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October 21, 2021

Via Email (board.secretary@bpu.nj.gov) and the BPU Public Document Search Webpage

Aida Camacho-Welch
Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave., 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

RE: In the Matter of the Proposed Readoption With Substantial Amendments to N.J.A.C. 14:3, All Utilities
BPU Docket Number: AX21070998

Dear Ms. Camacho-Welch:

Please accept this letter on behalf of Legal Services of New Jersey, Inc., setting forth LSNJ's comments on the Board's potential rule amendments dated September 10, 2021, in connection with the readoption of its regulations at N.J.A.C. 14:3. LSNJ coordinates New Jersey's Legal Services system, 6 non-profit corporations throughout the state providing free legal services to low-income people in civil legal matters. When appropriate, LSNJ makes available information and perspectives on matters of broad public importance in the lives of people in poverty based on its experience in representing tens of thousands of low-income people each year.

I. Extension of Consumer Protections to Water Customers.

The proposed extension of crucial customer protections – including but not limited to the Winter Termination Program – to water service as well as electric and gas service represents a major step forward for water customers. LSNJ commends the Board and staff for proposing these changes, and urges the

extension of all customer protections previously limited to electric and gas customers, such as those in N.J.A.C. 14:3-3A.4(i) and (j), to water customers in the final proposal.

II. Notice.

Language. Regulated utilities in New Jersey market their services and urge customers to contact their collection departments to make payment arrangements in English, Spanish, and other languages. In addition, many utility and BPU publications are routinely provided to customers in both English and Spanish -- a practice that is to be commended. Yet the most important notice sent to customers (in terms of the magnitude of possible consequences if it is not understandable), the notice of discontinuance for alleged nonpayment, may still be provided only in English under N.J.A.C. 14:3-3A.3(e).

New Jersey's Spanish-speaking population is substantial. More than 1.8 million New Jersey residents are Hispanic or Latino,¹ and about 1.4 million New Jersey residents primarily speak Spanish at home.² Over a million New Jerseyans are less than fully fluent in English.³

The implications are clear: termination notices should be provided in both English and Spanish, as is required in many other states with sizable immigrant populations.⁴ Notices should also be required in languages spoken by a substantial number of residents in communities within a utility's service area and, as in California, in the language in which the utility offered the service.⁵

In order to implement these changes, N.J.A.C. 14:3-3A.3(e) should be modified as follows:

All notices of discontinuance shall be provided in both English and Spanish. In addition, a [A] public utility shall, if any utility service has been offered to the customer in a language other than English or Spanish, if a substantial number of residents in the customer's municipality are known to speak a language other than English or Spanish, or if [upon the request of] the customer requests notice in another language in which the utility does business, send a [Spanish language] version of the notice of discontinuance in that language.

Service and Content. N.J.A.C. 14:3-3A.2, -3A.3 and -3A.4 should be clarified and strengthened in several respects.

¹ U.S. Census Bureau, Quick Facts: New Jersey (<https://www.census.gov/quickfacts/NJ>).

² U.S. Census Bureau, Selected Social Characteristics in the United States (2019) (<https://data.census.gov/cedsci/table> (filter for "New Jersey" applied)).

³ *Id.*

⁴ *See, e.g.*, 4 Colo. Admin. Code §§ 723-3:3408(d), -4:4408(d); 220 Code Mass. Regs. 25.02(11); N.M. Admin. Code § 17.5.410.33, .42; Or. Admin. R. 860-021-0011(1); Tex. Admin. Code, tit. 16, Rules 24.167(a)(1) (water), 25.29(k)(4) (electric), and 26.28(a)(7)(D) (telephone).

⁵ Cal. Pub. Util. Code 394.4(d).

