customer believes the initial decision by the Department of Public Service Office of Consumer Services Staff is wrong?
 - See, 16 NYCRR 12.0 et seq.

ANSWER:

- The customer can request an informal hearing. This request should be made within 15 days of the initial decision.
 - See 16 NYCRR 12.5(a)(1)
- Instead of the hearing, an informal review is also an option, and must similarly be requested within 15 days. (see, 16 NYCRR 12.6(b))
- If the customer and the utility are unable to settle the complaint, the hearing officer will make a decision on the complaint and notify the customer in writing of the decision. (see, 16 NYCRR 12.7-12.12)

QUESTION: WHAT IF THE CUSTOMER BELIEVES THE HEARING OFFICER'S OR INFORMAL REVIEW OFFICER'S DECISION IS WRONG?

- **ANSWER:**

- The hearing officer's decision can be appealed within 15 days of the decision to the Public Service Commission. See 16 NYCRR 12.13
- The appeal must be in writing and needs to show that there was an error made by the hearing officer on the facts, or in interpreting the law or regulations that affected the decision, or that evidence not previously available would affect the decision. See 16 NYCRR 12.13(b)
- The Commission will make a decision on the appeal and notify the customer in writing of its decision. See, 16 NYCRR 12.14

QUESTION: WHAT HAPPENS IF THE CUSTOMER BELIEVES THE COMMISSION'S DECISION IS WRONG AND WANTS FURTHER REVIEW?

- ***ANSWER:***
- A customer can bring an Article 78 proceeding in state court within 4 months of the PSC's final decision on a complaint. The cases must be filed in Supreme Court, Albany County.

PART III

ESCOS

- Energy service companies (ESCOs)- consumers can choose to buy to have electricity or natural gas "supply" from an ESCO rather than their local utility.
- The customer's "delivery" portion of the bill still comes from their local utility

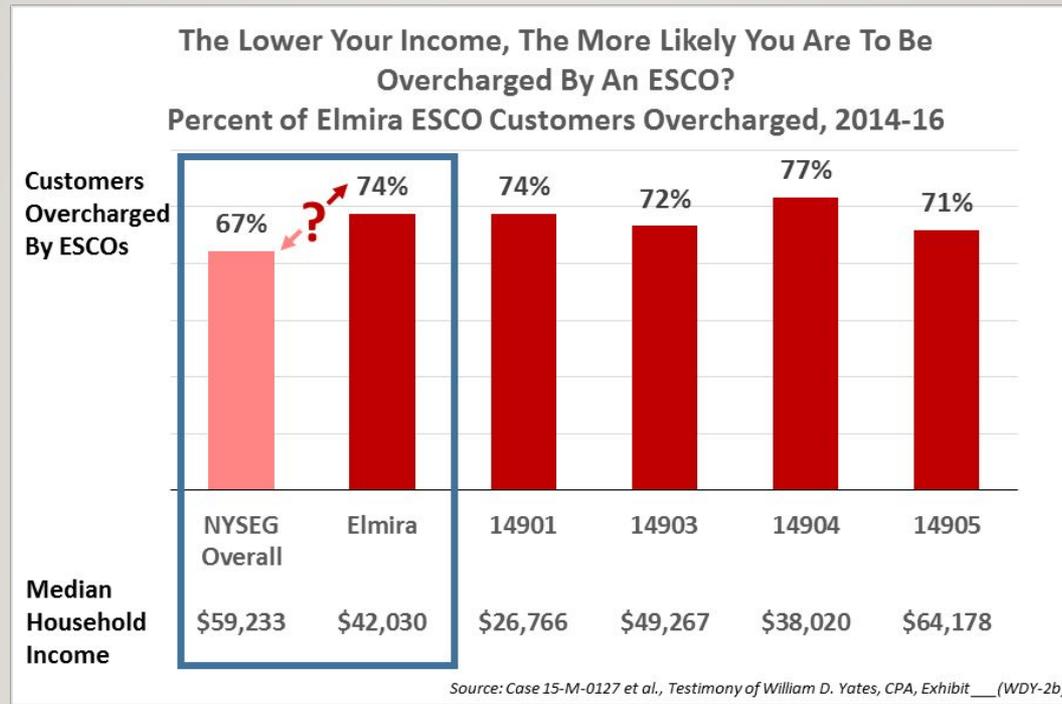
THE PROBLEM

- Many consumers across NY have complained about deceptive and misleading marketing practices:
 - Overstated savings followed by high utility bills;
 - Billing problems;
 - Excessive termination fees
 - Not providing translations of contracts and other papers
 - "Slamming" (being transferred to an ESCO without authorization)
 - Pretending to be from "the utility" and there to help them
- Of the 663 zip codes in New York State with at least 1,000 households, Elmira zip code 14901 had the third highest rate of residential customer complaints against ESCOs to the PSC from 2012 – 2013.

WHAT'S GOING ON IN ELMIRA ZIP CODES: 14901, 14903, 14904 AND 14905

- From 2014 – 2016, over 5,800 residential NYSEG customers in the Elmira area were overcharged by approximately \$6.3 million by ESCOs
 - This is about \$1,075 per customer.
- Less than 2,100 customers saved money doing business with ESCOs.
 - These customers saved a total of approximately \$2.6 million
 - This is about \$1,250 per customer.

