

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

IN RE: RULES AND REGULATIONS GOVERNING THE :  
TERMINATION OF RESIDENTIAL ELECTRIC : DOCKET NO. 4450  
AND NATURAL GAS SERVICE :

**COMMENTS OF NATIONAL CONSUMER LAW CENTER ON BEHALF OF  
GEORGE WILEY CENTER**

**I. INTRODUCTION**

On October 25, 2013, the Public Utilities Commission ("Commission") issued a Notice of Proposed Rulemaking soliciting comments on draft new rules and regulations governing the termination of residential electric and natural gas service, and repealing related existing regulations ("Notice").<sup>1</sup> The Commission's proposed new rules ("Proposed Rules") include definitions of key terms, general provisions regarding termination of service, limitations on termination of service, provisions regarding implementation of the Henry Shelton Act Arrearage Forgiveness Program, and severability provisions.<sup>2</sup>

**II. OVERVIEW**

National Consumer Law Center ("NCLC") appreciates the opportunity to comment on behalf of the George Wiley Center ("Wiley Center") in this docket. In addition, the Wiley Center notes that the Division of Public Utilities and Carriers ("Division") will issue a separate set of proposed rules pertaining to a broad range of critical regulatory consumer protections, and that these proposed rules will be closely related to and associated with the Termination of Service Rules Proposed by the Commission. In fact, in the section of the proposed rules entitled "General Rules Governing Termination of Service," The Commission proposes that "(t)ermination of utility service for outstanding indebtedness shall be authorized only after the Electric Utility or Gas Utility has complied with Reasonable

<sup>1</sup> Notice of Proposed Rulemaking and Public Hearing, State of Rhode Island and Providence Plantations Public Utilities Commission, Docket Number 4450, October 25, 2013.

<sup>2</sup> Proposed Rules, pp. 1-9.

Methods of Debt Collection *as defined by the Division* (emphasis added).<sup>3</sup> Although the two sets of proposed rules may be promulgated by two distinct agencies, informed comment on either set of proposed rules can only be made after viewing the entire package of proposed changes. The Wiley Center therefore respectfully requests that the Commission extend the comment period in the instant proceeding to coincide with the comment period that will apply to the to the proposed new rules of the Division.

In the event that the Commission denies the request to extend the comment period in the instant proceeding, the NCLC in the Wiley Center provide the comment below regarding selected provisions of the Commission's proposed rules.

### **III. ESSENTIAL NATURE OF ELECTRIC AND NATURAL GAS SERVICE AND THE NEED FOR ROBUST REGULATORY CONSUMER PROTECTIONS**

Electric and natural gas utilities provide a necessary service to consumers. It is well documented that loss of utility service poses real threats to the health and safety of utility customers. Disconnection of necessary utility service is known to increase the risk of house fires and cause extreme indoor temperatures that can lead to illness or death. In addition, loss of service the ability to participate effectively in society and renders a dwelling unit virtually inhabitable. Consumer protections in Rhode Island and many states have been adopted to protect society's most vulnerable members -- including those with low incomes, the elderly, the very young, and people with disabilities -- from loss of necessary service.

Rather than being viewed as a punitive structure intended to punish low income and vulnerable utility customers struggling to pay for life's basic necessities, the regulatory structure should be based on recognition of the extent to which nonpayment occurs as a result of inability to pay. Rules regarding termination of essential utility service should be predicated on the assumption that a vast majority of customers at all income levels prefer to remain current on their bills, but that some households have income that is simply insufficient to do so while at the same time paying expenses related to housing, medical care, childcare, food, clothing, and transportation, and other nondiscretionary necessities. The termination rules first and foremost must protect the home energy security of low income and vulnerable households.

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<sup>3</sup> Proposed Rules at 2.

#### IV. UTILITY PAYMENT TROUBLES AND HOUSEHOLD INCOME

In crafting an effective regulatory utility consumer protection structure the questions arise regarding the nature and causes of late payments and nonpayment. Too often, policymakers and others conveniently assume that utility payment troubles are based on financial irresponsibility, a desire to "game the system" or some other character flaw of a late paying customer. When customer service rules are based on this view, they are often punitive in nature and intended to punish those who are late for "bad behavior," and for placing excessive burden on timely paying customers and the utility system. The Wiley Center and NCLC assert that this is a flawed view, and we reiterate that rules regarding termination of essential service should be designed to protect vulnerable customers while supporting programs and policies that promote affordable payments for and retained access to basic utility service.

Utility payment troubles are better understood as a problem related to inadequate household income. While some may point to spotty, anecdotal evidence of individual customers skirting responsibility to pay their bills, there is solid, empirical evidence that many Rhode Island households simply lack sufficient income to pay for basic necessities. A 2012 report by The Economic Progress Institute found that, based on a bare bones, no frills household budget, "many Rhode Island households did not earn enough to make ends meet. ... Over 85% of Rhode Island single-parent families and 28% of two-parent families raising two or more children earn less than the income required to make ends meet. Over 40% of individuals earn less than the amount needed to meet basic needs." The report further found that "... it costs a single parent family \$49,272, and into parent family \$54,024, to raise a toddler and school-aged child. It costs an individual \$19,944 to meet his or her basic needs."<sup>4</sup> Utility payment difficulties viewed from this context lends support to a disconnection rules structure that is non-punitive, and instead promotes affordable payments and retained access.

