



September 2, 2022

Illinois Commerce Commission
c/o Jim Zolnierek, Bureau Chief, Public Utilities
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Re: CEJA-Related Revisions to Part 280

To the Illinois Commerce Commission (ICC):

Legal Action Chicago, Community Organizing and Family Issues, represented by the National Consumer Law Center, and the Citizens Utility Board, are providing these comments on the Illinois Commerce Commission’s initial proposed draft revisions to Part 280 of the Illinois Administrative Code to reflect changes pursuant to Public Act 102-0662, the Climate & Equitable Jobs Act (CEJA). The landmark CEJA legislation secured new protections for low income residential utility customers, and generally prohibited utilities from requiring deposits as a prerequisite to receiving service or charging late fees when bills are past due. We broadly support the Commission’s efforts to codify these CEJA provisions, and believe that the initial draft circulated by the Commission includes many positive elements that faithfully implement the core protections provided in CEJA. It is our understanding that this initial phase of the Part 280 rulemaking will solely address amendments that reflect the changes in law reflected in Sections 8-201.7, 8-201.8, 8.201.9, and 8-201.10 of the Public Utilities Act (PUA)

At the same time, we have several concerns that, if left unaddressed, risk undermining the regulations’ purpose by preventing many qualifying customers from taking advantage of the new CEJA protections. In particular, we are concerned that the current draft gives the utilities far too much discretion to determine who will qualify for the protections CEJA mandated.

This is problematic for two reasons. *First*, the utilities have an obvious financial incentive to implement the programs in a way that reduces participation, and thus allows them to continue charging late fees and demanding deposits. *Second*, the Commission’s current proposal places too many burdens on consumers. Herd and Moynihan’s book on the burdens of regulation, *Administrative Burden*, identifies three types of costs when regulations are enacted. There are learning costs (*e.g.*, learning about and meaningfully understanding a rule), psychological costs (*e.g.*, feeling daunted by a rule, feeling shame for having to comply or for not understanding), and compliance costs (*e.g.*, having to navigate an application or online system). The Commission’s current proposal risks imposing significant learning and compliance costs on consumers—costs that can and should be avoided to maximize participation and help as many consumers as possible avoid unnecessary late fees and deposits.

We therefore propose a number of revisions to the current draft CEJA Amendments to Part 280 (“CEJA Amendments”) circulated on or about June 9, 2022. These appear below as underlined and bolded additions. The organizations supporting these proposed changes include:



Legal Action Chicago

Legal Action Chicago is a partner organization of Legal Aid Chicago, the Midwest’s largest provider of free civil legal services to people who are living in poverty or otherwise vulnerable. Through class action litigation and legislative advocacy—tools that Legal Aid Chicago cannot use because of federal funding restrictions—Legal Action Chicago improves policies and systems that affect large groups of low-income individuals or even entire communities, with a focus on addressing racial inequities. Legal Action Chicago has a strong interest in ensuring that the proposed regulations provide adequate protections for low-income customers, many of whom are people of color.

Community Organizing and Family Issues

COFI is a community-based not-for-profit center and resource for family-focused organizing, leadership development and community building focused on the well-being of children, youth and families in low income and working families. COFI has offices Chicago, Elgin and East St. Louis, Illinois. COFI’s work embraces a mission to strengthen the power and voice of low-income and working families at all levels of civic life – from local institutions and communities to the city and state policy arenas. COFI organizes low-income parents of color who, in turn, have built local and statewide organizations that are fighting for change around issues affecting families, and attracting attention nationally to their innovative policy solutions and organizing steps. In addition, COFI works for public policy change on a variety of statewide issues impacting low income and working families throughout the State of Illinois. COFI parents are impacted by policies of every utility in the state, including the rules that will be developed in the ICC’s upcoming Part 280 rulemaking.

National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center® (NCLC) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

Citizens Utility Board

Citizens Utility Board (CUB) is a non-profit, non-partisan organization created by the Illinois General Assembly in 1983. Its mission is to represent the interests of residential utility customers across the state. Since its inception, CUB has been doing just that—working for lower rates and better service from the state’s investor-owned electric, gas and telecommunication companies. CUB challenges utility rate increases, appeals unfair regulatory decisions in the courts, and fights for rate reductions and refunds. CUB also promotes tougher consumer protection laws in the state legislature, publishes consumer-friendly information and holds hundreds of educational events each year.

