

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Resolution 2018-03

URGING ADOPTION OF PROTECTIONS AGAINST TERMINATION OF UTILITY SERVICE FOR LOW-INCOME, SENIOR, AND OTHER AT-RISK HOUSEHOLDS IN WHICH A SERIOUSLY OR CHRONICALLY ILL OR DISABLED PERSON RESIDES

Whereas, electric, gas, water and wastewater utility services are vital for the health, safety and comfort of all households;ⁱ and

Whereas, loss of utility service can lead to risk of serious harm or even death, if customers or household occupants lose access to critical, life-saving, or life-preserving medical equipment; or have serious or chronic medical conditions that may be exacerbated by loss of electric, gas, water or wastewater service; or resort to using unsafe sources of heating or lighting in their homes due to lack of financial resources necessary to avert shutoffs or timely restore terminated service (such households to be referred to herein as “vulnerable households”);ⁱⁱ and

Whereas, according to the National Fire Protection Association, approximately one-third of all home heating fires involve space heaters and four-fifths of house fires resulting in death involve the use of space heaters;ⁱⁱⁱ and

Whereas, almost half of all residential energy consumption is devoted to heating and cooling of homes,^{iv} with these services being essential to maintaining health, safety and comfort; and

Whereas, the large number of terminations of utility service jeopardizes the health and safety of many households and the safety of many communities and leaves vulnerable households at risk of harm;^v and

Whereas, households with seniors are particularly at risk if utility services are disconnected, due to a higher risk of hypothermia^{vi} if utility services are needed to provide heat; and higher risk of heat stress^{vii} if utility services assist with cooling; and

Whereas, seniors on fixed incomes, in particular, may face challenges in not only affording utility bills but also in accessing available assistance for paying utility bills, due to mobility limitations or other age-related disabilities; and

Whereas, young children -- like seniors -- are particularly at risk if utility services are disconnected, due to a higher risk of hypothermia^{viii} and heat stress^{ix}; and

Whereas, disconnections have a disparate impact on low-income communities, particularly those with significant concentrations of serious and chronic medical conditions and particularly communities of color;^x and

Whereas, the housing of vulnerable households is particularly threatened by energy insecurity and shutoffs serving to displace families and resulting in unsafe living conditions and evictions that force families to “double or triple up”, become marginally housed or unhoused;^{xi} and

Whereas, vulnerable residents and occupants of master-metered buildings may not receive prior notice of service terminations because they are not the customers of the utility; and

Whereas, lower-income households, with annual incomes at or below \$30,000, have “energy burdens” two- to four-times as large as higher income households (with “energy burden” defined as the percent of income spent on energy costs);^{xii} and

Whereas, funding to assist lower-income households pay their energy bills is insufficient to meet the need, with funding available from the federal Low Income Home Energy Assistance Program able to assist only about 6.1 million or about one-fifth of eligible households, with an average annual grant of \$458, during federal fiscal year 2018;^{xiii} and

Whereas, low-income households often go without food, forego medical or dental care in order to pay utility bills, or suffer illness in an effort to lower those bills by turning down thermostats to unhealthy levels;^{xiv} and

Whereas, states vary widely in the protections against termination available to customers and household occupants when there is a serious illness or vulnerable persons in the household, including some states that offer no protections, such as additional process, or delays, as of right, or stays of limited or unlimited duration;^{xv} and

Whereas, consumer protections for vulnerable households are being even further eroded as a result of large scale deployment of remote shut off technologies that enable utilities to disconnect service from a back office with little, if any, interaction with the impacted consumers.

