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RE: Department's Request for Comments Regarding Best Practices During the Resumption of Shutoff Activities (March 31, 2020)

Dear Acting Director Truschelli:

Thank you for providing the opportunity to comment in response to the Department's March 31, 2020 letter RE: Request for Comments Regarding Best Practices During the Resumption of Shutoff Activities to Executive Order No. 591 (March 10, 2020). The National Consumer Law Center ("NCLC") submits these comments on behalf of our low-income clients, the Massachusetts Union of Public Housing Tenants ("MUPHT")¹ and the Massachusetts Energy Directors' Association ("MEDA"),² referred to hereinafter as MUPHT/MEDA. Our comments pertain only to residential utility customers, not commercial and industrial customers.

The Department has broad authority to take actions under the Governor's state of emergency declaration, Executive Order No. 591. Pursuant to statute, the Chairman can exercise emergency powers including the following:

Upon declaration by the governor that a state of emergency exists, the governor may authorize the chairman of the department of public utilities to **take such action that the chairman may consider necessary to assure public safety and welfare through the priority restoration or continuing availability of gas, electric and water utility services.** Under such authority, **the chairman may issue operational and management**

¹ MUPHT is a membership organization that represents the interests of the tens of thousands of families that reside in publicly-owned as well as privately-owned but publicly-subsidized housing (collectively, "public housing") in Massachusetts.

² MEDA is the organization of the directors of offices throughout the Commonwealth that administer fuel assistance benefits to eligible low-income households.

directives and order expenditures or other measures by any investor-owned utility that the chairman considers necessary to respond to the state of emergency . . .

G.L. c. 25, sec. 4B (emphasis supplied).

The Department acted promptly, on March 13, 2020, to issue a letter to the Commonwealth's investor-owned electric and gas utility companies, directing those companies to refrain from terminating residential customers or issuing second requests for payment during the state of emergency or until further notice from the Department. On March 24, 2020, the Department issued a letter to all investor-owned electric, gas and water utility companies ("companies"), captioned "RE: Chairman's First Set of Orders under G.L. c. 25, § 4B," directing the companies to refrain from terminating service to customers and to refrain from sending communications that threaten termination for nonpayment of all or part of a utility bill until the state of emergency ends or until the companies receive further communications from the Department, whichever comes first.

At this time, we are grateful that the Department proactively seeks input as it shapes policies to address the needs of utility customers after the moratorium on terminations ends. Given the severe financial impacts of the current state of emergency, it is wise to anticipate that unprecedented numbers of residential customers will be unable to remain current on utility bills and other essential household expenses such as rent, mortgage payments, internet service (a current necessity for anyone who must work or attend school from home), child care, and other expenses, while also paying for daily necessities such as food and transportation.

Early indications paint a grim financial picture. In Massachusetts, 181,062 applicants filed for unemployment insurance benefits during the week that ended on March 28, 2020, and 148,452 filed during the previous week.³ Unemployment compensation filings during the crisis have been approximately twenty times higher than last year's filings.⁴ Countless more workers and independent contractors do not qualify for unemployment benefits but have similarly lost their sources of income. Rates of applications for benefits administered by the Massachusetts Department of Transitional Assistance, including Transitional Assistance for Families with Dependent Children (TAFDC), Supplemental Nutrition Assistance Program (SNAP, formerly referred to as Food Stamps), and Emergency Aid to the Elderly, Disabled and Children (EAEDC), have approximately tripled.⁵ Extremely high levels of financial need are anticipated after the state of emergency ends. An official from the U.S. Federal Reserve Bank predicted the U.S. unemployment rate may hit 30% in the second quarter because of shutdowns to combat the novel coronavirus, with an unprecedented 50% drop in gross domestic product.⁶

³ U.S. Dept. of Labor, News Release: Unemployment Insurance Weekly Claims (April 2, 2020), at <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/2020051.pdf>.

⁴ WGBH News, New Unemployment Claims Set Second Straight Weekly Record In Mass., (April 2, 2020), at <https://www.wgbh.org/news/local-news/2020/04/02/unemployment-claims-in-massachusetts-make-dramatic-jump-again>.

