Contents

About the Companion Website, Other Search Options ................................................. ix

Part I Introduction

Chapter 1 Introduction

1.1 About This Treatise ................................................................. 1
1.1.1 Introduction ........................................................................... 1
1.1.2 The Structure of This Treatise ............................................. 1
1.1.3 The Concept of the Public Utility ........................................ 2
1.1.4 “Restructuring” and “Deregulation” ..................................... 4
1.2 Types of Regulated Utilities .......................................................... 5
1.2.1 Natural Gas ................................................................. 5
1.2.1.1 Delivery of Natural Gas to the Consumer .............. 5
1.2.1.2 Regulation ........................................................... 6
1.2.1.3 Gas Restructuring and Impacts on Residential Customers . 6
1.2.2 Electricity ........................................................................ 7
1.2.2.1 The Electric Power Industry .................................... 7
1.2.2.2 Regulation ........................................................... 7
1.2.2.3 Electric Restructuring and Deregulation ..................... 8
1.2.2.3.1 Restructuring; reliability issues ...................... 8
1.2.2.3.2 Customer service, low-income rates, and energy efficiency ............................................. 10
1.2.2.3.3 “Default” service poses risks for consumers .......... 12
1.2.3 Water and Sewer ............................................................. 12
1.3 Regulation by State Utility Commissions ..................................... 12
1.3.1 The Governing Statute ...................................................... 12
1.3.2 Commission Rules and Regulations, Unpublished Orders .......... 13
1.3.3 Informal Precedent: Unwritten Rules, Word of Mouth .......... 14
1.3.4 Tariffs .............................................................................. 14
1.3.5 Dispute Resolution .......................................................... 15

Part II Getting and Maintaining Regulated Utility Service

Chapter 2 Right to Utility Service

2.1 Utilities Have a Duty to Furnish Service to All ................................... 17
2.1.1 Introduction ......................................................................... 17
2.1.2 The Common Law Duty to Serve ....................................... 17
2.1.3 State Statutes and PUC Rules and Orders Codify Duty to Serve .... 19
2.1.4 Effect of Utility Deregulation on Duty to Serve ..................... 19
2.2 A Public Utility May Not Deny (or Terminate) Service Based on a “Collateral” Matter ............................................................. 21
## 2.2.1 General .......................... 21
## 2.2.2 Unrelated Contract: Debts from Another Time and Place ........... 22
  2.2.2.1 Introduction ............................... 22
  2.2.2.2 Common Law Rule ............................. 22
  2.2.2.3 State Regulations ............................. 23
  2.2.2.4 Past Conduct Defrauding the Utility ..................... 23
  2.2.2.5 Separate Business Run by Utility .................... 24
## 2.2.3 Denial of Service Based on Third Party’s Outstanding Debt to the Utility 25
  2.2.3.1 Introduction ............................... 25
  2.2.3.2 Former Owner or Occupant of Real Property .............. 26
  2.2.3.3 Landlord-Tenant Situations ......................... 27
  2.2.3.4 Debt of Roommate or Family Member .................... 28
  2.2.3.5 Liability of One Spouse for Another’s Bills ............. 29
## 2.3 A Utility May Not Discriminate in Providing Service .................. 30
  2.3.1 Introduction ............................... 30
  2.3.2 Basic Rule of Unjust Discrimination ........................ 30
  2.3.3 Unjust Discrimination Challenges Based on Status as City Resident 32
  2.3.4 Low-Income Rates Are Not Unjust Discrimination ............. 33
## 2.4 Remedies for Refusal to Provide Service ............................ 33
  2.4.1 Dispute Resolution: Regulated Utilities ..................... 33
  2.4.2 Court Remedies and Jurisdiction .......................... 33
## 2.5 Customers Have the Right to Written Notice of Utilities’ Rules ........ 35
## 2.6 The Right to Courteous Treatment .................................. 36
  2.6.1 “Special Relationship” Between Utilities and Customers .......... 36
  2.6.2 Private Remedies for Discourteous Treatment .................. 37

### Chapter 3 Tenant Strategies for Maintaining Service

3.1 Introduction ............................................ 39
3.2 Tenant Obtaining Service in Own Name Despite Landlord’s Delinquency 39
  3.2.1 Common Law Right to Obtain Service from Utility in Own Name .... 39
  3.2.2 Utility Statutes with Landlord-Tenant Provisions .............. 40
  3.2.3 Application of Constitutional Principles ....................... 42
  3.2.4 Public Utility Commission Rules and Orders .................... 43
3.3 Rent Withholding to Pay Utility Directly for Landlord’s Obligation .... 43
3.4 Landlord’s Obligation to Tenant to Provide Utility Service .......... 43
  3.4.1 Implied Warranty of Habitability .......................... 43
    3.4.1.1 Overview ....................................... 43
    3.4.1.2 Application of the Warranty of Habitability ............ 44
    3.4.1.3 Jurisdictions Adopting the Warranty of Habitability ... 45
    3.4.1.4 Waiver .......................................... 46
    3.4.1.5 Remedies for Breach of Warranty of Habitability ....... 47
    3.4.1.6 Serious Code Violations Violate Warranty of Habitability 48
  3.4.2 Specific Statutory Protection Against Landlord Allowing Utility 48
    3.4.2.1 General .......................................... 48
    3.4.2.2 State-by-State Analysis ............................ 50
  3.4.3 Protection Against Reprisal ................................ 51

### Chapter 4 Metering Issues: Metering Errors, Master-Metering, Submetering, Prepayment Meters, Advanced Meters

4.1 Reverse Metering ....................................... 53
  4.1.1 Typical Fact Patterns ................................... 53
Chapter 5  Payment Issues: Payment, Security Deposits, and Late Charges

5.1 Payment ........................................................................ 83
  5.1.1 Introduction ......................................................... 83
  5.1.2 Tender of Payment .................................................. 83
  5.1.3 Partial Payment ....................................................... 84
  5.1.4 Calculating the Date of Payment ................................. 85
  5.1.5 Other Issues with Checks ......................................... 86
  5.1.6 Other Forms of Payment ........................................... 86
  5.1.7 Payments by Others or to Agents ............................... 87
  5.1.8 Designating Certain Accounts for Payment/Splitting the Check ......... 87
  5.1.9 Erroneous Payments Made Under Duress May Be Recovered .......... 88
  5.1.10 Pleading and Burden of Proof As to Payment .................. 88