I. The CEJA Amendments Should Identify All Methods of Obtaining “Low Income Residential Customer” Status.

To take advantage of the new CEJA protections, a consumer must fit the definition of a “low income residential customer.” To ensure that as many people as possible receive the benefits of the new protections, the Commission should add a new section that identifies the process utilities must use to determine whether a consumer qualifies as a “low income residential customer.”

The process should be as simple and inclusive as possible. The Commission should first require utilities to use the data they have already collected through energy efficiency program delivery, risk-scoring, and other operations to identify qualifying low-income consumers, or consumers living in extremely low-income areas, outside of the usual method of identifying customers enrolled in LIHEAP and PIPP programs. This will relieve customers of the unnecessary burden of affirmatively establishing their right to qualify for the protections afforded only to low income residential customers.

In addition to requiring utilities to identify and automatically provide qualified customers with the new protections, customers should be given a simple process for *requesting* low income residential customer status. The utilities should be required to support physical (*i.e.*, mail or in-person), electronic (*i.e.*, online), and telephonic means of enrolling. Customers should also be allowed to submit various forms of documentation to prove eligibility—including, for example, credible evidence of participation in the LIHEAP, PIPP, and/or Lifeline programs within the past two years.

The utilities should also be required to provide meaningful notice of the available protections and how to qualify for them. This would ideally include notice by mail and/or electronic mail, and in the customers’ bills, as we explain later in Section III. Further, as noted below, customers should receive notice whenever the utility believes that customer no longer qualifies for the new protections.

Finally, in order to maximize participation, the Commission should adopt a requirement that customers who qualify will not be required to re-establish their status for at least two years. This would also relieve the utilities of a significant burden because they would not have to determine whether every customer remains qualified for this program every year.

These proposals to ensure maximum participation are embodied in this proposed language for a new Section 280.280, and suggested amendment to Section 280.65:

[New] Section 280.280 – Qualification for Low Income Residential Customer Status

Every utility subject to this Part must develop a written policy and procedure to determine whether new or existing customers qualify as low income residential customers, as defined by this Part, and treat them as such. At a minimum, such a policy and procedure must:

- a) Allow, but not require, residential customers to apply for qualification as low income residential customers;**

b) Require the utility to determine whether new or existing customers qualify as low income residential customers, and qualifying those customers as such, including by:

- 1. using any customer information or data that the utility obtains in its usual course of business to identify whether the customer's household is at or below 80% of the latest area median household income as reported by the United States Census Bureau for the most applicable community or county, or, is at or below 150% of the federal poverty level;**
- 2. using any customer information or data that the utility obtains in its usual course of business to identify whether a customer has previously received or is eligible for LIHEAP, PIPP, and/or Lifeline service; and**
- 3. bi-annually obtaining information sufficient to identify whether a new or existing customer is currently participating in LIHEAP or PIPP, from the Illinois agency responsible for administering such program(s).**

Unless the utility would otherwise already take such action in the ordinary course of its business, under no circumstances will any utility initiate a hard credit inquiry for a customer pursuant to this subsection.

- c) Presumptively classify any new or existing customer as a low income residential customer where 40% or more of individuals in the customer's current zip code are at or below 150% of the federal poverty line and/or 80% of the latest area median household income for the customer's zip code or county, as reported by the United States Census Bureau;**
- d) Allow all new or existing customers to submit documentary evidence of participation in LIHEAP, PIPP, and/or Lifeline within the past two years as sufficient evidence that the individual qualifies for low income residential customer status;**
- e) Allow a new or existing customer to self-certify their household's sources and amounts of income in order to apply for low income residential customer status;**
- f) Allow for the submission of documentary evidence to establish low income residential status through the United States mail, private mail service, email, fax, and through a website established by the utility, and in the case of self-certification without additional documentation, also by telephone;**

- g) Notify customers by mail and/or electronic mail when they have qualified for low income residential customer status, and also, when they have ceased to qualify, and the reason for such disqualification;**
- h) Not require an existing customer qualified as a low income residential customer to re-establish their status within a period of less than two years from the date the utility most recently informs the customer of their eligibility;**
- i) Take no more than 60 calendar days to identify whether a new customer qualifies as a low income residential customer; and**
- j) Where the utility has knowledge that a customer has ceased to be eligible for LIHEAP, PIPP, and/or Lifeline, notify existing customers by telephone and/or mail that their low income residential customer status may have changed, and invite the customer to submit information and/or documentary evidence of their qualification before they formally lose such status.**

Section 280.65

[...]

