COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES
DPU 08-4

INVESTIGATION INTO EXPANDING LOW-INCOME CONSUMER PROTECTIONS AND ASSISTANCE

Comments of Massachusetts Energy Directors Association and Low-Income Weatherization and Fuel Assistance Network

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I. INTRODUCTION

The Department has opened this major investigation into a broad range of "laws and regulations . . . and . . . public policies" of the Commonwealth that directly affect the ability of consumers, "particularly low-income consumers," to obtain natural gas and electricity needed to keep their homes warm and run lights and appliances. Order Opening Investigation ("OOI"), p. 1. A the outset, the Department notes:

> Much has changed over the past several years that bears fundamentally upon the design, commitment to, and implementation of the Department's policies and regulations addressing the challenges faced by low-income consumers.

Indeed, much has changed. Massachusetts residential natural gas prices increased 64% between 2002 and 2007.[1] Average electricity prices jumped from 10.93¢/kWh in 2002 to 16.6¢/kWh in 2006, a 52% increase in just 4 years.[2] Heating oil prices as of March 25 are $3.81/gallon, up almost 60% from last year alone, and **3.3 times** the price in 2002.[3]

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[1] Energy Information Administration ("EIA"), "Natural Gas Summary," available at: http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_SMA_a.htm.

[2] EIA, "Retail Sales, Revenue and Average Retail Price by Sector," available at: http://www.eia.doe.gov/cneaf/electricity/st_profiles/sept08ma.xls.

[3] Division of Energy Resources, "Massachusetts Heating Oil Prices," available at: http://www.mass.gov/doer/fuels/pricing.htm#oilsurvey.

The OOI sets the objective of "*increasing* protections for low-income consumers by various means, including amending standards for arrearage management programs, expanding discount rates and eligibility, amending service termination regulations, and promoting increased participation in energy efficiency programs" OOI, p. 15 (emphasis added). The low-income weatherization and fuel assistance program network and the Massachusetts Energy Directors Association (collectively, "Network/MEDA") offer these comments in response to the OOI. The Network consists of the agencies that implement many of the low-income energy programs: LIHEAP[4] (fuel assistance); utility arrearage programs; screening for discount rate eligibility; weatherization;[5] and utility energy-efficiency programs. The agencies also advocate for their clients regarding these programs as well as on service termination and customer service issues.

These commenters are grateful for this historic proceeding, which encompasses virtually every important issue affecting low-income utility customers. This comprehensive approach is very valuable. Often, changes to one program or policy element need to be coordinated with another. We thank the Commission for recognizing that all its low-income programs and rules are best considered together, as a panoply of approaches for protecting low-income consumers.

II. OVERVIEW OF COMMENTS: UTILITY BILLS INCREASINGLY OUT OF REACH

[4] Low-Income Home Energy Assistance Program, authorized by 42 U.S.C. §§ 8621 - 8629.

[5] Weatherization Assistance Program, authorized by 42 U.S.C. §§ 6861 - 6873.

The Network/MEDA considers all of a family's energy bills — heating (provided via oil, propane, kerosene), natural gas and electricity — when assisting low-income clients. Families that must find ever-larger amounts of money to pay for their heat (whatever the fuel source) inevitably have less money available to pay the electric or gas bills. For oil-heat households, the tripling of oil prices since 2002 means that there is not even enough money to pay for heat, let alone lights and appliances. Through much of the 1980s and 1990s, the LIHEAP grant covered approximately three tanks of oil (and the natural gas equivalent) – enough to carry the family through most of the winter. At current prices, the LIHEAP grant barely covers one tank of oil. A survey completed by the Network/MEDA earlier this year showed that almost all oil clients had exhausted their LIHEAP benefits by mid- January. While natural gas customers face relatively lower prices this winter, their arrearages are quite high, due to past price increases, and appear to be growing, as those bills are also unaffordable.[6]

The problem of high energy prices is exacerbated by the facts that the incomes of low-income families have been effectively stagnant for decades and that more and more households cannot afford the basic necessities of housing, utilities, food, transportation and medical care. Over the period 1979 to 2005, "[real] average after-tax income of the poorest fifth of the population rose just 6 percent, or $900."[7] Despite stagnant incomes, low-income households must contend with the very high cost of living in Massachusetts. The Crittenton Women's Union has developed a "Family Self-Sufficiency Calculator" ["Calculator"] that allows one to estimate the bare minimum

[6] Recent data from Bay State Gas shows residential arrears are up 8% in one year.

[7] Center for Budget and Policy Priorities, "Income Inequality Hits Record Levels, New CBO Data Show" (Dec. 14, 2007), available at: http://www.cbpp.org/12-14-07inc.htm#_ftn2.

cost of providing the most basic needs for families of various sizes and configurations,[8] and that well-illustrates the problem of low-incomes and high costs.

For example, a two-parent household with two teenage children living in Quincy would need $41,287 annually to cover its basic expenses, while a single-parent household with one pre-school child and one school-age child would need $48,513, in order to meet the much higher costs of child care. The chart below compares the FSS calculation of these two households, as well as a single-senior household, to the current guidelines for 150% and 200% of the federal poverty level ("FPL"). (Note that more than two-thirds of all Massachusetts LIHEAP households have incomes **below** 150% of the FPL):

	2-Parent, 2 teenager fam. Quincy	1-Parent, 1 preschool, 1 school-age, Worcester	Senior living alone, Boston
Minimum income needed From: FSS Calculator	$41,287	$48,513	$25,874
150% of FPL, per fam. size	$31,800	$26,400	$15,305
200% of FPL, per fam. size	$42,400	$35,200	$20,420

The Calculator allows for many more variations of household size/configuration and geographic location than shown above. However, the only LIHEAP families who have sufficient income to cover the bare-minimum necessities: (1) include two parents; (2) include no infant, school-age or teenage children; and/or (3) live in lower-rent areas outside the greater Boston area. It is therefore no surprise that so many low-income households are so far behind on their utility

[8] The calculator can be found here: http://www.liveworkthrive.org/calculator.php.

bills. **The fundamental cause of the rising inability of low-income consumers to afford their utility bills is simple: they do not have enough money.**

The Network/MEDA proposes two fundamental measures to address the fact that most low-income households cannot afford their energy bills: substantial increases in the low-income discount, to make the prices more affordable, and expansion of low-income energy efficiency programs, to reduce the volume of electricity and gas consumed. With these two measures, arrearage management programs can then help those households with short-term budget or management difficulties. We address specific Department questions at the end. In the sections that follow, we address each of the Department's areas of inquiry. In summary,

- We propose a substantial increase in the low-income discount, tiered to target those most in need with the deepest discount.
- If low-income discounts are increased substantially, the Department should explore two-tier AMPs, with a "Tier 1" that involves automatic enrollment of customers by the utility, or automatic identification of customers who meet specified criteria for enrollment, with a mechanism for those customers to opt into the program. We caution, however, that there is no existing model for large-scale, automatic enrollment onto arrearage management programs. The utility companies and the Network/MEDA would have to work out a number of details regarding screening; enrollment; payment plans terms; and defaults. Any Tier 1 program should be considered a pilot. The utilities and the Network/MEDA should be allowed flexibility in program design if Tier 1 is to succeed.
- Tier 2 programs should be designed for those who default from a Tier 1 program or choose not to participate. However, because these customers, by definition, are those who for some reason cannot or do not participate in Tier 1, they will need additional services in the nature of training, screening and referral to other programs, or budget counseling. The Network/MEDA is willing to work with others to design such a Tier 2 program, but at the present time does not have a detailed proposal to make.
- We propose modifications to Department rules to make it easier for low-income consumers to retain or restore utility service.
- Existing low-income efficiency programs — funded from utility revenues, federal and state agencies, and foundations — are nationally acclaimed. Low-income energy efficiency programs are already well-integrated with LIHEAP and discount rates, through the LIHEAP

application process. Therefore, no major changes are needed in order to enhance program integration. The major barrier to increased energy efficiency in low-income households is limited program funding.

III. ARREARAGE PROGRAM

As noted above, most low-income customers in arrears simply do not have enough income to pay their current bills. Energy prices are too high relative to incomes. This is particularly true for those living or below 150% of poverty: two-thirds of the households receiving LIHEAP. No amount of management or counseling can change this basic fact. When the arrearage management program was enacted by the General Court,[9] the hope was that then-recent and severe price increases were temporary and that prices would return to levels where a segment of low-income customers – with struggle, help, and education – could arrange their lives to pay their utility bills. In fact, high prices have become permanent.