⁵ WGBH News, Mass. Residents Turning to Public Assistance Programs (April 8, 2020), at <https://www.wgbh.org/news/local-news/2020/04/08/mass-residents-turning-to-public-assistance-programs>.

⁶ Steve Matthews, Bloomberg News, "U.S. Jobless Rate May Soar to 30%, Fed's Bullard Says" (March 22, 2020).

Even before the crisis, more than 200,000 low-income households qualified for discounted utility rates, an estimate that captures some but not all eligible households.

While there is widespread understanding that the current crisis poses extreme risks to public health and financial well-being, new information is emerging which indicates that Black and Latino communities, and low-income households, are suffering even more than their neighbors. In Massachusetts, there are early indications that Black and Latino residents of low-income communities in the Boston area, and particularly low-income households that speak Spanish as a primary language, are becoming sick and being hospitalized at higher rates.⁷ Our state is not an anomaly. Louisiana has reported that more than 70 percent of the state's COVID-19 deaths are of Black residents, but only about one-third of Louisiana residents are Black.⁸ In Michigan, Black residents represent 33 percent of COVID-19 deaths, but only 14 percent of the state's population.⁹ The state of Illinois found disproportionately high rates of infection and death among the state's Black residents, and 70% of deaths in Chicago are of Black residents.¹⁰ As noted by an official at Massachusetts General Hospital, these disparities reflect the economic conditions of these communities.¹¹

In light of the serious economic consequences that have already occurred, and those to come, we offer these comments in response to the topics identified by the Department. We urge the Department to continue to work with stakeholders and offer further opportunities for input as the crisis progresses and as the state of emergency is lifted. As noted above, these comments address residential customers.

1. Whether categories of customers should be treated differently (e.g., customers who suffered hardship because of COVID-19 or the state of emergency, residential customers v. C&I customers, customers notified prior to the Order of a potential shut off for non-payment)

a) Categories of customers

Among residential customers, there will be customers who were identified as low-income prior to the crisis, customers who were not previously low-income but now suffer financial hardships as a result of the crisis, and customers who have not suffered financial hardships. We recommend that the Department take the following approach to identifying the needs of these customers:

Identified Low-Income:

Customers who were identified as low-income prior to the crisis must be of the highest priority during and after the crisis. These customers should continue to be eligible for bill

⁷ Boston Globe, "Coronavirus may be hitting harder in Black and Latino communities" (April 8, 2020).

⁸ Louisiana Dept. of Health, Coronavirus (COVID-19), at <http://ldh.la.gov/Coronavirus/> (last viewed April 8, 2020).

⁹ Coronavirus: Michigan Data (April 7, 2020), https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173-__,00.html.

¹⁰ IL Dept. of Public Health, COVID-19 Statistics, at <https://www.dph.illinois.gov/covid19/covid19-statistics>; WBEZ.org, *In Chicago, 70% of COVID-19 Deaths Are Black* (April 5, 2020), at <https://www.wbez.org/stories/in-chicago-70-of-covid-19-deaths-are-black/dd3f295f-445e-4e38-b37f-a1503782b507>.

¹¹ Boston Globe, "Coronavirus may be hitting harder in Black and Latino communities" (April 8, 2020).

payment assistance programs, the discount rate and Arrearage Management Programs (AMPs). These customers should also retain their eligibility for special protections for termination based on financial hardship in conjunction with serious illness, presence of an infant in the household, households in which all adults are 65 or older, and the winter moratorium protection, pursuant to 220 CMR 25.02. The Department should direct utilities to waive any requirements for these customers to submit new eligibility documentation for at least six months after the end of the Massachusetts state of emergency.

Recently Low-Income:

Customers who recently experienced a significant loss of income due to the financial impacts of the crisis, including newly unemployed, will also be a high priority and will need increased flexibility to maintain access to utility services. These customers should be allowed to self-identify or self-certify as low-income customers for the duration of the state of emergency and for at least 6 months after the state of emergency ends. This flexibility should be allowed for both pragmatic and public health reasons. As a practical matter, proving eligibility for means-tested public assistance programs will be extremely difficult during this time. Offices where low-income customers would typically apply for LIHEAP benefits are currently closed to the public. Department of Transitional Assistance (DTA) offices are operating with reduced staff and are closed to walk-ins.