ELMIRA'S OVERCHARGES



*The above chart is consistent with PULP finding across New York State

WHAT IS GOING ON WITH ESCOS IN NYS

- The PSC started an investigation that reveals that with a few exceptions, the ESCOs have failed to provide similar energy-related value-added products or services. See Case No. 15-M-0127
- The PSC has (3) additional proceedings investigating ESCOs and their business practices:
 - CASE 12-M-0476 – Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State;
 - CASE 98-M-1343 – In the Matter of Retail Access Business Rules; and
 - CASE 06-M-0647 – In the Matter of Energy Service Company Price Reporting Requirements.

WHAT IS GOING ON WITH ESCOS CONT'D

- In 2016, the PSC ordered ESCOs to guarantee savings to low-income customers who purchase energy when compared to what a traditional utility would charge.
- The ESCOs are challenging the PSC's order in court
- In November a mid-level appeals court panel ruled that the PSC can regulate ESCOs and limit their ability to sell to low-income customers.
 - *See National Energy Marketers Assn. v New York State Pub. Serv. Commn.*, 2017 NY Slip Op 27223

WHAT TO DO IF YOU WANT TO TERMINATE YOUR RELATIONSHIP WITH AN ESCO

- Start off by contacting the ESCO directly and inform them that you no longer want them to supply your electricity or gas.
- Note: some ESCOs require one and two year contracts so termination fees and charges will apply to cancel your contract
- If you believe that your account was fraudulently transferred to an ESCO you can file a complaint with the PSC

Part IV

Examples of Assistance for Low-Income Consumers

- Social Services Law 131-s, the “One Shot” law
- Low-Income Home Energy Assistance Program (HEAP)
- Emergency HEAP
- Renter’s HEAP
- Utility Funded Programs
- State Funded Programs (i.e., Low-Income Affordability Program; May 20, 2016 Order in Case 15-M-0565)
- Religious, 501c3, affinity programs

SSL 131-S ASSISTANCE

- The “One-Shot” utility assistance program when HEAP is not available to resolve an emergency
- Need not be eligible for ongoing PA
- Applicant must be “tenant” and “customer of record”
 - See, *Goodwin v. Perales*, 88 NY 2d. 383 (1996)
- Persons under a Public assistance sanction are eligible (continued)

SECTION 131-S ASSISTANCE

- No repayment agreements required for EAA (SSI eligible)
- Written repayment agreements are required for applicants with incomes above PA eligibility guidelines; see Childs v. Bane, 605 NYS 2d 488 (1993)
- Under OTDA rule, customers who defaulted on a prior DSS repayment are not eligible for another grant until current on repayment schedule.
- Note: Tenants/Customers of Record can get 131-s even if they are subject to a “Shared Meter” situation; see Robinson v. Perales, 560 NYS 2d 881 (1990).

HOME ENERGY ASSISTANCE PROGRAM (HEAP)

*REGULATIONS ARE: 45 C.F.R. 96 ET SEQ.
STATUTE IS: 42 U.S.C. § 8621-8630
[HTTP://OTDA.NY.GOV/PROGRAMS/HEAP](http://otda.ny.gov/programs/heap)*

NOTE: NYS GETS ROUGHLY 10% OF ALL LIHEAP FUNDS; \$325 MILLION+

WHO IS ELIGIBLE FOR HEAP:

- The Home Energy Assistance Program (HEAP) helps those on low- or fixed-income pay the cost of heating their homes or apartments.
- The application period opened on November 13th.
- Who is eligible: whether you rent or own your home, you are eligible for a HEAP grant in any year your income does not exceed the annual income limit.
- Qualifying also makes you eligible for emergency HEAP benefits if you are in danger of running out of fuel or having your power shut off.
- To learn more call: Hotline at 1-800-342-3009
- To apply: <https://mybenefits.ny.gov/mybenefits/begin>

WHY GET THE SMALL HEAP RENTER'S BENEFIT?

- It provides categorical eligibility for low-income electric, gas, and telephone lifeline rates
- HEAP eligibility is broader than other programs that trigger reduced rates
- The benefits will far exceed the HEAP benefit

EMERGENCY HEAP:

Emergency HEAP is also available in January 2019

To receive an emergency HEAP benefit, the household must meet regular HEAP eligibility AND

- Be without heating fuel or have less than a 7 day supply OR
- Have heat-related service terminated or scheduled for termination OR
- Have customer-owned heating equipment in need of repair/replacement OR
- Be in an emergency home heating situation AND
- Alternative living/payment arrangements can not be made.

UTILITY FUNDED LOW INCOME ASSISTANCE PROGRAMS

- Reduced Rates for Low-Income Utility Customers
- Utility Arrears Management Programs
- NYSERDA/Utility Low Income Energy Efficiency Programs
- Utility Fuel Funds and Charities – “Heartshare”
- *Note: National Grid is the only NYS utility that offers a unique renewable energy rate through their "GreenUp Program."

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