

The logo for Regulatory Compliance Services features a dark blue rectangle at the top and a light blue rectangle at the bottom, both partially enclosed by a thin white arc that forms a partial circle around the text.

**Regulatory Compliance
Services**

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**UNIFORM BUSINESS PRACTICES
CASE 98-M-1343
February 2016**

AND

**HOME ENERGY FAIR PRACTICES ACT
(HEFPA)
December 2008**

Compliments of:
Regulatory Compliance Services
www.your-rcs.com

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

UNIFORM BUSINESS PRACTICES
CASE 98-M-1343

February 2016

TABLE OF CONTENTS

SECTION 1: DEFINITIONS.....	1
SECTION 2: ELIGIBILITY REQUIREMENTS.....	6
SECTION 3: CREDITWORTHINESS.....	15
SECTION 4: CUSTOMER INFORMATION.....	20
SECTION 5: CHANGES IN SERVICE PROVIDERS.....	24
SECTION 6: CUSTOMER INQUIRIES.....	41
SECTION 7: DISTRIBUTION UTILITY INVOICES.....	43
SECTION 8: DISPUTES INVOLVING DISTRIBUTION UTILITIES, ESCOs OR DIRECT CUSTOMERS.....	45
SECTION 9: BILLING AND PAYMENT PROCESSING.....	47
SECTION 10: MARKETING STANDARDS.....	61

SECTION 1: DEFINITIONS

As used in the Uniform Business Practices (UBP), the following terms shall have the following meanings:

Assignment – Transfer by one ESCO to another ESCO of its rights and responsibilities relating to provision of electric and/or gas supply under a sales agreement.

Bill ready – A consolidated billing practice that requires each non-billing party, after receiving customers' usage data, to calculate its charges and send via EDI charges, billing information, and bill messages to the billing party in a form that allows the transfer of the information to the bill in a format the billing party selects.

Billing cycle – The period for which a customer is billed for usage of electricity or natural gas.

Billing services agreement (BSA) – An agreement between the distribution utility and the ESCO stating the billing practices and procedures and the rights and responsibilities of billing and non-billing parties relating to issuance of consolidated bills to customers.

Budget billing – A billing plan that provides for level or uniform amounts due each billing period over a set number of periods, typically 12 months, and determined by dividing projected annual charges by the number of periods. Installment amounts may be adjusted during the period and may include reconciliations at the end of the budget period to account for differences between actual charges and installment amounts.

Business day – Monday through Friday, except for public holidays.

Consolidated billing – A billing option that provides customers with a single bill combining charges from more than one service provider and issued by a distribution utility providing delivery service (utility consolidated bill) or by a commodity supplier (ESCO consolidated bill).

Customer inquiry – A question or request for information from a customer relating to a rate, term, or condition of service provided by an ESCO, distribution utility or other service provider.

Cramming – The addition of unauthorized charges to a customer's bill.

Deferred payment agreement (DPA) – A fair and equitable payment plan agreed upon by a customer and utility and/or a customer and an ESCO that allows a customer to pay an overdue amount in installments. A DPA is based upon the customer's financial circumstances and ability to pay the overdue amount while making payment on current charges.

Demand – The amount of electricity or natural gas that is or could be immediately needed by a customer at any given point in time referred to as customer load. For consolidated billing, the term is used in the context of "billing period demand" for customer bills.

Electric – The amount of electricity, measured in kilowatts (kW), that a customer uses at a point in time, the customer's usage averaged over a period, or capacity of facilities reserved for the customer for stand-by or other service.

Natural Gas – The amount of gas measured in cubic feet or therms that a customer uses or may use over a period, or capacity of facilities reserved for the customer for stand-by or other service.

Direct customer – An entity that purchases and schedules delivery of electricity or natural gas for its own consumption and not for resale. A customer with an aggregated minimum peak connected load of 1 MW to a designated zonal service point qualifies for direct purchase and scheduling of electricity provided the customer complies with NYISO requirements. A customer with annual usage of a minimum of 3,500 dekatherms of natural gas at a single service point qualifies for direct purchase and scheduling of natural gas.

Distribution utility – A gas or electric corporation owning, operating or managing electric or gas facilities for the purpose of distributing gas or electricity to end users.

Distribution utility customer account number – A number used by a distribution utility to identify the account of a utility customer.

Distribution utility tariff – A schedule of rates, terms and conditions of services provided by a distribution utility.

Door-to-door sales – The sale of energy services in which the ESCO or the ESCO’s representative personally solicits the sale, and the buyer’s agreement or offer to purchase is made at a place other than the place of business of the seller; provided that “door-to-door sales” shall not include any sale which is conducted and consummated entirely by mail, telephone or other electronic means, or during a scheduled appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

Drop – A transaction that closes a customer’s account with a provider. This term is used when: (1) a customer’s enrollment is pending and the customer rescinds the enrollment; (2) a customer enrolled with an ESCO returns to distribution utility service or enrolls with another ESCO; or (3) the ESCO discontinues service to a customer.

Dual billing – A billing option that provides for separate calculation of charges and presentation of bills to the customer by the distribution utility and ESCO.

Electronic data interchange (EDI) – The computer-to-computer exchange of routine information in a standard format using established data processing protocols. EDI transactions are used in retail access programs to switch customers from one supplier to another or to exchange customers’ history, usage or billing data between a distribution utility or MDSP and an ESCO. Transaction set standards, processing protocols and test plans are authorized in orders issued by the Public Service Commission in Case 98-M-0667, In the Matter of Electronic Data Interchange and available on the Department of Public Service website at: www.dps.ny.gov/98m0667.htm.

Energy broker – A non-utility entity that performs energy management or procurement functions on behalf of customers or ESCOs but does not make retail energy sales to customers.

Energy services company (ESCO) – An entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility. ESCOs may perform other retail service functions.

ESCO marketing representative – An entity that is either the ESCO or a contractor/vendor conducting, on behalf of the ESCO, any marketing activity that is designed to enroll customers with the ESCO.

Enroll/Enrollment – The process used to switch a customer from a distribution utility to an ESCO or from one ESCO to another.

Enrollment date – The effective date for commencement of electric or natural gas service from an ESCO or distribution utility.

Guarantor – An entity that agrees to pay another's debt or perform another's duty, liability or obligation.

Independent Third Party Verification – the confirmation of a customer's agreement to take service from an ESCO or authorization for the ESCO to request information by a Verification Agent.

Interval data – Actual energy usage for a specific time interval for a specific period recorded by a meter or other measurement device.

Load profile – Actual or estimated customer energy usage by interval over a period representing usage for a customer or average usage for a customer class.

Lockbox – A billing payment receipt method agreed upon by a distribution utility and an ESCO, involving use of a third party financial institution to receive and disburse customer payments.

Marketing - The publication, dissemination or distribution of informational and advertising materials regarding the ESCO's services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.

Meter – A device for determination of the units of electric or natural gas service supplied to consumers.

Meter Data Service Provider (MDSP) – An entity that provides meter data services, consisting of meter readings, meter data translations, and customer association, validation, editing and estimation.

Meter Service Provider (MSP) – An entity that installs, maintains, tests and removes meters, or other measurement devices and related equipment.

Multi-retailer model – A model for retail access that involves provision of electric or natural gas supply and of delivery service, provided separately to end use customers by two or more entities.

New York State Independent System Operator (NYISO) - An independent management organization, authorized by the Federal Energy Regulatory Commission, operating the bulk electric transmission system.

New delivery customer – A customer initiating delivery service by a distribution utility.

Nomination – A request for delivery of a physical quantity of natural gas or for its delivery at a specific point under a purchase, sale, or transportation agreement.

Office of Consumer Services – Office, within the Department of Public Service, which receives and makes determinations concerning customer complaints. Office of Consumer Services (OCS) identifies the exiting Office or its successor in the event the Office name is changed.

Pay-as-you-get-paid method – A payment processing method offered by a billing party presenting consolidated bills, whereby the billing party forwards payment to the non-billing party after receiving payment from the customer.

Pending enrollment – A stage in processing an enrollment that commences with validation of an enrollment transaction request and ends on the enrollment date that the new supplier is expected to deliver energy.

Pending ESCO – An ESCO is a pending ESCO from the date of receipt of an EDI notice containing the effective date for a customer’s enrollment until the ESCO commences commodity service for that customer.

Plain Language – Written in clear and coherent manner using words with common and everyday meaning and avoiding legal or energy industry terms, acronyms and abbreviations that a person of ordinary intelligence would not be expected to understand. If use of a technical term is necessary, the term is clearly defined in the portion of the text where it is used.

Purchased accounts receivable – A debt owed to an ESCO by a customer for receipt of supplies of gas or electricity and transferred to a distribution utility in exchange for consideration.

With recourse – Purchase of accounts receivable with recourse by a distribution utility means that the ESCO remains liable if its customers fail to make payments. A distribution utility that purchases accounts receivable with recourse sends payments to an ESCO at predetermined intervals for amounts billed that are not in dispute and may offset subsequent purchase payments against or obtain reimbursement from an ESCO of any unpaid amounts.

Without recourse – Purchase of accounts receivable without recourse by a distribution utility means that the ESCO is not liable if its customers fail to make payments. A distribution utility that purchases accounts receivable without recourse sends payments to an ESCO at predetermined intervals for amounts billed that are not in dispute and has no right to seek reimbursement from an ESCO of any unpaid amounts.

Rate ready – A consolidated billing practice that requires each non-billing party to furnish in advance of the billing cycle, rates, rate codes or prices (fixed and/or variable), tax rates, billing information, and bill messages to the billing party. The billing party, after receipt of usage data from the MDSP, uses the information on record to calculate the non-billing party’s charges.

Residential customer – An individual or occupant of a residential premise as defined in 16 NYCRR Part 11.2(a)(2).

Sales agreement – An agreement between a customer and an ESCO that contains the terms and conditions governing the supply of electricity and/or natural gas provided by an ESCO. The agreement may be a written contract signed by the customer or a statement supporting a customer’s verifiable verbal or electronic authorization to enter into an agreement with the ESCO for the services specified.

Single retailer model – A model for retail access that involves provision of electric and/or natural gas service to end users by an ESCO that purchases delivery service from the distribution utility and resells it along with electricity and/or natural gas to end users.

Slamming – Enrollment of a customer by an ESCO without authorization.

Special meter reading – An actual meter reading performed, upon request, on a date that is different than the regularly scheduled meter reading date.

Special needs customer – A customer who has a certified medical emergency condition, who is elderly, blind or physically challenged, or who may suffer serious impairment to health or safety as a result of service termination during cold weather periods and, thus, is eligible for special procedures before termination of service under the Home Energy Fair Practices Act (HEFPA) (Public Service Law §32(3)).

Switch – Transfer of a customer from one ESCO to another, from a distribution utility to an ESCO, or from an ESCO to a distribution utility.

Switching cycle – For electric service, the period between the date of the last meter read and the next regularly scheduled meter read. For gas customers, the period between the date of the last meter read and the next regularly scheduled meter read or the first day of the month and the first day of the following month.

Termination Fee – An amount specified in an ESCO sales agreement where such agreement permits the ESCO to assess and collect a charge in such amount to a customer who terminates the agreement before the end of a term described in that agreement, regardless of whether the assessed amount is identified as a fee, a charge, liquidated damages or a methodology for the calculation of damages, and regardless of whether it is fixed, scaled or subject to calculation based on market factors.

Verification Agent - An entity that is an independent vendor/contractor conducting, on behalf of the ESCO, verification of an agreement, resulting from telephonic or door-to-door marketing, with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, as required by Section 5, Attachment 1 of the UBP. In the limited circumstance where the verification is only of customer authorization for release of information, the entity does not need to be independent of the ESCO.

SECTION 2: ELIGIBILITY REQUIREMENTS**A. Applicability**

This Section sets forth the process that an applicant is required to follow for a Department of Public Service (the Department) finding of eligibility to sell natural gas or electricity as an ESCO, that an ESCO is required to follow to maintain eligibility, and that a distribution utility is required to follow for discontinuance of an ESCO's or Direct Customer's participation in a distribution utility's retail access program.

B. Application Requirements

1. Applicants seeking eligibility to sell natural gas and/or electricity as ESCOs are required to submit to the Department an application package containing the following information and attachments:
 - a. A completed Retail Access Eligibility Form, available on the Department website: www.dps.ny.gov
 - b. A sample standard Sales Agreement for each customer class that meets the requirements set forth in Section 5.B.3, *infra*.
 - c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers.
 - d. A sample ESCO bill used when dual billing is in effect and, if applicable, a sample ESCO consolidated bill, with terms stated in clear, plain language;
 - e. Procedures used to obtain customer authorization for ESCO access to a customers' historic usage or credit information;
 - f. Sample copies of informational and promotional materials that the ESCO uses for mass marketing purposes;
 - g. Proof of registration with the New York State Department of State;
 - h. Internal procedures for prevention of slamming and cramming;
 - i. Name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
 - j. Names and addresses of any entities that hold ownership interests of 10% or more in the ESCO, including a contact name for corporate entities and partnerships;
 - k. Detailed explanation of any criminal or regulatory sanctions imposed during the previous 36 months against any senior officers of the ESCO or any entities holding ownership interests of 10% or more in the ESCO;
 - l. A copy of the ESCO's quality assurance program, which is designed to monitor (a) compliance with Section 10 of the UBP and (b) accuracy of the ESCO marketing materials provided to prospective customers;
 - m. A completed Service Provider Contact Form, which can be found on the Department's website <http://www.dps.ny.gov/ocs.html>, identifying the ESCO's employee(s) responsible for resolving consumer complaints received by the Department and referred to the ESCO; and

- n. A list of the entities, including contractors and sub-contractors, that will market to customers on behalf of the ESCO. The list must include the entities' names, addresses, phone numbers and owners, managers, and/or principals. This list must be updated regularly as entities are added or removed.
2. Applicants shall submit to the Department the name of the utility that will test designated EDI transactions required for syntactical verification in the Phase I testing program. The Department shall maintain a list of ESCOs that successfully complete Phase I test requirements by transaction type.
3. An ESCO that knowingly makes false statements in its application package is subject to denial or revocation of eligibility.
4. If the application package contains information that is a trade secret or sensitive for security reasons, the applicant may request that the Department withhold disclosure of the information, pursuant to the Freedom of Information Law (Public Officers Law Article 6) and Public Service Commission regulations (16 NYCRR §6-1.3).

C. Department Review Process

The Department shall review the application for each applicant. An ESCO shall notify the Department of any major changes in the information submitted in the Retail Access Eligibility Form and/or application package that occurs during the Department review process. The Department shall advise the applicant, in writing, if the applicant submitted the required information and if satisfaction of Phase I EDI testing requirement has been verified by the utility designated by the applicant.

1. ESCOs deemed eligible to provide commodity service by the Department must begin serving customers within two-years from the date of the letter notifying the ESCO of their eligibility status (eligibility letter). The ESCO that does not begin serving customers within such two-year period may be required to conduct additional EDI testing before enrollments will be processed.

D. Maintaining ESCO Eligibility Status

1. An ESCO shall submit by January 31 each year (January 31 Statement):
 - a. a statement that the information and attachments in its Retail Access Eligibility Form and application package are current; or
 - b. a description of revisions to the Retail Access Eligibility Form and application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means.
2. An ESCO shall update all the information it submitted in its original application package to the Department every three years, starting from the date of its eligibility letter, consistent with the requirements of UBP Section 2.B. An ESCO's status as an eligible supplier is continuous from the date of the Department eligibility letter, unless revoked or otherwise limited in accordance with UBP Section 2.D.5. If the three year anniversary date falls within one month of January 31, the ESCO shall resubmit its application package in lieu of the January 31 statement.

3. An ESCO shall file with the Secretary, a separate average unit price for products with no energy-related value added services for each of two groups of customers and by load zone: i) residential price fixed for a minimum 12 month period; ii) residential variable price. The averages should be weighted by the amount of commodity sold at each price within each customer category. ESCOs shall also file the number of customers purchasing products in those categories. ESCOs shall file the required information quarterly, reflecting data over that period, within 30 days of the end of each calendar quarter (i.e., data must be provided no later than April 30th, July 30th, October 30th and January 30th of each year).¹
4. An ESCO shall submit at other times during the year:
 - a. A description of any major change in the Retail Access Eligibility Form and/or application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means. For purposes of Subdivision D of this Section, the term, "major change," means a revision in the terms and conditions applicable to the business relationship between the ESCO and its customers, including provisions governing the process for termination of sales agreements.
 - b. Changes in marketing plans, including changes to the list required in subsection B.1.n of this Section of the UBP.
 - c. Changes in the ESCO's business and customer service information displayed on the Department's Website.
 - d. At least once every thirty days, each ESCO serving residential customers must post a price for each product it offers to those customer classes (e.g., fixed-price, variable-price, renewable energy, with each type of value-added service, etc) on the Power to Choose website. Each ESCO must guarantee to charge new customers no more than the price of the ESCOs posted offers at the time of the customer's agreement for each product.
 - e. Changes in personnel responsible for resolving consumer complaints received by the Department and referred to the ESCO.
5. An ESCO may be subject to the consequences listed in UBP Section 2.D.6.b for reasons, including, but not limited to:
 - a. false or misleading information in the application package;
 - b. failure to adhere to the policies and procedures described in its Sales Agreement;
 - c. failure to comply with required customer protections;
 - d. failure to comply with applicable NYISO requirements, reporting requirements, or Department oversight requirements;

¹ If the Power-to-Choose website is modified to allow ESCOs to file this information there, the Department may notify ESCOs that compliance with this provision may be accomplished in that manner.