Now, therefore, be it resolved that NASUCA encourages all policymakers, and particularly state utility regulatory commissions, to adopt laws, regulations and policies to protect customers and household occupants, including occupants of master-metered buildings, from termination of utility service through additional process, or delay as of right, when there is a serious or chronic illness in the home, particularly when the household has low-income residents, or when there are vulnerable seniors or young children in the home; and

Be it further resolved that NASUCA encourages state utility regulatory commissions to continuously review and monitor utility disconnection policies, practices and notices, including those that relate to master-metered buildings, to track disconnection and reconnection data and statistics, particularly with regard to the disconnection and reconnection of service during the heating season and to low income customers, and to aggressively enforce utility compliance with shut-off laws and regulations to the full extent permitted by law; and

Be it further resolved that NASUCA encourages all electric, gas, water and wastewater companies to implement on their own, or propose to their regulators where applicable, policies that would protect customers and household occupants, including occupants of master-metered

buildings, from termination of utility service through additional process, or delay as of right, when there is a serious illness in the home and when the household has low-income individuals, particularly vulnerable seniors, or young children; and

Be it further resolved that NASUCA encourages state utility regulatory commissions and all electric, gas, water and wastewater companies to develop processes to identify customers and household occupants, including occupants of master-metered buildings, who may be vulnerable and/or at-risk so that protections against termination (including remote termination) may be in place in advance of any actual efforts to terminate service, along with simple methods for documenting the qualifying illness or condition; and

Be it further resolved that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions, including litigation, consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to the resolution.

ⁱ *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978) (“Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.”)

ⁱⁱ See, e.g., *The Washington Post*, Deneen L. Brown, Mary Pat Flaherty & John Woodrow Cox, “Carbon Monoxide Blamed after Father and His 7 Children Die in Their Sleep” (April 8, 2015), available at: https://www.washingtonpost.com/local/grandparents-father-of-7-who-died-in-princess-anne-home-was-doing-his-best/2015/04/07/fa8debc2-dd14-11e4-be40-566e2653afe5_story.html?noredirect=on&utm_term=.2cd541839d42; *The Evening News (Beacon, NY)*, Power Shut Off; Candle Triggers Blaze; 10 Killed” (May 15, 1982), available at: <https://news.google.com/newspapers?nid=1982&dat=19820515&id=AYRGAAAIBAJ&sjid=mTINAAAIBAJ&pg=1950,1867982&hl=en>; *Daily Tribute*, “Utility Says It Followed Rules in Shutting Off Service” (May 1, 2015), available at: <http://www.dailytribune.com/general-news/20150501/utility-says-it-followed-rules-in-shutting-off-service>.

ⁱⁱⁱ “Space Heaters Involved in 79 Percent of Fatal Home Heating Fires” (Feb. 11, 2010), available at: <https://www.nfpa.org/News-and-Research/News-and-media/Press-Room/News-releases/2010/Space-heaters-involved-in-79-percent-of-fatal-home-heating-fires>.

^{iv} Dep’t Of Energy, “Heating and Cooling,” available at: www.energy.gov/heating-cooling.

^v For example, from January to September 2013, DTE Energy in Michigan reported 169,407 terminations of service, while Consumers Energy reported 118,203 terminations. *World Socialist Web Site*, Thomas Gaist, “Utility Companies Continue Utility Shutoffs As Bitter Cold Hits Detroit” (Jan. 28, 2014), available at: <http://www.wsws.org/en/articles/2014/01/28/dtes-j28.html>. Nationwide, millions of customers experience termination of utility service each year.

^{vi} National Institute on Aging, “Hypothermia and Older Adults,” available at: <https://www.nia.nih.gov/news/hypothermia-and-older-adults>.

^{vii} Centers for Disease Control and Prevention, “Heat and Older Americans,” available at: <https://www.cdc.gov/disasters/extremeheat/older-adults-heat.html>.

^{viii} Mayo Clinic, “Hypothermia,” available at: <https://www.mayoclinic.org/diseases-conditions/hypothermia/symptoms-causes/syc-20352682>; see, e.g., *Cincinnati.com*, *The Enquirer* “They Died in their Beds. Was Duke Energy Responsible?”, Carrie Blackmore Smith, (September 10, 2017),

<https://www.cincinnati.com/story/news/2017/09/10/cincinnati-hypothermia-duke-energy-puco/642509001/>. The Public Utilities Commission of Ohio (PUCO) found that Duke Energy Ohio failed to comply with the winter heating season requirements. *See*: In the Matter of the Complaint of Jeffrey Pitzer, Complainant, v. Duke Energy Ohio, Inc., Respondent. PUCO Case No. 15-298-GE-CSS, Opinion and Order (August 30, 2017).
<http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=b53a1c89-e2b9-42e3-aa76-0d0cf1979cf3>

^{ix} Children’s Hospital of Wisconsin, “Heat Related Illnesses in Children,” *available at*:
<https://www.chw.org/medical-care/sports-medicine/sports-medicine-and-rehab-services/heat-illness>.

