



# CONSUMER CONCERNS

Information for Advocates  
Representing Older Adults

National Consumer Law Center®

## What to do when Utility Service is Disconnected?

Loss of utility service is a particularly serious problem for older Americans, who can face serious illness or death from extreme weather conditions. The most frequent reason utility service is disconnected is for nonpayment of the bill. However, because utility service is such a practical necessity of modern life, there are often limits and procedural requirements placed on the ability of a utility to disconnect a customer.

This issue of Consumer Concerns for Older Americans examines some measures that advocates for the elderly can take when a client is facing disconnection of utility service.

### Quick Checklist of Some Issues to Consider

- Determine whether the company is a regulated or unregulated utility. This determines what protections a consumer has.
- Check the disconnection procedures required by law. Written notice of the utility's intention to disconnect service and the customer's right to a hearing are generally required.
- Check to see if the state has a moratorium rule or law that prohibits disconnection of utility service for certain categories of protected customers. The elderly and those with serious illnesses are often protected against terminations during the winter months or otherwise extreme temperatures.
- Check to see if there are special payment programs that would make the utility bills affordable.

### Overview of the Types of Utilities

#### Utilities Regulated by Public Utility Commissions.

Most utilities are private companies, owned by their shareholders. These utilities are regulated by a state agency, often called the Public Utility Commission (PUC) or the Public Service Commission (PSC). While the utilities which a PUC regulates may be public or private entities, they all offer essential services to the public and

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are subject to some degree of governmental control. Typical privately owned public utilities are the local telephone, gas, and electric companies. Some regulated water companies are also privately owned.

Most commissions issue formal regulations governing utility service to residential customers. Copies of the regulations can be obtained directly from the public utility commission. Commissions also have informal procedures and policies, particularly concerning termination of service. Counselors who are helping households with utility problems should become familiar with both the formal rules and the informal process.

Many 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, including reduced rates, weatherization, or prohibitions against disconnection of service during the winter months, can be obtained from the public utility commission, as well as from the local utilities.

## Basic Rights: Minimum Protections Relating to

If the utility is regulated by the state's PUC, it must abide by the rules issued by the Commission. While Commission rules vary from state to state, for the most part the minimum protections relating to disconnections include the following:

- **Notice**

Prior to termination of service a consumer must be given notice: (a) that the service will be terminated by a particular date, (b) the reason for the proposed shut-off, (c) the various rights that the consumer has to prevent termination, (d) the right and procedures for appeal. Sometimes written notice must be given more than once. Customers of municipalities may have constitutional due process rights to notice and a hearing prior to the termination of utility service. Failure to comply with these notice requirements will generally make the termination wrongful.

- **Limit on When a Utility Can Turn Off Service**

State public utility regulations typically permit disconnection for non-payment, but often prohibit disconnections for small, insignificant amounts, or for balances that have been outstanding for less than a certain number of months. The state laws (both statutes and case law) or Commission rules should also prohibit disconnections when there is a dispute over the bill. Other common prohibitions against terminations apply after a certain time of day and before weekends or holidays.

- **Right to Appeal**

Before a termination, the customer should have a right to appeal to both the utility and to the state utility commission. In many states, informal appeals can be made by telephone before the termination, and often the utility service will be maintained or reconnected during the appeals process.

## • Right to Deferred Payment Plan

In some states, prior to termination, a consumer must be informed of the option to pay the 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.

## • Strategies for When a Client Fails to Meet the Terms of a Negotiated Payment Plan

Sometimes a consumer’s failure to make the payments in a negotiated payment plan is the cause of a threatened termination. Where this is the case, look at the reasonableness of the terms. If the consumer’s circumstances have not changed since the plan was created, but the consumer still could not make the payments, the plan may not have been reasonable in the first place. Check to see if the terms of the payment plan met the terms of the state regulations for such plans, if any.

### • Reasonableness of Plans

In setting the terms of an installment payment plan, many state regulations 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’s income. Have all the required factors been considered and were the terms of the plan reasonably based on all these factors? If there was a change in circumstances (job loss, illness) an advocate could argue that the plan needs to be revised (preferably before the breach).

### • Adhesion Contracts

The utilities will always say that the customer agreed to the payment plan in a contract, and thus cannot come back and say that the terms are unfair. However, there is often an absence of equal bargaining power when a customer deals with a utility. These types of agreements could fall into the category of “adhesion contracts” and courts may refuse to enforce them.