- e. failure to provide notice to the Department of any material changes in the information contained in the Retail Access Eligibility Form or application package;
 - f. failure to comply with the UBP terms and conditions, including discontinuance requirements;
 - g. failure to comply with EDI transaction set standards and processing protocols and/or use properly functioning EDI systems;
 - h. repeated failures to comply with price reporting requirements, reporting misleading price information, or continuing to fail to comply with price reporting requirements after withdrawal of eligibility to enroll new customers;
 - i. failure to comply with the Commission's Environmental Disclosure Requirements or failure to comply with other Commission Orders, Rules or Regulations;
 - j. failure to reply to a complaint filed with the Department and referred to the ESCO within the timeframe established by the Department' Office of Consumer Services which is not less than five days;
 - k. any of the reasons stated in Subdivision F of this Section; or
 - l. a material pattern of consumer complaints on matters within the ESCO's control;
 - m. failure to comply with any federal, state, or local laws, rules, or regulations related to sales or marketing; or 'No Solicitation' signage on the premises; or
 - n. failure to comply with any of the Marketing Standards set forth in Section 10 of the UBP.
6. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in UBP Section 2.D.5, the Commission or Department may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the failure or non-compliance, as well as the ESCO's history of previous violations.
- a. The Commission or Department shall:
 1. Either (a) notify the ESCO in writing of its failure to comply and request that the ESCO take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the ESCO show cause why a consequence should not be imposed.
 2. The Commission may impose the consequences listed in subparagraph b of this paragraph if (a) ESCO fails to take corrective actions or provide remedies within the cure period; or (b) the Commission determines that the incident or incidents of non-compliance are substantiated and the consequence is appropriate.
 3. Consequences shall not be imposed until after the ESCO is provided notice and an opportunity to respond.
 4. The notice of consequences imposed by the Commission will be published on the Department's website.
 - b. Consequences for non-compliance in one or more of the categories set forth in

UBP Section 2.D.5 may include one or more of the following restrictions on an ESCO's opportunity to sell electricity and/or natural gas to retail customers:

1. Suspension from a specific Commission approved retail program in either a specific service territory or all territories in New York;

2. Suspension of the ability to enroll new customers in either a specific service territory or all service territories in New York;
 3. Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to the Department for review;
 4. Reimbursements to customers who did not receive savings promised in the ESCO's sales agreement/Customer Disclosure Statement or substantially demonstrated to have been included in the ESCO's marketing presentation or to customers who incurred costs as a result of the ESCO's failure to comply with the marketing standards set forth in Section 10 of the UBP;
 5. Release of customers from sales agreements without imposition of early termination fees;
 6. Revocation of an ESCO's eligibility to operate in New York; and,
 7. Any other measures that the Commission may deem appropriate.
- c. Consequences imposed pursuant to this paragraph shall continue to apply until the ESCO's failure to comply with the UBP has been cured or the Commission or Department has determined that no further cure is necessary.
7. An ESCO's eligibility to serve customers is valid unless: the ESCO abandons its eligibility status; or such status is revoked by the Commission through a final order pursuant to UBP Section 2.D.6.
 8. The Department shall notify distribution utilities upon notice to the ESCO, and the NYISO if applicable, of any determination to revoke an ESCO's eligibility to sell natural gas and/or electricity. The distribution utility shall notify the ESCO's customers, in accordance with paragraph 3 of Subdivision F of this Section, of any Department revocation of an ESCO's eligibility.
- E. Distribution Utility Requirements
1. After receipt of the Department's compliance letter, the ESCO shall notify the distribution utility, and NYISO if applicable, of its eligibility status and intent to complete the process to commence operation in the distribution utility's service area, including execution of any operating agreement that is required.
 2. Upon satisfaction of the distribution utility's and, if applicable the NYISO's requirements, and successful completion of EDI testing conducted by the distribution utility, the ESCO may enter into an operating agreement, if any is required, with the distribution utility to commence operations in its service territory.
- F. Discontinuance of an ESCO's and Direct Customer's Participation in a Retail Access Program
1. In accordance with the procedures established in this Subdivision, a distribution utility may discontinue an ESCO's or Direct Customer's participation in its retail access program for the following reasons:
 - a. Failure to act that is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the distribution utility's system, and the ESCO or Direct

- Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice;
- b. Failure to provide natural gas (provided zero quantity) to the distribution utility's city gate;
 - c. Failure to pay an invoice upon the due date;
 - d. Failure to provide for delivery of at least 95% of the amount of natural gas directed by a distribution utility for delivery or at least 80% of the daily metered usage of the ESCO's customers or a Direct Customer's specified load or lower percentages included in a balancing program established in a distribution utility's tariff and/or any operating agreement;
 - e. Failure to maintain a creditworthiness standard or provide required security;
 - f. Failure to comply with the terms and conditions of a distribution utility's tariff, operating agreement, or Gas Transportation Operating Procedures (GTOP) Manual to the extent that said documents are consistent with the provisions of the UBP;
 - g. Discontinuance of an ESCO's or Direct Customer's participation in a distribution utility's retail access program by the NYISO; or,
 - h. Commission determination that an ESCO is not eligible to sell natural gas or electricity to retail customers.
2. To initiate the discontinuance process, a distribution utility shall send a non-EDI discontinuance notice by overnight mail and verified receipt, to the ESCO or Direct Customer and the Department. The notice shall contain the following information:
 - a. The reason, cure period, if any, and effective date for the discontinuance;
 - b. A statement that the distribution utility shall notify the ESCO's customers of the discontinuance if the ESCO fails to correct the deficiency described in the notice within the cure period, unless the Department directs the distribution utility to stop the discontinuance process;
 - c. The distribution utility may suspend the ESCO's right to enroll customers until correction of the deficiency; and
 - d. Correction of the deficiency within the cure period, or a Department directive, will end the discontinuance process.
 3. The distribution utility shall send notices to the ESCO's customers informing them of the discontinuance and providing the following information:
 - a. The discontinuance shall or did occur on one of the following dates selected by the distribution utility: the scheduled meter read date, the first day of the month, or another date, if readings are estimated, or on the date of a special meter read;
 - b. Customers have the option to select another ESCO or return to full utility service or, if a program authorizing random assignment is in effect, to enroll with a designated ESCO through that program;
 - c. Names and telephone numbers of ESCOs offering service to retail customers in the distribution utility's service territory;

- d. Any ESCO selected by a customer may file an enrollment request on the customer's behalf with the distribution utility, and the distribution utility shall charge no fee for changing the customer's provider to the new ESCO; and,
 - e. During any interim between discontinuance of a customer's current ESCO and enrollment with a new ESCO, the distribution utility shall provide service under its applicable tariff, unless the distribution utility notified the customer that it is terminating its delivery services to the customer on or before the discontinuance date.
4. The distribution utility shall submit a sample copy of its discontinuance notice to the Department for review and approval prior to distribution to customers.
 5. The distribution utility may request permission from the Department to expedite the discontinuance process, upon a showing that it is necessary for safe and adequate service or in the public interest. Any expeditious discontinuance process shall include the ESCO or Direct Customer, and the distribution utility.
 6. Upon any discontinuance, an ESCO or Direct Customer shall remain responsible for payment or reimbursement of any and all sums owed under the distribution utility tariffs, any tariffs on file with the FERC and service agreements relating thereto, or any agreements between the ESCO and the distribution utility.
 7. The notice requirements and time limits for a distribution utility to discontinue an ESCO's or Direct Customer's participation in a distribution utility's retail access program (discontinue participation) are:
 - a. Upon a distribution utility determination that an ESCO's or Direct Customer's action, or failure to act, is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the distribution utility's system and that the ESCO or Direct Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice, the distribution utility may discontinue participation as soon as practicable.
 - b. Upon a distribution utility determination that an ESCO or Direct Customer responsible for the delivery of natural gas failed, except under force majeure conditions, to deliver natural gas (provided zero quantity) to the distribution utility's service territory for its load, the distribution utility may discontinue participation no sooner than two business days after receipt by the ESCO or Direct Customer of a discontinuance notice.
 - c. Upon a distribution utility determination that an ESCO or Direct Customer failed to pay an invoice on the due date, as specified in the distribution utility's tariff, and the ESCO's or Direct Customer's required security or credit limit is insufficient to cover the unpaid amount, with interest, the distribution utility may discontinue participation no sooner than ten business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer pays the amount due on or before the expiration of the cure period, the distribution utility shall stop the process to discontinue participation.
 - d. Upon a distribution utility determination that an ESCO or Direct Customer responsible for the nomination and delivery of natural gas failed, except in

force majeure conditions, to nominate and/or deliver sufficient natural gas to the distribution utility's service territory to satisfy at least 95% of the amount of natural gas directed by a distribution utility for delivery or at least 80% of the daily metered usage of the ESCO's customers or the Direct Customer's specified load or lower percentages included in a balancing program established in a distribution utility's tariffs and/or any operating agreement on any three days during any month, the distribution utility may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer provides adequate assurances and a description of any necessary process changes that ensure adequate nominations and deliveries on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances and proposed process changes are inadequate, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that the distribution utility will discontinue participation on or before the expiration of 15 business days from the end of the cure period. If a failure to provide sufficient natural gas for any 3 days during a calendar month occurred during the past 12 months and the distribution utility sent a related discontinuance notice for each occurrence, it may discontinue participation no sooner than two business days after receipt by an ESCO or Direct Customer of a discontinuance notice.

- e. Upon a distribution utility determination that an ESCO or Direct Customer failed to provide or maintain a creditworthiness standard or required security, the distribution utility may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer satisfies the creditworthiness standard or provides the required security on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue with the discontinuance process because the ESCO or Direct Customer failed to comply with the creditworthiness standard or provide adequate security, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that it will discontinue participation on or before 15 days from the expiration of the cure period. If a failure to comply with the creditworthiness standard or provide adequate security occurred twice during the past 12 months and the distribution utility sent a related discontinuance notice for each failure, it may discontinue participation no sooner than two business days after receipt by an ESCO or Direct Customer of a discontinuance notice.
- f. Upon a distribution utility determination that an ESCO or Direct Customer failed, except in force majeure conditions, to comply with any other applicable provision of the distribution utility's tariff, operating agreement, or

GTOP manual, the distribution utility may initiate a discontinuance process no sooner than ten business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer provides adequate assurances and a description of any necessary process changes that ensure compliance on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances and proposed process changes are inadequate, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that it will discontinue participation on or before the expiration of 15 business days after the end of the cure period.

SECTION 3: CREDITWORTHINESS

A. Applicability

This Section establishes creditworthiness standards that apply to ESCOs and Direct Customers. An ESCO's and Direct Customer's participation in a distribution utility's retail access program is contingent upon satisfaction of creditworthiness requirements and provision of any security.

B. ESCOs

1. An ESCO shall satisfy a distribution utility's creditworthiness requirements if:
 - a. The ESCO, or a guarantor, maintains a minimum rating from one of the rating agencies and no rating below the minimum from one of the other two rating agencies. For the purposes of this Section, minimum rating shall mean "BBB" from Standard & Poor's, "Baa2" from Moody's Investor Service, or "BBB" from Fitch Ratings (minimum rating); or,
 - b. The ESCO enters into a billing arrangement with the distribution utility, whereby the distribution utility bills customers on behalf of the ESCO and retains the funds it collects to offset any balancing and billing service charges provided that the distribution utility has a priority security interest with a first right of access to the funds. The ESCO shall submit an affidavit from a senior officer attesting to such utility interest and right. Except that an ESCO serving customers outside of such billing arrangement, must satisfy the security requirements of UBP Section 3.D with respect to those customers.
2. If an ESCO, or a guarantor, is not rated by Standard & Poor's, Moody's Investor Service or Fitch Ratings, it shall satisfy a distribution utility's creditworthiness requirements if the ESCO, or a guarantor:
 - a. Maintains a minimum "1A2" rating from Dun & Bradstreet (Dun and Bradstreet minimum rating) and the ESCO maintains 24 months good payment history with the distribution utility; and,
 - b. Provides any security required by the distribution utility, calculated in accordance with Subdivision D, after deduction of the following unsecured credit allowances:

<u>Rating</u>	<u>Unsecured Credit Allowance</u>
5A1 or 5A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
4A1 or 4A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
3A1 or 3A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
2A1 or 2A2	50% of an ESCO's tangible net worth, up to \$500,000
1A1 or 1A2	50% of an ESCO's tangible net worth, up to \$375,000

An ESCO shall provide information, upon request of the distribution utility, to enable the distribution utility to verify the ESCO's equity. The distribution utility may request reasonable information to obtain the verification and shall safeguard it as confidential information and protect it from public disclosure. The distribution utility may deny the unsecured credit allowance to any ESCO that fails to provide the requested information.

3. A distribution utility may require an ESCO to provide and maintain security in the full amount of the distribution utility's credit risk, calculated in accordance with Subdivision D, if:
 - a. The ESCO, or a guarantor, is not rated;
 - b. The ESCO, or a guarantor, with a minimum rating is placed on credit watch with negative implications or is rated below the minimum rating;
 - c. The ESCO, or a guarantor, is rated below the Dun & Bradstreet minimum rating or the ESCO fails to maintain 24 months good payment history with the distribution utility; or,
 - d. An ESCO issuing consolidated bills fails to render timely bills to customers or to make timely payments to the distribution utility.
4. If a distribution utility's credit risk, associated with an ESCO's participation in its retail access program, exceeds 5% of the distribution utility's average monthly revenues for the applicable service, the distribution utility may require the ESCO, in addition to maintaining a minimum rating, to provide and maintain security in the amount of such excess credit risk.

C. Direct Customers

A Direct Customer shall satisfy a distribution utility's creditworthiness requirements if:

1. Its account is current and remained current for the past 12 months; and,
2. If its debt is rated, it maintains a minimum rating of its long-term unsecured debt securities from one of the rating agencies and no rating below the minimum rating from one of the other two rating agencies.

D. Calculation of Credit Risk and Security

The distribution utility shall calculate its credit risk and establish its security requirements as follows:

1. Delivery Service Risk

- a. For an ESCO that issues a consolidated bill under a multi-retailer model, a distribution utility may require security in an amount no greater than 45 days of peak usage of the ESCO's customers' projected energy requirements during the next 12 months, priced at the distribution utility's applicable delivery service rate and including relevant customer charges.
- b. For an ESCO that bills customers for delivery and commodity services under a single retailer model, a distribution utility may require security in an amount no greater than 60 days of peak usage of the ESCO's customers' projected energy requirements during the next 12 months, priced at the distribution utility's applicable delivery service rate and including relevant customer charges.
- c. Upon an ESCO request, the distribution utility shall establish separate security requirements for summer (April 1 - October 31) and winter (November 1 - March 31) and may retain winter security until the end of two months (April and May) after the end of the winter period.

2. Natural Gas Imbalance Risk

- a. The distribution utility may require an ESCO or Direct Customer to provide security in an amount no greater than the ESCO's customers' or a Direct Customer's projected maximum daily quantity times peak forecasted NYMEX price for the next 12 months and for upstream capacity to the city gate times 10 days.
- b. Upon the request of an ESCO or Direct Customer, the distribution utility shall establish separate security requirements for summer (April 1 - October 31) and winter (November 1 - March 31) and may retain winter security until the end of two months (April and May) after the end of the winter period.

3. Major Change in Risk

- a. A major change shall mean a change in credit risk of more than the greater of 10% or \$200,000.
- b. The ESCO or Direct Customer shall promptly notify the distribution utility and the Department of any major change in credit and or rating risk.
- c. The distribution utility may require an ESCO or a Direct Customer, within five days, to provide additional amounts of security if a major change occurs to increase its credit risk, as follows:
 1. If Standard & Poors, Moody's Investor Service, or Fitch Ratings downgrades an ESCO's, or its guarantor's, rating or a Direct Customer's

debt below the minimum rating or Dun & Bradstreet downgrades an ESCO's, or its guarantor's, rating or a Direct Customer's debt; or,

2. An increase occurs in customer usage or in energy prices and such increase is sustained for at least 30 days.
- d. In the event that a major change occurs to decrease a distribution utility's credit and/or rating risk, results in compliance by an ESCO or Direct Customer with creditworthiness requirements, and elimination of the basis for holding some or all of the security, the distribution utility shall return or release the excess amount of the ESCO's or Direct Customer's security with accumulated interest, if applicable. The distribution utility shall return such amount within five business days after receipt of an ESCO or Direct Customer notice informing the distribution utility of the occurrence of such major change.

