

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE REGULATION)
GOVERNING TERMINATION OF)
RESIDENTIAL ELECTRIC OR NATURAL) PSC REGULATION DOCKET NO. 53
GAS SERVICE BY PUBLIC UTILITIES)
FOR NON-PAYMENT DURING EXTREME)
SEASONAL TEMPERATURE CONDITIONS)
(OPENED APRIL 15, 2003))

ORDER NO. 6325

AND NOW, this 9th day of December, 2003;

WHEREAS, pursuant to 26 Del. C. § 209(a), and 29 Del. C. §§ 10111 et seq., the Public Service Commission ("the Commission") has determined to adopt proposed "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions" ("Regulations"); and

WHEREAS, the following parties participated in this regulation docket: the Division of the Public Advocate, Conectiv Power Delivery, Delaware Electric Cooperative, Inc., Chesapeake Utilities Corporation, and the Commission Staff; and

WHEREAS, the Commission has determined to issue this Order reciting the Background, Summary Of The Evidence And Information Submitted, And Its Findings; and

WHEREAS, on or about March 7, 2003, the Division of the Public Advocate ("DPA") filed a Petition to Reopen PSC Regulation Docket No. 3 ("Petition"); and

WHEREAS, on September 4, 1979, the Commission initiated PSC Regulation Docket No. 3 to develop rules and regulations that would

govern the termination of residential electric, natural gas, and heating oil services by regulated public utilities during the heating season; and

WHEREAS, after receiving comments from the affected utilities, as well as from interested members of the consuming public, the Commission, by Order No. 1990 (Oct. 30, 1979), adopted regulations that specified the circumstances under which service terminations during the heating season could be effected for non-payment; and

WHEREAS, these Regulations were further modified by the Commission in Order No. 2143 (Oct. 28, 1980; and

WHEREAS, the DPA noted in its Petition that, among other things, the adopted Regulations provide that no service terminations for non-payment shall occur during the heating season "to a dwelling unit on a day when the 8:00 a.m. ambient air temperature measured at a location in the State of Delaware, selected by the utility, within fifty (50) miles of the subject dwelling unit, is twenty degrees Fahrenheit (20° F) or less on the morning of the date when said service . . . is scheduled for termination."; and

WHEREAS, the DPA contends in its Petition that the 20° F temperature floor set by the existing Regulations is rather extreme and would adversely affect the health and safety of the consuming public, particularly that segment of the population most likely to face a service termination, children, the aged, and the infirm; and

WHEREAS, the DPA asserts in its Petition that the DPA Staff has compiled data, which is supplemented with research performed by the Commission's own Staff, concerning the termination policies of 35

states during the heating season. An analysis of that data reveals the following:

- A majority of the state jurisdictions surveyed have restrictions against disconnecting electric and/or natural gas services during the winter months;
- A third of these states have specific temperature restrictions during the winter, and a majority of these prohibit terminations if the temperature is less than 32° F;
- About a third of the states in the study prohibit the disconnection of services to low-income or elderly customers during the winter.

WHEREAS, the DPA notes that Delaware lacks a uniform standard relating to the temperature floor at which regulated utilities may not terminate service during the winter; and

WHEREAS, in its Petition the DPA notes that the present Regulations do not speak to the severe and adverse impact that service terminations can also have during times of extreme temperatures in the Summer; and

WHEREAS, the DPA observes that, in 2001, it was able to negotiate with Conectiv Power Delivery ("Conectiv") to voluntarily adopt a policy of limiting service terminations of residential customers during periods of extreme heat in the Summer, but that this policy is one which Conectiv adopted voluntarily and such policy cannot be enforced by the Commission nor imposed on any other electric utility; and

WHEREAS, the DPA, therefore, has requested that for the sake of uniformity, and for the general welfare of all consumers of regulated electric services, the Commission consider adopting the Conectiv "hot weather" policy as part of the termination Regulations originally adopted in this docket, to be applicable to all relevant utilities under the Commission's jurisdiction; and

WHEREAS, the Staff submitted a memorandum to the Commission dated March 11, 2003, in which it supported the reopening of this docket; and

WHEREAS, on April 15, 2003, the Commission issued Order No. 6148 reopening this regulation docket and recaptioned the docket as Regulation Docket No. 53; and

WHEREAS, pursuant to Order No. 6148, the Commission caused to be published a public notice soliciting comments concerning revisions to the Regulations; and

WHEREAS, the Commission Staff prepared a proposed set of "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions," conducted a public workshop on August 20, 2003, received and considered written comments from interested parties, and conducted a series of teleconferences in which the participants in this docket provided further comments on the Regulations; and

WHEREAS, on October 7, 2003, the Commission held a duly noticed public hearing to consider the revised Regulations prepared by the

