COMMONWEALTH OF MASSACHUSETTS

Notice of Inquiry by the Department of	**)**	
Public Utilities on its own Motion into	**)**	**D.P.U. 24-15**
Energy Burden with a Focus on Energy	**)**	
Affordability for Residential Ratepayers	**)**	

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER,
ON BEHALF OF OUR LOW-INCOME CLIENTS

Introduction

The National Consumer Law Center (NCLC) appreciates the opportunity to comment on the questions raised by the Department in its Vote and Order Opening Inquiry in docket number D.P.U. 24-15. NCLC offers these comments on behalf of our low-income clients.

Utility service is vital to health, safety, and economic security, both for individual households and communities at large. Affordable and reliable electric service also supports state and federal climate goals. The following principles should be incorporated into efforts to promote energy affordability and reduce energy burdens for low-income Massachusetts households:

- Massachusetts should adopt policies and protections to ensure uninterrupted, affordable access to a basic level of service by offering programs designed to avoid customer disconnection.
- Involuntary disconnection of electric service due to nonpayment should never be the preferred or default collections tool of utility companies.
- Disconnection policies should be revisited and revised to reverse the legacy of systemic discrimination and racism, which results in disproportionate numbers of Black and Latine' households suffering involuntary disconnection of utility service.
- Massachusetts should adopt additional enforceable protections to maintain service for vulnerable populations, particularly in the face of increased extreme weather and weather-related disruptions.

The following comments contain our initial answers to the questions posed by the Department. NCLC looks forward to continued discussions and technical sessions to further develop affordability programs and consumer protections for Massachusetts utility consumers.

B. Design of Residential Energy Affordability Programs

1. **As between a PIPP and tiered discount rates (collectively referred to as "energy affordability programs"), discuss the relative advantages and disadvantages of each.**

A PIPP, which stands for Percentage of Income Payment Plan or Percentage of Income Payment Program, if designed well, can effectively reduce low-income household energy payments to an amount that is estimated to be affordable. Under a PIPP, participating customers pay a predetermined percentage of income for utility service. PIPPs target benefit levels to a household's particular income circumstances based on a predetermined affordability goal. Tiered discount rates are similar, but are less tailored to each customer's financial circumstances. In a tiered discount, a target energy burden is established, and then a discount is applied to each tier based on the average or midpoint income of that tier.

The following table summarizes differences between PIPPs, percentage discounts, and tiered discounts:

Main Types of U.S. Utility Affordability Programs

Program Type	What Participants Pay for Utility Service	Pros	Cons
Percentage of Income Payment Plan (PIPP)	Payments are capped at a predetermined "affordable" % of income	Tailored to household's income based on affordability goal; particularly valuable to lowest-income participants; protects low-income households from rising retail rates	Possibly greater administrative complexity; depending on structure, may provide lower benefits for households that meet eligibility criteria but have somewhat higher incomes than other qualifying households
Flat Percentage Discount	Total utility bills are reduced by a specified % or $ amount	Relatively low administrative cost	Same discount for all eligible customers; not distinguished by individual household's income
Tiered Discounts	Distinct discount rate is applied to each income tier to achieve a predetermined limit on burden level	Tailored to household's income; determination of each household's monthly bill or fixed credit is not required	Administrative costs are somewhat higher for a tiered discount approach than a flat % discount, may be similar to those needed for a PIPP

In general, PIPPs provide predictability by capping bills at a set percentage each month for eligible households. The bill would be the same or nearly the same throughout the year.

PIPPs in Illinois and Ohio also include arrearage management programs (AMPs), so that participants who make on-time monthly payments each month earn debt cancellation for prior arrearages.

Because PIPPs cap expenses at a set percentage of income, they are well-suited to address the energy burdens of those with very low incomes.[1]

PIPPs may have the additional benefit of supporting electrification goals. For example, if the combined gas and electric bill for a low-income family is capped at an affordable percentage, then the family will be insulated from a spike in their electric bill if they convert from gas heating to an air-source heat pump. Similarly, a family who has not yet switched would be shielded from the increased gas costs predicted by some analysts.[2]

Both PIPPs and tiered discount programs require examination of customer incomes. Since separate billing and payment arrangements must be developed for each participating customer, however, PIPPs may entail a somewhat higher level of administrative complexity than straight discount rates. For example, a PIPP may initially require added administrative complexity with respect to examining a customer's prior usage for purposes of establishing a budget billing amount (even monthly payments) and then applying the PIPP discount to these monthly amounts. A tiered discount, on the other hand, requires a determination of the appropriate tier for a customer based on their income, unlike a PIPP, which requires calculation of a reduced bill for each participant.

Overall, a PIPP may entail some additional administrative efforts, but would be more protective of families with the lowest incomes given the individual assessment of energy burden, in contrast with a tiered discount, which averages the predetermined energy burden within a tier.[3]

2. Discuss how the Department should address the "cliff" experienced by customers who have an increase in income that is sufficient to remove their eligibility for assistance

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[1] For additional discussion of PIPPs and affordability programs, see, Lawrence Berkeley National Laboratory, *Advancing Equity in Utility Regulation*, 32-34 (Nov. 2021), available at https://emp.lbl.gov/publications/advancing-equity-utility-regulation.

[2] E.g., D.P.U. 20-80, *The Role of Gas Distribution Companies in Achieving the Commonwealth's Climate Goals, Independent Consultant Report Technical Analysis of Decarbonization Pathways*, pg. 104, Figure 38, Non-migrating customer energy burden for low income customers (March 18, 2022).

[3] We offer a further clarification regarding PIPPs. PIPPs are distinct from the income-tiered fixed charge that is currently being debated in California and before the California Public Utility Commission. A PIPP is an affordability program that is made available to eligible low-income utility customers and can operate alongside various types of rate designs (e.g., volumetric charges, performance-based ratemaking, or tiered fixed charges). The California tiered fixed charge, though tiered according to income, would assign all customers to a tier and is a rate design and not primarily an affordability program. We add this clarification since we have observed media reports and some members of the public accidentally conflating the two. See, CPUC docket No. R.22-07-005, Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates. See also, https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/demand-response-dr/demand-flexibility-rulemaking.

programs but insufficient to ease the energy burden to the comparable level prior to the income increase.

Every type of benefit program requires some type of income ceiling or eligibility cut-off, so a goal of affordability program design should be to make the transition from eligibility to over-income status as easy to navigate as possible. Under the current straight discount program, customers could experience the termination of the discount as a "cliff." A PIPP or tiered discount replaces the cliff with a slope, which may create a less abrupt transition for families who see their income rise.

Program design can soften but not entirely eliminate the cliff. However, those who are just above the income eligibility threshold currently do not carry large energy burdens. The energy burden for ineligible households in Massachusetts is usually below 6% already. The benefit of the reduced energy burdens for low-income customers outweighs the minimal additional cost for non-participants, who usually do not carry excessive energy burdens.[4]

Median Electric and Total Home Energy Burdens by State by Income Tier

State	Income Tier	Median Electric Burden	Median Total Burden	Number of Households
Massachusetts	0% - 75% FPL	18.3%	28.7%	205,545
	76% - 100% FPL	6.0%	9.6%	91,404
	101% - 150% FPL	3.2%	6.6%	138,172
	151% - 200% FPL	2.7%	5.3%	177,127
	201% - 300% FPL	2.3%	4.3%	307,231
	> 300% FPL	1.0%	1.8%	1,794,300
	Total	1.6%	2.8%	2,713,778

Source: NCLC computations using 2020 U.S. EIA Residential Energy Consumption Survey (RECS) microdata

Further, Massachusetts is developing subsidized and free energy efficiency assistance for households with incomes of 60-80% FPL, which will help reduce their energy bills.[5] These

[4] See John Howat, National Consumer Law Center, Electric Service Discount and Arrearage Management Program Design Template, Chart 1 (Apr. 2020), *available at* www.nclc.org.