5.2 Utility Service May Be Made Contingent Upon Payment of a Security Deposit . 88
  5.2.1 General ............................................................. 88
  5.2.2 Discriminatory Deposit Practices Are Prohibited ................. 89
    5.2.2.1 General ......................................................... 89
    5.2.2.2 Equal Credit Opportunity Act Prohibitions on Discriminatory
           Deposits ......................................................... 89
      5.2.2.2.1 General ..................................................... 89
      5.2.2.2.2 The “prohibited bases” ................................... 90
      5.2.2.2.3 “All stages of the credit transaction” .................. 91
      5.2.2.2.4 Enforcement ............................................... 91
      5.2.2.2.5 Parallel state credit discrimination statutes .......... 91
  5.2.3 Who Must Pay a Deposit? ........................................ 92
  5.2.4 Should Non-Utility Credit History Be Utilized? ................. 92
    5.2.4.1 Overview ......................................................... 92
    5.2.4.2 Are Credit Scores Fair and Reliable When Determining Access to
           Utility Services? .................................................. 93
    5.2.4.3 How Credit Scoring Works .................................... 93
    5.2.4.4 Does Use of Credit Scores Undermine the Duty to Provide
           Service? .................................................................. 94
    5.2.4.5 Accuracy of Information in Consumer Credit Files Puts into
           Doubt the Reliability of Credit Scores .......................... 95
    5.2.4.6 Credit Scores May Have a Disparate Impact on Vulnerable
           Consumers ........................................................... 95
    5.2.4.7 What Happens If Consumers Dispute Their Credit Score? ....... 96
    5.2.4.8 Recent Challenges to Use of Credit Scores by Utility Companies . 97
    5.2.4.9 Necessary Safeguards When Credit Scores Are Used for Utility
           Services ............................................................... 98
  5.2.5 Full Utility Credit Reporting to Credit Bureaus .................. 98
    5.2.5.1 Overview ......................................................... 98
    5.2.5.2 Traditional Uses of Credit Scores ............................ 99
    5.2.5.3 Nontraditional Uses of Credit Scores ........................ 99
    5.2.5.4 Utility Credit Reporting—Current Practice .................. 99
    5.2.5.5 Full Reporting by Electric and Gas Utilities—Harm to
           Low-Income Households ........................................... 99
    5.2.5.6 Utility Credit Reporting and State Regulatory Consumer
           Protections .......................................................... 100
    5.2.5.7 Implementation Concerns—Fairness and Consistency .......... 100
      5.2.5.7.1 General ......................................................... 100
      5.2.5.7.2 Customer service rules—bill payment timeframes and
              deferred payment agreements .................................. 100
      5.2.5.7.3 Home energy expenditures .................................. 101
      5.2.5.7.4 Availability of low-income energy assistance .......... 101
5.2.6 UCC Limits on Utilities’ Power to Demand Deposits or Increased Deposits ............................................. 102

5.2.7 How Much Deposit Can a Utility Demand? ................................. 103
  5.2.7.1 Common Law Rule: Utility May Seek Only a Reasonable Level of Deposit ...................................... 103
  5.2.7.2 Regulated Utilities: Deposit Amounts Set by Rules ........... 103
  5.2.7.3 Charging a Particular Customer the Maximum Allowed Deposit May Not Be Reasonable ......................... 104

5.2.8 Payment of Deposit in Installments ...................................... 104

5.2.9 Deposits and Utility Customers in Bankruptcy ....................... 104

5.2.10 Public Utility Must Pay Interest on Deposits ......................... 104

5.2.11 Deposits Must Be Refunded Within a Reasonable Time ............ 105

5.2.12 Deposit Policies of Restructured Utilities .......................... 105

5.3 Evaluating and Challenging a Utility’s Deposit System .................. 105
  5.3.1 General Economic Considerations: Costs of Deposits ............... 105
  5.3.2 The Function of a Deposit ........................................ 106
  5.3.3 The Costs to Ratepayers of a Deposit ................................ 106

5.4 Reconnection Charges ........................................ 106

5.5 Challenging Late Charges ........................................ 107
  5.5.1 General .............................................. 107
  5.5.2 Are Late Charges Authorized by PUC? ................................ 108
  5.5.3 No Late Charges When There Is Special Regulatory Protection from Disconnection .......................................... 110
  5.5.4 Late Receipt of Bill and Late Payments by Others As a Defense .... 110
  5.5.5 When Liability for Late Fees Terminates ................................. 111
  5.5.6 Calculation of a Late Charge May Not Involve a “Pyramiding” of Late Charges ........................................ 111
    5.5.6.1 Pyramiding Described ........................................ 111
    5.5.6.2 FTC Credit Practices Rule .................................. 111
    5.5.6.3 The Late Charge Should Not Include Late Charges Imposed More Than Once for the Same Skipped Payment .......................................................... 112
    5.5.6.4 No Late Charges on Unpaid Late Charges .......................... 112
  5.5.7 Late Charges Should Not Be Assessed Prematurely ................. 112
  5.5.8 Usury Challenges ........................................ 113
  5.5.9 The Fair Credit Billing Act ..................................... 113
  5.5.10 Credit Discrimination Challenges to Late Charges ............... 113
  5.5.11 Unfair or Deceptive Acts or Practices Statutes ................. 114

5.6 Are Utility Late Charges Fair? ........................................ 114
  5.6.1 Introduction ........................................... 114
  5.6.2 Late Charges Should Only Cover Reasonable and Legitimate Expenses ........................................ 114
  5.6.3 Late Payment Charge Does Not Induce Prompt Payment .......... 116
  5.6.4 Late Charges More Favored in the Non-Utility Context .......... 116

Chapter 6

Grounds for Termination of Utility Service and Termination Protections

6.1 Grounds for Termination of Service ..................................... 121
  6.1.1 Nonpayment .............................................. 121
  6.1.2 Failure to Pay Deposit ..................................... 122
  6.1.3 Meter Tampering and Other Fraud; Violation of Utility Regulation ........................... 122
  6.1.4 Failure to Permit Utility Access; Health or Safety Reasons .......... 122
  6.1.5 Disconnection at Request of Customer ................................ 122