Staff, the comments and discussion at the workshop on August 20, 2003, and the written comments received from interested parties; and

WHEREAS, on October 7, 2003, the Commission issued Order No. 6282 promulgating the revised Regulations prepared by Staff; and

WHEREAS, the revised Regulations were transmitted to the Registrar of Regulations for publication in the Delaware Register; and

WHEREAS, the revised Regulations contained provisions designed to: 1) increase the threshold temperature level at which the termination of service is prohibited from the present level of 20 degrees Fahrenheit to 32 degrees Fahrenheit; 2) extend the scope of the regulations to encompass the termination of utility service used for cooling during the period from June 1 through September 30, in circumstances where the Heat Index (a combination of air temperature and humidity) will equal or exceed 105 degrees Fahrenheit; 3) add definitions for the terms "Cooling Season" and "Heat Index;" (4) delete any reference to heating oil service, because it is no longer regulated by the Commission under Delaware law; 5) enlarge the period of notice of termination which must be given to residential customers from five working days to fourteen calendar days; 6) revise the interest rate that may be charged to customers on past due amounts being paid under installment agreements from 18 percent per year to the interest rate set forth in the utility's approved tariff, which revision is expected to reduce the interest rate charged to customers; 7) amend a provision in the existing regulations regarding the minimum duration of an installment agreement to repay an undisputed arrearage by providing that the restriction will not apply to subsequent

installment agreements in the event the customer defaults on the initial agreement; 8) clarify the language in the regulations to require covered utilities to make a reasonable good faith attempt to make personal contact with the customer at the premises to be disconnected prior to termination; 9) specify that the revised regulations do not apply during the cooling season to customers of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit; 10) revise language in the existing regulations about providing customers who are unable to pay their utility bill with information about organization(s) that may provide the customers with assistance; 11) revise a provision of the existing regulations to deal with situations where a customer tenders cash to a utility employee who is not authorized to accept cash; 12) update provisions dealing with non-mandatory third party notice programs that may be adopted by utilities; and 13) revise provisions related to the termination of service to multiple occupancy dwelling units served through a master meter, including the posting of notice at each affected building; and

WHEREAS, pursuant to Commission Order No. 6282, public notice was published in *The News Journal* and *Delaware State News* newspapers seeking additional public comment to be filed with the Commission on or before November 30, 2003, and stating that the Commission would conduct a public hearing on the revised Regulations on December 9, 2003; and

WHEREAS, no additional written comments have been received from the public or interested parties; and

WHEREAS, the participants in this docket have jointly proposed an amendment to Section 3.1 of the revised Regulations to require covered utilities to make at least one documented attempt to contact the customer by telephone prior to actual termination of service; and

WHEREAS, no additional amendments have been proposed to the revised Regulations.

Now, therefore, **IT IS SO ORDERED**:

1. Pursuant to 29 Del. C. § 209(a), the Commission finds and determines that the adoption of the proposed Regulations, including the aforesaid amendment to Section 3.1, is just and reasonable, and in the public interest, and will foster the furnishing of safe and adequate and proper service to customers.

2. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* on January 1, 2004, the proposed Regulations attached hereto as Exhibit "A." The Commission hereby adopts and approves the proposed Regulations, attached hereto as Exhibit "A," as the Regulations that will govern the Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions. The Regulations shall become effective on January 12, 2004.

3. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

THE DELAWARE PUBLIC SERVICE COMMISSION

REGULATIONS GOVERNING TERMINATION OF RESIDENTIAL
ELECTRIC OR NATURAL GAS SERVICE BY
PUBLIC UTILITIES FOR NON-PAYMENT DURING
EXTREME SEASONAL TEMPERATURE CONDITIONS

PSC REGULATION DOCKET NO. 53

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I. GENERAL

1.1 Authority

These regulations are adopted pursuant to the authority granted to the Public Service Commission under 26 Del. C. § 209(a) and 29 Del. C. § 101.

1.2 Application and Purpose

These regulations establish uniform procedures which must be followed prior to termination of service for non-payment during the heating or cooling season and apply to all covered utilities. The purpose of these regulations is to protect public health, safety, and property by taking reasonable steps to insure that an individual has the opportunity to act to avoid termination of certain utility services for non-payment during the heating or cooling season without imposing substantial additional cost on other utility customers. Notwithstanding anything stated in these regulations to the contrary, the provisions of these regulations do not apply during the cooling season to a customer of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit.

II. DEFINITIONS

"Cooling Season" - means that portion of the calendar year extending from June 1 through September 30.

"Covered Utility" - means any utility regulated by the Public Service Commission of Delaware that supplies electric or natural gas service to a dwelling unit.

