COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

DPU 24-15

COMMENTS OF THE NATIONAL CONSUMER LAW CENTER ON BEHALF OF ITS LOW-INCOME CLIENTS

I. INTRODUCTION

The Department initiated this docket 24-15 on January 4, 2024[1], opening an inquiry into energy burdens that customers face, with a focus on making essential energy more affordable for residential customers of the state's regulated electric and gas companies.[2] The Department received extensive comments from scores of parties after the January 4 Order was issued, and it held an Energy Burden Workshop on June 4, 2024.

On September 12, 2024, the Department issued an "Interlocutory Order on Next Steps in Investigation on Energy Affordability" ("September 12 Order") in which it identified "Areas of Consensus"[3] as well as "Decision Points."[4] The Department also listed approximately two dozen questions which it deemed worthy of further investigation and to which parties are invited to offer their comments, with a due date of November 1.

In the following sections, the National Consumer Law Center ("NCLC") describes its interest in the proceeding (section II); provides its answers to many of the questions posed by the Department (section III); and also raises additional issueS it respectfully suggests could be productively addressed in this docket (section IV).

---

[1] "Notice of Inquiry by the Department of Public Utilities on its own Motion into Energy Burden with a Focus on Energy Affordability for Residential Ratepayers", Jan. 4, 2024 ("January 4 Order").

[2] Roughly 10% of the state's utility customers are served by municipal utilities, which, in some cases, provide electric and gas service (e.g., Holyoke Gas and Electric Department) and, in others, just electric service (e.g., Hull Municipal Lighting Plant). *See* "Massachusetts Municipally Owned Lighting Plants," *available at:* https://www.mass.gov/info-details/massachusetts-municipally-owned-electric-companies. Customers of these municipal entities will largely not be affected by rulings in this docket. However, many of them no doubt struggle to pay their utility bills.

[3] September 12 Order, pp. 3-4.

[4] *Id.*, pp. 4-7. Those Decision Points were favoring tiered discount rates (TDRs) over percentage of income payment plans (PIPPs), and how to recover the cost of the revenue shortfall resulting from offering discount rates.

II. INTEREST OF THE NATIONAL CONSUMER LAW CENTER

NCLC is a 501(c)(3) non-profit which works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.

Regarding regulated electric and gas service, we strongly advocate for policies and protections to ensure uninterrupted, affordable access to essential utility service. We believe that involuntary disconnection of electric or gas service due to nonpayment should never be the preferred or default collections tool of utility companies. In formulating policies, regulators such as the Department should bear in mind the legacy of systemic discrimination and racism, which results in disproportionate numbers of Black and Hispanic households suffering involuntary disconnection of utility service.[5] We urge Massachusetts to adopt expanded, enforceable protections to maintain service for vulnerable populations, particularly in the face of increased extreme weather and weather-related disruptions.

NCLC is particularly interested in and appreciative of the Department's focus on energy affordability. Based on the reports routinely filed by the regulated companies in DPU 20-58[6], customer arrearages have been rising significantly, not only during the peak of the COVID pandemic, but even since the rates of illness and death have dropped dramatically, and as the economic disruptions of quarantines have become a thing of the past:

- ► As of July 2024, 114,000 low-income gas and electric customers were in arrears, **up 29% from March 2020.**
- ► As of July 2024, total arrears for low-income customers were $208 million, **up 75% from March 2020.**

---

[5] *See, e.g.,* DPU 23-150, "Direct Testimony of John Howat on behalf of the Massachusetts Energy Directors Association", Revised Exh. MEDA-1, p. 44 (March 29, 2024) ("…among the 20 zip codes [in the National Grid territory] with the highest disconnections ratio, 9 were among the top 20 zip codes with the highest non-white population percentages."). Mr. Howat has done analysis in some jurisdictions showing a stronger correlation between race and terminations, than income and terminations. *See, also,* Congressional Research Service, Electric Utility Disconnections (Jan. 31, 2023), p. 11 (For the period May, 2020 to May, 2021, 3.2% of white households experienced disconnection for non-payment, compared to 9.7% for Black households and 12.9% for Hispanic households), available at https://crsreports.congress.gov/product/pdf/R/R47417#:~:text=These%20researchers%20estimated%20that%20between,of%20respondents%20(Figure%204); Steve Cicala, *The incidence of extreme economic stress: Evidence from utility disconnections*, Journal of Public Economics 200 (2021), available at https://www.stevecicala.com/papers/disconnections/disconnections.pdf.

[6] Not all of the companies are current in filing their reports in DPU 20-58. Therefore, all numbers cited in this paragraph are based solely on the available reports.

► As of July 2024, the average amount owed by low-income customers in arrears was $1,055, **up 48% from March 2020.**

DPU 24-15 is thus both a timely and essential docket for the thousands of customers struggling to pay their bills and avoid termination of utility service. We applaud the Department for engaging in this inquiry.

III. ANSWERS TO THE DEPARTMENT'S QUESTIONS

B.1.[7] *What target level of total household energy burden below six percent should a TDR be designed to achieve to provide a benefit to the highest number of customers? How should the energy burden target be shared by gas versus electric costs? How should it be shared by heating versus non-heating costs?*

A. What should be the target burden percent?

As NCLC noted in a table submitted in its March 1, 2024 comments (p. 4) in this docket, existing energy burdens vary quite widely by income tier, even for those below the 60% of state median income cap for the Home Energy Assistance Program ("HEAP") and utility discount rates. We reproduce that table below:

Median Electric and Total Home Energy Burdens by State by Income Tier

State	Income Tier	Median Electric Burden	Median Total Burden	Number of Households
Massachusetts	0% - 75% FPL	18.3%	28.7%	205,545
	76% - 100% FPL	6.0%	9.6%	91,404
	101% - 150% FPL	3.2%	6.6%	138,172
	151% - 200% FPL	2.7%	5.3%	177,127
	201% - 300% FPL	2.3%	4.3%	307,231
	> 300% FPL	1.0%	1.8%	1,794,300
	Total	1.6%	2.8%	2,713,778

Source: NCLC computations using 2020 U.S. EIA Residential Energy Consumption Survey (RECS) microdata

[7] This numbering scheme follows the numbers used by the Department on pages 8 to 11 of the September 12 Order.