6.2 Notice Requirement Prior to Disconnect ................................ 123
  6.2.1 Right to Notice ........................................... 123
6.4 Past Undercharges As Collateral Matters ........................................... 145
6.7 Recourse for Wrongful Disconnection .................................................... 145
  6.7.1 Utility’s Failure to Comply with Legal Limitations .......................... 145
  6.7.2 Disconnections As Torts .................................................................... 146
    6.7.2.1 Duty ...................................................................................... 146
    6.7.2.2 Breach .................................................................................. 147
    6.7.2.3 Causation .............................................................................. 148
    6.7.2.4 Damages ................................................................................ 148
6.8 Landlord-Requested Utility Disconnects ..................................................... 149
  6.8.1 General ......................................................................................... 149
  6.8.2 State and Local Laws Placing Obligations on the Utility ...................... 149
  6.8.3 State Statutes Specifically Regulating Landlord’s Ability to Order
    Disconnect .................................................................................... 149
    6.8.4 State Landlord-Tenant Law Limiting Landlord’s Ability to Initiate
      Disconnect .................................................................................. 150
      6.8.4.1 Quiet Enjoyment .................................................................. 150
      6.8.4.2 Warranties of Habitability .................................................. 150
      6.8.4.3 Self-Help Eviction .................................................................. 151
      6.8.4.4 Prohibitions Against Retaliation and Discrimination As Limits on
        Landlords’ Ability to Terminate Utility Services ............................ 153
      6.8.4.5 State UDAP Statutes As a Remedy Against Vindictive Landlords .. 155
      6.8.4.6 Tenants As Third-Party Beneficiaries of Contract Between
        Landlord and Utility ................................................................... 156
      6.8.4.7 Constitutional Protections for Tenants of Public and Subsidized
        Housing ..................................................................................... 157
      6.8.4.8 The Fair Housing Act Prohibits Discrimination by Landlords and
        Utilities ..................................................................................... 158

Part III Keeping Utility Bills Affordable in Private and
Subsidized Housing

Chapter 7 Utility Affordability Programs: Description and Implementation

  7.1 Short-Term or Crisis Energy Payment Assistance ................................. 159
    7.1.1 Fuel Funds ................................................................................. 159
      7.1.1.1 General .............................................................................. 159
      7.1.1.2 Funds Raised ....................................................................... 159
    7.1.2 The Emergency Assistance Program and the Repeal of AFDC .......... 160
    7.1.3 Emergency Shelter Grants (ESG) ................................................. 161
    7.1.4 FEMA (Federal Emergency Management Agency) Funds ................ 162
  7.2 Long-Term Payment Assistance Options .............................................. 162
    7.2.1 Introduction .............................................................................. 162
    7.2.2 Low-Income Rate Discount Programs ............................................. 163
      7.2.2.1 Introduction ......................................................................... 163
      7.2.2.2 Straight Discount ................................................................. 163
        7.2.2.2.1 Overview ....................................................................... 163
        7.2.2.2.2 The California Alternate Rates for Energy (CARE)
          discount program ..................................................................... 163
        7.2.2.2.3 Straight discount programs in other states ...................... 166
      7.2.2.3 The Tiered Discount Program .................................................. 167
        7.2.2.3.1 Overview ....................................................................... 167
        7.2.2.3.2 The Indiana tiered discount program .............................. 167
        7.2.2.3.3 The New Hampshire tiered discount program ............... 169
      7.2.2.4 Consumption-Based Discounts ................................................. 169
Access to Utility Service

7.2.2.5 Customer Charge Waiver ........................................... 170
7.2.3 Percentage of Income Payment Plans .................................. 171
  7.2.3.1 Overview ..................................................... 171
  7.2.3.2 Straight PIPP ................................................ 171
    7.2.3.2.1 Overview .............................................. 171
    7.2.3.2.2 The Ohio PIPP ........................................... 171
    7.2.3.2.3 The Pennsylvania Customer Assistance Program (CAP) .......... 174
  7.2.3.3 The Fixed Credit Model ......................................... 179
    7.2.3.3.1 Overview .............................................. 179
    7.2.3.3.2 The New Jersey program ................................ 180
    7.2.3.3.3 The Maine program .................................... 183
  7.2.3.4 The Supplemental Energy Assistance Model ......................... 189
    7.2.3.4.1 Overview .............................................. 189
    7.2.3.4.2 The Maryland EUSP ...................................... 189
    7.2.3.4.3 The Washington LIRA ................................... 192
    7.2.3.4.4 The Oregon OLGA ....................................... 196
  7.2.4 Budget Billing .................................................... 199
7.2.5 Arrearage Forgiveness .................................................. 201
  7.2.5.1 Overview ..................................................... 201
  7.2.5.2 Connecticut .................................................. 201
    7.2.5.2.1 Overview .............................................. 201
    7.2.5.2.2 The basic natural gas utility hardship customer arrearage forgiveness plan .... 202
    7.2.5.2.3 The basic electric utility hardship customer arrearage forgiveness plan .... 206
    7.2.5.2.4 The relationship between energy efficiency and arrearage forgiveness .... 207
  7.2.5.3 Missouri ....................................................... 208
    7.2.5.3.1 Overview .............................................. 208
    7.2.5.3.2 The disapproved Laclede Gas Catch-Up/Keep-Up pilot program .......... 208
    7.2.5.3.3 The approved Laclede Gas Catch-Up/Keep-up pilot program .......... 210
  7.2.5.4 Other States .................................................... 211
7.2.6 Line Extension Assistance ............................................. 211
7.2.7 System Benefit Charges in Restructured States ......................... 211
  7.2.7.1 Overview ..................................................... 211
  7.2.7.2 Nevada’s System Benefits Charge Program ......................... 212
  7.2.7.3 Wisconsin’s System Benefits Charge Program ....................... 214
7.3 Developing and Administering an Affordability Program ................. 216
  7.3.1 Outreach and Administrative Issues .................................. 216
  7.3.2 Costs in Establishing an Affordability Program ..................... 217
    7.3.2.1 Start-up Costs ............................................. 217
    7.3.2.2 Ongoing Administration Costs ................................ 217
    7.3.2.3 Net Revenue Implications ................................... 219
      7.3.2.3.1 General .............................................. 219
      7.3.2.3.2 Data to estimate take-rate of program ..................... 219
      7.3.2.3.3 Net revenue loss versus gross revenue loss: Avoided costs ............... 220
    7.3.2.4 Impact of affordable bills: Net revenue increase .................... 221
  7.3.3 Data Sharing—Protection of Benefit Recipients’ Privacy ............... 222
  7.3.4 Eligibility Components of Affordability Programs .................... 224
    7.3.4.1 Overview ..................................................... 224
    7.3.4.2 Federal Poverty Level ........................................ 224
Chapter 7

