



# GETTING AND KEEPING UTILITY SERVICE: UTILITY CONSUMER RIGHTS

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**PUBLIC UTILITY LAW PROJECT  
OF NEW YORK**

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# PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.

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## **Presenter**

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# WHAT IS A “PUBLIC UTILITY”?

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- A public utility is a privately or publicly-owned entity that provides residential and/or business customers with vital public services such as electricity, gas, steam, telecommunications and water services.
- The public utility is usually a monopoly or near monopoly that uses the public rights of way such as streets, sidewalks to provide its public services.
- In return for the monopoly/near monopoly status, ability to use public rights of way, and power of eminent domain, public utilities are usually comprehensively regulated by a municipal entity, or a state acting directly or through a public utility or public service commission (“PUC” or “PSC”).

# SOME COMMON UTILITY ISSUES

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- High utility rates
- Shutoff notices and shutoffs
- Deferred Payment Agreements (DPAs)
- Serious Medical Condition
- Denial of Applications for Service
- Home Energy Assistance Program (HEAP) & Other Assistance Programs
- Public Service Commission (PSC) Hotline and Complaint Process
- Energy Service Companies (ESCO) issues

# CURRENT ADDITIONAL UTILITY ISSUES

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- Companies not following the moratorium on shutoffs
- Landlords requesting illegal shutoffs
- Customers whose service was terminated pre-pandemic

# TOPICS

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- Home Energy Fair Practices Act (HEFPA)
  - Art. 2 of the Public Service Law (PSL)
- Social Services Law sec. 131-s Assistance
- Home Energy Assistance Program (HEAP)
- Utility Low-Income Assistance Programs
- NYS PSC Hotline (800-342-3355)
- NY PSC Complaint Process (800-342-3377)
  - See also, 16 NYCRR 12.0 et seq.
- ESCOs & Current issues in NYS
- Current issues regarding COVID-19

# NYS' UNAFFORDABILITY CRISIS

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- NYS' electric and gas utilities issued 6.8 million shutoff notices between July of 2017 and July of 2018
- More than 1 million residential customers owed in excess of \$750 million in 60-days + arrears as of July 31, 2018
- Service was terminated as a bill collection measure to more than 200,000 customers statewide as of July 31, 2018
- (Note: a customer = 1 meter which = approx. 3 people)

# **HOME ENERGY FAIR PRACTICES ACT (HEFPA)**

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- ART. 2 OF THE PUBLIC SERVICE LAW (PSL)
- PSC REGS PART 11 (16 NYCRR 11 ET SEQ.)



# QUESTION:

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- If a customer can't pay their utility bill, what will happen?
  - The utility can take *no action* until your payment is at least 20 days past due.
  - The utility must issue a final termination notice at least 15 days before shut-off.
  - Therefore, the EARLIEST that a termination can occur is 35 days after the payment due date (20 days + 15 days).

# QUESTION:

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- When can the utility terminate electric or natural gas service?
  - Termination Allowed
    - Monday - Thursday
    - 8:00 AM to 4:00 PM
  - Termination Not Allowed
    - On any Friday or public holiday
    - On any day the utility's main office is closed;
    - During the 2-week period encompassing Xmas and New Year's Day

# QUESTION:

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- Are there special procedures for termination of utility service in the winter?
  - Yes. For the period November 1st through April 15th, the utility:
    - Can take *no action* until a payment is at least 20 days past due.
    - Must issue a final notice of termination at least 15 days before the shut-off.
    - Must try to contact an adult resident by telephone or in person at least 72 hours before the shut-off, to see if a medical emergency exists.
    - Must try to contact an adult resident by telephone or in person at the time of shut-off.

# QUESTION:

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- What are the protections from termination for people with medical problems?
  - If the customer or household member has a serious medical condition that will be aggravated by termination, service can be continued if:
  - The doctor calls the utility and advises them of the emergency condition. (Telephone certification is good for **5 days** – must be followed by a written certification.)

# ANSWER:

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- Note: “Life Saving Equipment” is a special case...
- A written certification is good for **30 days** and must contain:
  - doctor’s name, address and state registration number
  - name and address of utility customer
  - nature of serious illness or medical condition
  - statement that the illness or condition will be aggravated by termination of utility service with reasons supporting the conclusion.