[5] Proposals before the Massachusetts Energy Efficiency Advisory Council (EEAC) include: free weatherization for households with income up to 80% SMI, free weatherization services for all residents in certain disadvantaged communities; free heat pumps for renters in certain disadvantaged communities; increased funding to address pre-weatherization barriers. See, EEAC Equity Working Group Meeting, "Summary of Equity and Geographic Strategies for 2025-2027" (Draft), (Feb. 5, 2024), available at https://ma-eeac.org/february-5-2024-eeac-equity-working-group-meeting/.

resources would provide some additional support for families who are just above the eligibility threshold, to help keep their bills more affordable.

California regulators considered the issue of experiencing a cliff in program eligibility in their proceedings to establish a pilot PIPP program. There, the CPUC set income eligibility at 200% FPL rather than 250% FPL, noting that ". . . excluding customers with incomes above 200% of FPG from the pilot will reduce the likelihood that the PIPP will not benefit the participant. As parties have noted throughout the proceeding, there is potential for customers with higher incomes to receive no benefit from a PIPP."[6]

Although there will always be a point when families above the income threshold will lose eligibility for any utility affordability program, the design of a PIPP should gradually reduce the amount of support to reflect the decreased financial needs of the household, thereby lessening the disruption that a loss of benefits may cause.

3. Discuss how eligibility for an energy affordability program should be determined. Is the eligibility threshold different depending upon whether it is related to a PIPP or tiered discount rates? Should eligibility be based on the FPL or SMI? Are there other options?

Please see the response to Question B2. As noted above, under the current income eligibility guidelines, non-participants usually are those with combined electric and gas energy burdens of 6% or less even without the utility discount rate. The current Massachusetts eligibility threshold of 60% SMI[7] is similar to those offered in other states such as Illinois (200% FPL),[8] New Hampshire (200% FPL)[9] and Oregon (60% SMI).[10] Also, at least one state recently approved a modest discount for gas utility households whose income falls between 201% and 300% of the federal poverty level.[11] We recommend retaining the current eligibility threshold of 60% SMI.

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[6] California Public Utilities Commission (CPUC), R.18-07-005, Order Instituting Rulemaking (OIR) to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Decision Authorizing Percentage of Income Payment Plan Pilot Programs, D. 21-10-012 at 16 (Oct. 7, 2021), at https://perma.cc/38PU-MCV2.

[7] G.L. c. 164, § 1F(4)(i) ("In a program year in which maximum eligibility for the low-income home energy assistance program, or its successor program, exceeds 200 per cent of the federal poverty level, a household that is income eligible for the low-income home energy assistance program shall be eligible for the low-income discount rates required by this subparagraph.")
We note that the Department's Vote and Order Opening Inquiry in D.P.U. 24-15 identified the income threshold as 200% FPL, but pursuant to the statute, the correct income threshold is 60% of SMI, which is the income eligibility threshold for the low-income home energy assistance program (LIHEAP). D.P.U, Vote and Order Opening Inquiry, D.P.U. 24-15 (Jan. 4, 2024).

[8] 305 Ill. Comp. Stat. 20/18.

[9] N.H. Public Utilities Commission, DE 14-078, Statewide Low-Income Electric Assistance Program Order Approving Changes to EAP Discounts and Income Eligibility Level, Order No. 25,901 (May 13, 2016).

[10] *See* Or. Rev. Stat. § 757.230; Oregon Pub. Utils. Comm'n, Implementation of H.B. 2475, Docket No. UM 2211 (Dec. 14, 2021).

[11] *See, e.g.,* ICC Docket No. 23-0066, *Northern Illinois Gas Company, d/b/a Nicor Gas – Proposed Increase in delivery service rates,* Order of November 16, 2023 at 201-205.

When the current California PIPP pilot program was being developed, the CPUC considered extending eligibility to 250% FPL. Ultimately, the CPUC decided to use an eligibility criteria of 200% FPL, which matched the income eligibility threshold for the state's existing affordability program, the California Alternate Rates for Energy (CARE) program. The California PIPP pilot is ongoing, and the CPUC states that it expects to revisit the income eligibility threshold when it develops a long-term PIPP program.[12]

In Massachusetts, consumers who receive LIHEAP and certain other public benefits are periodically identified and automatically enrolled in the low-income discount rate. While this approach is helpful for many, families who are not eligible for LIHEAP due to immigration status or other reasons are more difficult to identify. Other options for determining income eligibility could include presumptive eligibility strategies to encourage enrollment, such as identifying census tracts where the concentration of low-income residents is so large that presumptive eligibility for these residents is reasonable. These strategies will be discussed further, below (see, e.g., response to Question D1).

4. Discuss whether customers in arrears should be eligible for participation in energy affordability programs. If so, discuss how that debt should be treated.

Yes, customers in arrears should be eligible for affordability programs. Denying access to affordability programs to customers in arrears would result in excluding many (if not most) of the households most seriously in need of help.[13] These consumers should be encouraged to participate in both affordability programs and energy efficiency programs. This is abundantly clear in connection with Arrearage Management Programs (AMP), since to qualify for an AMP the customer must be in arrears. We think it equally clear that customers in arrears should be eligible for discount rates and all other affordability programs. Customers in need of affordability programs have limited income to pay their bills for necessities such as food, shelter and utilities. While not every low-income customer is in arrears, many of them are, as shown in several reports NCLC has issued based on the arrearage data reported to the Department.[14]

We believe that the cost of affordability programs – specifically including discount rates and AMPs – should be recovered by an equal per kWh charge collected from all non-low-income customers and customer classes. All customers --- regular non-discount residential and

[12] California Public Utilities Commission (CPUC), R.18-07-005, Order Instituting Rulemaking (OIR) to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Decision Authorizing Percentage of Income Payment Plan Pilot Programs, D. 21-10-012 at 16 (Oct. 7, 2021), at https://perma.cc/38PU-MCV2.

[13] To the extent budget plans offered by companies are considered an affordability program, we think it reasonable that the customer can be excluded if already in arrears. These customers would be better served by an AMP.

[14] *See, e.g.,* NCLC, "Risks of Utility Shutoffs Are Rising in Massachusetts (Apr.2023), *available at:* https://www.nclc.org/wp-content/uploads/2023/04/Risks-of-Utility-Shutoffs-Are-Rising-in-Massachusetts.pdf. As of February 2023, 225,895 low-income customers were in arrears. Of those in arrears, the average amount owed was $1316, or 50% more than the average amount owed by those on the regular (non-discount) rate. *Id.,* Charts 1 and 3).

commercial --- stand on equal footing relative to a program targeted to help low-income customers, and they should share equally in the cost.[15]

The Illinois PIPP program includes an arrearage management program and a PIPP. It couples the PIPP with an arrearage reduction program that applies a credit equal to one-twelfth of the pre-program arrears for each on-time payment of the monthly PIPP bill.[16]

5. Discuss whether energy affordability programs should only apply to a maximum amount of consumption each month.

No, due to the varied health and safety needs of low-income consumers, along with the need to support building electrification, there should not be a cap on the amount of consumption.

NCLC strongly opposes energy usage limits. These limits would be counter to the underlying purpose of an energy affordability program, and could be punitive to vulnerable low-income households. For instance, older adults, young children, consumers with serious illnesses, consumers with disabilities, and households with irregular work schedules may have different energy needs and be less able to shift their energy usage to off-peak hours.