- c) Expiration of Qualification: If a customer is not re-qualified as a low income customer, then the **natural gas, electric, water or sewer utility** may begin assessing late **payment** fees on past due amounts. However, late **payment** fees shall not be assessed retroactively on bills issued during the time period when the customer was qualified as a low income customer. **No customer will be required to re-qualify as a low income residential customer less than two years after they are initially determined to be qualified.**

[...]

II. **Tampering-Related Language Should Be Clarified to Better Explain the Consumer's Rights and the Utility's Burden of Proof.**

Customers who are found to have tampered with utility services may not participate in the program. The language in the Commission's current proposal, however, does not clearly define the process by which the utilities will identify tampering, provide customers with sufficient notice that they are suspected of tampering or evidence supporting the allegation, or clearly allow customers an opportunity to challenge this evidence. Our suggested amendments address these deficiencies by stating that the utilities bear the burden of establishing the violation, identifying the evidence that is sufficient to support the allegation, and providing a process for challenging this evidence.

Further, our suggested amendments protect consumers who unintentionally benefitted from tampering but did not themselves engage in tampering. In other words, we add a “proof of intent” requirement to protect innocent customers.

We propose the following modifications to the Commission’s current draft CEJA Amendments, as such:

Section 280.30

[...]

- h) Deposit Payment Requirement: The utility may require a deposit of an applicant for service under the criteria listed in Sections 280.40 (Deposits) and ~~280.45 (Deposits for Low Income Customers)~~. The utility may require that the initial down payment of any applicable deposit be paid within a minimum of 12 days; **provided, however, that a utility shall not require a deposit against potential non-payment for service of any low income residential applicant except when the utility has proof that the customer engaged in tampering of the electric or gas utility equipment during the previous 5 years. Any such proof of tampering will be furnished to the applicant at the time the utility requests a deposit. The utility shall bear the burden of proving that the customer for whom the deposit is being required engaged in tampering, and the utility shall provide the customer the opportunity to contest the finding that the customer engaged in tampering. Any deposit furnished while a customer is contesting such proof of tampering shall be returned to the customer with interest if it is later determined through the means provided by this Part that the customer did not engage in tampering.**

[...]

Section 280.40

[...]

- d) Applicant Deposits: The utility shall have the right to require a deposit of an applicant, **other than a low income residential applicant applying for natural gas or electric service and determined to be low income under this Part,** under the following conditions:
- 1) The applicant was previously disconnected for non-payment of bill amounts owing to the utility for the same class and type of service;
 - 2) The applicant failed to pay a final bill owing to the utility for the same class and type of service;
 - 3) The residential applicant's credit score fails to meet the minimum standard of the credit scoring system described in the utility's tariff;

- 4) The non-residential applicant fails to provide satisfactory credit references, including past utility service records or favorable history with other creditors. The utility shall file a tariff with the Commission describing its criteria by which non-residential applicants can establish satisfactory credit for this purpose;
- 5) The utility has proof that the applicant previously benefitted from tampering as described in Section 280.200;
- 6) The utility has proof that the conditions described in Section 280.210 (Payment Avoidance by Location) exist for the applicant.

Notwithstanding anything in this Section to the contrary, the utility shall have the right to require a deposit of a low income residential applicant for natural gas or electric service if the utility has proof that the customer engaged in tampering of the electric or gas utility equipment during the previous 5 years. **Any such proof of tampering will be furnished to the applicant at the time the utility requests a deposit despite the applicant otherwise qualifying as a low income residential applicant. The utility shall bear the burden of proving that the customer for whom the deposit is being required engaged in tampering, and the utility shall provide the customer the opportunity to contest the finding that the customer engaged in tampering. Any deposit furnished while a customer is contesting such proof of tampering shall be returned to the customer, with interest, if it is later determined through the means provided by this Part that the customer did not engage in tampering.**

[...]

