

February 10, 2016

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

RE: Recommended Changes to 220 CMR 25.00
Docket No. D.P.U. 15-562

Dear Secretary Marini:

On behalf of our low-income clients, the National Consumer Law Center (NCLC) submits the following comments as part of docket number 15-562, a rulemaking proceeding pursuant to Executive Order 562 to Reduce Unnecessary Regulatory Burden. NCLC requests that the Department consider certain revisions to portions of 220 CMR Part 25.00, which provide important consumer protections regarding the procedures for termination of service to “elder persons.” The suggested revisions described below are meant to clarify ambiguities and confusion regarding which households are considered “elderly” and covered by Part 25.03(1)(a)4. and 25.05.¹

1. Aligning language to avoid unintended confusion and properly protect seniors

In 2009, the Department added to its regulations a crucial, new protection for low-income elders. The Department amended 220 CMR 25.03, so that low-income elders may request absolute protection from utility termination in certain circumstances. 220 CMR 25.03(1)(a)4.

While NCLC commends the Department for adding this valuable protection, we are aware of instances where this regulation has caused unintended confusion among social services providers who assist elderly residents. For instance, in November 2015, NCLC spoke with a social services provider who erroneously believed that her elderly client was not entitled to any of the protections under 220 CMR 25.03 or 25.05 because a minor did not reside in the

¹ Note that NCLC has filed substantively identical comments in DPU 15-183. We respectfully ask that the Department consider these comments either in DPU 15-183 or this docket (15-562) in order to carry out the intent of Executive Order 562, which, *inter alia*, directs each state agency to “ensure that every regulation is clear, concise and written in plain and readily understandable language.” As our comments make clear, wording contained in part 25.03 and 25.05 regarding utility handling of elderly customer accounts is unclear and has created confusion. We therefore hope that the Department will address our concerns, on the merits, in one or the other docket.

household with the elders. The social services provider had relied on collateral documents from Eversource which closely tracked the wording of part 25.03; listed the categories of low-income customers who qualify for the protections of 220 CMR 25.03; and did not include a household made up only of low-income elderly adults as eligible for protection.

In order to reduce confusion and protect elders (including elders who do not have a minor in the household) from the risk of termination, we urge the Department to clarify, in both 25.03 and 25.05, that only all adults in the household must be age 65 or older to be covered by those rules. Section 25.05 of the regulations, which addresses "Termination of Service to Elderly Persons," requires that "all **residents** are 65 years of age or older." 220 CMR 25.05(1)(emphasis added).

We suggest that 25.05(1) should apply to a household in which all "adults" (rather than "residents") are age 65 or over. Moreover, to avoid customer confusion, the regulation should clearly state that the presence of a minor does not disqualify the otherwise eligible household.

The Department clearly has the authority under Massachusetts law to make this change.² Moreover, such a change would align the Part 25 regulations with the procedures the Department adopted almost 40 years ago that are applicable to covered telephone companies in their dealings with "elderly persons." In DPU 18448, Part 8 ("Telephone Service of Elderly Persons"), those rules are made applicable to "households in which all **adult** residents are sixty-five years of age or older." The intent of 18448 is clearly to protect a household where all "adults" are age 65 or over, even if a minor (e.g., a grandchild) lives in the household. That same intent should be reflected in the Part 25 rules governing electric and gas companies. There is no reason to exclude from the benefits of Part 25.03 or 25.05 elders who take on caring for a minor.

We respectfully suggest the following amendments to the regulation (25.05):

(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~~ **adults** are 65 years of age or older. **The presence of a minor shall not disqualify a household from being treated as an elderly household for purposes of 220 CMR 25.05.** . . .

(3) Termination Notice. A company may terminate service to a household in which all **adult** 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

² G.L. c. 164, § 124E (giving Department broad authority to "promulgate such rules and regulations as are necessary . . .").

notices threatening termination of service to any household which has notified the company that all **adult** residents of the household are 65 years of age or older.

...

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

(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 **adult** 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 Public Utilities (DPU). . . ."

(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 **adult** 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. . . .

We also suggest, for similar reasons, that part 25.03(1)(a)4. be amended to read:

4. That all adults in the home are age 65 or older. ~~and a minor resides in the home~~ **The presence of a minor in the household shall not disqualify the household from coverage by this provision.**

2. Adding definition of "minor"

As currently written, the regulation does not define the term "minor." In order to clarify the meaning of the regulation, we suggest that the Department add a definition of "minor" to 220 CMR 25.01(2). In keeping with the Department's intent to protect elderly utility consumers, we urge the Department to define "minor" to include those who are under the age of twenty-one.

Neither G.L. c. 25 nor c. 164 contains a definition of minor. We note that the Department's telephone rules do include a definition of "adult" as anyone "eighteen years of age or older." DPU 18448, Rule 1.1. However, other Massachusetts laws and regulations extend minor status or underage status until the age of twenty-one. See, e.g., G.L. c. 201A § 1; 205 CMR 150.01. We respectfully suggest that the Department choose age twenty-one so as to more fully protect seniors who take care of much younger persons. We propose the following addition to the definitions at 220 CMR 25.02:

Minor. For the purposes of 220 CMR 25.00, an individual who is under the age of twenty-one years.

If you have questions about these comments, please contact Jenifer Bosco at jbosco@nclc.org or Charles Harak at charak@nclc.org. Thank you for your consideration of these comments.

Respectfully,

Charles Harak, Esq.
Jenifer Bosco, Esq.
on behalf of our low-income clients