6. Discuss whether energy affordability programs should reflect a seasonal fluctuation or an annual determination regarding energy usage limits.

We read Question B6 as implicitly assuming that there should be a monthly consumption cap, above which the assistance under an affordability program would not apply. (See, above, response to Question B5). We do not think there should be such a cap. Therefore, we do not support having seasonal fluctuation in any such caps, nor an annual determination of such caps. On average, low-income households consume less than higher-income households. For those low-income households who do consume more than the average, it is often due to factors outside their control, including living in older, rental housing where the owner has not engaged in weatherization or updated the heating system. Seniors and disabled low-income persons may spend more time at home and therefore use more energy than other customers. These low-income households with above-average consumption are likely to have the highest energy burdens and be in the greatest need of assistance.

However, we fully support making strong connections between energy affordability programs and energy efficiency programs. This occurs already for those who apply for the Low-income Home Energy Assistance Program (LIHEAP, or fuel assistance) because in most of the

[15] *See American Hoechest v. Department of Public,* 379 Mass. 408,410 (1980) ("The department rejected the company's proposal that residential customers, not eligible for the rate, should pay the cost of it, noting that such residential ratepayers stand in the same position as commercial and industrial customers. Finding the analogy to the financing of government social welfare programs particularly apt, the department ordered that the costs of the rate be shared equally by all customer classes.")

[16] *See* 305 Ill. Comp. Stat. 20/18.

state the agency that delivers LIHEAP is the same agency that delivers energy efficiency services. In the very few instances where one agency delivers LIHEAP and another delivers weatherization, the LIHEAP application still serves as the application for weatherization, and the LIHEAP agency makes an immediate referral to the weatherization agency.

The new PIPP statute in Virginia requires that PIPP participants receive no-cost weatherization or energy efficiency services to reduce household energy usage and further ease household energy burdens.[17] We support this type of affirmative approach.

7. Discuss the use of demographics (e.g., age, households with children, owners/renters) in designing energy affordability programs.

The most useful demographic information in the design of energy affordability programs is the identification of the top zip codes within each utility's territory that experience the most involuntary disconnections and the most repeat disconnections. This approach was adopted by the California PUC in its PIPP pilot program.[18] The Maryland Public Service Commission approved the Maryland Department of Housing and Community Development's plan to use geographic categorical eligibility for the ratepayer-funded limited income EmPOWER Program.[19]

8. Discuss whether energy affordability programs should be designed to provide particular relief to environmental justice ("EJ") populations. If so, how can programs be designed to provide such relief?

As an initial matter, outreach to communities with EJ concerns is of paramount importance, and should be conducted on an ongoing basis regardless of the types of affordability programs that are ultimately adopted. Recommendations for outreach and access are detailed in the report issued by the Stakeholder Working Group last year.[20] The report stresses the need for community engagement, and provides detailed examples and recommendations.

Any program aimed at providing particular relief to communities with EJ concerns should be developed in consultation with those communities, using strategies to maximize community engagement. As noted in the response to Question B3, one approach could be adopting presumptive eligibility strategies to encourage enrollment, such as identifying census

[17] Va. Code Ann. § 56-585.6.
[18] California Public Utilities Commission (CPUC), R.18-07-005, Order Instituting Rulemaking (OIR) to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Decision Authorizing Percentage of Income Payment Plan Pilot Programs, D. 21-10-012 at 23 (Oct. 7, 2021), at https://perma.cc/38PU-MCV2.
[19] MD PSC Maillog No. 304379: Maryland Department of Housing and Community Development EmPOWER Maryland Limited Income Program 2024-2026 Program Plan (August 1, 2023) at page 33.
[20] Massachusetts Stakeholder Working Group, *Overly Impacted & Rarely Heard, Incorporating Community Voices into Massachusetts Energy Regulatory Processes* (May 2023), available at https://www.mass.gov/overly-impacted-and-rarely-heard-incorporating-community-voices-into-massachusetts-energy-regulatory-processes.

tracts where the concentration of low-income residents is so large that presumptive eligibility for these residents is reasonable.

9. Should the maximum cap as a percentage of household income paid under a PIPP be set below six percent for customers who experience a disproportionate burden of energy infrastructure in their neighborhood?

This idea is intriguing, though compensation for living in a community with EJ concerns may be better administered through the legislature. For instance, the legislature could create an annual benefit, or a refundable tax credit, for households living in impacted census tracts.

10. With respect to a PIPP, discuss how the percentage cap on energy costs should be determined.

Several states have PIPPs or similar affordability programs with target energy burdens as low as 2% for electric or gas service. In New Jersey, assistance is available if a household's energy burden is projected to exceed 2% of household income for electric service or for gas service, or 4% of household income for all-electric heat customers. [21]

The 6% cap on energy costs is frequently used, but may not always provide an affordable bill for the lowest income consumers. For instance, the Maryland Office of People's Counsel observed the following:

> "This [6%] affordability percentage is based on the assumption that if the cost of housing consumes 30 percent or more of household income, the household's housing burden is likely to be unaffordable, and that 20 percent of housing costs should be allocated to energy bills. This results in a 6 percent energy burden. "Researchers estimate that housing costs should be no more than 30 percent of household income, and household energy costs should be no more than 20 percent of housing costs. This means that affordable household energy costs should be no more than 6 percent of total household income. For decades, researchers have used the thresholds of 6 percent as a high burden and 10 percent as a severe burden." In fact, even energy burdens lower than 6 percent may be unaffordable for some households. As the U.S. Department of Housing and Urban Development ("HUD") has observed, the 30 percent metric from which the 6 percent metric is derived is based on amendments to the federal Fair Housing Act that capped public housing rent first at 25 percent and then at 30 percent of a resident's income. The more general application of the metric does not account for the fact that different households earning the same annual income spend considerably different amounts of money on basic necessities, including energy. Given this fact, a "[c]aution should be used in using [the 30 percent] measure to assess affordability challenges among different income levels or household types as variations in the cost of other necessities would suggest the need for corresponding variations in

[21] Legal Servs. of New Jersey, Help With Your Energy and Water Bills (Oct. 30, 2023), *available at* www.lsnjlaw.org.

the payment standard used." The same caution should be used regarding the 6 percent energy burden measure."[22]

Nevada takes a somewhat different approach. The Nevada PIPP programs are required by statute to reduce participants' electric and gas burdens to the same percentage as that of a median income household. NRS 702.250(7) provides as follows: "…if a household is eligible to receive assistance pursuant to this section, the Division: (a) Shall, to the extent practicable, determine the amount of assistance that the household will receive by determining the amount of assistance that is sufficient to reduce the percentage of the household's income that is spent on natural gas and electricity to the median percentage of household income spent on natural gas and electricity statewide."

Most non-low-income customers spend less than 6% of their monthly income on home energy bills. We recommend that, as part of this proceeding, the Department should consider modeling a PIPP program using total energy burden targets of 4%, 5% and 6%, to determine the benefits to eligible households and the costs to non-participating ratepayers. This information could then be shared with participants for additional comment.

11. With respect to a PIPP, discuss how the Department can limit the total energy burden of electric and gas bills for customers served by two different distribution companies, one for gas and one for electric.

