

**What to do When Utility Service
Has Been Disconnected
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An earlier Consumer Concerns, "How to Help Older Americans Avoid Loss of Utility Services," provided a list of payment assistance and other programs available to help older Americans stay current with their utility bills. It also presented a very brief overview of ways to challenge utility terminations. Because loss of utility service is a particularly serious problem for older Americans, who can face serious illness or death from extreme weather conditions, this issue of Consumer Concerns provides a more in-depth examination of potential steps that customers and their advocates can take to prevent termination.

Strategies for Helping Seniors Avoid Loss of Utility Service

Seniors with utility problems should consult someone experienced in utility customer service issues. Information about customer service issues and payment assistance programs can often be found by consulting the state public utility commission (PUC), local community action programs and legal services offices. Local senior service programs can also help by gathering information from the customer and calling the utility or PUC on the customer's behalf. The case examples here, and the discussions following, offer practical advice which may help senior advocates in deciding if, and how, they can help seniors facing notice or actual disconnection of utility service.

Case A

Mrs. W., a 72 year old woman living on social security and Aid to Families with Dependent Children (AFDC), whose two grandchildren live with her, comes in to your office at 2:30 p m one afternoon. The "gas man" has just been to the house to tell her that if she doesn't pay her overdue bill in full by 4:30 p m that afternoon, he will have to turn off the gas. But this month she is no later than she has been most other months; Mrs. W. says she always pays her bill about two weeks after it is due (although she does not always pay the bill in full). What can you do to help her?

Quick Review of Issues To Consider:

Check the procedures that the law requires prior to disconnection of service: written notice of the utility's intention to disconnect service and of the customer's right to a hearing is generally required. Is the notice adequate? Does it inform Mrs. W. of all her rights? Was Mrs. W. offered a payment plan? Is it a reasonable plan which she can afford to pay? Has she violated it by not continuing to pay the required payments? Does Mrs. W. qualify under a moratorium rule or law which does not permit disconnection of utility service for certain categories of customers, especially in the winter months? Is there one required under her state's public utility commission rules? Because she is elderly, it is likely that some type of moratorium rule will apply to her.

Longer Review:

If the gas company is a utility which is regulated, or supervised, by the state Public Utility Commission, then the gas company must abide by the rules issued by the Commission. While Commission rules vary from state to state, for the most part minimum protections relating to disconnection of service, or terminations, are as

follows:

Notice. Prior to termination of service, a consumer must be given notice:

- (a) that the service is subject to termination, and
- (b) of the various rights that the consumer has to prevent termination. Often this requirement includes a repeat written notice. Face-to-face notice may also be required. Failure to comply with these notice requirements will generally make the termination wrongful.

Limit on Circumstances When A Utility Can Turn Off A Customer's Utility Service. Regulations typically permit disconnection for non-payment, but often prohibit disconnections for small, insignificant amounts, or for those which have been outstanding for less than a certain number of months.

Right to Appeal. Before or after termination, the customer must have a right to appeal to both the utility and to an independent third party such as the Public Utility Commission. In many states, informal appeals can be made by telephone before the termination, and often utility service will be maintained or reconnected during the appeals process.

Right to Deferred Payment Plan. Prior to termination, a consumer must be informed of the option to pay these old bills (referred to as "arrears") through a reasonable installment plan. Often this payment plan has a six month limit for bringing the account up-to-date.

Moratorium on Terminations. In most northern states there is a total prohibition on termination of heat related utilities to residential consumers between November 1 and March 31. In other states, there is often a limited moratorium to prevent utility terminations for households with elderly or disabled residents, and occasionally for households with infants. Some of these rules require that before a household is considered for the moratorium, all efforts to obtain state or other energy payment assistance must have been attempted.

Unfortunately, termination procedures are not always scrupulously followed. Often utility representatives will refuse to negotiate a payment plan, or fail to give notice of all the customer's important rights, such as the opportunity to appeal or the right to participate in a payment plan. Because consumers' main or only information provider is generally a company representative, it is up to the consumer advocate to recognize the abuses and determine whether such practices are a violation of state or local regulations. Public utility commissions generally have authority to help resolve disputes, and a call to the Consumer Division of the Commission can often stall or prevent a disconnection altogether.

The utility's failure to follow the termination rules typically provides grounds to demand that the termination process start over, and that utility service be maintained during the process. A court decree (called an injunction) may be sought to stop termination or to have service restored. Wrongful termination may even give rise to a legal claim for money damages against the utility.

Strategies When a Client Fails to Keep Current on a Negotiated Payment Plan and Faces Disconnection

In some cases the previous terms of a negotiated payment plan were not met by the household, and that is the cause of the threatened termination.

The question then arises whether the payment plan was unreasonable. If the customer's circumstances have not changed but she or he could not keep to its

terms, it was probably not reasonable when it was first arranged. Utilities have the obligation to "mitigate" (minimize) damages (the amount of financial harm customers will suffer).

Finally, did the terms of the payment plan meet with all the requirements of the regulations? If not, the regulations may have been violated, or the utility may have failed in its obligation to mitigate, or reduce, damages.