7.3.4.3 Median Income ................................... 225
7.3.4.4 The Self-Sufficiency Standard ......................... 226
7.3.4.5 Non-Income Eligibility Criteria ........................ 226
7.3.4.6 Categorical Eligibility. ................................ 227
7.3.4.7 Resources on Outreach and Eligibility. .................... 227

7.4 Intervenor Funding in Public Utility Regulatory Cases to Encourage Affordability Programs. ........................ 228
7.4.1 Introduction ........................................... 228
7.4.2 State Authority for Intervenor Funding ......................... 229
7.4.3 Specific Conditions for Intervenor Funding Awards ................ 230
7.4.4 Types of Costs for Which Compensation Is Allowed ............... 232
7.4.5 Intervenor Funding Under PURPA ........................... 233

7.5 The Legality of Utility Affordability Programs. ........................ 236
7.5.1 Introduction ........................................... 236
7.5.2 Utility Rates Cannot Unjustly and Unreasonably Discriminate . 236
7.5.3 Do Affordability Programs Unreasonably Discriminate in Rates? 238
7.5.3.1 Courts Taking Literal Interpretation of Duty of Nondiscrimination ........................................ 238
7.5.3.2 Most Courts Recognize Differences Between Different Groups of Customers in Same Customer Class .......... 239
7.5.3.3 Reasonable Discrimination Is Permissible .................... 239
7.5.3.4 Cost of Service Principles ................................ 240
7.5.3.5 Factors Other Than Cost of Service ............... 240
7.5.3.6 Usage ......................................... 242
7.5.3.7 Targeting ....................................... 242
7.5.4 Authority of Public Service Commission to Permit Utility to Have Reduced Rate. ........................ 243

Chapter 8

The Low Income Home Energy Assistance Program (LIHEAP)

8.1 Overview of LIHEAP .......................................... 245
8.1.1 LIHEAP Summary ....................................... 245
8.1.2 History of LIHEAP ....................................... 246
8.1.3 LIHEAP Funding ........................................ 247
8.1.3.1 LIHEAP Regular Block Grant ......................... 247
8.1.3.2 LIHEAP Emergency Contingency Funds .......... 248

8.2 Significant LIHEAP Provisions .................................. 249
8.2.1 Purpose .............................................. 249
8.2.2 State Administration of LIHEAP ............................. 249
8.2.3 State Plans. ........................................... 249
8.2.4 Public Participation Provisions .............................. 249
8.2.5 Crisis Intervention ....................................... 250
8.2.6 Leveraging and REACH Incentive Programs ..................... 250
8.2.7 Low-Cost Residential Weatherization or Other Home Energy-Related Repair ........................................ 250

8.3 Program Eligibility .......................................... 250
8.3.1 Introduction ........................................... 250
8.3.2 “Household” As Determination of Eligibility ............... 251
8.3.2.1 Definition of Household ................................ 251
8.3.2.2 Unrelated Boarders ................................ 252
8.3.2.3 Separate Living Quarters. ............................. 252
8.3.2.4 Strategies ....................................... 252

8.4 Targeting of Benefits ......................................... 253
8.5 Equitable Treatment of Owners and Various Classes of Renters ........................ 254
8.5.1 Introduction ........................................... 254
Access to Utility Service

8.5.2 Public Housing and Section 8 Tenants ........................................ 254
  8.5.2.1 General ........................................ 254
  8.5.2.2 Section 927 of the Housing and Development Act of 1992 .... 255
  8.5.2.3 Subsidized Housing Tenants Who Pay for Heat Through Rent .... 255
  8.5.2.4 Section 927 Amended by Congress .............................. 256
  8.5.2.5 Marbley v. Bane: Interpretation of Section 927 As Amended ... 257

8.6 Income-Disregard Provision .................................................... 257
  8.6.1 General .............................................. 257
  8.6.2 Effect of “Income-Disregard” Provision on Distribution of Benefits .. 257
  8.6.3 Vendor Payments ......................................... 257
  8.6.4 Statutory Clarification ........................................... 258

8.7 LIHEAP’s Explicit Remedies ................................................. 258
  8.7.1 Withholding Provision ........................................... 258
  8.7.2 Administrative Review ........................................... 258

8.8 Enforcement of the LIHEAP Statute ........................................... 258

Chapter 9
Weatherization

9.1 Introduction ................................................................. 261

9.2 Low-Income Weatherization Assistance Program (WAP) ................. 261
  9.2.1 History and Overview of the Program ............................. 261
  9.2.2 Program Eligibility .............................................. 262
  9.2.3 Assistance Provided .............................................. 262
  9.2.4 States’ Annual Weatherization Plans .............................. 263
  9.2.5 Applicability of the WAP to Tenants ............................... 263
    9.2.5.1 Overview ........................................... 263
    9.2.5.2 Guidance Found in WAP Statute and DOE Regulations .... 264
    9.2.5.3 State Plan Regulation of Tenant Weatherization ......... 264
    9.2.5.4 Rent Increases Following Weatherization .................. 265
    9.2.5.5 Evictions ............................................ 266
    9.2.5.6 Rent for New Tenant When Existing Tenant Vacates ....... 266
    9.2.5.7 Sale of Weatherized Property ............................. 266
    9.2.5.8 Protecting Tenants Who Pay for Heat Through Rent ....... 267
    9.2.5.9 Owner Agreements ...................................... 267
    9.2.5.10 Two Instructive State Plans: Massachusetts and New York . 267
    9.2.5.11 Alternative Dispute Resolution Issues ................... 268
    9.2.5.12 Other Execution, Monitoring, and Enforcement Issues .... 268
  9.2.6 Application of Davis-Bacon Rules to WAP ........................... 268

9.3 Other Government Initiatives ............................................... 269
  9.3.1 LIHEAP ..................................................... 269
  9.3.2 Department of Agriculture ....................................... 269
  9.3.3 State Funding of Weatherization .................................. 269