This crisis has triggered unexpected expenses and losses of income for low-income families across the Commonwealth that may not be readily provable by paystub or benefit application. Customers, for example, may have needed to purchase internet service for in-home schooling, or leave a job due to family illness, the removal of elderly family members from a nursing home impacted by COVID-19 outbreaks or new child care responsibilities prompted by the closing of daycare centers. Self-certification should qualify these households for special low-income assistance and protections.

Further, under current public health directives, individuals are encouraged to remain at home as much as possible. The Department should direct utilities to allow for self-certification to avoid driving needy families to go out to obtain documentation or attempt to apply for services in person.

It is likely that many of the recently low-income households will eventually be identified as recipients of public assistance benefits, and the companies will obtain matching information about these households so that the low-income households can be moved to the discount utility rates offered by the companies. The data sharing and matching process between utility companies and the DTA occurs on a quarterly basis, so many of these customers may have to wait for up to three months to be automatically qualified to the discount rate. This number of newly-eligible low-income ratepayers will be significant, as applications for benefits administered by the DTA have recently tripled previous filings.¹²

After the crisis, the newly low-income customers who have not been identified through DTA match should be given an extended period of time to prove financial eligibility for bill payment

¹² WGBH News, Mass. Residents Turning to Public Assistance Programs (April 8, 2020), at <https://www.wgbh.org/news/local-news/2020/04/08/mass-residents-turning-to-public-assistance-programs>.

assistance and termination protections, since there will likely be administrative hurdles as public assistance offices reopen with a huge number of applicants and possibly a loss of experienced staff members due to the virus. In light of the practical challenges and public health implications, self-certification should be encouraged at this time and for 6 months following the crisis.

Other Residential Customers:

Even for customers who emerge from the current crisis with relatively little financial harm, there could be instances where these customers need additional flexibility. However, the existing billing and termination protections at 220 CMR 25.00 *et seq.* should be sufficient to protect these consumers. At this time, we do not have concerns about utilities continuing to collect from these customers after the crisis under existing billing and collection rules. We do, however, urge the Department to direct utilities that after the moratorium ends, the companies are to restart the notice process set forth in 220 CMR 25.02 by issuing another initial bill for all residential customers who had been issued termination notices prior to the state of emergency.

b) Considerations for treatment and needs of different categories of customers

Identified low-income and recently low-income customers are likely to need additional flexibility and support in order to maintain access to crucial utility service. We recommend additional protection for the identified low-income and newly low-income customers, e.g.,

- More flexible payment plans, and more flexible AMP programs, with extensive outreach and enrollment assistance. These recommendations will be discussed in the answers to questions 2 and 5, below.
- Implement protections for low-income customers who sign up with competitive supply companies, to keep their rates at or below discounted basic service rate. As the Department is aware, the Attorney General has documented that low-income customers pay more for competitive supply than other residential customers, and have a higher rate of enrolling. While the concerns about disparate financial impacts on low-income customers are not new, the combination of supply rates that exceed basic service prices and the current crisis are likely to exacerbate the risk of disconnections after the moratorium ends, and will deplete assistance funds more quickly. We urge the Department to respond to the request of the Attorney General and open a proceeding to investigate the harm to low-income customers, and to act swiftly to protect these customers and to shield all ratepayers from the financial consequences.¹³

2. Questions 2 and 5:

- **The procedures to notify a customer of a potential shutoff after shutoff activities are allowed to resume**

¹³ See, Request of the Office of Attorney General, Office of Ratepayer Advocacy for Investigation into the Effect of the Individual Residential Supply Market on Low Income Ratepayer Assistance Programs, Pursuant to G.L. c. 164, §§ 1F, 76C, 124A, 124E, 124F, 124H; and St. 2005, c. 140, § 17 (Dec. 17, 2019).

