

# Chapter 6

## Utilities

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*Legal Tactics: Tenants' Rights in Massachusetts*  
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# Utilities

by **Charlie Harak**

*Italicized words are in the Glossary*

If you are having a problem with your utility company, you need to arm yourself with the right information. In many situations, you will be able to resolve the problem yourself.

In other situations, you may be able to get help from the Department of Public Utilities (DPU), the state agency responsible for regulating utility companies.

This chapter will focus primarily on your rights in dealing with the electric, gas, and water companies. Also included is some limited information about dealing with telephone companies.

## The Department of Public Utilities

The Department of Public Utilities (DPU) is the state agency responsible for regulating utility companies.<sup>1</sup> DPU regulates gas, electric, and privately owned water companies (but not municipal water companies).<sup>2</sup> Telephone companies are regulated by DTC and operate under a slightly different set of regulations.<sup>3</sup>

The DPU has a special consumer hotline staffed by advocates who are trained to help consumers when companies do not follow the law or refuse to make reasonable agreements. DPU's advocates are not lawyers, and they will not represent you. However, DPU advocates are able to resolve many of the problems that customers have with utility companies.

Before calling the DPU consumer line, you must first try to resolve your problem directly with the utility company. You can do this by calling the company's Customer Service number or writing the company a letter. If this fails to resolve the

problem, call the DPU Consumer Division and explain the problem, providing as many details as possible.

If the DPU advocate cannot help you, you can try speaking to a DPU Consumer Division supervisor. As a last resort, you have the right to request a *hearing* against the utility company, with a neutral hearing officer supplied by the DPU. The utility company cannot terminate your service while an *appeal* is pending on a disputed bill.<sup>4</sup>

## Consumer Hotline

### How to Reach the Department of Public Utilities

The Department of Public Utilities (DPU) is the state agency responsible for regulating utility companies. In addition to regulating the quality of service, the DTE investigates problems, and has procedures to help you resolve problems.

**800-392-6066** Outside of Boston  
**617-305-3531** Boston area

Department of Public Utilities  
Consumer Division  
1 South Station  
Boston, MA 02110

# Your Right to Obtain Service

When you move into an apartment, you have the right to receive gas, electric, water, and telephone service upon request—although special rules apply if you owe the utility company money from a prior address. Most companies will allow you to request new service by telephone. Some companies may require you to sign an application form.

Some companies refuse to serve people under 18 years old, even if they are living in their own home. There is no legal basis for refusing service to a minor. If a company refuses you service for this reason, call the DPU.<sup>5</sup>

## 1. Who Pays for Utilities

The following chart tells you when you are responsible for paying utilities and when your landlord is responsible.

Type of Utility	Who Pays
Water	Landlord is <b>usually</b> required to pay. <sup>6</sup>
Fuel for Hot Water	Landlord must pay unless a written lease says the tenant must pay. <sup>7</sup>
Fuel for Heat	Landlord must pay unless a written lease says the tenant must pay. <sup>8</sup>
Electricity and Gas	Landlord must pay unless there is a meter that separately calculates the tenant's electricity or gas use <i>and</i> a written lease says the tenant must pay. <sup>9</sup>

## 2. If You Owe Money from a Previous Address

### a. Electric and Gas

If you owe an electric or gas company money from a previous address, the company may say that it will not set up an account at your new address unless you pay the full amount owed (the *arrearage*) or arrange a payment plan satisfactory to the company. The companies often require payment of at least half the arrearage up-front, and sometimes much more than half. However, if you never failed to pay two or more bills in a row at your prior address, you have a legal right to set up a new account so long as you agree to pay off the total amount owed within three months.<sup>10</sup>

If you did go two or more months at your prior address without paying your bill, the company may still have to set up a new account for you as long as you do the following:

1. Agree that the company may add the arrearage from your old address to your new account,
2. Set up a reasonable payment plan to pay it off, and
3. Give the company permission to terminate your new account if you fail to keep to the payment plan.

To make this agreement and set up a new account, ask to sign a "Cromwell Waiver." This is a document that gives the electric or gas company the permission to add the old arrearage to your new account and to terminate your new account if you do not pay it off, which the company would not otherwise be able to do.

You should **only sign a Cromwell Waiver** if you have an old arrearage that is causing the utility company to deny you service at your new address.

Once you sign the Cromwell Waiver, you need to set up a payment plan. The company must agree to a payment plan that is reasonable, taking

your income level into consideration. For tips on setting up a plan, see the section in this chapter on **Getting Help Paying Your Bills**. If you qualify for a special protection, you should tell this to the utility company. See the section in this chapter on **Special Protections Against Shut-offs**.

If the gas or electric company refuses to let you sign a Cromwell Waiver and set up a reasonable payment plan to dispose of your old arrearage, call the DPU consumer line for assistance.<sup>11</sup>

Note: If you receive TAFDC or EAEDC and are moving from a shelter into an apartment, you may qualify for up to \$1,000 in Relocation Benefits that you can use to pay off old utility bills and hook up new service.<sup>12</sup> Apply for these benefits with your caseworker at the Department of Transitional Assistance.

#### **b. Telephone**

Telephone companies are more resistant to setting up new accounts for customers who owe money on old accounts. There are no DPU rules specifically addressing the situation of customers seeking new service who owe the phone company money from a prior address. You also may be able to set up a new account by negotiating a payment plan with the telephone company to pay off what you owe. If the company will not agree to a payment plan that is reasonable based on your income, call the DPU consumer line. A DPU consumer advocate may be able to help you negotiate a better plan.