Limiting the total home energy burden (e.g., 5% of household income) for households receiving both gas utility and electric utility bills to a predetermined level requires examining expenditure data by fuel type and assigning burden caps for each fuel in a proportionate manner. For example, the table below, based on NCLC calculations using 2020 Residential Energy Consumption Survey microdata, indicates that in 2020 Massachusetts households heating primarily with gas spent an average of $2,322 for all home energy services. Included in that total average cost was $1,321 for non-heat electricity service, or 56.9% of the total cost. Thus, setting the target electric burden for PIPP participants would entail multiplying the target *total* burden by .569 to arrive at a target electric burden of 2.8%. That would leave the gas target burden set at 2.2% (5% - 2.8%). The target burden level for an all-electric, including heat, household would be set at the total burden level of 5%.

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[22] Maryland Public Service Commission, Docket No. PC 59, Comments of Maryland Office of People's Counsel Regarding Limited-Income Mechanisms for Utility Customers Under PUA § 4-309, at 3, fn. 6 (Jan. 31, 2024), available at https://webpsc.psc.state.md.us/DMS/pc/pc59. Internal citations omitted for readability, and are:

- American Council for an Energy-Efficient Economy, *Understanding Energy Affordability*, 1 n.2 (September 9, 2019), https://www.aceee.org/sites/default/files/energy-affordability.pdf. *See also* Maryland Public Service Commission Staff, *Affordable Energy Program ("AEP") Proposal*, at 5, Case No. PC 27 (Nov. 1, 2012).
- *See* HUD, "Rental Burdens: Rethinking Affordability Measures," https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html.
- Joint Center for Housing Studies of Harvard Univ., *Measuring Housing Affordability: Assessing the 30 Percent of Income Standard* (Sept. 25, 2018), available at https://www.jchs.harvard.edu/research-areas/working-papers/measuring-housing-affordability-assessing-30-percent-income-standard

MA Average 2020 Home Energy Expenditures by Heating Fuel

Main space heating fuel		Total electricity cost, in dollars	Total natural gas cost, in dollars	Total propane cost, in dollars	Total fuel oil/kerosene cost, in dollars	Total cost including electricity, natural gas, propane, and fuel oil, in dollars	Electricity % of total home energy expenditure
Not applicable	N	10,323	10,323	10,323	10,323	10,323	
	Mean	$808	$2	$0	$153	$963	83.8%
Natural gas	N	1,450,702	1,450,702	1,450,702	1,450,702	1,450,702	
	Mean	$1,321	$997	$3	$2	$2,322	56.9%
Propane	N	69,498	69,498	69,498	69,498	69,498	
	Mean	$1,633	$26	$1,694	$0	$3,353	48.7%
Fuel Oil	N	662,489	662,489	662,489	662,489	662,489	
	Mean	$1,689	$34	$55	$1,487	$3,265	51.7%
Electricity	N	469,296	469,296	469,296	469,296	469,296	
	Mean	$1,517	$67	$36	$17	$1,637	92.7%
Wood or pellets	N	51,470	51,470	51,470	51,470	51,470	
	Mean	$1,723	$88	$186	$227	$2,224	77.5%
Total	N	2,713,778	2,713,778	2,713,778	2,713,778	2,713,778	
	Mean	$1,458	$555	$68	$372	$2,453	59.4%

Source: NCLC calculations using 2020 Residential Energy Consumption Survey microdata

12. Discuss how the revenue shortfall associated with energy affordability programs should be recovered from other customers. Should it be allocated only among residential customers of the utility or across all customer classes? Should it be a statewide recovery factor (i.e., spread across all gas or electric utilities)? Are there other options?

Please see our answer to Question B4, above. We strongly believe that the cost of energy affordability programs should be collected from all customer classes. A non-low-income customer stands in the same position as a commercial customer, relative to affordability programs for which neither is eligible. Neither derives direct monetary benefits from the affordability programs; each participates equally in a more just and equitable energy system. In addition, commercial customers benefit when home energy services are affordable, to the extent that affordability programs result in households having more discretionary income to spend, which benefits the larger economy, including commercial businesses. The bottom line is that ensuring all of our neighbors have access to essential and affordable utility services is a goal all customers should support.

13. Discuss whether energy affordability programs should focus on heating versus non-heating customers.

Since all low-income customers struggle with energy burdens, we do not support distinguishing between heating and non-heating customers.

14. With respect to tiered discount rates, discuss how the varying levels of discount should be determined. Should the discount rates and income levels be revised from time to time? If so, how often?

More precise than a straight percentage discount and less precise than a PIPP, the tiered discount establishes a series of discount tiers for different income levels to address the average energy burdens within each tier. In a tiered discount, a series of income tiers is established (for instance, 0%–75%, 76%–125%, and 126%–150% of the federal poverty guidelines, and 151% of the guidelines up to the program income eligibility ceiling), and a distinct discount percentage rate is applied to each tier. Tier-specific discounts are set to achieve a predetermined target burden level (e.g., 5% of household income) at the income tier midpoint. The tiered discount is designed to reduce a customer's bill to an affordable level, with households in the lower income tiers receiving steeper discounts than those in higher tiers.

If a tiered discount rate was implemented, then to most effectively stabilize the energy burdens of low-income customers, the discount provided within each tier should be adjusted annually to achieve the same target energy burden level. In Massachusetts, the Department could direct utilities to update the discounts yearly in the companies' RAAF filings.

15. Discuss the role of energy efficiency programs, consumption reduction, investment in residential loan programs for photovoltaic and battery installations, and targeted educational programs in addressing energy Affordability.

We fully support making strong connections between energy affordability and energy efficiency programs. (See response to Question B6, above). Energy efficiency programs are free to all households in Massachusetts at or below 60% of state median income. Those programs not only reduce consumption – thus reducing bills – those also provide important health and comfort benefits. We do think that between MassSAVE and the community agencies that deliver the low-income energy efficiency programs, there are a great deal of targeted educational programs for low-income energy consumers. In addition, the Executive Office of Housing and Livable Communities does a very good job of educating the public about the existence of LIHEAP, weatherization, and discount rates. However, we know that the actual number of households receiving LIHEAP and other energy affordability programs is likely less than the number of households eligible. Therefore, there is always value in discussing ways that outreach can be improved, particularly for those for whom English is not their primary language, and for many immigrants.

We are wary of loan programs that would be marketed to low-income households, particularly for photovoltaic and battery installations. These installations require large, up-front investments, which results in loan payments being large as well. Experience from around the country has taught us that low-income households are likely to default on loans or financing for major energy investments because adding significant surcharges to already unaffordable bills places unrealistic financial burdens on those customers.[23] Since weatherization and air source heat pumps are provided at no cost to low-income households under the MassSAVE program, there is no reason for low-income households to take out loans for those investments, including financing mechanisms that purport to ensure annual energy savings but in no way guarantee such savings.[24] As for batteries and solar photovoltaic systems, we hope that the state will find ways to use the expected funding under the Inflation Reduction Act to help deliver those services to low-income households without the burden and risk of loan repayments. For example, funds from the EPA's Greenhouse Gas Reduction Fund,[25] which includes funds for Solar for All programs, may be available to support low and moderate income homeowners.

C. Other Energy Affordability Measures

1. With respect to potential changes to the AMPs, discuss:
a. The level of debt forgiveness that should be offered, and how quickly customers should be required to pay off their debts;

The current system appears to work well, and the continued oversight and monitoring by members of the AMP working group has been helpful in modifying and improving the program. We recommend retaining the current twelve-month duration for each AMP enrollment, with the possibility of reenrollment. Unaffordability of monthly energy bills varies by season and market events. These programs currently allow reenrollment, which is more effective than a "one-and-done" framework.

