

**Massachusetts Advisory Committee to the United States Commission on Civil Rights**

**Water Briefing  
Tuesday, May 19, 2020**

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Good afternoon, Massachusetts Advisory Committee to the United States Commission on Civil Rights and members of the public. Thank you for holding this important and timely water briefing. The current COVID-19 pandemic has amplified the urgent need to ensure that all members of our society have access to safe and affordable water and waste water service.

Safe and affordable drinking water and waste water service (referred to as “water service” in my statement) are essential utility services. The human body needs water to survive, and clean water is necessary for cooking, cleaning and sanitation. Water service is also essential for a dwelling to be considered habitable. The United Nations General Assembly has recognized water as a human right.<sup>1</sup> One state, California, has passed legislation explicitly stating that: “It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”<sup>2</sup>

COVID-19 adds a heightened importance to ensuring access to safe and affordable water service. For individuals, households and communities, public health steps to prevent and slow the rate of disease transmission require water for handwashing and cleaning.<sup>3</sup> Until there is a vaccine or effective treatment for COVID-19, staying at home as much as possible will be critical to slowing the spread of the virus. Water service is required for a home to be habitable.

During the height of the pandemic, 14 states (including two New England states, New Hampshire and Maine), the District of Columbia and Puerto Rico issued protective water shut-off moratoria that covered all public water systems.<sup>4</sup> Unfortunately, the Massachusetts utility

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<sup>1</sup> Resolution A/RES/64/292, U.N. General Assembly (Jul. 2010).

<sup>2</sup> California Assembly Bill (AB) 685, Human Right to Water Act (2012).

<sup>3</sup> CDC Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself and Others* available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>4</sup> Larry Levine Governors: *Safe, Clean Water is Essential in COVID-19 Crisis*, NRDC (April 8, 2020) available at <https://www.nrdc.org/experts/larry-levine/governors-safe-clean-water-essential-covid-19-crisis>. (States with statewide water shut-off protections and DC and PR: Michigan, California, North Carolina, Ohio, Wisconsin, Maine, New Hampshire, Indiana, Kansas, Mississippi, Delaware, Washington, Maryland, Montana, District of Columbia and Puerto Rico).

shut-off moratorium only covered investor-owned utilities.<sup>5</sup> This covers only a very small number of suppliers in the Commonwealth.<sup>6</sup> Residential customers in Massachusetts served by municipal and other non-investor-owned water utilities must rely on a utility-by-utility approach for disconnection protections.

Consumers under the protection of a shut-off moratorium are still responsible for their water usage. One recent industry analysis estimates an annualized impact on drinking water utilities of \$5.4 billion due to COVID-19 shut-off moratoria (non-shut offs for non-payment) and revenue loss due to increased residential delinquencies (e.g., due to job loss).<sup>7</sup> As COVID-19 shut-off protections are lifted for water,<sup>8</sup> energy,<sup>9</sup> and telecommunication<sup>10</sup> services, consumers will face a sudden increase in payment obligations at the same time there is record unemployment and underemployment. This will be a period where consumers are particularly vulnerable to losing water service and will require extra protections and assistance to protect connection to essential utility services.

The COVID-19 public health and economic crisis has disproportionate racial impacts. Communities of color have been hardest hit. The Federal Reserve reports that that 39% of people who were working in February 2020 and had a household income below \$40,000 had lost their

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<sup>5</sup> *Baker-Polito Administration Temporarily Prohibits Utility Shutoffs to Protect Massachusetts Ratepayers* (Mar. 24, 2020). Available at <https://www.mass.gov/news/baker-polito-administration-temporarily-prohibits-utility-shutoffs-to-protect-massachusetts>.

<sup>6</sup> Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities* (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019) at 2 (noting that there are only 19 privatized water suppliers in Massachusetts). Available at <https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>.

<sup>7</sup> Raftelis, *The Financial Impact of the COVID-19 Crisis on U.S. Drinking Water Utilities, AWWA and AMWA* (April 14, 2020) at Executive Summary (Table shows annualized marginal cost of non-shut offs of \$.57 billion and annualized revenue loss due to increased delinquencies of \$4.92 billion). Available at [https://www.awwa.org/Portals/0/AWWA/Communications/AWWA-AMWA-COVID-Report\\_2020-04.pdf](https://www.awwa.org/Portals/0/AWWA/Communications/AWWA-AMWA-COVID-Report_2020-04.pdf).

