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October 1, 2012

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**PUBLIC SERVICE COMM
OF MARYLAND**

Mr. David Collins,
Executive Secretary
William Donald Schaefer Tower
6 St. Paul St., 16th Floor
Baltimore, MD 21202

VIA HAND DELIVERY

Dear Mr. Collins:

Pursuant to Maryland Public Service Commission's (hereinafter "Commission") May 23, 2012 Letter Order, please see the attached *Final Report to the Maryland Public Service Commission from the Workgroup on Tenant Payment of Landlord Utility Bills* in Public Conference 30.

Additionally, to provide support and additional context, the Workgroup respectfully recommends that the Commission accept comments on the *Report* in advance of the December 1, 2012 reporting deadline to the General Assembly.

The members of the Workgroup remain willing to offer additional guidance upon request.

Sincerely,

Odogwu O. Linton, Esq.
Director

Final Report

To The

Maryland Public Service Commission

From the

Workgroup on Tenant Payment of Landlord Utility

Bills

PC 30

October 1, 2012

Odogwu Obi Linton, Esq. Director and
PSC Leader
Maryland Public Service Commission
Office of External Relations

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Executive Summary

At the direction of the General Assembly, the Maryland Public Service Commission, convened the Workgroup on Tenant Payment of Landlord Utility Bills (hereinafter "Workgroup"). The Workgroup was directed to study known and potential solutions to determine the best way to provide notice of a pending termination of service to a tenant occupied property when the landlord defaults on the responsibility established in the lease to pay the utilities for the property. Like the majority of states, Maryland has statutory and administrative law requirements for notice to tenants in master-metered properties. Accordingly, the Workgroup focused on non master metered, single tenant occupied properties.

The uncodified language presents a challenge in two parts. The first is the provision of notice to a tenant. The participating regulated and non-regulated utilities are familiar with landlord customer of record situations. However, there is no reliable data to define the scope of the issue identified by the uncodified language. Without an understanding of the scope of the problem, agreement on potential solutions became difficult. Nevertheless, the Workgroup Report does propose three solutions for providing notice: 1) assume all customers with a service address that is different from the billing address are in a landlord / tenant relationship and as a result, mail a copy of the termination of service notice to the service address and the billing address on file with the regulated utility; 2) mail a notice of termination to the tenant at the landlord's request; or 3) After receiving statutory authority to distribute confidential customer (landlord) billing information to a third party (tenant), mail a copy of the notice of termination to the tenant at the tenant's request. Since the scope of the problem is unknown, the Workgroup could not explore the potential costs to the regulated utility companies to develop and deliver a notice to the tenant using any of these three options.

Some in the Workgroup believe that the problem identified in the uncodified language is not applicable to municipal water companies (hereinafter "MWCs"). MWC's have separate notice, collection and service denial procedures governed by various laws and administrative regulations which provide for notice, addressed to "occupant", of a pending termination of service to the service address. Once received, the tenant can pay the landlord's debt or contact the landlord to resolve the outstanding debt. While certain provisions in the Code of Maryland Regulations could create a similar notice requirement for regulated utilities, statutory changes authorizing distribution of confidential customer information would be required for full implementation.

Once notice of termination of service has been sent to, and received by, the tenant, the second part of the challenge arises -- namely what rights or options would be available to the tenant. Under the Workgroup's Recommendations, subject to an investigation and credit review by the regulated utility, the tenant has the option to either open a new account or pay the landlord's outstanding debt. The Workgroup agreed that the tenant has no responsibility to pay the landlord's outstanding debt, and if the tenant chooses to open a new account in his or her name, the landlord remains responsible for the debt remaining on his account. The Workgroup's recommendations do not limit the tenant's rights to pursue the landlord for breach of contract.

Accordingly, although the Workgroup's discussions did not result in a complete resolution of the issues presented in the uncodified language, the Workgroup did agree that a tenant in this situation may make application for a new regulated utility account in his/her own name, and will not be held responsible for payment of the outstanding balance due for regulated utility service at the property as a result of the landlord's failure to pay. The Workgroup further agreed that the tenant's application for regulated utility service would be treated in the same

manner as any other prospective new customer-applicant, subject to the same evaluation criteria. Finally, all in the Workgroup acknowledged that, nothing in the foregoing process would change a utility's right, at any time, to investigate suspected fraud or other material misrepresentation by an applicant or customer.

I. Background and Procedural History

During the 2011 Legislative Session, the Maryland General Assembly enacted Chapters 573 and 574, 2012 Laws of Maryland ("Act"), entitled "Public Service Commission – Study on Tenant Payment of Landlord Utility Bills," directing the Maryland Public Service Commission (hereinafter "Commission") to convene:

[a] workgroup to study and make recommendations on how to develop a mechanism to allow tenants in residential properties to pay for their utilities when the landlord responsible for utility payments defaults on that responsibility.

On May 23, 2012, the Commission issued a Notice seeking members to participate, which included certain members specified by the Act. On June 27th, the Commission formally empaneled the Workgroup on Tenant Payment of Landlord Utility Bills (hereinafter "Workgroup"). The Workgroup was directed to file a meeting plan establishing a Proposed Schedule of Future Meetings with Agenda and Discussion Topics for each Meeting and identify additional parties to participate in the Workgroup discussions.¹ The Workgroup held its first meeting on July 12, 2012, and filed the Meeting plan along with additional member recommendations on July 25, 2012.² Attached to this report is a copy of the final membership list.³

II. Description of Task

The uncodified language directed the Workgroup to study and provide recommendations or answers to the following questions:

¹ The Workgroup notes that a fifth meeting was held to discuss a previously unidentified issue. It will be discussed later in this report.

² The Workgroup also recommend that the Commission invite additional members to participate in the meetings. By way of Letter Order, the Commission approved the request on July 27th.

³ The list of members to the Workgroup does not include a representative from each Maryland regulated utility.

- i. how to ensure proper notice is given to an occupant of a residential property when utility termination due to nonpayment is pending;
- ii. what mechanism would be most effective in allowing a tenant to pay for utility usage when a landlord defaults on the landlord's responsibility to pay;
- iii. how to protect a utility company's rights to pursue bad debt;
- iv. how to protect a tenant's right to pursue breach of contract remedies;
- v. how similar efforts in other states have worked;
- vi. how to eliminate the opportunity for fraud in the payment for utility usage by a tenant when a landlord defaults on the landlord's responsibility to pay; and
- vii. any other matters the workgroup identifies as pertinent to the respective interests of the tenants, utilities, and landlords.

The Commission directed the Workgroup to file final recommendations on the above questions by October 1, 2012.⁴ Accordingly, the Workgroup respectfully files the following report and recommendations.

III. Overarching Issues

The Workgroup discussed a range of issues related to the uncodified language's directive. As part of the recommendations to follow, there are several overarching conclusions that apply to them.

a. *Translating the Uncodified Language into Industry Practice*

First, the Workgroup's purpose, as stated in the uncodified language, is to "[d]evelop a mechanism to allow certain tenants to pay for utilities when a certain landlord defaults". When translated into industry practice, the uncodified language identifies a familiar situation where a customer of record (here the landlord) has opened and accepted responsibility for payment of utility service at a particular address, but for reasons unknown, fails or refuses to pay for the service. While the uncodified language identifies the contractual relationship between the landlord and tenant as part of the fact pattern the Workgroup was directed to address, unless

⁴ See May 23, 2012 Letter Order at 2. The directive is repeated in the June 27th Letter Order listing the nominees for the Workgroup.

made aware of the existence of the landlord-tenant relationship, the regulated utility only knows that the landlord is the customer of record responsible for paying for service at a specific location.

b. *The Municipal Water Companies*

The uncodified language identified a familiar situation, and in doing so, created a scenario where certain members of the Workgroup recommended that the MWC's⁵ be exempt from the overall recommendations. Regulated water, gas and electric companies allow individual customers to accrue debt at a service address and, will prohibit that customer from obtaining new service at a new address until their old debt is paid. The debt becomes the personal debt of a person or corporate entity. This collection format allows multiple customers over a period of time to accrue charges at a single address – but a new customer with no debt can always contact the regulated water, gas or electric company and obtain new service *at that same address* without payment of the debt accrued by prior customers of record. However, the MWC's attach the outstanding debt to a property, thereby requiring payment of a water bill at that address, *from anyone*, to insure continuity of service.⁶

For purposes of the collection of debt, this distinction creates a fork in the road with regard to collection policy and administrative regulations. Regulated water, electric and gas utilities mail a turn off notice to the customer of record at one address (or more if requested pursuant to third party notification), which need not be the service address. The MWCs mail a turn off notice to the customer of record *and* also to the property where service is provided whenever a termination is pending, and the notice to the property is addressed to "occupant"

⁵ The Washington Suburban Sanitary Commission and the Baltimore City Department of Public Works Water & Waste Water fit into this category.

⁶ See Public Utilities Article Section 25-504(e) which authorizes WSSC to collect on delinquent water bills from the owner of the property.

(which could reach the tenant living at the premises) as envisioned by the uncodified language. Further, MWC's accept payment from any person, including the tenant, and have the right, pursuant to regulation to require that the entire arrearage be paid prior to or as a condition of restoring service.

c. Single Tenant Occupied Residences

The Recommendations included in this Report apply only to a lease holder in a single family, individually metered home (referred to throughout this Report as "tenant"), and do not apply to existing Master metered buildings. The Code of Maryland Regulations (hereinafter "COMAR") 20.31.03.06 requires all Regulated Utilities to provide notice to Master metered buildings, which are defined in COMAR 20.31.01.02(11) as buildings

"with a dwelling unit or units, the owner or landlord of which buys electricity or gas from the utility and provides it to the tenant or tenants in the building either as a part of the rent or as a separate charge under the authority of Public Utilities Article, §7-303, Annotated Code of Maryland."

Based on the foregoing COMAR regulation, the Workgroup concluded that the Master metered building notice requirement⁷ does not apply to properties where only one rental agreement exists.

d. Customer Confidentiality

The Workgroup engaged in considerable discussions regarding the substance of the notice of service termination provided to tenants. One solution considered by the Workgroup involved sending the tenant a duplicate of the service termination notice provided to the customer of record (*i.e.* the landlord). Since the standard service termination notice contains private customer information, however, providing a copy of such to a third party may violate

⁷ Specifically, COMAR requires that the utility notify tenants in a master-metered building 14 days prior to service denial through posting termination notices in a conspicuous location in the building and, by first class mail, flyers or "door stuffers".

COMAR and other Maryland consumer protections.⁸ The Workgroup agreed that legislative authority to distribute confidential customer of record billing and credit information to a non customer of record third party would be required if the notification agreed upon was that of providing the tenant with a duplicate service termination notice. Certain Workgroup members did propose a form of notice that would not disclose any private customer of record information, however a notice of this form would need to be created, and would result in additional programming and development costs.

e. *Costs*

As discussed throughout this Report, the Workgroup could not identify or measure the cost or benefit of providing notices of termination of service to tenants residing in single-metered units. Sufficient data did not exist to determine the number or percent of service termination notices that involved single household tenants where the landlord was responsible for the utility bill. In addition, the Workgroup did not reach a unanimous recommendation on a single proposal or solution. Without sufficient data on the scope of the problem or a proposed solution, the Workgroup could not determine the cost of implementing a solution. These costs could include, but are not limited to such expenses as: mailing and printing costs; utility systems changes; or other administrative challenges. Accordingly, the Report does not identify the costs to provide service denial notices to tenants. However, the Workgroup agreed that there would be additional costs to implement any solution.

IV. How to ensure proper notice is given to an occupant of a residential property when utility termination due to nonpayment is pending.

⁸ Each utility has strict policies prohibiting distribution of confidential consumer information. The principle is also established throughout a range of Federal and Maryland law. *See eg.* COMAR 20.40.02.01(B)(5) prohibiting a utility from disclosing any customer-specific information without the informed consent of the customer.

RECOMMENDATION: The Workgroup spent considerable time discussing format, delivery and information required to deliver “proper notice” to the “occupant of a residential property” or tenant. However, the Workgroup did not agree to adopt any of the three proposed notice solutions below. There are several challenges embedded within the administrative processes necessary to ensure successful delivery of “proper notice.” Subject to the discussion below, the Workgroup concluded that notification of a pending termination of utility service due to nonpayment should be sent by mail directly to the premises.⁹ This notification may be a duplicate termination notice that currently includes utility contact information and would be addressed to “occupant”, which would raise the disclosure of private information described above. Consumer advocates recommended both that a form of notice be used so as to avoid the disclosure of private information and that the outside of the envelope be marked “Important Notice to Occupants – Utility Shutoff Pending.” The regulated utilities expressed concern about the costs of implementing the recommendation to use a different envelope to mail the second notice.

While sending notice via mail is the recommended format for a notice, there are several unresolved issues:

Notification of Landlord / Tenant Relationship

Unless requested by the customer of record under the Third Party Notification process discussed in subsection (ii) below, there is no requirement that regulated utilities provide notice of a pending termination of service for non-payment to anyone other than the customer of record. The landlord customer of record can choose to have termination of service notices sent to a “billing address” which can be altogether different than the address where utility service is

⁹ The Workgroup notes that certain utilities hand deliver notices to tenants when they are aware of a landlord/tenant relationship as discussed in section IV(iii) below.

provided. The Workgroup did not have any evidence to support the conclusion that landlords have withheld pending service disruption notices to tenants and, there was no evidence to conclude that tenants have requested the notifications and were rejected. Furthermore, because of varying local jurisdiction regulations, there is no existing, statewide comprehensive list of landlords or rental properties that regulated utilities can use to provide notice to tenants.¹⁰ As a result, the regulated utilities do not have access to complete, or current information to determine under what conditions notice is desired, or when a current customer of record is actually a landlord and the service is in the landlord's name. The Workgroup could not agree on a mechanism that would provide notification of a pending termination of service to a tenant where the tenant is not the customer of record. However, three distinct proposals were presented:

- i. Send a termination of service notice to the service address and the billing address in all instances where the billing address is different from the service address*

Under this option, the regulated utility would be responsible for sending a notice of termination to both the customer of record's preferred billing address and also to the service address. Although sending duplicate termination notices when the billing address is different from the service address would involve additional costs, it is thought to be administratively easier to implement. However, the existence of different billing and service addresses does not always indicate that a landlord/tenant relationship is apparent. For example, a customer may have a vacation or weekend residence and mail the utility bill for that residence to the permanent address. Or, a customer could elect to receive their bills at post office box. In both situations, the regulated utility would have both addresses within their database, but in each instance, there is only one customer and no landlord – tenant relationship.

