



Tip of the Month November 2015

The Cold Weather Rule Update

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Credit to Paul Moe (Faegre Baker Daniels) and Tyler Candee for the original Cold Weather Rule Tip from November 2006

Despite the unusually warm temperatures, we are now in the “cold weather period.” This means that energy customers can avail themselves of the Cold Weather Rule protections to prevent heat shutoffs through the winter. The Cold Weather Rule is not a bright line rule preventing utility disconnections. Instead, it establishes a framework for the customer to establish payment arrangements to avoid a utility disconnection. This Tip will outline the Rule as it applies to customers of public utilities.¹

Utility providers can disconnect heating utilities for customers who are behind on payment, even in the winter. The Cold Weather Rule enables residential utility customers to establish payment plans to prevent disconnection of utilities, or to reconnect utilities, that provide heat to the residence during the cold weather period (October 15 through April 15). The Rule requires that the utility providers give notice to customers and work with them to create a mutually acceptable payment plan that the customer must follow to avoid disconnection.

Notice

Utility providers must notify customers of their rights and the available options related to both budgeting for utilities and setting up payment plans. The Cold Weather Rule requires the utility provider to give two relevant notices:

1. **Summary of rights and responsibilities** – Between September 1 and October 15, the utility provider must send customers a summary of their rights and responsibilities, which notably includes: an explanation of the Cold Weather Rule, suggestions for low or no cost methods to reduce energy consumption, and ways to avoid disconnection.
2. **Notice before disconnection** – During the cold weather period, the utility provider must provide the customer an easy to understand notice prior to disconnecting services. The notice must include the date of the scheduled disconnection, the amount due, and information regarding payment agreements. The utility provider must mail the notice at least ten working days before disconnection, or personally serve the notice at least seven working days before disconnection.²

Upon receiving notice, the customer should promptly investigate payment options to avoid the imminent disconnection. While the law prohibits the provider from disconnecting services in some instances, such as when no personnel are available to enter payment agreements (for example on a holiday), the utilities will be terminated without a mutually acceptable payment plan in place.³

¹ Minnesota Statutes § 216B.096 establishes the framework for public utilities. Minnesota Statutes § 216B.097 applies to cooperative or municipal utilities.

² Working days are days, Monday through Friday, excluding legal holidays. The day of mailing or of the customer's receipt of notice do not count as working days.

³ See Minn. Stat. § 216B.096 Subd. 7 (b) for a full list of prohibited times to disconnect utilities.

Payment Plans

Customers who have fallen behind on utility payments must take measures to try and catch up, or the utilities will be disconnected. During the cold weather period, customers have the ability to enter into payment plans to prevent heating from being shut off. These plans do not have to fully satisfy the outstanding debt by the end of the period to avoid disconnection. As long as the customer commits to a plan and makes timely payments on the plan, he or she can prevent a heating shut off.

If the provider has already disconnected the utilities, the customer must enter into a payment plan to get the heat back on. The utility will make 'reasonable efforts' to return the heating within 24 hours.

The Cold Weather Rule dictates that the utility provider take into consideration the customer's financial situation and other household circumstances when entering into the payment plan. The payment plan must be mutually acceptable, which is a determination reviewable by the Public Utilities Commission.

Low Income Plans – Customers whose household income is at or below 50 percent of the state median income can enter into a plan with their payments capped at ten percent of the household income. The customer should be prepared to provide the following forms of verification: the household's most recent tax return, paycheck stubs or an employer's written verification of wages earned for the last two months, or documentation of other sources of income such as unemployment, public assistance, or a pension. The provider and customer may modify the plan if the customer experiences a change of financial circumstances.

Tenants

Tenants facing utility disconnections have additional concerns. If a tenant is responsible for paying utilities, falling behind on payments or causing a utility disconnection may be a breach of lease and grounds for eviction. Even if the tenant can enter into an agreement with the utility provider under the Cold Weather Rule, he or she may face eviction for the delinquency. To avoid eviction in such a case, the tenant would need to seek agreements with both the landlord and the utility provider.

If the landlord is responsible for utility payments and the building is facing disconnection, the utility provider is required to post notice of the impending disconnection at the building. If the landlord fails to fix the situation, the tenant may seek a court order requiring the landlord to do so.⁴ Loss of heat in the winter can justify the tenant filing an emergency tenant remedy action, an expedited case seeking prompt relief. Tenants also have the option of making current payments directly to the utility provider and deducting the amount from the rent, though should consider possible repercussions of doing so.⁵

Resources

Customers facing disconnection may be able to get help with payments, including energy assistance.

- Statewide, call First Call for Help at 211 or (651) 291-0211
- Hennepin County, call Community Action Partnership of Suburban Hennepin (952) 930-3541 or visit <http://capsh.org/services/energy-assistance/>

⁴ The tenants are required to provide the landlord notice and an opportunity to respond. Oral notice can be sufficient prior to initiating such an action.

⁵ For details, see Minn. Stat. § 504B.215.