### **3. Deposits**

#### **a. Electric and Gas**

A company cannot charge you a deposit for residential electric and gas when you first receive service.<sup>13</sup>

#### **b. Telephone**

The telephone company may charge you a deposit of up to \$50 if you owe them money from an old address and if you do not dispute the old bill. The telephone company may also require a deposit if you were previously shut off for failing to pay your bills. If you do pay a deposit and then pay your bills on time for six months, the telephone company must return your deposit, with interest, upon your request.<sup>14</sup>

### **4. Installation Fees**

#### **a. Electric and Gas**

Electric and gas companies generally do not charge installation fees to connect your services.<sup>15</sup>

#### **b. Telephone**

The telephone company routinely charges fees to connect your house to the central office. They also routinely charge for any requests you make for service, home wiring, or additional jacks. For a list of these charges, consult the introductory pages of your telephone directory.

If you receive TAFDC, EAEDC, SSI, MassHealth Basic or Standard, Food Stamps, LIHEAP (fuel assistance), free school lunch, Head Start, Veteran's assistance or federal housing assistance, you can qualify for half-price installation fees from most local phone companies. Ask your local phone company for an application for the "Link-Up" program.

Those eligible for Link-Up are also eligible for "Lifeline," which provides a monthly discount of approximately \$18 per month of the monthly cost of basic phone service. For more information about Link-Up and the related Lifeline program, go to:  
[www.lifelinesupport.org/li/low-income/lifelinesupport/browser/Default.aspx](http://www.lifelinesupport.org/li/low-income/lifelinesupport/browser/Default.aspx).

# Your Right to Continued Service

## 1. Limited Grounds for Termination of Service

The only reason your service can be shut off is for failure to pay for service at your current address<sup>16</sup> (Also note that you may be able to get terminated service restored even if you owe money from your current address; see the section in this chapter on **Special Protections Against Shut-offs**).

You cannot be shut off for charges owed from a prior address or for money owed by a prior occupant.<sup>17</sup> You also cannot be shut off for non-service-related charges such as rental fees on appliances purchased from a utility company or charges for repair work performed by the utility company.<sup>18</sup>

## 2. Your Landlord Fails to Pay

If a landlord is responsible for the electricity or gas in your building and fails to pay the bills, a company cannot shut off service in the building until the tenants have been given at least 30 days' notice.<sup>19</sup> Because many of these landlord-tenant cases can become very complicated, you should immediately call the DPU if you are in this situation and also try to get legal help. Do not expect to get legal help from the DPU.

Tenants can avoid the shut-off by banding together and agreeing to pay a "projected bill." You have a right to deduct from your rent any payments you make to the utility company, and you are protected from *retaliation* by the landlord. If you withhold rent for this purpose, you may also ask the DPU to establish a payment plan.

Tenants generally cannot be held responsible for any portion of the landlord's previous bills. The utility company can petition for a *hearing* at the DPU to show that the tenants should pay part or all of the previous bills, but to win such a hearing the company has to prove that the tenants withheld more rent than it would take

to pay the bills, that the tenants had no other reason for withholding rent, and that it would not be an undue burden for the tenants to pay the bills.<sup>20</sup>

The failure of a landlord to pay for and provide utilities to tenants will usually violate other state housing laws. For example, if a landlord does not provide electricity or gas for heat during the winter, she is violating the state Sanitary Code. Tenants who bring lawsuits against landlords for these violations can win up to three months' rent and attorneys' fees. Tenants may also want to ask the court to appoint a temporary landlord called a *receiver* to manage the building. For more information on receiverships, see **Chapter 11: Receiverships**.

## Special Protections Against Shut-offs

Customers are often protected against a utility company's shutting off or terminating their service, even if they cannot afford to pay their bills. These special protections are discussed below.

### 1. Serious Illness or Personal Safety

#### a. Electric, Gas and Water

Electric, gas, and water companies cannot shut off your service if you, your child, or someone else in your household is seriously ill and you cannot afford to pay your bills because of financial hardship.<sup>21</sup> The utility companies must treat any medical condition that a doctor considers a serious illness as a serious illness. Serious illness can include psychiatric health problems such as major depression, anxiety disorder, Post-Traumatic Stress Disorder (PTSD), and Attention Deficit Hyperactivity Disorder (ADHD). It can also include chronic physical health problems such as diabetes, asthma, and fibromyalgia. Or, it can be a temporary serious illness such as pneumonia or the flu.

To protect yourself against a shut-off, you should take the following steps as soon as possible:

1. Contact your doctor or the local Board of Health and explain your situation. Ask them to immediately contact the utility company by phone and tell the company that you are or someone in your household is seriously ill. Make sure the doctor or Board of Health has your name and address to give to the utility.

Within seven days of this initial phone contact, the doctor or Board of Health must send a letter to the utility company certifying the illness. See the sample letter (**Form 6**) and sample form letter (**Form 7**) that can be given to your doctor to fill out. Tell your doctor to include the words "serious illness" in the letter and to describe the illness. If it is a chronic or long-term illness, the doctor should include the word "chronic" in the letter. A letter that states that the illness is "chronic" will result in 90 days of protection before you have to renew, while a letter that does not state this will result in only 30 days of protection.

Note: If the company refuses to honor the initial phone call from the doctor or Board of Health, report this immediately to the DPU's Consumer Division and request that the DPU order the company to continue your service.

2. Contact the company and ask them to send you a financial hardship form. You must complete and submit this form as proof that you are unable to pay the amount you owe.
3. Your doctor or the Board of Health will need to send a new letter at the end of the protected period (90 days for an illness certified as chronic and 30 days for an illness not certified as chronic). You can have a doctor or the Board of Health renew serious illness letters for as long as you need help.

## **b. Telephone**

Telephone customers are eligible for a similar "serious illness" protection. However, the doctor's letter must be renewed every 30 days even if the illness is specified as chronic, with a maximum of two renewals (a maximum total of 90 days of protection). By the end of the protection period, you must either pay the total amount owed or enter into a payment plan with the company in order to prevent shut-off.

