The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

November 18, 2008

D.P.U. 08-104

Investigation by the Department of Public Utilities on its own Motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq. revising 220 C.M.R. § 14.00 and 220 C.M.R. § 25.00.

ORDER ADOPTING EMERGENCY REGULATIONS

I. INTRODUCTION

By this Order, and pursuant to G.L. c. 30A, § 2, the Department of Public Utilities ("Department") adopts an emergency regulation amending 220 C.M.R. § 14.03(2A)(b) to broaden eligibility for the low-income discount rate for natural gas customers whose incomes are within 60 percent of the state median income. The Department also adopts an emergency regulations amending 220 C.M.R. § 25.03(1)(a)(2) to protect from service termination households in which an infant resides. The Department also adopts an emergency regulation amending 220 C.M.R. § 25.03(1)(a)(4) to protect households from service termination in which all adult residents are 65 years of age or older and minor children live in the household. In addition, the Department adopts an emergency regulation amending 220 C.M.R. § 25.03(2) to allow nurse practitioners and physician assistants to certify the serious illness of a customer so that the customer may obtain protection from service termination. Further, the Department adopts an emergency regulation amending 220 C.M.R. § 25.03(4) to allow customers with a serious illness to renew the certification of the illness quarterly, and customers with a serious chronic illness to renew the certification semi-annually. Finally, the Department adopts three revisions to 220 C.M.R. § 25.00 correcting typographical errors found at 220 C.M.R. § 25.02(3), 220 C.M.R. § 25.03(1)(b) and 220 C.M.R. § 25.05(2), which were omitted from our recent rulemaking in D.P.U. 07-105 (2008).[1]

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[1] Specifically, the Department amends the following typographical errors: (1) in 220 C.M.R. § 25.02(3), the Department inserts the word "in" prior to "220 C.M.R.

(continued…)

With the commencement of the winter heating season and the steep rise in energy prices, the emergency regulations are necessary for the public safety and general welfare of citizens of the Commonwealth, particularly low-income consumers. The Department must issue a final Order within three months after the adoption of the emergency regulations and after the public has an opportunity to comment pursuant to G.L. c. 30A, § 2. The emergency regulations are designated as 220 C.M.R. § 14.03(2A)(b), 220 C.M.R. § 25.02(3), 220 C.M.R. § 25.03(1)(a)(2), 220 C.M.R. § 25.03(1)(a)(4), C.M.R. § 25.03(1)(b), 220 C.M.R. § 25.03(2), 220 C.M.R. § 25.03(4), and 220 C.M.R. § 25.05(2) and are effective upon filing with the Secretary of the Commonwealth.

II. RELEVANT STATUTES AND REGULATIONS

220 C.M.R. § 14.03(2A)(b) establishes the eligibility criteria for the low-income discount rate for natural gas customers. Eligibility is based upon a consumer's receipt of any means-tested public benefit program or eligibility for low-income home energy assistance program ("LIHEAP"). Id. Until recently, LIHEAP eligibility was set at 200 percent of the federal poverty level. On October 30, 2008, the Massachusetts Department of Housing and Community Development ("DHCD") announced that eligibility for LIHEAP in Massachusetts

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[1] (…continued)
§ 25.00"; (2) in 220 C.M.R. § 25.03(1)(b), the Department corrects the reference from 220 C.M.R. § 25.01(2)(f) to 220 C.M.R. § 25.01(2) so that it accurately identifies the subsection in which the definition of financial hardship is found; and (3) in 220 C.M.R. § 25.05(2), the Department deletes the word "at" because it is redundant.

is changed to 60 percent of the state median income. See Press Release, Office of the Governor (October 30, 2008).

G.L. c. 164, § 124H prohibits a gas or electric company from terminating service to a household where a person under the age of twelve months resides and a financial hardship exists. Department regulations prohibit a gas or electric company from terminating service for nonpayment or refusing to restore service, in a household with an infant under the age of twelve months, if the nonpayment occurs after the birth of the child. 220 C.M.R. § 25.03(1)(a)(2).

