

Substantially amended (a); in (e), inserted requirement that notice be in boldface; in (f), inserted text "make a reasonable effort to"; and in (f)1, amended list of entities to be notified.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In (a) substituted "wastewater" for "sewer" in 1 and 2 and added 4; rewrote (c)1.

Amended by R.2004 d.12, effective January 5, 2004.

See: 35 N.J.R. 91(a), 36 N.J.R. 200(b).

In (a), rewrote the introductory paragraph.

#### Case Notes

Homeowners' association was not entitled to stay of discontinuance by water utility of fire hydrant service. In *Matter of Vernon Valley Water Company v. Stone Hill Property Owners Association*, 93 N.J.A.R.2d (BRC) 1.

Check sent by customer to water utility did not constitute accord and satisfaction; customer entitled to credit but not punitive damages. *Slowinski v. City of Trenton*, 92 N.J.A.R.2d (BRC) 71.

A Superior Court order was res judicata with respect to administrative petition claiming that judgment finding building owner liable for utility bills was erroneous. *Jones v. Public Service Electric and Gas Company*, 92 N.J.A.R.2d (BRC) 61.

Service discontinuance by gas and electric utility; appropriate notice given and discontinuance not on basis of non-payment of contested charges. *Buczek v. Public Service Electric & Gas*, 92 N.J.A.R.2d (BRC) 13.

#### 14:3-7.12A Winter termination of residential electric and gas service (Winter Termination Program)

(a) A regulated electric or gas utility shall not discontinue service during the period from November 15 through March 15, referred to in this section as the "heating season," unless otherwise ordered by the Board, to those residential customers who demonstrate at the time of the intended termination that they are:

1. Recipients of benefits under the Lifeline Credit Program;
2. Recipients of benefits under the Federal Home Energy Assistance Program (HEAP), or certified as eligible therefore under standards set by the New Jersey Department of Human Services;
3. Recipients of Temporary Assistance to Needy Families (TANF);
4. Recipients of Federal Supplemental Security Income (SSI);
5. Recipients of Pharmaceutical Assistance to The Aged and Disabled (PAAD);
6. Recipients of General Assistance (GA) benefits; or
7. Persons unable to pay their utility bills because of circumstances beyond their control. Such circumstances shall include but shall not be limited to unemployment, illness, medically related expenses, recent death of a spouse and any other circumstances which might cause financial hardship.

(b) Those residential electric or gas customers whose services have been discontinued for non-payment and have

not been reconnected as of November 15, and who are otherwise eligible for protection under the Winter Termination Program, shall be required to make a down payment of up to 25 percent of the outstanding balance as a condition precedent to the receipt of services during the current heating season. The customer shall be notified, at the time of enrollment in a budget payment plan as required by (c) below, that the 25 percent down payment shall represent a maximum required amount and is not to be regarded as a minimum required payment. The utility shall consider the customer's ability to pay in determining the appropriate level of the required down payment, but in no instance shall such required payment exceed 25 percent of the outstanding balance. The utility shall refer to the Board for resolution, all disputes regarding the appropriate level of down payments.

(c) All residential electric or gas customers who are eligible for and who seek the protection of the Winter Termination Program shall enroll in a budget payment plan on an annual basis.

(d) All residential electric or gas customers who are eligible for and who seek the protection of the Winter Termination Program shall make good-faith payments during the heating season, if they have the ability to do so. Said payments should be equal to a budget payment amount, although a lesser amount shall be accepted from those customers who do not have the ability to pay the full budget amount.

1. If an eligible customer has the ability to make a good-faith payment but refuses to do so, or if there is any other dispute related to good-faith payments, the servicing utility shall refer said dispute to the Board for a determination. In addition, the servicing utility shall inform each eligible customer involved in such a dispute that the matter has been forwarded to the Board for a determination and that the customer may also notify the Board of the dispute if he or she so chooses. Until the Board has rendered a determination in such an instance, the servicing utility shall not unilaterally discontinue service during the heating season.

(e) Customers who are eligible for and who seek the protection of the Winter Termination Program shall forward all energy related financial assistance, such as Home Energy Assistance Program (HEAP) heating benefits, to their electric or gas utility, if either utility is their major heat supplier.

(f) During the heating season, the affected electric or gas utilities shall not request a security deposit or an addition to an existing security deposit from a customer who is eligible for and seeks the protection of the Winter Termination Program.