Section 280.45 (a)

- a) A low income natural gas or electric residential customer or applicant ~~may~~ shall not be required to pay a deposit except where the utility has proof that the customer engaged in tampering of the electric or gas utility equipment during the previous 5 years. **Any such proof of tampering will be furnished to the applicant at the time the utility requests a deposit despite the applicant otherwise qualifying as a low income residential applicant. The utility shall bear the burden of proving that the customer for whom the deposit is being required engaged in tampering, and the utility shall provide the customer the opportunity to contest the finding that the customer engaged in tampering. Any deposit furnished while a customer is contesting such proof of tampering shall be returned to the customer with interest if it is later determined through the means provided by this Part that the customer did not engage in tampering.**

Section 280.200(b), (d)

- a) Intent: Tampering with utility wires, pipes, meters or other service equipment is prohibited. The intent of this Section is to describe the process by which the utility shall bill the customer for the unauthorized usage when the utility has proof that the customer benefitted from tampering.
- b) Proof: The utility has the burden of proving by a preponderance of the evidence that tampering has occurred with the utility's wires, pipes, meters or other service equipment, that the customer has **intentionally** benefitted from the tampering, and that the utility's billing is reasonable.
- c) Investigation: When the utility has reason to suspect that tampering has occurred, it shall investigate without delay.
- d) Notice to Customer: Once the utility has full proof of the tampering, it shall report to the customer the details of the investigation. **The utility shall also provide the customer with all the proof it possesses of tampering, and all details of its investigation into such tampering, at any time it declines to classify the customer as a low income residential customer based on its possession of proof of tampering.**

[...]

III. The ICC Should Require Frequent and Meaningful Notice of These New Rules.

The CEJA Amendments currently do not require adequate notice of the new rights and protections, and therefore do not help ensure that every qualified customer receives the benefits of such rights and protections. The utilities should provide notice of low income residential customer protections when the utility knows the customer participates in LIHEAP or a similar assistance program, and in customers' monthly utility bills, notices of preferred payment dates, and written communications related to security deposits, late fees, and/or disconnections.

Further, when a utility knows the customer has limited English proficiency (LEP), or lives in an area where there is a demonstrated need for second-language notices, the utility must provide its written communications in the appropriate second language(s). This will help to ensure that at-risk LEP populations do not miss out on CEJA's important new protections solely due to a language barrier—especially when the barrier could be overcome with a brief explanation in the consumer's primary language.

These changes to the proposed CEJA Amendments are embodied by the following suggested amendments:

Section 280.40

[...]

- b) Notification of Demand for Deposit:

- 1) A utility shall make an initial notice of a deposit to an applicant or customer no later than 45 days after the applicant's application for service is approved or after the event that justifies the deposit. A deposit shall not be assessed until the initial notice is given.
- 2) *A utility shall defer the utility's initial credit deposit requirements for a period of 60 days for a residential customer or applicant who is a victim of domestic violence. [220 ILCS 5/8-206.6]*
- 3.2) The initial deposit notice shall be made in writing and shall disclose:
 - A) The reason for the deposit;
 - B) The amount of the deposit and how it is calculated;
 - C) The payment requirements and schedule of payments for the deposit;
 - D) The date by which the entire deposit must be paid;
 - E) That the amount of the deposit may be adjusted if the annual charges for the customer substantially change;
 - F) The refund policy for the deposit;
 - G) The interest policy for the deposit; and
 - H) The deposit policy applicable to low income **electricity, gas, water or sewer** customers **determined to be low income under this Part**, and how qualification can be demonstrated, **including, but not limited to, the types of information and/or documentary evidence sufficient to demonstrate qualification, all available means of transmitting that information and/or documentary evidence to the utility, how the customer may automatically qualify as a low income residential customer, and how they may request a refund of any late payment fee or deposit if those have not been automatically provided;** and
 - H.1) The availability and contact information for the Commission's Consumer Services Division in the event of a dispute that the utility has not resolved to the satisfaction of the applicant or customer.

[....]

Section 280.50

[....]