- First, the requirement of good faith efforts at telephone contact prior to termination in N.J.A.C. 14:3-3A.4(c) should apply to all customers, not only those over 65 year of age.
- Second, notices of discontinuance should *always* be a separate document from the monthly bill sent to the customer. We commend the Board for having made this the default rule, as embodied in proposed N.J.A.C. 14:3-3A.3(b)(2). LSNJ believes, however, that there should be no exemptions for individual utilities. Regulations protecting customers from improper and unnecessary terminations of utility services should be applied on a uniform statewide basis. Additionally, any reasonable increased costs, to the extent they are not offset by improved collections, should be recoverable through the ratemaking process. This is a very important – but also simple and inexpensive – protection. It could be accomplished easily by striking the second sentence of N.J.A.C. 14:3-3A.3(b)(2).
- Third, the time periods for payment should be expanded to a period of 30 (rather than 20) days for payment, and 15 days for the notice of discontinuance. This would allow adequate time for persons who may need to obtain assistance, file a dispute, or whose sole source of income is received monthly.
- Fourth, crucial information for customers facing potential termination of essential utility services should be required to be printed on the front of the page. The requirement in N.J.A.C. 14:3-3A.4(j) that the “STATEMENT OF CUSTOMER’S RIGHTS” appear on the back of the notice should be eliminated.

In addition, the content of the “STATEMENT OF CUSTOMER’S RIGHTS” should be strengthened by amending proposed N.J.A.C. 14:3-3A.4(h) as follows:

* * *

2. A statement that in the event the customer is either unable to make payment of a bill or wishes to contest a bill the customer should contact the utility, the customer’s regional Legal Services program, and/or the Legal Services of New Jersey hotline. The notice shall contain information sufficient for the customer to make appropriate inquiry, including but not limited to the telephone number of the customer’s regional Legal Services program, and the telephone number and intake web page for the Legal Services of New Jersey hotline; and

3. A statement that if a customer is presently unable to pay an outstanding bill, the customer may contact the utility to discuss the possibility of entering into a reasonable and affordable deferred payment agreement. In the case of a residential customer receiving more than one service from the same utility, the statement shall state that deferred payment agreements are available separately for each utility service.

- Fifth, all information on the notice of termination should be required to be clear and conspicuous.
- Finally, the material provisions of four key customer protections – assistance programs, medical emergencies, deferred payment agreements, and the Winter Termination Program (together with extreme cold and extreme heat protections) -- should be set forth in greater detail. Customers need to know what these protections are and when they are available in order to use them and in order to dispute utility failures to administer them in accordance with the regulations. LSNJ would be pleased to work with the Board to develop language that would accomplish these important goals.

III. Winter Termination Program.

The Winter Termination Program (WTP) is a key protection from dangerous cold-weather terminations, and an eligible customer should not have to affirmatively raise and “demonstrate” eligibility, as is currently required under N.J.A.C. 14:3-3A.5(a). The simplest solution would be simply to prohibit utility terminations during the winter months. Otherwise, a utility should be required to take all reasonable steps to determine whether a customer proposed to be terminated during the winter moratorium period is protected under the Winter Termination Program *before* service is disconnected, including but not limited to asking the customer whether they are unable to pay their utility bills for reasons beyond their control. If in response to such an inquiry, or on the customer’s own initiative, the customer self-certifies eligibility for Winter Termination Program protection, termination during the moratorium period should only be permitted on order of the Board after a hearing.

In addition, the current requirement that a WTP-eligible customer –by definition, a customer facing significant financial challenges – whose service was previously terminated, must make a substantial downpayment (as much as 25% of their arrears) in order to have service reconnected, presents an unfair hurdle to WTP protections for many customers in need. Customers receiving need-based assistance, or who are unable to pay their utility bills because of circumstances beyond their control, by definition have no *additional* resources to devote to utility arrears. The downpayment requirement in N.J.A.C. 14:3-3A.5(b) should be eliminated.

IV. Deferred Payment Agreements.

Affordable deferred payment agreements (DPAs) are important for many customers seeking to maintain crucial utility services, and for utilities as a means for collecting legitimate debts. Unaffordable payment plans fulfill neither purpose. Moreover, DPAs are rarely if ever appropriate for a utility’s lowest-income customers, who struggle just to keep up with their regular monthly utility bills.