(g) During the heating season, all notices of discontinuance of residential electric or gas services shall be accompanied by a Winter Termination Program fact sheet, printed in

both English and Spanish, setting forth all terms and conditions of the Program. The affected electric and gas utilities shall submit drafts of their proposed fact sheets to the Board no later than October 1, in order that the Board may approve their form and substance prior to the heating season. The form and substance of the Winter Termination Program fact sheets shall be subject to Board review and approval on an annual basis.

(h) Customers who are eligible for and seek the protection of the Winter Termination Program shall participate in the low income seal-up programs, if available and if eligible therefor, currently approved by the Board and administered by the affected electric and gas utilities. The implementation of this requirement shall be effectuated through the following procedures:

1. Descriptive information on the low income seal-up programs shall accompany the Winter Termination Program fact sheet as required in (g) above;

2. The utility shall refer to its seal-up contractor, the names of responding protected customers who are eligible for the low income seal-up programs. The contractor or the utility shall contact the customers to schedule the seal-up. Scheduling shall take place as soon as practicable after receipt of the customer response to the notice of discontinuance;

3. Winter Termination Program customer seal-ups shall be performed as soon as practicable. If a utility projects that it cannot complete these seal-ups prior to the end of the heating season, it shall submit an alternate implementation schedule to the Board for review on or before January 31;

4. The contractor shall perform a general audit of the dwelling and perform the most cost effective weatherization measures first. The contractor shall record and report to the utility any structural deficiencies requiring greater weatherization measures beyond the scope of the seal-up. The utility shall refer the customer names to those agencies providing low income weatherization programs;

5. The utility shall inform all agencies administering the Low Income Weatherization Grant Program in its territory of the new seal-up and weatherization grant provisions of the Winter Termination Program;

6. The utility shall monitor the usage and billing payment record of participating customers. The utility shall also compile historic consumption and billing data for these customers as well as a list of specific conservation measures installed in order to provide a basis for evaluating the Program. This information shall be submitted to the Board for analysis by May 1;

7. Electric utilities shall provide seal-up to those eligible participating customers who heat with electricity or any fuel other than natural gas in accordance with the existing Board approved low income seal-up programs;

8. Electric utilities shall not be required to provide the seal-up to those customers who heat with natural gas. The electric utilities shall forward the names of these gas heating customers to the appropriate gas utility for processing. Gas utilities shall not provide seal-up to those eligible customers who do not heat with natural gas but shall forward the names of non-gas heating customers to the appropriate electric utility for processing;

9. Tenants shall be required to secure landlord permission for the weatherization work. A landlord consent form, or the means to obtain one shall be forwarded to customers along with the descriptive information and Winter Termination Program fact sheet as required in (h)1 above;

10. The utility may utilize the services of the local Community Action Program (CAP) Agencies or other local social service organizations, to certify the economic eligibility for the low income seal-up programs for those customers who seek the protection of the Winter Termination Program because they are unable to pay their utility bills because of circumstances beyond their control. This option shall be related solely to the economic eligibility of a customer for the low income seal-up programs and shall not be utilized as a means of determining the eligibility of a customer for protection under the Winter Termination Program. Economic eligibility for the seal-up measures for these customers shall be determined by those standards applicable to the low income seal-up programs as established and approved by the Board;

11. As participation in the low income seal-up programs is a continued program eligibility requirement, the utility shall refer to the Board, for purposes of an administrative review, the names of all protected customers who refuse such participation. Pending said administrative review, the utility shall not unilaterally discontinue service for failure to participate in the low income seal-up programs. Discontinuance for said failure to participate shall not occur unless authorized by the Board. Tenants who are unable to obtain appropriate landlord/owner permission shall not be considered to have refused participation in the low income seal-up programs. The utility shall provide the Board with the names and addresses of those tenants who have indicated their inability to obtain landlord/owner consent.

(i) An electric or gas utility may terminate service to a customer who is eligible for the Winter Termination Program if said customer connects, disconnects or otherwise tampers with the meters, pipes, wires or conduits of the utility for the purpose of obtaining electric or gas service without payment therefor.