9.4 Utility-Sponsored Energy Efficiency ..................................... 269
  9.4.1 Introduction .................................................. 269
  9.4.2 Only Utilities May Be Able to Re-Weatherize Certain Units and Also Increase the Number of Households Served .............. 271
  9.4.3 Only Utilities May Be Able to Weatherize Certain Multifamily Dwellings ........................................... 271
  9.4.4 Only Utilities Can Engage in Certain Types of Weatherization .... 271
  9.4.5 Inadequate Federal Funding .................................... 272
  9.4.6 Overcoming Utilities’ “Cost-Effective” Requirement ............ 272
  9.4.7 Challenges Presented by Low-Income Energy Efficiency Programs ... 272
    9.4.7.1 High Transaction Costs .................................. 272
    9.4.7.2 Non-Energy-Savings Repairs ............................... 273
    9.4.7.3 Inadequacy of Low-Interest Loans .......................... 273
    9.4.7.4 The Solution: Combining Funds ............................ 273
Chapter 10 Utility Allowances in Subsidized Housing

10.1 Overview of Utility Allowances: What They Are; Who Gets Them; Why They Are Important for Tenants .......................................................... 275
  10.1.1 Introduction .............................................................................. 275
  10.1.2 Types of Housing with Utility Allowances ............................. 275
  10.1.3 The Role of Utility Allowances in Setting Rents ...................... 276
  10.1.4 The Three Basic Metering Arrangements in Publicly Assisted Housing ................................................................. 277
    10.1.4.1 Overview ........................................................................... 277
    10.1.4.2 Master-Metered Projects .................................................. 277
    10.1.4.3 Check-Metered Projects ................................................... 277
    10.1.4.4 Retail-Metered Units ....................................................... 278

10.2 Calculation of Utility Allowances in Publicly Assisted Housing ........... 278
  10.2.1 Overview .............................................................................. 278
  10.2.2 Method for Establishing and Revising Allowances: Retail- and Check-Metered Tenants ......................................................... 279
  10.2.3 PHA Discretion, the HUD Guidebook, and Role of Tenant Advocacy ................................................................. 280
    10.2.3.1 PHAs Have Discretion in Setting Allowances ...................... 280
    10.2.3.2 HUD Guidebook .............................................................. 280
  10.2.4 Appliances and Uses Covered by and Excluded from Utility Allowances .............................................................. 281
  10.2.5 Rules Specific to the Rental Assistance Programs (Vouchers and Certificates) ................................................................. 283
    10.2.5.1 Differences Between Public Housing and Voucher Programs ................................................................. 283
    10.2.5.2 Voucher Tenants Face Unique Problems ............................ 284
    10.2.5.3 Calculating Utility Allowances for Voucher Tenants ............ 285
  10.2.6 Utility Allowances in HUD-Subsidized Developments: Section 236 and Project-Based Section 8 ........................................... 287
    10.2.6.1 Overview ........................................................................... 287
    10.2.6.2 Section 236 Housing .......................................................... 287
    10.2.6.3 Projects Assisted Under Section 8 ....................................... 289
  10.2.7 “Fannie Mae” and “Freddie Mac” Utility Allowances .................. 289

10.3 Meter Conversions in Public Housing ............................................ 290

10.4 Seasonal Utility Allowances and Carryover Credits .......................... 291

10.5 Surcharges and Litigation Relating to Surcharges in Public Housing ........ 292
  10.5.1 Check-Metering Surcharges ................................................... 292
  10.5.2 Master-Metering Surcharges .................................................. 293

10.6 Inadequacy of Utility Allowances ................................................. 294
  10.6.1 Relationship Between Costs and Allowances ......................... 294
  10.6.2 GAO’s Findings ..................................................................... 295
  10.6.3 Reasons for the Inadequate Allowances .................................... 296
  10.6.4 Public Housing’s Performance Funding System Causes Some PHAs to Deliberately Keep Allowances Too Low .......................... 297
  10.6.5 GAO’s Recommendations Regarding Inadequate Utility Allowances ................................................................. 297

10.7 Litigation on Inadequate Utility Allowances .................................... 298
  10.7.1 Introduction ........................................................................... 298
  10.7.2 Public Housing Authority Defenses ....................................... 300
  10.7.3 Relief Obtained ...................................................................... 301

10.8 Advocating for Clients: Developing the Facts .................................. 301
  10.8.1 Introduction ........................................................................... 301
  10.8.2 Determining the Need for Weatherization ............................... 302
  10.8.3 Documents to Obtain ............................................................ 302
  10.8.4 Factors to Consider ............................................................... 303
  10.8.5 Using Utility Bills or Meter Readings to Analyze Consumption .... 303
  10.8.6 Using HUD Form 52722 ......................................................... 304
  10.8.7 Estimating Consumption When Actual Readings Are Unavailable .. 304
Part IV