[9] St. 2005, ch. 140, § 17(a).

Preliminary data show that an arrearage management program ("AMP"), especially with case management, can help some people get back on their feet. Participants in the Massachusetts REACH grant program[10] – Leveraging Assets for Self-sufficiency through Energy Resources (LASER) – received intensive casework services, and on average saw their arrearages decline during the course of their participation. However, this program can only work for people who have the resources to pay their current bills. On a typical low-income budget, this is impossible. AMPs can only be successful in moving payment-troubled low-income utility customers onto the path of energy sustainability if it is coupled with substantial discounts, strong coordination between the utilities and the Network/MEDA, and flexibility in design.

The current AMP designs are working well for some customers, but they differ among utilities in eligibility criteria, enrollment practices, amounts of arrearage that can be forgiven, frequency of arrearage credits, and program term lengths. There has not been enough experience with any particular model to conclude that one model is "better" than all the others. The Network/MEDA and the utilities have been meeting regularly to discuss "AMP Best Practices", and have identified several elements that can perhaps be standardized. The proposal outlined below is the Network/MEDA's take on a basic structure of an AMP design, the details of which should be worked out through the AMP Best Practices collaborative and submitted to the Department when the other components of the low-income affordability program, such as the size of the discounts, are known and more data has been gathered and analyzed.

[10] REACH — **R**esidential **E**nergy **A**ssistance **Ch**allenge — is authorized by 42 U.S.C. § 8626b. REACH provides competitive grants to states that propose to run innovative fuel assistance pilot programs. Massachusetts is a REACH recipient, operating a program it calls LASER.

A. Basic, or "Tier 1" Arrearage Management Plan

1. Basic Screening Parameters:[11]

- Customer must be in arrears for over 60 days;
- Customer must be an active customer, or, if terminated, arrangement must first be made to restore service:
- Payment history will be reviewed based on agreed-upon parameters to determine if customer is candidate for Tier 1.

2. Enrollment Parameters:

- Automatic enrollment by utility for customers who meet screening criteria, with opt-out provision for customers who choose not to participate; or
- Automatic identification of eligible customer by utility, with utility notifying the customer of the right to opt in;[12] and
- Customer referred for weatherization and energy efficiency services screening; and
- Customer offered limited budget counseling and energy usage education, to extent available.

[11] As noted above, automatically enrolling large numbers of low-income households on AMPs is largely unprecedented. Berkshire Gas has an AMP that automatically enrolls customers who are on the discount rate and whose arrearages exceed specified levels. However, only several hundred customers are enrolled. If much larger companies follow such a model, several thousand customers would be enrolled. Any such effort should be treated as a pilot.

[12] Under an opt-in model, utilities and the Network/MEDA will have to reach agreement on who will notify customers of their eligibility and offer any follow-up services.

[Continued on p. 8]

3. Payment Plan Parameters:[13]

- Customer will be placed on low-income discount rate (if not already on);
- If eligible, LIHEAP and other payment benefits taken into account before calculating levelized monthly customer payment under AMP;
- Utilities/the Network/MEDA, set affordable, levelized monthly payment with customer;
- Amount of arrearage forgiveness determined;
- Arrearage credits applied monthly.

4. Default Parameters:

- If customer misses specific number of payments, will be defaulted and referred to Tier 2.

B. Tier 2 Arrearage Management Program

[13] Note that the provisions of St. 2005, ch. 140, § 17(b) regarding four-month minimum payment plans were not intended to act as a condition to be incorporated into AMPs mandated by § 17(a). Sections 17(a) and (b) are not inter-related. Section 17(b) was intended to address problems regarding implementation of the Department's payment plan rules, 220 CMR 25.01 & 25.02(6). At the time, some companies were not freely offering four-month minimum payment plans, or were offering plans under which the customer would have to pay, e.g., 90% of the overdue bill up front with the remaining 10% spread over four months. The Network/MEDA considered this a violation of the intent of the Department's rules and worked with the legislature to assure that companies offered equal-payment, four-month minimum plans to low-income customers.

By definition, any customers in a Tier 2-type program would either have already defaulted from the Tier 1 program, or opted out, perhaps because the customer believed that the offered payment plan was unaffordable. These customers will need more intensive budget counseling and/or case management services than are readily available.

The Network/MEDA are willing to explore how they can play a useful role with Tier 2 customers, including screening for which customers are likely to succeed and offering additional services. However, there are important questions that must be resolved regarding the types of services that would be offered to those customers and a source of funding to compensate whoever provides those services. Based on the LASER program that members of the Network/MEDA have been offering for the past several years, it is clear that offering budget counseling and case management services to large numbers of payment-troubled low-income households requires relatively significant funding.

IV. LOW-INCOME DISCOUNT RATES

The Network/MEDA estimates that electric utility low-income discounts ranged from 24% to 35% of the total bill in 1999, and gas discounts from 18% to 20%. These discounts allowed many more utility customers back then to pay their bills without building up high arrearages and being disconnected for non-payment. Since electric industry restructuring, and with large increases and volatility in natural gas prices, the value of these discounts has been greatly eroded. As of July 2007, electric company discounts had lost between 27% and 50% of their value; gas discounts have decreased up to 63% in value since 1999 in one case.

During this same time period, low-income customer bills have increased at a faster rate than non-low-income customer bills, due to the erosion in the value of the discounts. In some cases, low-income rates more than doubled. Prices of other necessities, especially heating oil and gasoline, have also risen dramatically. We agree with the Department that a much larger percentage

discount is needed and that it should include discounts on the commodity portion of the bill, at a stable percentage. The Network/MEDA also recommends that the discount should be tiered to reflect differences in income among the low-income population, and that the percentage value of the discount should be made uniform across all utilities.

The Department notes that "most electric and gas companies cannot accurately estimate what portion of eligible customers are enrolled" on their discount rates. OOI, pp. 9 - 10. In fact, it is challenging to determine the number of discount-eligible households because raw census data do not address such factors as whether the property owner (and not the tenant) pays the utility bills and whether households counted as low-income by the census live in institutional settings (nursing homes, student dorms, etc.) where they are not responsible for utility bills.

We do know that the automatic enrollment process instituted in DTE 01-106-A has succeeded in enrolling 90,000 new households onto the discount rates, and that the Energy Bucks program has heightened visibility within the low-income community of discount rates, LIHEAP, and energy efficiency programs. We encourage the Department to monitor closely efforts underway at the Department of Housing and Community Development ("DHCD") to conduct electronic matches between its subsidized housing data base and utility customer files, and to assist DHCD in overcoming any barriers that may be encountered. The Department and interested parties should also explore whether other agencies, besides DHCD, can conduct matches similar to those that the Department of Transitional Assistance has performed.

The Network/MEDA also proposes that the utility companies review accounts held by customers in arrears and send letters to those customers who are not yet on the discount rates, explaining the eligibility criteria, and including an application. Discount rate applications should

also be available on the internet[14] and should be freely provided by the companies to anyone who requests a blank application. Moreover, each company should provide a fax number where completed forms can be sent, to minimize processing time. Companies should also freely provide financial hardship forms to anyone who so requests.

The Department also asks if the income-eligibility limit for the discount should be increased, and whether a statutory amendment is necessary for such an increase. We believe that the legal question has been conclusively addressed by the Supreme Judicial Court and by past Department practice. In *American Hoechest v. DPU*, 379 Mass. 408 (1980), business customers of Massachusetts Electric Company ("MECO") challenged the Department's approval of a "reduced rate for certain elderly poor customers." The Department had concluded that "it seems reasonable to approve the rate as an experiment in alternative design." *Id.* at 410. The SJC held:

> There can be no question that the Department's jurisdiction over the entire rate structure includes the authority to approve a reduced rate for certain customers . . . . While cost of service is a well-recognized basis for utility rate structures, it need not be the sole criterion.

Id. at 411 - 412. While MECO was the first company to obtain approval for a low-income discount rate, virtually every company adopted some form of discount rate over the next two decades. The Department approved such rates without explicit authority from the legislature.

