220 CMR 25.00: BILLING AND TERMINATION PROCEDURES OF THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Section

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Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the 20 days after the date of service of said decision, order or ruling. (M.G.L. c. 25, § 5 as most recently amended by St. 1971, c. 485.)

25.01: Applicability and Definitions

(1) Application. 220 CMR 25.00 shall apply to all gas, electric and water utility companies subject to the jurisdiction of the Department of Telecommunications and Energy and all municipal gas and electric departments, corporations and plants. Excluded from the application of 220 CMR 25.00 are the following: industrial accounts, commercial accounts not affecting tenants, and accounts affecting nursing homes, hotels, and motels.

220 CMR 25.00 supersedes all prior regulations of the Department of Telecommunications and Energy governing billing and termination procedures for gas, electric and water utilities.

If any part of the terms and conditions of any company are in conflict with 220 CMR 25.00, 220 CMR 25.00 shall be controlling.

(2) Definitions. The following terms, as used in 220 CMR 25.00 shall have the following meanings:

Bill, a written statement from a company to a customer setting forth the amount of gas, electricity or water consumed or estimated to have been consumed for the billing period set forth in the company's tariff and the charges therefor.

Budget Plan, an equalized payment arrangement whereby the customer's gas or electric usage is projected for a period, equal monthly charges are calculated and

billed for said period, and said charges are reconciled with actual usage in the final billing for said period.

Company, a gas or electric company as defined in M.G.L. c. 164, a water company as defined in M.G.L. c. 165, or a municipal gas or electric department, corporation or plant established pursuant to any general or special law.

Customer, any user of gas, electricity or water billed on a residential rate as filed with the Department.

Department, the Department of Telecommunications and Energy, Commonwealth of Massachusetts.

Financial Hardship, shall exist when a customer is unable to pay an overdue bill and such customer meets income eligibility requirements for the Low-Income Home Energy Assistance program administered by the Massachusetts Department of Housing and Community Development, or its successor, or when the Director of the Department's Consumer Division, or his designee, determines that such a finding is warranted.

Heat Related Account, an account for gas or electric service which service supplies fuel or energy, as the case may be, to a space heating system or is used to activate the space heating system, of a customer or landlord customer.

Landlord Customer, one or more individuals or an organization listed on a gas, electric or water company's records as the party responsible for payment of the gas, electric or water service provided to one or more residential units of a building, of which building such party is not the sole occupant.

Payment Plan, a deferred payment arrangement applied to an amount of past due charges. Said arrangement shall extend over a minimum of four months, or such other period approved by the Department's Consumer Division, whereby equal payments of said past due charges in addition to currently due charges are billed to the customer.

Projected Bill, a written statement of the amount which would be owed if the same quantity of gas, electricity or water were supplied at current rates as was supplied for the same billing period during the previous year; but, if no service was rendered to the account during the same billing period for the previous year or if the demand for such service is significantly different from that of the previous year, such written statement shall be based upon a reasonable method of estimating charges for usage approved by the Department.

Receipt, in the case of a bill or notice required by 220 CMR 25.00, shall be

presumed to be three days after the date of mailing, or if a bill or notice is delivered rather than mailed, on the date of delivery.

Residential Building, a building containing one or more dwelling units occupied by one or more tenants, but excluding nursing homes, hotels and motels.

Service, gas, electric or water service.

Tenant, any person or group of persons whose dwelling unit in a residential building is provided gas, electricity, or water, pursuant to a rental arrangement, but who is not the customer of the company which supplies such gas, electricity or water.

25.02: Billing and Termination Procedure for Residential Customers

(1) Billing and Payment. All bills shall be payable upon receipt. However, no bill shall be considered "due" under applicable law or 220 CMR 25.00 in less than 45 days from receipt or in the case of gas and electric companies in less time than has elapsed between receipt of such bill and receipt of the most recent previous bill for the company's services, whichever period is greater.