You can also receive up to 30 days of protection when there is a "personal emergency" in which lack of access to a phone endangers the health or safety of a household member.<sup>22</sup>

A personal emergency can include domestic violence or threats from a past abuser, or any other crisis or threat that requires access to a phone. If you need protection from shut-off because of an emergency, you must write a letter to the company explaining your emergency and why you are unable to pay your bills. You should also call the company and alert a Customer Service representative to your situation. By the end of the 30-day protection period, you must either pay the amount that you owe or enter into a payment plan with the company.

If you have difficulty getting a phone company to protect your account from shut-off based on a serious illness or personal emergency, call the DPU Consumer Division. Even though there are regulations that set certain time limits as to when the telephone company is required to give protection, if you need protection you should try to persuade the company to extend the protection period.

## **2. Winter Protection**

### **Electric and Gas**

Electric and gas companies cannot shut off your service between November 15 and March 15 if you cannot afford to pay your utility bills and if the service is used to heat your house. (This March 15 end-date is often extended to mid- or late-April by the DPU). To get the protection,

you need only to fill out a financial hardship form and state that the electricity or gas is your heating source or that the electricity is necessary for the operation of your furnace, thermostat, or other controls.<sup>23</sup>

If you think you may have trouble paying winter heat bills, call your company and ask them to send you a financial hardship form. Fill it out and return it as soon as possible. After you do this, you are protected against a shut-off between November 15 and March 15 (or later date, if the DPU extends the winter moratorium).

### 3. Families with Infants

#### Electric, Gas, and Water

Electric, gas, and water companies cannot shut off your service if you cannot afford to pay your bill and if there is an infant under one year old living in your house.<sup>24</sup> To get this protection, you must submit a financial hardship form. You must also prove your child's age, through a birth certificate or letter or official document from a physician, hospital, government agency, clergyman, or religious institution.

### 4. Elderly Households

#### Electric, Gas, Water, and Telephone

If you and all the members of your household are 65 years or older, it is very difficult for a company to shut off utility service—so difficult that it almost never happens. The rules covering electric, gas, water, and telephone service shut-offs for elderly households require the following:<sup>25</sup>

- Companies must establish procedures to identify households in which all members are 65 or older. To protect yourself, you should notify the utility company if everyone in your household is 65 or older.
- Companies must allow elderly households to identify a third-party contact person who can warn them if a utility company threatens to shut off service. To get this protection, contact your utility company and ask for a

Third Party Notification Form. You can name a friend, relative, or home-care provider as a third party. After you give a company this form, the company must then notify your third party of all overdue bills and shut-off notices. This third party is not legally responsible for paying your bill.

- Companies cannot shut off service to elderly households without written permission from the DPU. Because this would involve a hearing before the DTE, companies rarely even request permission to shut off service to elders.

## What to Do to Restore Your Service

Most of the grounds for preventing termination of service are also grounds for getting service restored once it has been shut off.

### 1. If You Qualify for a Special Protection

If your utility service has already been terminated, you have the right to get it restored if you are eligible for any of the protections discussed in the **Special Protections Against Shut-offs** section in this chapter. Note, however, that this right to get service restored is not indefinite.

While, the DPU has never defined how long after a termination a customer can ask to have service restored based on a Special Protection, companies will often refuse to restore service if the customer has been terminated for 30 days or more. If you are trying to get service restored, but the company refuses because it claims you are no longer a customer or have been terminated too long, contact the DPU Consumer Division.

Putting aside the question about how long a customer retains the right to restore terminated service, **the utility company must restore your service** if you can show financial hardship and one of the following:

- **For Electricity, Gas, Water, and Telephone:** A household member is seriously ill. This can include an adult, child or other household members who has any physical, mental or emotional condition or health problem that a doctor believes is a serious illness.
- **For Electricity, Gas, Water, and Telephone: Everyone<sup>26</sup>** in the household is over age 65 and the company has not gotten permission from DPU to terminate service.
- **For Electricity, Gas, and Water:** A child under one year of age is living in the home, *and* the child was born before the service was terminated for non-payment.
- **For Electricity and Gas:** It is between November 15 and March 15 and the utility provides heat or is needed to run the furnace or heating system.
- **For Telephone:** You have a personal emergency requiring access to a phone.

If your household is eligible for one of these protections, you should notify the company immediately. To do this, follow the steps outlined in the **Special Protections Against Shut-offs** section in this chapter. If the company refuses to restore your service, call DPU for assistance.

## 2. If the Company Did Not Follow Proper Procedures

If the company did not follow the procedures listed in the next section in this chapter, called **Your Rights During the Termination Process**, before shutting off your service, it should restore your service and go through the proper procedures. You should call the company immediately and explain which procedures were not followed, and ask that your service be restored until the proper procedures are followed and you are given a chance to respond to them. If the company refuses, call DPU.

## 3. If You Are Trying to Set Up an Account at a New Address

If you are trying to set up an electricity or gas account at a new address and you owe the company money, you must sign a "Cromwell Waiver," which states that you are still responsible for the prior bills and that your new service can be terminated if you fail to pay them. You must then set up a payment plan for paying off the old *arrears*. The company will often require that you pay half of the arrears up-front. If you cannot do this and cannot get the company to agree to a different arrangement, call the DPU for assistance. See the section in this chapter called **Your Right to Obtain Service**.