Since the median energy burden for households between 150% of the Federal Poverty Level ("FPL") and 200% of FPL is 5.3%, some of those households will have burdens below 6% and some above 6%. However, most households at or below 150% of FPL will generally have burdens above 6%, with those in the lowest income tier having a median energy burden of almost 30%. For NCLC, this clearly suggests that energy burden targets should vary somewhat with income a nd not be set at 6% for all lower-income households. While we do not propose specific, varying energy burden targets at the present, we provide two examples as to why varying burdens should be seriously considered.

First, we consider the circumstances of a family with income right at 150% of the federal poverty level. For a family of 3, their income is $39,000 (rounding up).[8] We will assume the family is able to find a 2-bedroom apartment for $2,500, challenging but not impossible, especially outside more expensive neighborhoods.[9] The family would spend $30,000 annually for rent. That leaves $9,000 for all other expenses, or about $175/week, which may be enough to cover a very minimal food budget, but not enough to cover much else. The household obviously cannot afford to pay 6% of income ($2,340) for energy, as that would leave only $125/week for food and everything else.

On the other hand, a family of 3 at 60% of median income would have roughly $79,000 available to cover necessary expenses. They should be able to find a two-bedroom apartment for $3,000 or less ($36,000 annually) in most neighborhoods of the state.[10] That would leave $43,000 for food, transportation, energy, and other essential expenses. Their actual energy bills are likely at or below 6% of income ($4,740).

We also note that lower income households, which have high energy burdens, also experience high "energy insecurity."[11] For those at or below 100% of FPL, 35% of households reported energy insecurity in "some months" or "almost every month." For those between 100%

[8] In June, the Executive Office of Housing and Livable Communities released the FY 25 income eligibility limits for HEAP. For a family of 3 at 150% of FPL, the limit is $38,730.

[9] *See, e.g.,* "Rent Advisor Massachusetts Rent Report", *available at: https://www.apartmentadvisor.com/rent-report/ma*

[10] See fn. 9.

[11] For purposes of our discussion, "energy insecurity" reflects households that report forgoing necessities such as food or medicine to pay energy bills, maintaining indoor temperatures at unhealthy levels, receiving disconnection notices, or actually experiencing disconnection.

and 150% of FPL, 24% reported this frequency of energy insecurity. Those between 150% and 200% of FPL reported a comparable level of energy insecurity, 23%. Those above 200% of FPL reported a much lower rate of energy insecurity, only 7%.[12]

This somewhat simplified analysis underlines our conclusion that a single energy burden should not apply to all households at or below 60% of median. However, we think more analysis and discussion including the Department and stakeholders is needed to decide on appropriate and varying energy burden targets.

B. How should that burden percent be allocated?

We think the approach that National Grid took in its recent rate case (DPU 23-150) is reasonable. There, the company used the relative expenditures of low-income customers on their gas and electric bills as a template and divided the target energy burden between gas and electricity.[13] NCLC is also open to other approaches parties may suggest. We note, however, that it is relatively easy for a combined utility such as National Grid to obtain the relevant gas and electric expenditures. We hope companies such as Liberty Gas or Berkshire Gas might address how they might be able to do so.

C. Sharing the burden between heating and non-heating costs

The challenge here is that approximately 30% of HEAP households heat with oil, propane or kerosene,[14] and there is no easy way to capture their heating expenditures, if those expenditures were to be used at all in setting energy burdens for households that heat with these delivered fuels. However, since heating with oil is more expensive than heating with gas, and since these households will almost always have an electric bill (occasionally, a small gas bill as well, for cooking, possibly even for water heating), the target electric bill energy burden for these households should somehow reflect their high heating costs.[15]

---

[12] We attach to these comments Appendix A, which describes the data sources NCLC used to calculate energy insecurity in Massachusetts, by income tier, and summarizes our key analytic findings. We attach as Appendix B the full data resulting from our analysis, in Excel format.

[13] "Customer Panel" testimony, Exh. NG-CP-1, p. 28, l. 14-22, DPU 23-150 (Nov. 16, 2023) ("After LIHEAP distributions are made, the low-income customer has spent 56 percent of their home energy bills on electricity and 44 percent on gas.")

[14] The "Weekly Update" for September 5, 2024 provided by the state's HEAP program shows that 31% of households served heated with a deliverable fuel.

[15] It is possible the Massachusetts Energy Marketers Association may be able to provide useful data on energy expenditures by households that heat with a deliverable fuel.

For customers who heat with gas or electricity, NCLC again thinks the approach taken by National Grid (see section B, above) is reasonable, but that the energy expenditure data used to develop the expenditure ratios should be refined and vary, depending on which fuel is used to heat. For instance, the ratio for a gas-heat household should be average expenditures on gas for gas-heat customers compared to non-heat electric expenditures, and the ratio for an electric heat customer should be average expenditures for electric heat customers and average gas expenditures for those who don't heat with gas.

B.2. *What are the advantages and disadvantages of using percentage of area median income ("AMI") versus percentages of state median income ("SMI") for determining eligibility and tiers?*

The advantage of using AMI is that AMI reflects the varying costs of living in various parts of the state, especially the higher housing costs in metropolitan areas such as Boston. Using AMI would make more households eligible for discounts in those high-cost AMIs.[16]

The disadvantage of using AMI is that it would be much harder to administer the discount rate program, especially any tiered discount rate program. The utilities rely quite heavily on HEAP and the Community Action Program ("CAP")[17] agencies to learn who is eligible for discount rates. Yet HEAP uses SMI, not AMI. Thus, it would be challenging to identify the additional households in, say, Boston who would be eligible under AMI, even though not eligible under SMI. Additionally, the larger utilities such as National Grid and Eversource no doubt serve some towns where AMI would be applicable, and others where SMI would be the proper income standard. Simply communicating the discount rate income limits to customers would become more challenging, as those income limits would now vary by city and town.

NCLC does not believe these challenges are necessarily insurmountable. However, we hope the utilities might address how they could implement an AMI income eligibility standard.

B.3. *How often should an established TDR structure be reviewed and amended to ensure alignment with changes in energy prices, inflation, usage trends, or other such items?*

---

[16] Wherever AMI would be lower than SMI, SMI should be used to determine income eligibility.

[17] Community Action Programs in Massachusetts tend to refer to themselves as such, or as CAPs, but the name and abbreviation "Community Action Agencies" and "CAAs" is also commonly used. NCLC use both interchangeably in these comments.