<sup>8</sup> Alexandra Campbell-Ferrari and Luke Wilson, *The COVID-Water Disconnect: How Statewide Moratoriums Are Leaving People Behind*, The Center for Water Security and Cooperation, Blue Paper available at [https://drive.google.com/file/d/1A1Ba1b8-BQH6k-cmEOGMtJw9yJrQ\\_Ax-/view](https://drive.google.com/file/d/1A1Ba1b8-BQH6k-cmEOGMtJw9yJrQ_Ax-/view). See also, National Association of Regulatory Utility Commissioners (NARUC) State Response Tracker Available at <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

<sup>9</sup> National Association of Regulatory Utility Commissioners (NARUC) State Response Tracker Available at <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

<sup>10</sup> The list of communications companies that have taken a voluntary pledge to not disconnect customers available at <https://www.fcc.gov/keep-americans-connected>.

jobs and another 6% of all adults reported reduced hours or took unpaid leave.<sup>11</sup> There is also a greater risk to low-income workers of color from the economic fallout due to COVID-19. We have glimpses of the racial disparity with utility disconnection when we look at Massachusetts energy data. Pre-COVID-19, data on electricity shut-offs showed that for households at or below 150% of the federal poverty level, African American households in Massachusetts experienced disconnections over five times more than their Caucasian counterparts.<sup>12</sup> The Federal Reserve Bank of Philadelphia performed an analysis of workers most likely at risk of job loss from the pandemic. The analysis looked at which occupations were most at risk due to requiring close proximity to customers or co-workers and would be difficult to do from home. The analysis found that “at risk” workers “are between 7 and 12 percentage points more likely than lower-risk workers to be male, non-white or Latino, and to rent their homes.”<sup>13</sup>

Analysis of COVID-19 deaths by race and ethnicity find that nationally, the mortality rate for Black Americans is 2.6 times higher than the rate for Whites.<sup>14</sup> These disparities are apparent in Boston, where, of the total COVID-19 cases with known race or ethnicity, 40.3% of the individuals are Black or African American, 14.2% are Hispanic or Latino and 28.4% are White.<sup>15</sup> The Mayor of Boston has established a Health Inequities Task Force to provide guidance on data analysis, testing sites and health care services.<sup>16</sup> Access to safe and affordable water during the COVID-19 crisis and the economic recovery will require deliberate consideration of the racial equity.

### **Tools for Water Equity**

Traditional utility credit and collections tools are blunt and harsh, particularly where there are not an array of consumer protections and programs to address affordability. These utility credit and collection tools include disconnection of water service for non-payment, which deprives a

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<sup>11</sup> Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020* (May 2020) at p.53. Available at <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

<sup>12</sup> Analysis of John Howat, senior policy analyst, National Consumer Law Center, based on 2009 Energy Information Administration’s Residential Energy Consumption Survey for Massachusetts (26.2% of African American households were disconnected from electricity service due to an inability to pay compared to 4.6% of White households).

<sup>13</sup> Keith Wardrip and Anna Tranfaglia, *COVID-19: Which Workers Will be Most Impacted?*, Federal Reserve Bank of Philadelphia (April 2020) at 3. Available at <https://philadelphiafed.org/-/media/covid/covid-19-impacted-workers.pdf?la=en>.

<sup>14</sup> APM Research Lab Staff, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Research Lab (May 12, 2020) Available at <https://www.apmresearchlab.org/covid/deaths-by-race>.

<sup>15</sup> City of Boston, *COVID-19 Health Inequities Task Force Created* (May 17, 2020). Available at <https://www.boston.gov/news/covid-19-health-inequities-task-force-created>.

<sup>16</sup> *Id.*

household of water service, liens which jeopardize a household's property interest, imposition of charges, fees and interest which only make an unaffordable water debt even more unaffordable, and negative credit reporting which increases the cost of credit for a struggling household.

Water utilities should make a distinction between those households that cannot afford to pay their water bills without sacrificing other necessities of life and those households that can afford to pay, but chose not to pay. This next section is a description of tools and strategies for the former, while the traditional collection tools described above are appropriate for the latter.