¹⁰ Identifying a list of all properties where a landlord provides unmetered utility service for which it is compensated via tenant rental charges would be a tall, if not impossible, task to complete. Monitoring the list for completeness presents a myriad of challenges from agency responsibility to enforcement.

ii. Require the landlord to request and authorize that a notice get sent to the tenant

This suggestion is based on the Third Party Notification (hereinafter "TPN") process found in COMAR 20.31.01.07. Today, TPN occurs when a regulated utility receives a written request, on a form provided by the utility company, authorizing the company to distribute termination notices to a third party. For example, a parent may wish to receive a copy of a termination of service notice sent to the residence of a college-aged child where the service is in the child's name. The companies noted that a tenant or landlord could request that a utility provide notice of a pending service denial for nonpayment to a tenant through use of COMAR 20.31.01.07. However, the regulation has never been promoted for this purpose and would require approval of the request from the landlord/customer of record, who conceivably is also the person refusing to pay the utility bill. Accordingly, it is probable that the landlord would refuse to authorize distribution of the notice to the tenant.

iii. Tenant May Request Prior Notice of Termination

While there is no agreed upon mechanism to measure the existence or frequency of service termination to a tenant when payment of the regulated utility service is the landlord's responsibility, the Workgroup agreed that it does occur. As the party occupying the premises where utility service is provided, the tenant is the one with the greatest incentive to seek information about impending service termination. This remains true throughout the life of the rental agreement.

The Third Party Notice option provides an opportunity for the tenant to request notice of a pending service termination with the landlord's approval. However as discussed above, the utilities do not have any contractual arrangement with the tenant. The request from the tenant

may be the first time the regulated utility receives any notice of a claimed landlord/tenant relationship at the service address.¹¹ Nevertheless, some regulated utilities would not object to providing pending service termination notices to the tenant, provided the landlord agrees to the distribution of confidential information, which would include his account number and past due balance; statutory changes are made authorizing the regulated utility to distribute the confidential customer information to the tenant. In the event the landlord / tenant contract no longer remains in force, one of the parties needs to provide an update to the regulated utility.

The use of the TPN provision would require significant programming changes and modifications to internal procedures since regulated billing systems can maintain only two addresses for a customer (one for the service address, one for a TPN request, a "billing address" or other use.

V. What mechanism would be most effective in allowing a tenant to pay for utility usage when a landlord defaults on the landlord's responsibility to pay;

RECOMMENDATION: The Workgroup concluded that current rules impacting regulated utilities provide solutions for this question. When faced with notice of a pending service denial, COMAR provides the tenant several options to resolve the issue. The Workgroup agreed that both options discussed below remain available to the tenant.

a. Application for new service in the tenant's name

For example, the steps necessary for a customer to apply for a new account from a regulated electric utility can be found in COMAR 20.50.04.01-1.¹² The existence of a debt accrued by the landlord does not prohibit a tenant from applying for and receiving a new utility

¹¹ The Workgroup learned that some landlords have oral lease agreements with their tenants. There was general concern about verifying the existence of a landlord tenant arrangement (as opposed to some other arrangement which could result in a violation of the COMAR "co-occupancy" rules. *See infra* at 16.

¹² COMAR 20.55.04.01-2 for new Gas Service or 20.70.04.01 for new regulated water service.

account in the tenant's own name, pending an investigation and credit review by the utility.¹³

The application for service cannot be denied due solely to the landlord's arrearage. The landlord's arrearage shall remain the responsibility of the landlord.

b. Make payment on the landlord's account

Requiring a tenant to make payment on or towards the landlord's utility service account is not considered a desirable option since the tenant already pays for utility service obligations through the payment of regular rental charges assessed on the unit. However, the tenant may also make a payment towards the landlord's delinquent account to maintain the service in the landlord's name.¹⁴ The Workgroup agreed that this option remains available to the customer (or tenant) who may find that after a credit check by the utility company, other factors may exist which could either delay the new service in the tenant's name or, the tenant may be unwilling to continue pursuit of the service in his or her own name.¹⁵

VI. How to protect a utility company's rights to pursue bad debt;

RECOMMENDATION: The most effective means for collecting debts attributable to using utility service is the ability to deny continued service at the location. A successful transfer of the account into the name of the tenant may result in increased legal and administrative costs as the utility pursues efforts to collect payment from the landlord for delinquent balances. The Workgroup agreed, however, that a range of collection actions remain available to the regulated utility to protect its rights to pursue the bad debt. Some of those options include:

- a. Transfer of the landlord's outstanding debt to another active account (in the same rate class);

¹³ Investigations are intended to mitigate utility risk and can include assessments for credit, fraud, etc.

¹⁴ Assuming the tenant is current on the rental agreement, this means that the tenant would have "paid" for the utility service twice, once to the utility to maintain the service and once to the landlord who has retained the tenant's payment.

¹⁵ The tenant could be required, for example, to pay a deposit to establish credit with the utility under COMAR 20.30.02.01 et. seq.

- b. Pursuit of collection through the state courts;
- c. Denial of new service in the name of the landlord until the outstanding debt is paid;¹⁶ and
- d. Recovery in rates from all customers.

In addition, if the tenant takes no action upon receipt of the notice, the utility can still deny service at the address.

VII. How to protect a tenant's right to pursue breach of contract remedies

RECOMMENDATION: The solutions proposed within this Report are designed to provide notice of an impending service termination to the tenant's leased property. In that instance, the service is in the landlord / customer of record's name. Assuming the tenant has made all appropriate payments to the landlord and, the landlord has not paid the utility, there are certain breach of contract remedies that may be available to the tenant. However, prospectively, the solutions proposed herein are intended to assist the tenant in maintaining service, either through a new account or in the landlord's name. To that end, it is the Workgroup's conclusion that nothing proposed in this Report impacts or otherwise impedes the tenant's right to pursue breach of contract remedies against the landlord. In addition, the Workgroup recommends that the Real Property Article of the Maryland Code be amended to permit the tenant to deduct from the rent due under the lease all amounts paid by the tenant to utility suppliers when it was the obligation of the landlord to make the payments.

VIII. How similar efforts in other states have worked;

The Workgroup requested information about similar efforts to address these issues from other states where regulated utilities have active industry business. In addition, the Workgroup reviewed a *Survey of Public Utility Notice and Tenant-Pay Laws*, prepared for the Public Justice

¹⁶ COMAR 20.50.04.01-1 for electric customer service; 20.55.04.01-1 for gas service, and 20.70.04.01 for regulated water service.

Center by a student attorney from the University of Baltimore,¹⁷ which provided a brief summary of some relevant statutes in other jurisdictions.¹⁸ The Workgroup specifically focused on providing notice to a residence with a single renter as opposed to master metered, or a residence or building with multiple (two or more) rental properties. The Workgroup notes that a majority of states have some form of notice requirement to tenants in master metered properties. However, for single renter properties, there are clear distinctions. While Delaware, Virginia, Kentucky and the District of Columbia have regulations requiring notice to tenants in master metered or multiple renter properties, they do not have regulations requiring notice to single renter properties. On the other hand, the states of New Jersey, Pennsylvania, Ohio, Massachusetts, and West Virginia have implemented notice solutions (statutes are included as Attachment C). The utilities reported mixed results in those states. The regulated utilities all struggle with knowing when and to whom to send notice. Each statute required individual notice to single renters **only when** the utility knew that the rental arrangement existed. Since the States placed the burden to provide the notice on different parties (some the tenant, others the landlord), the source of the notice did not matter.

IX. How to eliminate the opportunity for fraud in the payment for utility usage by a tenant when a landlord defaults on the landlord's responsibility to pay;

RECOMMENDATION: The Workgroup assumes the fraud referenced is against the utility through an applicant falsely claiming to be a tenant, or claiming that the landlord was responsible for payment of the utility bill. As long as the tenant can (1) demonstrate proof (a) of status as a tenant and (b) that the landlord, rather than the tenant, was responsible for payment of

¹⁷ *Survey of Public Utility notice and Tenant-Pay Laws*, dated April 17, 2012, from Melissa Wisniewski, Student Attorney, University of Baltimore Civil Advocacy Clinic.

¹⁸ The Workgroup reviewed the Study to gauge the efforts in other States, however certain members of the Workgroup questioned the Study's accuracy.

the utility charges, and (2) has no credit issues that would prohibit application for service in his or her name (such as a prior unpaid debt), the opportunity for fraud should be limited.

As noted earlier in this Report, the circumstances outlined in the uncodified language are not new to the regulated utility companies. COMAR currently gives a utility the right, at any time, to terminate service in the event the utility determines that application for such service was fraudulently made.¹⁹ Each utility has well established divisions that investigate and review service applications from new applicants to determine credit risks to the company. The regulated utilities will conduct internal investigations to determine the credit worthiness of a tenant. The review will also limit the regulated utility's exposure to COMAR Co-occupancy (or "fraud") related concerns. Accordingly, the Workgroup does not recommend any changes to the existing regulations, and urges that any resultant statutory or regulatory solution preserve the regulated utility's ability to investigate and confirm or deny, as appropriate, tenant applications for new service where the tenant is applying for new service and when the landlord's debt remains unpaid.²⁰

X. Any other matters the workgroup identifies as pertinent to the respective interests of the tenants, utilities, and landlords.

a. Scope of the Issue

Despite a concerted effort to do so, the Workgroup was unable to define the scope of this issue. "Attachment B" lists seven "Data Requests" responded to by the MWC's and regulated utilities. While there was great effort put into collecting the data, the data was not reliable primarily because the majority of the regulated utilities have no internal process or mechanism for recording requests for termination of service data from landlords or tenants. In addition,

¹⁹ See COMAR 20.31.02.04. See also COMAR 20.50.04.01-2(b)(7) wherein a utility may likewise refuse to connect service upon a determination that the application for such service was fraudulently made.

²⁰ This would include the potential request for a deposit under 20.30.02.01 et. seq.

similar requests for information from the landlords and/or tenant associations and the "Advocates"²¹ did not produce any data which could be reasonably relied upon to justify imposing significant and potentially costly system changes.

As a result, the solutions crafted and recommended in this Report are designed to produce what the Workgroup believed would produce notice to tenants in a leased single meter/single unit dwelling without creating new and expensive costs for regulated utilities and in return, for all customers.

b. Other Self-Help Remedies

When reviewing the statutes in states where single renters receive notice of a pending service denial, the Workgroup noticed that a comprehensive framework often existed in support of the statutes. Among other provisions, the tenants were afforded certain customer of record rights or self help remedies normally reserved to the landlord or other regulated utility customers.²² The Workgroup did not have the time to explore these issues in detail, but thought it was worth raising for consideration at a later time should that time arise.

c. Proposed Legislation

Finally, the Advocates proposed legislation that would address the failure of landlord to pay for utility service obligations that are embedded in tenant rental charges. While the Workgroup discussed the statute at two meetings and some progress was made, the discussions did not produce an agreement.

XI. Conclusion

²¹ Generally, the Advocates were the Office of People's Counsel, the Office of Attorney General, the Public Justice Center, Energy Advocates and the Legal Aid Bureau.

²² See eg. 66 Pa.C.S. § 1524 (Pennsylvania) which places a duty on the landlord to alert the utility to landlord – tenant relationships; 66 Pa.C.S. § 1531 (Pennsylvania) which creates a "presumption of retaliation" against the landlord; OAC Ann. 4901:1-18-08 (Ohio) which allows the tenant to place the rent due to the landlord in an escrow account with the clerk of the court; 220 CMR 25.04 (Massachusetts) authorizing among other rights, the authority for monetary damages for landlord retaliation for retaining utility service.

The Workgroup is pleased to produce the aforementioned Report and recommendations,
and remains willing to offer additional guidance upon request.

Attachment A

Agency / Organization	Name	Title or Company	Street Address	City, State, Zip Code	E-mail Address	Telephone No.	Fax No.
Baltimore Gas & Electric Company							
Primary	Jason Manuel	Director - Revenue Management	2 Center Plaza, 110 Fayette St.	Baltimore, MD 21201	Jason.M.Manuel@bge.com	410-470-1179	410-470-8022
Alternate	Gina M. Wyatt	Manager - Accounts Receivable	2 Center Plaza, 110 Fayette St.	Baltimore, MD 21201	Gina.Wyatt@bge.com	410-470-6460	410-470-8006
Counsel	Kim Curry		2 Center Plaza, 110 Fayette St.	Baltimore, MD 21201	Kimberly.a.curry@constellation.com	410-470-1305	
Potomac Edison Company							
Primary	Melanie Ramsburg	FirstEnergy Corp.	1310 Fairmont Avenue P. O. Box 1392	Fairmont, WV 26555-1392	mramsbu@firstenergycorp.com	304-367-3192	304-368-2484
Alternate	April McKenzie	FirstEnergy Corp.	700 East 4 th St.	Cumberland, MD 21502	Amckeniz@firstenergycorp.com	301-759-5716	304-368-3785
Counsel	Jeff Trout	FirstEnergy Corp.	800 Cabin Hill Drive	Greensburg, PA	JeffTrout@firstenergycorp.com	724-333-5721	
Office of People's Counsel							
Primary	Anne L. Johnson	Asst. People's Counsel	6 St. Paul St. Suite 2102	Baltimore, MD 21202	annej@opc.state.md.us	410-767-8160	410-333-3616
Alternate	Cynthia J. Reilly	Dir., Consumer Assistance.	6 St. Paul St. Suite 2102	Baltimore, MD 21202	cindyvr@psc.state.md.us	410-767-8156	410-333-3616
SMCO							
Primary	Tami A. Gardiner	Credit & Collections/ Retail Choice Manager	P. O. Box 1937	Hughesville, MD 20637	Tami.gardiner@smeco.com	240-528-9744	301-274-4329
Alternate	Thomas M. Dennison	Government and Public Affairs Mgr.	P. O. Box 1937	Hughesville, MD 20637	Tom.dennison@smeco.com	301-274-4342	301-274-1809
Washington Gas Light Co.							
Primary	Donald R. Hayes	Senior Regulatory Counsel	101 Constitution Ave., NW	Washington, DC 20080	dhayes@washgas.com	202-624-6507	202-624-6789
Alternate	Tina L. Ward	Senior Specialist - Regulatory Affairs	6801 Industrial Road	Springfield, VA 22151	tward@washgas.com	703-750-5263	703-750-5501