The current rule allows a utility to demand a downpayment that can be as much as “25 percent of the total outstanding bill due.” The rule also states that DPAs must be “fair and reasonable” and “take[] into consideration the customer’s financial circumstances,” but it provides no standards for ensuring that these standards are met. *See* N.J.A.C. 14:3-7.7(a), (b)(1). In our experience, the result is that

unaffordable payment plans – involving both demands for downpayments exceeding 25% of the amount due and extraordinarily high monthly payments – were routine in the pre-COVID economy.¹

Action by the Board in this realm is crucial. Stronger protections– some of which reflect provisions that have served well during the past 18 months under Executive Orders and Board rules and policies responding to the COVID pandemic – should be proposed as part of the current readoption, including:

- DPAs for Winter Termination Program-eligible customers with no down payment, and the option of a low fixed monthly payment (\$5 or \$10) toward arrears (similar to a system used in New York since the onset of the COVID pandemic),
- Requiring utilities to consider specific information about a customer’s household income and expenses, and offer actually affordable DPAs with terms of up to five years (or longer if necessary),
- Allowing a grace period for late payments, and
- Providing customers with the opportunity to enter into a second DPA in the event of default, reflecting the customer’s current ability to pay if financial circumstances have changed.

V. Medical Conditions.

We continue to believe that the language of N.J.A.C. 14:3-3A.2(i) and (j) is imprecise and unnecessarily confusing, leading to dangerous results. We urge the Board and staff to propose revised rules reflecting the following core principles discussed in a recent report by the National Consumer Law Center:

- **Broad Scope:** Eligibility for the protection should be broad and should include anyone with a serious illness whose health and safety would be at risk by involuntary disconnection of energy service.
- **Diversity of Certifiers:** A wide range of entities should be allowed to certify serious illness, and the utility company should be required to abide by their certification.

¹ Prior to COVID, a practice had developed pursuant to which utilities believed they were not required to offer DPAs with a duration of longer than 12 months, regardless of the customer’s financial circumstances. Indeed, we have encountered purported “agreements” with welfare recipients requiring payments of \$200 per month toward arrears, and heard utility company personnel state that they do not consider the customer’s financial circumstances in connection with deferred payment agreements.

- **Prompt Initiation and Adequate Duration of Protection:** Seriously ill customers must be able to obtain the protection against disconnection promptly, and the duration of the protection should correlate with the customer’s health needs.
- **Adequate Notice and Easily-Accessible Process:** Utilities should be required to notify customers of the serious illness protection rules, with an explanation of a clear and simple application procedure, and in multiple languages as appropriate to that utility’s service territory.
- **Affirmative Outreach:** Utilities should act affirmatively to identify medically fragile customers and avoid terminating their service.
- **Monitoring and Enforcement:** Utilities should be required to collect, report, and analyze data, at a granular level (e.g., by zip code), to monitor the administration of the protections.¹

We propose the following language to replace N.J.A.C. 14:3-3A.2(i) and (j), addressing the first three points above:

Discontinuance of residential service for nonpayment is prohibited if a medical condition exists within the household which requires utility service for treatment, or which would be aggravated by a discontinuance of service. Submission of a statement from a licensed health care practitioner or a social service professional, including but not limited to a physician, physician assistant, osteopath, nurse practitioner, nurse, mental health professional, board of health or public health official, or social service agency, shall constitute dispositive evidence that such a condition exists.

Discontinuance shall be prohibited for a period of 90 days, except by order of the Board, whenever (i) a customer submits a statement from a licensed health care practitioner or a social service professional as described above, or submits other reasonable evidence to the utility as to the existence of the medical condition, or (ii) the utility knows or has reason to know of the existence of the medical condition.