E. Security Instruments

1. The following financial arrangements are acceptable methods of providing security:
 - a. Deposit or prepayment, which shall accumulate interest at the applicable rate per annum approved by the Public Service Commission for "Other Customer Capital";
 - b. Standby irrevocable letter of credit or surety bond issued by a bank, insurance company or other financial institution with at least an "A" bond rating;
 - c. Security interest in collateral; or,
 - d. Guarantee by another party or entity with a credit rating of at least "BBB" by S&P, "Baa2" by Moody's, or "BBB" by Fitch; or
 - e. Other means of providing or establishing adequate security.
2. A distribution utility may refuse to accept any of these methods for just cause provided that its policy is applied in a nondiscriminatory manner to any ESCO.
3. If the credit rating of a bank, insurance company, or other financial institution that issues a letter of credit or surety bond to an ESCO or Direct Customer falls below an "A" rating, the distribution utility shall allow a minimum of five business days for an ESCO or Direct Customer to obtain a substitute letter of credit or surety bond from an "A" rated bank, insurance company, or other financial institution.

F. Lockbox

If the distribution utility and ESCO arrange for a lockbox, security requirements are reduced by 50% provided that the arrangement includes the following:

1. Agreement on allocation of funds and the first right of the distribution utility, in the event of an ESCO's financial difficulty, to obtain funds in the lockbox deposited to the credit of the ESCO;
2. Establishment of rules for managing the lockbox;
3. Agreement on conditions for terminating the lockbox for non-compliance with the rules or for failure to receive customer payments on a timely basis; and,

4. Responsibility of an ESCO for any costs associated with implementing and administering the lockbox.

G. Calling on Security

1. If an ESCO or Direct Customer fails to pay the distribution utility, in accordance with UPB Section 7, Invoices, the distribution utility may draw from security provided that the distribution utility notifies the ESCO or Direct Customer five business days' in advance of the withdrawal and the ESCO or Direct Customer fails to make full payment before the expiration of the five business days.
2. If an ESCO receives a discontinuance notice or elects to discontinue service to customers and owes amounts to the distribution utility, the distribution utility may draw from the security provided by the ESCO without prior notice.
3. If an ESCO files a petition or an involuntary petition is filed against an ESCO under the laws pertaining to bankruptcy, the distribution utility may draw from security, to the extent permitted by applicable law.

H. Application by Distribution Utilities

1. Within ten business days after receipt of a complete ESCO application, a distribution utility shall complete its evaluation of initial creditworthiness, state the rationale for its determination, and provide the calculation supporting the credit limit and any resulting security requirement.
2. A distribution utility shall perform, at least annually, an evaluation, at no charge, of an ESCO's satisfaction of creditworthiness standards and security requirements.
3. A distribution utility shall perform evaluations of creditworthiness, security requirements, and security calculations in a non-discriminatory and reasonable manner.
4. Pending resolution of any dispute, the ESCO or Direct Customer shall provide requested security within the time required in this Section.
5. A distribution utility may reduce or eliminate any security requirement provided that it reduces or eliminates the requirement in a nondiscriminatory manner for any ESCO or Direct Customer. The distribution utility may request reasonable information to evaluate credit risk. If an ESCO or Direct Customer fails to provide the requested information, a distribution utility may deny the ESCO or Direct Customer an opportunity to provide lower or no security.

SECTION 4: CUSTOMER INFORMATION**A. Applicability**

This Section establishes practices for release of customer information by distribution utilities or MDSPs to ESCOs and Direct Customers and identifies the content of information sets. The distribution utility or MDSP and an ESCO shall use EDI standards, to the extent developed, for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system.

B. Customer Authorization Process

The distribution utility or MDSP shall provide information about a specific customer requested by an ESCO authorized by the customer to receive the information.

1. An ESCO shall obtain customer authorization to request information, in accordance with the procedures in UBP Section 5, Changes in Service Providers, Attachments 1, 2, and 3. An ESCO shall inform its customers of the types of information to be obtained, to whom it will be given, how it will be used, and how long the authorizations will be valid. The authorization is valid for no longer than six months unless the sales agreement provides for a longer time.
2. A distribution utility and a MDSP shall assume that an ESCO obtained proper customer authorization if the ESCO is eligible to provide service and submits a valid information request.
3. An ESCO shall retain, for a minimum of two years or for the length of the sales agreement whichever is longer, verifiable proof of authorization for each customer. Verification records shall be provided by an ESCO, upon request of the Department, within five calendar days after a request is made. Locations for storage of the records shall be at the discretion of the ESCOs.
4. Upon request of a customer, a distribution utility and/or MDSP shall block access by ESCOs to information about the customer.
5. An ESCO and its agent shall comply with statutory and regulatory requirements pertaining to applicable state and federal do-not-call registries.

C. Customer Information Provided to ESCOs¹

1. Release of Information. A distribution utility and a MDSP shall use the following practices for transferring customer information to an ESCO:
 - a. A distribution utility shall provide the information in the Billing Determinant Information Set upon acceptance of an ESCO's enrollment request and the information in the Customer Contact Information Set and the Credit Information Set, upon ESCO request.

¹ Upon enrollment of a customer, an ESCO shall receive usage data and any subsequent changes, corrections and adjustments to previously supplied data or estimated consumption for a period, at the same time that the distribution utility validates them for use. An ESCO issuing consolidated bills is entitled to receive billing information, in accordance with UBP Section 9, Billing and Payment Processing.

- b. The distribution utility or MDSP shall respond within two business days to valid requests for information as established in EDI transaction standards and within five business days to requests for data and information for which an EDI transaction standard is not available. The distribution utility or MDSP shall provide the reason for rejection of any valid information request.
2. Customer Contact Information Set. The distribution utility or MDSP, to the extent it possesses the information, shall provide, upon an ESCO request, consumption history for an electric account and consumption history and/or¹ a gas profile for a gas account.
 - a. Consumption history² for an electric or gas account shall include:
 1. Customer's service address;
 2. Electric or gas account indicator;
 3. Sales tax district used by the distribution utility and whether the utility identifies the customer as tax exempt;
 4. Rate service class and subclass or rider by account and by meter, where applicable;
 5. Electric load profile reference category or code, if not based on service class, whether the customer's account is settled with the ISO utilizing an actual 'hourly' or a 'class shape' methodology, or Installed Capacity (ICAP) tag, which indicates the customer's peak electricity demand;
 6. Customer's number of meters and meter numbers;
 7. Whether the customer receives any special delivery or commodity "first through the meter" incentives, or incentives from the New York Power Authority;
 8. The customer's Standard Industrial Classification (SIC) code;
 9. Usage type (e.g., kWh or therm), reporting period, and type of consumption (actual, estimated, or billed);
 10. Whether the customer's commodity service is currently provided by the utility;
 11. 12 months, or the life of the account, whichever is less, of customer data via EDI and, upon separate request, an additional 12 months, or the life of the account, whichever is less, of customer data via EDI or an alternative system at the discretion of the distribution utility or MDSP, and, where applicable, demand information;³ if the customer has more than one meter associated with an account, the distribution utility or MDSP shall provide the applicable information, if available, for each meter; and

¹ If a distribution utility or MDSP offer a gas profile and consumption history, an ESCO may choose either option. A distribution utility or MDSP shall make available, upon request, class average load profiles for electric customers.

² A distribution utility or MDSP, in addition to EDI transmittal, may provide Web based access to customer history information.

³ A distribution utility may provide data for a standard 24 months or life of the account, whichever is less, as part of its Customer Contract Information Set.

12. Electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs) via EDI, and if requested in detail, via an acceptable alternative electronic format.
- b. A gas profile for a gas account shall include:
 1. Customer's service address;
 2. Gas account indicator;
 3. Customer's number of meters and meter numbers;
 4. Sales tax district used by the distribution utility for billing and whether the utility identifies the customer as tax exempt;;
 5. The customer's Standard Industrial Classification (SIC) code;
 6. Whether the customer's commodity service is currently provided by the utility;
 7. Rate service class and subclass or rider, by account and by meter, where applicable;
 8. Date of gas profile; and,
 9. Weather normalization forecast of the customer's gas consumption for the most recent 12 months or life of the account, whichever is less, and the factors used to develop the forecast.
3. Billing Determinant Information Set. Upon acceptance of an ESCO enrollment request, a distribution utility shall provide the following billing information for an electric or gas account, as applicable¹:
 - a. Customer's service address, and billing address, if different;
 - b. Electric and/or gas account indicator;
 - c. Meter reading date or cycle and reporting period;
 - d. Billing date or cycle and billing period;
 - e. Meter number, if available;
 - f. Distribution utility rate class and subclass, by meter;
 - g. Description of usage measurement type and reporting period;
 - h. Customer's load profile group, for electric accounts only;
 - i. Life support equipment indicator;
 - j. Gas pool indicator, for gas accounts only;
 - k. Gas capacity/assignment obligation code;
 - l. Customer's location based marginal pricing zone, for electric accounts only; and,
 - m. Budget billing indicator.²

¹ As specified in the EDI standard for an enrollment request and response, the distribution utility may transmit additional data elements, based upon the request, the responding distribution utility, and the commodity type.

² This indicator is limited to 12 month levelized payment plans and does not include other payment plans.

4. Credit Information Set. The distribution utility or MDSP shall provide credit information for the most recent 24 months or life of the account, whichever is less, upon receipt of an ESCO's electronic or written affirmation that the customer provided authorization for release of the information to the ESCO. Credit information shall include number of times a late payment charge was assessed and incidents of service disconnection.

D. Direct Customer Information

A Direct Customer shall receive usage data and any subsequent changes, corrections and adjustments to previously supplied data, and estimated consumption for a period, at the same time that the distribution utility validates them for use. The distribution utility or MDSP shall make available, upon request, to an electric Direct Customer, a class load profile for its service class.

E. Charges for Customer Information

No distribution utility or MDSP shall impose charges upon ESCOs or Direct Customers for provision of the information described in this Section. The distribution utility may impose an incremental cost based fee, authorized in tariffs for an ESCO's request for customer data for a period in excess of 24 months or for detailed interval data per account for any length of time.

F. Unauthorized Information Release

An ESCO, its employees, agents, and designees, are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or MDSP, in accordance with this Section, to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer or is specifically authorized by the customer or required by legal authority. If such authorization is requested from the customer, the ESCO shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.

SECTION 5: CHANGES IN SERVICE PROVIDERS**A. Applicability**

This Section establishes practices for receiving, processing, and fulfilling requests for changing a customer's electricity or natural gas provider and for obtaining a customer's authorization for the change. A change in a provider includes transfer from: (1) one ESCO to another; (2) an ESCO to a distribution utility; and (3) a distribution utility to an ESCO. This Section also establishes practices for: an ESCO's drop of a customer or a customer's drop of an ESCO, retention of an ESCO after a customer's relocation within a distribution utility's service area, assignment of a customer, and initiation or discontinuance of procurement of electricity or natural gas supplies by a Direct Customer. This Section does not establish practices for obtaining other energy-related services or changing billing options.

The process of changing a service provider is comprised of two steps. For enrollment with an ESCO, the first step is obtaining customer agreement, and any required third party verification, to accept electric and/or natural gas service according to the terms and conditions of an offer. A sales agreement establishes the terms and conditions of the customer's business arrangement with the ESCO. The second step is enrollment and the distribution utility's modification of its records to list the customer's transfer to a provider on a specific date. The second step is primarily between the ESCO and the distribution utility.

B. Customer Agreement

An ESCO, or its agent, may solicit and enter into a sales agreement with a customer subject to the following requirements.

1. The ESCO shall obtain a customer agreement to initiate service and enroll a customer and customer authorization to release information to the ESCO by means of one of the following methods.
 - a. Telephone agreement and authorization, preceded, or followed within three business days, by provision of a sales agreement, in accordance with requirements in Attachment 1 – Telephonic Agreement and Authorization/Third Party Verification Requirements;
 - b. Electronic agreement and authorization, attached to an electronic version of the sales agreement, in accordance with requirements in Attachment 2 – Electronic Agreement and Authorization Requirements; or
 - c. Written agreement bearing a customer's signature on a sales agreement (original or fax copy of a signed document), in accordance with requirements in Attachment 3 – Written Agreement and Authorization Requirements.
2. For any sale resulting from either door-to-door or telephonic marketing, each enrollment is only valid with an independent third party verification.
3. The ESCO shall provide residential customers the right to cancel a sales agreement within three business days after its receipt (cancellation period).
4. The standard Sales Agreements for each customer class shall include the following information written in plain language:

- a. Terms and conditions applicable to the business relationship between the ESCO and the customer which includes:
 1. provisions governing the process for rescinding or terminating an agreement by the ESCO or the customer including provisions stating that a residential customer may rescind the agreement within three business days after its receipt;
 2. the placeholder for the price or how the price is determined, the terms and conditions of the agreement, including the term and end date, if any, of the agreement, the amount of the termination fee and the method of calculating the termination fee, if any, the amount of late payment fees, if applicable, and the provisions, if any, for the renewal of the agreement; and,
 3. a clear description of the conditions, if any, that must be present in order for savings to be provided to the customer, if savings are guaranteed.
 - b. Such contract shall also include on the first page thereof a Customer Disclosure Statement (the Statement). The text within this Statement shall state in plain language the terms and conditions described above and set forth in Attachment 4 – Sample Customer Disclosure Statement. When the form contract is used by the ESCO as its agreement with the customer, the Customer Disclosure Statement shall also contain the price term of the agreement. In the event that the text in the Statement differs from or is in conflict with a term stated elsewhere in the agreement, the term described by the text in the Statement shall constitute the agreement with the customer notwithstanding a conflicting term expressed elsewhere in the agreement.
 - c. Procedures for resolving disputes between the ESCO and a customer;
 - d. Consumer protections provided by the ESCO to the customer;
 - e. Method for applying payments and consequences of non-payment;
 - f. Any charges and fees, services, options or products offered by the ESCO;
 - g. Department contact information, including the Department ESCO hotline at 1-888-697-7728;
 - h. ESCO contact information, including a local or toll-free number from the customer's service location, and procedures used for after-hours contacts and emergency contacts, including transfer of emergency calls directly to a distribution utility and/or an answering machine message that includes an emergency number for direct contact with the distribution utility.
 - i. A statement that the ESCO shall provide at least 15 calendar days notice prior to any cancellation of service to a customer; and
 - j. If a condition of service, a statement that the ESCO reserves the right to assign the contract to another ESCO.
5. Additional terms and conditions applicable to residential customers and customers solicited via door-to-door sales include:
 - a. Prepayments – no agreement for the provision of energy by an ESCO shall require a prepayment. Where an ESCO is the billing party, it may offer a

customer an option of prepayment. Any agreement providing for prepayment may be cancelled by the customer, without penalty within 90 calendar days from the date of such agreement. Any unused portion of the prepayment shall be returned to the customer within 30 business days following cancellation of the agreement.

- b. Termination fees – no agreement for the provision of energy by an ESCO shall require a termination or early cancellation fee in excess of either a) \$100 for any contract with a remaining term of less than 12 months; or b) \$200 for any contract with a remaining term of more than 12 months or; c) twice the estimated bill for energy services for an average month, provided that an estimate of an average monthly bill was provided to the customer when the offer was made by the ESCO along with the amount of any early termination fee. To calculate such average monthly bill, the ESCO may use an average of the customer's actual usage for the previous twelve months or if such data is unavailable at the time the offer is made apply the usage for a typical customer in that service classification as reported by the distribution utility or the Commission, and multiply it by the ESCO's estimate of the average annual rate that will be charged under the agreement.
- c. Variable charges – all variable charges must be clearly and conspicuously identified in all contracts, sales agreements and marketing materials.
- d. Material changes and renewals– no material changes shall be made in the terms or duration of any contract for the provision of energy by an ESCO without the express consent of the customer obtained under the methods authorized in the UBP. This shall not restrict an ESCO from renewing a contract by clearly informing the customer in writing, not less than thirty days nor more than sixty days prior to the renewal date, of the renewal terms and the customer's option to reject the renewal terms. A customer shall not be charged a termination fee as set forth in Section 5.B.3.1.a herein, if the customer objects to such renewal within three business days of receipt of the first billing statement under the agreement as renewed. Regarding contract renewals, with the exception of a rate change, or an initial sales agreement that specifies that the agreement renews on a monthly basis with a variable rate methodology which was specified in the initial sales agreement, all changes will be considered material and will require that the ESCO obtain the customer's express consent for renewal.
- e. A renewal notice in the standardized format provided by the Department, must be used.
- f. The renewal notice must be enclosed in an envelope which states in bold lettering: "IMPORTANT: YOUR [ESCO NAME] CONTRACT RENEWAL OFFER IS ENCLOSED. THIS MAY AFFECT THE PRICE YOU PAY FOR ENERGY SUPPLY."
- g. When a fixed-price agreement is renewed as a fixed-price agreement, the ESCO shall provide the customer with an additional notice before the issuance of the first billing statement under the terms of the contract as renewed, but not more than 10 days prior to the date of the issuance of that bill. This notice

shall inform the customer of the new rate and of his or her opportunity to object to the renewal, without the imposition of any early termination fees, within three days of receiving the first billing statement under the terms of the contract as renewed.