Chesapeake Utilities Corp.						
Primary	Matthew M. Everngam	Regulatory Analyst	350 S. Queen St.	Dover, DE 19904	meverngam@chupk.com	302-734-7614
Alternate	Jeffrey R. Tietbohl	Vice President	350 S. Queen St.	Dover, DE 19904	jietbohl@chupk.com	302-734-6742
Choptank Electric Coop.						
Primary	Robert P. Behlke	VP of Member Affairs	P. O. Box 430	Denton, MD 21629	bobbb@choptankelectric.com	410-479-8553
Alternate						410-479-1014
Pepco Holdings, Inc.						
Primary	Nicole Carter	Group Manager Customer Operations, Credit, Collections and Remittance	701 Ninth Street, NW, EP7642	Washington, DC 20068	nicarter@pepcoholdings.com	202-872-2741
Alternate	Deborah Davis	Manager Call Center Operations	5 Collins Drive, 84CP42	Carneys Point, NJ 08069	Deborah.davis@pepcoholding.com	856-351-7079
Counsel	Doug Michael		701 Ninth Street, NW, EP7642	Washington, DC 20068	demichael@pepcoholdings.com	202-331-6767
Columbia Gas of Maryland.						
Primary	Larry Nowicki	Manager, Regulatory Compliance	1020 North Hartley Street	York, PA 17404	LNowick@NiSource.com	717-849-0188
Alternate	Shirley Bardes Hasson	Manager, Regulatory Policy	121 Champion Way, Suite 100	Canonsburg, PA 15317	SBardes@NiSource.com	724-416-6383
Hagerstown Light Dept.						
Primary	Nathan Fridinger		425 E. Baltimore St.	Hagerstown, MD 21740	Nfridinger@hagerstownlight.org	301-790-2600
Alternate	Scott Nicewarner		1 E. Franklin Street	Hagerstown, MD 21750	snicewarner@hagerstownlight.org	301-790-2000 Ext. 161
Advanced Water Management, Inc.						
Primary	David L. Valcarenghi	Manager or Rates and Regulation	664 Churchmans Road	Newark, DE 19702	Dvalcarenghi@advancedwater.com	302-453-6995
Public Justice Center, Inc.						
Primary	Russell R. "Ronnie" Reno, Jr.	Staff Attorney	One North Charles Street, 2 nd Floor	Baltimore, MD 21201	renor@publicjustice.org	410-400-6958
Alternate	C. Matthew	Staff Attorney	One North Charles	Baltimore, MD	hillm@publicjustice.org	410-400-6947

Washington Suburban Sanitary Commission	Heather L. Ashbury	Consumer Protection Div. WSSC Associate Counsel - II	14501 Sweitzer Lane	Laurel, Maryland 20707	hshbur@wsscwater.com	(301) 206-8165	
Prince George's Property Owners' Association, Inc.	Dave Dorsch	Board Member			dfixone@yahoo.com		
Baltimore City Department of Public Works Water & Waste Water	Jennifer Ludwig	Special Project Development Manager	Abel Wolman Municipal Building 200 Holliday Street, 4 th Floor	Baltimore, MD 21202	Jennifer.Ludwig@baltimorecity.gov	410-396-9506	410-837-8672
Maryland Public Service Commission Staff	Jennifer J. Grace	Assistant Staff Counsel	William Donald Schaefer Tower 6 St. Paul Street, 17 th Floor	Baltimore, Maryland 21202	jgrace@psc.state.md.us	(410) 767-8101	
Monitoring							
AOBA	Lisa Hoover, Esq.	Vice President of Government Affairs for Maryland	1050 17th Street, Suite 300, NW	Washington, DC 20036	lhoover@aooba-metro.org	(301) 261-1460	

Attachment B

PC 30 General Data Requests

1. Please state the number of residential termination or disconnection notices that were issued or delivered by your utility for each calendar month during the period June 1, 2011 through June 30, 2012.
 - a. For each of your month, please state the number of notices for which the billing address is different than the service address.
2. Please state whether the customer records or data base currently maintained by your utility include information regarding a tenant or co-occupant, if any, of the service address.
3. If your utility serves customers in a jurisdiction other than Maryland, please state, for each such jurisdiction, whether the customer records or data base currently maintained by your utility include information regarding a tenant or co-occupant, if any, of the service address.
4. If your utility serves customers in a jurisdiction other than Maryland please state for each such jurisdiction whether, if the billing address is different from the service address, termination or disconnection notices are sent to both the billing address and the service address.
5. Do you have an established process to allow a tenant to continue service at an address where the landlord fails to pay the utility bill? If so, please describe that process.
6. Please describe your procedures for handling third party notifications required by COMAR 20.31.01.07.
 - a. Please state the number of third party notifications issued or delivered by your utility for each calendar month during the period June 1, 2011 through June 30, 2012.
7. Please state the number of termination or disconnection notices to tenants in a master metered building that were issued for each calendar month during the period January 1, 2011 through June 30, 2012. Please describe the method of notification, e.g. by first class mail, by flyers or "door stuffers".

Attachment C

New Jersey

N.J.A.C. 14:3-3A.6

**NEW JERSEY ADMINISTRATIVE CODE
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**TITLE 14. PUBLIC UTILITIES
CHAPTER 3. ALL UTILITIES
SUBCHAPTER 3A. DISCONTINUANCE AND RESTORATION OF SERVICE**

N.J.A.C. 14:3-3A.6 (2012)

§ 14:3-3A.6 Discontinuance of service to tenants

(a) Electric, gas, water and wastewater public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at premises being serviced. If such a relationship is known to exist, and if the tenants are not the customers of record but are end-users, as these terms are defined at N.J.A.C. 14:3-1.1, discontinuance of service is prohibited unless the utility has, notwithstanding the time periods in N.J.A.C. 14:3-3A.5, given a 15-day written notice to the owner of the premises or to the customer of record to whom the last preceding bill was rendered. Further, the utilities shall use their best efforts to determine the names and addresses of each tenant, in order to provide such notice, for example, through mailings to landlords requesting a list of tenants. The utility shall use its best efforts to provide copies of the discontinuance notice to all tenants. In addition, the utility shall provide the tenant(s) with a 15-day written notice, which shall be hand-delivered, mailed, or posted in a conspicuous area of the premises and in the common areas of multiple family premises.

(b) If a utility uses posting as the method of notice, each utility shall use its best efforts to also place a copy of the notice on each tenant's car windshield or under the door of each tenant's dwelling. In the case of tenants of single and two-family dwellings, each tenant shall also be provided with a 15-day individual notice. Each utility shall offer the tenant(s) continued service to be billed to the tenant(s) unless the utility demonstrates that such billing is not feasible. The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person. The utility shall not be held to the requirements of this provision if the existence of a landlord-tenant relationship could not be reasonably ascertained.

(c) When a landlord-tenant relationship is known to exist, an electric and/or gas utility, at the landlord's request, shall send written notice to the landlord that a tenant's electric or gas service is being voluntarily or involuntarily discontinued.

(d) When a landlord-tenant relationship is known to exist, an electric and/or gas utility, at the landlord's request, shall place the service in the landlord's name if the tenant's electric and/or gas service is being voluntarily or involuntarily discontinued.

(e) To participate in this program, the landlord shall complete a form provided by the utility, indicating a choice as specified in (a) or (b) above.

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* This section is current through regulations in effect as of July 2012 *

TITLE 150. LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION
SERIES 3. RULES FOR THE GOVERNMENT OF ELECTRIC UTILITIES

W. Va. CSR § 150-3-4 (2012)

§ 150-3-4. Customer Relations.

4.1. Customer information.

4.8.a.1.A. The written notice must comply with P.S.C. W.Va. Form No. 14-E and shall be sent first class mail, address correction requested, at least ten (10) days prior to the scheduled termination. The personal contact shall be at least twenty-four (24) hours prior to the scheduled service termination unless it is reasonably established that the premises are not permanently inhabited. The written notice shall become void if the utility has not discontinued service within (30) thirty days of the date indicated on the notice for termination. The personal notice shall become void if the utility has not discontinued service within thirty days of the personal notice. The individual giving notice in person shall present a copy of the original written notice or a document which contains the same information as presented on the original notice. If the personal notice is by telephone, the person shall inform the customer how to obtain a copy of the original written notice.

4.8.a.1.J. If the customer of record responsible for payment of a utility bill is: (a) a landlord of a master metered apartment building, motel, hotel, or other multiple unit dwelling, or (b) a third party who is a non-resident of the single service location, then written notice of termination, using Form 14-ME, shall be posted at least five (5) days prior to the scheduled termination. The notice for a master metered multiple unit dwelling shall be placed in a conspicuous common area at a location readily available for public inspection. Whenever possible, copies shall also be posted on the main doors of each dwelling in the facility. The notice for single unit dwellings occupied by third parties shall be placed on the main door of the dwelling.

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66 Pa.C.S. § 1521 (2012)

§ 1521. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Billing month." --A period of time not to exceed 35 days. The bill shall not include any previously billed service furnished during a period other than that covered by the current bill. If previously unbilled utility service is included in the current utility bill, the utility shall use an estimated bill for the 30-day period.

"Discontinuance." --Any cancellation of the service contract at the request of the ratepayer and in accordance with section 1523(b) (relating to notices before service to landlord terminated).

"Landlord ratepayer." --One or more individuals or an organization listed on a gas, electric, steam, sewage or water utility's records as the party responsible for payment of the gas, electric, steam, sewage or water service provided to one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.

"Mobile home." --A transportable, single-family dwelling unit intended for permanent occupancy and constructed as a single unit, or as two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations and constructed so that it may be used without a permanent foundation.

"Mobile home park." --Any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or more mobile homes, occupied for dwelling or sleeping purposes, are or are intended to be located.

"Residential building." --A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident.

"Tenant." --Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

"Termination." --The cessation of service, whether temporary or permanent, without the consent of the ratepayer. For the purposes of this subchapter, this term shall include cessation of service at the request of the landlord ratepayer when a tenant does not agree to the cessation of service.

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66 Pa.C.S. § 1523 (2012)

§ 1523. Notices before service to landlord terminated.

(a) *Nonpayment of charges.* --Except when required to prevent or alleviate an emergency as defined by the commission or except in the case of danger to life or property, before any termination of service to a landlord ratepayer for nonaccess as defined by the commission in its rules and regulations or nonpayment of charges, a public utility shall:

(1) Notify the landlord ratepayer of the proposed termination in writing as prescribed in section 1525 (relating to delivery and contents of termination notice to landlord) at least 37 days before the date of termination of service.

(2) Notify the following agencies which serve the community in which the affected premises are located in writing not less than ten days before the proposed termination of service:

(i) The Department of Licenses and Inspections of any city of the first class.

(ii) The Department of Public Safety of any city of the second class, second class A or third class.

(iii) The city or county Public Health Department or, in the event that such a department does not exist, the Department of Health office responsible for that county.

(3) Notify each dwelling unit reasonably likely to be occupied by an affected tenant of the proposed termination in writing as prescribed in section 1526 (relating to delivery and contents of first termination notice to tenants) at least seven days after notice to the landlord ratepayer pursuant to this section and at least 30 days before the termination of service. If within seven days of delivery or mailing of the notice to the landlord issued pursuant to this section the landlord ratepayer files a complaint with the commission disputing the right of the utility to terminate service, the notice shall not be rendered until the complaint has been adjudicated by the commission, but the landlord ratepayer shall continue to pay the undisputed portion of current bills when due pending the final decision of the complaint.

(b) *Voluntary relinquishment of service.* --Before any discontinuance of service by a public utility to a landlord ratepayer due to a request for voluntary relinquishment of service by the landlord ratepayer:

(1) the landlord ratepayer shall state in a form bearing his notarized signature that all of the affected dwelling units are either unoccupied or the tenants affected by the proposed discontinuance have consented in writing to the proposed discontinuance, which form shall conspicuously bear a notice that the information provided by the landlord ratepayer will be relied upon by the commission in administering a system of uniform service standards for public utilities, and that false statements are punishable criminally;

(2) all of the tenants affected by the proposed discontinuance shall inform the utility orally or in writing of their consent to the discontinuance; or

(3) the landlord ratepayer shall provide the utility with the names and addresses of the affected tenants pursuant to section 1524 (relating to request to landlord to identify tenants) and the utility shall notify the community service agencies and each dwelling unit pursuant to this section and section 1526.

(c) *Rights of tenants.* --Under the voluntary relinquishment discontinuance procedures of subsection (b)(3) the tenants shall have all of the rights provided in section 1527 (relating to right of tenants to continued service) through section 1531 (relating to retaliation by landlord prohibited).

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66 Pa.C.S. § 1524 (2012)

§ 1524. Request to landlord to identify **tenants**.

(a) *Duty of public utility and landlord.* --At least 37 days before the termination of **service**, it is the duty of any public **utility** to request from the landlord ratepayer the names and addresses of the affected **tenants**. Upon receiving such a request for the names and addresses of the affected **tenants** pursuant to this subchapter, the landlord ratepayer shall provide the **utility** with the names and addresses of every affected **tenant** of any residential building or mobile home park for which the **utility** is proposing to **terminate service** unless within seven days of delivery or mailing of the **notice** the landlord ratepayer pays the amount due the **utility** or makes an arrangement with the **utility** to pay the balance.

(b) *Time for providing information.* --The information shall be provided by the landlord ratepayer:

(1) within seven days of receipt of a request from a public **utility** for **tenants'** names under subsection (a);

(2) within seven days of delivery or mailing of the **notice** to the landlord ratepayer required by section 1523 (relating to **notices** before **service** to landlord terminated);

(3) within three days of any adjudication by the commission that the landlord ratepayer must provide the requested information if the landlord files a complaint with the commission within seven days of receipt of the **notice** to the landlord disputing the right of the **utility**

to terminate service; or

(4) upon such terms as may be ordered by a court in an action brought by the utility under section 1532(b) (relating to penalties).

(c) *Right of public utility.* --In the event the public utility is unable to obtain the names and addresses of all affected tenants from the landlord ratepayer, the public utility may pursue any appropriate legal or equitable remedy it has in order to obtain from the landlord ratepayer the names and addresses of all affected tenants of a residential building or mobile home park for which the utility is proposing termination of service to the landlord ratepayer. The commission may order the public utility to obtain the information from the landlord ratepayer.

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66 Pa.C.S. § 1526 (2012)

§ 1526. Delivery and contents of first termination notice to tenants.

(a) *General rule.* --The notice required to be given to a tenant pursuant to section 1523 (relating to notices before service to landlord terminated) shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit, or by unit number or unit designation, and shall be posted in common areas.

(1) In the case when a utility does not send notice by first class mail, notice shall be hand-delivered. Hand-delivery shall mean two attempts at personal service on a responsible individual residing within the dwelling unit on the same or separate days. Each attempt at personal service must be made as follows:

(i) One attempt shall be made between 8 a.m. and 5 p.m. on any day Monday through Friday.