# QUESTION:

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- What is a Deferred Payment Agreement (DPA) and how does it work?
  - A DPA is a written agreement to pay arrears for past utility service over time. Some of the requirements are:
    - must be in writing, signed by the customer and a utility representative;
    - a down payment may be required
    - must be tailored to customer's financial circumstances;
    - may be amended if customer's financial circumstances change.

# ***DEFERRED PAYMENT AGREEMENTS:***

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- A utility cannot:
  - terminate service;
  - deny an application for service due to arrears; or
  - refuse to reconnect
  - unless it has 1<sup>st</sup> offered a DPA
- Failure to offer the DPA is unlawful and grounds for a complaint to restore service

# GETTING & KEEPING SERVICE:

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- Public Utilities have a “duty to serve” arising in part from use of the public rights-of-way, from common law, and also from 100 years of litigation
  - See, e.g., *Perceval v. Public Service Commission*, 148 N.Y.S. 583 (1st Dept. 1914).
- *Therefore, the utility must provide service except for certain narrow exceptions, where it can require a writing or deposit, but must still provide service.*



# QUESTION:

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- When can a utility require a written application for service to a new account?
  - Service is terminated (or subject to termination) for non-payment of arrears.
  - Evidence of meter tampering or theft of service. Meter advanced with no customer of record.
  - Application made by a third person.

# QUESTION:

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- If an application is denied, what notice must the utility provide to the applicant?
  - Within 3 days of making the application, the utility must provide written notice including:
    - The reason for denial. The precise steps needed to qualify for service (such as agreeing to a DPA).
    - The applicant's right to request review by the PSC.

# QUESTION:

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- Can I be required to pay a security deposit to get utility service?
  - No, generally not unless you are a short-term or seasonal customer.

# QUESTION:

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- Can a customer who owes the utility money from an old closed account get service to a new account?
  - Yes, if you enter into a Deferred Payment Agreement (DPA) or pay in full
  - Utilities must offer a DPA before they can deny service to applicants with balances due from accounts previously closed.

# QUESTION:

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- Can current customers be asked for security deposits as a condition of continuing service?
  - Only if they are delinquent in paying bills.
- Customers are delinquent if:
  - They have 2 consecutive months of arrears and have not made a reasonable payment,
  - OR**
  - They had utility service terminated for nonpayment in the past 6 months.

# Assistance for Low-Income Consumers

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- Low-Income Home Energy Assistance Program (HEAP)
- Emergency HEAP
- Renter's HEAP
- Utility Funded Programs (e.g., "Energyshare")
- State Funded Programs (i.e., Low-Income Affordability Program; created in 2016 in Case 15-M-0565)
- Religious, 501c3, affinity programs

# SSL 131-S ASSISTANCE

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- The “One-Shot” utility assistance program when HEAP is not available to resolve an emergency; see also, 18 NYCRR 352.5
- Need not be eligible for ongoing Public Assistance
- Applicant must be “tenant” and “customer of record”;  
18 NYCRR 352.5(a)
- Persons under a Public assistance sanction are eligible  
(continued)

# SECTION 131-S ASSISTANCE

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- No repayment agreements required for recipients of Emergency Assistance for Adults (e.g., SSI eligible)
- Written repayment agreements are required for applicants with incomes above PA eligibility guidelines
- Under OTDA rule, customers who defaulted on a prior DSS repayment are not eligible for another grant until current on repayment schedule.



# Home Energy Assistance Program Questions

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*REGULATIONS ARE: 45 C.F.R. 96 ET SEQ.  
STATUTE IS: 42 U.S.C. § 8621-8630*

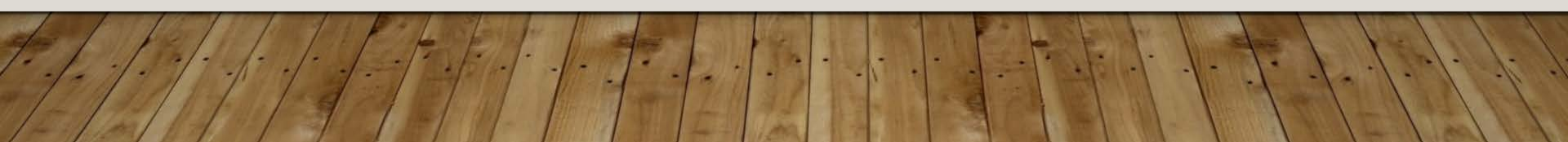
*NOTE: NYS GETS 10% OF ALL LIHEAP FUNDS; \$325 MILLION+*

# ANSWER:

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Who is eligible for HEAP?