The initial bill after commencement of service shall not be "due" in less than 45 days from receipt, or in less time than has elapsed between receipt of such bill and the day upon which service was initially extended, whichever is greater.

No disputed portion of a bill which relates to the proper application of approved rates and charges, or the company's compliance with 220 CMR 25.00, shall be considered "due" during the pendency of any complaint, investigation, hearing or appeal under 220 CMR 25.00.

(2) Actual Meter Reading and Estimated Bills

(a) A company shall make an actual meter reading at least every other billing period. A company may estimate a customer's consumption of gas, electricity or water only if:

1. The procedure used by the company for calculating estimated bills has been previously approved by the Department;
2. The company clearly indicates that the bill is an estimate by use of the word "ESTIMATE" on the face of the bill, in close proximity to the amount thereof, and in a manner previously approved by the Department; and
3. The company has either scheduled readings for times other than normal business hours, or attempted by mail or by telephone to make an appointment with the customer, and provided cards on which the customer may record the reading; and
4. The company has not rendered an estimated bill to the customer for the billing period immediately preceding that for which the estimate is made.

(b) Notwithstanding the provisions of the 220 CMR 25.02(2)(a) the company may render an estimated bill for any billing period in which:

1. The customer has knowingly or willfully denied reasonable access to the company's representatives for the purpose of taking an actual reading of the meter; or
2. The customer has otherwise made an actual reading of the meter unnecessarily difficult; or
3. Circumstances beyond the control of the company make an actual reading of the meter extremely difficult.

(3) Termination of Service. Except as elsewhere provided herein, service may be terminated only if:

(a) A bill is not paid within 45 days from receipt, or such longer periods as may be permitted by 220 CMR 25.02(1); and

(b) The company, not earlier than 27 days after the rendering of the bill (*i.e.* first request for payment), renders a second request for payment, stating its intention to terminate on a date not earlier than 48 days after the receipt of the bill in the case of gas and electric companies, and 46½ days in the case of water companies; and

(c) The company renders a final notice of termination not earlier than 45 days after receipt of the bill. Such notice must be rendered at least 72 hours, but in no event more than 14 days, prior to termination in the case of gas and electric companies; and at least 36 hours prior to termination in the case of water companies; and

(d) The bill remains unpaid on the termination date indicated on the notice.

In no event shall service to a customer be terminated for failure to pay a portion of any bill which is the subject of a dispute pursuant to 220 CMR 25.02(4). However, a customer shall be responsible for and accordingly shall be subject to termination for non-payment of any portion of any bill which is not the subject of a dispute pursuant to 220 CMR 25.02(4).

Service shall not be terminated for any reason other than failure to pay a bill, unless the Department certifies its approval after giving both parties an opportunity to be heard. Such a hearing shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

Nothing in 220 CMR 25.00 shall be construed to prevent termination for reasons of safety, health, cooperation with civil authorities or any other reason for which termination power is specifically granted in the Massachusetts General Laws.

When service to a customer has been terminated, the Director of the Department's Consumer Division or the Director's designee, may order resumption of service pending an investigation pursuant to 220 CMR 25.02(4).

Termination of service under 220 CMR 25.02 may be effected between the hours of 8:00 A.M. and 4:00 P.M., Monday through Thursday, provided that such day is not a holiday as defined in M.G.L. c. 4, § 7, cl. (18) or the day before such a holiday.

All bills shall contain, or be accompanied by, a brief explanation of the

customer's rights pursuant to 220 CMR 25.02(4). All second requests for payment referred to in 220 CMR 25.02(3)(b) and all termination notices referred to in 220 CMR 25.00 shall be accompanied by a brief explanation of the customer's rights pursuant to 220 CMR 25.00.