(ii) The other attempt shall be made either between 6 p.m. and 10 p.m. on any day Monday through Friday or between 8 a.m. and 5 p.m. on a Saturday or Sunday.

Each of these attempts must be made not less than four hours apart. If no personal service is made on any occasion, the notice must be posted on the individual dwelling unit and inserted under the door if floor space allows.

(2) In the case where the utility cannot gain access to a residential building to comply with paragraph (1), the utility shall apply to court to obtain the names and send notice by first class mail to the affected tenant.

In order to obtain the names and addresses of the affected tenants and in conjunction with section 1524 (relating to request to landlord to identify tenants), the utility representative shall visit the affected premises within seven days of service of notice to the landlord ratepayer, under section 1525 (relating to delivery and contents of termination notice to landlord), and, by personally contacting one or more of the affected tenants, shall attempt

to obtain the names of all the tenants residing in the affected premises. The notice for each affected tenant for whom a name has been obtained shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit by address and by unit number or, if none exists, by unit designation and shall also be conspicuously posted in the common areas. The notice for each affected tenant for whom a name has not been obtained shall be hand-delivered to each individual dwelling unit by address and unit number or, if none exists, by unit designation and shall be conspicuously posted in the common areas. For the purposes of this section, the term "unit designation" means the geographic location of a dwelling unit by floor and floor area. All notices shall contain the following information:

(1) The date on which the notice is rendered.

(2) The date on or after which service will be discontinued.

(3) On each account, the bill for the billing month preceding the notice to the tenants except that, in the case of water and sewer service where the billing period is bimonthly or quarterly, the utility shall provide an estimate of costs for the previous 30-day period. Estimates shall be based upon actual usage or, if actual usage is not available, by determining one-twelfth of the dwelling unit's annual usage.

(4) The following statement of the tenant's rights, the words and phrases of which appear all in capital letters to be printed in 12-point bold-faced type with the first letter printed in upper case and the letters that follow in lower case and the words and phrases which do not appear all in capital letters to be printed in ten-point type, with any letter in upper case to remain so and the rest in lower case:

IMPORTANT NOTICE TO TENANTS

WARNING: YOUR (utility company shall insert company name and type of service) MAY BE SHUT OFF ON OR AFTER (date) BECAUSE (utility shall fill in reason for termination). TO STOP THE SHUTOFF OF YOUR UTILITY SERVICE, YOU MUST DO ONE OF THE FOLLOWING THINGS:

1. You can join with the other tenants to pay the utility bill for the last 30 days preceding this notice or you can pay the total bill yourself. Either way, you do not have to pay a deposit or get credit granted in your name. You will not have to pay your landlord's other debts or the debts of prior tenants, and the utility service will remain in the name of the landlord.

2. You may deduct your payment to the utility company from your rent due now or from future rent. The utility company will tell your landlord how much you paid for that utility service.

ADDITIONAL INFORMATION

1. The bill which must be paid to continue service is [amount].

2. Your landlord cannot punish you if you pay the utility bill. Your

landlord cannot raise your rent, cannot evict you and cannot take action against you in any other way for paying the utility bill and deducting it from rent. You have a right to recover money damages from the landlord for any damages or injury he causes you for exercising your rights as a result of this notice.

3. You have the right to dispute the accuracy of the bill and have certain other rights. If you would like further information regarding these rights, contact your utility at (utility shall fill in a phone number and address where the tenant may get further information).

DO YOU HAVE ANY QUESTIONS?

If you have any questions about your utility service, please contact the utility company at (telephone number and address). If, after talking about your problems with the utility, you are not satisfied, then call the Pennsylvania Public Utility Commission at its toll-free number, which is 1-800-692-7380, or write the Residential Termination Unit, Bureau of Consumer Services, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17120. YOU SHOULD CALL OR WRITE BEFORE THE SHUTOFF. TO AVOID SHUTOFF, YOUR LETTER MUST BE RECEIVED BEFORE THE SHUTOFF DATE.

The words and phrases of the foregoing notice to tenants are subject to revisions due to changes in the rules, regulations and laws governing this subchapter.

(5) That the tenant or tenants must make payment to the utility on account of nonpayment of charges by the landlord ratepayer by check or money order drawn by the tenant to the order of the utility or by cash and that the tenant must provide, upon request, reasonable identification to the utility. Reasonable identification shall include, but not be limited to, a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant.

(b) *Uniform explanation of tenants' rights and responsibilities.* --The commission shall direct the affected utilities to develop for commission approval a uniform explanation of all rights and responsibilities of tenants under this subchapter. Within 180 days of the effective date of this section, the uniform explanation of all rights and responsibilities of tenants shall be available in a suitable format for distribution by the utility company in response to requests by tenants under subsection (a).

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66 Pa.C.S. § 1527 (2012)

§ 1527. Right of tenants to continued service.

(a) *Application for continued service.* --At any time before or after service is terminated by a public utility on account of nonpayment of charges by the landlord ratepayer, the affected tenants may apply to the utility to have service continued or resumed.

(b) *Payment of charges by tenants.* --A public utility shall not terminate service or shall promptly resume service previously terminated if it receives from the tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month preceding the notice to the tenants. Thereafter, the utility shall notify each tenant of the total amount of the bill for the second and each succeeding billing month and, if the tenants fail to make payment of any bill within 30 days of the delivery of the notice to the tenants, the utility may commence termination of service, except that no termination may occur until 30 days after each tenant has been furnished notice of the proposed termination as prescribed in section 1528 (relating to delivery and contents of subsequent termination notice to tenants). The tenant or tenants shall make payment to the utility on account of nonpayment of charges by the landlord ratepayer by check or money order drawn by the tenant to the order of the utility or by cash. In all cases, the tenant shall provide, upon request, reasonable identification to the utility. For the purposes of this section, "reasonable identification" shall include, but not be limited to, a driver's license, photo identification, medical assistance or food stamp identification or any similar document issued by any public agency which contains the name and address of the tenant.

(c) *Disposition of payment by utility.* --Upon receiving any payment, the utility shall notify the landlord ratepayer who is liable for the utility service of the amount or amounts paid by any tenant and the amount or amounts credited to the landlord's bill for each tenant pursuant to this section. Tenants requesting continued utility service under this section, except those individually subscribing for service under subsection (d), shall not be considered utility customers but shall be considered to be acting on behalf of the landlord ratepayer, who shall remain liable to the utility for service provided after notice to tenants. In the event that the tenants fail to satisfy the requirements of subsection (b) with regard to the first billing month period preceding notice to the tenant, the utility shall refund any moneys received from a tenant to that tenant. Any payments made by the tenants shall be applied first against the bill for the billing month preceding notice to the tenants and then against bills for service rendered subsequent to the bill. Upon termination of service to the tenants for failure to pay the utility bill for service in full for any subsequent month or upon voluntary discontinuance of service at the request of the tenants, the utility shall immediately refund to the tenants any amounts paid to the utility for the billing period for which payment in full was not remitted.

(d) *Agreement for individual service.* --Any tenant of a residential building or mobile home park who has been notified of a proposed discontinuance of utility service pursuant to section 1523 (relating to notices before service to landlord discontinued) shall have the right to agree to subscribe for future service individually if this can be accomplished without a major revision of distribution facilities or additional right-of-way acquisitions.

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66 Pa.C.S. § 1528 (2012)

§ 1528. Delivery and contents of subsequent termination notice to tenants.

Subsequent notices required to be given to a tenant pursuant to section 1527 (relating to right of tenants to continued service) shall be sent by first class mail or otherwise hand-delivered to each affected tenant by name at his individual dwelling unit, by unit number or unit designation, and shall be posted in common areas. Whenever the utility has been unable to obtain the names and addresses of the affected tenants under section 1524 (relating to request to landlord to identify tenants) or 1526 (relating to delivery and contents of first termination notice to tenants), the utility shall hand-deliver the subsequent notice of termination to each affected tenant for whom a name has not been obtained to the tenant's individual dwelling unit by address and unit number or, if none exists, by unit designation. The notice shall also be conspicuously posted in the common areas. For the purposes of this section, the term "unit designation" means the geographic location of a dwelling unit by floor and floor areas. All notices shall contain the following information:

- (1) The date on or after which service will be terminated.
- (2) The amount due, which shall include the arrearage on any earlier bill due from tenants.
- (3) A telephone number and an address at the utility and at the commission which a tenant may call for an explanation of his rights.
- (4) The right of a tenant to file a complaint with the commission to enforce any legal right that he may have under this part.

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66 Pa.C.S. § 1529 (2012)

§ 1529. Right of tenant to recover payments.

Any tenant who has made a payment to a utility on account of nonpayment of charges by the landlord ratepayer pursuant to this subchapter may subsequently recover the amount paid to the utility either by deducting the amount from any rent or payment on account of taxes or operating expenses then or thereafter due from the tenant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

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66 Pa.C.S. § 1529.1 (2012)

§ 1529.1. Duty of owners of rental property.

(a) *Notice to public utility.* --It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) *History of account.* --Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) *Failure to give notice.* --Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 66. PUBLIC UTILITIES
PART I. PUBLIC UTILITY CODE
SUBPART C. REGULATION OF PUBLIC UTILITIES GENERALLY
CHAPTER 15. SERVICE AND FACILITIES
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66 Pa.C.S. § 1530 (2012)

§ 1530. Waiver of subchapter prohibited.

Any waiver of a tenant's rights under this subchapter shall be void and unenforceable.

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66 Pa.C.S. § 1531 (2012)

§ 1531. Retaliation by landlord prohibited.

(a) *General rule.* --It is unlawful for any landlord ratepayer or agent or employee thereof to threaten or take reprisals against a tenant because the tenant exercised his rights under section 1527 (relating to right of tenants to continued service) or section 1529 (relating to right of tenant to recover payments).

(b) *Liability of landlord for damages.* --Any landlord ratepayer or agent or employee thereof who threatens or takes such reprisals against any tenant shall be liable for damages which shall be two months rent or the actual damages sustained by the tenant, whichever is greater, and the costs of suit and reasonable attorneys' fees.

(c) *Presumption of retaliation.* --The receipt of any notice of termination of tenancy, an increase in rent or of any substantial alteration in the terms of tenancy within six months after the tenant has acted pursuant to section 1527 or 1529 to avoid termination of utility service shall create a rebuttable presumption that the notice is a reprisal against the tenant for exercising his rights under section 1527 or 1529. However, the presumption shall not arise if the notice of termination of tenancy is for nonpayment of rent not withheld under section 1529 or lawfully withheld under any other right that the tenant may have by law.

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66 Pa.C.S. § 1532 (2012)

§ 1532. Penalties.

(a) *Per diem liquidated damages.* --Any landlord ratepayer who fails to provide a utility with the names and addresses of affected tenants in accordance with section 1524 (relating to request to landlord to identify tenants) or fails to provide reasonable access to the meter shall be deemed to have caused substantial damage to the utility by thus forcing a continuation of the existing utility service and, as a consequence, shall be required to pay, as liquidated damages to the utility, a sum of not less than \$ 500 but not more than \$ 1,000 for each day of the landlord's failure to comply, commencing with the first day of completion and exhaustion of the procedures provided under section 1524(a) and (b)(1), (2) and (3).

(b) *Injunctive relief.* --The utility may commence an action in equity against a landlord ratepayer to obtain injunctive relief compelling the landlord to furnish the names and addresses of affected tenants or compelling the landlord to provide access to the meter. Interference with the utility's ability to terminate service without this information shall be deemed sufficient proof of immediate, continuing and irreparable injury to sustain injunctive relief. The court shall, in addition to awarding injunctive relief, render judgment in favor of the utility for the total per diem liquidated damages recoverable under subsection (a) together with reasonable attorney fees and necessary costs of suit.

(c) *Tampering with posted notice.* --Any person who removes, interferes or tampers with a notice to tenants of proposed termination of service, posted pursuant to section 1526 (relating to delivery and contents of first termination notice to tenants) commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$ 300.

(d) *Denial of access to common areas.* --Any landlord ratepayer or an agent or employee

who willfully denies an agent or employee of the utility access to common areas of his residential building for any lawful purpose under this title, including, but not limited to, posting or delivering notices to tenants under this subsection, shall be subject to a civil penalty of not more than \$ 500 for each day access is denied.

§ 1533. Petition to appoint receiver.

(a) *Appointment of receiver.* --Notwithstanding the foregoing sections of this chapter, when a landlord ratepayer is two or more months in arrears in his utility payments, the affected utility shall have the right to petition the court of common pleas of the county wherein the leased premises are located to appoint a receiver to collect rent payments otherwise due the landlord ratepayer directly from the tenants and to pay all overdue and subsequent utility bills therefrom. The provisions of this section shall not be construed to supersede any tenant rights or defenses under law regarding the payment of rent. This right may be exercised only in those situations that involve units which are not individually metered by the utility. Upon appointment, the receiver shall notify the tenants of his powers and their rights under law regarding payment of rent and continued utility service by first class mail, certified mail, personal service or posting notice in each unit in the leased premises.

(b) *Right to continued service.* --The affected utility under this section shall not terminate utility service if it receives payment from the receiver in the amount specified in subsection (c)(2) within 60 days from the date notice to the tenants of the appointment of the receiver is mailed or delivered.

(c) *Duty of receiver.* --The receiver shall:

(1) collect all rents directly from the tenants;

(2) pay the utility bills equal to the amount due for the billing month prior to the tenants receiving notice of the appointment of the receiver and all future bills as they become due;

(3) after payment of the amounts in subsection (c)(2), any excess moneys shall be applied pursuant to further order of court; and

(4) return the remainder to the landlord ratepayer, less the costs of the notification made to the tenants, plus a 2% administrative fee.

(d) *Termination.* --The receiver shall continue to collect the rents and make disbursements in the manner provided in subsection (c) until the second rental period ends after all of the following conditions have been met:

(1) The landlord ratepayer deposits in escrow with the utility a sum equal to the utility charges from the two highest monthly periods in the preceding 12 months.

(2) The landlord ratepayer demonstrates to the satisfaction of the court of common pleas that it has the financial recourses necessary to resume its obligations to the utility and the tenants.

(3) The landlord ratepayer pays the undisputed amount of all outstanding utility bills.

At such time rental payments will once again be made to the landlord ratepayer. Notice of this change shall be made to the tenants by the receiver by means of first class mail, certified mail, personal service or posting notice in each unit in the leased premises, the

costs of notice to be paid by the landlord ratepayer.

(e) *Escrow fund.* --The escrow fund established under subsection (d)(1) shall not be considered a prepayment of utility costs and shall be applied only against outstanding utility bills at the time a new receiver is appointed for a subsequent failure by the landlord ratepayer to pay utility bills for a two-month period. The escrow fund shall be returned to the landlord ratepayer not later than 90 days nor earlier than 60 days, after the landlord ratepayer obtains a court order releasing the fund and certifying that timely payment of utility bills has been made for the immediately preceding 24 consecutive months.