NCLC Senior Policy Analyst John Howat addressed this very question in his revised testimony filed in DPU 23-150, on behalf of the Massachusetts Energy Directors Association. There, he recommended that the tiered discounts be adjusted annually to address the very variables the Department notes here, asserting that annual adjustments are necessary "in order to achieve the goal of an average energy burden for electric bills that does not exceed" the company's target burden as rates change over time. Howat testimony, Revised MEDA Exh. 1, pp. 25-26 (Mar. 29, 2024). NCLC continues to recommend annual adjustments.

B.4. *Should the discount rate vary based on usage?*

We recommend that the percentage value of the discount should not vary based on usage, for three different reasons. First, usage varies significantly from season to season, reflecting, among other factors, heating loads in the winter and cooling use in the summer. It would be challenging to implement a consumption-based discount, and confusing for customers. Second, there are competing policy interests if consumption were to be considered. Arguably, discounts should be smaller for high-consumption customers to encourage investments in energy efficiency and encourage energy-saving behavior. But, leaning in the other direction, those with the highest usage may be tenants living in older housing in which the owner refuses to make energy efficiency investments, or may simply have large families who need to use more energy. These families are in fact the most in need of discounts. Third, if consumption was considered and those with higher consumption were provided a smaller percentage discount to discourage high use of electricity, this would perversely discourage electrification investments. NCLC thus does not recommend incorporating consumption when setting discounts.

B.5 *Should the discount rate vary based on receipt of other similar benefits?*

NCLC does not support varying the discount based on receipt of other similar benefits. The issue of whether HEAP should be considered in setting discount rates was directly addressed in National Grid's rate case, DPU 23-150. NCLC offered extensive testimony as to why this would not be good policy.[18] On brief, the company agreed that it was reasonable to exclude HEAP from the calculation, and the Department so ordered.[19]

[18] "Direct Testimony of John Howat on behalf of the Massachusetts Energy Directors Association", Revised Exh. MEDA-1, pp. 11-18 (March 29, 2024).

[19] DPU 23-150, pp. 579-580 (Sept. 30, 2024) ("National Grid acknowledges that the removal of estimated LIHEAP payments from the calculation of energy burden is reasonable . . .[W]e find that including the receipt of LIHEAP benefits in the calculation of the discount rate is inappropriate at this time and, therefore, we direct the Company to remove the LIHEAP assumption from its discount calculations.")

Low-income households are eligible for a broad range of programs that help them pay their energy bill and, more generally, other essential needs. In addition to HEAP, the Residential Assistance for Families in Transition (RAFT) program and the Good Neighbor Fund (as well as smaller, local charities) provide assistance directly for paying energy bills. However, other programs such as Emergency Assistance for the Elderly, Disabled and Children (EAEDC), Supplemental Security Income (SSI), Transitional Assistance for Families with Dependent Children (TAFDC), and Veterans' Assistance all provide cash assistance that can help households pay for their energy bills. It would border on the impossible for utilities to gather all of the relevant income information, especially because they are not in the business of verifying income, and challenging for the Department to determine exactly how receipt of such benefits would affect applicable discount rates.

B.6 *Should consumption tiers be integrated into the TDR design?*

NCLC does not support incorporating consumption tiers. (See answer to B.4, above).

C.1 *Whether and how should discount rate customers be excluded from having to pay for the shortfall (i.e. excluded from paying the RAAF)?*

Discount rate customers unquestionably should be excluded from paying for the cost of the revenue shortfall from the offering of discount rates. This is the incontrovertible mandate of G.L. c. 164, §1F(4), which provides, in relevant part:

> "The cost of such discounts shall be included in the rates charged *to all other customers* of a distribution company." (Emphasis added).

The plain meaning of the phrase "to all other customers" can only be customers <u>other</u> than the low-income customers who are eligible for the discount under Section 1F(4). A bedrock rule of statutory interpretation in Massachusetts is that courts shall "strive to effectuate the Legislature's intent by looking first to the statute's plain language." *Plymouth Retirement Board v. Contributory Retirement Appeal Board*, 483 Mass. 600, 604 (2019) [internal quotations and citations omitted]. *See, also, Matter of E.C.,* 479 Mass. 113, 118 (2018) ("Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent.")

The language of Section 1F(4) is plain and must be applied in deciding who shall, and shall not, pay for the lost revenues resulting from adoption of discount rates. Failure to read Section 1F(4) as excluding low-income customers from paying for the cost of the discount would

render the phrase "all other customers" surplusage, contrary to oft-followed principles of legislative construction. *See, e.g., Ropes & Gray LLP v. Jalbert*, 454 Mass. 407, 412 (2009) ("A statute should be construed so as to give effect to each word, and no word shall be regarded as surplusage.")

To the extent that excluding low-income customers from contributing to that portion of each company's RAAF (Residential Assistance Adjustment Factor), which recovers discount rate costs, may require revisions to a company's RAAF, the Department should require companies to make such revisions.

C.2 *Should recovery [of the revenue shortfall from discount rates] be statewide (with separate recovery for gas versus electric) instead of utility-wide?*

As the question notes, the discount rate-driven revenue shortfall is now collected from each utility company's ratepayers. NCLC has not researched nor taken any position whether the Department could order equalized state-wide collection of discount rate costs across companies, which would likely result in ratepayers of the state's larger companies (National Grid and Eversource) subsidizing discount rate costs at smaller companies (e.g., Berkshire Gas, Liberty Gas and Unitil).[20] These smaller companies in their March 1, 2024 comments in this docket opined that to adopt a New Hampshire model for equalizing costs across companies "would require a change in law to be implemented in Massachusetts."[21]

However, the smaller companies also note that they generally have a higher percentage of low-income customers than the larger utilities, and that this could justify equalizing costs across companies.

At the present time, NCLC takes no position on equalizing discount rate costs across the state. We look forward to reviewing the comments of other parties.

C.3 *Whether and how should shareholders contribute to recovery of the revenue shortfall? Do shareholders benefit from the availability of more comprehensive discount rates?*

NCLC will address the second question first, in part because if shareholders do benefit from the availability of more comprehensive discount rates, it is easier to conclude, at least as a policy matter, that they should contribute to recovery of the revenue shortfall.

[20] This possibility was flagged in the September 12 Order, pp. 6-7.

