

**COMMUNITY AFFAIRS**

**DIVISION OF HOUSING AND COMMUNITY RESOURCES**

**Winter Termination Program**

**Proposed New Rules: N.J.A.C. 5:45**

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 40A:5A-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-152.

Submit written comments by January 20, 2023, to:

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The agency proposal follows:

**Summary**

The Winter Termination Program (Program) established pursuant to P.L. 2021, c. 317 (N.J.S.A. 40A:5A-29), prohibits a local authority, municipal utility, or rural electric cooperative from discontinuing service to eligible residential customers from November 15 through March 15. A residential customer qualifies for the Program if they receive assistance pursuant to various

specified programs, including the Low-Income Household Water Assistance Program, set forth in the proposed new chapter. Pursuant to the statutory requirements, the Department of Community Affairs' (Department) proposed new rules reflect the provisions of the Board of Public Utilities' rules for its Winter Termination Program for residential electric and gas public utility service at N.J.A.C 14:3-3A.5.

A section-by-section summary of the proposed new rules follows.

### **Subchapter 1. General Provisions**

N.J.A.C. 5:45-1.1 sets forth the purpose of the chapter.

N.J.A.C. 5:45-1.2 defines the words, terms, and phrases necessary for the implementation and enforcement of the new rules.

### **Subchapter 2. Utility Shutoff Protections**

N.J.A.C. 5:45-2.1 sets forth the utility shutoff protections. Subsection (a) sets forth the eligibility requirements for applicants to the Program. Subsection (b) sets forth that the vendor shall send notice to residential customers advising them of the Program. Subsection (c) provides that local authorities, municipal utilities, or rural electric cooperatives do not have to comply with subsection (b) if there is a no shut off policy during November 15 to March 15. Subsection (d) requires eligible residential customers who seek protection of the Program to make good-faith payments. Subsection (e) provides that if the residential customer receives financial assistance for electric, water, wastewater service, the customer shall forward that assistance to the vendor. Subsection (f) prohibits a vendor from requesting a security deposit from an eligible residential customer who seeks protection pursuant to the Program.

### **Subchapter 3. Waiver**

N.J.A.C. 5:45-3.1 allows for waiver of provisions, as needed, by the Commissioner of the Department.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The Department anticipates that the proposed new rules will have a positive social impact. The proposed new rules will allow eligible residential customers of local authorities, municipal utilities, or rural electric cooperatives to maintain residential sewer service, water service, and electric service, during the winter months from November 15 through March 15, thereby avoiding any hardships related to service shut off during that time.

### **Economic Impact**

The proposed new rules should have an economic impact on local authorities, municipal utilities, rural electric cooperatives, and their customers. The proposed new rules prohibit a local authority, municipal utility, or rural electric cooperative from discontinuing service only to certain residential customers during the winter months, from November 15 through March 15. The proposed new rules require a customer to make good-faith payments during the time they are in the Program, and further requires the customer to forward any financial assistance received to the local authority, municipal utility, or rural electric cooperative during that time period.

The local authorities, municipal utilities, and rural elective cooperatives that provide the services to the eligible residential customers may have to maintain service receiving only partial payment during the relevant time period, which may be passed on to customers. However, this burden is outweighed by the benefit to the health, safety, and welfare of the residential customer who will maintain service during the winter months.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules are not being proposed pursuant to the authority of, or to implement, comply with, or participate in, any program established pursuant to Federal law or any State statute that incorporates or refers to any Federal law, standards, or requirements.

### **Jobs Impact**

The proposed new rules are not expected to have an impact on the creation or loss of jobs in the State of New Jersey.

### **Agricultural Industry Impact**

The Department does not anticipate that the proposed new rules would impact the agricultural industry.

### **Regulatory Flexibility Analysis**

The proposed new rules establish the Winter Termination Program in the Department, which addresses electric, water, and sewer service discontinuation to eligible residential customers during the winter months, from November 15 to March 15. Vendors that are considered small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will have to keep records of those customers who are participating in the Program and cannot terminate the aforementioned services, as discussed in the Summary above. These requirements are necessary for the implementation of P.L. 2021, c. 317, and are not expected to pose an undue burden on small businesses.