Disconnection moratoria: Unlike the 14 states along with the District of Columbia and Puerto Rico noted *supra*, Massachusetts does not have clear and uniform water shut-off protections in place during the COVID-19 emergency. Shut-off moratoria serve several functions. For the household, it ensures water service, even if the household is no longer able to pay their water bills. For the water utility and the community it serves, the shut-off moratorium provides time to prepare for how to build a safe off-ramp or grace period once the moratorium is lifted so that household can still stay connected to service. Without this planning, there is the risk of a great number of households losing water service in the same period of time due to an inability to pay the current bill and any accumulated arrearages.

Safe reconnections: Because water service is essential for households to protect themselves from COVID-19 and to shelter-at-home safely, any households that have been disconnected must be safely reconnected. Water reconnections, particularly after prolonged shut-off, can increase the risk of contaminants and must be done properly.<sup>17</sup>

Special Protections for Vulnerable Populations: Water is essential for life and a habitable home and is a basic human need for all households. That said, there are special termination protections for customers of regulated water service in Massachusetts that should be applied for all water service customers. Regulated utilities are prohibited from disconnecting customers experiencing financial hardship under certain circumstances:

- Someone in the home is seriously ill; or
- There is a child under 12 months living in the home; or
- Between November 15<sup>th</sup> and March 15<sup>th</sup> (and this is often extended a few weeks); or
- All the adults in the home are 65 or older and a minor also resides in the home.<sup>18</sup>

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<sup>17</sup> See e.g., Michigan Department of the Environment, Great Lakes, and Energy, *Flushing Your House Plumbing System When Water Services are Restored*. Available at [https://www.michigan.gov/documents/egle/egle-tou-dweh-WaterReconnectionActions\\_683801\\_7.pdf](https://www.michigan.gov/documents/egle/egle-tou-dweh-WaterReconnectionActions_683801_7.pdf).

<sup>18</sup> 220 Code Mass Reg §25.03.

Water Affordability Programs: Water utilities lag behind their energy industry counterparts when it comes to design and implementation of affordability programs. Below is a sample of low-income water assistance programs from around the country and energy affordability program designs:

*Percentage of Income Payment Plans:* The Percentage of Income Payment Plan (PIPP) is a rate design that is based on a percentage of a household's income deemed to be affordable. For example, if a household's income is \$12,000 annually and the affordable percentage of income is determined to be 5%, then the household would be required to pay \$600/year (or \$50/month).<sup>19</sup>

*Tiered Rates Tied to Income:* In 2017, the Philadelphia Water Department established a Tiered Assistance Program (TAP) to help low-income consumers (150% of the federal poverty level (FPL)) afford their water bills. The tiered rates are based on the household's FPL starting with bills capped at 2% of income for households at 0 - 50% FPL; 2.5% of income for households at 51% - 100% FPL; 3% of income for household at 101% - 150% of FPL, and 4% of income for households with special hardships above 150% of poverty.<sup>20</sup> Baltimore recently passed a law to establish a similar water affordability program, called "Water for All." Water bills for low-income customers with incomes at 0 - 50% of the FPL would be capped at 1% of income; customers with incomes at 51% - 100% of FPL would have their water bills capped at 2% of income and customers between 101% - 150% FPL would have their bills capped at 3% of income.<sup>21</sup> Baltimore's program has not yet been implemented and advocates await the publication of the regulations for the assistance program.<sup>22</sup>

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<sup>19</sup> Example of energy PIPPs include the Illinois PIPP for low-income energy customers eligible for the Low Income Home Energy Assistance Program (See <https://www2.illinois.gov/dceo/communityservices/utilitybillassistance/pages/default.aspx>) and the Ohio PIPP for energy services (See [https://development.ohio.gov/is/is\\_pipp.htm](https://development.ohio.gov/is/is_pipp.htm)).

<sup>20</sup> See *Managing Public Water Infrastructure With Resource Constraints, Water Affordability Based on Income: The Tiered Assistance Program in Philadelphia*. Available at [http://graham.umich.edu/media/pubs/Water-CS-Philidelphia-Tiered-Assistant-Program\\_0.pdf](http://graham.umich.edu/media/pubs/Water-CS-Philidelphia-Tiered-Assistant-Program_0.pdf).