[21] "Initial Comments of the Distribution Companies," p. 21 (Mar. 1, 2024)

Discount rates are one form of affordability programs among others, such as arrearage management programs,[22] payment plans,[23] and protections against termination of utility service.[24] The statutes of the Commonwealth and regulations of the Department clearly reflect the policy that assisting low-income ratepayers is in the interest of all. The legislature and Department are fully aware that these affordability programs and policies carry a cost, but have concluded that the benefits to low-income customers and society at large outweigh the costs. These public affordability policies provide a basis for deciding that shareholders should bear at least some of the costs.

But taking a narrower and self-interested perspective, there is reason to believe that affordability programs are a more effective collection tool than the more traditional approach of terminating service to those who cannot pay. One economic premise underlying the establishment of low-income discounts is that a utility that delivers an affordable bill to a low-income customer will receive more in payment from that customer than if it delivered an unaffordable bill. To the extent this is true, both low-income customers and the utility company (including its shareholders) benefit.

At least one utility industry association recognized the value to customer and company alike from promoting affordability programs:

> When customers have trouble paying utility bills, the cost to the utility is manifested in increased arrearages, late payments, disconnection notices, and service terminations. Some of the specific advantages of adopting customer financial assistance programs include…reducing utility collection costs, arrearages, disconnects, and reconnects, which improves the utility's bottom line…. [25]

Similarly, the Water Research Foundation (WRF) has noted that a:

> proactive approach [to low-income affordability challenges] is ultimately a more effective business strategy than simply waiting for accounts to appear as past due.[26]

[22] Mandated by Acts of 2005, c. 140, §17.
[23] Mandated by 220 C.M.R. 25.02(6).
[24] Mandated by G.L. c. 164, §§124A-124F.
[25] American Water Works Association (AWWA), *M1 Principles of Water Rates, Fees and Charges*, Seventh Edition, 2017, pp. 217-18.
[26] Water Research Foundation, *Best Practices in Customer Assistance Programs*, at xxi-xxii.

WRF also stated that "customer assistance programs have been shown to be capable of producing more total revenue for the dollars expended."[27]

NCLC also suggests that because corporations in other contexts assert that their rights are no different than individual, embodied citizens,[28] they and their shareholders should, at least in part and in some contexts, be held to the same obligations as other citizens, including contributing to the cost of discount rates.

The Department's first question is the more difficult one to answer. To the extent that the question's use of the word "should" implies a moral dimension, NCLC absolutely believes that shareholders "should" in fact contribute to the cost of discount rates. They benefit from the very existence of the utility company and, as good corporate citizens, should contribute to assisting its neediest ratepayers.

However, assuming that shareholders do not voluntarily decide to contribute to the cost of the discount rates, the question arises as to the Department's authority to incentivize or require such a contribution. Utility companies are entitled under the Constitution and clear Supreme Court precedent to earn a reasonable return on their investments.[29] Thus, the Department cannot deprive a company of the opportunity to earn a reasonable return, whether by setting rates too low overall, or requiring the company to make contributions to affordability programs that would inevitably result in depriving it of a reasonable return.

Despite those limitations, the Department has fair discretion to set a return on equity within a "zone of reasonableness."[30] Just as the Department can consider, when setting return on equity, whether a particular capital asset is "used and useful" and can weigh the burdens on both investors and ratepayers of its ratemaking decisions,[31] NCLC believes that the Department can

---

[27] *Id.* at 91.

[28] *See. e.g., Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876 (2010) (government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity).

[29] *See, e.g., Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S.Ct. 281, 288 (1944) (". . . the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of W. Va.*, 262 U.S. 679, 690, 43 S.Ct. 675, 678 (1923) ("Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.")

[30] *In Re Permian Area Basin Rates*, 390 U.S. 747, 767, 88 S.Ct. 1344, 1360 (1968) (". . .courts are without authority to set aside any rate selected by the Commission which is within a 'zone of reasonableness.'")

[31] *Fitchburg Gas and Electric Light Company v. Department Of Public Utilities.* 375 Mass. 571, 575 (1978).

and should consider, when deciding on the allowed rate of return, whether a regulated company is generally operating in the public interest and being a responsible corporate citizen, so long as that return is in the zone of reasonableness. There is precedent in the Department's rate case decisions for considering a company's compliance with various aspects of its public service obligations when deciding where in the zone of reasonableness to set the return on equity. *See, e.g., In re: Aquarian Water Co. of Massachusetts*, DPU 11-43, pp. 218-219 (Mar. 30, 2012) ("the Department has set a utility's ROE at the low end of a range of reasonableness upon a showing that a utility's performance was deficient. . . We find no reason to depart from our long-standing precedent and the accepted regulatory practice of considering qualitative factors such as management performance and customer service in setting a fair and reasonable ROE."); *In re: New England Gas Co.,* DPU 08-35, p. 220 (Feb. 2, 2009) ("We have also taken the deficiencies in NEGC's customer service . . .into consideration to reduce the appropriate return on equity relating to what we otherwise would have granted."); *In re: Massachusetts Electric Co.,* DPU 15-155, p. 381, n. 270, 382, n. 271 (Sept. 30, 2016) (collecting Department and other jurisdiction precedents on considering "qualitative factors such as management performance and customer service in setting a fair and reasonable ROE.")

Assisting low-income customers is part of a regulated company's obligations in exchange for having a monopoly franchise, as evidenced by the mandated-existence of arrearage management programs, discount rates, and protections against termination of utility service. Only three years ago the legislature amended the Department's enabling statute to specifically require considerations of equity and affordability:

> In discharging its responsibilities under this chapter and chapter 164, the department shall . . . prioritize safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions . . . . (Emphasis added).[32]

The Department has the authority, when deciding where within the zone of reasonableness to set return on equity, to consider the extent to which shareholders may be supporting affordability programs, including discount rates. The extent to which a company has met its obligations to assist low-income customers, and any impact this would have on the

[32] G.L. c. 164, §1A, added by St. 2021, c. 8, §15.

determination of return on equity, would have to be made on a case-by-case basis in individual rate cases.