C. Provision of List of ESCOs to Customers

Distribution utilities shall offer to provide a customer who requests initiation of delivery service with an up-to-date list of ESCOs and provide the list at any time, upon request of any customer.

D. Customer Enrollment Procedures

1. An ESCO shall transmit:
 - a. An electric enrollment request to a distribution utility no later than 5 business days prior to the effective date of the enrollment.
 - b. A gas enrollment request to a distribution utility no later than 10 business days prior to the effective date of the enrollment.
 - c. The enrollment request shall contain at a minimum, the information required for processing set forth in Attachment 5, Enrollment Request.
2. The distribution utility shall process enrollment requests in the order received.
3. The distribution utility shall accept only one valid enrollment request¹ for each commodity per customer during a switching cycle. If the distribution utility receives multiple enrollment requests for the same customer during a switching cycle, it shall accept the first valid enrollment request and reject subsequent requests.
4. An ESCO shall submit an enrollment request after it obtains customer authorization, and third party verification where required, and it has provided the sales agreement to the customer. For telephonic enrollments, in which the ESCO sends the customer the sales agreement via US Mail, the ESCO shall provide for two business days for the customer to receive the sales agreement.
5. After receipt of an enrollment request, the distribution utility shall, within one business day, acknowledge its receipt, and provide a response indicating rejection and the reason, or acceptance and the effective date for the change of provider.
6. Upon acceptance of an enrollment request, the distribution utility shall contemporaneously send a notice to the incumbent ESCO that the customer's service with that ESCO will be terminated on the effective date of the new enrollment. In the event that the distribution utility receives notice from the pending ESCO, the incumbent ESCO (with specific customer authorization for each cancellation), or the customer, prior to the effective date that a pending enrollment is cancelled, the distribution utility shall transmit a request to reinstate service to the incumbent ESCO, unless the incumbent ESCO previously terminated service to the customer or the customer requests a return to full utility service.

¹ Criteria for determining the validity of an EDI transaction are described in the EDI processing protocols adopted in Case 98-M-0667, Electronic Data Interchange.

7. With the exception of a new installation use of an interim estimate of consumption or a special meter reading,¹ a change of providers is effective: for an electric customer, on the next regularly scheduled meter reading date; and, for a gas customer, on the next regularly scheduled meter reading date or the first day of the month, in accordance with provisions set forth in the distribution utility's tariff.² The distribution utility shall set the effective date, which shall be no sooner than 5 business days after receipt of an enrollment request. Service to new delivery customers is effective after the installation is complete and, if necessary, inspected.
8. An off-cycle change of an electric service provider is allowed no later than 15 calendar days before the date requested for the change if a new ESCO or a customer arranges for a special meter reading or agrees to accept an interim date for estimating consumption. The ESCO or customer is required to pay the cost for any special meter reading, in accordance with provisions set forth in the distribution utility's tariff. A change based upon an interim estimate of consumption or a special meter reading is effective on the date of the interim estimate or special meter reading. Off-cycle changes of gas service providers are allowed if the incumbent and new ESCO agree on an effective date no later than 15 calendar days following the request.

E. Customer Notification

1. The distribution utility shall send no later than one calendar day after acceptance of an enrollment request a verification letter to the customer notifying the customer of the acceptance. The notice shall inform the customer that if the enrollment is unauthorized or the customer decides to cancel it, the customer is required immediately to so notify the distribution utility and the pending ESCO.
2. Upon receipt of such cancellation, the distribution utility shall cancel the pending enrollment and reinstate the customer with the incumbent ESCO, if any, or the distribution utility, provided that the distribution utility is notified prior to the planned effective date. If the distribution utility is notified on or after the planned effective date, the change to the new provider shall occur and remain effective for one billing cycle. The customer shall return to full utility service at the end of the next switching cycle, unless the customer is enrolled by another ESCO in accordance with this section prior to the next switching cycle.
3. If a customer notifies the pending ESCO of such cancellation, the pending ESCO shall send a customer's drop request to the distribution utility within one business day.

¹ If meters are read bimonthly and bills are issued monthly using estimated usage, the effective date for the interim months is the date usage is estimated for billing purposes.

² If meters are not read within two business days of the scheduled meter reading day, the distribution utility or MDSP shall estimate usage as of the scheduled meter reading day. The effective date for a change of provider is that date, except where changes of natural gas suppliers are scheduled for the first of the month.

F. Rejection of Enrollment Requests

The distribution utility may reject an enrollment request for any of the following reasons:

1. Inability to validate the transaction;
2. Missing or inaccurate data in the enrollment request;
3. ESCO's ineligibility to provide service in the specified territory;
4. No active or pending delivery service;
5. A pending valid prior enrollment request; or
6. The account is coded as ineligible for switching.

G. Customer Relocations Within a Service Territory

1. A customer requesting relocation of service within a distribution utility's service territory and continuation of its ESCO service, arranges for continuation at the new location of delivery service by contacting the distribution utility and of commodity service by contacting the ESCO.¹ Each provider contacted by the customer shall remind the customer of the need to contact the other provider to initiate the change in service or arrange for a conference call with the other provider and customer, and within two days, notify the other provider that a customer requested relocation of service.
2. The distribution utility's representative shall inform the customer, or the customer's agent, and the ESCO of the effective dates, contingent upon the customer's approval, for discontinuance of service at one location and commencement of service at the new location. The ESCO shall confirm to the distribution utility that it shall continue service to the customer at the new location.
3. In the event that the ESCO is unable, or does not wish to continue service to the customer at the new location, the distribution utility shall provide full utility service to the customer.

H. Customers Returning to Full Utility Service

1. A customer arranges for a return to full utility service by contacting either the ESCO or the distribution utility in accordance with this paragraph. An ESCO contacted by the customer shall, within one business day, process the customer's request to return to full utility service. A utility contacted by a customer shall remind the customer to contact the ESCO about the customer's returning to full utility service provided, however, that if the customer has already contacted the ESCO or wants to proceed without contacting the ESCO, the utility shall, within one business day, process the customer's request to return to full utility service. If a change to full utility service results in restrictions on the customer's right to choose another supplier or application of a rate that is different than the one applicable to other full service customers, the distribution utility shall provide advance notice to the customer.

¹ In the Single Retailer Model, the customer contacts only its ESCO. The ESCO notifies the distribution utility of the customer's new service location and mailing address, if applicable. Direct customers contact only the distribution utility.

2. A Direct Customer that intends to change from procuring its own supplies to full utility service shall notify the distribution utility.
 3. No ESCO shall transfer 5,000 or more customers during a billing cycle to full utility service, unless it provides no less than 60 calendar days notice to the distribution utility and Department. The transfers shall occur on the customers' regularly scheduled meter reading dates, unless the distribution utility and ESCO agree to a different schedule.
 4. The following process sets forth the steps for an ESCO's return of a customer to full utility service.
 - a. An ESCO may discontinue service to a customer and return the customer to full utility service provided that the ESCO notifies the customer and the distribution utility no later than 15 calendar days before the effective date of the drop. The ESCO's right to discontinue service to any customer is subject to any limitations contained in its sales agreement.
 - b. An ESCO's notice to retail customers shall provide the following information:
 1. Effective date of the discontinuance, established by the distribution utility, unless the ESCO arranged for an off-cycle date;
 2. Statement that the customer has the option to select another ESCO, receive full utility service from the distribution utility, or, if available in the distribution utility's service area and the customer is eligible, accept random assignment by the distribution utility to an ESCO; and,
 3. Statement that customer shall receive full utility service until the customer selects a new ESCO and the change in providers is effective, unless the distribution utility notified the customer that it will terminate its delivery service on or before the discontinuance date.
 - c. The ESCO shall provide a sample form of the notice it plans to send to its customers when it transfers 5,000 or more customers to the Department for review no later than five calendar days before mailing the notice to customers.
- I. New Delivery Customers
1. A customer may initiate distribution utility delivery service and subsequently enter into a customer agreement with an ESCO for commodity supply, or arrange for both services at the same time.
 2. A customer may authorize an ESCO to act as the customer's agent (ESCO agent) in establishing distribution utility service. The ESCO agent shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent.
 3. An ESCO acting as a customer's agent shall establish a new delivery account on behalf of the customer and enroll the customer with the distribution utility so that ESCO commodity service commences when distribution utility delivery service begins. The ESCO shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent. An ESCO that is a customer's agent is authorized to submit the customer's application for new delivery service, in compliance with requirements for such applications stated in

the law, rules and distribution utility tariffs. An ESCO shall provide the customer's name, service address and, if different, mailing address, telephone number, customer's requested service date for initiation of delivery service, and information about any special need customers, including any need for life support equipment. An ESCO shall refer a customer directly to a distribution utility for arrangement of distribution related matters, such as contribution-in-aid of construction and construction of facilities necessary to provide delivery service and settling of arrears and posting security.

4. Upon a customer's application for service, the distribution utility shall provide an ESCO with the effective date for initiation of delivery service and any other customer information provided to an ESCO in an acceptance of an enrollment request. The distribution utility may notify the customer of the acceptance.

J. Multiple Assignments of Sales Agreements

1. An ESCO may assign all or a portion of its sales agreements to other ESCOs provided that the assigned sales agreements clearly authorize such assignments or the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service. An ESCO shall provide a written notice no later than 30 calendar days prior to the assignment or transfer date to each customer and distribution utility. The notice to the distribution utility shall include a copy of the assignment document, with financial information redacted, executed by the officers of the involved ESCOs, and a copy of the notice sent to the customer, or, if a form notice, a copy of the form and a list of recipients.
2. The assignment documents shall specify the party responsible for payment or reimbursement of any and all sums owed under any distribution utility tariff or Federal Energy Regulatory Commission tariff and any service agreements relating thereto, and under any agreements between ESCOs and distribution utilities and between ESCOs and their customers.
3. An ESCO's notices to customers shall provide the following information:
 - a. Effective date of the assignment;
 - b. The name, mailing and e-mail addresses, and telephone number of the assigned ESCO; and,
 - c. Any changes in the prices, terms and conditions of service, to the extent permitted by the sales agreement.
4. The ESCO shall provide sample forms and any major modifications of such notices to the Department for review no later than five calendar days before mailing them to customers.
5. The distribution utility shall, within two business days after receipt of an assignment request, acknowledge and initiate processing of the request and send written notice of the request to the ESCO's assigned customer.

K. Unauthorized Customer Transfers

1. A change of a customer to another energy provider without the customer's authorization, commonly known as slamming, is not permitted. The distribution

- utility shall report slamming allegations to the Department on at least a monthly basis.
2. An ESCO that engages in slamming shall refund to a customer the difference between charges imposed by the slamming ESCO that exceed the amount the customer would have paid its incumbent provider and pay any reasonable costs incurred by the distribution utility to change the customer's provider from the ESCO that engaged in slamming to another provider.
 3. ESCOs shall retain for two years or for the length of the sales agreement whichever is longer, documentation of a customer's authorization to change providers. Such documentation shall comply with the requirements described in Attachments 1, 2 or 3.
- L. Lists of ESCO Customers, Budget Billing, Charges and Fees
1. A distribution utility, upon an ESCO's request, shall provide at no charge, once each calendar quarter, a list of the ESCO's customers at the time of the request and, monthly, the number of accounts enrolled with an ESCO and the ESCO's sales (kWh and/or dekatherms). ESCOs may obtain such customer lists at other times for cost-based fees set forth in distribution utility tariffs.
 2. A distribution utility shall adjust its bills rendered under a budget billing plan on the effective date for changing a provider and include the adjustments in the customer's next bill.
 3. Upon enrollment of a distribution utility customer with an ESCO or return of an ESCO customer to full utility service, a distribution utility shall impose no restrictions on the number or frequency of changes of gas or electricity providers, except as provided in this paragraph. The distribution utility shall accept only one valid enrollment request for each commodity per customer during a switching cycle. If multiple requests are received for the same customer during a switching cycle, the distribution utility shall accept the first valid enrollment request and reject subsequent enrollment requests.
 4. A distribution utility shall impose no charge for changing a customer's gas or electricity provider.
 5. A distribution utility may establish a fee in its tariffs for a special meter reading.

Attachment 1**Telephonic Agreement and Authorization/Third Party Verification Requirements**

- A. A voice-recorded verification is required to enter into a telephonic agreement or a door to door agreement with a customer to initiate service and begin enrollment. Use of either an Independent Third Party or an Integrated Voice Response system to obtain customer authorization is required for any telephone solicitation or sales resulting from door-to-door marketing. Verification by an Independent Third Party or an Integrated Voice Response system shall be recorded and conducted without the ESCO marketing representative's presence, either on the telephone or in person. A voice-recorded verification shall verify the following information to substantiate the customer's agreement or authorization:
1. Do you understand that this conversation is recorded and that oral acceptance of the [ESCO name]'s offer is an agreement to initiate service and begin enrollment?
 2. Is it [specific date] at [specific time]?
 3. Do you understand that the marketing representative represents [specific ESCO] and that [specific ESCO] is not the distribution utility?
 4. If the sale was conducted through door-to-door marketing, has the marketer left the premises?
 5. Are you [specify customer's name]/Please state your name (or is your company name [specify company name]/Please state your company's name)?
 6. Do you live at [specific address]/Please state your address (or is your company located at [specify company address]/Please state your company's address)?
 7. Is your email address [specific e-mail address] /Please provide your email address (if the customer chose to provide it)?
 8. Is your distribution utility account number [specify account number]/ Please state your distribution utility account number?
 9. Are you the primary account holder or do you have authority to make changes to this account?
 10. If the sale was conducted through door-to-door marketing: did the ESCO marketing representative provide you with the sales agreement, his/her business card or contact information and leave a copy of the ESCO Consumer Bill of Rights?
 11. If the sale was conducted through telemarketing: did the ESCO marketing representative offer to mail you a copy of the ESCO Consumer Bill of Rights or did the ESCO marketing representative tell you how to find the ESCO Consumer Bill of Rights online?
 12. Did you agree to the terms of service as reviewed with you by the [ESCO name] representative on [INSERT ENROLLMENT DATE]?

- a. The price of____(electricity and/or natural gas) under the contract is ____for__months (years).
 - b. Or the price of____(electricity and/or natural gas) under the contract is a variable rate and will vary month-to-month.
 - c. The early termination fee (if any) is____(this may be a methodology instead of a dollar amount).
13. If savings is guaranteed (compared to the utility rate), a plain description of the type of savings and the conditions that must be present in order for the customer to be eligible for savings. If savings is not guaranteed (as compared to the utility supply service) a statement indicating such;
 14. Please be advised that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by your utility and the utility will also be available to respond to leaks or other emergencies should they occur;
 15. Do you authorize the release of the following information from your distribution utility: [specify information] and do you understand that you may rescind this authorization at any time by calling [specify toll free number] or e-mailing [specify e-mail address]?
 16. For residential enrollments only: Do you understand that you may rescind the agreement within three business days after its receipt by [describe how such rescission can be accomplished] and if you do not rescind the agreement, an enforceable agreement will be created?
- B. The ESCO, or its agent, shall provide a copy of any Customer Disclosure Statement and sales agreement to the customer by mail, e-mail or fax within three business days after the telephone agreement and independent third party verification occurs. The sales agreement shall set forth the customer's rights and responsibilities and describe the offer in detail, including the specific prices, terms, and conditions of ESCO service. Such agreement shall be substantially the same, in form and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b.
 - C. The independent third party verification shall be conducted in the same language used in marketing or sales materials presented to the customer, and communicated clearly and in plain language.
 - D. An ESCO shall retain independent third party verification records for two years from the effective date of the agreement and/or authorization or for the length of the sales agreement whichever is longer. In the event of any dispute involving agreement, authorization and/or the independent third party verification , the ESCO shall make available the audio recording of the customer's agreement and/or authorization, including the independent third party verification within five business days after a request from the Department.