(4) Investigation and Appeal. If any matter relating to the proper application of approved rates and charges, or the company's compliance with 220 CMR 25.00, is subject of a complaint by the customer, the following procedure shall apply:

(a) The customer shall notify the company of the dispute by telephone, mail or in person. The company shall refer this matter to an employee assigned to investigate billing complaints. Such employee shall investigate and make a substantial effort to resolve the customer's complaint.

The customer shall be notified in writing as to the resolution of the complaint and the company shall keep a record of said correspondence for three years. Such notice shall also include the following statement: "If you still consider your bill to be inaccurate or if you continue to dispute the time over which your arrearage is to be paid, you have a right to appeal to the Department of Telecommunications and Energy.

Write:	Consumer Division Massachusetts Department of Telecommunications and Energy One South Station Boston, MA 02110
or Call:	(617) 727-3531 or Toll-Free 1-800-392-6066 TTY (for the hearing impaired only): 1-800-323-3298

(b) If the customer disputes the company's written notice of decision, the customer shall notify the Department of Telecommunications and Energy Consumer Division that he wishes to appeal. A representative of the Department shall notify the company and thereafter shall conduct an investigation. Such investigation shall include an opportunity for each side in the dispute to be heard and may include a pre-hearing conference. Such hearing shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department representative shall rule promptly upon the appeal and notify the customer and company of his decision and of the right to appeal the decision to the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

(c) Within seven days of being notified of the decision of the Department's representative the customer and/or the company may request a hearing under M.G.L. c. 30A.

(5) Orders. Pending final determination of a dispute, the Director of the Department's Consumer Division or his designee may enter any temporary orders which he deems just and equitable including but not limited to restoration of service and payment plan arrangements.

Upon final determination of the dispute by the Department, the Department shall order service to be continued, restored, or terminated upon such terms and conditions as it deems equitable to both the customer and the company.

(6) Payment and Budget Plans. Each company shall make available payment plans and budget plans as an option to all customers for payment of accumulated arrearages and/or prospective billings, as the case may be.

All bills and notices specified by the Department shall contain language, approved by the Department, advising customers of the availability of the aforementioned plans.

(7) Violation, Complaint. Any customer or company aggrieved by any action in violation of 220 CMR 25.00 may at any time request a hearing before the Department by making a complaint in writing to the Department, provided that such matter has not been previously investigated by the Department.

(8) Multiple Meters. No company may bill any residential unit in a multiple residence on the basis of an estimated allocation of charges made from a reading from a single meter in such multiple residence.

(9) Rate Classification. Each customer shall receive, either through the mail or by hand delivery, no later than the initial billing on his or her account, a notice describing the rate on which he or she is charged. This notice shall include:

(a) A statement that specific rates are available for particular uses, *e.g.*, residential, heating, all-electric, commercial, time-of-use;

(b) A statement that the customer should notify the company immediately if he or she is not charged at the most advantageous rate; and

(c) A telephone number at the company which the customer may use to obtain additional information about available rates.

(10) Customer of Record. Whenever a new account is created for any service address, the company shall, at the time of the initial billing on this account, send separately to each listed customer of record a notice that such person is a customer of record. The notice shall include:

(a) A listing as the customer appears on company records;

(b) A statement that a customer of record is liable for all bills rendered on said account; and

(c) A telephone number at the company which the customer may call to change his or her status with relation to this account, or to make corrections in the company's listing of name and address.

(11) Form of Notices. All written notices required by 220 CMR 25.00 shall contain such language and be in such form as shall be approved by the Department subsequent to the adoption of 220 CMR 25.00. The Department may require that such notices be written in languages other than English.

(12) General Applicability. The foregoing provisions of 220 CMR 25.02 shall apply to all billing and termination matters under 220 CMR 25.00 unless otherwise indicated.