VI. Disputes.

Copies of Utility Responses Should be Provided to the Customer. N.J.A.C. 14:3-7.6, governing customer disputes, should require that

- utilities respond to customer disputes by setting forth the reasons for the utility’s position in writing and providing relevant documents,

¹ National Consumer Law Center, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now* (2021) (available [here](#)).

- utility responses be provided promptly to the customer,
- Board staff maintain a files containing all of the information in its possession relating to each dispute and
- the customer have the right to review and copy all of the information in the file, with a free copy made available to low-income customers and Legal Services clients.

Many other states provide for such reasonable procedures in their regulations. An example can be found at N.Y. Comp. Codes R. & Regs., tit. 16, §§ 12.1, *et seq.*

Board Staff Should Clarify Payment Obligations, if any, Pending Resolution of Disputes. In addition, the regulations should provide for a means to determine what, if any, amounts remain undisputed. We recommend that the following language be added at the end of N.J.A.C. 14:3-7.6(a):

Should there be a question as to the amount in dispute, the Division of Customer Relations shall make a reasonable estimate of the amount in dispute and the undisputed charges. If any amount is determined not to be in dispute, the customer shall be protected from service termination for a reasonable time to allow the customer to pay the undisputed amount, seek financial assistance, or enter into a deferred payment agreement.

VII. Reconnection In Appropriate Circumstances.

Under current regulations, Board staff have expressed the view that they may lack the authority to require prompt reconnection of service. N.J.A.C. 14:3-3A.9 should be revised to provide a right to immediate reconnection if termination was improper for any reason, if necessary to enable a customer to apply for assistance (implementing ¶ 5 of the revised BPU Customer Bill of Rights), or if the customer raises a bona fide dispute (and pays, enters into a DPA, or applies for assistance to cover any undisputed charges).

VIII. Continuation of Service While Application for Assistance is Pending.

As a common-sense protection, and as a logical corollary of ¶ 5 of the revised BPU Customer Bill of Rights, a provision should be added to N.J.A.C. 14:3-3A.2(e) stating that a utility shall not discontinue a customer's service while the customer has an application pending for utility-related financial assistance.

IX. Continuation of Service During Periods of Excessive Heat.

The proposed amendment of N.J.A.C. 14:3-3A.2(e)(3) to provide protection from termination of service when the temperature is forecast to be above 90° Fahrenheit at any time during the next 48 hours is highly beneficial to New Jersey's utility customers, and to its utilities as well. It will, quite simply, save lives. LSNJ commends the Board's proposal. LSNJ filed extensive comments with the Board in 2008 detailing the evidence supporting a 90° threshold for excessive heat protection, and would be happy to provide a copy of those comments on request.

LSNJ is very concerned, however, about the limitation of high-heat protection with the phrase "If a customer is eligible for the Winter Termination Program." Determining eligibility for the Winter

Termination Program in emergent circumstances during the summer months poses an ever-present risk of complicating and undermining an otherwise simple, very effective, and potentially life-saving protection, and leaving many vulnerable utility customers at great risk. The Board should simply delete this language.

X. Continuation of Service During Periods of Excessive Cold.

N.J.A.C. 14:3-3A.2(e)(1) currently protects customers from termination of service when the *high* temperature is forecast to be 32° or below during the next 24 hours. This can leave customers vulnerable to loss of utility service before nights where the temperature will fall far below freezing. To provide crucial protection for vulnerable customers, the excessive cold weather rule should follow the model of the excessive heat rule, and apply whenever any unsafe temperature is forecast over the next 48 hours. In addition, for purposes of consistency and clarity, the words “at any time” should be added, as follows:

Whenever the ~~high low~~ temperature is forecast to be 32 degrees Fahrenheit or below **at any time** during the next ~~24~~ **48** hours, ~~electric and gas~~ **all** utilities shall not, within any portion of their service territories, disconnect residential service . . .

Thank you for the opportunity to comment at this stage in the readoption process.

Sincerely,

LEGAL SERVICES OF NEW JERSEY, INC.

By: David McMillin
David McMillin