- **Communications to ensure that customers know they are responsible to pay for the utility services they use while shutoffs are prohibited**

MUPHT/MEDA, below, provide a combined answer to question #2 and question #5, as both raise important public policy challenges regarding how a responsible utility communicates with its customers in an environment where unprecedented numbers of people have lost their jobs.¹⁴ Hundreds of thousands of families will be newly experiencing extreme financial distress, yet many of those will have never had to apply for government assistance or asked for help from their utilities previously. When they start applying for government assistance or other help, they will confront offices that are physically closed, phone lines that are jammed for hours, and web sites that are overwhelmed with traffic¹⁵.

Regarding question #2, MUPHT/MEDA recommend two procedures and messaging protocols for the post moratorium period.

The Department should require utilities to follow all of the procedural steps regarding the shut-off process provided at 220 CMR 25.02(3). Companies should be required to send an initial, post-moratorium bill (even if initial bills have been previously rendered); the “second request for payment” no earlier than 27 days after that initial, post-moratorium bill has been sent; and the final notice of termination no earlier than 45 days after receipt of the initial, post-moratorium bill. We recommend that companies must start the three-step bill/second request/final notice process post-moratorium because so many customers will not have been paying attention to their overdue utility bills during the emergency period, especially because companies have suspended “communications that threaten to shut off gas, electric, or water service” during the present emergency period.¹⁶

Second, to the extent our recommendation is adopted, both the regulated companies and their customers would benefit from clear communications regarding the policies that will be in place during the moratorium and when it ends. We therefore fully support all reasonable efforts to notify customers that any termination processes will not begin until after the moratorium, and will start with the sending of an initial bill within the meaning of 220 C.M.R. 25.02(3). Companies should also provide messaging that the moratorium does not mean a customer is not obliged eventually to pay those bills. We believe all affected parties -- including the companies,

¹⁴ In a story reported by WGBH News, the number of new unemployment claims skyrocketed to 148,452 for the week ending March 21, 2020, a twenty fold increase over the week ending March 14. Moreover, the number of new claims jumped another 22% for the week ending March 28, to 181,062 claims. “New Unemployment Claims Set Second Straight Weekly Record In Mass.”, WGBH News (Apr. 2, 2020).

¹⁵ Unemployment agency websites around the country have been crashing under the weight of new applicants seeking help. “Unemployment websites from Oregon to NY are crashing under the weight of the coronavirus crisis,” Fast Company (Mar. 18, 2020), available at: <https://www.fastcompany.com/90478927/unemployment-websites-from-oregon-to-ny-are-crashing-under-the-weight-of-the-coronavirus-crisis>.

¹⁶ Pursuant to the Chairman’s First Set of Orders under G.L. c. 25, § 4B, issued on March 24, 2020, the Department has stated: “Until the state of emergency in the Commonwealth of Massachusetts related to COVID-19 is lifted or you receive further communication from the Department, whichever comes first, the Companies shall not send communications that threaten to shut off gas, electric, or water service to any of their customers for failure to pay a bill or any portion of a bill the Companies issued to a customer” and has further provided that “Companies shall not send communications that threaten to shut off” utility services for non-payment, during that same period.

customers, the Attorney General, and the Department -- would benefit from consistent messaging. We therefore recommend that the Department facilitate a working group, with a very short timeline, to work out acceptable language. We are optimistic that consensus could be reached as it is hard to imagine that any party will object to accurate and consistent language being developed regarding the ongoing obligation to pay, the import and terms of the moratorium, and the billing and collection processes that will ensue when the moratorium ends. Once language is agreed upon, the companies should use all of the means available to them to disseminate the message: bill stuffers and/or bill messages, web sites, social media, emails, etc.