With the passage of the Restructuring Act, the legislature for the first time required electric (but not gas) companies to "provide discounted rates for low-income customers comparable to the low-income discount rate prior to March 1, 1998." St. 1997, ch. 164, § 193, *adding* G. L. ch. 164, § 1F(4). In effect, the legislation locked into place the individual discount rates that the Department

[14] Several companies already post their discount rate forms on the internet, and at least two companies post Spanish language versions as well.

had approved over the years. Nothing in this legislation, however, capped income-eligibility for the discount rates. Rather, the legislature created a floor below which the discounts could not fall (". . . comparable to the . . . discount rate prior to March 1, 1998"). In contrast, in the same Act the legislature explicitly capped the amount that may be spent on energy efficiency programs. St. 1997, ch. 164, § 37 *adding* G. L. ch. 25, § 19 (4th sentence). There is no cap, however, on discount rate eligibility.

The Department's subsequent practice supports the conclusion that it has inherent authority to allow discount rate eligibility above the minimum mandated by law. The discount rates offered by Boston Gas Company exceeded the applicable floor for several years. From the outset of its discount rate program, the company chose to offer discount rates to all of its customers who were income eligible for LIHEAP. Thus, when LIHEAP eligibility increased to 200% of the FPL (from 175%),[15] the company voluntarily increased discount rate eligibility to 200% of the FPL, even though the Department did not mandate that companies increase to 200% until 2005. *Compare, Boston Gas Company,* DTE 03-40 (2003), p. 388 (approving discount rate, up to 200% of FPL) *with,* DTE 05-87 (2005) (noting that eligibility previously set at 175% of the FPL; increased to 200% in accord with provisions of St. 2005, ch. 140, §§ 11 & 12).

The Network/MEDA propose that the Department avail itself of the discretion it has to increase discount rate eligibility, and raise the cap to 60% of the state median, and that the percentage value of those discounts vary with the LIHEAP income tiers, so that the energy burden on the poorest households, expressed as a percent of income, is no more than 1.5 times the percentage burden on a median income household.

The Network/MEDA proposes that the discount be expanded and tiered as follows:

[15] *See, e.g.,* St. 2000, ch. 316, § 2A (funding for households between 175% and 200% of FPL).

- For households with incomes up to 150% of FPL, 65% discount off total bills, including commodity portion of the bills;
- with incomes between 150% and 200% of FPL, 40% discount; and
- with incomes between 200% of FPL and 60% of median income, 25% discount.

Alternatively, to address the fact that incomes for discount-eligible customers have been flat for the past ten years as the percentage value of the discount has been eroded, the Network/MEDA proposes a level of discount for both electric and natural gas customers sufficient to restore affordability to the relative levels that existed at the time the Restructuring Act passed.[16] Preliminary calculations show that increasing the discount to such levels would cost the average residential consumer about $1 a month and bring the energy burden of the poverty level customer to about 1.5 times the burden of the median income customer – still a much greater burden, but possibly affordable for many.

The Network/MEDA includes specific proposals on retroactive application of the discount rates and placing discount rate customers on levelized billing plans in the responses to questions 9 - 12, below.

V. TERMINATION, PAYMENT PLANS, COMPLIANCE

A. Getting service at a new address, with prior arrearage

The most common problem that low-income households face in getting new service is that the applicant owes the utility company money for service provided at a prior address. Currently, there are no clear rules governing the rights of such customers. There is a particular need for rules defining the up-front payments that can be required.

[16] For NGRID, a 54% discount off regular residential rates would bring the average (500 kWh/mo.) low-income customer's bill to approximately the level it was in 1990.

The Network/MEDA provides more detailed comments regarding this point in the response to questions 13 to 15, but notes some key issues here. First, the Department should require companies to offer so-called "Cromwell waivers"[17] to customers seeking service at a new address who owe money from a prior address. Under these agreements, customers consent to having bills from the prior address added to the current bill. Second, companies should be required to enter into reasonable payment plans on the balances from the prior address. Payment plans would be made under revised payment plan rules that clearly apply both to customers whose service has not been terminated as well as when service has been terminated.

B. Restoration of terminated service when customer has "protected" status

State laws establish termination protections for customers with a serious illness in the household (G. L. ch. 164, § 124A), with an infant in the household (§ 124H), and during the winter period of November 15 to March 15 (§ 124 F). The Department's implementing regulations provide: "No company may shut off **or fail to restore utility service . . ."** when any of the protections applies. However, there has never been any clear regulation or guidance specifying how long a customer can be terminated before losing (if ever) this right to have service restored, even though the highlighted words are clearly intended to provide some level of protection to customers whose service has already been terminated. In the experience of the Network/MEDA, resolving the existing ambiguity is most important for low-income customers who assert serious illness protection.[18] The Network/MEDA believes that companies somewhat routinely restore service to seriously ill customers who properly document their protected status and who have been

[17] *See Cromwell v. Boston Gas Company*, DPU 18123 (1974), which held, *inter alia*, that a utility company cannot terminate service at a customer's current address for amounts due for service provided at a prior address. See answers 13 to 15 for a further discussion of *Cromwell*.

[18] We believe that companies generally restore service that was terminated to a low-income household during the winter once the household demonstrates that it has a financial hardship, or when customers assert infant protection as the basis for restoring terminated service.

terminated for as little as one day and up to perhaps one month, without much problem. However, once the customer has been without service for several weeks, the companies often take the position that the person is no longer a "customer" and therefore that the right to restore terminated service disappears.

Clearly, the legislature intended the phrase ". . . or fail to restore gas or electric service . . ." to have some meaning, and it is up to the Department to clarify that meaning under the rule-making authority explicitly granted in G. L. ch. 164, § 124A. The Network/MEDA recommends that the Department clarify the rules as follows:

- The Department should rule that low-income customers who qualify for serious illness protection have the automatic right to get terminated service restored, for up to four months after termination, by submitting the required doctor's letter and financial hardship form, and may ask the Consumer Division to order restoration beyond that period of time, for good cause shown.

- To the extent that there is any doubt that a low-income customer can get service restored during the winter, if the termination occurred after November 15, the Department should clarify that restoration is required if the customer provides evidence of financial hardship.

- The Department should also rule that a customer does not lose protected status upon moving from one address to another. That is, if a customer has serious illness (or infant) protection at Address A and informs the company that he or she is moving to Address B, the service should be initiated at the new address with the same protection in place.

C. Payment plan and collection issues

The Department's rules have long provided that "[e]ach company shall make available payment plans . . . to all customers for payment of accumulated arrearages," 220 CMR 25.02(6), and that such payment plans "shall extend over a minimum of four months," 220 CMR 25.01(2). Responding to inconsistent compliance with this rule, the legislature in 2005 passed legislation specifying that a four-month payment plan means that the customer cannot be required to pay more than 25% of the overdue balance as the initial payment and that the remaining balance shall be divided equally over the term of the plan. St. 2005, ch. 140, § 17(b).

The Department's payment plan rules create a floor available to all customers seeking payment plans. But for a significant percentage of the low-income customers who fall behind on their bills, four months is not nearly enough time to catch up. In addition, many low-income customers who negotiate payment plans themselves too readily agree to payment plans that are unaffordable by any objective standard. This often leads quickly to the customer breaching the payment plan and then being offered a second payment plan (if one is offered at all) that is even more onerous than the first. Finally, neither the companies nor the Department consider that the 25% down/four-month-minimum rule applies to customers who have already had their service terminated, leaving them without any clearly defined payment plan rights.

The existing payment plan rules must be substantially revised. The goal must be to ensure that low-income customers are offered payment plans that are not only at least four months in duration, but also affordable to the customer. Moreover, when customers service representatives ("CSRs") speak with any customer who is in arrears, the CSRs should have the affirmative obligation to check if the customer is already on the discount rate and has applied for fuel assistance. Customers who appear unable to afford a payment plan on the outstanding arrears should be referred to the AMPs. The role of the DPU Consumer Division in helping customers to negotiate affordable payment plans should be clarified and strengthened. The Network/MEDA provides more detailed proposals in its answers to questions 13 - 15.

On the issue of companies using collection agencies, once companies refer accounts out for collection, it can become difficult or impossible for the customer to work out payment plans or assert protections. The Network/MEDA has had the experience of asking a company to bring an account back in house, after it has been sent to collection, and being able to work out payment arrangements agreeable to the company and affordable to the customer, after the collection agency

refused to discuss reasonable payment terms.[19] The Department should provide guidelines for when companies must take accounts back in house, or to otherwise ensure that customers' right are not seriously eroded by the mere fact that an account has been placed in collection. The Network/MEDA provides more detail in its answer to question 17.