<sup>21</sup> Brett Walton, Circle of Blue Water News, *Baltimore Council Approves Income-Based Water Bills* (Nov. 21, 2019) available at <https://www.circleofblue.org/2019/world/baltimore-council-approves-income-based-water-bills/>; Food & Water Watch, *Baltimore Committee to Hold Online Hearing on Water Accountability & Equity Act Implementation* (Apr. 29, 2020) available at <https://www.foodandwaterwatch.org/news/baltimore-committee-to-hold-online-hearing-water-accountability-equity-act-implementation>.

<sup>22</sup> Food & Water Watch, *Baltimore DPW Asks to Extend Implementation Deadline on Water Affordability Legislation Despite Greater Need* (Apr. 30, 2020) available at <https://www.foodandwaterwatch.org/print/news/baltimore-DPW-extends-implementation-of-water-affordability-bill>.

*Discounts Off of a Full Bill or a Portion of the Bill:* Another means of lowering the amount of the water bill due is to provide a low-income discount off of the whole bill, or portion of the bill. San Jose Water Company offers a 15% discount off the total bill for low-income customers through its Water Rate Assistance Program (WRAP).<sup>23</sup> San Jose Water Company customers who are enrolled in the electric or natural gas low-income utility discount California Alternate Rate for Energy (CARE) program are automatically enrolled in San Jose's WRAP program. The Washington Suburban Sanitary Commission (WSSC) has a Customer Assistance Program (CAP) that provides a credit for fixed water and sewer fees of up to \$28/quarter for low-income customers enrolled in Maryland's low-income Office of Home Energy Programs.<sup>24</sup>

*Charitable Funds:* Like Energy Fuel Assistance Funds, some water companies make it possible for other customers and the company to contribute to a charitable fund to help payment-troubled customers. One example of an emergency water fund is Missouri American H2O Help to Others, which is an emergency assistance program that is run by community action agencies.<sup>25</sup> Charitable funds, while helpful and potentially more flexible than traditional bill payment assistance programs, are often small in size and do not have a steady funding stream.

*Arrearage Management Programs/Arrearage Forgiveness:* Low-income households and households that have experienced a sudden drop in income and/or increase in expenses can fall behind on their regular bills. Massachusetts has an innovative approach to help customers who have fallen behind achieve a fresh start through Arrearage Management Programs (AMPs).<sup>26</sup> Since 2008, all regulated Massachusetts electric and gas utilities offer AMPs. With an AMP, customers can earn forgiveness of 1/12 of their arrearage with each on-time monthly payment. Thus, in a period of a year, it is possible for a household to have all of its arrears forgiven. Water AMPs should be given particular consideration as the economy recovers from COVID-19 and households who had lost work or wages are once again earning a steady income.

*Low-income Conservation/Leak Detection and Repair:* Subsidized water conservation measures such as low-flow aerators and appliances such as water efficient toilets can help lower water bills for struggling households. Traditional rebate programs are cost-

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<sup>23</sup> See <https://www.sjwater.com/customer-care/help-information/water-rate-assistance-program>.

<sup>24</sup> See <https://www.wsscwater.com/assistance#cap>.

<sup>25</sup> See <https://amwater.com/moaw/customer-service-billing/payment-assistance-program>.

<sup>26</sup> For an in depth explanation of the Massachusetts AMPs, see Charlie Harak, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)*, National Consumer Law Center (Sep. 2013) available at [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/amp\\_report\\_final\\_sept13.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf).

prohibitive for low-income households without the discretionary income to pay for the upfront costs. Seattle Public Utilities offers low-income customers free water-saving toilets.<sup>27</sup> Leaks can also be a costly problem for low-income households because the cost of a plumber and possible new parts for fixtures is cost-prohibitive. Programs that target high-volume users that are low-income for leak detection and repair services can help make bills more affordable. The City of Sacramento Department of Utilities has a “Leak Free Sacramento” program for low-income customers and provides leak repairs and water efficient fixtures for eligible customers.<sup>28</sup>

### Water Consumer Protections

Water service rules, procedures and practices can pose barriers for payment-troubled customers. In order to lower these barriers to water service, utilities should consider:

- Not requiring deposits to start service or restart service<sup>29</sup>
- Not imposing late fees, particularly during the COVID-19 crisis and economic recovery
- Providing reasonable payment plan terms with customers that do not require down payments and provide for an extended payment period (e.g., 12 months)
- Providing clear materials to customers about their rights to utility service and obligations
- Providing a fair dispute resolution process
- Providing clear notice requirements before termination of water service
- Allowing customers to pay field agents to stop a disconnection and authorizing and requiring field agents to stop a termination if there is danger to the health and safety of the households (e.g., resident is seriously ill)