We also suggest that, beyond the issues raised by questions 2 and 5, the Department, companies and interested parties should radically rethink what good messaging means in a time of global pandemic. As noted above, there are already many thousands of households that have seen their work evaporate and who will be looking for assistance with health care needs, housing, and income support to ameliorate their difficult circumstances. Because many of those households will never before have been so seriously stressed financially nor faced with such serious health risks, navigating the bewildering array of government agencies, charitable organizations and utility programs that may assist them will be overwhelming. We are also deeply concerned that a disproportionate percentage of those losing work in the hard-hit service, hospitality, food preparation, retail, home health care, and child care sectors are very low-wage workers and people of color.¹⁷ We are equally concerned that the direct, life-threatening impacts of the novel coronavirus itself are disproportionately impacting African-Americans.¹⁸

These facts call for new approaches to messaging, including through unions that organize at least some of these workplaces; major employers in those work sectors; and partnerships with community based organizations that are able to get the word out in communities of color and in low-income, working class communities. More than ever, utilities need to make their messages in the languages most spoken in their service territories. Spanish language communications may be of particular importance at this time.¹⁹

Those new messages should cover all of the available programs that can help with payment of utility bills: LIHEAP/fuel assistance, discount rates, arrearage management programs (AMPs), payment plans, protections for the serious ill²⁰, elderly and those with infants, and energy efficiency services. We particularly encourage companies to expand their outreach regarding the AMPs as these could prove especially helpful for those who have lost their jobs but

¹⁷ A brand-new report published by Prosperity Now estimates that there are more than 25 million people in America employed in these traditionally low-wage jobs and that many of them are immigrants who will not be eligible for much of the relief in the recently-passed CARES Act. "The Unequal Impact of the COVID-19 Crisis on Households' Financial Stability: Who Is More Likely To Be Immediately Hurt And Why" (April 2020), available at: https://prosperitynow.org/sites/default/files/PDFs/Scorecard%202020/Unequal_Impact_of_COVID-19.pdf

¹⁸ The racially-disparate impact of COVID-19 has already been documented in several cities and states. "Black Americans Bear the Brunt As Deaths Climb," N.Y. Times (Apr. 7, 2020), p. 1. While Massachusetts as yet is not tracking COVID illnesses and deaths by race, there is strong evidence -- and every reason -- to conclude the same is true in the greater Boston area. "Coronavirus may be hitting harder in Black and Latino communities," Boston Globe (Apr. 8, 2020).

¹⁹ See, Boston Globe, "Coronavirus may be hitting harder in Black and Latino communities" (April 8, 2020).

²⁰ It is essential to have strong messaging regarding the serious illness protection as there may be tens of thousands of households where someone will be ill with COVID-19.

who may be able to return to work within the next several months. These customers will likely be in debt on a range of bills, and AMPs will provide an incentive and reward for customers to start paying utility bills regularly. This of course also benefits company collection efforts, and all other ratepayers.

Because there will be so much messaging that is new, and so many customers who only recently saw their financial circumstances worsen, we strongly urge the Department to require companies to change the message customers hear when they call up and reach the Interactive Voice Response (“IVR”) system. At the present time, we recommend that the initial message should convey the following information, in English and in Spanish:

“We understand that so many of our customers are dealing with the effects that the coronavirus is having on their health and well-being. We want you to know we are here to help, including through offering more flexible payment plans and suspension of collection activities for at least the next several weeks. We also continue to offer discount rates to customers who qualify based on income, and other programs that will help you keep up with your bills. After this message, please feel free to speak to one of our customer service representatives about the help that is available.”²¹

Lastly, we recommend that the Department work with other relevant state agencies to help disseminate messaging beyond the traditional routes that the utilities employ. NCLC has had preliminary conversations which lead it to believe that the Department of Unemployment Assistance (“DUA”) might put relevant information about assistance for struggling customers on its webpage, if the Department were directly involved in discussions with DUA. This could prove an immensely productive messaging channel since the hundreds of thousands of recently unemployed individuals are most likely to turn first to DUA for help. We also encourage the Department to work with the Attorney General’s office to reach out to DUA as well as the DTA to explore other ways these companion agencies can help get out the word regarding not only the programs and policies that help with payment of electric and gas bills, but also about the telephone Lifeline program. It is particularly important in this period when all Massachusetts households are encouraged to stay at home as much as possible²² that households have voice and broadband service, which have become even more essential for children to do remote schoolwork and for families to order medications, speak to doctors, keep up with the latest government advisories, apply for unemployment assistance, and make it through this crisis period.