D. Compliance issues

In general, the Network/MEDA finds that companies comply with termination and payment plan rules, with isolated exceptions that are quickly cleared up. Key company staff are generally responsive to inquiries from the Network/MEDA when problems arise.

However, the Department should consider whether companies should be required to file training scripts and manuals, or, at least, provide the Department and interested advocates ready access to those documents when individual problem cases raise the question of whether CSRs are being properly trained. Most problem cases are *sui generis* and quickly resolved in informal discussions between advocates and utility personnel, but the occasional problem case raises a red flag for the Network/MEDA that something is wrong systematically. In such instances, the Department should be willing to quickly review company systems and training materials, and to share such information with any advocates involved with the problem situation.

The Department may also wish to review how the Consumer Division logs and categorizes complaints, and investigates and responds to any complaints that appear to raise systematic problems with any particular company's compliance with Department rules and policies. Moreover, it would be useful for advocates if the Department posted summary complaint information, by company and category of complaint, on its web site.

[19] The Network/MEDA often brings to the table LIHEAP and other payment sources that convince the

VI. ENERGY EFFICIENCY

Low-income energy efficiency programs have proven that they can make energy much more affordable, in addition to providing economic and environmental benefits to all ratepayers. The programs are successful largely because the implementing agencies, including DHCD and the Network/MEDA, pay such careful attention to quality and achieving energy savings. All work is inspected and air sealing quality is verified by infrared camera. There is also a "Best Practices" program in which all gas and electric utilities participate, along with DHCD and member agencies of the Network/MEDA.

In the past ten years, Massachusetts low-income energy efficiency programs have won many national awards and proven robustly cost-effective on a societal basis. The electric programs, for instance, achieved a benefit/cost ratio of 2.9 in the period 2003-2005, according to the latest DOER report. In the latest year for which DOER has collected data from the electric utilities (2006), the low-income electricity programs saved 17 MW of summer demand, 44 MW of winter demand, and 179,000 mWh of energy. For participants, this has meant average savings of about 10% in baseload electricity consumption and about 20% in heating fuel. The high quality and cost-effectiveness of these programs could not have occurred without the skill and cooperation of the utilities, other program administrators (Cape Light Compact), and DHCD.

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company that it is in its own interest to deal directly with the customer.

The low-income efficiency program appears seamless to the public, but it is actually the result of funding from a variety of sources, including from the gas and electric utility companies, the federal weatherization and fuel assistance programs (the latter program supports heating system repair and replacement), the Ford Foundation, and the Massachusetts Technology Collaborative (MTC). Programs are delivered simultaneously to the customer — gas and electric, efficiency and weatherization. Efficiency measures range from heating systems to refrigerators, education to efficient lighting, air sealing to roof repairs. The utility funding piggybacks on the pre-existing federal programs and generally operates under the federal protocols.[20] Priority is given to high-use consumers, as well as to elderly households and those with young children. Because high usage is often the cause of high arrearages, the efficiency programs are well-coordinated with AMPs.

Demand response for low-income consumers means installing measures that lower consumption during summer afternoons — replacing existing inefficient window air conditioners with efficient units and installing high load factor measures, such as efficient lighting. Cost-effectiveness analysis by NGRID shows that replacing inefficient air conditioners has a benefit/cost ratio of 2.5, provided the units are screened to determine that they are in use in the daytime. As part of our Best Practices approach, we are developing protocols with the utilities to better identify those situations (*e.g.*, households with seniors or children at home) where replacing air conditioners would be cost-effective as a demand response measure. Air conditioners needed only at night have little impact on peak demand and are therefore more cost-effectively controlled by timers. Lighting opportunities have been addressed through the Best Practices process by removing any limitation on the number of efficient light bulbs that are installed in each home. We are also involved in two

[20] There are small differences between the utility and government-funded programs in terms of income eligibility and per-household funding caps for various measures.

MTC-funded pilots to install home-sized combined-heat-and power (microCHP) units as part of targeted projects to address distribution system constraints.

The LIHEAP intake process serves to integrate all available low-income energy programs. LIHEAP is the program most well-known to low-income consumers, serving 140,000 households annually. It is administered in their communities by local agencies they know and trust. Everyone who applies for LIHEAP is screened for income eligibility, and also referred to the other programs for which they are eligible: discount rates, efficiency, arrearage management.

However, not everyone eligible for the energy efficiency program can participate because funding is limited. Budgets are fully expended each year. At the current rate, it would take decades, or even longer than a century, to weatherize every eligible low-income home, upgrade its heating system, and address inefficient electric plug-loads. A large increase in funding would be easily absorbed by low-income need. Such an increase would not so easily be absorbed by the existing contractor infrastructure within a short period of time, however, which is operating at or near capacity in most parts of the state. A good model for addressing this constraint is pending in the current KeySpan case, D.P.U. 07-104 – roughly, a 20% increase per year to double the budget in five years. This will allow time to recruit, train, and monitor the needed expansion of the contractor and auditor infrastructure without compromising quality. Developing the systems for recruiting, training, and monitoring this infrastructure is a chief priority for the Best Practices initiative.

VII. CONCLUSION

The Network/MEDA again thanks the Department for opening this important docket, and urges the Department to closely consider the recommendations to substantially increase the value of the discount rate as well as enhance the current termination and payment plan rules. The

Network/MEDA also stands ready to work with the Department and the companies to design Tier 1 and Tier 2 AMPs along the lines discussed in these comments.

Respectfully submitted by counsel for the Network/MEDA,

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RESPONSES TO THE DEPARTMENT'S QUESTIONS

Arrearage Management Program Questions

Q1. Should companies offer two tiers of arrearage management programs?[21]
Q2. If companies offer some sort of basic AMP, how should it be designed?
Q3. If companies offer some sort of advanced AMP, how should it be designed?

In answering these three closely-related questions about AMPs, the Network/MEDA assumes that the Department will increase the percentage value of the discount rates to a sufficient degree so that utility service becomes far more affordable for most low-income customers. If discounts are not substantially increased, a large-scale, Tier1-type program could result in many customers quickly defaulting after initial enrollment. But assuming that discounts are increased, the Network/MEDA supports the concept of a two-tier AMP and proposes a basic, Tier 1 AMP that incorporates the following elements:

· **Screening**:

- Customer must be in arrears for over 60 days.

- Company may require that arrears be over a specified threshold amount (e.g., $300), and thresholds may vary based on whether account is heating or non-heating.

- Customer must be an active customer, or, if terminated, must first arrange to have account restored.

- Customer's payment history will be reviewed under agreed-upon parameters to determine if customer is candidate for Tier 1 or Tier 2.

- Customer already on, or will be placed on, discount rate.

· **Enrollment**:

- Automatic enrollment by utility for customers who meet screening criteria, with opt-out provision for customers who choose not to participate; or

[21] Some of the questions have been abridged from their original version in the OOI.

- Automatic identification of eligible customer by utility, with utility notifying the customer of the right to opt in.

- Customer referred for weatherization and energy efficiency services screening.

- Customer offered limited budget counseling and energy usage education, to extent available.

· **Payment Plan Parameters:**

- LIHEAP and other committed or expected benefits (e..g., FEMA, United Way, Catholic Charities, etc.) taken into account before calculating levelized monthly customer payment under AMP.

- Utilities set affordable, levelized monthly payment with customer.

- Amount of annual arrearage forgiveness determined.

- Arrearage credits applied monthly.

Default

- If customer misses specified number of payments, customer defaulted and referred to Tier 2.

While the Network/MEDA supports the concept of a two-tiered AMP if the value of the discount is increased, several key questions would need to be answered, foremost of which are: What, if any, "support services" (see OOI, App. A, Question #1) should the companies offer, and how would they be delivered to customers? Similarly, what services would the Network/MEDA be able to offer in a Tier 2 program that would increase the likelihood that Tier 2 customers would in fact succeed, rather than default? What source of funding could pay for these services? How will the decision be made to direct a particular customer to Tier 1, Tier 2, or maybe no tier at all?