Attachment 2**Electronic Agreement and Authorization Requirements**

- A. To enter into an electronic agreement with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, an ESCO, or its agent, shall electronically record communications with the potential customer. As required in Section 5, the Electronic Agreement and authorization may also require an independent third party verification call, which must include the information in Attachment 1. An ESCO shall provide the following electronic information, as applicable, to substantiate the customer's agreement and/or authorization:
1. A statement that electronic acceptance of a sales agreement is an agreement to initiate service and begin enrollment;
 2. The Customer Disclosure Statement and the sales agreement containing the prices, terms and conditions applicable to the customer, which, if printed as a physical document, would be substantially the same, in form, and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b.
 3. If savings are guaranteed, or guaranteed under only certain circumstances, the ESCO must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to be provided;
 4. An identification number and date to allow the customer to verify the specific sales agreement to which the customer assents;
 5. A statement from the ESCO that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by the customer's utility; and that said utility will also be available to respond to leaks or other emergencies should they occur;
 6. A requirement that the customer accept or not accept the sales agreement by clicking the appropriate box, displayed as part of the terms and conditions; after the customer clicks the appropriate box to accept the sales agreement, the system shall display a conspicuous notice that the ESCO accepts the customer;
 7. Use of an electronic process that prompts a customer to print or save the sales agreement and provides an option for the customer to request a hard copy of the sales agreement; an ESCO shall send the hard copy by mail within three business days after a customer's request;
 8. A description of the types of information that the ESCO needs to obtain from a distribution utility or MDSP and the purposes of its use, a request that the customer provide authorization for release of this information, and the effective duration of the authorization;
 9. A requirement that the customer agree or not agree to provide such authorization by clicking the appropriate box, displayed as part of the terms and conditions;
 10. A statement that a residential customer may rescind the agreement and authorization within three business days after electronic acceptance of the sales

- agreement; a statement that a customer may rescind the authorization for release of information at any time; provision of a local or toll-free telephone number, and/or an e-mail address for these purposes; upon cancellation of the agreement, the ESCO shall provide a cancellation number;
11. Verification of the date and time of the electronic agreement and authorization; and
 12. Provision by the customer of the customer's name, address, distribution utility customer account number, and any additional information to verify the customer's identify.
- B. The ESCO shall, within three business days of any final agreement to initiate service to a customer, send an electronic confirmation notice to the customer at the customer's e-mail address.
 - C. The ESCO shall use an encryption standard that ensures the privacy of electronically transferred customer information, including information relating to enrollment, renewal, re-negotiation, and cancellation.
 - D. Upon request of a customer, the ESCO shall make available additional copies of the sales agreement throughout its duration. An ESCO shall provide a toll-free telephone number and e-mail address for a customer to request a copy of the sales agreement.
 - E. An ESCO shall retain documentation of a customer's agreement in a retrievable format for two years from the effective date of the customer's acceptance and/or authorization or for the length of the sales agreement whichever is longer. In the event of any dispute involving an electronic agreement or authorization, the ESCO shall provide a copy of the customer's acceptance of the sales agreement and/or authorization for release of information or provide on-line access to the acceptance and/or authorization within five calendar days after a request from the Department.

Attachment 3**Written Agreement and Authorization Requirements**

- A. An ESCO may enter into a written agreement (original or fax copy of a signed document) with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information. As required in Section 5, the Electronic Agreement and authorization may also require an independent third party verification call, which must include the information in Attachment 1. A sales agreement shall contain, in addition to the Customer Disclosure Statement discussed in UBP Section 2.B.1.b.2, the following information, as applicable:
1. A statement that a signature on a sales agreement is an agreement to initiate service and begin enrollment;
 2. A description of the specific prices, terms, and conditions of ESCO service applicable to the customer, which is substantially the same, in form and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b and, if savings are guaranteed, or guaranteed under only certain circumstances, the ESCO must provide a plain language description of the conditions that must be present in order for the savings to be provided;
 3. A description of the types of information that the ESCO needs to obtain from a distribution utility or MDSP, the purposes of its use, and effective duration of the authorization;
 4. A statement that acceptance of the agreement is an authorization for release of such information;
 5. A customer signature and date; the sales agreement shall be physically separate from any check, prize or other document that confers any benefit on the customer as a result of the customer's selection of the ESCO;
 6. A statement that a residential customer may rescind the agreement within three business days after signing the sales agreement; a statement that a customer may rescind the authorization for release of information at any time; provision of a local, toll-free telephone number, and/or e-mail address for these purposes; the customer may fax a copy of a signed sales agreement to the ESCO; upon cancellation of the agreement, the ESCO shall provide a cancellation number; and
 7. The customer's name, mail and any e-mail address (if the customer chooses to provide it), distribution utility account number, and any additional information to verify the customer's identify.
 8. A statement from the ESCO that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by the customer's utility; and that said utility will also be available to respond to leaks or other emergencies should they occur;
- B. ESCOs shall retain written agreements and/or authorizations for two years from the effective date of the agreement and/or authorization or for the length of the agreement whichever is longer. In the event of any dispute involving a sales agreement or

authorization, the ESCO shall provide a copy of the sales agreement and/or authorization within five business days after a request from the Department.

Attachment 4**Sample Customer Disclosure Statement**

Price	
Fixed or Variable and, if variable, how the price is determined	
Length of the agreement and end date	
Process customer may use to rescind the agreement without penalty	
Amount of Early Termination Fee and method of calculation	
Amount of Late Payment Fee and method of calculation	
Provisions for renewal of the agreement	
Conditions under which savings to the customer are guaranteed	

Attachment 5**Enrollment and Drop Requests Information Requirements**

- A. An ESCO shall provide the following information for enrollment requests, and an ESCO or distribution utility shall provide the following information for drop requests:
1. Utility ID (DUNS# or tax ID);
 2. ESCO ID (DUNS# or tax ID);
 3. Commodity requested (electric or gas); and,
 4. Customer's utility account number (including check digit, if applicable).
- B. The following information is required for enrollment requests:
1. Customer's bill option;
 2. For distribution utility rate ready consolidated billing:
 - a. an ESCO's fixed charge, commodity price, sales and use tax rate or rate code;
 - b. ESCO customer account number;
 - c. budget billing status indicator; and,
 - d. tax exemption percent and portion taxed as residential.
 3. For Single Retailer Model: special needs indicator;
 4. For gas service: gas capacity assignment/obligation indicator, and, if applicable, gas pool ID, gas supply service options, and human needs indicator;
 5. For electric service: indicator for a partial requirements customer, if applicable.
- C. The following information is required for drop requests:
1. Reason for the drop;
 2. For distribution utility request, service end date;
 3. For ESCO initiated request, effective date of customer move, if applicable; and
 4. For ESCO initiated request in Single Retailer Model, customer's service and mailing address.

SECTION 6: CUSTOMER INQUIRIES**A. Applicability**

This Section establishes requirements for responses by an ESCO or distribution utility to retail access customer inquiries. An ESCO or distribution utility shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.

B. General

1. Distribution utilities and ESCOs shall provide consistent and fair treatment to customers.
2. Distribution utilities and ESCOs shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
3. Distribution utilities and ESCOs shall provide local or toll-free telephone access from the customer's service area to customer service representatives (CSRs) responsible for responding to customer inquiries and complaints.
4. CSRs shall obtain information from the customer to access and verify the account or premises information. Once verification is made, the CSR shall determine the nature of the inquiry, and, based on this determination, decide whether the distribution utility or the ESCO is responsible for assisting the customer.
5. The CSR shall follow normal procedures for responding to inquiries. If the inquiry is specific to another provider's service, the CSR shall take one of the following actions:
 - a. Forward/transfer the inquiry to the responsible party;
 - b. Direct the customer to contact the responsible party; or,
 - c. Contact the responsible party to resolve the matter and provide a response to the customer.
6. Each distribution utility and ESCO shall maintain a customer service group to coordinate and communicate information regarding customer inquiries and designate a representative to provide information relating to customer inquiries to the Department.
7. ESCOs may provide a teletypewriter (TTY) system or access to TTY number, consistent with distribution utility tariffs.

C. Specific Requests for Information

1. A distribution utility or ESCO shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.
2. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.

3. The distribution utility and ESCO shall respond to customer inquiries about billing and payment processing, in accordance with UBP Section 9, Billing and Payment Processing.

D. Emergency Contacts

1. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports of gas odor, natural disaster, downed wires, electrical contact, or fire.
2. The ESCO CSR shall transfer emergency telephone calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility. If no ESCO CSR is available, the ESCO shall provide for after-hours emergency contacts, including transfer of emergency calls directly to a distribution utility or an answering machine message that includes an emergency number for direct contact to the distribution utility.
3. Each ESCO shall provide periodic notices or bill messages to its customers directing them to contact the distribution utility in emergency situations and providing the emergency number.

SECTION 7: DISTRIBUTION UTILITY INVOICES**A. Applicability**

This Section establishes procedures for invoices of charges for services provided by the distribution utility directly to an ESCO or Direct Customer. A distribution utility and ESCO or Direct Customer may agree to establish other arrangements and procedures for presentation and collection of invoices for services rendered.

B. Invoices

1. An ESCO or Direct Customer shall pay the full amount due, without deduction, set-off or counterclaim, within 20 calendar days after the date of electronic transmittal or postmarked date (due date). Subsequent to the due date, charges are overdue and subject to late payment charges at the rate of 1.5% per month. The overdue charges include the amount overdue, any other arrears, and unpaid late payment charges. The distribution utility may provide, upon request, supporting or back-up data in electronic form, if available on its computer system.
2. A distribution utility shall provide interest at the rate of 1.5% on an overpayment caused by the distribution utility's erroneous billing, provided that it may, without applying interest, credit all or a portion of the overpayment to the next bill issued within 30 days and/or refund all or a portion of the overpayment, upon request, within 30 days after its receipt. The distribution utility shall refund any credit balances, upon request.
3. An ESCO or Direct Customer shall make payments by means of an electronic funds transfer. A distribution utility shall use any partial payments first to pay any arrears and second to pay current charges.

C. Billing Inquiries and Disputes

1. An ESCO or Direct Customer shall make any claims relating to inaccuracies of invoices in writing no later than 90 calendar days after the date of electronic transmittal or postmarked date. ESCOs and/or Direct Customers are responsible for payment of disputed charges during any pending dispute.
2. A distribution utility shall designate an employee and provide a telephone number and e-mail address for receipt of inquiries from an ESCO or Direct Customer relating to invoices. The employee shall direct an ESCO or Direct Customer that presents an inquiry or complaint to the responsible and knowledgeable person able to explain charges on an invoice.
3. A distribution utility shall acknowledge in writing receipt of an inquiry within five calendar days after its receipt. A distribution utility shall investigate and respond in writing to the inquiry within 20 calendar days after its receipt.
4. A distribution utility shall refund any overpayments, including interest, within five calendar days after it makes a determination that an ESCO or Direct Customer made an overpayment. It may provide the refund by applying a credit to any overdue amounts or making direct payment of any remainder. The distribution utility shall provide refunds by means of an electronic funds transfer.

Interest is calculated at the rate of 1.5 % per month from the date of the overpayment to the refund.

5. No interest is required on overpayments voluntarily made by an ESCO or Direct Customer to an account, unless an overpayment is applied to security.

**SECTION 8: DISPUTES INVOLVING DISTRIBUTION UTILITIES,
ESCOs OR DIRECT CUSTOMERS**

A. Applicability

This Section describes the dispute resolution processes available at the Department to resolve disputes relating to competitive energy markets involving utilities, ESCOs and/or Direct Customers, including disputes alleging anti-competitive practices. The processes are not available to resolve disputes between retail customers and ESCOs or distribution utilities. They are also not applicable to matters that, in the opinion of the Department Staff, should be submitted by formal petition to the Public Service Commission for its determination or are pending before a court, state or federal agency. The availability of the processes does not limit the rights of a distribution utility, ESCO or Direct Customer to submit any dispute to another body for resolution.

B. Dispute Resolution Processes

The parties shall in good faith use reasonable efforts to resolve any dispute before invoking any of these processes. Distribution utility tariffs and operating and service agreements between the parties shall identify the processes used to resolve disputes, and shall refer to the dispute resolution processes described in this Section as acceptable processes to resolve disputes.

1. Standard Process

The parties shall use a method to send documents described in this paragraph that will verify the date of receipt.

Any distribution utility, ESCO or Direct Customer may initiate a formal dispute resolution process by providing written notice to the opposing party and Department Staff. Such notice shall include a statement that the UBP dispute resolution process is initiated, a description of the dispute, and a proposed resolution with supporting rationale. Department Staff may participate in the process at this or any later point to facilitate the parties' discussions and to assist the parties in reaching a mutually acceptable resolution.

- a. No later than ten calendar days following receipt of the dispute description, if no mutually acceptable resolution is reached, the opposing party shall provide a written response containing an alternative proposal for resolution with supporting rationale and send a copy to Department Staff.
- b. No later than ten days after receipt of the response, if no mutually acceptable resolution is reached, any party or Department Staff may request that the parties schedule a meeting for further discussions. The parties shall meet no later than 15 calendar days following such request, upon advance notice to Department Staff, unless the parties and Department Staff agree upon another date. The Department may assign one or more Staff members to assist the parties in resolving the dispute.
- c. If no mutually acceptable resolution is reached within 40 calendar days after receipt of the written description of the dispute, any party may request an

initial decision from the Department. A party to the dispute may appeal the initial decision to the Public Service Commission.

- d. If the parties reach a mutually acceptable resolution of the dispute, they shall provide to Department Staff a description of the general terms of the resolution.

2. Expedited Process

In the event that an emergency situation arises to justify immediate resolution of a dispute, any party may file a formal dispute resolution request with the Secretary to the Public Service Commission asking for expedited resolution. An emergency situation includes, but is not limited to, a threat to public safety or system reliability or a significant financial risk to the parties or the public. The filing party shall provide a copy of the request to other involved parties and the Department Staff designated to receive information related to dispute resolution under this Section. The request shall describe in detail the emergency situation requiring expedited resolution, state in detail the facts of the dispute, and, to the extent known, set forth the positions of the parties.

SECTION 9: BILLING AND PAYMENT PROCESSING

A. Applicability

This Section establishes requirements¹ for billing and payment processing options offered by a distribution utility and ESCO in a multi-retailer model. This Section does not establish requirements for billing and payment processing in the single retailer model. A distribution utility and ESCO shall comply with the requirements established in this Section, unless they agree upon modifications or other procedures for billing and payment processing in a Billing Services Agreement.

B. Billing and Payment Processing Options: General Requirements

1. A distribution utility shall offer to ESCOs without undue discrimination the billing and payment processing options available in its service territory.
2. A customer participating in a retail access program shall select from the billing and payment processing options offered by ESCOs.
3. A distribution utility shall allow its customers to select, through their ESCOs, one of the billing and payment options available in the distribution utility's service territory. An ESCO may offer to its customers billing and payment processing options available in the customer's service territory and shall maintain or provide for the capability of issuing a separate bill for its services under the dual billing option. An ESCO customer may direct the billing party to send its consolidated bills or dual bills to a third party for processing and payment.
4. A distribution utility or ESCO may perform the responsibilities of a billing party for a customer and the other provider (non-billing party) based upon the billing and payment processing options available to the customer and the customer's choice.
5. A distribution utility or MDSP shall make validated usage information available to the billing and non-billing parties at the time that the distribution utility or MDSP determines that the information is acceptable.²
6. Information on customer usage, billing, and credit is confidential. A distribution utility or MDSP may release such information, upon a customer's authorization, in accordance with the UBP Section 5, Changes in Service Providers.
7. A distribution utility and ESCO shall demonstrate the technical capability to exchange information electronically for their billing and payment processing options.
8. An ESCO shall provide 60 calendar days notice by mail, e-mail or fax to a distribution utility of any plan to offer a billing option that is not currently offered to its customers. The distribution utility may agree to a shorter notice period preceding initiation of the option. The 60 calendar-day notice shall not impose any obligation on any party to proceed without a successful test of data exchange capability and the fulfillment of other obligations described in this Section. If an ESCO later changes its system, it shall provide adequate advance notice and conduct any additional testing required.

¹ The requirements are applicable when EDI is available upon issuance by the Commission of data standards applicable to a bill model and operational upon successful completion of the testing required for a bill model.

² A distribution utility or MDSP shall provide electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs) via EDI and, if requested, in detail via an acceptable alternative electronic format if retrieved from meters.

9. A distribution utility and an ESCO are responsible for separately remitting their tax payments to the appropriate taxing authorities.
10. Where the ESCO is the billing party, it may offer a customer an option of prepayment. Where a distribution utility is the consolidated billing party, the distribution utility is not required to support processing of prepayments or application of customer prepayments to ESCO charges.