3. A potential suspension of late payment fees

Although we are not aware of late fees charged to residential utility customers, such fees should be waived from the start of the state of emergency on March 10, 2020, and for 180 days after the state of emergency ends.

²¹ We recognize that many parties will have differing views on how any new IVR messaging should be worded. We welcome the Department establishing a working group to reach consensus. Based on some preliminary conversations with some of the companies, we are optimistic that consensus could be reached, and fairly quickly.

²² “Gov. Baker extends stay-at-home advisory, closure of non-essential businesses through May 4,” WCVB (Apr. 1, 2020).

4. The type of payment plans that should be offered to customers

Extended payment plans will be needed for customers during the post-moratorium period after utility payments again become due. Customers who lack the resources to pay for utility services during and after the crisis will most likely be suffering financial hardships in other aspects of their lives, and will be struggling to pay all necessary household bills and expenses. As noted above, new unemployment compensation claims in Massachusetts and the rest of the country have reached unprecedented levels, with Massachusetts residents filing a record 181,062 initial claims during the week ending March 28, 2020. Low-income customers, including those who recently lost their household income, should remain the priority.

Payment plans are an important consumer protection, but payment plan arrangements are not likely to provide relief for the very lowest income customers. Debt forgiveness may be the most feasible way to protect those living in severe poverty. The Department should closely examine the federal stimulus payments or assistance that utility companies ultimately receive, and what percentage of those stimulus payments should be allocated for utility debt forgiveness for extremely low-income customers who are in deep debt and poverty.

We also note that many low-income customers will have access to supplemental LIHEAP benefits, which could partially address arrearages.

For low-income customers who have some household income, the terms for payment plans and AMPs should be made more flexible to allow customers a realistic path to paying down arrearages while maintaining utility service. Uninterrupted utility service will continue to be important to public health at least until a COVID-19 vaccine or treatment is developed, since it is possible that repeated or seasonal outbreaks could continue to occur in the interim.²³

AMP programs, with additional flexibility and duration,²⁴ should be a priority after the moratorium ends. As described above, in the post-moratorium period the companies should promote AMPs and other assistance programs to customers who may be eligible. Under the current AMPs, customers are usually enrolled for one year and must stay current on their utility bills to earn some arrearage forgiveness each month.

We urge the Department to work with the companies to develop extended post-crisis AMP programs. We recommend that, for six months after the state of emergency ends, low-income

²³ See, e.g., Washington Post, *Perspective: Coronavirus will linger after the pandemic ends. But it won't be as bad.* (March 13, 2020), at https://www.washingtonpost.com/outlook/coronavirus-pandemic-immunity-vaccine/2020/03/12/bbf10996-6485-11ea-acca-80c22bbee96f_story.html

²⁴ In preliminary discussions with three major utility companies in Massachusetts, the companies appear to be willing to allow customers to remain on AMPs even if payments are missed during the state of emergency. When necessary, the companies also appear willing to start a new AMP agreement when a new agreement would help the customer.

customers who have some income (and are not the extremely low-income consumers described above) be offered the opportunity to enroll in AMPs with a duration of up to 36 months.²⁵

Low-income customers should also be given the option to enroll in payment plans with more flexible terms. The Department should create clear and consistent guidelines that direct companies to offer payment plans that better reflect a customer's ability to pay. For previously identified and newly identified or self-certifying low-income customers, companies should offer payment plans of up to 24 months duration or longer, as payment plans should be commensurate with the customer's ability to pay. No initial down payment should be required. If an enrolled low-income customer misses a payment, each company should be directed to start a new payment plan for that customer which extends for an equivalent number months, with the remaining balance and any other accumulated arrearages amortized over that new repayment period. A similar model has been used in Iowa prior to the crisis, while requires a utility to offer a second payment agreement for a term equal to or greater than the first, for a customer who has made at least two consecutive payments.²⁶ California utilities are offering flexible payment plan arrangements as a response to the COVID-19 crisis.²⁷

All customers, even those who are not identified as low-income and have not self-certified that they are low income, should be offered payment plans that extend for at least 18 months, unless the customer affirmatively asks for a shorter plan, with no initial down payment whether the customer has been terminated from service or not.