### **Housing Affordability Impact Analysis**

It is not expected that the proposed new rules will have an impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would

evoke a change in the average cost associated with housing. While the proposed new rules address the continuation of, and payment for, certain utility services, the proposed new rules do not affect housing affordability, or the average cost associated with housing.

### **Smart Growth Development Impact Analysis**

It is not expected that the proposed new rules will have any impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan, as the proposed new rules address the continuation of, and payment for, certain utility services.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposed new rules follows:

## CHAPTER 45

### WINTER TERMINATION PROGRAM

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5:45-1.1 Purpose

The purpose of this chapter is to implement a Winter Termination Program to prevent service discontinuation for eligible residential customers receiving residential electric, sewer, and water service from a local authority, municipal utility, or rural electric cooperative from November 15 through March 15.

## 5:45-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Board” means the Board of Public Utilities.

“Department” means the Department of Community Affairs.

“Local authority” means an authority, as defined in section 3 at P.L. 1983, c. 313 (N.J.S.A. 40A:5A-3), or a water district established pursuant to N.J.S.A. 40:62-96 et seq., that provides electric, sewer, or water service.

“Municipal utility” means a municipal public utility, as defined at N.J.S.A. 40A:1-1, that provides electric, sewer, or water service.

“Program” means the Winter Termination Program.

“Residential customer” means a residential customer of record of a local authority, municipal utility, or rural electric cooperative, or any residential tenant of a residence, where the owner or any agent or other representative of the owner of the residence is a non-residential customer of record of a local authority, municipal utility, or rural electric cooperative.

“Vendor” means the local authority, municipal utility, or rural electric cooperative, as relevant to a particular residential customer.

## SUBCHAPTER 2. UTILITY SHUTOFF PROTECTIONS

### 5:45-2.1 Utility shutoff protections

(a) A vendor shall not discontinue service during the period from November 15 through March 15 to those residential customers who demonstrate, at the time of the intended termination, that they are:

1. Recipients of benefits pursuant to the Federal Home Energy Assistance Program (HEAP) or certified as eligible therefor, pursuant to standards set by the New Jersey Department of Human Services;

2. Recipients of Temporary Assistance to Needy Families (TANF);

3. Recipients of Federal Supplemental Security Income (SSI);

4. Recipients of Pharmaceutical Assistance to the Aged and Disabled (PAAD);

5. Recipients of General Assistance (GA) benefits;

6. Recipients of the Universal Service Fund (USF);

7. Recipients of the Low-Income Household Water Assistance Program;

8. Recipients of benefits pursuant to the Lifeline Credit Program; or

9. Persons unable to pay their utility bills because of circumstances beyond their control.

i. Circumstances pursuant to this paragraph shall include, but not be limited to, unemployment, illness, medical-related expenses, recent death of an immediate family member, or any other circumstances that might cause financial hardship.

(b) A vendor shall send a notice to all residential customers about the Winter Termination Program in the billing cycle prior to November 15. The notice shall set forth the terms and conditions of the Program. A vendor shall send a notice about the Program to a residential customer who has started a new service, after the billing cycle, prior to November 15 at the time the residential customer starts the new service.

(c) If a vendor has a policy that provides that service will not be shut off to any residential customer from November 15 to March 15, the vendor does not have to comply with the notice requirement at (b) above. In such case, the vendor shall post a notice generally describing the

Program on its website. If the policy changes at any time, the vendor must comply with (b) above.

(d) All residential electric, water, and wastewater customers who are eligible for, and seek the protection of the Winter Termination Program, shall make good-faith payments during the period, if they are able.

(e) If a customer receives electric, water, or wastewater-related financial assistance, the customer shall forward any benefits received to their appropriate electric, water, or wastewater vendor.

(f) During the protection period, an electric, water, or wastewater vendor shall not request a security deposit or an addition to an existing security deposit from a customer who is eligible for, and seeks the protection of, the Winter Termination Program.

### SUBCHAPTER 3. WAIVER

#### 5:45-3.1 Waiver

The Commissioner of the Department may waive provisions in this chapter for good cause.