1. No discontinuance shall occur until the customer has been afforded all reasonable due process considerations, including an opportunity to be heard. Toward this end, the electric and gas utilities shall comply with the following requirements prior to discontinuing service to any customer who has allegedly tampered with the meter or other company facilities resulting in the receipt of unmetered service:

- i. The utility shall notify the Board of all pertinent facts related to the alleged tampering;

ii. The Board shall have seven days after receipt of said information to complete an impartial and informal investigation of the matter. In the event that a utility comes forward with sufficient credible evidence that shows that the meters, pipes, wires, conduits or attachments through which a customer is thus being furnished with electric or gas service have been tampered with, the Board shall immediately notify the customer and the burden shall shift to the customer to come forward with sufficient evidence to rebut the charges of the utility. Failure to do so will result in a finding that tampering did occur for the purpose of obtaining the utility service without payment and that the customer is responsible therefor;

iii. Upon a finding by the Board that tampering did occur, the utility shall give written notification to the customer, by certified mail, return receipt requested, and to the local public welfare agency and the local municipal health agency, by regular mail, as to the date upon which service to the customer shall be terminated. Said notification shall be made at least seven days prior to the date of the proposed service termination. The utility shall further advise the customer in the written notification that if he or she claims to be dependent on life sustaining equipment, the customer must furnish a physician's certificate within the aforementioned seven day period, wherein the condition requiring such equipment is identified and verified;

iv. Any relief requested under N.J.A.C. 14:3-3.6(d) regarding medical emergencies shall be reviewed on a case-by-case basis.

2. A customer, otherwise eligible for the Winter Termination Program, whose electric or gas service had been discontinued prior to the start of the heating season and who has subsequently caused the unauthorized restoration of said service shall, when said unauthorized service has been registered on the meter, be required to make a down payment of up to 25 percent of the outstanding account balance as of the most current meter reading as a pre-condition for the continuation of service during the heating season.

New Rule, R.1987 d.516, effective December 21, 1987.

See: 18 N.J.R. 2315(a), 19 N.J.R. 2405(b).

Amended by R.1991 d.221, effective May 6, 1991.

See: 22 N.J.R. 1112(a), 23 N.J.R. 1439(b).

Corrected erroneous reference at (i)lii., to tampering "not" occurring; correct indication is to tampering occurring.

Amended by R.1997 d.39, effective February 3, 1997.

See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

In (h), inserted reference to program availability; and in (h)8, added provision relating to eligible customers not heating with natural gas.

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In (a)3, substituted "Temporary Assistance to Need Families (TANF)" for "Federal Aid to Families with Dependent Children (AFDC)"; in (a)6, substituted "General Assistance (GA) benefits" for "general welfare assistance".

### 14:3-7.13 Disputes as to bills

(a) A utility shall not discontinue service because of nonpayment of bills in cases where a charge is in dispute, provided the undisputed charges are paid and a request is made to the Board for an investigation of the disputed charge. In such cases the utility shall notify the customer that unless steps are taken to invoke formal or informal Board action within five days, service will be discontinued for nonpayment. Once a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease. Each utility shall provide the Board's Division of Customer Assistance with responses to written complaints within five days and within three days for verbal complaints. When the Board has determined that a formal or informal dispute has been resolved, the utility is required to provide at least seven days written notice before service may be discontinued.

(b) In appropriate cases the Board may require all or a portion of disputed charges to be placed in escrow.

(c) Whenever a residential customer advises the utility that the customer wishes to discuss a deferred payment agreement because said customer is presently unable to pay a total outstanding bill, the utility shall make a good faith effort to provide the customer with an opportunity to enter into a fair and reasonable deferred payment agreement(s) which takes into consideration the customer's financial circumstances. In negotiating such a deferred payment agreement(s), a residential customer may not be required to pay, as a down-payment, more than 25 percent of the total outstanding bill due at the time the agreement(s) is made or executed. In the case of a residential customer who received more than one utility service from the same utility and the amount which is in arrears is a combination of those services, the utility shall offer a separate deferred payment agreement for each service based on the outstanding balance for that service prior to any proposed discontinuance for nonpayment. The utility shall not require such a customer to accept two or more deferred agreements that extend over the same time period. The customer shall have the option to enter into a deferred payment agreement(s) and have the remaining service(s) disconnected until satisfactory arrangements for payment can be made. A utility shall renegotiate and/or amend the deferred payment agreement of a residential customer if said customer demonstrates that his or her financial circumstances have changed significantly because of factors beyond his or her control.

1. A non-residential electric, gas, water and/or wastewater customer shall be allowed to enter into a deferred payment agreement for a period of no more than three months. A utility may request from a non-residential electric, gas or Class A water company customer or from a customer of a wastewater company that meets the Class A water company revenue threshold, a down payment of no more than one half of the amount past due and owing at the time of entering into a deferred payment agreement.