## Your Rights During the Termination Process

### a. Electric, Gas, and Water<sup>27</sup>

If a company tries to shut off your service for failure to pay for service at your current address, it must comply with the following procedures:

1. The company must first send the initial bill. You have at least 48 days from the day that you receive this initial bill until a company can shut off your service for not paying the bill.
2. The company must then send you a reminder notice called a "Second Request for Payment." The company must wait at least 27 days after sending you the first bill before sending you a reminder notice.
3. The company must send you a "Final Notice of Termination." It must wait until 45 days after sending you the first bill before sending you a final notice. This notice must give you at least 72 hours' (three days') notice as to when the termination will actually happen for gas and electricity, or 36 hours' notice for water.<sup>28</sup>

4. A company cannot terminate your account for non-payment of any portion of any bill that you are disputing.<sup>29</sup> If you think that you have been billed incorrectly, you can dispute your bill by contacting the company by phone, mail, or in person. The company then must investigate your claim and notify you in writing of the results of the investigation. If you disagree with the company's findings, you can file an appeal at the DPU and request a hearing.
5. Any company employee attempting to shut off your service must first see if anyone is home and explain to that person that service is about to be terminated. The employee must present that person with a notice describing all of the special termination protections, which cover serious illness, infants, winter protection, and the elderly. The employee must postpone the shut-off for three days if you claim any of the protections. If no one is home, however, the company can shut off your service, but must leave a financial hardship form and a notice describing available protections under your door.
6. Shut-offs can be done only between 8 a.m. and 4 p.m., Monday through Thursday. Shut-offs cannot be done on a Friday, Saturday, Sunday, holiday, or the day before a holiday.
7. During the winter months, electric and gas companies must call you or notify you in person before shutting off your service. If no one is home, the shut-off cannot legally be completed.<sup>30</sup>

#### **b. Telephone**<sup>31</sup>

Telephone companies must follow termination procedures similar to those required of electric, gas, and water companies, with the following differences:

1. You have a minimum of 45 days, rather than 48 days, between the initial bill and a potential shut-off. A telephone company has to wait 30 days after sending you an initial bill before it can send you a first termination

notice, and the first termination notice has to be sent 15 days before the shut-off date.

2. The telephone company does not have to send you a second request for payment before sending you the first termination notice. However, the company must send you two termination notices, the second of which must be sent five days before the shut-off.
3. Regardless of the season, telephone companies must make at least one telephone call to inform you that a shut-off is scheduled. If no one answers, however, the shut-off can be completed.<sup>32</sup>
4. There is no requirement that a company employee attempting to shut off your service check to see if you are at home or leave information under your door.

## **Getting Help Paying Your Bills**

### **1. Payment Plans**

Many customers cannot afford to pay their utility bills and are not eligible for any of the special protections against shut-offs previously discussed in the section in this chapter called **Special Protections Against Shut-offs**. If you find yourself in this situation, you still are eligible for a **payment plan**.

Utility companies must provide customers with payment plans that allow a customer to take several months to pay overdue bills.<sup>33</sup> You have the absolute right to spread payment of overdue bills over a minimum of four months.

#### **Do not agree to pay more in a shorter amount of time if you cannot afford it.**

If your budget does not allow you to pay the balance in four months, you should ask for a longer amount of time. Try to work out an acceptable payment plan with the company. If you qualify for the discount rate and/or fuel assistance (see the sections below) and have not received them, tell the company that you will

apply and that this will reduce your future bills. This should make the company willing to negotiate a better payment plan (such as requiring less money up-front), since it indicates that you will be in a better position to make payments in the future.

Also, if you receive TAFDC or EAEDC benefits from the Department of Transitional Assistance, you can offer to pay off your *arrears* through *vendor payments* that are deducted from your check and sent directly to the company. Utility companies often agree to better payment plans when they know that they will receive the payments directly from the Department of Transitional Assistance.

Finally, you may be able to reduce the amount that you owe the company, and thereby get the company to agree to a better payment plan, by getting the low-income discount applied *retroactively* to your account. See the following section, **Discount Rates**.

If the utility company won't allow you enough time to pay your overdue bill, call the DPU and say that you want a longer payment plan than the company is offering because you can't afford to pay more quickly.

## 2. Discount Rates

### a. Getting Discounted Rates on Future Bills

State law requires all **non-municipal electric and gas companies** to provide discounted rates to low-income customers who receive or are eligible for public benefits.<sup>34</sup> You can get a discount on your electric and gas bills if your income is at or below 200% of the federal poverty guideline (see **Poverty Guidelines** at the end of this chapter) and you receive any benefits under any income-tested benefits program, including (but not limited to) the following benefits:

- TAFDC,
- EAEDC,
- SSI,
- Emergency Assistance shelter benefits,

- Food Stamps,
- MassHealth Basic or Standard,
- MassHealth Essential,
- Prescription Advantage Program,
- Refugee Resettlement Program benefits,
- Fuel assistance (LIHEAP),
- Certain kinds of veterans' benefits, or
- If your child is enrolled in Head Start or the School Breakfast or School Lunch Program.

The discounted rates can lower your bills by roughly 10% to 20% depending on the company, and therefore can save you a substantial amount of money each year. See **2008 Government Poverty Guidelines** chart at the end of this chapter.

You can also get discounts from most **local telephone companies** if you receive:

- TAFDC,
- EAEDC,
- SSI,
- MassHealth Basic or Standard,
- Food Stamps,
- Fuel assistance (LIHEAP),
- Head Start,
- Veteran's assistance, or
- Federal housing assistance.

The "Lifeline" discount is approximately \$18 per month off basic local service. The "Link-Up" discount gives you half off of the installation fee and allows you to pay that fee in monthly installments over the course of a year.<sup>35</sup>

## b. Getting the Discounts Applied Retroactively

There are three different ways that discount rates can be applied retroactively.

First, at least one company (KeySpan) routinely puts customers who receive fuel assistance onto the discount rates as of November 1. This is regardless of when the customer actually applies for and gets approved for fuel assistance during the winter months. Therefore, for companies other than KeySpan, if you receive fuel assistance, you should ask to be placed on the discount rate back to November 1.