If possible, the AMP should allow the cancellation of all overdue arrearage for the customer. The utility company will either recover its costs for the amounts of arrears forgiven through the Residential Assistance Adjustment Factors (RAAF), or else will recover the same costs through its recovery mechanism for uncollectible accounts, up to an established ceiling. In either scenario, the costs are passed along to other ratepayers. Allowing for full debt cancellation through the AMP program would not add an excess burden for non-participating ratepayers, and would have the benefit of lifting the debt burden carried by too many low-

[23] For additional details about the problems associated with financing of energy measures, see, e.g., *Testimony of National Consumer Law Center, on Behalf of its Low-income Clients, in Opposition to H. 3275 and S. 2218 Regarding Residential Property Assessed Clean Energy (PACE) Programs* (September 29, 2021), available at https://www.nclc.org/resources/residential-property-assessed-clean-energy-pace-programs/.
[24] See, Berneta Haynes, NCLC, *Tariff-based On-Bill Financing: Assessing the Risks for Low-Income Consumers* (Feb. 14, 2023), available at https://www.nclc.org/resources/tariff-based-on-bill-financing-assessing-the-risks-for-low-income-consumers/
[25] https://www.epa.gov/greenhouse-gas-reduction-fund/about-greenhouse-gas-reduction-fund.

income families as well as reduce utility credit and collection costs and uncollectible amounts covered by all ratepayers. AMP participation may also help low-income families to stay current on their monthly utility bills going forward – particularly when combined with a tiered discount rate or PIPP.

b. Whether income eligibility thresholds should be the same as for energy affordability programs or, if not, how they should be set;

Customers who have some regular income are likely those who benefit most from the AMP, since these customers are in a better position to keep up with the monthly bill after entering the program. The Department should consider offering AMPs to customers with incomes up to 80% SMI. While customers in this 60-80% SMI group would not be eligible for the discounted utility rate, the ability to participate in the AMP may further smooth the "cliff" discussed at Question B2. It is possible that a PIPP or tiered discount that can make bills affordable for low-income households would have the positive effect of increased AMP success from increased current monthly bill payments. However, we recognize that such changes might require an amendment to the statute that established the AMP as a program for low-income customers as defined under chapter 164.[26]

c. How the costs associated with AMPs should be recovered from other customers;

Cost recovery from all non-participating customers, through the RAAF, is the current reconciling mechanism. We do not suggest a change to the current method, though would be open to considering other mechanisms.

While it is difficult to quantify, it is likely that AMPs – particularly when coupled with a discount rate or PIPP -- result in more payments received (because monthly bills are more affordable) and therefore benefit nonparticipating ratepayers.[27]

d. What happens if the customer misses a payment; and

Customers can currently miss several payments, and as a condition of participation have agreed to make up missed payments or be disenrolled from the AMP.

e. Whether the program should be offered to customers who have been disconnected.

Yes, the program is offered to customers who have been disconnected and seek to restart service. Excluding these customers would be inconsistent with the AMP's role as an affordability program.

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[26] Chapter 140 of the Acts of 2005, Sec. 17(a).

[27] *See,* ICC Docket Nos. 23-0068/0069 (cons.) -- *North Shore Gas Co., Peoples Gas Light & Coke Company -- Proposed increase in delivery service rates,* Direct Testimony of Roger D. Colton, COFI/LAC Ex. 1.0, pp. 41-60; https://www.icc.illinois.gov/docket/P2023-0069/documents/337551/files/588161.pdf.

2. With respect to current disconnection protections and potential changes, discuss:
a. The effectiveness of disconnection as a tool to reduce arrearages;

While disconnections do stop the accrual of new arrearages, this mechanism is a harsh and overly burdensome penalty when the reason for nonpayment is unaffordability. As we have written elsewhere:

> "Reliance on disconnections as a collections tool has the effect of punishing people for being poor, and ignores the longstanding racial and economic discrimination that have created the disparities that fuel poverty and the unaffordability of utility services. Available data indicate that utility service disconnections disproportionately harm people of color. When customers experience sudden loss of income or other financial hardships, they should not be forced to choose between paying a utility bill and affording rent, food, medicine, and other essentials."[28]

Analysis of data on utility disconnections has revealed that disconnections disproportionately impact communities of color, even when controlling for income.[29] Although this analysis has not yet been conducted in Massachusetts, results would likely be similar. Disconnections may also be correlated with events outside of a household's control, such as extreme weather.[30] Given the severe impacts of utility disconnections on families,[31] we urge that disconnection should be a tool of last resort if used at all. Moreover, vulnerable populations, including households with older adults, children under 6 and disabled or medically compromised individuals should never be disconnected.[32]

In addition, data reported through D.P.U. 20-58 indicates that, even under current disconnection practices, the aggregate amount of arrearages held by low-income customers continues to grow, as illustrated below:

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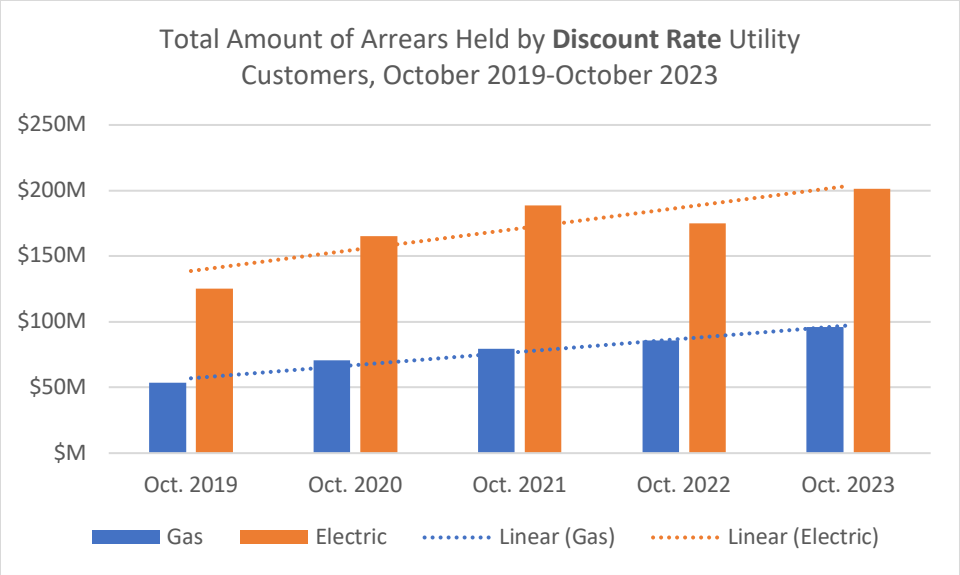
[28] NCLC et al., *Implementing a Roadmap to Utility Service as a Human Right* (April 2021), available at https://www.nclc.org/resources/implementing-a-roadmap-to-utility-service-as-a-human-right/.
[29] E.g., Steve Cicala, *The incidence of extreme economic stress: Evidence from utility disconnections*, Journal of Public Economics 200 (2021), available at https://www.stevecicala.com/papers/disconnections/disconnections.pdf.
[30] See, e.g., Barreca, A., Park, R.J. & Stainier, P., Nature Energy, *High temperatures and electricity disconnections for low-income homes in California*, 1052–1064 (2022). https://doi.org/10.1038/s41560-022-01134-2 Available at https://www.nature.com/articles/s41560-022-01134-2 ("[H]ot weather causes financial strain on low-income households, as evidenced by an increase in electricity expenses and subsequent electricity disconnections.").
[31] For a more complete discussion of coping mechanisms used to avoid utility disconnections, see Hernández, D. and J. Laird, Sage Publications, "Surviving a Utility Shutoff: U.S. Households at Greatest Risk of Utility Disconnections and How They Cope" (2021).
[32] These populations have been deemed "priority" populations under state LIHEAP plans because of their particular vulnerabilities.