25.03: Termination of Service to Customers During Serious Illness, Infant, and Winter Protection

(1) Statement of Protection from Shut-off due to Financial Hardship.
No company may shut off or refuse to restore utility service to the home of any customer if:

(a) It is certified to the company:

1. That the customer or someone living in the customer's home is seriously ill; or

2. That there is domiciled in the home of the customer a child under the age of 12 months and the customer's service has not been shut off for nonpayment before the birth of the child; or

3. Between November 15 and March 15, that the customer's service provides heat or operates the heating system and that the service has not been shut off for nonpayment before November 15; and

(b) The customer is unable to pay any overdue bill, or any portion thereof, because of financial hardship, as defined in 220 CMR 25.01(2).

(2) Procedure for Certifying Protections. A claim of protection under 220 CMR 25.03(1) may initially be made by telephone. The telephone certification shall remain valid until the filing time periods specified hereunder have expired. In the case of serious illness, the telephone call must be made by a registered physician or local board of health official. In response to a claim of protection, the company shall forward to the customer a financial hardship form in such a form as shall be approved by the Department and shall instruct the customer or party acting on behalf of the customer that the financial hardship form forwarded to the customer must be filled out and returned to the company within seven days from the date of receipt. The company shall also, where applicable to the particular claim:

(a) Inform the customer or party acting on behalf of the customer that a registered physician or local board of health must forward to the company a certificate of serious illness within seven days from the date of notice. Said certificate shall state the name and address of the seriously ill person, the nature of the illness and the business address and telephone number of the certifying physician or local board of health; or

(b) Inform the customer or party acting on behalf of the customer that written certification must be forwarded to the company within seven days from the date of notice stating the name, birthdate and domicile of the child claimed to be under the age of 12 months. Certification may be in the form of a birth certificate, or a letter or official documents issued by a registered physician, local board of health, hospital or government official, Department of Transitional Assistance, clergyman, or religious institution. The company, in turn, shall determine within seven days from the date all certifications were due

back whether all claims have been appropriately certified. If the company determines that any claim has not been certified, the company shall so notify the customer in accordance with the provisions of 220 CMR 25.03(8)(c). Notice to the customer shall include a statement of the customer's right to dispute the company's determination by contacting the Department within seven days from the date of receipt of such notice.

(3) Conclusive Effect of Certificates. Certification of serious illness and infancy shall be conclusive evidence of the existence of the condition claimed unless otherwise determined by the Department after investigation.

A company which received fuel assistance payments in the prior winter season on behalf of a customer shall presume that customer meets the financial hardship guidelines set out in 220 CMR 25.01(2) and shall protect the account from November 15 through January 1, in order to give the customer sufficient time to apply for fuel assistance for the current winter season. If application for fuel assistance or other certification of financial hardship is not made by January 1 the company may pursue normal collection activity consistent with 220 CMR 25.00. For all customers, the company must provide financial hardship forms and appropriate instructions for completion on or before November 15.

A signed statement by the customer showing that his/her income falls within the financial hardship guidelines as set out in 220 CMR 25.01(2) shall be considered presumptive evidence of financial hardship unless otherwise determined by the Department.

(4) Renewal of Certification. In all cases where service is continued or restored pursuant to a claim under 220 CMR 25.03(1), the customer shall renew the financial hardship form quarterly. If the financial hardship is shown to be ongoing for the period November 15 to March 15, renewal shall be waived for that period. However, the provisions of 220 CMR 25.03(3) shall govern where certification of financial hardship occurs due to participation in a fuel assistance program the prior winter.

Certifications of serious illness shall be renewed monthly, except that where illness is certified as chronic, the serious illness certificate shall be renewed quarterly.

Certification of infancy shall remain in effect without renewal until the child reaches the age of 12 months.

(5) Notices. Collection notices shall be in such form as approved by the Department.

All arrearage notices shall be accompanied by a prominent written notice of the protections afforded by 220 CMR 25.03(1). No notice threatening termination of service shall be issued between November 15 and March 15 to any customer who has provided the company with a notice of financial hardship in accordance with 220 CMR 25.00, unless otherwise authorized by the Department.