The Massachusetts LASER pilot[22] suggests that a case management approach can succeed in reducing the arrearages of payment-troubled customers, but providing the necessary casework services takes substantial time and effort. Even with that effort, many customers will not be able to

[22] See page 6, above, for a brief discussion of the LASER program.

make the payments called for in an AMP, unless bills become much more affordable by significantly increasing the low-income discount. Once the discount provides sufficient resources to enable customers to pay their utility bills, the basic AMP should allow many customers in arrears to comply with the AMP requirements. For customers for whom Tier 1 still is not a good fit, a Tier 2 AMP can provide additional services that may help a significant percentage of even those customers to succeed. However, the Network/MEDA cannot, at the present time, specify the nature of those services nor identify a funding source that can cover the cost of providing those services. By definition, customers in Tier 2 will have more significant problems in making payments than those in Tier 1. To the extent that the Department wishes to proceed with a two-tiered approach, a goal that the Network/MEDA supports, the utility companies and the Network/MEDA will have to engage in additional discussions and negotiations to answer the key questions noted above. The Department may wish to direct the parties to enter such discussions and report back by a date certain.

Q4: Should the eligibility threshold for participating in AMPs be increased?

Consistent with our proposal to raise the income eligibility level for the utility discounts from the current 200% of FPL to 60% of state median income, eligibility for the AMP should be raised to the same level. There is reason to believe that higher-income customers (those closer to 60% of median than, e.g., 100% of the poverty level) will be more successful than those with have lower-incomes, especially if the eligibility for discount rates is expanded.[23]

Q5: What terms and conditions should the AMPs offer consumers in order to maximize success?

[23] However, analysis of preliminary data from the AMPs does not reveal a strong correlation between income and successful completion of the AMP.

Of the terms noted above in the answer to Q1/Q2/Q3, we stress the importance of the following:

- For most customers, no initial, up-front payment required.
- Full amount of arrearage forgiven, if customer complies with the AMP payment plan.
- Companies may vary the length of the repayment period, depending on the customer's circumstances.
- Credits should be applied monthly, to provide customer frequent, positive reinforcement.
- LIHEAP and other known or expected payments to be deducted from the estimate of the next year's prospective bill before levelized monthly payment is calculated.
- Default and re-enrollment rules should be flexible enough so that customers can miss a few payments without defaulting and can re-enroll, especially when default results from unexpected circumstances such as loss of job, illness, or major medical bills.

The Network/MEDA believes that these terms and conditions should be standardized across all utilities, as much as possible. The AMP Best Practices collaborative, which includes the companies and the Network/MEDA, will continue to work on other design elements based on experience with the AMPs currently in place. If the collaborative is able to come to consensus on all or some elements it believes should be standardized, a proposal to that effect will be submitted to the Department at a later date reflecting such consensus.

Q6: What role should financial counseling play in arrearage management programs? Should such counseling be provided by the electric and gas companies, by the CAP agencies, or both?

As noted in the answer to Q1/Q2/Q3, this is one of the most critical yet most difficult questions to answer. One underlying assumption of a Tier 1 program is that large numbers of customers who are in arrears can be more-or-less automatically enrolled, based on certain screening criteria, and expected to succeed without significant financial counseling or other case management services, especially if the low-income discounts are increased to the level that bills become affordable for many more households.

It is reasonable to expect that tens of thousands of customers might be enrolled statewide under a Tier 1 design. It is not reasonable to expect that any party, whether company or CAP, can provide significant counseling or case management to such a large volume of customers. The

Network/MEDA does not propose that Tier 1 customers must be provided counseling or other services, although it is of course desirable that those services be offered to the extent possible.[24]

Tier 2 customers, by contrast, will likely need some level of financial counseling or case management if they are to have a fair chance of succeeding in the program. These customers should be offered budget or financial counseling, most likely through the Network/MEDA. But as noted above, this raises questions as to the level of services that should be provided, and identifying a funding source to cover the cost of providing services. The experience to date with both the LASER program and the AMPs is that providing those services is time-consuming and costly. Presently, the Network/MEDA is not able to offer services of that nature to thousands of households, and further discussions with the utilities would be needed to determine how such services could be offered.

Q7: Do electric and gas companies currently have the proper financial incentives to both minimize arrearages and minimize customer service terminations?

Q8: Should the Department establish performance standards, with associated penalties and/or rewards, to encourage greater success with AMPs?

[24] For example, many Tier 1 customers will also be LIHEAP clients, and, in some instances, they might get a limited amount of financial counseling services as part of the LIHEAP process. The Network/MEDA also may be able to refer some Tier 1 clients to other agencies that provide counseling services. However, it is important to note that the Network/MEDA does not provide these services to all 140,000 LIHEAP households.

The Network/MEDA prefers to first review the responses of the companies to question 7 and to perhaps respond during the hearings to this question, since the companies have a better understanding of the existing financial incentives regarding arrearages and terminations. In response to question 8, the Network/MEDA has found the companies to be extremely cooperative in designing, implementing, and evaluating the current pilot AMPs. We therefore see no reason to establish performance standards regarding AMPs. Given that the AMPs are still very new and operating in a pilot phase, it could be counter-productive to set up a reward-penalty system at this time. The Network/MEDA believes that Massachusetts utilities have made very good progress so far with their AMPs and that continued success is more likely to occur if the Department remains somewhat flexible in its approach.

Low-Income Discount Rate Questions

Q9. Should the eligibility threshold for the electric and gas low-income discount rates be increased? If so, what should the threshold be? Does existing statute give the Department and the companies sufficient flexibility to increase the electric low-income eligibility threshold?

The eligibility threshold for the electric and gas low-income discounts rates should be increased to up to 60% of the state median income. For a discussion of the Department's legal authority to increase the income-eligibility level for the electric discounts, please see the discussion above, pp. 10 - 12.

Q10: Should the amount of discount provided to low-income electric and gas consumers be increased? If so, to what level? Should the discounts offer relief from a portion of the commodity cost as well as the delivery cost? If so, how?

Yes, the amount of discount provided to low-income households should be increased, especially in light of the significant erosion in the value of the discounts since electric industry restructuring began in early 1998 and the significant increases in natural gas commodity costs. The

Network/MEDA proposes that the utility discounts be tiered to ensure that the poorest households receive the largest discounts off their utility bills, with those households earning up to 100% of the federal poverty level ("FPL") having no greater than 1.5 times the energy burden for gas or electricity than households at the median income level.

Specifically, the Network/MEDA propose the following (subject to keeping the added cost to the average non-low-income residential customer around $1.00 per month):

- For households with incomes up to 150% of the FPL, 65% discount off total bills, including commodity portion of the bills.
- For households with incomes between 150% and 200% of the FPL, 40% discount.
- For households with incomes between 200% of the FPL and 60% of median income, 25% discount.

These tiers are consistent with those used to verify income in the LIHEAP program, in order to minimize administrative burdens. Utilities will know which discount tier a customer falls into, simply by knowing how much the customer receives in LIHEAP benefits. If a customer's income tier cannot be readily determined, that customer would default to the lowest discount (25%).

The Network also recommends that customers placed on the low-income discount rate also be placed on levelized payment plans.

Q11. What can be done to increase the enrollment of consumers onto the low-income discount rate? If the eligibility threshold for the low-income discount rate is increased, what should be done to enroll the additional consumers?

The Network/MEDA suggests that the most likely route to increased enrollment is to expand the number of government assistance programs that match their client caseloads with utility company customer databases, along the lines currently down by the utilities and the Department of Transitional Assistance ("DTA"). DTA computer matching has added approximately 90,000 households to the discount rate program. DHCD is currently in the initial phases of implementing a computer match as well. To the extent needed, the Department should make sure that the utilities

cooperate with DHCD as it moves forward. The Network/MEDA also respectfully suggests that the Department should work with the Executive Office of Health and Human Services to identify other agencies that may have client databases that could be productively matched with utility company databases.

The Network/MEDA also proposes that the utility companies review accounts held by payment-troubled customers and send letters to any such customers who are not yet on the discount rates — explaining the discount program, outlining eligibility criteria, and including an application. Discount rate applications should also be available over the internet and should be freely provided by the companies to any customer, advocate or other person who requests a blank application. Moreover, each company should provide a fax number where completed forms can be sent, to minimize processing time.

Q12. Should consumers that are identified as eligible for the discount rate be offered the discount retroactively? If so, for how long a period? Should this practice be applied only in those instances where a customer is in arrears?