Source: NCLC Analysis of Massachusetts gas and electric arrearage data reported in D.P.U. 20-58.

b. The minimum notification and arrearage requirements prior to disconnection and recommended changes;

We do not support reducing the amount of time before a disconnection takes place under the existing notice rules at 220 CMR 25.02(3).

The current rules require three notices – an initial bill, a second notice, and the termination notice. An additional notice, with more specificity about the date of disconnection may be helpful to consumers. Such notice should be provided in multiple languages, with a phone number to call for translation help. The additional notice should also contain information and instructions about disconnection protections, discounts, LIHEAP, and other resources.

In addition, we urge the Department to consider creating a rule that would direct the utility company to offer to enroll customers in all applicable affordability and assistance programs administered by the utility before any disconnection could proceed.[33]

c. Current policy and level regarding disconnection/reconnection fees, and whether utilities should be allowed to charge disconnection/reconnection fees to customers eligible for energy affordability programs;

[33] See, e.g., CPUC, Decision 20-06-003, Phase 1 Decision Adopting Rules and Policy Changes to Reduce Residential Disconnections for the Larger California Jurisdictional Energy Utilities (June 16, 2020), Ordering paragraph 1(c) (no disconnection for nonpayment until utility offers to enroll customers in all applicable benefit programs administered by the utility and where utility has discussions with customer prior to disconnection, there is a duty to inquire if customer is interested in hearing about applicable programs).

Massachusetts prohibits disconnection/reconnection fees pursuant to 220 CMR 27. We strongly oppose any such fees and the Department should not impose them. Disconnection/reconnection fees and late fees are punitive measures that disproportionately harm under-resourced families. States that allow such fees often permit utilities to charge fees that are disproportionate to their costs, turning late fees into a profit center for utilities and a tax on the poor for consumers.[34]

d. Whether the Department should consider disconnection protections for people with disabilities.

Massachusetts currently has strong disconnection protections for low-income customers with serious illnesses or chronic serious illnesses.[35] Customers must demonstrate a financial hardship to be eligible for the protection, and must provide certification from a medical provider every three months for a serious illness or every six month for a chronic serious illness. There is currently no specific legal protection for households who are not considered low-income.

We urge the Department to consider adding a renewable protection for non-low-income customers with disabilities. All households need sustained access to heating and cooling, and many medical conditions and disabilities require continuous electric service for necessary items such as wheelchairs with batteries that must be charged, oxygen concentrators, nebulizers, or medications that must be refrigerated.[36]

The Department could create a blanket protection from termination for all customers with a serious illness or disability, regardless of income. In the alternative, the Department could structure this disconnection protection by creating two different types of protections for low-income and non-low-income customers. This is somewhat similar to the protections for older adults provided in the regulations. For low-income elders, there is a blanket protection for households where "all adults domiciled in the home are age 65 or older and a minor resides in the home," at 220 CMR 25.03(1)(a)(4) (note that in practice, this protection appears to be extended to households where all adults in the home are age 65 or older, even if there is no minor in residence). For non-low-income elders, disconnection is not allowed unless the utility company complies with additional due process requirements:

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[34] See, Lawrence Berkeley National Laboratory, *Advancing Equity in Utility Regulation*, at 38-39 (Nov. 2021), available at https://emp.lbl.gov/publications/advancing-equity-utility-regulation. Table 4 lists late fees from a diverse range of utilities across the country, with fees per customer ranging from $0.55 to $23.93.

[35] 220 CMR 25.03. See also, NCLC, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now* (Feb. 2021), available at https://www.nclc.org/resources/report-protecting-seriously-ill-consumers-from-utility-disconnections-what-states-can-do-to-save-lives-now/.

[36] California consumers may qualify for the state's Medical Baseline Program if they have been diagnosed with certain conditions or need certain types of medical equipment, see CPUC Medical Baseline information at https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/medical-baseline.

> "A company may terminate service to a household in which all residents are 65 years of age or older only after such company first secures the written approval of the Department. In addition to the application for such approval filed with the Department, the company shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to 220 CMR 25.05(2) and the residents of such household." 220 CMR 25.05(3)

The Department could use a similar approach here, creating an absolute protection from disconnection for eligible low-income households where a resident has a disability, and a protection for non-low-income households which would allow for disconnection only after the utility company afforded additional due process to the family and obtained permission from the Department.

e. How the costs associated with disconnection protections are currently recovered and how should they be recovered from other customers; and

These do not have to be recovered separately. The cost of termination protections is generally covered as part of the cost of uncollectible accounts established in rate cases. Special rate adjustments may also be considered.

f. Whether the Department should consider shutoff moratoriums for nonpayment during the summer and, if so, the appropriate time period.

We strongly urge the Department to adopt shutoff moratorium protections for the summer, as well as disconnection protections for other dangerous weather-related conditions such as dangerous air quality or other harmful conditions.

Extreme Heat Protections

It is increasingly clear that climate change is leading to more frequent and dangerous heat waves across the country, which can lead to serious health impacts including death.[37] Nearly a quarter of people in the U.S. are vulnerable to extreme heat. According to the Centers for Disease Control and Prevention, between 2018 and 2021, there were 4,681 heat-related deaths in the U.S. One estimate pegs the cost of heat events in the U.S. at $1 billion in excess health care costs each year and if unaddressed, could cost the U.S. economy $14.5 trillion over the next fifty years.[38]

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[37] Kaiser Family Foundation, Continued Rises in Extreme Heat and Implications for Health Disparities, N. Ndugga, S. Artiga, August 24, 2023; see https://www.kff.org/racial-equity-and-health-policy/issue-brief/continued- rises-in-extreme-heat-and-implications-for-health-disparities

[38] Center for American Progress, The Health Care Costs of Extreme Heat (June 27, 2023), available at https://www.americanprogress.org/article/the-health-care-costs-of-extreme-heat/; Deloitte, The turning point -- A new economic climate in the United States (Jan. 2022), available at

Extreme heat is particularly harmful to households struggling with energy insecurity, which include disproportionate numbers of Black and Latine' households as a result of our long history of discrimination, redlining, and other forms of systemic racism. Low-income households, communities of color, and communities with environmental justice concerns are thereby more at risk for the harmful consequences of climate-related extreme heat.[39]

The most protective type of disconnection protection would be based on calendar days when extreme heat is the most likely. This is the structure of the existing Massachusetts winter moratorium, which prohibits disconnections of low-income households from November 15-March 15 (and is usually extended to April 1). Arizona has adopted the country's first calendar-based protection from disconnections during periods of extreme heat, which allows the utility company to choose either temperature-based protections, or a calendar-based protection from disconnection from June 1-October 15.[40]

Since Massachusetts experiences a shorter window of extremely hot temperatures, a shorter calendar-based protection, e.g., July 1-August 15, may be appropriate. A calendar-based protection would be easier to administer, and more predictable for consumers. It is an unfortunate fact that many heat-related deaths result when consumers have an air conditioner available but do not turn it on because they are worried about electricity costs.[41] A calendar-based protection may better address the needs of those who are particularly vulnerable to the effects of high heat. A calendar-based protection may also lessen the disparate burden on lower-income residents in urban heat islands,[42] multifamily housing, housing in poor condition,

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https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-the-turning-point-a-new-economic-climate-in-the-united-states-january-2022.pdf.

[39] See, e.g., Michelle Graff et al., Climate Change and Energy Insecurity: A Growing Need for Policy Intervention, Environmental Justice, Vol. 15, No. 2, 76-82 (April 19, 2022), available at https://par.nsf.gov/servlets/purl/10248736.