C.4 *What are the advantages and disadvantages of using other sources of funding, such as federal or state, to recover the revenue shortfall? What other federal or state funds are appropriately characterized as mitigating energy burdens already? If federal or state funds are applied to offset revenue shortfalls, how would such funds be integrated into the RAAF formula?*

NCLC appreciates the Department's interest in seeking ways to mitigate the impact on ratepayers of discount rates. However, and combining answers to the first and third questions in C.4, NCLC believes it would be exceedingly difficult to integrate the relevant state or federal funding sources into the RAAF. Therefore, the main "disadvantage", which is not exactly a disadvantage, is the simple impracticality of trying to do so. For example, the largest government program that assists low-income customers in paying their bills is HEAP. Under HEAP as currently structured in Massachusetts, applicant low-income households are legally entitled to have payments made directly to their energy suppliers or to themselves.[33] Further, those payment amounts are determined by local fuel assistance agencies in response to 150,000 individual applications, spread over the roughly six-month period each year in which applications for HEAP can be made.[34] The Executive Office of Housing and Livable Communities, where the fuel assistance program is housed, would have to substantially revise the HEAP design before it would be possible to integrate HEAP assistance and the RAAF.

The other major program that assists households in paying utility bills is Residential Assistance for Families in Transition. It is even harder to imagine how RAFT payments could be used to offset the cost of discount rates. RAFT is only available to those with a termination notice.[35] It is impossible to predict who will receive RAFT payments, nor the amount. Most critically, the applicant household would not be able to avoid termination if the RAFT payments were somehow integrated into the RAAF.

---

[33] *See* Draft FY25 State Plan for Low-Income Home Energy Assistance Program, *available at:* https://www.mass.gov/doc/fy2025-heap-state-plan-draft/download

[34] According to the "Weekly Summary" for September 2, 2024 prepared by the state's fuel assistance program, approximately 150,000 households were served in the FY 24 program.

[35] RAFT rules are summarized here: https://www.mass.gov/how-to/apply-for-raft-emergency-help-for-housing-costs. To be eligible for RAFT payments on utility bills, the rules require that "you [the applicant household] received a utility shutoff notice."

NCLC again notes its appreciation for the Department seeking other sources of funding to defray the cost of the discount rates.

D.1 *Should all the Distribution Companies structure their AMPs in the same manner? Should they all use a standard formula for the level of debt forgiveness provided annually to eligible ratepayers?*

NCLC supports AMP programs having similar rules, in general. Front-line agencies that assist low-income customers have a much easier time explaining the program to their clients if program rules are consistent, and the worker does not need to work through rules that vary from town to town, depending on which company serves a town. However, there may be some variations across companies that are justified by a particular company's circumstances and that do not interfere with clearly communicating program rules. As to the annual level of debt forgiveness, NCLC believes this is a program design feature of great interest to individual ratepayers and front-line advocates seeking to explain the program to clients, so it would be desirable if there was a standard formula across companies.

On September 11, 2024, the Attorney General filed a letter in DPU 24-AMP requesting an investigation of the 2024 AMP filings and proposing stakeholder meetings to address thirteen issues listed in that letter. On October 23, the Attorney General submitted a second letter noting that a stakeholder meeting has been set up for November 18, 2024 and, consequently, asked for a pause in the AMP proceeding pending the outcome of the stakeholder meeting. This stakeholder meeting is an ideal forum for discussing the extent to which programs can be more uniform.

D.2 *Should AMPs be offered to customers in the 60-80 percent AMI/SMI income bracket?*

In our March 1, 2024 comments (p. 14) in this docket, NCLC did recommend expanding AMPs to those between 60% and 80% of AMI/SMI:

> The Department should consider offering AMPs to customers with incomes up to 80% SMI. While customers in this 60-80% SMI group would not be eligible for the discounted utility rate, the ability to participate in the AMP may further smooth the "cliff" effect [that impacts those just above the 60% income cap]. . . .

We maintain that position here.

E. 1 *Should disconnection for non-payment be prohibited regardless of the date or season?*

NCLC certainly believes that prohibiting disconnections of low-income customers for non-payment would be highly advantageous for low-income customers.[36] Terminating utility service to low-income customers can cause tremendous harm, including death.[37] Almost 50 years ago, the Supreme Court recognized the vital importance of utility service for health and well-being.[38] As the climate warms, it is ever more important that households have access to electricity to run air conditioners, fans and air-source heat pumps during periods of extreme heat.[39]

There are other harms as well. Without electricity, refrigerated food and medicines spoil, electrically-powered medical devices such as oxygen concentrators and ventilators cannot operate, and households may lose their access to the Internet. For public and subsidized housing tenants, failure to maintain utilities often leads to eviction.[40]

With these realities and precedents in mind, NCLC believes, ideally, that no customer should be disconnected for inability to afford their monthly utility bills. Massachusetts already protects from termination those households where the adults are 65 or older (220 C.M.R. 25.03(1)4. [for low-income elderly]; 220 C.M.R. 25.05 [regardless of income]); those low-income households in which there is a serious illness, if certified by a medical practitioner (220 C.M.R. 25.03(1)1.); low-income customers whose heat is provided via a regulated utility, during the winter (220 C.M.R. 25.03(1)3.); and low-income households where there is a child under the age of 1 (220 C.M.R. 25.03(1)2.) NCLC urges two expansions of these protections against termination.

---

[36] NCLC assumes that the Department is not considering banning terminations for those who can afford to pay.

[37] NCLC, *Protecting Seriously Ill Consumers From Utility Disconnections: What States Can Do To Save Lives Now*, p. 5 (Feb. 2021) (citing deaths of elderly customers in New Jersey and Arizona).

[38] *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) ("utility service is a necessity of modern life [and] the discontinuance of . . . heating for even short periods of time may threaten health and safety").

[39] The Department of Health and Human Services ("HHS") reports that heat-related deaths "have been increasing in the U.S., with approximately 1,602 occurring in 2021, 1,722 in 2022, and 2,302 in 2023." HHS, "Extreme Heat," *available at*: https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/climate-health-outlook/extreme-heat/index.html#:~:text=Heat%2Drelated%20deaths%20have%20been,2022%2C%20and%202%2C302%20in%2023.

[40] *See* 24 C.F.R. §982.404(b) (voucher tenants "may be held responsible for a breach of the HQS [Housing Quality Standards] that is caused by any of the following: (i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant . . . ."). There are similar obligations for public housing tenants, and some private landlords as well have lease provisions that allow for eviction if tenant-paid utility service is not maintained.

First, in addition to calendar-based moratorium during the winter, we urge an extreme heat/air quality moratorium, both calendar-based for the hottest part of summer and weather-condition based, if extreme temperatures or dangerous air quality occur outside the calendar-based period.[41] Second, we urge protection against termination for low-income households with a child under the age of 6. Young children – and not just those under the age of 1 – are more vulnerable to extreme temperatures.[42] Putting financially and physically vulnerable populations at risk of disconnection merely because it may impact a utility's bad debt is not a legitimate reason to permit the continuation of a credit and collections system that tends to disproportionately impact communities of color and vulnerable populations.