Issues Specific to Low-Income Telecommunications and Water

Chapter 11

Telecommunications

11.1 Introduction .............................................. 309
11.2 Regulatory Authorities ....................................... 312
  11.2.1 State Utility Commissions ............................... 312
  11.2.2 Federal Communications Commission ...................... 313
  11.2.3 Federal-State Joint Board on Universal Service .......... 314
11.3 Federal Affordability and Access Programs ......................... 315
  11.3.1 Introduction .......................................... 315
  11.3.2 Federal Low-Income Assistance Programs: Lifeline, Link-Up, and Toll Limitation Service ...................... 316
  11.3.2.1 Federal Low-Income Assistance Program Overview ........ 316
    11.3.2.1.1 Introduction .............................. 316
    11.3.2.1.2 Universal Service Administrative Company (USAC) .... 316
    11.3.2.1.3 Eligible telecommunications carriers (ETCs) ......... 316
  11.3.2.2 Lifeline ........................................ 317
  11.3.2.3 Amount of Lifeline Support .......................... 317
  11.3.2.4 Services Covered Under Universal Services ............... 318
    11.3.2.4.1 General ...................................... 318
    11.3.2.4.2 Number-portability charge waiver ................ 318
    11.3.2.4.3 No-disconnect rule .......................... 319
    11.3.2.4.4 “Universal Service” is an evolving term ........... 319
  11.3.2.5 The Federal Link-Up Program ........................ 321
  11.3.2.6 Eligibility for Lifeline and Link-Up .................... 321
  11.3.2.7 Certification and Verification for Lifeline and Link-Up .............................................. 323
    11.3.2.7.1 General ...................................... 323
    11.3.2.7.2 States with state Lifeline support ................ 323
    11.3.2.7.3 States using the federal default eligibility criteria ... 324
  11.3.2.8 Tribal Lifeline and Link Up: Enhanced Support ............ 324
    11.3.2.8.1 Introduction .................................. 324
    11.3.2.8.2 Geographic areas covered by enhanced Lifeline and Link-Up .............................................. 325
    11.3.2.8.3 Enhanced Lifeline and Link-Up customer qualifications ............................... 325
    11.3.2.8.4 Eligible telecommunications carriers for Tribal Lifeline and Link-Up ...................... 326
  11.3.2.9 Modifications to the Lifeline Program .................... 327
  11.3.2.10 Barriers to Lifeline Service .......................... 328
    11.3.2.10.1 Deposits ..................................... 328
    11.3.2.10.2 Outstanding bills ............................ 328
    11.3.2.10.3 Local service from predatory carriers ............. 328
  11.3.2.11 Strategies for Dealing with Pending Termination of Lifeline Service ............................. 329
  11.3.2.12 Strategies for Increasing Participation in Lifeline and Link-Up .............................................. 330
11.3.2.12.1 Lifeline and Link-Up outreach ................ 330
11.3.2.12.2 Automatic enrollment .......................... 331
11.3.3 Toll (Long-Distance) Limitation ...................... 331
11.3.4 Other Federal Universal Services Programs .......... 331
11.4 State Universal Service Programs ........................ 332
11.5 Services for the Disabled Under the Telecommunications Act of 1996 ...... 332
11.5.1 General ............................................. 332
11.5.2 Guidelines .......................................... 334
11.5.3 Enforcement of the Provisions Regarding Access by Persons with Disabilities ........................................... 334
11.6 Telephone Customer Service Issues ...................... 334
11.6.1 Deposits ............................................ 334
11.6.2 Shut-Offs .......................................... 334
11.6.3 Local Phone Company Collection of Long-Distance Bills as Covered by Fair Debt Collection Practices Act ................ 335
11.6.4 The Telephone Bill As a New Payment Mechanism .......... 335
11.6.5 Overview of Unfair or Deceptive Telecommunications Practices .......... 336
11.6.5.1 Slamming ........................................ 336
11.6.5.1.1 Introduction .................................. 336
11.6.5.1.2 Authorization verification requirements to switch long-distance service ................................................. 336
11.6.5.1.3 Procedures for resolving a slamming dispute .......... 337
11.6.5.1.4 Filing a complaint with the state utility commission . 338
11.6.5.1.5 Filing a complaint with the FCC .................. 338
11.6.5.2 Remedies Under the Federal Slamming Rule .......... 339
11.6.5.2.1 If the consumer has not paid the unauthorized long-distance company ................................................. 339
11.6.5.2.2 If the consumer has already paid the unauthorized long-distance company ................................................. 339
11.6.5.3 Preventive Measures .................................. 340
11.6.5.4 State Slamming Protections .......................... 340
11.6.5.5 Cramming .......................................... 341
11.6.5.6 Pay-per-Call or 1-900 Numbers ...................... 341
11.6.5.6.1 General ........................................ 341
11.6.5.6.2 Some key pay-per-call protections in the regulation of phone companies offering pay-per-call services .... 342
11.6.5.6.3 Blocking requirement ............................ 342
11.6.5.6.4 Disclosure requirement .......................... 342
11.6.5.6.5 Remedies ...................................... 343
11.6.5.7 State Laws Regulating 1-900 Numbers ................. 343
11.6.5.8 Other Entities Liable for a Provider’s 900-Number Fraud .......... 344
11.6.6 Unsolicited Calls ...................................... 345
11.6.7 Prepaid Telephone Cards ................................ 345
11.7 Payphones ............................................. 346
11.7.1 Overview ............................................ 346
11.7.2 Inmate Payphones .................................... 347
11.7.3 Internet As a Regulated Telecommunications or Information Service .... 349

Chapter 12 Affordable Water Service
12.1 The Growing Problem of Water Affordability ................. 351
12.2 Types of Water Affordability Programs ....................... 352
12.3 Examples of Low-Income Water Affordability Rates .......... 352
Part V Special Circumstances

Chapter 13 Bankruptcy Issues: When Either the Consumer or Landlord Files for Bankruptcy

13.1 Using Bankruptcy to Prevent Utility Shut-Off and Deal with Arrearages

13.1.1 Bankruptcy As a Source of Consumer Protections

13.1.1.1 Introduction

13.1.1.2 The 2005 Bankruptcy Amendments

13.1.1.3 A Consumer Debtor’s Bankruptcy Options

13.1.1.4 The Purposes of Bankruptcy

13.1.2 Public Utility Bills Under the Bankruptcy Code

13.1.2.1 Introduction

13.1.2.2 Is a Service Provider a “Utility” Under the Bankruptcy Code?

13.1.2.3 Special Bankruptcy Rules for Utility Arrears

13.1.2.3.1 Continuation or reconnection of service

13.1.2.3.2 The obligation to provide adequate assurance

13.1.2.3.3 Procedure for determining adequate assurance

13.1.2.3.4 Post-petition termination procedures

13.1.2.4 Utility Has No Service Obligation If Customer Has Tampered with Service

13.1.2.5 The Right to Continued Utility Service Under Section 525(a) for Bankruptcy Debtors Who Are Customers of Utilities That Are “Governmental Units”