(f) *Interest on funds.* --Any funds held in escrow by any utility shall bear interest payable to the landlord at a rate 1% lower than the rate actually received in a regular savings account at a commercial bank within the court's jurisdiction, and the remaining 1% shall be remitted to the court for administrative costs.

(g) *Number of receivers.* --In the event more than one utility company is affected by any landlord ratepayers' failure to pay utility bills, the court shall appoint the same receiver to function for all aggrieved utilities.

OHIO ADMINISTRATIVE CODE
4901:1 Utilities
Chapter 4901:1-18 Termination of Residential Service

OAC Ann. 4901:1-18-08 (2012)

4901:1-18-08. Landlord-tenant provisions.

This rule is to address circumstances where the **utility** company knows that the customer is the landlord for a multi-unit dwelling (i.e., **tenants** who receive master-metered **services**) or for a single-occupancy dwelling where the **utilities** are included in the rent. A **utility** company may disconnect the **utility service** of these consumers, for nonpayment by the landlord, only in accordance with the following:

(A) The **utility** company shall give a **notice** of disconnection of **service** to the landlord/agent at least fourteen days before the disconnection would occur. If, at the end of the fourteen-day **notice** period, the customer has not paid or made payment arrangements for the bill to which the fourteen-day **notice** relates, the **utility** company shall then make a good faith effort by mail, or otherwise, to provide a separate ten-day **notice** of pending disconnection to the landlord/agent, to each unit of a multi-unit dwelling (i.e., each **tenant** who receives master-metered **service**), and to single-occupancy dwellings where the **utilities** are included in the rent. This ten-day **notice** shall be in addition to the fourteen-day **notice** given to the landlord/agent. This **notice** requirement shall be complied with throughout the year. In a multi-unit dwelling, written **notice** shall also be placed in a conspicuous place.

(B) The **utility** company shall also provide all of the following information in its ten-day **notice**:

(1) A summary of the remedies **tenants** may choose to prevent disconnection or to have **service** reconnected.

(2) A statement to inform **tenants** that a list of procedures and forms to prevent disconnection or to have **service** reconnected are available from the **utility** company upon request. A model form of the **tenants'** ten-day **notice** is attached as appendix A to this rule.

(C) The **utility** company shall inform any consumer inquiring about the **notice**, posted pursuant to paragraph (A) of this rule, of the amount due for the current month's bill and that the disconnection of **service** may be prevented if the consumer(s) makes a single payment to the **utility** company in the amount of the current month's bill.

(D) The **utility** company shall credit to the appropriate account any payment made by **tenants** equal to or exceeding the landlord's current bill for those premises. The **utility** company is under no obligation to accept partial payment from individual **tenants**. The **utility** company may choose to accept only a single payment from a representative acting on behalf of all the **tenants**.

(E) No **utility** company shall disconnect **service** to master-metered premises, or to a single-occupancy dwelling where **utilities** are included in the rent, when all of the following actions take place:

(1) A **tenant** delivers to the **utility** company a copy of the written **notice** required by

division (A) of section 5321.07 of the Revised Code, signed by fifty per cent or more of the **tenants** of the occupied dwelling units in a multi-unit dwelling, or the **tenant** in a single-occupancy dwelling, which **notice** shall designate the imminent disconnection of **utility service** (as shown by the disconnection **notices** received) as a reason for the **notice**.

(2) A **tenant** informs the **utility** company in writing of the date of the last day on which rent may be paid before a penalty is assessed or the date on which default on the lease or rental agreement can be claimed.

(3) The **tenants** timely invoke the remedies provided in divisions (B)(1) and (B)(2) of section 5321.07 of the Revised Code, including but not limited to:

(a) Depositing all rent that is due and thereafter becomes due to the landlord, with the clerk of the municipal or county court having jurisdiction.

(b) Applying to the court for an order to use the rent deposited to remedy the condition or conditions specified in the **tenant's notice** to the landlord (including but not necessarily limited to payment to the **utility** company rendering the disconnection **notice**).

(F) Each **utility** company that delivers **notice** pursuant to paragraph (A) of this rule shall provide to each **tenant**, upon request, the procedures to avoid disconnection or to have **service** reconnected as described in appendix B to this rule. The forms referenced in appendix B to this rule shall be made available by the **utility** company and also will be available on the commission's website at <http://www.puc.ohio.gov/PUCO/rules> or by contacting the commission's call center at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays. Hearing or speech impaired customers may contact the commission via 7-1-1 (Ohio relay **service**). The **utility** company shall also identify for the **tenant** any resources in the community where he/she can obtain assistance in pursuing his/her claim, including but not limited to:

(1) The telephone number(s) of the local legal **services** program (in cities over one hundred thousand served by that **utility** company).

(2) The toll-free number(s) for the Ohio state legal **services** association.

(3) The toll-free number(s) of the office of consumers' counsel.

(4) The telephone number(s) of the local bar association.

(5) The telephone number(s) of the local **tenant** organization(s).

(G) If a **utility** company disconnects **service** to consumers whose **utility services** are included in rental payments or who are residing in master-metered premises, the **utility** company, upon inquiry, shall inform the consumer that **service** will be reconnected upon payment of the amount due for the current month's bill plus any reconnection charge if the payment is made within fourteen days of disconnection. The **utility** company shall continue **service** at the premises as long as the **tenant's** representative continues to pay for each month's **service** (based upon actual or estimated consumption) by the due date of the bill for that **service**. The **utility** company shall also reconnect **service** for those consumers who, within fourteen days of the disconnection of **service**, invoke the provisions of section 5321.07 of the Revised Code, as specified in paragraph (E) of this rule. If the consumers choose to have

their **service** reconnected by paying the current month's bill and payment is not made by the due date each month, the **utility** company shall post the **notice** in a conspicuous location on the premises and make a good faith effort by mail or otherwise to notify each household unit of a multi-unit dwelling, or **tenant** receiving **service** in the master-metered premises, or **tenant** in a single-occupancy dwelling, of the impending **service** disconnection. The **utility** company is not required to reconnect **service** pursuant to this paragraph where the landlord resides on the premises.

(H) The **utility** company shall provide **service** to a master-metered premise only if the customer is the landlord/owner of the premises. Company acceptance of new applications for **service** to master-metered premises requires the landlord/owner to provide to the company an accurate list specifying the individual mailing addresses of each unit served at the master-metered premises.

(I) The **utility** company may charge the landlord/owner of the master-metered premises, or of a single-occupancy dwelling, a reasonable fee, as set forth in the **utility** company's tariffs, designed to pay the **utility** company's incurred cost for providing the **notice** to **tenants** required by paragraph (A) of this rule.

(J) The **utility** company has the burden of collecting from the landlord/owner any billed amounts unpaid at the next billing cycle.

(K) If a customer, who is a property owner, landlord, or the agent of a property owner, requests disconnection of **service** when residential **tenants** reside at the premises, the **utility** company shall perform both of the following actions:

(1) Provide at least a ten-day **notice** prior to the disconnection of **service** by mail to the residential **tenants** or by posting the **notice** in conspicuous places on the premises.

(2) Inform such customer of the customer's liability for all **utility service** consumed during the ten-day **notice** period.

(L) Notwithstanding any **notice** requirement for a **utility** company under paragraph (K) of this rule and paragraph (A)(3)(d) of rule 4901:1-18-06 of the Administrative Code, a **utility** company will not be found to have violated these rules if either the following occurs:

(1) The **utility** company uses reasonable efforts to determine the status of the customer/consumer as either a property owner, landlord, the agent of a property owner, or a **tenant**.

(2) The customer/consumer misrepresents the status of the customer/consumer as the property owner, the landlord, the agent of a property owner, or a **tenant**.

CODE OF MASSACHUSETTS REGULATIONS

*** This document reflects all regulations in effect as of 8/31/2012 ***

TITLE 220: DEPARTMENT OF PUBLIC UTILITIES
CHAPTER 25.00: BILLING AND TERMINATION PROCEDURES OF THE DEPARTMENT OF
PUBLIC UTILITIES

220 CMR 25.04 (2012)

25.04: Termination of Service to Accounts Affecting Tenants

(1) **Identifying Customers.** Each company shall devise procedures reasonably designed to identify, before termination of service for non-payment, landlord customers paying for service to a residential building. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E and 220 CMR 25.05.

(2) **Identifying Affected Tenants.** Each company shall devise procedures reasonably designed to identify the number and addresses, including apartment numbers, of tenants who may be affected by a planned termination of service to an account of a customer who has been determined, pursuant to procedures adopted under 220 CMR 25.04(1) to be a landlord customer. Such procedures shall be submitted by each company in writing to the Department. The Department may require, by a written notification, such modifications of a company's procedures as it considers reasonably necessary to carry out the purposes of M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E.

(3) **Termination of Service.** No company shall terminate service to any landlord customer for non-payment except in accordance with 220 CMR 25.03(1) and 220 CMR 25.04.

(4) **Pre-termination Notice to Landlord Customers.** Prior to the termination of service to any landlord customer for non-payment, the company shall give the landlord customer prior written notice of termination as required by M.G.L. c. 164, § 124D and M.G.L. c. 165, § 11E. Such notice shall contain the following information:

- (a) The amount owed the company by the landlord customer for each affected account;
- (b) The date on or after which service will be terminated, such date to be not less than 37 days after the date on which notice is first given to the landlord customer;
- (c) The date on or after which the company will notify the tenants of the proposed termination of their rights under 220 CMR 25.00, including their rights to withhold rent;
- (d) The right of the landlord customer to avoid a termination of service by paying the company the full amount due for the accounts in question prior to the intended date of termination or by paying a portion of the amount due and making an equitable arrangement with the company to pay the balance; and
- (e) The right of the landlord customer to invoke the procedures set forth in 220 CMR 25.02(4) and 220 CMR 25.03(1).

(5) Investigation and Appeal for Landlord Customers. The provisions of 220 CMR 25.02(4) shall be applicable to all disputes involving landlord customers.

In any proceeding pursuant to 220 CMR 25.02(4), the Department may require, among other things, that the landlord customer provide the names, addresses, and apartment numbers of each of the tenants who may be affected by a termination of service.

(6) Notice to Tenants. The company shall give a written notice, or notice in such form as is approved by the Department, of the proposed termination for non-payment to each residential unit reasonably likely to be occupied by an affected tenant. Such notice shall not be rendered earlier than seven days following notification to the landlord customer pursuant to 220 CMR 25.04(4). However, if the landlord customer commences a proceeding pursuant to 220 CMR 25.04(5), such notice shall not be rendered until such proceeding has been concluded. In no event shall such notice be served upon the tenants less than 30 days prior to the termination of service to the landlord customer on account of non-payment. Upon affidavit, the Department may, for good cause shown by the company, reduce the minimum time between notification of the landlord customer and notification of the tenants.

The notice may be mailed or otherwise delivered to the address of each affected tenant, and shall contain the following information:

- (a) The date on which the notice is rendered;
- (b) The date on or after which service will be terminated;
- (c) The circumstances under which service to the affected tenant may be continued, specifically referring to the conditions set out in 220 CMR 25.04(7);
- (d) The projected bill as described in 220 CMR 25.04(7);
- (e) The statutory rights of a tenant:
 1. To deduct the amount of any direct payment to the company from any rent payments then or thereafter due;
 2. To be protected against any retaliation by the landlord for exercising such statutory right; and
 3. To recover money damages from the landlord for any such retaliation.
- (f) A telephone number at the company and at the Department which a tenant may call for an explanation of his rights.

The information in 220 CMR 25.04(6)(a) through 25.04(6)(f) shall be posted not less than 30 days prior to termination of service to the landlord by the company in those common areas of the building where it is reasonably likely to be seen by the affected tenants.

(7) Rights of Tenants to Continued Service.

(a) At any time before or after service is terminated on account of non-payment by the landlord customer, tenants may apply to the company to have service continued or resumed. The company shall not terminate service or shall resume service previously terminated if it receives from the tenants an amount equal to a projected bill for the 30 day

period commencing on the later of the date of the planned termination or the date service is resumed, whichever is later.

(b) Thereafter, the company shall notify each tenant of the total amount of the projected bill for the second and each succeeding period of 30 days or less. If the tenants fail to make payment of any projected bill before the start of the period for which the bill is projected, the company may commence termination procedures; provided that no such termination may occur until 30 days after each tenant has received written notice of the proposed termination. Such notice shall contain:

1. The date on or after which service will be terminated;
2. The amount due, which shall include the arrearage on any earlier projected bill due from tenants;
3. A telephone number at the company and at the Department which a tenant may call for an explanation of his rights; and
4. The right of a tenant, within seven days of the notice, to invoke the procedure for investigation and hearing set forth in 220 CMR 25.02(4).

(c) Tenants shall be considered customers for purposes of 220 CMR 25.02(4) and 25.02(5) and shall be entitled to dispute any matter relating to a projected bill in accordance with the provisions of 220 CMR 25.02(4).

(d) Notwithstanding anything contained elsewhere in 220 CMR 25.00, prior to any termination for non-payment which would affect tenants, the company shall notify the Department's Consumer Division by telephone of the proposed termination. Upon notice of such proposed termination, or during any hearing pursuant to 220 CMR 25.02(4), the Department may make inquiry of the parties as to the following matters, among others:

1. The amount the tenants have paid to the company in relation to the amount equal to one month's projected bill;
2. The number of vacant units in the building;
3. The extent to which the tenants have control over their source of money for rent payments, including such matters as the lateness of Public Assistance checks, direct rent payments by the Department of Transitional Assistance to the tenants' landlord, or participation by tenants in a leased housing or rental assistance program;
4. Whether the tenants are engaged in rent withholding against their landlord;
5. The amount of payments recently received by the company from the landlord and the size of the past due bill of the landlord;
6. Whether the company has pursued collection remedies, other than threatened termination of service, against the landlord;
7. Weather conditions;
8. The existence of illness of tenants in the affected units;

- 9. The ages of the persons residing in the affected units;
- 10. The availability of other housing to the tenants; and
- 11. The existence of, or potential for, terminations of service by other companies.

The Department may consider and give due weight to the above matters in any decision rendered pursuant to 220 CMR 25.02(5).