## • Special Protections and Moratoria on Terminations

Most cold-weather states have date-based termination moratoria during the winter months, but often there are limitations on who is protected (for example, the protection may only apply to the elderly or households with very young children) and conditions that must be met in order to be protected by the rule (for example, experiencing financial hardship or entering a payment agreement). A number of states have explicit temperature-based termination moratoria. Shut-off protections for those with serious illnesses are of varying durations and usually require a note from a medical professional.

## • Information About Sources of Payment Assistance

Consumers facing disconnection for nonpayment should seek out payment assistance programs. Community action agencies, utility companies and state utility commissions should be able to provide consumers with information about the existence of assistance programs for maintaining continuous electricity, gas, telecommunications, and water service. The LIHEAP Clearinghouse National Energy Assistance Referral (NEAR) project is a

free service for those who want information on where to apply for Low Income Home Energy Assistance, a federal energy assistance program. The toll free number for NEAR is 1-866-674-6327. Additionally, Lifeline Across America, [www.lifeline.gov](http://www.lifeline.gov), is an organization that includes the Federal Trade Communications Commission, National Association of State Utility Consumer Advocates and the National Association of Regulatory Utility Commissioners as members. It provides information about Link-up and Lifeline, which are discounts applied to telephone installation and monthly payments for low-income customers. Payment assistance information for water service, if such programs are available, can be provided from the PUC or directly the water utility.

## • Taking Legal Action at the PUC or in Court

There may be situations where the quickest way to prevent a disconnection is to have a lawyer seek an injunction from the PUC that will prevent the utility from shutting off the service. If the state utility commission is not being helpful in preventing a wrongful disconnection, an original complaint or appeal to the civil courts may be allowed. Where utility service has already been unlawfully disconnected, an attorney could file for a writ of mandamus to compel the restoration of service. It may also be possible to sue for damages resulting from the wrongful termination of utility service at the PUC and/or the civil courts. Advocates should also remember to keep the door open for negotiations with the utility throughout these formal legal processes. The utility may become more interested in settling the consumer's complaint, to the consumer's benefit, than incur the time and costs of litigation.

## • Special Issues for Tenants

If the landlord is using utility disconnections as part of an underlying dispute with the tenant, the tenant often has remedies against the landlord and possibly the utility. A landlord's termination of utility service acts like an eviction since the tenant must either choose to go without a basic necessity or move. Most of the states have specific laws that forbid a landlord from terminating utility service to tenants. Some state and local laws and utility commissions also require notice of a shut-off to be given to tenants where the service is in the landlord's name. In these situations, utility companies are also often required to provide an opportunity for tenants to take service in their own names.

## • How to Get Help with Terminations by Regulated Utilities

Individual customers can often obtain help with utility disputes directly from the staff of the state commission. There may even be a toll free number to call for consumer assistance. A call to the utility commission's consumer division that starts an investigation may suspend or prevent a disconnection altogether, depending on the results of the investigation. Filing a Formal Complaint that initiates a formal review of the complaint is another option that starts a process of review. Most states also have a utility consumers' advocate office that may also be helpful in negotiating with a regulated utility (a list of state utility consumer advocates is available at [www.nasuca.org](http://www.nasuca.org)). Your local legal services office and senior advocacy groups may also be able to help you with your utility problems.

- **Unregulated Utilities: Municipal Utilities and Rural Electric Cooperatives**

Consumers served by municipal utility providers and rural electric cooperatives are generally excluded from regulation by state public utility commissions, although some state commissions do have limited jurisdiction over municipal utilities. Municipal utilities are usually owned by the city or town and run by an elected board of commissioners. The utility's own board of directors or staff sets out policies concerning utility terminations, deposits, and the like. Rural Electric Cooperatives (RECs) are membership-controlled utilities, established under federal and state law.

- **How to Get Help with Terminations by Unregulated Utilities**

In the case of municipal utilities, consumers should contact the municipal's board members or staff to get copies of these policies or to get help enforcing them. Customers of municipal utilities may also have a due process right to notice and hearing prior to termination of utility service. Consumers belonging to a REC will have to look for protection largely from the REC itself, which will have its own policies specifying members' rights.

### **For More Information**

National Consumer Law Center, Guide to the Rights of Utility Consumers (September 30, 2006).

National Consumer Law Center, Guide to Surviving Debt, Chapter 15 Utility Terminations (2010)

National Consumer Law Center, Access to Utility Service, (4th Edition 2008 and Supplement 2010)



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