(E.2 and E.3 combined answer, below.)

E.2 *Should reconnection fees be eliminated for discount-rate eligible customers? What are the costs of eliminating reconnection fees for discount rate customers?*

E.3 *Should reconnection fees be eliminated for all customers? What are the costs of eliminating reconnection fees?*

NCLC supports eliminating reconnection fees for low-income customers.[43] A low-income customer terminated for non-payment obviously does not have the means to pay for the utility service itself. Imposing reconnection fees imposes a huge barrier for those low-income customers who may be able to pay enough so that they would otherwise be reconnected.

Low-income customers who are HEAP recipients are able to have terminated service restored for as little as 25% of the overdue bill for services.[44] However, to the extent the

---

[41] See discussion in E.4, *infra*.

[42] *See, e.g.,* U.S. Environmental Protection Agency, "Extreme Heat Effects on Children and Pregnant Women", *available at:* https://www.epa.gov/children/protecting-childrens-health-during-and-after-natural-disasters-extreme-heat ("Children have a smaller body mass to surface area ratio than adults, making them more vulnerable to heat-related morbidity and mortality."); "Cold Ice and Snow Safety," *available at:* https://kidshealth.org/en/parents/winter-safety.html#:~:text=Kids%20are%20at%20greater%20risk,red%20and%20numb%20or%20tingly. ("Kids are at greater risk for frostnip and frostbite than adults.")

[43] NCLC takes no position on imposition of reconnection fees for those who can afford to pay their bills.

[44] The Vendor Agreement that utilities sign with the local HEAP administering agencies (*available at:* https://liheapch.acf.hhs.gov/docs/2024/vendor-agreements/MA_VendorAgreement_2024.pdf] provides, in paragraph 6: "The Vendor agrees that should the Vendor send final notice of termination . . . the Vendor shall not terminate utility services or shall immediately restore terminated utility services upon receiving from the Agency a commitment that the Agency shall pay 25% of the Certified Customer's overdue balance owed the Vendor, or upon receiving actual payment of said 25% from any source. The Vendor's obligations hereunder are subject to any overriding policy or directive of the DPU". (Emphasis added)

customer must also pay a reconnection fee, that could prove an insurmountable barrier to having service restored.

NCLC has no information regarding the costs incurred or revenues companies receive from reconnection activity. The utilities should be required to reveal this data. If reconnection fees are permitted for non-low-income customers, those fees should be cost-based with no mark-up.

E.4 *Please discuss the advantages and disadvantages of implementing a moratorium on electric terminations during the entire summer period versus a moratorium on disconnections only during periods of extreme heat or poor air quality. As part of this response, please comment on any statutory or regulatory impacts of changes to a moratorium on electric disconnections during summer months or periods or extreme heat or poor air quality.*

The advantage of a calendar-based system is that it is much more predictable, easier to administer, and easier for customers to understand when they will be protected. Conversely, a system based on temperature or air quality forecasts is less predictable and much harder for consumers to understand when they will be protected, without, for example, checking a company's web site (if the company posts such information on its web site) or otherwise accessing announcements of the extreme heat or air quality event. Moreover, although Massachusetts is not a relatively large state, temperatures and air quality do vary from, say, Cape Cod to the Berkshires. Because both National Grid and Eversource have customers scattered across the state, it is possible a heat emergency might not be declared because the reference temperature or air quality is monitored at a location where the temperature is lower or the air quality better than elsewhere in the state.

NCLC supports a calendar based moratorium on disconnections, where terminations of electricity would be prohibited during the summer period while school is not in session, or at least for the period July 1 to August 15.[45] In addition, we support having temperature or air quality-triggered protections during days outside this period where the temperature or air quality would merit suspending terminations. Such temperature-based disconnection protections should

[45] Average daytime highs in the Boston area exceed 80 degrees for the six week period July 1 through August 15, and are lower both before and after. (U.S. climate data is available here: https://www.usclimatedata.com/climate/boston/massachusetts/united-states/usma0046#google_vignette)

include a heat index factor or National Weather Service alert as an additional basis for instituting the moratorium.

One best practices model is in Arizona, which specifically directs a utility to adopt one of the following conditions under which it shall not terminate residential service, including NCLC's preferred calendar-based model:

a. During any period for which the local weather forecast, as predicted by the National Weather Service, indicates that the weather in the customer's service address:

i. Will include temperatures that do not exceed 32° F;

ii. Will include temperatures that exceed 95° F; or

iii. Will include other weather conditions that the Commission has determined, by order, are especially dangerous to health; or

b. During the calendar days of June 1 through October 15 of each year, which shall be specified as non-termination dates in a utility's tariffs.[46]

NCLC highlighted the Arizona model in its March 1, 2024 Comments in this proceeding.

If temperature alone is chosen as a metric for disconnection protection, best practices demand that Massachusetts incorporate a heat index or National Weather Service warning metric to account for the impact of humidity (also known as the wet bulb temperature) in addition to a temperature-based metric. One recent example is the decision of the Illinois legislature to not only lower the summertime disconnection moratorium from the previously existing 95 degree temperature trigger to 90 degrees, but also to incorporate a National Weather Service heat advisory warning as a disconnection prohibition trigger, in recognition of the role humidity plays in triggering heat stroke.[47]

As further context for our positions, we reproduce below excerpts of the comments we submitted on March 1[48]:

---

[46] See Ariz. Admin. Code R14-2-211; ACC Docket No. RU-A-19-0132, Decision 78316, Nov. 9, 2021.

[47] *See* 220 ILCS 5/8-205(b). *See, also, What is the Heat Index*?, National Weather Service, available at https://www.weather.gov/ama/heatindex#:~:text=If%20you%20are%20exposed%20to,physical%20activity%20in%20the%20 heat

[48] This past July, NCLC produced a report on extreme heat, "Protecting Access to Essential Utility Service During Extreme Heat and Climate Change," *available at:* https://www.nclc.org/resources/protecting-access-to-essential-utility-service/

(From NCLC's March 1 comments, pp. 18-21)

Extreme heat is particularly harmful to households struggling with energy insecurity, which include disproportionate numbers of Black and Latiné households as a result of our long history of discrimination, redlining, and other forms of systemic racism.