- c) Bill Content: Bills rendered to a retail customer for service, regardless of bill delivery method, shall be itemized to clearly show at least the following:
- [....]
- 5) Itemization of billing amounts: The following components of the bill and the total amount shall be itemized and listed vertically for ease of reading:
- A) The monthly customer charge or any portion of the charge;
 - B) Any applicable demand charges;
 - C) Depending upon the type of utility service:
 - i) Electricity: The cost of energy detailed by the energy used and price per unit of each change in the unit price;
 - ii) Natural gas: The cost of gas determined by the number of therms used and the price per therm for each change in the unit price;
 - iii) Water: The volume of water used and the price per gallon or cubic foot and the price for each change in the unit price;
 - D) Depending upon the type of utility service:
 - i) Electricity: Any applicable cost of fuel adjustment;
 - ii) Natural gas: Any applicable cost of gas adjustment;
 - iii) Water: Any applicable cost of purchased water;
 - E) Any other applicable adjustments, including other charges not under categories of changes but relating to services, energy, gas, water, sewerage or other programs provided to customers;
 - F) State tax;
 - G) Municipal tax;
 - H) Infrastructure maintenance fee;
 - I) Optional services listed separately;

- 6) The bill due date;
- 7) Definitions or explanations of any abbreviations and technical words used on the bill; ~~and~~
- 8) For electric and gas utilities, the average use per day for the period over which the bill is rendered and for the comparable period one year earlier, and an indication of the difference in temperatures between the two periods; **and**
- 9) **The information required by Section 280.65(d) of this Part relating to the rights and protections of low income residential customers.**

[....]

Section 280.65

[....]

- d) Notifications: A natural gas, electric, water, or sewer utility subject to this Part shall provide sufficient and clear notice of the rights and protections available to low income residential customers under this Part, including those rights and protections related to late payment fees and deposits. Such notice shall be sufficient where it is provided in, at minimum:**
- 1) **The notice required under Section 280.40(b);**
 - 2) **On each bill required under Section 380.50(c);**
 - 3) **When notifying customers of the availability of a preferred payment date under Section 280.70;**
 - 4) **The informational packet required by Section 280.260;**
 - 5) **In any case where the utility has actual knowledge that a customer is receiving any benefit specified in Section 280.70(c) of this Part;**
 - 6) **In any written communication to a customer notifying them of the utility's request for a deposit, or, that the utility has assessed a late payment fee against the customer, including on a regularly issued bill that includes a late payment fee; and**
 - 7) **In any written communication to a customer regarding the reconnection of a utility service, after it has been discontinued for any reason.**

Such notices shall provide an explanation of the methods by which a customer may establish that they are low income residential customers, and the information and/or documentary evidence sufficient to establish this status to the utility.

Section 280.120

[...]

g) Length of DPA:

- 1) The amount of time negotiated with the customer for the completion of the DPA shall be set between 4 to 12 billing cycles, with the utility having the discretion to agree to more than 12 billing cycles for completion of the DPA.
- 2) In determining the length of time to offer, the utility shall take into account the ability of the customer to successfully complete the DPA.
- 3) If a residential customer's household income will not allow the customer to successfully complete a DPA of any length, the utility shall advise the customer of the availability of local assisting agencies, **the customer's right to apply for qualification as a low income residential customer, the information and/or documentary evidence required or allowed to be submitted to apply for such qualification, and all methods by which a customer may apply for such qualification.**

[...]

Section 280.180

[...]

g) Survey and Notice to Affected Customers:

- 1) *Not later than September 15 of each year, every gas and electric utility shall conduct a survey of all former residential customers whose gas and/or electric service was used to provide or control the primary source of space heating in the dwelling and whose gas and/or electric services was terminated for non-payment of a bill or deposit from December 1 of the previous year to September 15 of that year and where service at that premises has not been restored.*
- 2) *Not later than October 1 of each year, the utility shall notify each of these former customers that the gas and/or electric service will be restored by the company for the coming heating season if the former customer contacts the utility and makes arrangements to pay the past due balance and any deposit to the utility under the*

*conditions set forth in this Section, **and that the utility will not require payment of any late payment fee or deposit for a qualified low income residential customer consistent with the terms of this Part.***

- 3) *A utility shall notify the former customer or an adult member of the household by personal visit, telephone contact or mailing of a letter by first class mail to the last known address of that former customer. The utility shall keep records which would indicate the date, form and results of the contact.*
- 4) Any former customer who meets the eligibility requirements under subsections (a) and (b) shall be eligible for reconnection under this Section, regardless of whether the utility identified the former customer in the survey requirements of this subsection (g) and regardless of whether that former customer received notification under this subsection (g).