(6) Appeal, Investigation and/or Hearing. If a company determines that a customer is not entitled to protection under 220 CMR 25.03(1) and the customer disputes this determination as provided in 220 CMR 25.03(2), the Company shall not terminate

service pending resolution of the dispute. The Department shall investigate and may order service to be continued, restored or shut off upon such terms or conditions as are just and equitable and consistent with 220 CMR 25.00.

Upon a finding by the Consumer Division of the Department that any company has failed to adhere to any of the provisions of 220 CMR 25.00 or to appropriately screen the accounts it pursues for termination between November 15 and March 15, it may require said company to obtain individual written permission from the Department, under terms the Department shall set, for each account or type of account that it desires to shut off.

(7) Procedure for Terminating Service. Upon entering any premises to shut off service to any customer therein pursuant to the provisions of 220 CMR 25.00, the company representative must, before shut-off, state to an occupant that service is to be shut off. He shall also present such occupant with a notice of the protections afforded customers under 220 CMR 25.03(1) and a financial hardship form. If the occupant claims protection, shut-off shall be postponed for 72 hours in order to allow the customer time to submit documentation supporting his/her claim or to obtain telephone certification from a physician, governmental agency, or religious institution as provided generally in 220 CMR 25.03(2). In the case of telephone certification, the company shall inform the calling party of the seven day deadline for submission of appropriate documentation as provided in 220 CMR 25.03(2).

If service is terminated to a home when none of its occupants is present, or when entry is not allowed by the occupant, the company shall leave a notice describing serious illness, infant and winter protections and a financial hardship notice at or under the occupant's door.

If, after having postponed termination due to an oral assertion of protection under 220 CMR 25.00, the company determines pursuant to 220 CMR 25.03(2) that a customer has not appropriately certified his or her claim for protection under 220 CMR 25.03(1) and the determination has not been appealed within seven days as set out in 220 CMR 25.03(8), the company may terminate service in accordance with 220 CMR 25.03(8).

During the period November 15 to March 15, in addition to the requirements set out above, the company shall give heating account customers telephone or personal notice of the impending shut-off no earlier than three days before the shut-off.

(8) Procedure for Terminating Service after Postponement. Notwithstanding the provisions of 220 CMR 25.03(1) and 25.03(7), shut-off need not be postponed where a customer has not appropriately certified his or her claim for protection, and the company's determination that the customer does not qualify for protection has not been appealed within seven days as set out in 220 CMR 25.03(2). However, the right to shut off service shall arise only after the company has given the customer written notice of:

(a) The proposed termination date and the reason therefor;

(b) The protections afforded by 220 CMR 25.03(1); and

(c) The right to dispute any company decision adverse to the customer's claim for protection under 220 CMR 25.03(1) by writing or calling the Department

within seven days of receipt of notice and the customer has failed to contact the Department within the allotted time. The Department's address and telephone numbers shall be provided in all notices as approved by the Department.

(9) Violation of Regulations. Willful violation of 220 CMR 25.03(1) through (8), as determined after hearing as provided in 220 CMR 25.02(4), by any gas, electric or water utility company subject to the Department's jurisdiction, or any municipal gas or electric corporation, shall result in the imposition of a penalty of $100 for each violation.

25.04: Termination of Service to Accounts Affecting Tenants

(1) Identifying Customers. Each company shall devise procedures reasonably designed to identify, before termination of service for non-payment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E and 220 CMR 25.05.

(2) Identifying Affected Tenants. Each company shall devise procedures reasonably designed to identify the number and addresses, including apartment numbers, of tenants who may be affected by a planned termination of service to an account of a customer who has been determined, pursuant to procedures adopted under 220 CMR 25.04(1) to be a landlord customer. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E.

(3) Termination of Service. No company shall terminate service to any landlord customer for non-payment except in accordance with 220 CMR 25.03(1) and 220 CMR 25.04.