Note: While there are no rules or regulations that require companies to do this, some companies will do this if requested.

Second, if you apply on your own to get the discount rates, you should be (but generally are not) placed on the discount rate back to the day of application. For example, if the company takes two months to process the discount rate application, you should not lose two months of the discount, but should instead ask to be placed on the discount rate as of the date of your application. But, again, there are no rules or regulations that require the company to do so.

Third, every company in the state has voluntarily agreed that it will place customers on the discount rate retroactively, if the customer has in fact been eligible for the rate for some period of time, but did not know to apply. **Customers themselves cannot call the company to ask for this type of retroactive application of the discount. Only advocates can do so, on behalf of their clients—customers, and only certain specified individuals at the companies will respond to these requests.** If you are an advocate and need more information about how to contact the company, call Charlie Harak at National Consumer Law Center at 617-542-8010.

## 3. Fuel Assistance Program

The state operates a fuel assistance program that assists low-income households in paying their heating-related bills. The program is run by the Department of Housing and Community Development (DHCD). Gas customers are eligible for fuel assistance only if they use gas for home heating. Electric customers are eligible if they heat with electricity or use electricity to operate their heating system; for example, if the motors or fans on an oil-fired furnace run on electricity.

All households earning less than 200% of the poverty guidelines are financially eligible for fuel assistance. The chart at the end of this chapter entitled **2008 Government Poverty Guidelines** will tell you, based on your family size, whether you are financially eligible.

The actual amount of assistance has varied somewhat over the past few years. For the 2007-2008 heating season, households that heat with oil, propane and kerosene received up to \$1,165, and households that heat with other sources received up to \$1,025. The amount that you receive will depend on your income, household size, and whether you live in subsidized housing.

You must apply for fuel assistance between November and March. To find out where to apply in your area, call 800-632-8175 or go to: [www.massdhcd.com/fuel](http://www.massdhcd.com/fuel).

## 4. Private Sources

Many utility companies voluntarily participate in a program called the Good Neighbor Fund, run by the Salvation Army.

This fund provides modest payments, generally up to \$275, to help people pay their gas, electric, and oil bills. To be eligible for payments, a family must have income between 200% and 275% of the federal poverty level (see **2008 Government Poverty Guidelines** chart at the end of this chapter). To find out more about the Good Neighbor Fund, contact your local Salvation Army.

In addition to the Good Neighbor Fund, there are statewide and local charities that sometimes help people with their heating bills. There is no central listing of all of these charitable sources, but a good place to start is by calling the United Way, the local chapter of St. Vincent dePaul or local churches.

In addition, Citizens' Energy often provides up to 100 gallons of free oil (or a sharply discounted price on an oil purchase), usually through the local community action programs and other agencies that operate the fuel assistance program. To learn more about the Citizens' Energy Program, contact your local fuel assistance agency. To locate your local fuel assistance agency, you can go to: [www.massdhcd.com/fuel](http://www.massdhcd.com/fuel).

You can also download a brochure called "Cold Relief" which has this information on it. This brochure is at: [www.mass.gov/Ehed/docs/dhcd/cd/cold/coldrel.pdf](http://www.mass.gov/Ehed/docs/dhcd/cd/cold/coldrel.pdf).

## 5. Relocation Benefits

The Department of Transitional Assistance no longer provides Emergency Assistance (EA) benefits for paying overdue utility bills. However, if you receive TAFDC or EAEDC benefits *and* you are moving from a shelter into an apartment, you may qualify for \$1,000 in Relocation Benefits.<sup>36</sup> These can be used to pay off old utility bills so that you can set up an account at your new apartment. You can apply for these benefits with your caseworker at the Department of Transitional Assistance.

## Lowering Your Bills Further

Besides applying for the low-income discount, fuel assistance, the Good Neighbor Fund, and/or funds from other private sources, you can take the following steps to reduce your monthly electricity and gas bills.

## 1. Continuous Level Billing

If you have trouble paying your heating bills in the winter, you may want to consider this payment option for your heat source utility. With continuous level billing, the company averages your bills from the past year in order to determine your average monthly bill. You are then billed this fixed amount every month. For example: Assume you have electric heat and pay \$200 per month for the six months when the weather is cold, but only \$60 per month when the weather is warm. Your average monthly bill is \$130 per month. With continuous level billing, the company would bill you \$130 each month year-round, so that you can avoid ever having to pay out \$200 at one time.

## 2. Weatherization and Heating System Programs

Your heating and cooling bills may be too high due to drafts, cracks, poor insulation, or an inefficient or broken heating system. Weatherizing your house or apartment and repairing your heating system can significantly reduce your bills.

There are local organizations across Massachusetts that receive funding from the U.S. Department of Energy to provide weatherization assistance to low-income tenants and homeowners. To qualify for this assistance, your household income must be under 60% of median income (slightly higher than 200% of poverty) (see **2008 Government Poverty Guidelines** chart at the end of this chapter). If you qualify, the organization will send a certified energy auditor to inspect your home. If the auditor finds that your home needs sealing, insulation, weatherstripping, or minor repairs related to weatherization, or that your heating system needs repair or replacement, the organization will hire a contractor to do the work at no cost to you.

To find the nearest organization offering these services, call the Bureau of Energy Programs at 800-632-8175. In addition, many utility

companies offer their own free energy audits for low-income customers.

### 3. Getting Repairs Made

If your windows, flooring, walls, heating system, or thermostat are in need of repair, this can increase your heating and cooling bills substantially. Your landlord is responsible for keeping your apartment in safe and habitable condition. See **Chapter 8: Getting Repairs Made** for information on what to do.