A low-income household can receive help in meeting the costs of heating energy whether they own or rent their home and whether the heat is provided by natural gas or electricity by the utility or fuel (oil, propane, or kerosene) if sold by a separate vendor.

- The NYS HEAP eligibility guidelines require that;
  - You and your household members are United States Citizens or qualified aliens and
  - Your household's gross monthly income is at or below the current income guides for your household size as posted in the table below or
  - You receive Supplemental Nutrition Assistance Program (SNAP) benefits or
  - You receive Temporary Assistance or
  - You receive Code A Supplemental Security Income (SSI Living Alone)
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# QUESTION:

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- How is the payment amount determined?
  - Payments are made on a point system based on:
    - Income
    - Number of Vulnerable household members
    - Energy Burden

# QUESTION:

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- What are the income criteria?

The program looks at whether at least one household member receives public assistance, supplemental security income or food stamps

OR

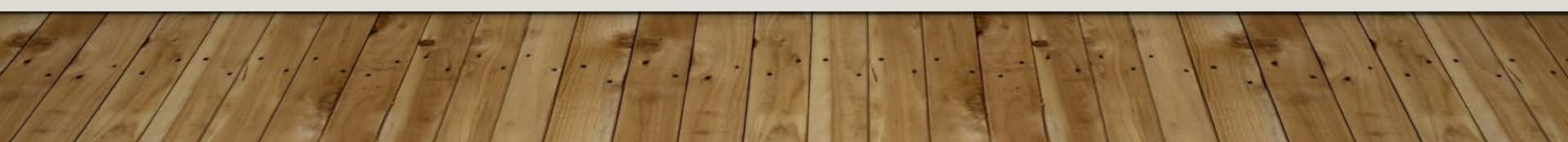
Whether the gross monthly household income is no more than the current income eligibility guidelines; roughly 135-185% of the federal poverty line.

# QUESTION:

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- What is a vulnerable household member?

A vulnerable household member is someone who is:

- Disabled (as defined by the criteria for food stamps)
  - Under the age of six
  - Frail or over age 60
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# QUESTION:

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- Is there more than one type of HEAP payment?
  - Yes.
- Regular HEAP payments are made based on household income and go directly to the provider of the energy (the utility or a fuel company).

# ANSWER:

Emergency HEAP payments *can* be issued after a regular HEAP payment is received, the customer faces termination of heat-related utility service or is without fuel and lacks resources to pay the bill.

EMERGENCY HEAP		
<b>Income Guidelines</b>		<b>Customer of Record</b>
The maximum eligibility guidelines are utilized. A household is categorically income eligible and placed in Tier I if at least one member of the HEAP household is in receipt of recurring FA, SN, SNAP, or Code A SSI.		Applicant must meet customer of record requirements.
<b>Resources</b>		<b>Residence</b>
All available liquid resources must be explored. Applicant households may not have available liquid resources in excess of \$2000 (or \$3000 if the household contains a member age 60 or older) for heat/heat-related emergencies. The <a href="#">HEAP Manual</a> contains a list of resource exemptions.		The applicant must currently reside in the dwelling for which assistance is requested and the residence must be the applicant's primary residence.
<b>Benefits</b>		
<b>Utility Emergencies (Heat or Heat-Related Only)</b>		<b>Non-Utility Heating Emergencies</b>
Each utility benefit insures a minimum of thirty (30) days of prospective service.		
<b>Category</b>	<b>Benefit</b>	<b>Oil, Kerosene, Propane: A one-time benefit of \$675 is authorized</b>
Heat-Related Domestic	\$140	<b>Wood, Pellets, Coal, Corn, Other: A one-time benefit of \$525 is authorized</b>
Natural Gas Heat Only	\$350	
Natural Gas Heat Combined with Heat-Related Domestic	\$490	<b>Propane Tank Installation and Deposit: Maximum of \$500 per program year</b>
Electric Heat	\$490	<b>Temporary Relocation: Maximum of \$500 per program year</b>

# QUESTION:

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- Are utility customers eligible for HEAP if heat is included in their rent?
  - A household which pays for heat indirectly as an undesignated portion of the rent or mortgage is eligible for a small regular HEAP benefit (“Renter’s HEAP”).