[40] Ariz. Admin. Code R14-2-211; ACC Docket No. RU-A-19-0132, Decision 78316 (Nov. 9, 2021):

> "A. Restrictions on termination of service; recordkeeping and repayment requirements
> . . . .
> 11. A utility shall adopt only one of the following conditions under which it shall not terminate residential service:
> a. During any period of time for which the local weather forecast, as predicted by the National Weather Service, indicates that the weather in the area of the customer's service address:
> i. Will include temperatures that do not exceed 32° F;
> ii. Will include temperatures that exceed 95° F; or
> iii. Will include other weather conditions that the Commission has determined, by order, are especially dangerous to health; or
> b. During the calendar days of June 1 through October 15 of each year, which shall be specified as non-termination dates in a utility's tariffs."

[41] See, e.g., Gatehouse Media, "Hostage to Heat" series (2019), available at https://stories.usatodaynetwork.com/hostagetoheat/texas-heat-summer-temperatures-electricity-power-cut-off/site/statesman.com; Maricopa County Dept. of Public Health, *2023 Weekly Heat Report* (Oct. 2023), available at WeArePublicHealth.org.

[42] Maxwell, K., S. Julius, A. Grambsch, A. Kosmal, L. Larson, and N. Sonti. 2018. Built environment, urban systems, and cities. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II

and mobile homes, all of which may experience higher temperatures than the surrounding areas.

In the alternative, if a temperature-based protection is chosen, it is preferable to use a heat index measure instead of temperature, to account for the health impacts of high humidity. If a temperature threshold is identified, we recommend that the threshold should not exceed 90 degrees Fahrenheit. Illinois, for instance, uses the following thresholds for its extreme heat disconnection protections:

> "If gas or electricity is used as the only source of space cooling or to control or operate the only space cooling equipment at a residence, then a utility may not terminate gas or electric utility service to a residential user, including all tenants of master metered apartment buildings, for nonpayment of bills:
>
> (1) on any day when the National Weather Service forecast for following 24 hours covering the area of the utility in which the residence is located includes a forecast that the temperature will be 90 degrees Fahrenheit or above;
>
> (2) on any day preceding a holiday or weekend where National Weather Service for the following 24 hours covering the area of the utility in which the residence is located includes a forecast that the temperature will be 90 degrees Fahrenheit or above during the holiday or weekend; or
>
> (3) when National Weather Service issues an excessive heat watch, heat advisory, or excessive heat warning covering the area of the utility in which the residence is located."

220 ILCS 5/8-205(b).

We understand that Eversource has a voluntary practice to halt disconnections during extreme heat events, and other utilities may have similar practices. We urge the Department to formalize these protections in regulation.

Unhealthy Air Quality Protections

Recently, NCLC advocates were pleased to learn that Eversource has a practice of suspending disconnections when the forecasted Air Quality Index reaches 151 or above for ozone or particulate pollution. This is the level that the EPA has established is "Unhealthy" for everyone, and sensitive groups may experience more serious health effects. Unhealthy air quality is correlated with many negative health outcomes, with disproportionately greater

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[Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC. pp. 438–478. § Zamuda, C., D.E. Bilello, G. Conzelmann, E. Mecray, A. Satsangi, V. Tidwell, and B.J. Walker. 2018. Energy supply, delivery, and demand. In Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC. pp. 174– 201.

impacts on people of color, people living in poverty, children, older adults, and other vulnerable populations.[43]

We recommend that the Department create an Unhealthy Air Quality disconnection protection for all utilities in Massachusetts.

Other Disaster Protections

In addition, the Department should consider adding additional protections that apply to residents affected by other disasters, such as floods or wildfires. These could be modeled on protections adopted in California in 2019.[44] The CPUC order requires that, if the Governor or a President declares a state of emergency due to a disaster that causes a loss or disruption of utility service or "the degradation of the quality of utility service," then the state's electric, gas and water utilities must certify that they are complying with the CPUC's emergency disaster protections and outreach activities. Emergency disaster protections for California consumers include:

> "(1) waive deposit requirements for affected residential customers seeking to reestablish service for one year and expedite move in and move out service requests;
> (2) stop estimated usage for billing attributed to the time period when the home/unit was unoccupied as result of the emergency;
> (3) discontinue billing;
> (4) prorate any monthly access charge or minimum charges;
> (5) implement payment plan options for residential customers;
> (6) suspend disconnection for nonpayment and associated fees, waive deposit and late fee requirements for residential customers;
> (7) support low-income residential customers, in disaster impacted zip codes which may include all zip codes in a county depending on circumstances, by
>
> > (a) freezing all standard and high-usage reviews for the California Alternate Rates for Energy (CARE) program eligibility until at least the end of the year and potentially longer, as warranted;
> > (b) contacting all community outreach contractors, the community based organizations who assist in enrolling hard-to-reach low-income customers into CARE, to help better inform customers of these eligibility changes;
> > (c) partnering with the program administrator of the customer funded emergency assistance program for low-income customers and increase the assistance limit amount for the next 12 months for impacted customers; and
> > (e) indicate how the energy savings assistance program can be deployed to assist impacted customers;

[43] See, e.g., American Lung Assoc., State of the Air Report (2023), available at https://www.lung.org/research/sota/health-risks.
[44] CPUC, Docket No. R.18-03-011, Order No. D.19-07-015 (July 11, 2019).

(8) suspend all CARE and FERA program removals to avoid unintentional loss of the discounted rate during the period for which the customer is protected under these customer protections;
(9) discontinue generating all recertification and verification requests that require customers to provide their current income information."[45]

While some of these protections would not be applicable in Massachusetts (for instance, Massachusetts utility companies do not assess late fees or disconnection fees, only municipal utilities can require a deposit from residential customers, and our affordability programs are different from the California CARE and FERA programs), many could be adopted here to protect customers who have experienced weather-related disasters.

Any new disconnection protections will be most effective if they are part of a comprehensive set of affordability programs plus disconnection protections.

D. Program Administration

1. Discuss the challenges and best practices for income verification for energy affordability programs, including the use of automatic enrollment or self-certification. In particular, discuss how to verify incomes above 200 percent of the FPL or 60 percent of the SMI.

Income eligibility for LIHEAP was increased to 60% of state median income several years ago. In accordance with G.L. c. 164, §1F(4)(i)[2nd para.][46], the income eligibility cap for the discount rates followed suit. Thus, the most straightforward current route to verify a household's income for energy affordability programs with a cap of 60% of median or less is to direct them to apply for LIHEAP. This not only would help the eligible households enroll in LIHEAP assistance for paying their energy bills, the eligibility decisions also qualifies households for the discount rates and arrearage management program.

To the extent that there will be affordability programs with an income cap higher than 60% of median,[47] it is challenging to verify the income of those above 60% of median. We

[45] CPUC, Docket No. R.18-03-011, Order No. D.19-07-015, 58-59 (July 11, 2019).

[46] "In a program year in which maximum eligibility for the low-income home energy assistance program, or its successor program, exceeds 200 per cent of the federal poverty level, a household that is income eligible for the low-income home energy assistance program shall be eligible for the low-income discount rates required by this subparagraph."