(4) Pre-termination Notice to Landlord Customers. Prior to the termination of service to any landlord customer for non-payment, the company shall give the landlord customer prior written notice of termination as required by M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E. Such notice shall contain the following information:

(a) The amount owed the company by the landlord customer for each affected account;

(b) The date on or after which service will be terminated, such date to be not less than 37 days after the date on which notice is first given to the landlord customer;

(c) The date on or after which the company will notify the tenants of the proposed termination of their rights under 220 CMR 25.00, including their rights to withhold rent;

(d) The right of the landlord customer to avoid a termination of service by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the company to pay the balance; and
(e) The right of the landlord customer to invoke the procedures set forth in 220 CMR 25.02(4) and 220 CMR 25.03(1).

(5) Investigation and Appeal for Landlord Customers. The provisions of 220 CMR 25.02(4) shall be applicable to all disputes involving landlord customers.

In any proceeding pursuant to 220 CMR 25.02(4) the Department may require, among other things, that the landlord customer provide the names, addresses, and apartment numbers of each of the tenants who may be affected by a termination of service.

(6) Notice to Tenants. The company shall give a written notice, or notice in such form as is approved by the Department, of the proposed termination for non-payment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall not be rendered earlier than seven days following notification to the landlord customer pursuant to 220 CMR 25.04(4). However, if the landlord customer commences a proceeding pursuant to 220 CMR 25.04(5), such notice shall not be rendered until such proceeding has been concluded. In no event shall such notice be served upon the tenants less than 30 days prior to the termination of service to the landlord customer on account of non-payment. Upon affidavit, the Department may, for good cause shown by the company, reduce the minimum time between notification of the landlord customer and notification of the tenants.

The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

(a) The date on which the notice is rendered;
(b) The date on or after which service will be terminated;
(c) The circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in 220 CMR 25.04(7);
(d) The projected bill as described in 220 CMR 25.04(7);
(e) The statutory rights of a tenant:
    1. To deduct the amount of any direct payment to the company from any rent payments then or thereafter due;
    2. To be protected against any retaliation by the landlord for exercising such statutory right; and
    3. To recover money damages from the landlord for any such retaliation.
(f) A telephone number at the company and at the Department which a tenant may call for an explanation of his rights.

The information in 220 CMR 25.04(6)(a) through 25.04(6)(f) shall be posted not less than 30 days prior to termination of service to the landlord by the company in those common areas of the building where it is reasonably likely to be seen by the affected tenants.

(7) Rights of Tenants to Continued Service

(a) At any time before or after service is terminated on account of non-payment by the landlord customer, tenants may apply to the company to have service continued or resumed. The company shall not terminate service or shall resume service previously terminated if it receives from the tenants an amount equal to a projected bill for the 30 day period commencing on the later of the date of the planned termination or the date service is resumed, whichever is later.

(b) Thereafter, the company shall notify each tenant of the total amount of the projected bill for the second and each succeeding period of 30 days or less. If the tenants fail to make payment of any projected bill before the start of the period for which the bill is projected, the company may commence termination procedures; provided that no such termination may occur until 30 days after each tenant has received written notice of the proposed termination. Such notice shall contain:

1. The date on or after which service will be terminated;
2. The amount due, which shall include the arrearage on any earlier projected bill due from tenants;
3. A telephone number at the company and at the Department which a tenant may call for an explanation of his rights; and
4. The right of a tenant, within seven days of the notice, to invoke the procedure for investigation and hearing set forth in 220 CMR 25.02(4).

(c) Tenants shall be considered customers for purposes of 220 CMR 25.02(4) and 25.02(5) and shall be entitled to dispute any matter relating to a projected bill in accordance with the provisions of 220 CMR 25.02(4).