"Dwelling Unit" - means one or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

"Heat Index" - a measure utilized by the National Weather Service of the apparent temperature (how hot it feels) when relative humidity is added to the actual air temperature.

"Heating Season" - means that portion of the calendar year extending from November 15 to March 31.

"Personal Contact" - means a face-to-face meeting between the customer or responsible occupant of the premises served and an employee of the covered utility who is authorized to receive payment and issue a receipt or make other arrangements for payment.

"Written Notice" - means notice in writing, mailed by First Class mail to the person who is being given notice, using the current billing address as shown on the records of the utility.

III. PROHIBITIONS

3.1. Written and Verbal Notice

- A. Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service to a dwelling unit during the heating or cooling season for non-payment of a past due bill or bills, unless at least fourteen (14) calendar days prior to such termination, written notice is given to the customer. The notice shall state the fact of impending termination, the date on or after which such termination will occur, and the steps which may be taken to avoid such termination. In addition, during the heating season, the covered utility shall make at least two (2) documented attempts on separate days to contact the customer by telephone prior to actual termination of service. One such attempt shall be after 6:00 P.M. During the cooling season, the covered utility shall make at least one (1) documented attempt to contact the customer by telephone prior to actual termination of service.
- B. During the heating season only, in those situations where the billing address is different from the location at which the service is being provided, the advance written notice required by § 3.1.A must also be given to the occupant of the premises being served.

3.2 Content of Notice

The written and verbal notice required by § 3.1 shall, at a minimum, include notification of the following:

- A. The date on or after which termination of service will occur unless some satisfactory arrangement is made for the payment of the undisputed delinquent bill or bills, which date shall be no less than fourteen (14) calendar days from the mailing of written notice.
- B. That if there is a good faith dispute concerning the unpaid bill or bills, termination of service will not take place pending determination of the dispute, provided the utility is notified of the existence of the dispute prior to actual termination. In this regard, the utility must also give the name or names of the persons or office authorized to receive notification of the existence of the dispute and empowered to resolve such disputes, together with the telephone number and address at which such persons or office can be contacted and notified of the existence of a dispute. No covered utility shall be required to delay termination of service pending resolution of a disputed bill or bills where the undisputed portion of the bill or bills would otherwise justify termination of service or where the customer does not agree to pay current undisputed bills as they become due and to eliminate undisputed arrearages by installment payments. Service will not be reconnected after termination for non-payment on the

grounds that a good faith dispute exists unless and until arrangements satisfactory to the covered utility have been made for payment in the event the dispute is resolved in favor of the utility.

- C. That if the customer is unable to pay the full amount of the undisputed bill or bills, termination of service may be avoided by entering into an initial installment agreement with the utility whereby the customer will agree to pay current bills as they become due and eliminate, by monthly installment payments, the undisputed arrearage over a period of not less than that during which the unpaid bills were incurred with interest on the unpaid balance at the next billing date. If the customer violates the initial installment agreement, the limitation on the minimum duration of the initial installment agreement shall not apply to any subsequent installment agreement. The interest rate shall be set forth in the approved tariff of the covered utility. The name, address, and telephone number of the utility employees or office empowered to enter into installment arrangements on behalf of the covered utility must be provided to the customer.
- D. That if the customer is unable to pay the undisputed bill or bills in full, or to enter into a satisfactory reasonable installment arrangement, there are charitable or governmental organizations or agencies that may be able to assist customers who are so situated and that the customer

should immediately contact such organizations. The written notice required by § 3.1 shall contain either a list of those organizations who have notified the covered utility that they may be able to assist customers, or the name and telephone number of an organization that the customer can contact to obtain such information.

- E. That if any occupant of the dwelling unit is so ill that termination of the utility service would adversely affect health or recovery, which fact has been certified by a statement from any licensed Delaware physician or any accredited Christian Science practitioner, when such certification is received by the covered utility or its employee, termination of service is prohibited by Delaware Law (26 Del. C. § 117(d)).

3.3 Final Contact Prior to Termination

The employee of the utility who is to disconnect service shall make a reasonable good faith attempt to make personal contact at the premises to be disconnected. If personal contact is made, the employee shall:

- A. Identify himself or herself to the customer or some responsible person then upon the premises and shall announce the purpose of his or her presence.
- B. Identify and record the name of the person contacted.
- C. Accept payment of all amounts tendered which are necessary to avert disconnection and issue a receipt for such payment. If the form of payment is unacceptable to the

utility, the employee can make other payment arrangements with the customer.