[47] For example, certain of the MassSAVE programs provide additional benefits (i.e, larger rebates) for those between 60% and 80% of median income compared to the benefits for those above 80% of median. Current proposals before the EEAC, for the 2025-2027 plan, include:

- 100% Weatherization for Moderate Income (owners and renters) with Self Attestation and 100% Weatherization for Rental Units all income levels
- 100% barrier remediation for Moderate Income (owners and renters) with income verification delivered through turnkey approach
- $5000/unit barrier remediation for Rental Units above MI income levels

recommend self-certification for these households – particularly when the discounts being offered are less than robust. Illinois recently ordered its investor-owned gas utilities to permit self-certification for a modest discount rate for customers whose income falls between 201% and 300% of the federal poverty level, with self-certification.[48] It would be valuable to explore this topic in any follow-up technical sessions the Department may schedule. In addition, we note the IRA Home Energy Rebate Programs that will be implemented by the DOER define median income as 80% - 150% AMI. To the extent the DOER is designing rebate programs for median income households, it may be possible to use that eligibility determination for categorical eligibility purposes.[49]

Automatic enrollment has proved a valuable and successful tool for the utilities in connection with their AMP programs.

We also think, as noted above, that certain affordability programs could benefit from some form of self-certification. However, that may vary by program, especially in connection with the extent of the assistance. We are aware that MassSAVE is considering making some offerings available either by self-certification, or based on the customer's geographic location (and not on actual income verification), but that other offerings (such as installation of air source heat pumps for homeowners) will still require income verification to receive the services for free, given the cost of those installations.

Utility affordability programs in several other states allow self-certification of eligibility. For instance, under the Oregon Energy Affordability Act of 2021, Oregon is developing a discount program that allows applicants to self-certify to the utility or community action agency.[50] In some states, self-certification includes periodic program audits.

We also note that although LIHEAP eligibility is a straightforward path to determining eligibility for other programs, applying for LIHEAP may present a barrier for some households. In addition to the financial eligibility determination, LIHEAP participants must also have U.S. citizenship or one of the types of immigration status permitted under federal law. Anecdotally, we understand that many non-citizen households may be concerned about applying for the program, even if a determination of financial eligibility is sufficient to show eligibility for the

- 100% Heat Pump installation and panel upgrades for Moderate Income (owners and renters) with income verification.

See, e.g., Massachusetts Energy Efficiency Advisory Council, Resolution and Priorities for the Development of the 2025-2027 Massachusetts Joint Statewide Three-Year Electric and Gas Energy Efficiency Investment Plan (December 20, 2023).

[48] *See, e.g.,* ICC Docket No. 23-0066, *Northern Illinois Gas Company, d/b/a Nicor Gas – Proposed Increase in delivery service rates,* Order of November 16, 2023 at 201-205.

[49] See IRA Home Energy Rebates guidance Ver 1.1, definitions 2.1 available at https://www.energy.gov/sites/default/files/2023-10/home-energy-rebate-programs-requirements-and-application-instructions_10-13-2023.pdf.

[50] *See* Or. Rev. Stat. § 757.230; Oregon Pub. Utils. Comm'n, Implementation of H.B. 2475, Docket No. UM 2211 (Dec. 14, 2021).

discount utility rates. Self-certification, presumptive eligibility for residents of geographic areas identified as economically disadvantaged, and outreach efforts will be needed.

2. Discuss the best practices to increase enrollment across energy affordability programs, such as the expanded use of utility advanced metering infrastructure data, marketing and outreach, and increased eligibility requirements.

Please see the responses to Questions B8 and D1.

Community Action Agencies (CAAs) across Massachusetts actively outreach to consumers who may be eligible for LIHEAP and other affordability programs. Recent efforts have included billboards, social media and radio advertisements. Some communities may benefit from additional support for partnerships between CAAs and trusted community based organizations. Additional resources for outreach by CAAs and their partners in community based organizations can support these efforts. There may also be a need for additional "one-stop shops" for energy assistance and energy efficiency programs, such as the Statewide Client Services Center being developed by the Low-Income Energy Affordability Network (LEAN).

The Department can also continue to explore the use of mapping as a way to qualify eligible households for low-income assistance programs. Data from advanced metering equipment, overlaid with census data or mapping of disadvantaged communities, such as those labeled as environmental justice communities, may be helpful to identify high usage households that may benefit from energy efficiency services.

As noted above, the distribution utility companies should continue to update and train utility customer service representatives to raise the various programs that could assist eligible low-income or financially struggling customers.

F. General Questions

2. Provide any additional comments or suggestions regarding the methods and measures that the Department could employ to address energy affordability.

Competitive Supply

As multiple reports by the Massachusetts Office of the Attorney General have found, the retail sale of competitive electric supply to residential households usually increases electric costs for enrolled households compared with what these families would have paid if they had remained with their distribution utility company or municipal aggregation. Competitive energy supply contracts usually worsen a household's energy burden, without any real benefit to the consumer. Halting the sales of individual residential competitive supply contracts would be an inexpensive way to drastically reduce the energy burdens of low-income and moderate-income

customers in Massachusetts, and we urge the Department to support legislative efforts to do so, in Senate Bill S. 2106 and House Bill H. 3196.

Intervenor compensation

As recommended in the Stakeholder Working Group report,[51] we urge the Department to use or obtain the authority to create an intervenor compensation program, to support broader participation in the Department's proceedings by community-based organizations, representatives of environmental justice communities, representatives of under-resourced communities, and others who are impacted by the Department's decisions but have lacked the resources to have their input considered by the Department. Other states including California,[52] Colorado,[53] Idaho,[54] Illinois,[55] Maine,[56] Michigan,[57] and Wisconsin[58] already have intervenor compensation statues that encourage a broad range of intervenors to participate in commission proceedings.

Additional Financial Support for Affordability Programs

Home utility service is vital to health, safety, and economic security, both for individual households and communities at large. Affordable and reliable electric service also supports state and federal climate goals that include building and transportation electrification. While it may be outside of the scope of the Department's authority, we are aware that Massachusetts affordability programs have mostly been funded through rates, socializing the costs to non-participating ratepayers. The impacts on non-participating ratepayers have been very small, but this could change as higher energy prices, increased costs for electrification measures, higher electric bills associated with heat pumps and electric vehicles, and other steps in the transition to cleaner energy move forward. Taxpayer support, and not just ratepayer support, is needed to address the extensive need. The legislature should consider measures to provide additional funding in support of energy affordability programs, to protect low-income consumers from financial harm during the energy transition, and to support progress toward Massachusetts climate goals.

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[51] Massachusetts Stakeholder Working Group, *Overly Impacted & Rarely Heard, Incorporating Community Voices into Massachusetts Energy Regulatory Processes* (May 2023), available at https://www.mass.gov/overly-impacted-and-rarely-heard-incorporating-community-voices-into-massachusetts-energy-regulatory-processes.

[52] Cal. Pub. Util. Code §1802 et seq. 203. The CPUC has published a succinct and helpful summary of the Intervenor Compensation Program, at https://www.cpuc.ca.gov/proceedings-and-rulemaking/intervenor-compensation.

[53] CO ST § 40–6.5–105 (a); CO LEGIS 21-103 (2021), 2021 Colo. Legis. Serv. Ch. 21-103 (WEST).

[54] Idaho Code Ann. § 61-617A.

[55] 83 Ill. Adm. Code Section 288.220.

[56] Me. Rev. Stat. tit. 35-A, § 1310.

[57] Mich. Comp. Laws Ann. § 460.6m.

[58] Wisc. Admin. Code, PSC 3.03. https://docs.legis.wisconsin.gov/code/admin_code/psc/3/03; Wisc. Act. 58 at 21, enacting Wisc. 2021 Assembly Bill 68 (July 8, 2021), https://doa.wi.gov/budget/SBO/2021%20Wisconsin%20Act%2058.pdf.

Thank you for the opportunity to submit these comments, and we look forward to participating in further discussions and proceedings in this docket.

Respectfully submitted,

National Consumer Law Center, on behalf of our low-income clients

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