## Common Problems

### 1. Another Person's Bill

#### a. Deserted Spouse

If you are a married woman and you have separated from your husband and he has left overdue utility bills in his name, you are not responsible for your husband's bills unless you have property worth more than \$2,000—and even then you are *liable* only to a maximum of \$100 for each account.<sup>37</sup>

To obtain the benefit of this rule, you should call the utility company and ask that a new account be opened in your name. You should do this as quickly as possible. If you do not inform the company that your husband has left, a dispute will often arise as to when he actually left. The company may also claim that you accepted responsibility for your husband's old bills by leaving the account in his name for as long as you did. Therefore, it is strongly recommended that you make the change promptly.

#### b. Roommate

When a roommate who is **the customer named on the utility bill** moves out of an apartment, the remaining roommate is not responsible for the departed roommate's bills.<sup>38</sup>

### c. Landlord Transfers Bill to Tenant

When a landlord wishes to switch responsibility for a utility bill from herself to a tenant, she cannot simply do so by calling the company. The tenant must agree in writing with the landlord and the utility must be separately metered.<sup>39</sup> If you have not agreed in writing to a utility bill being put in your name, call the utility company and ask that the bill be taken out of your name. If your landlord then refuses to pay the bill, the company cannot shut off your service without giving you notice. For more information, see the section in this chapter called **Your Right to Continued Service**.

### 2. Estimated Bills

Utility companies are required to read your meter on a regular basis. When they read your meter and send you a bill, your bill is based on your actual use. Utility companies are also allowed to send customers "estimated bills" based on your estimated use. The problem with too many estimated bills is that if the company estimates your utility use on the low side, you eventually will receive a very large "catch-up" bill once a company reads your meter and determines your actual use. Companies can also estimate on the high side and you may be paying more than you should.

You will know if it is an estimated bill because the word "ESTIMATE" must appear clearly on the face of the bill. A company may alternate between bills based on a meter reading one month and on estimated use the next month. A company cannot, however, send you two estimated bills in a row unless:

- You deny the company access to the meter, or
- The company cannot read the meter for reasons beyond its control.<sup>40</sup>

If you want your bill to be based on your actual use every month, you can read the meter yourself. If you do this, you can report your reading to the company over the phone or

through a meter reading card provided by the company. You can also contact the company and make arrangements for your meter to be read at a time when you will be home, including in the evening or on a Saturday.

### **3. Excessively High Bills and Illegal Metering Problems**

Customers often complain that their utility bills are too high. Unfortunately, the reason in most cases is simply that rates are so high. If you heat with gas or electricity, your utility bills can easily exceed \$2,000 per year. Even the electricity needed to run lights, a refrigerator, and a few other appliances can cost \$75 or more per month.

#### **a. Illegal Tapping**

A high bill may, however, indicate that you have a problem. In some cases, someone may be illegally tapping into your utility lines—that is, someone may be using utility service from the line you pay for. This is more common in apartment buildings, where all the meters may be accessible in a common area, such as a basement. If you suspect that your gas or electrical service is being illegally tapped or diverted, call the utility company and the DPU.

Although neither the company nor the DPU is required by law to conduct a thorough physical inspection of your premises for illegal tapping, they may offer to test a meter or help in some fashion. If the company and the DPU can't or won't help you, you may have to hire an electrician or plumber to locate the problem.

#### **b. Incorrect Metering**

High bills may also occur when the landlord installs too few meters in a multi-family building or attaches common-area lights or appliances to an individual tenant's meter. For example, a renovated Victorian house may now have three apartments, but only two meters. Or, the landlord may have hooked up the hallway lights or a common dryer to your apartment's meter, so that you are paying for these on top of the charges for your own apartment. You may, therefore, be

paying for your neighbor's utilities as well as your own. These sloppy metering practices are illegal under the state Sanitary Code.

If you believe that the owner has violated the provisions of the Sanitary Code regarding metering requirements, call the local Board of Health and ask for an inspection. If the Board of Health says that there is a metering problem, give a copy of the Board's report to the utility company within 60 days. The law requires the utility company to switch your entire bill to your landlord's name until the Board of Health certifies that the problem has been fixed.

If you paid for the heat, hot water, air conditioner, dryer, refrigerator, or freezer of another apartment or common area, the company must also refund you all of the utility bills that you paid during the period of improper metering, up to two years. If the incorrect metering resulted in your paying only for a common-area light, doorbell, and/or smoke or fire alarm, the company will refund you a total of \$10 per month for the relevant period.<sup>41</sup>

There is another kind of incorrect metering, called *cross-metering*, when the meters of two apartments are completely crossed. In this situation, each tenant is being billed for the utilities used by the other apartment. The DPU has ruled that when this kind of cross-metering is the fault of the utility company, the customer cannot be held responsible. If you think that you are being billed for someone else's energy use instead of your own, call the utility company and ask the company to "flash" your meter. If it turns out that your meter has been crossed with someone else's due to the company's negligence and that you have been overcharged, the company will not be allowed to collect for any excess usage that was not previously billed. If it turns out that you were undercharged, the company cannot require you to make up the difference if the cross-metering was due to the company's negligence.<sup>42</sup>

### c. Defective Appliances

You may have defective or inefficient appliances that are using too much electricity or gas, thus causing unusually high bills. Again, you can try calling the utility company to see if they can offer any help. But you may have to hire a plumber or electrician to get a satisfactory answer to your problem. If the appliances belong to the landlord, she may have an obligation to keep them in good working order under the state Sanitary Code.