^x National Consumer Law Center, unpublished analysis of Residential Energy Consumption Survey data by John Howat, Senior Analyst; The Utility Reform Network, “Living Without Power: Health Impacts Of Utility Shutoffs In California” (2018).

^{xi} The Utility Reform Network, “Living Without Power: Health Impacts Of Utility Shutoffs In California”, p. 27. (2018).

^{xii} See, e.g., NYS Department of Public Service Staff Report in the Low-Income Affordability Proceeding, Case 14-M-0565, p. 45; <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={73F1F127-09C1-460D-9F42-D6AE106B3C52}>; and see, Fisher, Colton and Sheehan, Home Energy Affordability Gap studies, at http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html; Evergreen Economics, “Needs Assessment for the Energy Savings Assistance and the California Alternate Rates for Energy Programs”, p. 50, Table 24 (Dec. 15, 2016), *available at*: <http://liob.cpuc.ca.gov/Docs/2016%20LINA%20Final%20Report%20-%20Volume%201%20of%202.pdf>

^{xiii} Mark Wolfe, Executive Director, National Energy Assistance Directors’ Association, Testimony Prepared for the Subcommittee on Labor, Health and Human Services and Education and Related Agencies, addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, posted April 30, 2018, *available at*: <http://neada.org/wp-content/uploads/2018/04/LIHEAPHouseTestimonyFY19.pdf>.

^{xiv} National Energy Directors’ Association, Jo-Ann Choate & Mark Wolfe, “2009 National Energy Assistance Survey” (2010); U.S. Energy Information Administration, Residential Energy Consumption Survey, “One in three U.S. households faced challenges in paying energy bills in 2015” (Oct. 31, 2017), *available at* [https://www.eia.gov/consumption/residential/reports/2015/energybills/?src=%E2%80%B9%20Consumption%20%20%20%20Residential%20Energy%20Consumption%20Survey%20\(RECS\)-f1](https://www.eia.gov/consumption/residential/reports/2015/energybills/?src=%E2%80%B9%20Consumption%20%20%20%20Residential%20Energy%20Consumption%20Survey%20(RECS)-f1); Cook, John T., et al. “A Brief Indicator of Household Energy Security: Associations with Food Security, Child Health, and Child Development in US Infants and Toddlers.” *Pediatrics* 122, no. 4 (October 2008): e867-75. doi:10.1542/peds.2008-0286.; Children’s Sentinel Nutrition Assessment Program (C-SNAP), “Balancing Acts: Energy Insecurity among Low-Income Babies and Toddlers of Color Increases Food Insecurity and Harmful Health Effects,” March 2007, *available at*: http://www.childrenshealthwatch.org/wp-content/uploads/SEDC_energy_report_2007.pdf; Bhattacharya, Jayanta, et al. “Heat or Eat? Cold-Weather Shocks and Nutrition in Poor American Families,” *American Journal of Public Health* 93, no. 7 (July 1, 2003): 1149–54. doi:10.2105/AJPH.93.7.1149.

^{xv} See, e.g., NAACP, “Lights out in the Cold: Reforming Utility Shut-Off Policies as If Human Rights Matter”, Table 6, p. 20 (March 2017), *available at*: <http://www.naacp.org/climate-justice-resources/lights-out-in-the-cold/>; National Consumer Law Center, *Access to Utility Service*, ch. 6 & App. A (6th Ed. 2018).

Submitted by the Consumer Protection Committee:

Adopted by the Membership
Minneapolis, Minnesota
June 24, 2018

Abstaining: Michigan, Tennessee