- D. Record and report to his or her supervisor any statements disputing the accuracy of the utility's findings concerning the cause for termination of service.
- E. Record and report to his or her supervisor statements or other information concerning the existence of any condition on the premises which would result in a medical emergency if service were terminated.
- F. Receive written certification from a duly licensed Delaware physician or accredited Christian Science practitioner that a named occupant of the dwelling unit is so ill that termination of service will adversely affect the occupant's health or recovery. Upon receipt of such certification, the utility shall not disconnect service.

IV. THIRD PARTY NOTICE

4.1 Non-Mandatory Third Party Notice

All covered utilities shall inform all of their customers of the availability of any third party notification program offered by the utility, whereby the customer can designate, in writing, a third person to receive notice of past due bills and written notice of termination of service. The third party so designated must indicate, in writing, willingness to receive such notice and shall not be held, in any way, liable to the utility by reason of acceptance of third party status.

4.2 Termination Notice Without Third Party Notice Program

No covered utility without a third party notice program, shall terminate service to a dwelling unit during the heating or cooling season without first having given the written notice required by § 3.1 and, in addition, having made actual contact on a face-to-face basis with an occupant over the age of 15 years of such dwelling unit, giving the minimum notice set forth in § 3.3.

4.3 Information Concerning Third Party Notice

If a covered utility adopts such a program, the utility shall take appropriate steps to see that all customers are aware of the existence of the third party notice program.

V. TERMINATION OF SERVICE TO MULTIPLE OCCUPANCY DWELLING UNITS SERVED THROUGH A MASTER METER

5.1 Prohibition

Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service during the heating or cooling season to any apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is provided directly or indirectly through a master meter without individual meters, unless such utility has provided the notice required in §§ 5.2 and 5.3.

5.2 Notice to Owner

A written notice pursuant to § 5.1 shall be sent by First Class mail not less than fourteen (14) calendar days prior to the scheduled date of termination for non-payment to the owner of the premises affected or in lieu thereof, to the person, firm, or corporation to whom or which the last preceding bill has been rendered or from whom or which the covered utility has received payment. The content of such notice shall, at minimum, include the notification required by § 3.2.

5.3 Notice to Occupants

The covered utility shall, at least ten (10) calendar days prior to termination for non-payment, provide notice to the occupants, which notice shall state the intended date of termination of service, the amount due for such service, and the procedure by which any tenant or public agency may make or guarantee such payment, and thereby avoid termination of service.

Such notice to occupants shall either be mailed by first class mail to the "occupant" of each dwelling unit in the building complex to which service is proposed to be terminated or posted in a conspicuous place or places at each building subject to termination, including common areas accessible to the utility.

5.4 Notice to State Agencies

Not less than fourteen (14) calendar days prior to termination of service to a multiple occupancy dwelling unit, the covered utility shall provide written notice of its intention to so terminate to the Public Service Commission of the State of Delaware, and to the Division of the Public Advocate.

VI. PROHIBITION ON TERMINATION DURING EXTREME SEASONAL TEMPERATURE CONDITIONS

6.1 Conditions of Termination

A. Heating Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the National Weather Service reports that the 8:00 A.M. temperature measured at a location in the State of Delaware that is within fifty (50) miles of the subject dwelling unit is thirty-two degrees Fahrenheit (32°F) or below on the morning of the date when said service is scheduled for termination.

B. Cooling Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the 8:00 A.M. National Weather Service forecast contains a special weather statement or other information predicting that the Heat Index measured at a location in the State of

Delaware that is within fifty (50) miles of the subject dwelling unit may equal or exceed one-hundred five degrees Fahrenheit (105°F) on the date when said service is scheduled for termination.

6.2 Deferred Termination

Where termination of service, otherwise authorized, has been deferred by virtue of § 6.1, notice of such fact shall be left at the subject dwelling unit on the date on which termination was to be effected, notifying the occupant that unless proper payment arrangements are made, service will be terminated thereafter on a day when § 6.1 does not apply. If the termination of service involves an apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is provided directly or indirectly through a master meter without individual meters, the notice required by this section shall be deemed sufficient if the notice is given in accordance with § 5.3.

VII. PENALTY AND BURDEN OF PROOF

7.1 Penalty

Any covered utility determined, after hearing, to have terminated service for non-payment to a dwelling unit or multiple occupancy dwelling unit in violation of these regulations, may be fined an amount equal to twice the amount of arrearage for which service was terminated, or such lesser amount as deemed appropriate after full

consideration of the circumstances. The fine which may be imposed shall not exceed the sum of \$1,000 for each day during which the termination is in violation of these regulations.

7.2 Burden of Proof

The burden of proof of compliance with these regulations shall be upon the covered utility at any proceeding instituted by formal written complaint to or upon motion of the Public Service Commission of Delaware. The Commission specifically reserves the right to randomly select termination cases and require the covered utility to appear before the Commission at a duly notice hearing and establish compliance with these regulations.