C. Consolidated Billing: General Requirements

1. A distribution utility and ESCO shall establish in a billing services agreement (BSA) detailed expectations for their responsibilities, including consequences for any failure to carry out such responsibilities.
2. A distribution utility may use the bill ready or rate ready method¹ for issuing consolidated bills. An ESCO that offers consolidated billing shall use a bill ready method.
3. A customer receiving delivery service from a distribution utility that is a combination natural gas and electric corporation (combination retail access customer) may receive a consolidated bill for both energy services if:
 - a. The distribution utility issues the consolidated bill;
 - b. One ESCO supplies the customer with both natural gas and electricity;
 - c. An ESCO supplying only one of the commodities agrees to bill for charges for the service provided by the other ESCO; or,
 - d. Separate distribution utility accounts are established for each service.
4. A combination retail access customer may receive separate consolidated bills for each commodity or a dual bill for one commodity and a consolidated bill for the other provided that the distribution utility's system is capable of providing separate accounts for each commodity. A distribution utility shall establish bill cycles and payment due dates. A distribution utility may charge a fee, as set forth in its tariff, to an ESCO to establish, upon the ESCO's request, a separate account for one of the commodities the distribution utility provides.

D. Consolidated Billing: Functions and Responsibilities

1. A billing party shall perform the following functions and responsibilities:
 - a. If the bill ready method is used, receive bill charges and other billing information from the non-billing party;
 - b. If the rate ready method is used, receive rates, rate codes and/or prices (fixed and/or variable) and other billing information from the non-billing party;
 - c. Receive bill messages and bill inserts from the non-billing party;
 - d. If the bill ready method is used, acknowledge receipt of the non-billing party's information and accept or reject it;

¹ A distribution utility electing the rate ready method for utility consolidated billing is not obligated to calculate or bill separately for other goods and services that an ESCO may provide.

- e. If the rate ready method is used,¹ calculate billed charges, including sales and use taxes; the non-billing party is required to provide the customer's sales and use tax rate to the billing party;
 - f. Print or make available electronically consolidated bills that state the non-billing party's charges, including taxes, arrearages, late fees, and bill messages;
 - g. Insert in bill envelopes consolidated bills and inserts required by statute, regulation or Public Service Commission order;
 - h. Stamp, sort and mail consolidated bills or, if authorized, transmit bills electronically;
 - i. Cancel and rebill charges;
 - j. Notify the non-billing party of amounts billed, by account, within two business days after rendering bills to customers;
 - k. Receive and record customer payments;
 - l. Allocate and transmit the non-billing party's share of receipts, by account, to the non-billing party;
 - m. Respond to general inquiries and complaints about the bill and its format; refer customers to the non-billing party for inquiries and complaints related to the non-billing party's rates, charges, services, or calculations; and,
 - n. Maintain records of billing information, including amounts collected, remaining and transferred, and dates.
2. If the bill ready method is used, each party shall calculate and separately state sales and use taxes applicable to its charges; if the rate ready method is used, the billing party shall calculate and separately state the state sales and use taxes applicable to its charges and the non-billing party's charges.
 3. A party that requires a customer's deposit shall administer it. If a non-billing party applies a customer deposit to an outstanding balance, it shall notify the billing party.
 4. Upon receipt of payments, a non-billing party shall notify the billing party.
 5. To initiate consolidated billing using the rate ready method, the non-billing party shall provide the billing party with the rates, rate codes, and/or prices (fixed and/or variable) and tax rates necessary to calculate the non-billing party's charges. The billing party shall specify in the BSA the number of prices for each service class per commodity accepted, deadline for transmission, effective date, and acceptable frequency of changes.²
 6. The billing party may process special handling requests from customers provided that it obtains agreement from the non-billing party for requests that affect it;
 7. The billing party is not required to calculate or provide separate statements to customers regarding gross receipts taxes applicable to a non-billing party's charges. The non-billing party may calculate and provide information on the gross receipts taxes applicable to its charges in a bill message or, if the bill ready method is used, as a line item on the bill.

¹ A distribution utility is not required to calculate or bill for ESCO services that are not directly related to the commodity it delivers.

² If a billing party's billing system is capable of providing the service, a billing party shall, upon request, apply a different rate, rate code, and/or price and tax rate to usage during different portions of the billing cycle to service provided after the effective date of the change. The non-billing party shall request a change in the rate, rate code, and/or price no later than four business days prior to the effective date requested.

8. The non-billing party may offer special billing features, such as budget billing or average payment plans.
- E. Consolidated Billing: Initiation, Changes or Discontinuance
1. Initiation
 - a. An ESCO that proposes to issue consolidated bills shall establish and provide to a distribution utility written procedures for billing and payment processing that ensure billing accuracy and timeliness, proper distribution of a distribution utility's bill messages and inserts, and proper allocation and transfer of distribution utility funds.
 - b. No distribution utility may impose a fee on an ESCO to process its application to offer consolidated billing.
 2. Changes

A request to change a customer's billing option shall be made on or before 15 calendar days prior to the scheduled meter reading date.
 3. Suspension and Discontinuance
 - a. A distribution utility may suspend or discontinue an ESCO's right to offer consolidated billing as a billing party or a non-billing party for failure to comply with a BSA. Suspension of the right to offer consolidated billing means that the ESCO is prohibited from offering consolidated billing to new customers.
 - b. Upon a determination by a distribution utility to suspend or discontinue an ESCO's right to offer consolidated billing to customers, it shall provide notice on or before 15 calendar days prior to the proposed date for the suspension or discontinuance (cure period) to the ESCO and state the reason for its determination. Upon failure of the ESCO to correct the deficiency on or before the expiration of the cure period, the distribution utility may require a change to dual billing for the ESCO's customers.
 - c. Upon discontinuance of consolidated billing rights, an ESCO may reapply to the distribution utility to offer consolidated billing. A distribution utility shall expedite consideration of such requests. Customers may begin receiving consolidated bills again after requirements are satisfied, including submission of transaction requests to establish consolidated billing for customers.
- F. Consolidated Billing: Customer Requests
1. A customer may request an ESCO to change its billing option. The ESCO shall request the bill option change on or before 15 calendar days prior to the scheduled meter reading date. An EDI change request is used to request a change in a customer's bill option. After receipt of the change request, a distribution utility shall, within one business day, acknowledge receipt of the request and, within two days, provide a response indicating rejection and the reason or acceptance and the effective date.
 2. No distribution utility may impose a charge on a customer or an ESCO for changing a billing option.
 3. When more than one request to change a customer's billing option is transmitted for a billing cycle, a billing party shall accept the last timely request received.
 4. A distribution utility may deny a request to initiate consolidated billing or discontinue consolidated billing for a customer with an amount past due for at least 38 calendar days,

unless the past due amount is subject to a DPA and the customer is fulfilling DPA obligations.

G. Consolidated Billing: Content

1. A billing party may decide upon the format for its consolidated bill provided that it states a summary of total charges and separately states distribution utility and ESCO charges in sufficient detail to allow a customer to judge their accuracy. Such separate statements shall appear in clearly separated portions of the bill and identify their source, distribution utility or ESCO. An ESCO that provides consolidated billing shall state on its consolidated bill the unadjusted distribution utility charges for delivery services provided by a distribution utility, without change.
2. A consolidated bill shall contain the information listed in Attachment 1, General Information, preferably in a summary section. The billing party may place the information on the bill in any order or location.
3. A consolidated bill shall contain the information listed in Attachment 2, Distribution Utility Content, separately stated for each distribution utility.
4. A consolidated bill shall contain the information listed in Attachment 3, ESCO Content, separately stated for each ESCO.
5. If the rate ready method is used, the ESCO shall provide to the distribution utility information listed in Attachment 3, ESCO Section Content, to the extent necessary for the distribution utility to calculate and issue bills. To initiate utility consolidated billing using the rate ready method, an ESCO shall provide the information to the distribution utility on or before 15 calendar days prior to the scheduled meter reading date. An ESCO may request a price or rate change no later than four business days prior to its effective date.
6. If a billing party and non-billing party agree to show the non-billing party's logo on the bill, the non-billing party shall provide it in an acceptable electronic format at least thirty days before its initial use.
7. If the rate ready method is used, a non-billing party is not required to provide information after it is initially submitted, except when a change is made.
8. When an ESCO issues a consolidated bill and the distribution utility transmits bill ready data, the distribution utility shall transmit to the ESCO at the appropriate time the applicable information listed in Attachment 2, Distribution Utility Content, items d – q, and the customer's name and service address.
9. When an ESCO issues consolidated bills on behalf of other ESCOs and distribution utilities and the other ESCOs provide information, the non-billing ESCOs shall provide bill ready information listed in Attachment 3, ESCO Content to the billing ESCO.
10. No party shall engage in cramming.
11. A non-billing party may display its bill messages up to 480 characters in length on the bill provided that the billing party raises no reasonable objection to the message. There is no limit in message length for the billing party. If the bill ready method is used, the non-billing party shall transmit the text of the messages or agreed upon message codes in the same EDI transaction as the billed charges. If the rate ready method is used, a non-billing party shall submit a common bill message on or before 15 calendar days before the date used. Unless a final print date is provided, the billing party shall continue to print the message on bills until

- the non-billing party transmits a different message or requests its discontinuance. In emergencies requiring printing of messages on bills, the billing party shall accommodate the needs of the non-billing party, if practicable.
12. The billing party shall, in a timely manner, print on bills or insert into bill envelopes information that a statute, regulation, or Public Service Commission order requires a distribution utility or ESCO to send to its customers. The billing party may not assess charges for inclusion of required inserts that do not exceed one-half ounce. A distribution utility may charge for any excess weight in accordance with its tariff. The party responsible for providing the information shall submit it to the billing party. If the information is provided in a bill insert, the responsible party shall deliver the inserts in preprinted bulk form in a proper size on or before 15 calendar days before the date requested for initiation of distribution to customers to a location designated by the billing party.
 13. Due dates and other general payment terms and conditions shall be identical for distribution utility and ESCO charges, unless different terms and conditions would have no impact on them. In the event of a conflict, the distribution utility's payment terms and conditions shall govern.

H. Consolidated Billing: Bill Issuance

1. No late charge may be applied to customers' bills for distribution utility charges, if payment is received by the billing party within the grace period.
2. If the bill ready method is used, the non-billing party shall transmit its charges and other information to the billing party on or before two business days after receipt of valid usage data for a customer account. If the rate ready method is used, the non-billing party shall transmit any revisions in rate and/or price data to the billing party on or before four business days prior to the prescribed date.
3. If the bill ready method is used, a billing party that receives a non-billing party's transaction within the prescribed time and rejects the transaction for cause shall, within one business day after receipt of the transaction, send the non-billing party an EDI reject transaction and state the reason for the rejection. The non-billing party may, if time permits, submit a corrected file containing billing charges for inclusion in the current billing statement.
4. If a non-billing party's transaction is sent to the billing party outside the prescribed time frame, the billing party may reject the transaction and shall notify the non-billing party on or before two business days after its receipt that the charges were not billed. The non-billing party may resubmit its charges the following billing period in accordance with prescribed time limits and without late charges. If the bill ready method is used, the non-billing party may submit a separate bill to the customer and notify the billing party of the action. The parties may also agree that the billing party shall hold the non-billing party's charges for inclusion in the next bill.
5. If a non-billing party's transaction is accepted using the bill ready method, the billing party shall render a bill within two business days after receipt of the transaction. If a rate ready method is used, a billing party shall render a bill in accordance with the distribution utility's regular bill issuance schedule. A bill is rendered upon transfer to the custody of the U.S. Postal Service or other delivery service or, if authorized by a customer, sent electronically to a valid e-mail address or telefax number, displayed on a secure website, or presented directly to the customer or customer's representative.

6. If the billing party has not purchased a non-billing party's accounts receivable, is able to process the non-billing party's transaction, and is unable to render a bill within the prescribed time, the billing party shall notify the non-billing party immediately. A billing party shall afford customers the same grace period to pay the bill.
 7. If the rate ready method is used, the billing party shall provide to the non-billing party within two business days after bill issuance, a statement of the accounts billed, date of issuance and amount of the non-billing party's charges shown on the bill (past due, current, and late payment charges and taxes).
- I. Consolidated Billing: Cancellations and Rebills
1. If non-billing party errors occur and are not corrected before the bill is issued, a billing party is not required to cancel bills or issue new bills. The non-billing party shall provide any necessary explanations to the customer and billing party and make any necessary adjustments on the next bill.
 2. If billing party errors cause the non-billing party charges to miss the billing window, the billing party shall cancel and reissue the bills within two business days after notification, unless the billing party and non-billing party arrange an alternative bill correction process.¹ A billing party shall afford customers the same grace period to pay bills.
 3. If no party errs, the parties may agree to cancel and rebill.
 4. To cancel a bill, a billing party shall:
 - a. Cancel usage by billing period;
 - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;
 - c. Send cancelled usage at the same level of detail as the original usage;
 - d. Using the rate ready method, if a bill is to be cancelled and reissued, recalculate charges and issue revised bills to customers within two business days after receipt of the revised usage data;
 - e. Using the bill ready method, if a bill is to be cancelled and reissued, issue the revised bill to customers within two business days after receipt of the revised usage data.
 5. To restate usage for a period, the distribution utility or MDSP shall first cancel usage for that period and then send the full set of restatement transactions.
- J. Consolidated Billing: Payment Processing and Remittance
1. The parties shall set forth their responsibilities, performance parameters, financial arrangements and other details associated with payment processing and remittance in a BSA, subject to the requirements in this Section.
 - a. In the Pay-as-You-Get-Paid Method, the billing party sends payments to the non-billing party, within two business days of receipt and posting of the funds and processes the payments in accordance with the required priority for application of payments established in this Section.
 - b. A BSA shall establish procedures for processing payments made on any purchased accounts receivable.

¹ Such errors do not include usage-related adjustments necessary when an actual meter reading becomes available to replace an estimated reading required, for example, because a customer denies access to a meter.

2. Payment Processing

- a. The billing party shall notify the non-billing party that payment is received and send payments to the non-billing party, within two business days after receipt and posting, by use of Electronic Funds Transfer (EFT), Automated Clearing House (ACH), or similar means to banks or other entities as agreed upon by the parties. The notice shall include, in account detail, the payments received from customers, the date payments are posted, the date payments are transferred, and the amounts allocated to the non-billing party's charges.
- b. The billing party may impose late payment charges on unpaid amounts not in dispute for the non-billing party provided the terms of the late payment charges are stated in a tariff or a sales agreement and previously disclosed to the customers. If the bill ready method is used, each party shall calculate its late payment charges. If the rate ready method is used, the billing party shall calculate the non-billing party's late payment charges under terms agreed upon by the parties. If a customer's check is returned for any reason, the billing party may charge the customer's account for the return fee and any reasonable administrative fee.
- c. Upon failure of the billing party to pay the non-billing party its proper share of customer payments within two business days after their receipt and posting or at the time agreed upon when accounts receivable are purchased, the billing party shall pay interest on the unremitted amount. The billing party shall calculate the interest at the rate of 1.5 percent per month from the date the payment was due to be received by the non-billing party or its bank.¹ The payment of interest is in addition to, and not in lieu of, the rights and remedies otherwise available to the parties.

3. Collections

The billing party is not responsible for collection of non-billing party funds, unless agreed to in a BSA.

4. Application of payments

- a. The billing party² shall allocate customer payments to the following categories of charges on the bill or contained in a notice that are not in dispute in this order of priority of payment: (1) amounts owed to avoid termination, suspension or disconnection of commodity or delivery service; (2) amounts owed under a DPA, including installment payments and current charges; (3) arrears; and (4) current charges not associated with a DPA. The billing party shall pro-rate payments to the charges within each category in proportion to each party's charges in that category. After satisfaction of the charges in a category, assuming available funds, the remainder of the payment shall apply to the next highest category according to the priority of payments and in the same manner as described above until the payment is exhausted.

¹ Upon request, the billing party shall provide the non-billing party with a verified copy of the posting log of payments received and transferred to the non-billing party during any calendar month specified by the non-billing party.

² Distribution utilities supplying delivery service for both natural gas and electricity to customers receiving consolidated bills shall apply the receipts to the separate services in accordance with their regular procedures. Where a consolidated bill displays delivery charges for separate gas and electric distribution utilities, the customer's payments shall be first prorated between the utility accounts in accordance with the amount each is due compared with the total amount due both distribution utilities.