*Tenant protections:* Water affordability programs, in general, are targeted to customers of record. Without any additional action, this leaves out tenants in master-metered properties<sup>30</sup> from being able to participate in water affordability programs. This is an added racial equity issue for tenants in Massachusetts because the state has one of the highest racial homeownership gaps in the

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<sup>27</sup> See <http://www.seattle.gov/utilities/services/water/reduce-water-use/low-income-toilet-offer>.

<sup>28</sup> See <https://www.cityofsacramento.org/Utilities/Water/Conservation/Residents/Residential-Water-Wise-Services/Leak-Free-Sacramento>.

<sup>29</sup> Regulated gas and electric utilities in Massachusetts are prohibited from requiring a security deposit for new or continued service. See 220 Code Mass Reg §27.00.

<sup>30</sup> Submetering in Massachusetts was prohibited until 2005, so tenants with their own meters would likely be tenants in newer units. See Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities* (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019) at 5. Available at <https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>.

country with white ownership in some communities at 68% compared to black homeownership in those same communities at 32%; statewide, for Hispanic residents the rate of homeownership is 26%.<sup>31</sup> Tenants are highly vulnerable to the high cost of water as it affects their rent. In addition, landlords are the ones who have control over whether fixtures are water efficient and when leaks are repaired. One city, Baltimore, switched from disconnecting multi-family properties over unpaid water bills and instead sues the landlord for nonpayment and continues the water service.<sup>32</sup> California is exploring a renter's water credit that would be delivered to the renter through the state income tax system.<sup>33</sup>

Data Collection: Assessing the effectiveness of water affordability programs and protections requires regular data collection and reporting. The lack of data collection and reporting on key metrics will also serve to hide the problem. Below are suggested data points that would provide the ability to track a utility's success in keeping vulnerable customers connected to essential water service and would also allow for comparisons across water utilities:

#### Data Points for Water Data Collection and Reports

1. Monthly collection (reporting could be quarterly, bi-annual or yearly)
2. Number of residential customers
  - 2.1 Same for low-income customers (payment assistance customers)
  - 2.2 Same for multifamily dwellings
3. Residential Arrearages (number, vintage (e.g., 90-day) and dollar amount)
  - 3.1 Same for low-income customers (payment assistance customers)
  - 3.2 Same for multifamily dwellings
4. Number of Residential Disconnection Notices
  - 4.1 Same for low-income customers (payment assistance customers)
  - 4.2 Same for multifamily dwellings
5. Number of Residential Disconnections
  - 5.1 Same for low-income customers (payment assistance customers)
  - 5.2 Same for multifamily dwellings
6. Number of Residential Reconnections
  - 6.1 Same for low-income customers (payment assistance customers)
  - 6.2 Same for multifamily dwellings

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<sup>31</sup> *Id* at 3.

<sup>32</sup> Joan Jacobson, *Keeping the Water On: Strategies for addressing high increases in water and sewer rates for Baltimore's most vulnerable customers*, The Abell Foundation (Nov. 2016) at pp. 10-11. Available at <https://www.abell.org/publications/keeping-water>.

<sup>33</sup> *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program* (Feb 2020) at Chapter 3. Available at [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/ab401\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf).

7. Number of customers disconnected more than 1 time in a year
  - 7.1 Same for low-income customers (payment assistance customers)
  - 7.2 Same for multifamily dwellings
8. Number of payment plans
  - 8.1 Same for low-income customers (payment assistance customers)
9. Average dollar amount of payment plans and timeframe
  - 9.1 Same for low-income customers (payment assistance customers)
10. Number of successful payment plans (and total collected)
  - 10.1 Same for low-income customers (payment assistance customers)
11. Number of liens
  - 11.1 Same for low-income customers (payment assistance customers)
  - 11.2 Same for multifamily dwellings

Conclusion: Program design and consumer protection rules can help keep vulnerable households connected to water service. In addition to utility and statewide tools, the creation of a federal low-income water assistance program similar to the Low Income Home Energy Assistance Program would help low-income consumers afford their water service.