# QUESTION:

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- How does a customer qualify for and receive an emergency HEAP benefit?
  - To receive an emergency HEAP benefit, the household must meet regular HEAP eligibility AND
  - Be without heating fuel or have less than a 7 day supply OR
  - Have heat-related service terminated or scheduled for termination OR
  - Have customer-owned heating equipment in need of repair/replacement OR
  - Be in an emergency home heating situation AND
  - Alternative living/payment arrangements can not be made.

# WHY GET THE SMALL HEAP RENTER'S BENEFIT?

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- It provides categorical eligibility for low-income electric, gas, and telephone lifeline rates
- HEAP eligibility is broader than other programs that trigger reduced rates
- The benefits will far exceed the HEAP benefit

# UTILITY FUNDED LOW INCOME ASSISTANCE PROGRAMS

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- Reduced Rates for Low-Income Utility Customers
- Utility Arrears Management Programs
- NYSERDA/Utility Low Income Energy Efficiency Programs
- Utility Fuel Funds and Charities – “Heartshare”

# **NYS PSC COMPLAINT HANDLING PROCESS**

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PSC REGULATIONS PART 12

&

PSC QUICK RESPONSE SYSTEM

# PSC HOTLINE 1-800-342-3355

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- Open until 7:30 PM
- Is not the Complaint line
- Can direct the utility to continue or restore service within 24 hours “***whenever a reasonable question regarding the circumstances of a termination or refusal of service exists or whenever the health and safety of a person is involved.***”

# QUESTION:

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- How does a customer initiate a complaint against a PSC regulated telephone or electric/gas provider and obtain a decision?
  - First, complain to the utility. If the provider does not resolve the complaint, then...
  - Call the Public Service Commission Complaint Line – 800-342-3377
  - Or, file a complaint online at

[http://www3.dps.state.ny.us/ocs/itgate.nsf/  
\(webDPS\\_welcome\)?OpenForm](http://www3.dps.state.ny.us/ocs/itgate.nsf/(webDPS_welcome)?OpenForm)



# QUESTION:

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- What happens after a complaint against a utility is lodged with the PSC?
  - Under the Office of Consumer Services “QRS” system, most complaints are not investigated and are referred back to the utility with direction to review the customer complaint and respond to the customer.



# QUESTION:

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- How quickly must a utility respond once the PSC has referred the complaint back to them?
  - If the complaint is related to the provision of service
    - The utility should contact the customer within two business hours
  - If the complaint is related to billing or another matter
    - The utility should contact the customer by the close of the following business day



# QUESTION:

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- What happens if the utility does not respond or if the issue remains unresolved?
  - The customer must again contact the PSC a second time to have the complaint “escalated,” meaning that the agency staff will now be involved to further investigate the complaint and make its initial determination on the merits of the dispute.



# QUESTION:

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- What if the customer believes the initial decision by the Department of Public Service Office of Consumer Services Staff is wrong?
  - The customer can request an informal hearing. This request should be made within 15 days of the initial decision.
  - If the customer and the utility are unable to settle the complaint, the hearing officer will make a decision on the complaint and notify the customer in writing of the decision.
  - Instead of the hearing, an informal review is also an option.



# QUESTION:

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- What if the customer believes the hearing officer's or informal review officer's decision is wrong?
  - The hearing officer's decision can be appealed within 15 days of the decision to the Public Service Commission.
  - The appeal must be in writing and needs to show that there was an error made by the hearing officer that affected the decision or that evidence not previously available would affect the decision.
  - The Commission will make a decision on the appeal and notify the customer in writing of its decision.



# QUESTION:

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- What happens if the customer believes the Commission's decision is wrong and wants further review?
  - A customer can bring an Article 78 proceeding in state court within 4 months of the PSC's final decision on a complaint. The cases must be filed in Supreme Court, Albany County.
  - Note: One must file a petition for rehearing within 30 days first, to exhaust administrative remedies (unless a constitutional issue is involved)



# COVID-19 ISSUES

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- March 13, 2020
  - All energy and water utilities under control of the PSC should halt terminations
    - This does NOT include municipal utilities (although many have taken their own actions)
- ESCOs must cease door-to-door solicitations
- HEAP has been extended until June 30<sup>th</sup> (there is also a 3rd round of E-HEAP available)

# TROUBLESHOOTING

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- If a customer's power is shut off for *any* reason:
  - Contact PULP
  - File an emergency complaint with the PSC
- Landlords cannot terminate a tenant's power due to nonpayment of rent currently
- If a customer's power was terminated pre-moratorium and they cannot get it back on contact PULP

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