#### V. RESPONSE TO SPECIFIC PROVISIONS OF PROPOSED RULES

As indicated above, the Wiley Center requests that the Commission extend the comment period in this proceeding so that commenters have the opportunity to view provide response to the complete package of rules and regulations pertaining to customer service,

<sup>4</sup> The Economic Progress Institute, "the 2012 Rhode Island Standard of Need, what it costs to live in Rhode Island and How Work Supports Help Families Meet Basic Needs, p. 2.

credit, collections and termination of service. However, NCLC submits on behalf of the Wiley Center the following initial comments with respect to specific provisions of the proposed rules. These comments should be viewed as supplemental to any others submitted by Wiley Center members or staff.

**A. Definition of "Seriously Ill"**

The proposed rule defines "seriously ill" as "an illness that is life-threatening or that will cause irreversible adverse consequences to human health or that has a significant potential to become life-threatening or to cause your reversible adverse consequences to human health."<sup>5</sup>

The Wiley Center and NCLC submit that the proposed definition's references to irreversible and life-threatening health consequences are unrealistic and overly restrictive. It should be left to the discretion of a medical professional to determine whether an individual's condition constitutes a serious illness. Loss of utility service can bring profound health consequences for a person with an illness that is neither your reversible nor life-threatening. Certification of serious illness by a qualified medical professional is sufficient to invoke serious illness protections in the rules.

**B. Definition of "Termination Notice"**

The proposed rule defines "Termination Notice" as "a written notice provided to the customer of record through the mail, or by electric means if previously agreed to by the customer record, no less than ten (10) days prior to the effective date of the proposed termination of service."<sup>6</sup>

The Wiley Center and NCLC assert that under no circumstances should clear notification of impending disconnection by mail be eliminated, even if the customer record submits to receipt of electronic notification. Secure notification of disconnection of service is an essential health and safety component of the termination rules. Delivery of such notification by mail is more reliable and far more secure than electronic notification. It should be noted that while delivery of mail is not contingent upon customers' financial circumstances, maintenance of internet or cell phone service is contingent upon such circumstances. It should be further noted that if a customer is having difficulty keeping current with the electric or natural gas bill, there is an increased likelihood that the same

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<sup>5</sup> Proposed Rule at 2.

<sup>6</sup> Proposed Rule at 2.

customer may be having difficulty staying connected to cell phone or Internet service. While it may be argued that voluntary agreement to electronic notification of disconnection at a particular point in time should be sufficient to waive access to notification by mail, the Wiley Center and NCLC note that an unforeseen change in a customer's financial circumstances may reinstate the need for secure notification by mail. A customer undergoing a change in financial circumstances may not be aware of or prioritize the need to reinstate notification by mail, and may therefore fail to receive clear, secure notification of impending loss of utility service. We therefore strongly urge that the proposed rule allow for voluntary acceptance of electronic notification of disconnection of service only as a supplement, but not as a replacement, of a clear requirement for notification by mail.

### C. Certification of Serious Illness

The Wiley Center and NCLC recommend that provisions in the proposed rule regarding certification of serious illness and of the presence of an infant in the household be stricken and replaced with the following language. Please note that this is language extracted from the Code of Massachusetts Regulations, and that they are already being complied with by national grid.

#### *Procedure for Certifying Protections.*

*A claim of protection from termination for reasons of serious illness or the presence of a child under two years of age 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, physician assistant, nurse practitioner or local board of health official. In response to a claim of protection, the Electric Utility or Gas Utility shall forward to the customer a financial hardship form in such a form as shall be approved by the Commission 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 Electric Utility or Gas Utility within seven days from the date of receipt. The Electric Utility or Gas Utility shall also, where applicable to the particular claim*

- (a) Inform the customer or party acting on behalf of the customer that a registered physician, physician assistant, nurse practitioner or local board of health must forward to the Electric Utility or Gas Utility 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, physician assistant, nurse practitioner, 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 Electric Utility or Gas Utility within seven days from the date of notice stating the name, birthdate and domicile of the child claimed to be under 24 months of age. Certification may be in the form of a birth certificate, or a letter or official documents issued by a registered physician, physician assistant, nurse practitioner, local board of health, hospital or government official, Department of Human Services, clergyman, or religious institution. The Electric Utility or Gas Utility, in turn, shall determine within seven days from the date all certifications were due back whether all claims have been appropriately certified. If the Electric Utility or Gas Utility determines that any claim has not been certified, the Electric Utility or Gas Utility shall so notify the customer. Notice to the customer shall include a statement of the customer's right to dispute the Electric Utility or Gas Utility's determination by contacting the Division 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 Division after investigation. An Electric Utility or Gas Utility which received fuel assistance payments in the prior winter season on behalf of a customer shall presume that customer meets the financial hardship guidelines 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 Electric Utility or Gas Utility may pursue normal collection activity with provisions of the Termination Rules. For all customers, the Electric Utility or Gas Utility 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 shall be considered presumptive evidence of financial hardship unless otherwise determined by the Division.

(4) *Renewal of Certification.* In all cases where service is continued or restored pursuant to a claim under this section, 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 this section 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 quarterly, except that where illness is certified as chronic, the serious illness certificate shall be renewed every six months. Certification of infancy shall remain in effect without renewal until the child reaches 24 months of age.

NCLC and the Wiley Center wish to again thank the Commission for this opportunity to comment.