The Network/MEDA proposes the following types of retroactive application of the discount rates:

- For customers who enroll on the discount rates by applying for fuel assistance[25], the discount rate should be applied retroactively back to November 1 of that fuel assistance year, regardless of when during the application period (generally, November 1 to April 30) the customer applies.
- For customers who get on the discount rates by submitting an application on their own, the rate should be effective no later than the date the application is received by the company, not (as is present practice for some companies) the date by which the company finally verifies that the customer is eligible.
- If, at time of initial application and/or initial automatic enrollment on the discount rates, the customer demonstrates that he or she has been income-eligible for the rate for an extended period of time, the customer should be placed on the rate retroactively, for the period during which the customer was income-eligible, or twelve months, whichever period is shorter.
- The Network/MEDA has an informal and voluntary arrangement under which the companies are willing to place certain customers on the discount rates retroactively,

[25] Fuel assistance (LIHEAP) agencies routinely notify the client's electric and/or gas company that the household is LIHEAP eligible and, therefore, eligible for the discount rates as well.

generally going back as far as one year, if an advocate documents how long the particular customer has been income-eligible. This has been very helpful to individual customers. The Network/MEDA is grateful to the companies for their willingness to do so, and sees no need for any action or intervention by the Department.

- The Department should ensure that customers are kept on the discount rate long enough to again qualify in the following LIHEAP year, i.e., for 18 months, so there is no disruption where an eligible customer must pay the full residential rate.

Service Terminations Questions

Q13. Are there additional actions that can be taken to reduce electric and gas utility service terminations? If so, what are those actions?
Q14: Does the Department need to clarify or expand our current regulations, or to take steps to better enforce our current regulations?
Q15: Should the Department promulgate regulations that address the rights of consumers whose electricity or gas service has been terminated?

(Note that the Network/MEDA offered comments above, pages 13 - 17, that address these questions, at least in part.) The Department could take additional steps to reduce the number of people who get terminated, and who are unable to get that service restored, by clarifying existing regulations or adopting new regulations, particularly regarding these circumstances: (i) customers seeking service at a new address but who owe money from a prior service address; (ii) customers seeking payment plans to avert a threatened termination or to restore terminated service; and (iii) customers seeking to have service restored based on assertion of protected status.

"Cromwell waivers": The most common barrier for low-income customers seeking service at a new address is owing money from a prior service address. Under the Department's decision in *Cromwell v. Boston Gas Co.*, DPU 18123 (1974), it is clear that a company cannot terminate service at a current address for money owed at a prior service address. *Id.*, at 3. Therefore, companies are unwilling to provide service at a new address if the customer owes money for prior service, unless the customer pays the prior bill in full, or the customer signs a so-called "Cromwell waiver" and at the same time agrees to pay the prior amount due under a payment plan. The "Cromwell waiver" simply waives the customer's rights under the Cromwell decision and thus allows the company to

add the bill from the prior address onto the new account, and to terminate service at the new address if the customer does not comply with the payment plan on the old amount due.

At first blush, Cromwell waivers appear an elegant solution to the problems faced by customers seeking new service who owe money from a prior address: the company protects its interests by being able to add the old bill to the new account, and the customer protects his or her interest by being able to negotiate a payment plan on the old balance and getting service at the new address.

The problem, however, is that there are no rules regarding how much the company can seek when it establishes the payment plan with the customer. Nothing prohibits the company from seeking 75%, 90% or even 100% of the prior bill as an up-front payment to get service at the new address, short of the customer initiating a complaint with the Department's Consumer Division. The Network/MEDA respectfully suggests that the Department adopt regulations that require companies to offer Cromwell waivers[26] and, upon the signing of a waiver, to offer the customer a reasonable payment plan. The contours of what constitutes "reasonable" are discussed immediately below.

Payment plans: The Department's rules require companies to offer "payment plans . . . to all customers for payment of accumulated arrearages," and for those plans to "extend over a minimum of four months." 220 CMR 25.01(2) & 25.02(6). These regulations need to be strengthened in two dimensions.

First, the Department must clarify that these regulations provide a minimum floor on the length of a payment plan and do not in any way suggest a ceiling. The Department should revise its

[26] In the experience of the Network/MEDA, managers at every utility company are aware of Cromwell waivers. But in practice, low-income advocates sometimes encounter customer service representatives who profess having never heard of these waivers. To address this problem, the Department should require companies, by regulation, to offer Cromwell waivers.

regulations to make it clear that the goal in setting any payment plan is to specify an amount that the customer can afford, considering such factors as to the size of the overdue bill; the customer's financial circumstances; the use to which the utility service is put (i.e., heating v. other); any hardships in the household; and other relevant circumstances. The regulations should make it clear that payment plans longer than four months are entirely appropriate.

A useful model for the Department to consider is the Iowa payment plan regulation, Iowa Admin. Code r. 199-19.4(10) ("Rule 19.4(10)"). At the outset, the rule requires companies to consider "current household income, ability to pay, payment history . . ., the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household" when establishing payment plans. Rule 19.4(10) b. The rule also provides that if customer has been terminated less than 120 days, the customer should be offered "the option of spreading payments evenly over at least 12 months." If the customer has been disconnected more than 120 days, the customer should be offered "the option of spreading payments evenly over at least 6 months." Rule 19.4(10) c. (1). Moreover, the regulations recognize that customers too readily agree to payment terms they cannot afford and then breach the payment plan. Therefore, the regulations further provide that "if the customer has made at least two consecutive full payments under the first payment agreement," but otherwise has breached that agreement, "the utility shall offer a second payment agreement . . . for the same term as or longer than the term of the first payment agreement." Rule 19.4(10) c. (2). This regulation thus provides great detail about the circumstances that must be considered in setting payment plans. It also specifically requires payment plans to be offered to those who have been terminated, even for extended periods of time. Lastly, it acknowledges that payment plans may need to be of long duration. The Network/MEDA supports all of these elements being included in revised Massachusetts payment plan regulations: detail about the terms of payment plans; clearly conferring

those same payment plan rights on those whose service has been terminated; and requiring companies to consider payment plans much longer than four months. In addition, customers seeking payment plans, even if service has already been terminated, should generally not be required to pay more than 10% to 25% of the overdue bill to get service restored.

Second, a revised payment plan regulation must more clearly define the customer's rights in "Cromwell waiver" situations. Companies should not be allowed to routinely seek 75% or more of the overdue bill as a condition of providing service at the new address, as this is more than the company may need to protect its interest as well as a near-insurmountable hurdle for many customers.[27] The Network/MEDA does not have a very specific proposal to make at the present time, but believes that customers in Cromwell situations should generally not be required to pay more than 10% to 25% of the bill to get service at a new address. In all Cromwell cases, the companies should be required to consider the same list of factors noted above for making any payment plan.

Protected accounts/restoring service: (Please see comments, pp. 14 - 15, above). The Department should clearly rule that customers whose service has been terminated but who have protected status can get their service restored. The Department's regulations require no less, 220 CMR 25.03(1) ("No company may shut off **or refuse to restore** utility service . . ."). But in order to give these words practical effect in areas that are now murky, the Department should rule as follows:

· Customers whose service has been terminated can have service restored by documenting the protected status (i.e., serious illness, infant) and demonstrating financial hardship, at any time within four months after the termination.

[27] For example, if the customer owes $1000 and the customer is required to pay 75%, or $750, up front, this acts as prepayment for several months of service (8 months or so of service in the case of a typical electric account), more than sufficient time for the company to determine if the customer will in fact keep up with the payment plan and terminate the account again if the customer breaches the plan.

· Customers whose service was terminated more than four months previously may petition the Consumer Division for an order to restore service, for good cause shown.

· To avoid any confusion regarding the winter moratorium protection, the Department should rule that for a customer whose service was terminated during the winter moratorium[28] and had a financial hardship at the time of the termination, service will be restored upon proof of financial hardship.

· Customers who have protected accounts should not lose the protection merely as a result of moving. Thus, if a customer has serious illness, infant, or winter moratorium protection at address A, the customer should be allowed to move to address B and have service turned on at that new address, even if money is owed at address A.

[28] Winter terminations are relatively rare, as at least some of the companies generally forbear from any residential terminations, low-income or not, when the weather is cold.