5. Support efforts to communicate this to consumers. We recommend that Department and utilities develop a consistent message

Please see section 2, above.

6. The appropriate process to consider ratemaking methodology to consider the Distribution Companies management and collection of associated arrearage dollars and bad debt write offs related the state of emergency.

MUPHT/MEDA understand that the Department will eventually have to decide whether, and how much, of any bad debt write-offs connected to the current state of emergency will be collected from ratepayers or from some other source. Beyond bad debt write-offs, MUPHT/MEDA expect that companies may file petitions for rate increases based, in whole or in part, upon any declines in sales -- particularly commercial and industrial sales -- arising from the COVID-19 pandemic and government orders that have effectively shut down many businesses across the Commonwealth. MUPHT/MEDA respectfully suggest that now is not the time to attempt to answer difficult ratemaking questions, particularly in this largely informal comment

²⁵ Because companies place a cap on the maximum amount of arrears that will be forgiven in a year, customers who have built up large arrearages might need as much as 36 months to pay down the arrearage in full.

²⁶ Iowa Admin. Code r. 199-19.4(10).

²⁷ Calif. Public Utility Commission, Utility Consumer Protections During California COVID-19 Outbreak, at <https://www.cpuc.ca.gov/covid19protections/> (last visited on April 9, 2020).

proceeding, one that certainly does not allow for discovery of the relevant facts nor for presentation and cross-examination of witnesses. The Department's immediate focus should be - - as it largely is, in the questions it has posed -- on the immediate problems facing literally hundreds of thousands of households across the state. It is increasingly clear that a thousand or more people in Massachusetts are going to die from COVID-19, and perhaps a hundred thousand will have their health affected in some way by that disease. Many more than that will have become unemployed, or had working hours seriously reduced, as well as suffered other adverse financial consequences. The Department must -- and appears poised to -- address those urgent needs.

The needs of utilities to possibly make up for lost revenues, whether due to increasing write-offs of uncollectibles or diminished kWh or therm sales are nowhere near as urgent. MUPHT/MEDA assume that the companies have the ability to suffer through the immediate financial headwinds they may be facing, unlike so many households. Moreover, recovery of any alleged revenue losses involves complicated accounting questions as well as applying established ratemaking and regulatory principles to a largely unprecedented set of facts. The Department should not attempt to answer those questions in an informal comment proceeding.

Moreover, it is possible that one or more of the utilities may be able to access financial assistance made available under the CARES Act²⁸ or under subsequent coronavirus relief legislation already under consideration in Congress²⁹. There is no reason for the Department to start down the road of potential utility revenue recovery before all of the relevant facts can be obtained. In fact, the statute that authorized the Department's Chairman to take the emergency steps that he has taken appears to mandate that these questions be resolved through adjudicatory rate proceedings:

“Expenses authorized by the chairman under this section may be recognized by the department for all purposes as proper business expenses of the affected utility or alternative utility subject to investigation and recovery through rates.” G.L. c. 25, sec. 4B.

Thus, both as a matter of what should be prudent and informed decision-making and as a matter of law, MUPHT/MEDA recommend that the Department defer on answering what is called for in question #6.

In the interim, the Department and utilities could work together to develop a system for tracking and recording emergency-related uncollectibles.

CONCLUSION

MUHPT and MEDA are grateful for this opportunity to provide our comments to the Department during this unprecedented crisis. We urge the Department to continue to provide

²⁸ The Coronavirus Aid, Relief and Economic Security Act, signed into law by the President March 27, 2020, Pub. L. 116-136.

²⁹ “What we know about the fourth coronavirus relief bill,” VOX, (Apr. 3, 2020), available at: <https://www.vox.com/2020/4/3/21206931/what-we-know-about-congress-fourth-coronavirus-bill>

more opportunities for comments, as the situation continues to evolve and after the moratorium ends. In addition, we appreciate that the Department's March 31 letter was directed to the companies, the Attorney General, NCLC and LEAN. We encourage the Department to continue to engage with interested stakeholders and to encourage additional stakeholders to comment.

Respectfully submitted,

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