(d) Notwithstanding anything contained elsewhere in 220 CMR 25.00, prior to any termination for non-payment which would affect tenants, the company shall notify the Department's Consumer Division by telephone of the proposed termination. Upon notice of such proposed termination, or during any hearing pursuant to 220 CMR 25.02(4), the Department may make inquiry of the parties as to the following matters, among others:

1. The amount the tenants have paid to the company in relation to the amount equal to one month's projected bill;
2. The number of vacant units in the building;
3. The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of Public Assistance checks, direct rent payments by the Department of Transitional Assistance to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;
4. Whether the tenants are engaged in rent withholding against their landlord;
5. The amount of payments recently received by the company from the landlord and the size of the past due bill of the landlord;
6. Whether the company has pursued collection remedies, other than threatened termination of service, against the landlord;

7. Weather conditions;
8. The existence of illness of tenants in the affected units;
9. The ages of the persons residing in the affected units;
10. The availability of other housing to the tenants; and
11. The existence of, or potential for, terminations of service by other companies.

The Department may consider and give due weight to the above matters in any decision rendered pursuant to 220 CMR 25.02(5).

(8) Payment of Arrearage by the Tenants. For good cause shown upon affidavit of the company, the Department may hold a hearing and thereafter may require the tenants to pay a portion of the arrearage of the landlord customer's account deemed just and reasonable. The Department shall notify the landlord customer, the tenants and the company in writing of the date, time and place of the hearing. Payment of any portion of an arrearage may be required only if the company proves by substantial evidence that:

(a) The total monthly rent due the landlord from the tenants is greater than the projected bill for the same period of time;
(b) The tenants are not engaged in rent withholding against their landlord for any reason other than for the payment of the projected bill;
(c) There are no claims of other companies against the withheld rent; and
(d) Such a requirement will not impose an undue burden upon the tenants.

If more than one company claims the withheld rent, such companies, by mutual agreement, may join together in a single proceeding under 220 CMR 25.04.

(9) Larceny and Unauthorized Use of Gas, Electricity and Water. No company shall terminate service supplied through any meter or meter bypass to a residential building on account of larceny or unauthorized use thereof unless:

(a) The company has attempted to identify and collect from the proper party to be billed; and
(b) The company has given written notice to the tenants.

Such notice shall state:

1. The date on which the notice is rendered;
2. The date on or after which service will be terminated, such date to be not less than 30 days after the date of receipt of such notice;
3. That service will continue to a qualified party who agrees to pay for such service; and
4. That service will be continued through a master meter if the conditions established in 220 CMR 25.04(7) for continued service are met.

(10) Termination of Service for Reasons Other than Non-Payment. Nothing in 220 CMR 25.00 shall be construed to prevent terminations for reasons of safety, health, cooperation with proper civil authorities or any other proper reasons for which termination power is specifically granted in the General Laws.

Where service to a residential building is terminated on account of public health or safety, the company shall post a notice in a common hallway of the building stating the reason for the termination and the fact that service will be resumed if the danger to public health or safety is removed. The notice shall also include a telephone number at the company and at the Department which a tenant may call for an explanation of the situation and his rights. If any tenant disputes the existence of an unsafe condition, he may apply to the Department for an immediate determination of that issue.

The company shall notify the Department immediately, when feasible, of any termination required by public safety or health and, in any event, within 24 hours of such termination, excluding Saturdays, Sundays and holidays.

25.05: Termination of Service to Elderly Persons

(1) Identifying Elderly Persons. Each company shall devise procedures and methods reasonably designed to identify, before termination of service for non-payment, accounts affecting households in which all residents are 65 years of age or older. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by written notification, such modifications of the company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(2) Third Party Notification. If a customer 65 years of age or older so desires, the company shall provide to a third person designated by such customer notification of all past due bills [*see* 220 CMR 25.02(1)], notices of termination of service, and notices of right to a hearing at before the Department. In no event shall the third party so notified be liable for the account of the customer.

Each company shall devise procedures reasonably designed to provide a voluntary system of third party notification for all customers 65 years of age or older. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124E and M.G.L. c. 165, § 1B and of 220 CMR 25.00.