……

A calendar-based protection may also lessen the disparate burden on lower-income residents in urban heat islands, multifamily housing, housing in poor condition, and mobile homes, all of which may experience higher temperatures than the surrounding areas.

……..

In the alternative, if a temperature-based protection is chosen, it is preferable to use a heat index measure instead of temperature, to account for the health impacts of high humidity. If a temperature threshold is identified, we recommend that the threshold should not exceed 90 degrees Fahrenheit.

…….

We understand that Eversource has a voluntary practice to halt disconnections during extreme heat events, and other utilities may have similar practices. We urge the Department to formalize these protections in regulation.

F. 3 *How often and through what process should customers have to re-verify eligibility?*

In the recent National Grid rate case, the Attorney General recommended a two-year period as the recertification interval for discount rates, but the Department deferred this recommendation for further review in the present docket. DPU 23-150, p. 592 (Sept. 30, 2024).

NCLC supports the Attorney General's recommendation as this will reduce one of the barriers customers now face in remaining on the discount rate. In terms of how recertification should occur, the recently-announced expansion of data matching between the utilities and state agencies that provide assistance to low-income households[49] should make it easier for the utilities to determine whether an existing discount rate customer remains income-eligible. If the

[49] "Healey-Driscoll Administration Announces Groundbreaking Partnership with Utility Companies to Lower Costs for Hundreds of Thousands of Households," (Oct. 16, 2024), *available at: https://www.mass.gov/news/healey-driscoll-administration-announces-groundbreaking-partnership-with-utility-companies-to-lower-costs-for-hundreds-of-thousands-of-households*.

utility is not able to recertify via data matching, it should notify the customer of the need to recertify and provide a reasonable time frame (say, 45 days) for the customer to provide the required documentation.

F.4 *Whether and how community action agencies ("CAAs"), community-based organizations ("CBOs"), and state agencies be used to facilitate enrollment, automatic or otherwise, and verification or re-verification.*

CAAs receive approximately 200,000 applications for HEAP assistance yearly, and provide bill payment assistance to approximately 150,000 of those households.[50] They play an important role in educating customers about discount rates, sharing information with utilities that results in virtually all HEAP-served households being enrolled on discount rates, and assisting clients who need to recertify their eligibility.

State agencies also play important roles. Agencies such as the Department of Transitional Assistance and MassHealth also educate their clients as to the availability of discount rates. As noted in our response to F.3, those agencies have recently announced a significant expansion of the data matching that allows low-income households receiving assistance from those agencies to be automatically enrolled on the discount rates.

There are some enrollment and re-certification gaps, however, that CAAs may be able to fill. First, many immigrants are not eligible for HEAP and, therefore, do not apply. However, they are eligible for the discount rates. The CAAs have been exploring being able to document the income of these households through a process separate from the HEAP application process. All interested parties should support this effort.

Second, as utilities move towards tiered discounts,[51] customers who are on the discount rate but not on HEAP will have to find some way to demonstrate to their utility company into which income tier they fall. Again, the CAAs may be able to develop the capacity to do so, and those efforts should be supported by all.

[50] Many immigrant households that apply are not legally eligible to receive HEAP; other households are over income; and yet other households fail to submit all of the documentation required, so far fewer are served than apply.

[51] The Department approved tiered discounts in the recent National Grid rate case, DPU 23-150, pp. 576-51, and has already stated its preference in this docket for tiered discounts over percentage of income payment plans. Sept. 12 Order, p. 5.

F.5 *Whether and how could state agencies establish a "one-stop shop" for enrollment, verification, and re-verification in all state assistance programs, including AMPs, discount rates, and service termination relief?*

Establishing such a one-stop shop would be extremely desirable as low-income households often need to apply to utilities, and through separate processes at the utility, to get on the AMPs and discount rates, and to assert termination protections. These households need to apply at CAAs for HEAP assistance, to DTA for SNAP (food stamps), and to MassHealth for medical assistance.

NCLC cannot speak to the interest or capacity of state agencies to establish such a one-stop shop, although we are aware that under Ch. 174 of the Acts of 2022 multiple state agencies are under a mandate to develop a common application portal. At a minimum, the Department would need to bring to the table the Executive Office of Housing and Livable Communities, which oversees HEAP, and the Executive Office of Health and Human Services, which oversees most of the other relevant low-income programs. NCLC would welcome such a convening.

(F.6 and F. 7, combined answer below).

F.6 *Please explain if there is a particular group of households or customers that are eligible to be served on the discount rate but are not, and explain the basis for this determination. Provide supporting data and analysis or explain what analysis needs to be performed to make such a determination.*

F.7 *What groups of eligible customers are difficult to enroll and why?*

NCLC believes that non-citizens are the hardest to reach and enroll because they are not eligible for HEAP, or even when they are eligible they choose not to apply because they believe they are ineligible,[52] or fear that applying for government assistance will jeopardize their staying in the United States. NCLC has heard that some elderly individuals choose not to apply, incorrectly believing that somehow their receipt of assistance will reduce the assistance others would receive. Lastly, many households between, say, 150% of the FPL and 60% of median income do not know that they are income-eligible for the discount rates. This is not surprising,

[52] A so-called "mixed household" that includes members who are, and are not, legally eligible to receive HEAP due to their immigration status can apply and receive prorated benefits. For example, if two of four household members are not legally eligible to receive HEAP, the household can still apply, but receive only 50% of the benefits they would receive if all were legally eligible. However, CAP agencies have experienced that many of these households do not even apply.

since the income limit for discounts (60% of state median income)[53] is much higher than for many public assistance programs such as SNAP.

NCLC does recommend a thorough analysis of the number of people who may be eligible to be on the discount rates, and those who actually are on those rates. While that latter number can be ascertained precisely, since the utilities carefully track that data, the former number is actually quite hard to determine with precision. Reasonable estimates can be made of the number of households at or below 60% of median from Census data or other demographic sources. However, there is a large number of households that would need to be subtracted, including families in doubled-up situations; the significant percentage of public and subsidized housing tenants who do not pay for their utilities;[54] tenants in private housing where the owner pays the utility bills; many students living in dorms or university owned housing where utilities are owner-paid; people living in a range of institutional settings; etc. NCLC and others have made efforts in the past to identify the gap between those eligible for, versus those actually on, the discount rates. It has so far proved very challenging to develop a credible estimate.