[....]

Section 280.250

When there is a demonstrated need for second language notices in the service area of any utility, notices as set out in Appendices A and B sent to customers located within the area should contain the following warning in the appropriate second language: "Important – This notice affects your rights and obligations and should be translated immediately." **Further, when there is a demonstrated need for second language notices in the service area of any utility, or the utility has knowledge of a customer's need for notice in a language other than English, at any time the utility must send the customer a notice relating or referring to protections for low income residential customers under this Part, the utility must provide the notice in the appropriate second language. For purposes of this Section, a "demonstrated need" shall mean evidence in any form that, more likely than not, at least 10% of residents at least 5 years of age in the customer's zip code speak a language other than English at home. Evidence from the U.S. Census Bureau that fulfills this requirement shall be conclusive evidence of a demonstrated need. Upon establishing a demonstrated need, the utility's notices for that zip code must be produced in both English, and in every language spoken at home by at least 5% of zip code residents who are at least 5 years of age, as noted by the U.S. Census Bureau.**

Section 280.260

[....]

- b) Content:
 - 1) Description of the services provided; and

- 2) Customer rights and responsibilities under this Part, including, at a minimum:
 - A) A brief description of billing information such as frequency of billing, due dates, and electronic billing and other billing options;
 - B) A description of the estimated bill process;
 - C) Payment options, including budget payment plan and deferred payment arrangements;
 - D) Payment methods and locations;
 - E) Late payment fees;
 - F) Deposit requirements;
 - G) Disconnection and reconnection procedures;
 - H) Utility dispute procedures and escalation procedures if a dispute is not resolved;
 - I) Contact information for the utility;
 - J) Commission's Consumer Services Division's informal complaint procedures;
 - K) Contact information for the Commission's Consumer Services Division;
 - L) A statement that the Commission's rules apply to service standards and reliability;
 - M) Notice of the availability of the Commission's rules; and
 - N) That special rights are available to low income residential customers, **what those rights are,** and how to qualify for low income customer status.

[...]

IV. The CEJA Amendments Should Allow for Retroactive Fee Waivers and Automatic Refunds of Deposits.

The proposed CEJA Amendments leave unanswered questions regarding a customer's obligation to pay late fees incurred after CEJA's effective date, but before they formally qualified as low income residential customers. A customer who qualifies for these protections after CEJA's effective date should

be able to benefit from them even if they did not formally apply for status as a low income residential customer. Such a policy is consistent with the statute, would reduce burdens on customers, and would extend the CEJA protections to more people. We therefore propose amendments that would waive all late fees for customers who become qualified as low income residential customers at any point on or after September 15, 2021.

Further, we propose an amendment providing for the automatic refund of deposits as soon as a consumer becomes qualified as a low income residential customer. While the CEJA Amendments do, as written, clearly state that qualifying customers do not have to pay deposits, they do not address what happens to existing deposits after a person is no longer required to have one on file with the utility. The proposed amendment would clarify that as soon as a person qualifies for protections under CEJA, the utility will automatically return their security deposit.

Our proposed amendments would read as follows:

Section 280.30

[...]

e) Requirements for Successful Application:

- 1) Information submitted must be accurate and verifiable; and
- 2) Any past due debts for utility services still owing to the utility by the applicant shall be identified and governed by this subsection (e)(2). The applicant must:
 - A) Pay past due debt in full and, if otherwise required **for those who are not low income residential customers**, enter into a payment plan for the deposit amount; or
 - B) At the utility's discretion, enter into a payment agreement to retire the debt; or
 - C) Make a down payment and agreement to retire the debt under the requirements of Section 280.180 (Reconnection of Former Residential Customers for the Heating Season).
 - D) *A utility shall defer the utility's initial credit requirements for a period of 60 days for a residential customer or applicant who is a victim of domestic violence. [220 ILCS 5/8-201.6]*
 - E) **If a customer's past due debts for utility services still owing to the utility include any late payment fee assessed after September 15, 2021, the customer shall not be required to pay such debts in order to be**

approved for utility service if the customer qualified as a low income residential customer on the date when the late payment fee was assessed, whether or not the utility formally designated them as a low income residential customer.