13.1.3 General Bankruptcy Considerations

13.1.3.1 Treatment of Pre-Bankruptcy Arrearages

13.1.3.2 Status of Utility Claims in Bankruptcy

13.1.3.2.1 Objecting to utility claims for priority treatment

13.1.3.2.2 Dealing with secured claims of utilities

13.1.3.3 Bankruptcy Rights As Leverage to Establish Voluntary Payment Plans

13.1.3.4 Disadvantages to Bankruptcy Filing

13.1.3.5 Timing Issue Related to Filing Bankruptcy Cases

13.1.3.6 Conversion of Cases and Voluntary Dismissal of Chapter 13 Cases

13.1.3.7 Initiating a Bankruptcy Case

13.1.3.8 Enforcing Monetary Claims Against Landlord

13.1.3.8.1 Filing a Claim Against Landlord

13.1.3.8.2 Recovering Administrative Costs

13.1.3.8.3 Seeking a Determination of Nondischargeability

13.1.3.9 Conclusion

13.2 Tenant’s Right to Utilities When Landlord Files Bankruptcy

13.2.1 Introduction

13.2.2 Effect of Bankruptcy on State Law Remedies

13.2.3 Keeping the Utilities on During the Bankruptcy Process

13.2.3.1 The Automatic Stay

13.2.3.2 Seeking Injunctive Relief Against Landlord in Bankruptcy Court

13.2.3.3 Removal of Pending Actions to Bankruptcy Court

13.2.3.4 Seeking Relief from Stay

13.2.3.5 In Forma Pauperis

13.2.3.6 Withholding Rent to Maintain Utilities

13.2.3.7 Seeking Appointment of a Trustee in a Chapter 11 Bankruptcy

13.2.3.8 Maintaining Service in a Chapter 7 Bankruptcy

13.2.3.8.1 Abandonment by the trustee

13.2.3.8.2 Loss of services without abandonment

13.2.4 Enforcing Monetary Claims Against Landlord

13.2.4.1 Filing a Claim Against Landlord

13.2.4.2 Recovering Administrative Costs

13.2.4.3 Seeking a Determination of Nondischargeability

13.2.5 Conclusion
Chapter 14 Manufactured Homes and Utility Service

14.1 Introduction .............................................. 383
  14.1.1 Importance and Definition of Manufactured Homes .... 383
  14.1.2 Unique Utility Issues Generally Apply to Homes Sited on Rented Land .. 383
14.2 Community Owner Restrictions on Choice of Utility Provider ............ 383
14.3 Utility Billing, Master Metering, and Submetering Arrangements .......... 384
  14.3.1 Restrictions on Master Metering ............................ 384
  14.3.2 Other Protections Involving Master Metering ................. 385
  14.3.3 When Park Switches So That Utilities Are No Longer Included in Rent .. 386
  14.3.4 Special Concerns for Water Submetering Arrangements .......... 386
14.4 Park Owner’s Failure to Provide Utility Service ...................... 387
14.5 Utility Termination As Means to Evict .................................... 387
14.6 Addressing Inefficient Homes .................................. 388
  14.6.1 Overview ............................................ 388
  14.6.2 Weatherization of Existing Homes ........................... 388
    14.6.2.1 Overview ...................................... 388
    14.6.2.2 Non-Energy Savings Repairs ......................... 388
    14.6.2.3 Specialized Training Requirements ..................... 388
    14.6.2.4 Weatherization of Homes in Communities ............ 389
  14.6.3 Replacement of Older Homes .................................. 389
    14.6.3.1 Overview ...................................... 389
    14.6.3.2 Barriers to Replacement of Older Manufactured Homes .... 390
      14.6.3.2.1 Financing .................................. 390
      14.6.3.2.2 Size of replacement units ...................... 390
      14.6.3.2.3 Lack of security of land tenure ................. 391
      14.6.3.2.4 Predatory lending .................................. 391
      14.6.3.2.5 Dealer capture of benefits .................... 391
    14.6.3.3 New Efforts to Assist Replacement ............. 391
    14.6.3.4 Decommissioning of Homes to Be Replaced ........... 392
    14.6.3.5 Efficiency of New Manufactured Homes ............ 393
14.7 Resident Ownership of Manufactured Home Communities As Solution to Utility Problems ........................................... 393

Chapter 15 Due Process Protections for Municipal and REC Customers; Unregulated Deliverable Fuels

15.1 Special Due Process Protections for Municipal and REC Customers ...... 395
  15.1.1 Due Process Requirements May Not Apply to Investor-Owned Utilities .. 395
  15.1.2 Municipal Utility Terminations Must Comply with Due Process ........ 396
  15.1.3 Due Process Requirements ............... 396
    15.1.3.1 General ........................................ 396
    15.1.3.2 Liability for Third Party’s Utility Debts .......... 397
  15.1.3.3 Rights of Tenants When Landlord Defaults and Utility Service Is Disconnected .......................... 398
  15.1.4 Applicability to RECs ................................... 401
15.2 Using the Fair Credit Billing Act to Stop Municipal or REC Disconnects .. 402
  15.2.1 Introduction .......................................... 402
  15.2.2 FCBA Protections ...................................... 403
15.3 Unregulated Deliverable Fuels .................................. 404
  15.3.1 Introduction .......................................... 404
  15.3.2 Special Issues Relating to Propane Vendors ................. 405
  15.3.3 Problems Associated with the Home Heating Oil Vendors .......... 405
  15.3.4 Unfair and Deceptive Acts and Practices Regulations Covering Oil or Propane Service; Other UDAP Challenges ........................ 405
Appendix A  State Regulation of Utilities
A.1 Summary of Utility Commission Regulation ................................. 415
A.2 Background to Utility Consumer Protection Rules .......................... 564
A.2.1 Introduction ........................................................................... 564
A.2.2 Components of the Consumer Regulatory Protection Structure ... 564
A.2.3 The Need to Strengthen Utility Consumer Protections .............. 565
A.3 Selected State Utility Consumer Protection Regulations ............... 566
A.3.1 Deposits .............................................................................. 566
A.3.2 Payment Plans ...................................................................... 566
A.3.3 Prohibition on Termination of Service Where There Is a Serious Illness . 567
A.3.4 Prohibition of Termination of Service During Winter Moratorium .... 567
A.3.5 Limits on Timing of Service Termination ............................... 568
A.3.6 Other Limitations on Denial of Service ............................... 569
A.3.7 Notice Requirements Relating to Service Termination .......... 569
A.4 Chapter 140, Acts of 2005 (MA) ............................................. 571
A.5 State-By-State Extreme Temperature Protections ....................... 572
A.6 State-By-State Summary of Serious Illness Protections ................ 579
A.7 State-By-State Summary of Customer Contact and Notification Procedures Prior to Disconnection of Service ....................... 590
A.8 State Utility Commissions .................................................... 624