Reasonableness of Plans. Many state regulations on payment plans require that the utility take into consideration a number of factors, such as the reasons for non-payment, the household's current energy usage, and the household income, in setting the terms of the installment payment plan. It is important to ask whether all the required factors were considered. Also, were the terms of the plan reasonably based on all these factors?

The onus should be put on the utility to prove that it considered all required and relevant factors in entering into the payment plan agreement.

It is also possible to challenge payment plans if they require equal monthly payments. During winter months, customers will want to pay less on their old bills (their arrears) because bills for current usage are higher in the winter. The same argument exists for seasonal workers with uneven income.

The utilities will always say that the customer agreed to this payment plan in a contract, so she or he should not now be able to say its terms are unfair. However, these plans are clearly contracts where one party, the utility, has an unfair advantage over the other party, its customer. The customers have no choice but to accept the terms the utility offers; otherwise, there will be immediate termination of service. There is an absence of equal bargaining power. These types of agreements are called "adhesion contracts," and they are interpreted to favor the less powerful party (the customer), where there is any confusion about what the agreement means.

Case B

Mrs. Garcia, a 70 year old widow, has lived in the same house for 10 years. The cost of the utilities - - water, heat and lights - - are included in the rent. The utilities are in the name of the landlord who has been paying those bills for years. The landlord sells the house to Mr. Z, who owns a number of homes throughout the city.

Mr. Z stops paying the utility bills for Mrs. Garcia's home. The Electric Company sends him notices of intent to disconnect his service for nonpayment but he ignores the notices, so the electric service to Mrs. Garcia's home is turned off.

Mrs. Garcia calls the Electric Company to complain and asks for service to be turned on again. She asks for the utility service to be put in her name and says she will pay the bills from now on. The Electric Company refuses to put the service in her name unless she first pays all the back bills of the landlord.

Quick Review of Some Issues to Consider:

As in the cases above, the notice(s) to terminate service should be examined to make sure that they meet all the procedural requirements under PUC rules.

More importantly, however, is whether Mr. Z or the Electric Company gave Mrs. Garcia notice of the intent to disconnect the electric service to her house. Is there an obligation for either the landlord or the utility company to provide such a notice? Mrs. Garcia is seeking to have the utility service established in her name, rather than that of the landlord. Is the utility required to provide that service?

Termination Process

The first question is whether the utility or landlord provided notice to Mrs. Garcia of the fact that the utility service to her house was going to be turned off. Assuming neither of them gave her notice, then the issue is whether one or both of them had an obligation, or duty, to do so.

Landlord's Duty to Inform Tenants. In most states, termination of landlord-supplied utility service constitutes a form of eviction, called "constructive" eviction. By causing the utilities to be shut off without going through the correct legal process (with the required notice), the landlord has violated Mrs. Garcia's rights.

Duty of Utility to Provide Notice to Tenants. The Electric Company may owe a duty to provide notice of the pending shut off to Mrs. Garcia as tenant of this home. A number of states require notice by the utility to the occupant of the residence when the utilities are about to be turned off. In some cases, this duty is based on rules issued by the state public utility commission. Some states also require notice to public assistance agencies, especially when recipients of low income home energy assistance plans (LIHEAP) or welfare reside in the premises, and/or notice to housing code enforcement officers and others.

Right to Service in Tenant's Name

Mrs. Garcia has a right to receive service in her own name. The states that require advance notice to tenants of disconnection of landlord-supplied utilities typically provide that the tenant must be given the opportunity to put the utilities in her/his name.

Additional Resources on Utility Issues, Generally, and on Termination of Service Issues The National Consumer Law Center (NCLC) has published a manual, entitled *Tenants' Rights to Utility Service* (1994), which provides a general overview of utilities, as well as information on procedures which should be followed prior to termination of utility service. See especially Chapters 1 - 3. For a discussion on consumer protection statutes relating to utility law, see §2.5 of the Manual. This manual is part of NCLC's *The Utility Law Practice Series*. For more information on the manual or how to address these issues, contact NCLC's Boston office at 617/523-8010. Federal and state consumer protection statutes are fully discussed and reviewed in *National Consumer Law Center, Fair Debt Collection*, (2d ed. 1993) §13.1.2. Some states exempt utilities from state debt collection statutes. This manual is part of NCLC's *Consumer Credit and Sales Legal Practice Series*.

About NCLC

In 1992, NCLC received funding from AOA to launch an Eldercare Initiative in Consumer Law, intended to improve access to and the quality of consumer representation for older Americans. Since 1969, NCLC has been providing legal advocates with technical and expert assistance, training and public actions that cover all major topics in consumer law. NCLC has established itself as the nation's consumer law specialist, making its legal expertise available to low income clients and their attorneys. These services are now available to advocates representing older Americans. The attorneys and policy analysts on NCLC's staff are all specialists in aspects of consumer law. The Center's comprehensive library of consumer law is updated continuously as attorneys conduct research on behalf of clients and revise NCLC legal practice publications.

Making Use of Consumer Law

NCLC is available to consult with legal advocates for the elderly and low income consumers on a wide range of consumer issues, providing leading and local case law, analyzing contract documents for federal and state law compliance, defining factual and legal issues, identifying experts and legal resources to strengthen cases and training attorneys in consumer law.

August, 1994

More information can be found in Surviving Debt on the NCLC Web Page at www.nclc.org