(8) Payment of Arrearage by the Tenants. For good cause shown upon affidavit of the company, the Department may hold a hearing and thereafter may require the tenants to pay a portion of the arrearage of the landlord customer's account deemed just and reasonable. The Department shall notify the landlord customer, the tenants and the company in writing of the date, time and place of the hearing. Payment of any portion of an arrearage may be required only if the company proves by substantial evidence that:

- (a) The total monthly rent due the landlord from the tenants is greater than the projected bill for the same period of time;
- (b) The tenants are not engaged in rent withholding against their landlord for any reason other than for the payment of the projected bill;
- (c) There are no claims of other companies against the withheld rent; and
- (d) Such a requirement will not impose an undue burden upon the tenants.

If more than one company claims the withheld rent, such companies, by mutual agreement, may join together in a single proceeding under 220 CMR 25.04.

(9) Larceny and Unauthorized Use of Gas, Electricity and Water. No company shall terminate service supplied through any meter or meter bypass to a residential building on account of larceny or unauthorized use thereof unless:

- (a) The company has attempted to identify and collect from the proper party to be billed; and
- (b) The company has given written notice to the tenants.

Such notice shall state:

- 1. The date on which the notice is rendered;
- 2. The date on or after which service will be terminated, such date to be not less than 30 days after the date of receipt of such notice;
- 3. That service will continue to a qualified party who agrees to pay for such service; and
- 4. That service will be continued through a master meter if the conditions established in 220 CMR 25.04(7) for continued service are met.

(10) Termination of Service for Reasons Other than Non-payment. Nothing in 220 CMR 25.00 shall be construed to prevent terminations for reasons of safety, health, cooperation with proper civil authorities or any other proper reasons for which termination

power is specifically granted in the General Laws.

Where service to a residential building is terminated on account of public health or safety, the company shall post a notice in a common hallway of the building stating the reason for the termination and the fact that service will be resumed if the danger to public health or safety is removed. The notice shall also include a telephone number at the company and at the Department which a tenant may call for an explanation of the situation and his rights. If any tenant disputes the existence of an unsafe condition, he may apply to the Department for an immediate determination of that issue.

The company shall notify the Department immediately, when feasible, of any termination required by public safety or health and, in any event, within 24 hours of such termination, excluding Saturdays, Sundays and holidays.

220 CMR 25.05

CODE OF MASSACHUSETTS REGULATIONS

*** This document reflects all regulations in effect as of 8/31/2012 ***

TITLE 220: DEPARTMENT OF PUBLIC UTILITIES
CHAPTER 25.00: BILLING AND TERMINATION PROCEDURES OF THE DEPARTMENT OF
PUBLIC UTILITIES

220 CMR 25.05 (2012)

25.05: Termination of Service to Elderly Persons

(1) **Identifying Elderly Persons.** Each **company** shall devise **procedures** and methods reasonably designed to identify, before termination of service for non-payment, accounts affecting households in which all residents are 65 years of age or older. Such **procedures** shall be submitted by each **company** in writing to the **Department**. The **Department** may **require**, by written **notification**, **such modifications of the company's procedures** as it considers reasonably **necessary to carry out** the purposes of **M.G.L. c. 164, § 124E** and **M.G.L. c. 165, § 1B** and of **220 CMR 25.00**.

(2) **Third Party Notification.** If a customer 65 years of age or older so desires, the **company** shall provide to a third person designated by such customer **notification** of all past due bills \$ (see **220 CMR 25.02(1)** \$), notices of termination of service, and notices of right to a hearing before the **Department**. In no event shall the third party so notified be liable for the account of the customer.

Each **company** shall devise **procedures** reasonably designed to provide a voluntary system of third party **notification** for all customers 65 years of age or older. Such **procedures** shall be submitted by each **company** in writing to the **Department**. The **Department** may **require**, by a written **notification**, **such modifications of a company's procedures** as it considers reasonably **necessary to carry out** the purposes of **M.G.L. c. 164, § 124E** and **M.G.L. c. 165, § 1B** and of **220 CMR 25.00**.

(3) **Termination Notice.** A **company** may terminate service to a household in which all residents are 65 years of age or older only after such **company** first secures the written approval of the **Department**. In addition to the application for such approval filed with the **Department**, the **company** shall concurrently give written notice to the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), any third person to be notified pursuant to **220 CMR 25.05(2)** and the residents of such household. Such written notice shall state that an application to terminate has been filed with the **Department** and shall set forth the rights of the residents of the affected household to a hearing before the **Department** pursuant to **220 CMR 25.05(4)**. Prior to approval by the **Department** of such application, no **company** may send notices threatening termination of service to any household which has notified the **company** that all residents of the household are 65 years of age or older.

The notices required by 220 CMR 25.05 shall contain language in accordance with 220 CMR 25.05(5) and shall be in such form as shall be approved by the **Department** prior to its use.

(4) **Investigation and Hearing.** The **Department** shall not approve an application for termination of service to a household in which all of the residents are 65 years of age or older unless the following facts have been established in the course of an investigation:

(a) The residents of the household, the Executive Office of Elder Affairs (or any agency designated by the Executive Office of Elder Affairs for such purposes), and any third person designated pursuant to 220 CMR 25.05(2) have received proper **notification** of termination pursuant to 220 CMR 25.00.

(b) The **company** has in good faith attempted to secure payment by reasonable means other than termination; and

(c) The **company** has not refused to accept any monthly installment payment agreement which is just and equitable.

The scope of the investigation need not be limited to the issue cited above, but may include any matters relating to a billing dispute brought to the **Department's** attention.

In appropriate cases, the **Department** may hold a hearing as part of the investigation. However, such investigation need not include a hearing unless requested by a resident or a third person designated pursuant to 220 CMR 25.05(2). If a hearing is held as part of the investigation, it shall be conducted before a **Department** representative, but shall not be constructed to be an "adjudicatory proceeding" as defined by **M.G.L. c. 30A**.

The **Department** shall notify the **company**, the residents and any third person designated pursuant to 220 CMR 25.05(2), and the Executive Office of Elder Affairs (or any agency designated by Executive Office of Elder Affairs for such purposes) of the results of the investigation and of the right of the **company** or residents to appeal the decision of the **Department** for an adjudicatory proceeding as defined by **M.G.L. c. 30A**.

Within seven days of being so notified, the **company**, the residents, or any third person designated pursuant to 220 CMR 25.05(2) may request a hearing under **M.G.L. c. 30A**. If such a hearing is requested, no termination of service may occur until the proceeding has been concluded and a final order entered.

(5) **Special Information Notice.** All second requests for payment, notices of termination of service, notices of right to a hearing before the **Department** and all other written communications by a **company** to a residential customer regarding bills for service shall contain on their face or include the following notice:

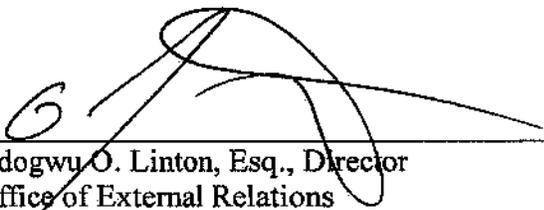
"If all residents in your house are 65 years of age or older, the **company** cannot terminate your service for failure to pay a past due bill without approval of the Massachusetts **Department** of Public Utilities (DPU). If you cannot pay your bill all at once, you may be able to work out a payment plan with the **company**. You have a right to a hearing at the DPU before termination. If you have any questions or want further information, call the **company** at (insert number) or the DPU Consumer Division at (617)-305-3531, Toll-free 1-800-392-6066 or TTY (for hearing impaired only) 1-800-323-3298."

(6) **Shut-off.** Upon entering any building to make a shut-off of service to any customer

therein, pursuant to M.G.L. c. 164, § 124 and M.G.L. c. 165, § 11A, the **company's** representative shall, prior to execution of the shut-off, state to an occupant of the home affected thereby that service is to be terminated. He shall also present such occupant with a notice as described in 220 CMR 25.05(5). If the **company's** representative is told that all of the occupants of the household are 65 years of age or older, service shall not be terminated unless such termination has been approved by the **Department**. If the occupant is not present or denies entry, the **company's** representative shall leave a notice as described in 220 CMR 25.05(5) at or under the occupant's door.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October 2012, a copy of the foregoing *Final Report to the Maryland Public Service Commission from the Workgroup on Tenant Payment of Landlord Utility Bills* in Public Conference 30 was served by email to the members of the Workgroup.



Odogwu O. Linton, Esq., Director
Office of External Relations
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul St.
15th Floor
Baltimore, MD 21202

410-767-8046

WILLIAM DONALD SCHAEFER TOWER • 6 ST. PAUL STREET • BALTIMORE, MARYLAND 21202-6806

410-767-8000 • Toll Free: 1-800-492-0474 • FAX: 410-333-6495
MDRS: 1-800-735-2258 (TTY/Voice) • Website: www.psc.state.md.us/psc/

PC 30 (19)

Columbia Gas[®]
of Maryland

A NiSource Company

Southpointe Industrial Park
121 Champion Way, Ste. 100
Canonsburg, PA 15317

Via Efile and Overnight Mail

November 20, 2012

Mr. David J. Collins
Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202-6806

Maillog No. 143761

**Re: Columbia Gas of Maryland, Inc. – PC30 Comments to Final Report to
Maryland Public Service Commission from the Workgroup on Tenant
Payment of Landlord Utility Bills**

Dear Mr. Collins,

Enclosed please find Columbia Gas of Maryland, Inc.'s ("Columbia") comments on the Final Report to the Maryland Public Service Commission ("Commission") from the Workgroup on Tenant Payment of Landlord Utility Bills.

These comments have been provided electronically via the Commission's efilings system and seventeen copies, including five copies that have been three-hole punched, have been overnighted for delivery before noon on November 21, 2012.

Columbia also supports the comments filed by the Joint Utility group.

Please contact Larry Nowicki or me via telephone with any questions regarding these comments. Larry may be reached at 717-849-0157 or lnowick@nisource.com. My contact information is 724-416-6310 or sbardes@nisource.com.

Columbia appreciates the opportunity to offer these comments for your thoughtful consideration.

Sincerely,


Shirley Bardes Dasso
Manager, Regulatory Policy

Enclosure

FILED

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**PUBLIC SERVICE COMM
OF MARYLAND**

Columbia Gas of Maryland, Inc.

Comments to the Final Report of the Workgroup on Tenant Payment of Landlord Utility Bills in Public Conference 30

Introduction

Columbia Gas of Maryland, Inc. ("Columbia") herewith submits its comments addressing the Final Report of the Workgroup on Tenant Payment of Landlord Utility Bills in Public Conference 30 ("Final Report"). As a member of the workgroup, Columbia actively participated in all meetings and appreciates this opportunity to offer supplemental comments to the Final Report. As evidenced by these comments, Columbia generally supports the information provided in the Final Report.

Columbia also supports the comments submitted on behalf of the Joint Utilities by Baltimore Gas and Electric.

History

In its 2012 session, the Maryland Legislature passed Chapter 574, 2012 Laws of Maryland, entitled "Public Service Commission – Study on Tenant Payment of Landlord Utility Bills" ("Chapter 574").

On May 22, 2012, Maryland Governor Martin O'Malley approved the legislative action.

Chapter 574, which became effective June 1, 2012, required that a workgroup be formed consisting of the Office of People's Counsel, the Public Justice Center, Energy Advocates, the Legal Aid Bureau, representatives from each gas and electric utility, representatives from private and public water utilities and municipalities, landlord or property owners association representatives, and other interested stakeholders.

Chapter 574 required the workgroup to examine:

- (1) How to ensure proper notice is given to an occupant of a residential property when utility termination due to nonpayment is pending;
- (2) What mechanism would be most effective in allowing a tenant to pay for utility usage when a landlord defaults on the landlord's responsibility to pay;
- (3) How to protect a utility company's rights to pursue bad debt;
- (4) How to protect a tenant's right to pursue breach of contract remedies;
- (5) How similar efforts in other states have worked;
- (6) How to eliminate the opportunity for fraud in the payment for utility usage by a tenant when a landlord defaults on the landlord's responsibility to pay; and

- (7) Any other matters the workgroup identifies as pertinent to the respective interests of the tenants, utilities, and landlords.

On May 23, 2012 the Maryland Public Service Commission ("Commission") initiated an administrative docket, PC30, convening a Workgroup on Tenant Payment of Landlord Utility Bills.

Scope of Issue

At its onset the Workgroup discussed in detail and identified that the scope of the issue was limited to residential premises in which a single meter serves a single dwelling unit, and the name on the utility bill is in the name of the landlord and not any of its tenants/occupants.. The group agreed that master-metered dwellings were already sufficiently covered by existing COMAR termination regulations.

Identification of Premises

Unless notified by a landlord or occupant, Columbia may not be aware of situations where a single gas meter is serving a single dwelling unit where the account for gas service is not in the name of an occupant of the property. Since circumstances can change on a daily basis among Columbia's 27,919 residential accounts, it is literally impossible to maintain up-to-date and accurate records on the occupancy of each individual dwelling. Columbia depends on its interaction with the account holder either over the telephone or, when a service technician is dispatched to a premise, to learn about the specific occupancy arrangements of an account. When Columbia becomes aware of a situation where the account holder is renting the dwelling the account is coded accordingly to ensure the occupant is receiving proper notification in case of a pending termination.

Current Process

Maryland Code 20.31.03.06 identifies the proper procedure for termination when a master meter situation exists and Columbia complies with that regulation by posting termination notices at least fourteen days prior to the termination date. In a master-metered situation, posting the property is necessary because it is the only way to reasonably ensure that each tenant/occupant has the opportunity to look at the notice and take appropriate action.

Likewise, when Columbia issues a termination notice and is aware that the premise subject to termination is rental property with utility service in the name of the landlord, Columbia will notify the occupant of the potential termination. If the occupant of a single meter, single unit premise contacts Columbia and requests the service be established in their name, and they meet the current COMAR regulations for applicants, as well as utility tariff requirements for establishing service, a new account will be

created in the name of the occupant. The occupant will not be held responsible for the previous account holder's outstanding balance at that premise.

Columbia has appropriate measures in place today to protect a tenant's right to gas service if the landlord's account has become delinquent and must be terminated. Furthermore, Columbia is not aware of any tenant or landlord complaints regarding its current process for termination of rental properties.

Comments

Columbia offers the following comments to each of the seven items identified by the General Assembly and asks the Commission to consider these comments when determining its recommendation to the Senate Finance Committee and the House Economic Matters Committee.

(1) How to ensure proper notice is given to an occupant of a residential property when utility termination due to nonpayment is pending

Proper notice is currently provided to known master-metered building as specified in COMAR 20.31.03.06.

The first step to ensure proper notice is given to an occupant of a residential property when termination is pending is to ensure the utility is aware that the premise is in fact rental property. Legislation should be enacted requiring all landlords who offer property for rent while maintaining the utility service in their name to contact the utility and identify such properties. This requirement would not apply to landlords who rent property on a daily or weekly basis for vacation purposes.