(d) Such agreements which extend for more than two months shall be in writing and shall provide that a customer who is presently unable to pay an outstanding debt for utility services may make reasonable periodic payments until the debt is liquidated while continuing payment of current bills. While a deferred payment agreement for each separate service need not be entered into more than once a year, the utility may offer more than one such agreement in a year. The Board may order a utility to accept more than one deferred payment agreement in a year if said action is reasonable. If the customer defaults on any of the terms of the agreement, the utility may discontinue service after providing the customer with a notice of discontinuance. In the case of a residential customer who receives more than one utility service from the same utility and has subsequently entered into a separate agreement for each separate service, default on one such agreement shall constitute grounds for discontinuance of only that service.

(e) A public utility shall pay or credit interest at a rate equal to that prescribed by the Board in N.J.A.C. 14:3-7.5 (Return of deposits) on any overpayment made by a residential customer due to a billing error, unless the overpayment is fully refunded or credited to the customer's account within two billing cycles after written notification by the customer to the utility wherein the alleged error is identified, described and documented in sufficient detail.

1. For purposes of this subsection, "billing error" shall mean a charge to a residential customer in excess of that approved by the Board for the type of service supplied to that customer or in excess of the charge due for the service supplied to that customer as measured or recorded by meter or other device; except that neither the amount of any estimated bill in and of itself, nor the amount due on a budget account installment shall constitute a billing error.

2. The period of time constituting "two billing cycles" shall be determined by the billing practices of the public utility in place at the time of receipt by the utility of the written notification by the customer of the error. In no event shall such period be considered to be less than 60 days.

3. Each public utility shall annually provide written notice of the provisions of this subsection to each of its residential customers.

(f) A utility shall not assess a late payment charge on an unpaid bill unless such charge is provided for in the utility's applicable rate schedule approved by the Board.

1. A late payment charge shall not be approved if it is applicable to bills less than 25 days after rendering.

2. A late payment charge shall not be approved for a rate schedule applicable to a state, county or municipal government entity or any residential customer.

(g) When the amount of an electric, gas, water or wastewater bill is significantly higher than the established consumption history indicated on the customer's account, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests performed to deduce the accuracy of the meter, in the evaluation of whether or not the bill is correct and appropriate.

As amended, R.1978 d.155, effective May 16, 1978.

See: 9 N.J.R. 290(e), 10 N.J.R. 261(e).

As amended, R.1980 d.555, effective December 29, 1980.

See: 12 N.J.R. 552(a) 13 N.J.R. 105(b).

(c): Extended deferred payment opportunity to before or after discontinuance of service; 25 percent limit established.

Amended by R.1985 d.166, effective April 15, 1985.

See: 16 N.J.R. 2747(a), 17 N.J.R. 974(a).

Substantially amended.

Amended by R.1988 d.569, effective December 19, 1988.

See: 20 N.J.R. 963(b), 20 N.J.R. 3141(a).

(a): Added text "Once a formal . . ."; added (e).

Amended by R.1991 d.149, effective May 6, 1991.

See: 22 N.J.R. 619(b), 23 N.J.R. 1450(b).

Requires a utility to allow a customer at least 25 days to make payment before it could assess a late payment charge, late payment charge could be assessed only under a rate schedule approved by the Board which provides for such a charge. Prohibits late payment charges to a state, county or municipal government entity or residential customer.

Amended by R.1997 d.39, effective February 3, 1997.

See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Substantially amended (c); and added (g).

Amended by R.2002 d.280, effective September 16, 2002.

See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

In (a), added third sentence; in (c)1, added "or from a customer of a wastewater company that meets the Class A water company revenue threshold,"; inserted references to wastewater throughout.

#### Case Notes

Credit to home owner's electric bill account was proper. *Clendaniel v. Atlantic Electric Company*, 94 N.J.A.R.2d (BRC) 89.

Credit to elderly couple's water bill account was proper. *Mount v. Trenton Water Works*, 94 N.J.A.R.2d (BRC) 86.

Check sent by customer to water utility did not constitute accord and satisfaction; customer entitled to credit but not punitive damages. *Slowinski v. City of Trenton*. 92 N.J.A.R.2d (BRC) 71.

Service discontinuance by gas and electric utility; appropriate notice given and discontinuance not on basis of non-payment of contested charges. *Buczek v. Public Service Electric & Gas*, 92 N.J.A.R.2d (BRC) 13.