F.8 *Whether and how to establish a self-verification process?*

In the recent National Grid rate case, the Department approved a proposal from the Attorney General to launch a two-year self-attestation pilot. The Department also required a detailed compliance filing.[55] NCLC suggests that all interested parties will learn a great deal from this pilot. Apart from being supportive of the pilot, NCLC has no further comments on self-attestation at the present time. We intend to be active in the self-attestation stakeholder discussions.

(G.1 and G. 3, combined answer below)

G.1 *By what methods should Distribution Companies enhance outreach efforts to inform customers that households between 200 percent of the federal poverty level and 60% SMI are eligible for the discount rates?*

G.3 *Whether and how CAAs[56] and CBOs can be used to facilitate outreach.*

[53] Currently, $94,608 for a family of 4.

[54] Many housing authorities pay for all utilities, especially in elderly and disabled housing.

[55] DPU 23-150, pp. 591-591 (Sept. 30, 2024).

[56] "CAAs" refers to community action agencies. In these comments, NCLC refers to them as either CAAs, or "CAPs," for community action programs, the other common name used.

As our comments in F.6/F.7 above noted, we do see this income tier (between 200% of FPL 60% of median) as one that is less likely to participate in discount rates than those with lower income. In general, we do believe that the utilities do a reasonable job of conducting outreach, especially by working closely with the CAAs, which both administer HEAP at the local level and assist HEAP clients in getting enrolled on the discount rates. The CAAs do quite extensive outreach each year regarding HEAP and receive approximately 200,000 HEAP applications annually, serving 150,000 with HEAP payments once they are determined eligible. CAAs also provide housing services, early childhood education programs, and more. They are trusted local entities who help to spread the word about discount rates.

We do encourage the utilities to continue discussions with the CAAs, other community-based organizations, and with state agencies that provide other forms of assistance to income-qualified households.

G. 2 *Whether and how to target outreach to customers in those areas with the most disconnections and the most customers in arrears or on AMPs, in addition to targeting Environmental Justice populations and other demographics.*

Utilities have the data to determine the neighborhoods with the highest percentage of customers terminated for non-payment, in arrears, or on an AMP. They also know which communities are designated as Environmental Justice Communities. They should use this knowledge to target elevated outreach to those populations and communities.

NCLC has always heard very positive feedback from local groups when a utility sends staff to local community meetings, including "energy fairs" or other similar gatherings. The "personal touch", if you will, makes a difference. NCLC therefore recommends that – in addition to traditional outreach done through bill stuffers, social media, emails, advertisements on the MBTA, etc. – that utilities send trained personnel to local meetings in the impacted communities.

IV. ADDITIONAL ISSUES:

1. "PORTABILITY" OF PROTECTIONS

NCLC wishes to raise an additional issue not directly raised in the Department's question, but which does bear on the question of affordability and ensuring that customers are connected to essential utility service.

The Department's regulations provide certain protections against termination for low-income customers during the so-called winter moratorium; when there is a seriously ill member in the household or an infant under the age of one; and when all adults in the household are 65 or older.[57]

NCLC occasionally handles intake calls from customers (or their advocates) who question whether that protection will apply when the customer moves, if there is an outstanding arrearage at the time of moving. For example, a customer with a serious illness protection may have run up an arrearage of $500. If they move, the question arises as to whether the company could insist on some amount of payment as a condition of establishing a new account at the new address, or whether, instead, the customer has the right to service at the new address because the serious illness protection is "portable."

In practice, we have found that, on occasion, the relevant company will treat the protection as portable, especially if the customer contacts the company prior to the actual move, and we are very grateful for those instances when this has occurred. However, the question is addressed nowhere in the Department's regulations nor in any opinion from the Consumer Division.

We respectfully ask the Department to determine that protections are indeed portable. The legislature and Department have determined that households in those protected categories have a vital need for utility service, and should not be terminated, even if they cannot pay the amounts billed. Those protections should not be lost simply because the customer moves. For lower income households, moves may be necessitated by an eviction, or receipt of a long-awaited housing subsidy, or the need to flee domestic violence, or to relocate away from horrendous housing conditions. None of these circumstances justify loss of the protection against termination.

2. PROHIBITING THE ACCELERATION OF DISCONNECTIONS BASED ON "RISK-RANKING"

A credit and collection practice that appears to be of growing prevalence among electric and gas utilities across the United States that can impact the timing of a customer's

[57] 220 C.M.R. 25.03. Those protections are in fact mandated by statute, G.L. c. 164, §§124A (serious illness), 124E (elderly), 124F (winter moratorium), 124H (infant).

disconnection status is internal or third-party risk-ranking of customers.[58] Risk-ranking involves a non-transparent system of employing black-box algorithms to a series of utility-supplied metrics, including age of the account, number of times an account was paid late, and other factors.[59] A customer ranking is then assigned to each account based on perceived risk of nonpayment. The disconnection process can then be accelerated for those accounts deemed at high risk for non-payment as compared to accounts with low risk rankings. Alternatively, customers deemed at low-risk for non-payment are provided more time to pay a past-due bill.[60] While the use of risk-ranking to identify customers who may need energy assistance outreach is not necessarily objectionable, using the process to accelerate disconnections of those deemed at higher risk of nonpayment perversely gives less time to those customers who need the most time to line up assistance to pay their bills. It also tends to disproportionately impact racial minorities who suffer from the effects of systemic (even if unintentional) discrimination and should be prohibited by state policy makers and regulators.

NCLC raised the issue of risk-ranking in the recent National Grid rate proceeding, DPU 23-150. While the Department rejected "at this time" NCLC's recommendation to order National Grid to halt any acceleration of disconnections based on its use of a third-party risk ranking algorithm, the Department stated that it "may further investigate risk-ranking factors in D.P.U. 24-15."[61] NCLC urges the Department to incorporate an examination of risk ranking practices in this proceeding.

Respectfully submitted,

Charles Harak

Charles Harak, Esq.
National Consumer Law Center
charak@nclc.org
781-307-6775
charak@nclc.org

[58] *See, e.g.*, Total Solution Inc., Clients, http://www.totalsolutioninc.com/clients.html
[59] *See, e.g.* DPU 23-150, "Direct Testimony of John Howat", Revised Exh. MEDA-1, p. 46-50 (Mar. 29, 2024)..
[60] *Id.* (Howat Testimony).
[61] DPU 23-150, p. 638 (Sept. 30, 2024).