When a single meter, single unit situation exists, and the utility service is in the name of the landlord, Columbia agrees that notice to the tenant of a pending service termination for non-payment is appropriate. In order to limit the cost of implementing such a notice procedure, legislation should be enacted that permits the utility to deliver to the affected tenant through the U.S. Mail, a copy of the termination notice provided to the landlord (containing his account number and dollar amount of arrearages). Such notice should be addressed to the occupant and delivered to the service address in threat of termination.

(2) What mechanism would be most effective in allowing a tenant to pay for utility usage when a landlord defaults on the landlord's responsibility to pay

Permitting a tenant to establish service in their own name when meeting current regulations and tariff requirements for establishing service, is the most effective

mechanism to maintain utility service for the tenant. The tenant should not be held responsible for any unpaid balance of the landlord.

(3) How to protect a utility company's rights to pursue bad debt

The utility should retain its current ability to pursue the bad debt created by the landlord through normal credit and collection policies for terminated accounts and through an uncollectible allowance which is included in its base rates..

(4) How to protect a tenant's right to pursue breach of contract remedies;

Suggestions submitted by the Workgroup and the Joint Utilities as well as Columbia's comments do not limit a tenant's right to pursue breach of contract remedies.

(5) How similar efforts in other states have worked;

The Workgroup Report reflects regulations other states have enacted to address landlord tenant termination practices. However, the report does not clarify specific interpretations of the regulations offered by the various state utility commissions. Additionally, the effectiveness of regulations in other states, or the impact those regulations had on the problem in which they were created to address were not readily available. Further research is necessary to determine if specific data is available addressing the impacts that these regulations had on the utilities in those states, and the ratepayers of those utilities, before recommending a regulation previously adopted in another state.

(6) How to eliminate the opportunity for fraud in the payment for utility usage by a tenant when a landlord defaults on the landlord's responsibility to pay

The opportunity for fraud can be reduced if an occupant proves tenancy by producing a copy of a lease, as well as meeting the credit worthiness standards established by the utility. At least one other state permits a tenant to pay the landlord's current bill to maintain utility service. This practice encourages fraud by enabling a landlord to provide the funds for the current bill to a tenant who is willing to "exercise his right" to pay the utility bill to retain service.

(7) Any other matters the workgroup identifies as pertinent to the respective interests of the tenants, utilities, and landlords.

The most valuable legislative change to help tenants avoid termination when the utility bill is in the name of the landlord will be: 1) to require landlords to report to utilities a list of each of their rental units; and 2) that when a utility issues a termination notice to a landlord an identical termination notice can be provided to the tenant.

Summary

There are situations where a single individually metered rental unit has utility service in the name of the landlord rather than the tenant. However, only a very small percentage of these situations result in termination due to non-payment by the landlord. Proponents of this cause have not provided specific data or an exact number of occurrences that substantiate a problem even exists with single meter, single unit premises where the landlord is responsible for the utility bill. Consequently, it does not make any sense to develop new regulations until we can validate the problem and determine the extent of the issue. Certainly at this point, it does not justify incurring significant implementation costs for utility customers across Maryland to comply with new regulations or legislation.

A practical legislative solution would put the onus on landlords across the state to provide to the utility in writing a list of each residential premise address he offers for rent or lease, as well as the number of dwelling units at that address. That legislation should also include the ability of the utility to provide the tenant a copy of termination notice issued to the landlord including the account number and delinquent amount that is causing the pending termination. Once utilities have obtained that information they can monitor the number of occurrences when a termination is issued to the landlord. After at least twelve months of tracking, a follow-up investigation by the Commission could determine whether further regulations or legislation are necessary. In the interim utilities could provide the Commission with their individual plans for notifying tenants of the pending termination and their right to put the utility service in their name without responsibility for the landlord's delinquent balance.

Flexibility in the individual utility plans while protecting the tenant's utility service is paramount to obtain the most effective process while limiting the implementation and administrative costs that all customers will ultimately pay.

Kimberly A. Curry
Assistant General Counsel

PC 30 (20)
P.O. Box 1476
Baltimore, Maryland 21203-1475
410.470.1305
443.213.3206 Fax
kimberly.a.curry@constellation.com



Mail Log #143764
E-Filed 11/20/12

Via Electronic Filing

November 20, 2012

David J. Collins, Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

FILED

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PUBLIC SERVICE COMM
OF MARYLAND

**Re: Public Conference 30
In the Matter of the Public Service Commission Study on Tenant
Payment of Landlord Utility Bills**

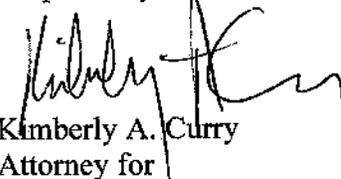
Dear Mr. Collins:

Enclosed for filing in the above-referenced case, please find the Comments of Baltimore Gas and Electric Company (BGE), Choptank Electric, Columbia Gas of Maryland, Inc., Potomac Edison, Potomac Electric Power Company and Delmarva Power and Light Company, Southern Maryland Electric Cooperative, Inc., and Washington Gas Light Company (collectively, the Joint Utilities).

BGE will hand deliver an original and 17 copies by noon on the next business day in accordance with the Commission guidelines for electronic filing. The Maillog number assigned to this filing will be indicated above for your reference.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



Kimberly A. Curry
Attorney for
Baltimore Gas and Electric Company
and on behalf of the Joint Utilities

KAC:jdb

Enclosures

In the Matter of the Public Service
Commission Study on Tenant Payment of
Landlord Utility Bills

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

Public Conference 30

Comments of the Joint Utilities

Pursuant to the Commission's October 23, 2012 Notice of Opportunity to Comment, Baltimore Gas and Electric Company, Choptank Electric, Columbia Gas of Maryland, Inc., Potomac Edison, Potomac Electric Power Company and Delmarva Power & Light Company, Southern Maryland Electric Cooperative, Inc., and Washington Gas Light Company (collectively, the Joint Utilities) file these comments on the Final Report of the Workgroup (Report) filed on October 1, 2012 in this proceeding.

I. SUMMARY

The Joint Utilities are sympathetic to individuals who are affected by the actions of a landlord who is delinquent on a utility bill. When aware of a tenant situation, the Joint Utilities historically have attempted to assist these individuals to maintain service in appropriate cases provided there is adequate proof of the circumstances, and ask that the Commission, and ultimately the General Assembly, closely analyze whether legislation governing utility conduct is needed. If the Commission recommends legislative action, the Joint Utilities request that such legislation not be burdensome, address customer privacy rights and clearly identify the responsibilities of the landlord and tenant.

II. COMMENTS

A. Threshold Issues

Before proposing any legislation governing actions tenants may take in the wake of a landlord's failure to pay a utility bill, there are several threshold issues at the outset that must be resolved in order to ascertain whether legislation is needed to assist tenants in maintaining service.

1. Definition of scope

As the Report notes, the scope of the number of tenants who are unable to maintain service when the landlord fails to pay remains unclear. Knowing the scope of the problem is an essential predicate to adopting any legislation that will impose costs on a utility to develop new processes.

New legislative mandates will likely require utilities to develop new procedures that do not currently exist. For example, the original legislation proposed that a specialized notice be provided to tenants that would have described a tenant's right to pay for utility service. Because such tenant-specific notices do not exist today, utilities would have to create a new form, develop new processes and implement billing system changes for those mailings. Furthermore, absent a landlord informing the utility of the existence of a tenant, a utility will have no way to directly communicate with a tenant via mail, except by mailing a duplicate notice to the occupant in all cases where the billing address and service address are not the same. Such a universal notification requirement raises the cost and privacy concerns. In addition, such automatic notice to all properties where a service address differs from a billing address will result in customers that have post office boxes or weekend homes getting a duplicate notice. Before utilities proceed down a path to develop and implement solutions and incur costs, the extent of the problem should be clearly defined.

2. Existing Processes Should be Explored to Address the Issue

The Joint Utilities offer assistance to tenants seeking continuity of service, provided the tenant can provide proof of the circumstances, when a landlord is faced with a potential termination because the landlord fails to pay a bill. When tenants inform utilities that they reside at a premise that is subject to termination, utilities allow tenants to place service in their name in appropriate circumstances, if the tenants otherwise qualify for utility service on their own. The utilities have existing mechanisms to help a tenant maintain service; therefore, the Commission and General Assembly should closely consider whether these avenues address the concern from the utilities' standpoint or if more, in the form of legislation, is truly needed.

3. The Solutions Addressing Landlord Delinquencies Should be Limited to Tenants of Single Family Homes

The Joint Utilities concur in the Working Group Report's conclusion that the resolution of this issue should apply only to tenants residing in a single family, individually metered home. Tenants in submetered dwellings currently receive notice as required by COMAR 20.31.03.06. With this notice, the tenants can undertake remedies to maintain service. In the Joint Utilities' service territories, terminations to submetered premises are an extremely rare occurrence. Thus, this existing COMAR regulation provides sufficient protections for tenants in master metered buildings. Accordingly, the solutions sought as a result of this proceeding need only apply to tenants of individually metered premises.

B. If Legislation Is Ultimately Adopted to Address Landlord Delinquencies Affecting Tenants, Certain Key Principles Must be Included

If the Commission recommends, and the General Assembly adopts legislation on this subject, there are a few guidelines governing the respective responsibilities of the

landlord, tenant, and utility that must be addressed in the legislation.

Landlord Responsibilities. The landlord should be required to notify the utility of the existence of the tenant. If a utility is required to individually notify a tenant of a pending termination, the landlord will have to inform the utility that the tenant resides at the home, as the utility has no other independent means to confirm the existence of a tenant. Accordingly, the legislation should contain a requirement that the landlord notify the utility that the tenant exists at the premises, and if the landlord fails to provide such notification, the utility should not be required to provide notice to individual tenants.

Tenant Responsibilities. Any proposal for legislation should include a requirement that the tenant, himself or herself, be eligible for utility service. In other words, the existing regulations and utility tariffs that govern the approval of a service application or the assessment of a deposit will apply to tenants seeking to place service in their name.

Utility Responsibilities. The legislation will need to address the form of notice to the tenant. Three options were described in the Report:

- Mail a notice to the service address when billing and service address differ in the utility's billing system.
- Mail notice of termination at the landlord's request.
- Mail notice of termination at the tenant's request, after the landlord authorizes the disclosure of that information to the tenant.

Utilities should be given the flexibility to adopt a notice provision that is the most cost effective and efficient to implement in their service territory, because some of these options are not cost effective or efficient alternatives for some utilities. The legislation should provide that the utility notify the Commission of the option chosen and the reasoning supporting the utility's election.

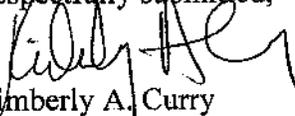
Moreover, any legislation must allow the Joint Utilities an appropriate amount of time to implement any and all of the changes required. The legislation should endeavor to minimize costs, which includes minimizing impacts to utility's IT systems and existing processes, and should not pose additional onerous notification obligations on the utilities.

Privacy. Currently, if a tenant calls the utility seeking information on why a termination has occurred, or is about to occur, a utility is prohibited from discussing with the tenant the landlord's payment history. Any legislation enacted to address tenant rights in the wake of a landlord's failure to pay a bill must permit a utility to discuss the reason for the pending termination, which will inevitably involve a disclosure of the landlord's prior payments and total delinquent amount.

III. CONCLUSION

The Joint Utilities recognize that continuity of service is an important goal sought by tenants impacted by a landlord's nonpayment of a utility bill. Without knowledge of the extent of the issue, that is, the number of tenants that are facing this dilemma, and given the existing mechanisms that utilities undertake to permit tenants to place service in their own names, the Commission and the General Assembly should carefully consider whether legislation is warranted. If legislation is adopted, it should seek to minimize costs to the utility, which will ultimately be borne by utility customers.

Respectfully submitted,



Kimberly A. Curry
Attorney for Baltimore Gas and Electric Company
110 West Fayette Street
Baltimore, Maryland 21201
Telephone: (410) 470-1305
Facsimile: (443) 213-3206
e-mail: kimberly.a.curry@constellation.com

November 20, 2012

and on behalf of the Joint Utilities

PAULA M. CARMODY
PEOPLE'S COUNSEL

STATE OF MARYLAND

ASSISTANT PEOPLE'S COUNSEL

CYNTHIA GREEN-WARREN
WILLIAM F. FIELDS
PETER SAAR
GARY L. ALEXANDER
RONALD HERZFELD
ANNE L. JOHNSON
GREGORY T. SIMMONS

THERESA V. CZARSKI
DEPUTY PEOPLE'S COUNSEL



OFFICE OF PEOPLE'S COUNSEL

6 Saint Paul Street, Suite 2102
Baltimore, Maryland 21202
(410) 767-8150 (800) 207-4055
FAX (410) 333-3616
WWW.OPC.STATE.MD.US

November 20, 2012

FILED

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**PUBLIC SERVICE COMM
OF MARYLAND**

David J. Collins, Executive Secretary
Public Service Commission
Of Maryland
6 St. Paul St. 16th Floor
Baltimore, Maryland 21202

**Re: PC 30 Tenant Payment of Landlord Utility Bills -- Consumer
Advocates Comments on the October 1, 2012 Final Report of the
Workgroup**

Dear Mr. Collins:

The purpose of this letter is to provide you with the comments of the Office of People's Counsel, the Public Justice Center, Inc., the Legal Aid Bureau, Inc., the Consumer Protection Division of the Maryland Attorney General's Office, and the Energy Advocates (collectively, "Consumer Advocates") to the Workgroup's Final Report ("Report").

In the Report's Executive Summary it is noted that, although the participating utilities are familiar with the problem of utility shut-offs, there is no reliable data to define the scope of the problem insofar as it relates to single metered single family dwellings. This lack of data specific to single family dwellings is occasioned by the fact that the data that was collected last year included both single metered single-family dwellings as well as master metered multi-family properties, and did not distinguish between the two. Additionally, tenant complaints regarding utility shut-offs in these situations may be difficult to track since such complaints may be identified as solely a landlord-tenant dispute, and therefore referred by the Maryland Public Service Commission or Office of People's Counsel to other agencies, such as the Consumer Protection Division. We do know, however, that in 2011, Baltimore Neighborhoods, Inc. received approximately 246 calls about utility shut-offs and related services. Baltimore Neighborhoods also received calls from tenants whose landlords were in

foreclosure and where the tenants were unable to obtain utilities because of their landlord's failure to pay. Likewise, all of the Consumer Advocates have received calls from tenants facing an actual or threatened utility shut-off. Further evidence that the problem of utility shut-offs is endemic is the fact that, as reported in the Survey, referred to in footnote 17 of the Final Report, a majority of the States have enacted legislation addressing this problem.