G.L. c. 164, § 124A prohibits a gas or electric company from terminating or failing to restore utility service to any household during the time one of its residents is seriously ill and a financial hardship exists. The customer must obtain a written certification of the serious illness from a registered physician or local board of health to protect the account from service termination. G.L. c. 164, § 124A. The procedure for certifying a serious illness and renewing the certification of a serious illness is set forth in 220 C.M.R. § 25.03(2) et seq.

G.L. c. 164, § 124E prohibits a gas or electric company from terminating utility service to any household in which all residents are 65 years of age or older, for failure to pay an outstanding account, without first complying with the Department's regulations. 220 C.M.R. § 25.05 establishes the procedure for terminating service to a household in which all residents are 65 years of age or older.

III. ANALYSIS

On September 15, 2008, the Department issued an Order expanding protections and assistance for low-income consumers. Low-income Consumer Protections and Assistance, D.P.U. 08-4 (2008). In the Order, the Department stated its intention to address service termination through a future proceeding. Id. at 51. This rulemaking fulfills that intention, in part.

In D.P.U. 08-4, the Department heard testimony that the drastic increase in commodity prices has resulted in numerous customers who are unable to afford their bills, but do not qualify for the low-income discount or fuel assistance because their incomes exceed 200 percent of the federal poverty level ("FPL"). D.P.U. 08-4 (Attorney General of the Commonwealth's Reply Comments at 12; Low-Income Weatherization and Fuel Assistance Network and Massachusetts Energy Directors Association Reply Comments at 12, 26; Tr. at 40-41). The Department also heard testimony in support of broadening the eligibility level for the low-income gas discount rate to 60 percent of the state median income to assist additional customers who are unable to afford their energy bills. D.P.U. 08-4 (Attorney General of the Commonwealth's Reply Comments at 12; Low-Income Weatherization and Fuel Assistance Network and Massachusetts Energy Directors Association Reply Comments at 12, 26; Tr. at 40-41). DHCD recently announced that eligibility for LIHEAP in Massachusetts is

changed to 60 percent of the state median income.[2] Eligibility for the low-income discount for electric customers is indexed to eligibility for LIHEAP, so eligibility for the electric discount has changed along with LIHEAP eligibility. G.L. c. 164, § 1F. Through this rulemaking, the Department is changing income eligibility for the discount for low-income gas consumers to 60 percent of state median income by indexing income eligibility for the discount to LIHEAP eligibility in order to achieve uniformity between the electric and gas discounts.

In D.P.U. 08-4, the Department heard testimony that loss of utility service is hazardous to the health of children. D.P.U. 08-4 (The Medical Legal Partnership for Children Initial Comments at 1). Department regulations prohibit a gas or electric company from terminating service for nonpayment or refusing to restore service, if the nonpayment occurs after the birth of the child. 220 C.M.R. § 25.03 (1)(a)(2). However, a household where service was terminated for nonpayment prior to the birth of the child does not qualify for this protection. Id. Therefore, the Department is extending protection to households with an infant under twelve months of age, regardless of whether the nonpayment and resulting service termination occurred prior to or after the birth of the infant.

In D.P.U. 08-4, the Department heard testimony regarding persons 65 years of age or older who reside with minor children. D.P.U. 08-4 (Executive Office of Elder Affairs Reply

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[2] On September 30, 2008, a Congressional continuing resolution ("CR") was enacted granting States the authority to provide fuel assistance to households whose income does not exceed 75 percent of the state median income for the fiscal year 2009. H.R. 2638/Public L. 110-329 (2008).

Comments at 2; Low-Income Weatherization and Fuel Assistance Network and Massachusetts Energy Directors Association Reply Comments at 7). G.L. c. 164, § 124E protects persons 65 years of age or older with a financial hardship from service termination when all residents of the household are 65 years of age or older. These older customers, who are otherwise eligible for account protection because of their age and a financial hardship, become ineligible for service protection when a minor child or children reside in the same household. Therefore, the Department is establishing a new protection at 220 C.M.R. § 25.03(1)(a)(4) for customers aged 65 years and older who reside with minor children, and are suffering a financial hardship.