Compliance/enforcement: The Network/MEDA generally finds that company managers desire to comply with the Department's regulations and respond when problem cases are brought to their attention, with relatively few exceptions. However, there appear to be instances where the front-line CSRs may not be properly trained or, for various reasons, do not follow the training that they may have been given. The Network/MEDA can only offer two very general suggestions that may enhance compliance. First, the Department, especially its Consumer Division, should always be alert for any pattern of complaints that are made against any particular company, and should respond promptly whenever it appears that a particular company has a cluster of similar complaints filed against it (whether formal complaints, or simply questions being raised by customers). Second, the Department should consider posting on its web site summary tables of complaints by category and company, which might aid in enforcement by allowing members of the public to review this information.[29]

The Network/MEDA is concerned that use out-of-state call centers perhaps increases the difficulty in maintaining a well-trained staff that fully understands and is compliant with the Massachusetts-specific rules, and urges the Department to be alert to any problems that may arise in connection with the use of out-of-state call centers.

While not strictly a compliance issue, making sure that all eligible customers are on the discount rate tends to reduce arrearages, terminations and related problems. Therefore, the Network/MEDA again suggests that companies routinely screen the accounts of payment-troubled customers to determine if they are on the discount rates and to send out application information to

[29] See "Company Complaint Data" on the Washington Utilities and Transportation Commission's web site for a model of how this data can be presented, available at: http://www.wutc.wa.gov/consumer/stats.

those customers. While many will not be income-eligible for the discounts, others will, and there is little downside in spreading the word as broadly as possible about discount rates.

Finally, the Network/MEDA notes the valuable and important role that the Consumer Division plays in day-to-day enforcement of Department rules and compliance with the intent underlying those rules. While the Consumer Division must balance the interests of both consumers and the companies, the companies are generally well aware of their rights and the consumers generally are not. Thus, the Consumer Division has historically played, and must continue to play, a critical role in making sure the rights of consumers are fully respected. This is particularly true when low-income customers call upon the Division for assistance in negotiating reasonable and affordable payment plans.

Q16: Should customers that have had their service terminated be allowed to participate in arrearage management programs?

Yes. By definition, customers who would benefit from AMPs have trouble paying their bills, and may of them will fall far enough behind to be terminated. One purpose of AMPs, in conjunction with increasing the value of the low-income discount rates, is to make it easier for customers to keep up with their bills. For more detail in response to this question, see the answers to questions Q1 - Q3 and Q5, above.

Q17: Are the companies properly using collection agencies to collect arrears?

The Network/MEDA has very limited experience dealing with the collection agencies that utility companies use, and therefore raises only this point: once the companies send an account to collection, it becomes virtually impossible to assert any protections, negotiate a payment arrangement, or have any type of meaningful communication. In one instance, the customer's front-line advocate had identified funding sources that could pay approximately $1,000 on the account in collections, which was a very sizeable fraction of that account. The collection agency refused to

negotiate. The front-line advocate contacted a more experienced utility advocate, who called the company directly and asked the company to take the account back in house, which the company readily agreed to do given the amount of money that was available to be paid on the account.

This case illustrates the problems that arise when companies send accounts out for collection. Payments that appear to be in the company's interest to accept, especially from low-income customers who simply cannot afford the full amount due, are not accepted by the collection agency. In a sense, the policies that underlie arrearage management programs — making the payments more affordable so that the customer will not be disconnected and the company might actually collect more than it otherwise would — are somewhat at war with the principles that drive collection agencies.

The Network/MEDA simply is not familiar enough with the types of arrangements companies make with their collection agencies to offer specific suggestions. However, the Network/MEDA appreciates that the Department has flagged this topic and hopes that the Department will explore it more fully during the hearings.

Q18: Should the Department adopt policies to address problems arising between landlords and tenants, where tenants are at risk of losing electricity or gas service if the landlord is in arrears?

The Department already has regulations regarding circumstances where the property owner's failure to pay utility bills can lead to lose of tenants' utility service, 220 CMR § 25.04. However, with the rising tide of foreclosures, many tenants live in buildings where the owner has abandoned the property and tenants have no where to turn, or where the current "owner" (holder of the foreclosed mortgage) is a foreign corporation who does not respond to complaints that the utilities are about to be terminated.

The Network/MEDA offers a few suggestions to address the increasing problem of terminated landlord accounts. First, the Consumer Division must be very proactive in responding to

these situations and use all available tools under § 25.04. In many of these cases, a large number of tenants are at risk of losing their utility service through no fault of their own, yet the tenants may have no idea of their rights under the Department's regulations and under relevant housing laws. The Department may wish to instruct the Consumer Division that any cases which come to its attention and involve a threatened or actual foreclosure should be given highest priority. Second, the Department should consider amending 25.04(7) to explicitly state that the Department, in its discretion, may order that service not be terminated for a specified period when circumstances so merit, rather than just cross-reference 25.02(5). Foreclosure cases often involve not only non-payment of utility bills but also a range of code violations and other problems. Yet it can often to be difficult to determine who is the current owner of the property and to take legal action against that party. Therefore, it is critical that the Department be prepared to protect utility service during this interim period, and to make sure both the Consumer Division and the public at large are familiar with the rights of tenants under 220 CMR § 25.04.

Q19: Should electric and gas companies be required to include sufficient information in their staff training manuals with regard to customer communications and treatment regarding service terminations, to ensure that consumers are treated properly and consistently?

The Network/MEDA assumes that training manuals cover these points, but to the extent this is not the case, they should be required to do so, as the Department's question suggests. The Department's staff should review company training manuals whenever there are complaints suggesting that company employees are not being courteous and consistent in dealing with customers. However, the Network/MEDA suspects that when there are problems of this nature, the underlying causes may lie less in the content and adequacy of training manuals, as in issues involving corporate culture and the oral communications that occur both within and outside of formal training sessions. In any company, there are individual CSRs, as well as higher level managers, who fully understand that the vast majority of low-income people who are not paying

their bills cannot pay their bills. In any company, there are also individual CSRs and perhaps managers who think that low-income customers try to "game the system" or simply mis-manage their finances, and who, as a result, may treat customers with less courtesy than they should. In any particular company, the overall balance may tip somewhat one way or the other, but changing that balance may have less to do with the content of training manuals than the quality, skills and attention of the managers and executives who are responsible for creating a corporate culture where all customers are treated courteously and as consistently as possible. The remedy to any problems in this area lies more in vigilant oversight by the Department and a willingness of the Department to engage in frank discussions with managers and executives than in revising training manuals.

Having voiced those caveats, the Network/MEDA does believe that the Department should be willing to closely review company training materials when complaints arise, and to provide access to those materials to the advocates who voiced the complaints or concerns that gave rise to the Department's own review.

Energy Efficiency Questions

Q20. Should the eligibility threshold for the electric and gas low-income energy efficiency programs be increased? If so, what should them threshold be?

At the present time, the Network/MEDA recommends maintaining the eligibility for efficiency programs at 60% of Massachusetts median income. We propose an increase in income-eligibility for low-income discount rates to the 60% standard, which will then match the energy efficiency threshold. If funding for energy efficiency programs and for LIHEAP were to increase dramatically, the Network/MEDA believes that a further increase to 80% of median should be considered. This will bring the efficiency eligibility standard in line with that of Department of Housing and Urban Development (HUD) programs, with which efficiency programs are sometimes

coordinated. However, at the present there is simply not adequate funding to justify an increase beyond 60% of median.

Q21: What can be done to increase enrollment of consumers in the low-income efficiency programs? What can be done to identify and enroll the gap customers?

Overall enrollment in the efficiency programs is constrained more by funding than by outreach limitations. With rare exception, budgets are fully expended every year. Thus the main tool that will increase enrollment is increased funding. Reaching the "gap" consumers, *i.e.*, those with incomes higher than the LIHEAP threshold of 200% of FPL is now accomplished via the Energy Bucks campaign, a joint outreach effort of the utilities and the Network/MEDA, and referrals from the LIHEAP process of those who are over the LIHEAP income threshold.

Q22: Are there opportunities to better integrate the electric and gas efficiency programs, [and to better integrate these programs] with the weatherization programs?

Energy efficiency and weatherization programs are fully integrated, as are gas and electric programs. Please see Energy Efficiency comments, pp. 17 - 20, *supra*.

Q23: Are there opportunities to modify or improve the roles played by the CAP agencies in designing and implementing the low-income energy efficiency programs?

The low-income programs have been extremely successful at delivering high quality, cost-effective energy efficiency. Design and implementation are accomplished through a collaborative approach with the utilities and administrators, including through a Best Practices process. (Please see Energy Efficiency comments, pp. 17 -20, *supra*.)

