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ELDER LAW

Helping Seniors Avoid Utility Service Loss

by the National Consumer Law Center

Maintaining utility service is a crucial issue for older Americans. While these consumers may not be able to afford their utility bills, they cannot afford to go without service either. For older citizens, reducing the use of basic utilities may be difficult, especially during the winter or summer, because of the threat that extreme temperatures can pose to their health. For retired seniors or seniors with disabilities, reducing basic electric, gas, or water bills may be even harder because they may spend more time at home. Significant savings in utility bills normally require major investments in insulation, home repairs, and energy-efficient appliances, which may be beyond the reach of financially limited consumers.

Unable to reduce utility costs or pay their bills, many older Americans accrue arrearages. Unpaid utility bills can mean loss of service, with dire consequences. For seniors who rent, loss of utility services may pose the possibility of eviction since landlords view the loss as a potential hazard for the rental unit (i.e., frozen pipes burst and cause extensive damage; use of alternative sources of heat or light can cause fires).

Understanding Who Regulates a Utility

The first step in handling utility problems is to understand who regulates the various utilities in the community. There are three types of utilities, and consumer rights vary with each type.

1. **Private Utilities Regulated by Public Utility Commissions.** Most utilities are private companies, owned by their shareholders, and are regulated by a state agency, usually called the public utility or service commission (PUCs). "Public" in the commission's title refers to the fact that the utilities must offer service to the general public. State PUCs closely regulate every aspect of privately owned utilities and offer consumers significant protection. PUCs typically have a legal division, a consumer complaint division, and divisions to handle problems with particular types of

service. Individual customers can often obtain help with utility disputes directly from the staff of the state commission (often an "800" number to call for consumer assistance).

Most PUCs issue formal regulations governing utility service to residential customers, and copies can be obtained from the local PUC. Commissions also have informal rules and policies, particularly concerning termination of service. Advocates who help families with utility problems should become familiar with both the formal and the informal rules. Most utilities offer a range of programs specifically for older consumers. Some also provide programs for low-income consumers for which some seniors may also qualify. Information about such programs can be obtained from the local PUC, as well as from the local utilities.

2. **Municipal Utilities.** A second type of utility is called a municipal utility. Municipal utilities are owned by a city or town and usually run by an elected board of commissioners. In most states, they are not regulated by the state PUC. The utility's board of directors or staff set policies concerning utility terminations, deposits, and the like. Consumers receive little or no assistance contacting the PUC concerning municipal utilities and must deal with their own municipality.
3. **Rural Electric Cooperatives (RECs).** RECs are membership-controlled utilities, established under federal law. RECs are usually not subject to state PUC regulation, so that consumers receive little assistance contacting a state PUC about an REC. Consumers instead must look for protection largely from REC itself, which has its own policies specifying members' rights.

Fighting a Termination of Service

The threat of immediate termination of service and the need to restore service that has already been terminated are the two most urgent problems faced by utility customers. In many states, statutes and PUC regulations provide a variety of significant protection against utility terminations. These protections include:

1. **Financial Hardship.** PUC regulations in some states prohibit or restrict termination of service for households with incomes below certain levels, or whose income is restricted to certain government benefits, or who can otherwise demonstrate financial hardship.
2. **Serious Illness.** State law or PUC regulations often restrict termination of service for households whose members face a serious illness, are threatened with serious illness, or depend upon life support systems. Often, the illness must be certified by a doctor. A household with very young children may also be able to use the health risk to the children as grounds to stop utility termination—this issue may be helpful for those seniors who have become care givers for their young grandchildren or other young children.
3. **Winter Protection Rules.** Many states and cities have enacted legislation that prevent termination of utility service during certain times of the year, chiefly termination of heat-related services during the heating months. To qualify for the protection, financial hardship may have to be demonstrated.
4. **Special Rules for Senior Households.** Some states offer general protection for older customers, while others protect them against termination if a winter storm is forecast or if the temperature is expected to drop below a certain level. Similar protection may be offered to households with children.
5. **Tenant Protection.** In some cases, a landlord may fail to pay for utility service, putting tenants at risk of losing the utility service. In some states, tenants must receive a special shutoff notice if the landlord is delinquent with payments. Then tenants may make utility payments directly to the utility and deduct those payments from their rent.
6. **Advance Notice of Utility Termination.** All customers are protected against surprise termination of service. Utility companies cannot legally termi-

nate service without first providing customers with requests for payment and notices of termination. Many utilities must also provide customers with an opportunity to dispute or contest the reasons for the shutoff.

7. **Contesting the Termination.** A utility commission's consumer division responds to phone calls, letters, and visits by residential customers. Many of the complaints are resolved informally, by consultation between the consumer division and the utility. Consumer divisions also hold hearings on complaints that cannot be resolved informally.

Consumers generally have a legal right to a hearing when they dispute a utility termination. They can simply request the PUC to provide a hearing before service is terminated. While municipal utilities are generally not regulated by the PUC, customers of municipal utilities have a constitutional right to a hearing before termination. Consumers need not have a lawyer represent them at the hearing. However, it may be helpful to have a paralegal or experienced utility counselor assist with the hearing. To support their claim, consumers should bring all relevant documentary evidence, such as a physician's affidavit or past bills, and it may be helpful to have witnesses present.

8. **Bankruptcy Protection.** The filing of a bankruptcy petition automatically requires the utility to restore service or cease a threatened termination. The filing creates a 20-day period when the consumer has a right to service from all applicable utilities. The utility can terminate service after that period only if the consumer fails to pay future bills, even if the consumer never pays on past-due bills. The utility can require the consumer to provide adequate assurance that future bills will be paid, such as providing a new deposit or having a cosigner.