## 4. Who's Responsible for Paying Bills

Your landlord may legally be responsible for utility bills that you have verbally agreed to pay. The state Sanitary Code requires a landlord to pay for the fuel used for hot water and space heating, as well as other electric and gas bills, unless you have signed a written agreement stating that you are responsible for these bills.<sup>43</sup> **If you have not agreed in writing to pay these bills, the landlord cannot make you pay them.**

However, if you pay the bills under a verbal agreement, you may have trouble getting the landlord to reimburse you later. The Massachusetts courts agree that it is a deceptive practice under the state's consumer rights law for a landlord to force a tenant to pay utility bills without a written agreement. However, even if there is such an agreement, the courts usually will not order a landlord to reimburse the tenant for bills that the tenant has already paid. Instead, the courts simply award the tenant \$25 in *damages* and require the landlord to pay the tenant's legal fees.

There are two exceptions to this: If the tenant can show that she had to live without utilities for any

period of time as a result of the landlord's not paying the bills, a court may award more money. Also, if the tenant can show that the combined cost of her rent and her utility bills is more than the *fair market value* of the apartment with utilities included, the court may award the tenant the difference between the two amounts.<sup>44</sup>

## Special Rules for Tenants Living in Condominiums

If you live in a condominium as a tenant and you face the loss or the threat of the loss of utility service due to the failure of the association to pay utility or heat bills, there are steps you can take to protect your rights.

The DPU has published regulations that apply to condominiums. These regulations also describe which other DPU rules apply to condo associations, to individual condo unit owners, and to tenants in condo units.<sup>45</sup> The regulations allow a condominium association to choose either the residential or commercial rate of the utility company, whichever is cheaper.<sup>46</sup>

The general DPU rules regarding pending bills, providing notice of termination, and offering payment plans apply when condo associations are customers. When units are separately metered, companies must give individual condo unit owners all special protections against shut-offs, as described in this chapter.<sup>47</sup> When a condo unit is rented to a tenant, that tenant has all the rights described previously in this chapter about when landlords fail to pay.<sup>48</sup>

## 2008 Government Poverty Guidelines

Every year, the federal government establishes poverty guidelines to determine who is financially eligible for particular programs. The chart below tells you what the yearly income cut-offs are for 2008. These figures change every year around February and are available at: [www.aspe.os.dhhs.gov/poverty/](http://www.aspe.os.dhhs.gov/poverty/).

Household Size	100% of Poverty	125% of Poverty	150% of Poverty	175% of Poverty	200% of Poverty	275% of Poverty
1	\$10,400	\$13,000	\$15,600	\$18,200	\$20,800	\$28,600
2	\$14,000	\$17,500	\$21,000	\$24,500	\$28,000	\$38,500
3	\$17,600	\$22,000	\$26,400	\$30,800	\$35,200	\$48,400
4	\$21,200	\$26,500	\$31,800	\$37,100	\$42,400	\$58,300
5	\$24,800	\$31,000	\$37,200	\$43,400	\$49,600	\$68,200
6	\$28,400	\$35,500	\$42,600	\$49,700	\$56,800	\$78,100
7	\$32,000	\$40,000	\$48,000	\$56,000	\$64,000	\$88,000
8	\$35,600	\$44,500	\$53,400	\$62,300	\$71,200	\$97,900
+ additional	\$3,600	\$4,500	\$5,400	\$6,300	\$7,200	\$9,900

Source: *Federal Register*, Vol. 73, No. 15, January 23, 2008, pp. 3971–3972.

## Endnotes

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1. The Department of Public Utilities was formerly called the Department of Telecommunications & Energy (DTE). As of April 11, 2007, DTE became two separate agencies: the Department of Telecommunications & Cable (DTC), which handles telecommunications and cable issues, and the Department of Public Utilities (DPU), which handles electric, gas, siting, pipeline, water and transportation issues.
2. See generally G.L. c. 164 (Gas and Electricity), G.L. c. 165 (Water), 220 C.M.R. §25.00 (Billing and Termination Regulations for Gas, Electric, and Water Companies).
3. DPU 18448 (telephone regulations). (Note: The rules adopted in DPU 18448 can be hard to obtain. They are available at the offices of the DPU and also as an appendix to *Utilities Advocacy for Low-income Households* (2nd Ed.), available at no charge from the National Consumer Law Center, 617-542-8010).
4. G.L. c. 164, §1F(2); 22D C.M.R. §25.02(1).
5. While G.L. c. 231, §§85O, 85P say that if you are 18 or older, you have reached the age of majority and have the full legal capacity to contract, there is no statute which provides a legal basis for denying services to someone under the age of 18.
6. 105 C.M.R. §410.180. Note, however, that in certain limited circumstances the property could have the tenants be responsible for paying the water bills. G.L. c. 186, §22. Very few property owners have been willing to comply with the conditions that must be met to shift to tenants the burden of paying for utility bills. Therefore, very few tenants in Massachusetts are actually responsible for paying for water. For more information about the water sub-meter law go to: [www.MassLegalHelp.org/housing/water-law](http://www.MassLegalHelp.org/housing/water-law).
7. 105 C.M.R. §§410.190, 410.201. If no such written agreement exists, the landlord is legally responsible for the cost of heat and hot water even if the tenant has adopted the practice of paying for them. *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987). See also 105 C.M.R. §410.354 (property owner must pay for the electric and gas bills unless there is a separate meter which measures only the tenant's own usage, and there is a written letting agreement requiring the tenant to pay).
8. 105 C.M.R. §§410.200, 410.201, 410.355. If no such written agreement exists, the landlord is legally responsible for the cost of heat and hot water even if the tenant has adopted the practice of paying for them. *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987). See also 105 C.M.R. §410.354 (property owner must pay for the electric and gas bills unless there is a separate meter which measures only the tenant's own usage, and there is a written letting agreement requiring the tenant to pay).
9. 105 C.M.R. §410.354.
10. 220 C.M.R. §27.00.
11. The process of using "Cromwell Waivers" to get service at a new address is not required or even described anywhere in the DPU's regulations.
12. 106 C.M.R. §705.350. To qualify, a person must have spent 60 days or more in a temporary emergency shelter, a shelter for victims of domestic violence, or in a teen structured living program (for teen parents 18 or 19 years of age).
13. 220 C.M.R. §27.00. This prohibition on deposits applies to the privately owned utilities, such as NSTAR and Keyspan, which provide electricity and gas to most people in Massachusetts. Municipally owned utilities—for example, the Groton Electric Light Department—can charge deposits. G.L. c. 164, §58A.
14. DPU 18448, Rule 4.5.
15. Gas service is not available except where your company has existing distribution lines. Electric companies may not readily agree to provide service to a particularly remote rural customer unless the customer contributes to the cost of bringing a power line to the house.