- b. The billing party may retain any payment amounts in excess of the amounts due as prepayments for future charges or return the excess amounts to customers. The billing party shall, in a timely manner, combine any excess payment amounts with the customer's payment on the next bill, and allocate and pro-rate the sum as set forth in Section 9.J.4.a.¹
 - c. When the billing or non-billing party enters into a multi-month payment agreement with a customer or waives any charges, that party shall notify the other party of such action.
 - d. The billing party shall hold payments received without account numbers or enough information for the billing party to identify the accounts and attempt to obtain information to identify the payer. If sufficient information is not obtained to identify the account information prior to the next bill, the billing party shall present the unpaid amount and late charge, if applicable, on the bill. If the customer contacts the billing party to inquire about the late charge and the lack of payment credit, the billing party shall resolve the matter and reverse the late charges. The billing party shall notify the non-billing party of the matter and its resolution and then allocate payments as necessary to balance the account.
5. Multiple Account Payment Processing
- Processing of a single customer payment for multiple accounts requires proactive action on the part of the billing party and the non-billing party to apply payments correctly. The parties shall set forth arrangements for multiple account payment processing in a BSA.
6. Non-billing Party's Balance
- a. Except as provided in Section 9.J.6 d., when a final bill is issued, the billing party shall maintain a current and past due balance for each account of the non-billing party until payment of the last bill issued for service provided by the non-billing party or 23 days after issuance of such bill, whichever is sooner. After such time, the account shall be considered "inactive."
 - b. Except as provided in Section 9.J.6 d., when a customer changes to a new ESCO, the billing party shall continue to receive and apply a customer's payments for the active account of the prior ESCO. If the customer does not pay the outstanding balance owed to the prior ESCO on or before 23 days after the final bill containing the prior ESCO's charges is issued, the billing party shall notify the ESCO and report the balance due.
 - c. With regard to a new distribution utility/ESCO relationship following a change of ESCOs or a change in a distribution utility, the new billing party shall, upon request of the new non-billing party, bill for the balances that may exist at the time of the change. The new billing party may include the arrears on current bills or in a separate bill if its billing system is not capable of accepting prior charges. If a change of providers occurs, a distribution utility is not required to post any arrears of the prior ESCO on consolidated bills issued after the final billing of its charges, unless the arrears become the property of the new ESCO and it provides documentation of its property right to the distribution utility.

¹ Where the customer elects to make a charitable donation, such as funding a low income program, satisfaction of the donation shall be made prior to allocation and pro-ration of the customer's excess payment.

- d. Upon ESCO termination of the commodity supply of a residential customer due to failure to pay charges, the billing party shall maintain a current and past due balance for the account of the terminating ESCO for one year from the date of termination by the ESCO. In the event that the terminating ESCO seeks suspension of delivery service within one year of the termination, or the residential customer has a DPA, the billing party shall maintain a current and past due balance for each account of the terminating ESCO until the arrears are paid in full.
7. Customer Disputes: Initiating a Bill Complaint
 - a. A customer or authorized representative may initiate a customer complaint regarding some or all of the charges on the customer's bill at any time.
 - b. When a complaint relates to the entire bill, to only the billing party's charges or services, or, using the rate ready method, to calculation of the billing or non-billing party's charges, the customer should contact the billing party. The billing party shall resolve the complaint and, if appropriate, place the customer's account in dispute. In the event the inquiry concerns only a non-billing party's bill, charges, services, or calculations, the billing party shall refer the customer to the non-billing party.
 8. Customer Complaints: Notification
 - a. Upon a determination that a complaint affects the entire bill, the billing party shall notify the non-billing party of the subject and amount in dispute, if known.
 - b. The non-billing party shall inform the billing party of disputes related to non-billing party charges that would affect the billing process.
 - c. Once such complaints are resolved and the billed amounts are no longer in dispute, the other party shall be notified.
- K. Consolidated Billing: Call Centers
- A billing party shall provide call centers with toll-free or local telephone access available 24 hours a day and an answering machine or voice mail service during the hours when call center staff is not available. A billing party shall maintain adequate staff to respond to customers' inquiries or refer inquiries to the non-billing party, where appropriate, within two business days.
- L. Dual Billing
1. The distribution utility and ESCO, acting as separate billing parties, shall render separate bills directly to the customer or the customer's representative. The customer or its representative shall pay the distribution utility and the ESCO separately.
 2. The distribution utility's bill shall conform to the standards set by the Public Service Commission.
 3. The distribution utility or MDSP shall transmit usage data to the ESCO at the time the information is available for rendering bills to customers, which may or may not coincide with meter reading cycle dates.
 4. The ESCO may decide upon its bill format provided that it states its charges in sufficient detail to allow customers to judge the accuracy of their bills. At a minimum, an ESCO shall provide the following information:
 - a. Customer's name and billing address and, if different, service address;
 - b. Customer's account number or ID;

- c. Period or date associated with each product or service billed;
 - d. Name of the entity rendering the bill;
 - e. Address to which payments should be sent or the location where payments may be made;
 - f. Local or toll free number for billing inquiries; if an ESCO enrolls and communicates with customers electronically, an e-mail address and telephone number with area code;
 - g. Due date for payment and a statement that late payment charges shall apply to payments received after the due date; and
 - h. Amount and date of payments received since the last bill.
5. Whenever a distribution utility or MDSP cancels consumption for an account, it shall provide a notice of cancellation and restated billing parameters for the account to an ESCO and a distribution utility, if applicable, and shall:
- a. Cancel usage by billing period;
 - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;
 - c. Send cancelled usage at the same level of detail as the original usage; and,
 - d. To restate usage for a period, cancel usage for that period and send the full set of billing parameter restatements.

Attachment 1**General Information**

- A. Customer name
- B. Service address
- C. Billing address, if different than service address
- D. Billing party account number, if any
- E. Start of billing cycle period (prior meter reading date for metered customers)
- F. Starting period meter reading (for metered customers)
- G. End of billing cycle period (current meter reading date for metered customers)
- H. Ending period meter reading (for metered customers)
- I. Billing period metered usage, any multiplier necessary to convert usage to billing units and resulting billing units (for metered customers)
- J. Billing period demand, if applicable
- K. Indicators, if usage is estimated, actual or customer provided
- L. Total current charges (total of billing and non-billing party charges, including late charges and taxes)
- M. Total prior billed charges (total of billing and non-billing party prior bill charges, including prior late charges and taxes)
- N. Total credits since last bill (total of billing and non-billing party credits);
- O. Date through which the credits are applied
- P. Total current bill (total of billing and non-billing party charges plus prior bill charges less credits)
- Q. Billing party name (and billing party logo, if billing party wishes it shown)
- R. Billing party address
- S. Billing party toll-free or local telephone number, and for a billing party that enrolls and communicates electronically with customers, an e-mail address and telephone number with area code, in lieu of a toll-free or local telephone number
- T. Distribution utility toll free-or local telephone number and emergency telephone number
- U. Method and location for payments
- V. Date of bill
- W. Payment due date
- X. Billing party messages of any length that apply in general to the bill and services provided by billing and non-billing parties, that are not reasonably objectionable to the parties

Attachment 2**Distribution Utility Content**

- A. Distribution utility name, and logo, if the parties agree
- B. Distribution utility address, if the distribution utility is not the billing party
- C. Distribution utility toll-free or local telephone number for inquiries about the distribution utility portion of the bill, if the distribution utility is not the billing party, and distribution utility emergency number
- D. Distribution utility customer account number, if the distribution utility is not the billing party
- E. Distribution utility rate classification identifier
- F. Distribution utility rates per billing unit, if applicable
- G. Distribution utility rates not based on billing units, if applicable, and unbundled, if applicable
- H. Distribution utility charge adjustments and adders, separately stated
- I. Taxes on distribution utility charges, if separately stated
- J. Billing period total distribution utility charges
- K. Prior billing period total distribution utility charges, including any prior late charges
- L. Credits on prior distribution utility charges
- M. Net prior distribution utility balance remaining, unless included in total prior billed charges stated in the General Information Section
- N. Late charge for unpaid prior distribution utility balance, unless included in total prior billed charges stated in the General Information Section
- O. Total amount due for distribution utility services
- P. If a budget bill, applicable billing information and resulting budget bill amount due for distribution utility services
- Q. The distribution utility's bill message, if any, up to 480 characters, if the distribution utility is not the billing party

Attachment 3**ESCO Content**

- A. ESCO name and logo, if parties agree
- B. ESCO address, if the ESCO is not the billing party
- C. ESCO toll-free or local telephone number for billing inquiries if the ESCO is not the billing party; ESCOs that enroll and communicate electronically with customer may provide an e-mail address and telephone number with area code in lieu of a toll-free or local telephone number; if a rate ready method is used, the billing party shall include a notice directing ESCO customers to call the billing party first to clarify bill calculations
- D. ESCO account number, if the ESCO is not the billing party and has a unique account number
- E. ESCO rate classification, if applicable
- F. ESCO rate per billing unit, if applicable
- G. ESCO rate not based on distribution utility unit, if applicable
- H. ESCO charge adjustments and adders, if any, separately stated
- I. Taxes on ESCO charges, if required to be separately stated
- J. Billing period total ESCO charges
- K. Prior billing period total ESCO charges, including any prior late charges, unless included in total prior billed charges stated in the General Information Section
- L. Credits on prior ESCO charges
- M. Net prior ESCO balance remaining
- N. Total amount due for ESCO services
- O. If a budget bill, applicable billing information and resulting budget bill amount due
- P. The ESCO's bill message, if any, up to 480 characters, if the ESCO is the non-billing party.

SECTION 10: MARKETING STANDARDS

A. Applicability

This Section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing to customers in New York.

B. Training of Marketing Representatives

1. ESCOs shall ensure that the training of their marketing representatives includes:
 - a. Knowledge of this Section and awareness of the other Sections of the New York Uniform Business Practices;
 - b. Knowledge of the ESCO's products and services;
 - c. Knowledge of ESCO rates, payment options and the customers' right to cancel, including the applicability of an early termination fee;
 - d. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,
 - e. The ability to provide the customer with a toll-free number from which the customer may obtain information about the ESCO's mechanisms for handling billing questions, disputes, and complaints.

C. Contact with Customers

1. In-Person Contact with Customers¹

ESCO marketing representatives who contact customers in person at a location other than the ESCO's place of business for the purpose of selling any product or service offered by the ESCO shall, before making any other statements or representations to the customer:

- a. Introduce him or herself with an opening statement that identifies the ESCO which he or she represents as an Energy Services Company, identifies him or herself as a representative of that specific ESCO; explains that he or she does not represent the distribution utility; and, explains the purpose of the solicitation.
- b. Produce identification, to be visible at all times thereafter, which:
 1. Prominently displays in reasonable size type face the full name of the marketing representative;
 2. Displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the ESCO they are representing;
 3. Provides the ESCO telephone number for inquires, verification and complaints.
- c. During the sales presentation, the marketing representative must also state that if customer purchases natural gas and/or electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled either (a) by an oral statement by the ESCO marketing representative, or (b) written material left by the ESCO marketing representative. Further, ESCOs that are affiliates of distribution utilities should not describe or disclose their relationship to the distribution utility unless such information is specifically requested by the customer.

¹ Including but not limited to marketing encompassed in the definition of door to door sales.

- d. An ESCO marketing representative must provide each prospective residential customer a business card or similar tangible object with the ESCO marketing representative's name; ESCO's name, address, and phone number; date and time of visit and website information for inquiries, verification and complaints.
 - e. An ESCO marketing representative must provide each prospective residential customer or customer that is marketed to via door to door marketing, with a copy of the ESCO Consumers Bill of Rights, before the ESCO marketing representative makes his or her sales presentation.
 - f. An ESCO marketing representative must provide the customer with written information regarding ESCO products and services immediately upon request which must include the ESCO's name and telephone number for inquiries, verification and complaints. Any written materials, including contracts, sales agreements, marketing materials and the ESCO Consumers Bill of Rights, must be provided to the customer in the same language utilized to solicit the customer.
 - g. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO marketing representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.
 - h. An ESCO marketing representative must leave the premises of a customer when requested to do so by the customer or the owner/occupant of the premises.
 - i. As stated in Section 5.B.2, for any sale resulting from door-to-door marketing, each enrollment is only valid with an independent third party verification in conformance with Section 5, Attachment 1. The verification must occur after the marketing agent has left the customer's premises, and must be completed before the ESCO may enroll a customer.
 - j. All ESCOs who have ESCO marketing representatives conducting door-to-door marketing must maintain a daily record, by zip code, of the territories in which the ESCO's marketing representatives have conducted door-to-door marketing. The information should be in a form that can be reported to Staff upon request, and should be retained by the ESCO for a minimum of six months.
2. Telephone Contact with Customers
- ESCO marketing representatives who contact customers by telephone for the purpose of selling any product or service offered by the ESCO shall:
- a. Provide the ESCO marketing representative's first name and, on request, the identification number;
 - b. State the name of the ESCO on whose behalf the call is being made;
 - c. Never represent that the ESCO marketing representative is an employee or representative or acting on behalf of a distribution utility. In addition, the ESCO marketing representative must clearly indicate that taking service from an ESCO will not affect the customer's distribution service and such service will continue to be provided by the customer's distribution utility;

- d. State the purpose of the telephone call;
 - e. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call; and,
 - f. Remove Customers' names from the marketing database upon Customers' request.
 - g. When marketing to residential customers the ESCO marketing representative must also:
 - 1. Explain that he or she does not represent the distribution utility;
 - 2. Explain the purpose of the solicitation;
 - 3. Notify each prospective customer of the ESCO Consumer Bill of Rights, where they can find it, and also provide a copy of the ESCO Consumer Bill of Rights with any written material sent to the customer including the sales agreement ; and,
 - 4. Provide any written materials, including contracts, sales agreements, marketing materials and the ESCO Consumers Bill of Rights, must be provided to the customer in the same language utilized to solicit the customer.
 - h. As stated in Section 5.B.2, for any sale resulting from telephonic marketing, each enrollment is only valid with an independent third party verification in conformance with Section 5, Attachment 1. The verification must be completed before the ESCO may enroll a customer.
3. Electronic Enrollments
- a. When marketing to residential customers the ESCO Consumer Bill of Rights should be provided to prospective customers as a non-avoidable screen which a customer must affirmatively acknowledge to verify they have seen the document, prior to effecting an enrollment.
4. Conduct
- ESCOs shall:
- a. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation or Order;
 - b. Not make false or misleading representations including misrepresenting rates or savings offered by the ESCO;
 - c. Provide the customer with written information, upon request, or with a website address at which information can be obtained, if the customer requests such information via the internet;
 - d. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, early termination fees and right of cancellation consistent with Section 2 of the UBP and any other relevant Section;
 - e. Ensure that any product or service offerings that are made by an ESCO contain information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a language in

which the ESCO representative has substantive discussions with the customer or in which a contract is negotiated;

- f. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,
- g. Cooperate with the Department and PSC regarding marketing practices proscribed by the UBP and with local law enforcement in investigations concerning deceptive marketing practices.

5. Dispute Resolution

ESCOs will maintain an internal process for handling customer complaints and resolving disputes arising from marketing activities and shall respond promptly to complaints forwarded by the Department.

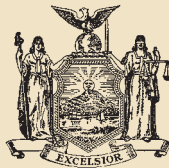
PSC Regulations

Home Energy Fair Practices Act

**Rules Governing the Provision of Gas, Electric
and Steam Service to Residential Customers**

**(incorporating amendments from the
Energy Consumer Protection Act of 2002)**

New York State Public Service Commission



The New York State Public Service Commission

About the Commission

The New York State Public Service Commission (PSC) regulates the state's electric, gas, steam, water and telecommunications utilities. The Commission also oversees the cable industry. The Commission is bipartisan and consists of up to five members, each appointed by the Governor and confirmed by the State Senate for a term of six years, or to complete an unexpired term of a former Commissioner. The Chairman, designated by the Governor, also is the chief executive officer of the Department of Public Service. The Department is the staff arm of the Commission.

Mission Statement

The primary mission of the New York State Department of Public Service is to ensure safe, secure, and reliable access to electric, gas, steam, telecommunications, and water services for New York State's residential and business consumers, at just and reasonable rates. The Department seeks to stimulate innovation, strategic infrastructure investment, consumer awareness, competitive markets where feasible, and the use of resources in an efficient and environmentally sound manner.

The Home Energy Fair Practices Act and the Energy Consumer Protection Act

The Home Energy Fair Practices Act (HEFPA) was enacted in 1981 and established as state policy that the continued provision of gas, electric and steam service to 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.

In 2002, the New York State Legislature enacted the Energy Consumer Protection Act which amended HEFPA to include energy service companies (ESCOs) and any other entity that provides gas and electric service to residential customers. In 2004, the PSC adopted rule changes to comport with the amended HEFPA law.

Since 1981, the New York State Home Energy Fair Practices Act (HEFPA) has provided residential energy customers with comprehensive protections in areas such as application for services, customer billing, and payment and complaint procedures. In 2002, in light of the restructured competitive retail energy market, the New York State Legislature amended HEFPA to include energy service companies (ESCOs) that provide gas and electric service to residential customers. Under the amendments, ESCOs are required to provide their customers with protections similar to those afforded to gas and electric utility customers. These new provisions ensure fair treatment of all residential energy customers, and serve to strengthen consumer protections and consumer confidence in New York's competitive energy market.