Q24: Are there opportunities to expand the energy efficiency measures and services currently offered by the low-income efficiency programs?

As noted in section VI of these comments, at current funding levels it would require many decades to address the need for energy efficiency improvements in existing low-income housing. To the extent there is additional funding, this would permit more rapid installation of needed efficiency measures. The Best Practices process reviews possible additional measures and services,

e.g., densepack insulation. In addition, the Network/MEDA, with the support of the MTC, conducted its own review of possible additional services and measures and has identified a number of cost-effective measures that could be included if funding permitted, including roof and other repairs to make air sealing possible, micro combined heat and power units, and solar hot water systems.

Q25: Are there opportunities to offer demand response programs through low-income efficiency programs, as a way of further reducing those consumers' energy bills?

Demand response opportunities in low-income homes are primarily from efficiencies in air conditioning (limited to units that operate at peak times) and lighting. These are being addressed in the way described in section VI, pp. 17 - 20, *supra*.

Program Integration and Tracking Questions

Q26: Should eligibility requirements be consistent across all low-income protection measures - AMPs, discount rates, energy efficiency programs, to assist with enrollment and maximize benefits?

The Network/MEDA would like the answer to be "yes" for administrative simplicity, but it may not always be practical in some instances due to federal regulation and inadequate funding. However, we do think that the Department can and should move forward at the present time in increasing the income-eligibility limit for discount rates and AMPs to 60% of median income. However, the LIHEAP threshold of 200% of the FPL is set by DHCD and is unlikely to be changed in Massachusetts without considerable additional funding. But the Network/MEDA are not opposed to having a limit of 60% of median income for discount rates and AMPs, even if that is higher than the 200% FPL limit for LIHEAP.

Q27:. Should electric and gas companies develop cross-enrollment practices to ensure that low-income consumers enrolled in one program will be enrolled in all the others?

Program integration, including cross-enrollment, is now accomplished through the Fuel Assistance program. See Q. 22. Two elements that could be added are additional computer

matching with non-energy programs (see Q. 11) and referral for LIHEAP by utilities when they enroll discount customers other than through the LIHEAP application process.

Q28: Are there opportunities to better coordinate and improve the efficiency of the low-income protection measures, including the collection and tracking of customer data?

The Network/MEDA strongly encourages the Department to ensure that companies are regularly and completely filing their required monthly collection reports. These reports are the only publicly-accessible source for information about the numbers of customers in arrears and the extent of the arrearage problem, as well as other data that is extremely relevant to decisions DHCD makes about the design of the LIHEAP program, to decisions the legislature makes about LIHEAP funding and other energy programs affecting low-income households, and to numerous decisions the Department itself makes.[30]

In addition, the Network/MEDA also suggests that companies should be required to use identical Excel spreadsheet formats when filing their reports. This would allow for more automated compilation and analysis of the data that is now being submitted. The Network/MEDA itself conducts that type of compilation and analysis, but must do so manually. DHCD also has analyzed the monthly collection report data, in connection with the design of this year's LIHEAP plan. These parties, as well as any other party interested in analyzing the monthly reports, would be greatly assisted if those reports were filed using identical Excel spreadsheet formats. The

[30] Based on the Network/MEDA's review of monthly collection reports filed for January and/or February 2008, it appears that (i) NSTAR is not yet reporting on the number of low-income accounts that are unpaid 60 days or more past the billing date, and (ii) NGRID is not reporting on the number of low-income accounts that are unpaid 60 days or more past the billing date, nor on the number of disconnection notices sent to low-income households, nor on the number of terminations or restorations of low-income accounts.

Network/MEDA stands ready to work with the Department, the utilities, and DHCD to ensure that this goal can be reached.

Q29: Are there opportunities for development of company information technology systems to accommodate more automated identification of arrearages, AMP enrollment, discount rate enrollment, efficiency program enrollment, as well as other customer protection activities?

We look to the companies to address any current limitations in their IT systems and improvements that could be made to achieve the goals outlined in the question. We do think it useful, as noted above, for companies to target outreach and mailings to customers who are in arrears, making sure that they are aware of the discount rates, AMPs, and energy efficiency programs that are available. In addition, utilities should make efforts to help identify high-use and elderly customers who are also low-income, because these households receive a priority in the weatherization program.

Finally, the Network/MEDA supports a proposal that the Medical-Legal Partnership for Children (MLPC) intends to file in this docket. In brief, MLPC has developed a unified, standardized form on which a customer could write all of the required information to apply for the low-income discount rates or for any of the protections against termination (elderly, serious illness, infant, winter moratorium). MLPC also will propose that a customer who has a chronic illness of indefinite duration should not be required to renew the serious illness letter as frequently as every 90 days. The Network/MEDA believes that the concept of developing a standardized form is well worth exploring. From the perspective of low-income consumers and their advocates, a standardized form will make it easier to fill out the required paperwork, and may also make it more likely that the companies get all the information they need. The Network/MEDA encourages the Department to give MLPC's proposals serious consideration.

Cost Recovery and AMI Questions

Q30: Please discuss the recovery of costs associated with modifications to the low-income consumer protection mechanisms.

The Network/MEDA is not able to quantify the potential impacts on utility ratepayers from each of the consumer protection measures proposed above. Regarding any changes to the AMPs, the Network/MEDA supported full utility recovery of net program costs when those programs were first set up, and continues to do so. The AMPs do provide some offsets against program costs, through reductions in credit and collection activities, and, as preliminary data suggests, through customers paying more than they otherwise would have. However, there is not enough experience to quantify these benefits. Like AMPs, discount rates make bills more affordable, which should lead to reduced credit and collection costs and more regular payments from low-income customers. Moreover, the Network/MEDA proposes that any increase in the discount rates be capped so as to add no more than about $1.00 per month in cost for an average residential utility customer. The energy efficiency programs are clearly cost-effective in the long run, although they do require an up-front investment.

31. Does the use of an automated information system call for additional regulatory protections for low-income customers?

The Network/MEDA interprets the phrase "automated information system" as referring to the broad range of technologies now available, all of which have the common feature that usage information previously read from a meter by a utility employee can be remotely "read" and transmitted to the company either by vehicles that drive by customers' homes and remotely access the usage and other data, or by wire transmission ("power line carrier"). To the extent that automated information systems (also known as "smart meters" or "advanced meters") do nothing more than replace physical meter reads by company employees with remote meter reads by electronic means, the Network/MEDA see little risk that existing customer protections will be infringed. However, as the Department's recent decision in *Fitchburg Gas & Electric*, DPU 07-71

(2008) makes clear, advanced metering technology can additionally serve as a platform for a broad range of other functions, including:

> . . . (1) better estimating load shapes and peak load conditions of specific circuits; (2) on-demand meter reads; (3) remote "virtual" access (**e.g., for disconnections and reconnections**); (4) electric system monitoring . . . (5) remote configuration of demand meters and time-of-use meters; and (6) distribution automation.

Id. at 12 (emphasis added). The possibility that customers' service could be remotely disconnected poses very real threats to the current structure of notice requirements and termination protections embedded in existing statutes and regulations regarding utility service. For example, the Department's procedures for termination of service are premised on the assumption that a company employee will physically "enter[] . . . premises to shut off service" and require that the employee "state to an occupant that service is to be shut off." 220 CMR § 25.03(7). The same rule requires that notice be given of the various termination protections and states that termination must be "postponed for 72 hours" if the occupant claims any of the protections.

It is all too easy to see how the current scheme of protections could be seriously undermined if advanced metering technology allows for remote disconnections. Customers with serious illnesses, or with infants or seniors in the household, or with financial hardship during the winter months, could have their service terminated by a push of the button at the company's offices and without an employee being present at the customer's premises to inform the customer of his of her rights. As the Department itself noted in DPU 07-71, at 38 - 39, automated information systems "may facilitate more aggressive service termination policies . . . and could lead to a deterioration of consumer and low-income protections." The Network/MEDA expects that if companies have the capacity to terminate service remotely, the number of terminations will increase substantially and that a larger number of customers than at present will experience terminations without being aware of their rights.

The Network/MEDA believes that companies should not be allowed to terminate service remotely, as this will almost inevitably lead to a "deterioration of consumer and low-income protections." Therefore, the Network/MEDA therefore does not at this time propose specific protections that should be added or changed were the Department to allow for remote disconnections.