(3) Termination Notice. A company may terminate service to a household in which all residents are 65 years of age or older only after such company first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the company shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to 220 CMR 25.05(2) and the residents of such household. Such written notice shall state that an application to terminate has been filed with the Department and shall set forth the rights of the residents of the affected household to a hearing before the Department pursuant to 220 CMR 25.05(4). Prior to approval by the Department of such application, no company may send notices threatening termination of service to any household which has notified the company that all residents of the household are 65 years of age or

older.

The notices required by 220 CMR 25.05 shall contain language in accordance with 220 CMR 25.05(5) and shall be in such form as shall be approved by the Department prior to its use.

(4) Investigation and Hearing. The Department shall not approve an application for termination of service to a household in which all of the residents are 65 years of age or older unless the following facts have been established in the course of an investigation:

(a) The residents of the household, the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), and any third person designated pursuant to 220 CMR 25.05(2) have received proper notification of termination pursuant to 220 CMR 25.00.

(b) The company has in good faith attempted to secure payment by reasonable means other than termination; and

(c) The company has not refused to accept any monthly installment payment agreement which is just and equitable.

The scope of the investigation need not be limited to the issue cited above, but may include any matters relating to a billing dispute brought to the Department's attention.

In appropriate cases, the Department may hold a hearing as part of the investigation. However, such investigation need not include a hearing unless requested by a resident or a third person designated pursuant to 220 CMR 25.05(2). If a hearing is held as part of the investigation, it shall be conducted before a Department representative, but shall not be construed to be an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

The Department shall notify the company, the residents and any third person designated pursuant to 220 CMR 25.05(2), and the Executive Office of Elder Affairs (or any agency designated by Executive Office of Elder Affairs for such purposes) of the results of the investigation and of the right of the company or residents to appeal the decision of the Department for an adjudicatory proceeding as defined by M.G.L. c. 30A.

Within seven days of being so notified, the company, the residents, or any third person designated pursuant to 220 CMR 25.05(2) may request a hearing under M.G.L. c. 30A. If such a hearing is requested, no termination of service may occur until the proceeding has been concluded and a final order entered.

(5) Special Information Notice. All second requests for payment, notices of termination of service, notices of right to a hearing before the Department and all other written communications by a company to a residential customer regarding bills for service shall contain on their face or include the following notice:

"If all residents in your house are 65 years of age or older, the company cannot terminate your service for failure to pay a past due bill without approval of the Massachusetts Department of Telecommunications and Energy (DTE). If you cannot pay your bill all at once, you may be able to work out a payment plan with the company. You have a right to a hearing at the DTE before termination. If you have any questions or want further information, call the company at (insert number) or the DTE

Consumer Division at (617)-727-3531, Toll-free 1-800-392-6066 or TTY (for the hearing impaired only) 1-800-323-3298."

(6) Shut-off. Upon entering any building to make a shut-off of service to any customer therein, pursuant to M.G.L. c. 164, § 124 and M.G.L. c. 165, § 11A, the company's representative shall, prior to execution of the shut-off, state to an occupant of the home affected thereby that service is to be terminated. He shall also present such occupant with a notice as described in 220 CMR 25.05(5). If the company's representative is told that all of the occupants of the household are 65 years of age or older, service shall not be terminated unless such termination has been approved by the Department. If the occupant is not present or denies entry, the company's representative shall leave a notice as described in 220 CMR 25.05(5) at or under the occupant's door.

25.06: Construction

Liberal Construction. 220 CMR 25.00 shall be liberally construed and in those instances where notice(s) or any other act(s) is (are) required, 220 CMR 25.00 shall be deemed to read in the aggregate.

REGULATORY AUTHORITY

220 CMR 25.00: M.G.L. c. 164, §§ 60, 76C, 124A, 124D, 124E, 124F, 124H and 124I; M.G.L. c. 165, §§ 1B, 4, 11A, 11E; M.G.L. c.30A, § 2.