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16. 220 C.M.R. §25.02(3) (general rule on utility shut-offs).
  17. *Cromwell v. Boston Gas Co.*, DPU 18123 (1974), G.L. c. 164, §124 (customer cannot be shut off for bill at prior address); G.L. c. 164, §125 (customer cannot be shut off for bill of prior occupant).
  18. G.L. c. 164, §124B.
  19. G.L. c. 164, §124D (electricity and gas), G.L. c. 165, §11E (water), and 220 C.M.R. §25.04(6) contain the protections for tenants discussed in this section.
  20. 220 C.M.R. §25.04.
  21. G.L. c. 164, §124A; 220 C.M.R. §25.03.
  22. Regulations protecting telephone consumers are contained in DPU 18448, which can be obtained from the DPU Consumer Division, and also as an appendix to *Utilities Advocacy for Low-income Households* (2nd Ed.), available at no charge from the National Consumer Law Center, 617-542-8010. The serious illness provisions discussed in this section are in DPU 18448, Rules 5.15, 5.16. The personal emergency rule is 5.17.
  23. G.L. c. 164, §124F; 220 C.M.R. §25.03.
  24. G.L. c. 164, §124H; 220 C.M.R. §25.03.
  25. The regulations covering elderly accounts are 220 C.M.R. §25.05 (electric, gas, water) and DPU 18448, Part 8 (telephone).
  26. Note that for phone customers, the rule only requires that every ADULT member of the household be over 65. DPU 18448, Rule 8.1. This means that, for example, grandparents who are over 65 and take in their young grandchildren can still claim elderly protection under the telephone rules.
  27. The procedures described in this section are mandated by 220 C.M.R. §§25.02, 25.03.
  28. 220 C.M.R. §25.02(3).
  29. 220 C.M.R. §25.02(3).
  30. 220 C.M.R. §25.03.
  31. The procedures described in this section are mandated by DPU 18448.
  32. DPU 18448, Rule 5.9.
  33. 220 C.M.R. §25.01(2) (definition of "payment plan"), §25.02(6).
  34. G.L. c. 164, §1F(4)(i), 220 C.M.R. §14.03(2A).
  35. The Lifeline and Link-Up discounts must be provided by phone companies that get certain kinds of federal and state funding. *See* 47 C.F.R. §§54.400-416, DTE 97-103; [www.mass.gov/Eoca/docs/dte/telecom/97-103/97-103.pdf](http://www.mass.gov/Eoca/docs/dte/telecom/97-103/97-103.pdf). The following phone companies provide the discounts, and others may, as well: Verizon, RCN, Granby Telephone and Telegraph Company, Richmond Telephone Company, and Taconic Telephone Corp.
  36. 106 C.M.R. §705.350.
  37. G.L. c. 209, §7.
  38. *Key v. Boston Edison Co.*, DPU 19355 (1978).

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39. 105 C.M.R. §410.354; *Corey v. Boston Gas Co.*, DPU 19758 (1980).
40. 220 C.M.R. §25.02(2).
41. See 220 C.M.R. §§29.01-29.13.
42. As the DPU noted in *Rapive v. Mass. Electric Company*, DPU 84-86-28 (Sept. 8, 1994): A "company may bill a customer retroactively for electricity used, but not originally billed, when that billing results from cross-metering that was not the fault of the Company [citation omitted]. . . . However, when the Department has determined that a Company was at fault for not discovering cross-metering after complaints from customers, it has found that a full abatement was warranted." *Rapive v. Mass. Electric Company*, at 5. See also *Thomas v. Boston Edison Company*, DPU 93-AD-30 (Nov. 1, 1994); *Van Buskirk v. Boston Gas Company*, DPU 3 (1982).
43. 105 C.M.R. §410.190 (hot water), §410.201 (heating), §410.354 (gas and electric).
44. See *Young v. Patukonis*, 24 Mass. App. Ct. 907, 908-909 (1987) (verbal agreement to pay for heat or hot water is void); *Poncz v. Loftin*, 34 Mass. App. Ct. 909 (1993), rev. den'd 415 Mass. 1102 (1993) (Tenant cannot recover cost of paying for heat and hot water under verbal agreement with landlord when tenant never asked landlord to pay bills and cannot show that apartment was made uninhabitable by defective heating equipment or interruptions in service. Tenant entitled only to nominal damages of \$25 and reasonable attorney's fees under G.L. c. 93A); *Knott v. Laythe*, 42 Mass. App. Ct. 908, 910 (1997) (If the combined cost of rent plus utilities does not exceed the *fair market value* of the apartment with utilities included, tenant can only recover \$25 and reasonable attorney's fees under G.L. c. 93A). These decisions were based on the theory that the Sanitary Code allows landlords to shift the burden of payment to tenants via written agreement, and that the failure to reduce a verbal agreement to writing does not in itself make the apartment uninhabitable.
45. 220 C.M.R. §28.00.
46. 220 C.M.R. §28.04.
47. 220 C.M.R. §28.05(1).
48. 220 C.M.R. §28.05(2).