The Public Service Commission has prepared this booklet as a reference guide for consumers, ESCOs and utilities. The booklet contains the Commission's revised rules implementing HEFPA and the Energy Consumer Protection Act. If you need additional information or assistance, please refer to the telephone numbers and addresses in the back of this publication.

Table Of Contents

Title 16 of New York Compilation of Codes, Rules and Regulations Parts 11 and 12

Part 11: Home Energy Fair Practices Act and Energy Consumer Protection Act - Rules

{Statutory Authority: Public Service Law, Article 2, §§4(1), 30-53, 66
and 80(1)}

<u>Section:</u>	<u>Page:</u>
11.1 Purpose	3
11.2 Applicability of rules	3
11.3 Applications for residential service	5
11.4 Termination or disconnection of residential service, and suspension of distribution service pursuant to PSL §32(5)	10
11.5 Residential service-special procedures	17
11.6 Voluntary third-party notice	28
11.7 Service to entire multiple dwelling	28
11.8 Service to two-family dwellings	33
11.9 Reconnection of service, restoration of commodity supply, and conditions for ending suspension of distribution service	35
11.10 Deferred payment agreements	38
11.11 Budget or levelized payment plans	44
11.12 Residential service deposits	45
11.13 Meter readings and estimated bills	48
11.14 Backbilling on residential accounts	50
11.15 Late payment and other charges	51
11.16 Contents of bills	53
11.17 Notification requirements	53
11.18 Emergency disconnection of residences	55
11.19 Inspection and examination of utility apparatus	55
11.20 Complaints to the utility	56
11.21 Emergency hotline	57

11.22 Waiver	57
11.23-11.29 (Reserved)	57

Shared Meter Regulations

11.30 Definitions	57
11.31 Commission’s designee	59
11.32 Service to shared meter account	59
11.33-11.39 Repealed	60

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}

<u>Section:</u>	<u>Page:</u>
12.0 Applicability of Part 12 Complaint Procedures	61
12.1 Complaints and questions	61
12.2 Complaint files	62
12.3 Continuation of service while a complaint is at the commission	62
12.4 Initial decision on complaint	63
12.5 Requests for informal hearing or review	63
12.6 Description of informal hearings and reviews	64
12.7 Rights of parties	65
12.8 Powers and duties of hearing officers and reviewers	66
12.9 Hearing postponement	67
12.10 Failure to appear	67
12.11 Settlement agreement	67
12.12 Informal hearing or review decision	68
12.13 Appeals to the commission	68
12.14 Commission determination	69
Appendix A-3	70
Appendix A-4	71
Appendix A-5	72
Appendix 16	73

PART 11

Home Energy Fair Practices Act and Energy Consumer Protection Act – Rules

§ 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 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:

- (1) (i) The term *utility* means 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; 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.
- (ii) 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.

- (iii) 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.
 - (iv) The terms *terminate* or *termination* mean ending an ESCO's provision of commodity service.
 - (v) 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.
 - (vi) 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 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
 - (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 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 reasons for the denial;
 - (ii) specifies precisely what the applicant must do to qualify for service; and
 - (iii) advises the applicant of 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, and suspension of distribution service pursuant to PSL §32(5)

- (a) **Termination or disconnection of residential service.** This subdivision sets forth termination and disconnection procedures applicable where a utility provides only distribution service and seeks to terminate the distribution service, the utility provides both distribution service and commodity supply and seeks to terminate them both or 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, subdivision 11.4(b) also applies.

- (1) **Conditions for termination or disconnection.** A utility may terminate or disconnect residential service as provided for in these rules if the customer:
 - (i) 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
- (ii) fails to pay amounts due under a deferred payment agreement;
 - (iii) fails to pay or agree in writing to pay equipment and installation charges relating to the initiation of service; or
 - (iv) fails to pay a lawfully required deposit; and
 - (v) is sent a final notice of termination or disconnection no less than 15 days before the termination or disconnection date shown on the notice.
- (2) Final notice. A final notice of termination or disconnection shall clearly state or include:
- (i) the earliest date on which termination or disconnection may occur;
 - (ii) 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;
 - (iii) the address and phone number of the office of the utility that the customer may contact in reference to his account;
 - (iv) the availability of utility procedures for handling complaints; and
 - (v) 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 THIS NOTICE WHEN PAYING THIS BILL.

or

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

(3) Notice of termination or disconnection—time.

- (i) No utility shall terminate or disconnect service under this Part until at least 15 days after a final notice of termination or disconnection:
 - (a) has been served personally upon the residential customer; or
 - (b) has been mailed to the residential customer at the premises where service is rendered.
- (ii) 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:
 - (a) has been mailed to the premises where service is rendered and to the residential customer at the alternative address; or
 - (b) 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, either:
 - (1) has been served personally upon an adult resident of the premises where service is rendered;
 - (2) has been explained by telephone to an adult resident of the premises where service is rendered; or
 - (3) has been posted in a conspicuous place at the premises where service is rendered.
- (iii) 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.

- (4) 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:
- (i) a public holiday, as defined in the General Construction Law; or
 - (ii) 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.
- (5) No termination or disconnection without verification of delinquent account.
- (i) No utility shall terminate or disconnect service for nonpayment of bills rendered, unless:
 - (a) 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
 - (b) 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 (6)(ii) of this Part.
 - (ii) 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 (i) of this subdivision upon approval by the commission of an alternate procedure for verification of payments which accomplishes the basic purposes of such paragraph.
- (6) 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:

- (i) are posted to the customer's account on the day payment is received; or
 - (ii) are processed in some manner so that termination or disconnection will not occur.
- (7) 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.
- (8) 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.
- (9) Special notification of social services official.
- (i) 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 in 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.

- (ii) 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.
- (iii) If the notification required by paragraph (i) of this subdivision is made orally, the utility shall within one business day mail a written notification to such social services official.
- (iv) 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.
- (v) 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.

(b) Suspension of distribution service pursuant to PSL §32(5). This subdivision 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 that is or was supplied by the requesting ESCO and for which the customer is in arrears.

- (1) 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:

- (i) the ESCO that was providing commodity supply to such customer has terminated the customer's commodity supply in compliance with all applicable provisions of subdivision 11.4(a), above;
 - (ii) the ESCO that was providing commodity supply to such customer notifies the distribution utility that commodity supply has been terminated in compliance with subdivision 11.4(a), above;
 - (iii) the ESCO's notification to the distribution utility demonstrates compliance with subdivision 11.4(a) (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 subdivision 11.4(a)(4));
 - (iv) 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;
 - (v) the distribution utility provided distribution service to the customer at the time the ESCO terminated its commodity supply;
 - (vi) 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;
 - (vii) 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
 - (viii) less than one year has elapsed since the commodity supply was terminated.
- (2) 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.
- (3) 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 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 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, 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 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, 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 pursuant to Social Services Law, those cases where heat-related service is not restored or continued so that 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 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 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

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 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 services 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 (a)(4) through (a)(8) 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 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 (a)(2)(i)-(iv) 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, restoration of commodity supply, and conditions for ending suspension of distribution service

- (a) **Reconnection of service.** This subdivision sets forth procedures applicable where: only distribution service was provided by a utility and was disconnected or distribution service and commodity supply were provided by and disconnected by the same utility.
- (1) A utility shall reconnect 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:
- (i) receipt by the utility of the full amount of arrears for which service was disconnected;
 - (ii) agreement by the utility and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;
 - (iii) upon the direction of the commission or its designee;
 - (iv) 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; or
 - (v) 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 disconnection before restoring service under this subdivision. Similarly,

under paragraph (a)(1)(ii) of this section, a utility may not insist on a downpayment in excess of one half the arrears which formed the basis for the disconnection or three months' billing, whichever is less. In these circumstances, payment of other lawful charges that did not form the basis for disconnection should be part of the installment plan, unless the customer elects to pay such charge immediately.

- (2) Whenever circumstances beyond the utility's control prevent reconnection of service within 24 hours of any of the events specified in paragraph (a)(1) of this section, service shall be reconnected within 24 hours after those circumstances cease to exist.
- (3) 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)(1)(v)). 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.

(b) Restoration of commodity supply. This subdivision sets forth procedures applicable where commodity was provided by and terminated by the same ESCO.

- (1) 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:
 - (i) receipt by the ESCO of the full amount of arrears for which service was terminated;
 - (ii) agreement by the ESCO and the customer on a deferred payment plan and the payment of a downpayment, if required, under that plan;
 - (iii) upon the direction of the commission or its designee;
 - (iv) 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
 - (v) 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.
- (2) 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(b)(1)(v)). 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.

(c) **Conditions for ending suspension of distribution service.** This subdivision 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:

- (1) receipt by a utility of the full amount of arrears for which service was terminated;
- (2) agreement by a 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 a utility of a commitment of a direct payment or written guarantee in accordance with the Social Services Law;
- (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; or
- (6) 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 utility has postponed the 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 required in accordance with section(s) 11.9(a) and/or 11.9(b) 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 its personnel, which procedures shall be filed with the Office of Consumer Services.
 - (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 Part 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 neither 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(a) and/or 11.4(b) 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) (1) 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.
- (2) 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 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 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 1/2 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 (a)(3) 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 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 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 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 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

Shared Meter Regulations

§ 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.

§ 11.32 Service to shared meter account

- (a) Only a distribution utility may disconnect service to a shared meter account. A distribution utility may not disconnect service to an occupied building at the owner's request unless a new account will be opened and disconnection of the owner's shared meter account will not result in interruption of service.
- (b) A distribution utility shall not disconnect service to a shared meter account for nonpayment unless it complies with the requirements of this section.
 - (1) The distribution utility shall give 15 days' written notice of its intention to 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 (a)(2)(i)-(iv) 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 prevent disconnection of service on a shared meter account to deduct such payments from their rent.
 - (3) Any occupant who would be affected by disconnection of a shared meter account may prevent 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 disconnection date set forth in the notice.

- (4) The department's staff shall be available to advise occupants who would be affected by disconnection of shared meter accounts of the protections provided by this section.
- (5) Whenever a final notice of disconnection of utility service has been provided under this section, and 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 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 disconnection.
- (7) During the cold weather period defined in section 11.5(c) of this Part, a distribution utility intending to 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

§ 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; 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 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 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 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 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 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 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 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 parties and may not be appealed.

- (b) A settlement of an informal review shall be confirmed by letter from the reviewer to 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. 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) 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 the customer and the utility in writing of the commission's decision and action.

APPENDIX A-4
(cf. § 11.7[g])
IMPORTANT NOTICE
TO TENANTS OF
THIS BUILDING

(Day of Week & Date)

The _____ (UTILITY) INTENDS TO SHUT OFF THE (ELECTRICITY/GAS) TO THIS BUILDING TEN DAYS FROM THE DATE OF THIS NOTICE BECAUSE THE LANDLORD HAS NOT PAID HIS BILL.

IF SERVICE IS SHUT OFF, THIS BUILDING WILL NOT BE HEATED.

IF YOU OR ANOTHER PERSON WHO LIVES HERE IS VERY SICK OR HAS ANOTHER SERIOUS HEALTH PROBLEM, CALL THE NEW YORK CITY HEATLINE AT _____ (TEL. NO.) AND REPORT THE CONDITION. GAS OR ELECTRICITY WILL NOT BE SHUT OFF DURING THE COLD WEATHER PERIOD (NOVEMBER 1-APRIL 15) IF YOU OR ANOTHER RESIDENT IS VERY ILL OR WILL HAVE A SERIOUS HEALTH PROBLEM IF THERE IS NO HEAT. A CASE WORKER FROM THE CITY'S HUMAN RESOURCES ADMINISTRATION WILL VISIT YOU OR THE OTHER PERSON TO VERIFY THE SERIOUS ILLNESS OR HEALTH PROBLEM. IF YOU HAVE ANY QUESTION REGARDING THEIR FINDINGS, YOU CAN ASK THE PUBLIC SERVICE COMMISSION FOR HELP BY CALLING 1-800-342-3377.

APPENDIX A-5
(cf. § 11.7[g])
IMPORTANT NOTICE
TO TENANTS OF
THIS BUILDING

(Day of Week & Date)

The _____ (UTILITY) INTENDS TO SHUT OFF THE (ELECTRICITY/GAS) TO THIS BUILDING TEN DAYS FROM THE DATE OF THIS NOTICE BECAUSE THE LANDLORD HAS NOT PAID HIS BILL.

IF SERVICE IS SHUT OFF, THIS BUILDING WILL NOT BE HEATED.

IF YOU OR ANOTHER PERSON WHO LIVES HERE IS VERY SICK OR HAS ANOTHER SERIOUS HEALTH PROBLEM, CALL _____ (UTILITY) AT _____ (TEL. NO.) AND REPORT THE CONDITION. GAS OR ELECTRICITY WILL NOT BE SHUT OFF DURING THE COLD WEATHER PERIOD (NOVEMBER 1 -APRIL 15) IF YOU OR ANOTHER RESIDENT IS VERY ILL OR WILL HAVE A SERIOUS HEALTH PROBLEM IF THERE IS NO HEAT. A UTILITY EMPLOYEE WILL VISIT TO VERIFY THE CONDITION, AND A DEPARTMENT OF SOCIAL SERVICES CASE WORKER MAY ALSO VISIT. IF YOU HAVE ANY QUESTION REGARDING THEIR FINDINGS, YOU CAN ASK THE PUBLIC SERVICE COMMISSION FOR HELP BY CALLING 1-800-342-3377.

APPENDIX 16

(refer to §§ 143.12, 275.12 and 434.11)
Editor's Note: Also refer to § 11.5 (c)(2)(ii)(a)

PREPARE IN DUPLICATE

FORM DSS-2338 (11 '74) UTILITY REFERRAL Request for Action on Hardship Case from Utility Company to local DSS		LOCAL DSS <hr/> ACCOUNT NUMBER <hr/> DSS CASE NUMBER
STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES		
NAME OF CUSTOMER TELEPHONE NUMBER		TYPE OF SERVICE
ADDRESS (specify Apartment Number) LIVING ARRANGEMENT		<input type="checkbox"/> Gas <input type="checkbox"/> Electric
		<input type="checkbox"/> Gas Heat <input type="checkbox"/> Electric Heat
DESCRIBE TYPE OF HARDSHIP		TYPE OF DWELLING
Check as appropriate. Use additional space for further information		<input type="checkbox"/> Single Family Home <input type="checkbox"/> Flat/Apt. <input type="checkbox"/> Trailer
		DATE AND HOUR OF VERBAL REFERRAL TO DSS
<input type="checkbox"/> Age, Infirmary or Mental Incapacitation <input type="checkbox"/> Life Support System <input type="checkbox"/> Serious Illness <input type="checkbox"/> Physical Disability <input type="checkbox"/> Other (Specify)		
LIST EFFORTS MADE TO RESOLVE SITUATION		
HOW LONG IS PAYMENT OVERDUE	TOTAL AMOUNT OWED	CUSTOMER IS RECEIVING
	\$	(check appropriate box) <input type="checkbox"/> Public Assistance <input type="checkbox"/> SSI <input type="checkbox"/> Unknown
SIGNATURE OF PERSON COMPLETING FORM		DATE
X		
UTILITY COMPANY	OFFICE ADDRESS	

INSTRUCTIONS

- 1) Mail original to local D.S.S
- 2) Keep second copy for your files

2172 PS 9-30-78

Notes:

How to Reach the New York State Public Service Commission Office of Consumer Services

By Telephone

Consumer Information

1-888-Ask-PSC1
(1-888-275-7721)

PSC Opinion Line
1-800-335-2120

Consumer Assistance

PSC HOTLINE
(Gas or Electric Shutoffs)
1-800-342-3355

PSC HELPLINE
(Inquiries or Complaints
about Gas, Electric, Water,
Cable, Steam or Telephone
Service or Billing)
1-800-342-3377

**PSC ALTERNATIVE
ENERGY LINE**
(Inquiries or Complaints
about Energy Service
Companies)
1-888-697-7728

Electronically or By Mail

Worldwide Web Address

<http://www.AskPSC.com>
<http://www.dps.state.ny.us>
(with links to local utilities and lists
of alternative energy providers)

Mailing Addresses

NYS Public Service Commission
Office of Consumer Services
Three Empire State Plaza
Albany, NY 12223-1350

NYS Public Service Commission
Office of Consumer Services
90 Church Street
New York, NY 10007-2919

NYS Public Service Commission
Office of Consumer Services
Ellicott Square Building
Suite 1050 • 295 Main Street
Buffalo, NY 14203-2508



New York State
Public Service Commission

1-888-Ask-PSC1 • www.AskPSC.com
Three Empire State Plaza, Albany, NY 12223