The Report, on page 12, states that the Workgroup “. . . did not have any evidence to support the conclusion that landlords have withheld pending service disruption notices to tenants.”¹ Although hard numbers are not available because this information was not specifically tracked, based on the anecdotal experience of the Consumer Advocates, this occurrence is not uncommon, and tenants routinely advise that they received no advance notice from their landlords of pending terminations of service and arrived home only to find one or more utilities cut off.

The utility companies expressed concern that the additional costs that they will incur in developing software to provide for enhanced record keeping, duplicate notices, special envelopes, etc. may not be warranted. While there likely will be additional costs incurred by the utilities in implementing the legislation that has been proposed by the Consumer Advocates, the extent of the utilities' concern is unknown since no cost estimates were provided to the Workgroup. Any cost/benefit analysis, however, must take into account the costs that, in the absence of legislation, will be incurred by a tenant who has had no advance notice of a utility shut-off and arrives home to find that the premises rented by the tenant are without one or more utilities. Without electricity, the tenant has no working refrigerator, no working washer or dryer, no lights, no working furnace, and in many instances, no working stove. The tenant is faced with an immediate problem the solution to which, in many cases, will be an immediate forced move, with the attendant costs of a new security deposit, payment of the first month's rent, and the cost of moving the tenant's property to a new location. Because the tenant is forced to move, the tenant and members of the tenant's family may be forced to stay in a homeless shelter or to couch surf with a relative or friend. Other results may include disruption in the education of the tenant's children and the emotional stress of having lost the home that the tenant had been renting. These costs incurred by a tenant who, through no fault of the tenant, has suffered a utility shut-off will, in many cases, exceed the aggregate amount of the landlord's unpaid utility bill that resulted in the utility shut-off.

The Report, on page 16, suggests that an “option” for collecting overdue utility bills is “recovery in rates from all customers.” A utility, however, may not unilaterally change its rates for purposes of recovering uncollectible accounts. Further, each

¹ Under current law, a landlord has no legal obligation to notify a tenant of a pending service termination.

David J. Collins, Executive Secretary

November 20, 2012

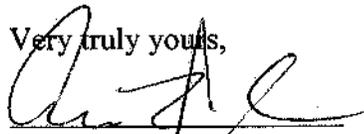
Page | 3

utility's base rates incorporates a factor for recovery of its uncollectible accounts, which factor can be changed only by the Commission at the utility's next base rate proceeding.

Lastly, the Report, on page 19, notes that proposed legislation drafted by the Consumer Advocates was circulated among the members of the Workgroup and discussed at two of their meetings. A copy of this proposed legislation is attached hereto as Attachment 1.

The Consumer Advocates appreciate this opportunity to provide the Public Service Commission with the foregoing comments to the Report.

Very truly yours,



Anne L. Johnson
Assistant People's Counsel
Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202

Russell R. Reno, Jr.
Staff Attorney
Public Justice Center, Inc.
One N. Charles Street, 2nd Floor
Baltimore, Maryland 21201

Gregory Countess
Assistant Director-Advocacy for Housing
and Community Economic Development
Legal Aid Bureau, Inc.
500 E. Lexington Street
Baltimore, Maryland 21202

Continued for Signatures:

David J. Collins, Executive Secretary
November 20, 2012
Page | 3

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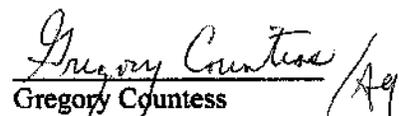
Very truly yours,



Anne L. Johnson
Assistant People's Counsel
Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202



Russell R. Reno, Jr.
Staff Attorney
Public Justice Center, Inc.
One N. Charles Street, 2nd Floor
Baltimore, Maryland 21201



Gregory Countess
Assistant Director-Advocacy for Housing
and Community Economic Development
Legal Aid Bureau, Inc.
500 E. Lexington Street
Baltimore, Maryland 21202

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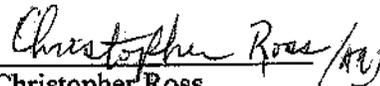
David J. Collins, Executive Secretary

November 20, 2012

Page | 4

Continued for Signatures:


Karen S. Straughn
Assistant Attorney General, Director -
Mediation Unit
Maryland Office of the Attorney General,
Consumer Protection Division
200 St. Paul Place
Baltimore, MD 21202-2021


Christopher Ross
Energy Advocates Chairperson
Energy Advocates
10 Francis Street
Annapolis, Maryland 21401

ALJ/eom
Enclosure

PC 30 – Proposal

Public Utilities Section 7-309

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVING THE MEANINGS INDICATED.

(2) "AFFECTED DWELLING UNIT" MEANS A DWELLING UNIT, AS DEFINED IN 7-303 OF THIS SUBTITLE, WHERE THE LANDLORD BUYS UTILITY SERVICE FROM THE UTILITY SERVICE PROVIDER AND PROVIDES IT TO THE TENANT OR TENANTS IN THE DWELLING UNIT EITHER AS A PART OF THE RENT OR AS A SEPARATE CHARGE, AND THE UTILITY SERVICE:

(I) IS THE SUBJECT OF THREATENED OR ACTUAL TERMINATION; AND

(II) IS DELIVERED THROUGH A METER TO TWO OR FEWER DWELLING UNITS.

(3) "LANDLORD" MEANS AN OWNER OF AN AFFECTED DWELLING UNIT WHO RENTS THE AFFECTED DWELLING UNIT TO A TENANT.

(4) "TENANT" MEANS AN OCCUPANT OF AN AFFECTED DWELLING UNIT WHO RENTS THE AFFECTED DWELLING UNIT FROM A LANDLORD.

(5) "UTILITY SERVICE" MEANS:

(I) GAS, ELECTRIC, OR WATER SERVICE PROVIDED BY A PUBLIC SERVICE COMPANY TO AN AFFECTED DWELLING UNIT; OR

(II) WATER SERVICE PROVIDED BY A COMMISSION, MUNICIPAL CORPORATION, OR OTHER GOVERNMENTAL UNIT TO AN AFFECTED DWELLING UNIT.

(6) "UTILITY SERVICE PROVIDER" MEANS:

(I) A PUBLIC SERVICE COMPANY THAT PROVIDES GAS, ELECTRIC, OR WATER SERVICE; OR

(II) A COMMISSION, MUNICIPAL CORPORATION, OR OTHER GOVERNMENTAL UNIT THAT PROVIDES WATER SERVICE.

(B) (1) A TENANT RESIDING AT AN AFFECTED DWELLING UNIT MAY APPLY FOR A NEW UTILITY SERVICE ACCOUNT IN THE NAME OF THE TENANT IN ORDER TO PREVENT THE TERMINATION OF UTILITY SERVICE AT THE AFFECTED DWELLING UNIT, OR IF UTILITY SERVICE HAS BEEN TERMINATED, HAVE UTILITY SERVICE RESTORED AT THE AFFECTED DWELLING UNIT.

(2) A TENANT SHALL NOT INCUR LIABILITY FOR PREVIOUS UTILITY CHARGES, OR TERMINATION OR RECONNECTION CHARGES DUE ON THE LANDLORD'S ACCOUNT BY TAKING AN ACTION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(C) (1) WHEN A TENANT TAKES THE ACTION DESCRIBED IN SUBPARAGRAPH (B)(1) OF THIS SECTION, A UTILITY SERVICE PROVIDER SHALL, SUBJECT TO APPLICABLE LAWS AND REGULATIONS, ESTABLISH A NEW ACCOUNT FOR THE AFFECTED DWELLING UNIT IN THE NAME OF THE TENANT.

(2) A UTILITY SERVICE PROVIDER MAY NOT REFUSE OR OTHERWISE LIMIT A TENANT'S RIGHT TO CONTINUE UTILITY SERVICE OR TO RECONNECT UTILITY SERVICE AT AN AFFECTED DWELLING UNIT BECAUSE OF THE LANDLORD'S PAST DUE ACCOUNT OR ANY OTHER ACTION OR OMISSION BY THE LANDLORD.

(D) IF AN ORAL OR A WRITTEN LEASE OF AN AFFECTED DWELLING UNIT REQUIRES A LANDLORD TO PAY A UTILITY BILL AND A TENANT MAKES PAYMENT ON ALL OR A PORTION OF THE UTILITY BILL, INCLUDING ANY PAYMENTS ON ACCOUNT OF A NEW UTILITY SERVICE ACCOUNT ESTABLISHED PURSUANT TO PARAGRAPH (1) OF SUBSECTION (C), OR PAYS ANY SECURITY DEPOSIT REQUIRED TO OBTAIN A NEW UTILITY SERVICE ACCOUNT, THE TENANT MAY DEDUCT THE AMOUNT OF THE PAYMENTS FROM RENT DUE TO THE LANDLORD.

(E) IF A TENANT FAILS TO MAKE A FUTURE PAYMENT ON THE TENANT'S ACCOUNT WHEN IT IS DUE, THE UTILITY SERVICE PROVIDER MAY TERMINATE SERVICE IN ACCORDANCE WITH EXISTING LAWS AND REGULATIONS.

(F) (1) IF THE SERVICE ADDRESS OF AN AFFECTED DWELLING UNIT IS DIFFERENT FROM THE MAILING ADDRESS TO WHICH THE BILLS FOR THE UTILITY SERVICE ARE SENT OR THE UTILITY SERVICE PROVIDER HAS OTHER REASON TO KNOW THAT THE PROPERTY IS OCCUPIED BY A TENANT, THE UTILITY SERVICE PROVIDER, AT LEAST 14 DAYS BEFORE TERMINATING UTILITY SERVICE TO THE AFFECTED DWELLING UNIT, SHALL, IN ADDITION TO ANY NOTICE THAT THE UTILITY SERVICE PROVIDER MAY SEND TO THE LANDLORD AT THE BILLING ADDRESS, SEND A NOTICE BY FIRST-CLASS MAIL TO THE AFFECTED DWELLING UNIT OR POST A TERMINATION NOTICE IN A CONSPICUOUS LOCATION AT THE AFFECTED DWELLING UNIT, SUCH AS NEAR MAILBOXES, ENTRANCES AND EXITS.

(2) THE UTILITY SERVICE PROVIDER SHALL ADDRESS THE NOTICE TO THE NAMED TENANT, IF THE UTILITY SERVICE PROVIDER KNOWS THE TENANT'S NAME, OR TO "ALL OCCUPANTS" IF THE UTILITY SERVICE PROVIDER DOES NOT KNOW THE TENANT'S NAME.

(3) THE OUTSIDE OF THE ENVELOPE CONTAINING THE WRITTEN NOTICE SHALL STATE, ON THE ADDRESS SIDE, IN BOLD, CAPITALIZED LETTERS IN AT LEAST 12-POINT TYPE, THE FOLLOWING: "IMPORTANT NOTICE TO OCCUPANTS: UTILITY SHUT-OFF PENDING".

(4) THE NOTICE SHALL INCLUDE:

(I) THE NAME OF THE CUSTOMER WHOSE SERVICE IS TO BE TERMINATED;

(II) THE EARLIEST DATE WHEN SERVICE WILL BE TERMINATED;

(III) THE OFFICE ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR DEPARTMENT AT THE UTILITY SERVICE PROVIDER WHOM THE TENANT MAY CONTACT TO OBTAIN FURTHER INFORMATION; AND

(IV) THE RIGHTS AND RESPONSIBILITIES OF A TENANT UNDER SUBSECTIONS (B), (C), (D) AND (E) OF THIS SECTION.

(5) BY FAILING TO TIMELY PAY UTILITY CHARGES, THE LANDLORD CONSENTS TO THE SENDING OF THE NOTICE TO TENANTS IN ACCORDANCE WITH THIS SUBSECTION.

(6) THE UTILITY SERVICE PROVIDER MAY CHARGE THE LANDLORD A REASONABLE FEE OF NO MORE THAN TWO DOLLARS FOR EACH NOTICE SENT TO AN AFFECTED DWELLING UNIT PURSUANT TO THIS SUBSECTION.

(G) WHERE THE SERVICE ADDRESS OF AN AFFECTED DWELLING UNIT IS THE SAME AS THE MAILING ADDRESS TO WHICH THE BILLS FOR THE UTILITY SERVICE ARE SENT AND THE UTILITY SERVICE PROVIDER HAS REASON TO KNOW THAT THE PROPERTY IS OCCUPIED BY A TENANT, ANY NOTICE OF TERMINATION REQUIRED BY STATUTE OR REGULATION SHALL:

(I) BE ADDRESSED TO THE CUSTOMER OF RECORD "AND/OR OCCUPANTS."

(II) BE ENCLOSED IN AN ENVELOPE, THE ADDRESS SIDE OF WHICH SHALL HAVE A WRITTEN NOTICE STATING IN BOLD, CAPITALIZED LETTERS IN AT LEAST 12-POINT TYPE, THE FOLLOWING: "IMPORTANT NOTICE TO OCCUPANTS: UTILITY SHUT-OFF PENDING".

(H) A TENANT'S RIGHTS UNDER THIS SECTION MAY NOT BE WAIVED IN ANY LEASE.

(I) COMMENCING AS OF THE EFFECTIVE DATE OF THIS SECTION, A UTILITY SHALL MAKE REASONABLE EFFORTS, BEFORE TERMINATION OR DISCONNECTION OF UTILITY SERVICE, TO IDENTIFY THOSE DWELLING UNITS WHERE THE OCCUPANT IS NOT, OR IS NOT LIKELY TO BE, THE OWNER AND WHERE THE UTILITY SERVICE IS DELIVERED THROUGH A METER THAT SERVES NO MORE THAN TWO DWELLING UNITS.

Real Property Section 8-401.

(b) (1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, the landlord

or the landlord's duly qualified agent or attorney shall file the landlord's written complaint under oath or affirmation, in the District Court of the county wherein the property is situated:

(iii) Stating the amount of rent and any late fees due and unpaid, LESS THE AMOUNT OF ANY UTILITY BILLS, FEES, OR SECURITY DEPOSIT PAID BY A TENANT UNDER 3 § 7-309 OF THE PUBLIC UTILITIES ARTICLE;

(c) (2) (iii) 2. The determination of rent and late fees shall include the following:

D. Credit for payments of rent [and], late fees, AND UTILITY BILLS, FEES, OR SECURITY DEPOSIT PAID UNDER § 7-309 OF THE PUBLIC UTILITIES ARTICLE made by the tenant after the complaint was filed.