In D.P.U. 08-4, the Department heard testimony that allowing only a registered physician or local board of health official to certify and renew the certification of a serious illness, combined with the frequency that renewals are required, has created a significant backlog in medical offices. D.P.U. 08-4 (Medical Legal Partnership for Children Comments at B). This backlog has made it increasingly difficult for customers with a serious illness to maintain the account protection to which they are entitled. Id. Therefore, the Department is allowing a nurse practitioner or physician assistant to certify a serious illness by amending 220 C.M.R. § 25.03(2). Additionally, the Department is extending the period of time that a certification of a serious illness is valid, from one month to three months, by amending C.M.R. § 25.03(2) and will require the renewal of the certification of a chronic serious illness less frequently, from quarterly to semi-annually, by amending 220 C.M.R. § 25.03(4).

The Department's authority to adopt emergency regulations is clear. The Department's regulations provide that upon a finding that "the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary to the public interest," the Department may dispense with such requirements and adopt emergency regulations.[3] 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2.

The increase in energy costs has been rapid and severe, and will cause the most vulnerable residents of the Commonwealth to face serious challenges meeting utility costs, staying current with utility bills, and avoiding service termination. Investigation Opening Order into Expanding Low-Income Protection and Assistance, D.P.U. 08-4, at 3 (February 12, 2008). In anticipation of the winter heating season, the Department finds that the amendment of the regulations governing eligibility for the natural gas low-income discount, and service termination of households with infants, elderly customers and customers with a serious medical illness, is necessary to continue protecting the most vulnerable customers, and hence is necessary for the public health, safety or general welfare. The Department further finds that the delay in implementation of regulations that would be caused by the requirements of notice and public comment would not be in the public interest. Delay might deny infants, elderly or

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[3] Before the amended regulation can become permanent, however, further action is required, including an opportunity for public comment. 220 C.M.R. § 2.05(4); see also G.L. c. 30A, § 2. A later public hearing and Department Order will provide that opportunity.

seriously ill customers the protection from service termination to which they are entitled. The time period required for ordinary rulemaking procedures is too lengthy to address customers' pressing needs this winter.

Accordingly, the Department adopts as emergency regulations "The Unbundling of Services Related the Provision of Natural Gas" 220 C.M.R. § 14.03(2A)(b) and "Termination of Service to Customers During Serious Illness, Infant, and Winter Protection" 220 C.M.R. § 25.02(3), 220 C.M.R. § 25.03(1)(a)(2), 220 C.M.R. § 25.03(1)(a)(4), 220 C.M.R. § 25.03(1)(b), 220 C.M.R. § 25.03(2), 220 C.M.R.§ 25.03(4), and 220 C.M.R. § 25.05(2). These regulations become effective upon filing with the Secretary of the Commonwealth and will remain in effect for a period not to exceed three months.

IV. ORDER

Accordingly, it is

ORDERED: That the regulations attached hereto and designated at 220 C.M.R. § 14.03(2A)(b), 220 C.M.R. § 25.02(3), 220 C.M.R. § 25.03(1)(a)(2), 220 C.M.R. § 25.03(1)(a)(4), 220 C.M.R. § 25.03(1)(b), 220 C.M.R. § 25.03(2), 220 C.M.R. § 25.03(4), and 220 C.M.R. § 25.05(2) are reasonably necessary for the public health, safety or general welfare within the meaning of G.L. c. 30A, § 2; and it is

FURTHER ORDERED: That the regulations entitled "The Unbundling of Services Related to the Provision of Natural Gas" and "Termination of Service to Customers During Serious Illness, Infant, and Winter Protection" attached hereto are hereby ADOPTED;

By Order of the Department,

/s/
Paul J. Hibbard, Chairman

/s/
W. Robert Keating, Commissioner

/s/
Tim Woolf, Commissioner