Appendix B  Telephone and Telecommunications Materials
B.1 Universal Service Sections in the Telecommunications Act of 1996 ........ 631
B.1.1 Telecom Carriers Eligible for Universal Service Support—47 U.S.C. § 214 ......................................................... 631
B.1.2 Federal Telecommunications Universal Services—47 U.S.C. § 254 .... 633
B.2 Federal Regulations for Universal Services Support for Low-Income Consumers .................................................. 638
B.2.1 Telecom Carriers Eligible for Universal Service Support (Eligible Telecommunications Carriers)—47 C.F.R. §§ 54.201–54.209 .... 638
B.2.2 Universal Services Support for Low-Income Consumers (Lifeline and Link-Up)—47 C.F.R. § 54.400–54.418 .......................... 641
B.3 FCC Slamming Regulations—47 C.F.R. §§ 64.1100–64.1195 ........ 647
B.4 Federal 900-Number Regulations ........................................... 654
B.4.1 FCC 900-Number Regulations—47 C.F.R. §§ 64.1501–64.1515 ..... 654
B.4.2 FTC 900-Number Regulations—16 C.F.R. §§ 308.1–308.9 ........ 658
### Appendix C
The Low Income Home Energy Assistance Program (LIHEAP)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.1</td>
<td>LIHEAP Statute—42 U.S.C. §§ 8621–8630</td>
<td>667</td>
</tr>
<tr>
<td>C.2</td>
<td>LIHEAP Regulation—45 C.F.R. §§ 96.80–96.89</td>
<td>677</td>
</tr>
<tr>
<td>C.3</td>
<td>2011 State LIHEAP Directors</td>
<td>687</td>
</tr>
<tr>
<td>C.4</td>
<td>LIHEAP Profile</td>
<td>690</td>
</tr>
</tbody>
</table>

### Appendix D
The Department of Energy’s Weatherization Assistance Program

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.1</td>
<td>Weatherization Assistance Program Legislation—42 U.S.C. §§ 6861–6873</td>
<td>693</td>
</tr>
<tr>
<td>D.2</td>
<td>Weatherization Assistance Program Regulations—10 C.F.R. 440</td>
<td>701</td>
</tr>
<tr>
<td>D.3</td>
<td>Consumer Information About Low-Income Weatherization</td>
<td>717</td>
</tr>
<tr>
<td></td>
<td>D.3.1 Frequently Asked Questions About Weatherization Assistance from Low-Income Families</td>
<td>717</td>
</tr>
<tr>
<td>D.3.2</td>
<td>What Are Weatherization Services?</td>
<td>717</td>
</tr>
<tr>
<td>D.4</td>
<td>2010 Poverty Income Guidelines and Definition of Income</td>
<td>718</td>
</tr>
<tr>
<td>D.5</td>
<td>State Weatherization Assistance Program Contacts</td>
<td>721</td>
</tr>
<tr>
<td>D.6</td>
<td>Documents Regarding Use of Weatherization Assistance Program Funding in Multi-Family Buildings</td>
<td>724</td>
</tr>
<tr>
<td>D.6.1</td>
<td>Final Rule on Amending Eligibility Provisions to Multi-Family Buildings for the Weatherization Assistance Program</td>
<td>724</td>
</tr>
<tr>
<td>D.6.2</td>
<td>Guidance Regarding Accrual of Benefits to Low-Income Tenants in Multi-Family Buildings Under the Weatherization Assistance Program</td>
<td>725</td>
</tr>
<tr>
<td>D.6.3</td>
<td>Updated Guidance on Eligible Multi-Family Property Listings for Use in the Weatherization Assistance Program</td>
<td>727</td>
</tr>
<tr>
<td>D.6.4</td>
<td>Memorandum of Understanding Between HUD and DOE (May 6, 2009)</td>
<td>730</td>
</tr>
</tbody>
</table>

### Appendix E
Energy Assurance Programs | 735

### Appendix F
Utility Discount Rate Outreach and Enrollment—Sample Legislation and Other Material

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>F.1</td>
<td>Massachusetts Materials</td>
<td>737</td>
</tr>
<tr>
<td>F.1.2</td>
<td>Selected Case Materials, D.T.E. 01-106, Investigation to Increase the Penetration Rate for Discounted Electric, Gas, and Telephone Service</td>
<td>737</td>
</tr>
<tr>
<td>F.1.2.1</td>
<td>D.T.E. 01-106-A, Investigation by the Department of Telecommunications and Energy to Increase the Penetration Rate for Discounted Electric, Gas, and Telephone Service</td>
<td>737</td>
</tr>
<tr>
<td>F.1.2.2</td>
<td>Order on Motion of Boston Edison Company et al. for Reconsideration or, in the Alternative, Clarification</td>
<td>741</td>
</tr>
<tr>
<td>F.1.2.3</td>
<td>D.T.E. 01-106-C, Order on Discount Rate Cost Recovery (Oct. 14, 2005)</td>
<td>745</td>
</tr>
<tr>
<td>F.2</td>
<td>Texas Materials</td>
<td>749</td>
</tr>
<tr>
<td>F.2.2</td>
<td>Rate Reduction Program—Tex. Admin. Code tit. 16, § 25.454</td>
<td>750</td>
</tr>
<tr>
<td>F.3</td>
<td>California Materials</td>
<td>754</td>
</tr>
<tr>
<td>F.3.2</td>
<td>California’s Moore Universal Telephone Service Act</td>
<td>754</td>
</tr>
<tr>
<td>F.3.3</td>
<td>Interim Opinion on Scope and Schedule for CARE Program Evaluations and Energy Division Audit of PG&amp;E’s Low Income Energy Efficiency Program, Cal. P.U.C. D. 03-02-070 (Feb. 7, 2003)</td>
<td>757</td>
</tr>
</tbody>
</table>
Appendix G  Sample Petitions and Letters Certifying Serious Illness
  G.1 Sample Petition to Intervene with Appearance of Counsel ............... 759
  G.2 Sample Petition to Initiate a Proceeding .................................. 760
  G.3 Sample Serious Illness Letters .............................................. 761
    G.3.1 Temporary Illness ....................................................... 761
    G.3.2 Chronic Illness .......................................................... 761

Appendix H  Finding Pleadings, Primary Sources on the Companion Website ...... 763

Index .............................................................. 769

Quick Reference to Consumer Credit and Sales Legal Practice Series . . 793