f) Applicable Past Due Debts:

- 1) Past due debts may only include debts for which the utility has retained summary data to support the validity of the debt. The utility shall make these records available to the applicant upon request. In addition, the utility shall provide, on request, a detailed description and the source of any other information supporting the debt. At a minimum, summary data supporting the debt shall include:
 - A) The service address or addresses where the debt accrued;
 - B) Meter readings and dates;
 - C) Usage and dates; and
 - D) Bill amounts and dates.
- 2) For purposes of determining whether an applicant may become a customer, past due debts shall not include charges owing for non-utility services and merchandise. **If the customer qualifies as a low income residential customer, past due debts shall not include late payment fees or deposits accrued after September 15, 2021.**

[....]

Section 280.40

[....]

h) Refund Conditions for Deposits:

- 1) The utility shall automatically refund the deposit plus accumulated interest once the customer **(i)** completes 12 consecutive months of service with fewer than four late payments, no disconnections for nonpayment and no tampering with the service, if the customer has no past due balance owing at the time of the deposit refund, **and/or (ii) becomes qualified as a low income residential customer.**

[....]

Section 280.65

- a) ~~Waiver:~~ A natural gas, water, sewer or electric utility shall not assess late payment fees to any low income residential customer shall not be assessed late payment fees while he or she is qualified as a low income customer. **At any time a customer is qualified as a low income residential customer after September 15, 2021, the utility shall waive any existing assessed late payment fees for any period in which the customer was a low income residential customer and not charge the customer any additional late payment fees. Additionally, upon request and qualification as a low income residential customer under this Part, the utility shall waive all late payment fees assessed for any period in which a customer was a low income residential customer, regardless of whether the customer qualifies as a low income residential customer at the time of the request.**
- b) New Qualification: When a customer is qualified as a low income customer, the natural gas, electric, water or sewer utility shall not be obliged to waive late payment fees that were assessed prior to qualification except as to late payment fees assessed after September 15, 2021 to any customer who, at the time of such assessment, qualified as a low income residential customer.

[...]

V. Utilities Should Be Required to Collect Additional Categories of Data.

The Commission's proposed CEJA Amendments commendably identifies meaningful data that utilities will be required to report. These data collection provisions will surely help the Commission and the public better understand the utilities' practices.

Nevertheless, minor modifications would improve the data reporting provisions. First, *all* categories of data reported monthly to the Commission should be broken down by customer class, low income residential customer status, and type of utility service. Second, there should be two additional categories of data. Each utility should report, for every month, (i) the total number of customers qualifying for low income residential customer status, and (ii) the number of customers who were denied such status because of allegations of tampering.

These proposed amendments read as follows:

Section 280.270

[...]

- b) Each gas, electric, water and sewer public utility shall report to the Commission by the 15th day of each month and make publicly available in executable, electronic spreadsheet format the following information, by zip code, customer class, low income

residential customer status, and type of utility service for the immediately preceding month:

- 1) *the number of customers, by customer class and type of utility service provided, during each month;*
- 2) *the number of customers, by customer class and type of utility service, receiving disconnection notices during each month;*
- 3) *the number of customers, by customer class and type of utility service, disconnected for nonpayment during each month;*
- 4) *the number of customers, by customer class and type of utility service, reconnected because they have paid in full or set up payment arrangements during each month;*
- 5) *the number of new deferred payment agreements, by customer class and type of utility service, each month;*
- 6) *the number of customers, by customer class and type of utility service, taking service at the beginning of the month under existing deferred payment arrangements;*
- 7) *the number of customers, by customer class and type of utility service, completing deferred payment arrangements during the month;*
- 8) *the number of deferred payment arrangements, by customer class and type of utility service, that defaulted during each month;*
- 9) *the number of customers, by customer class and type of utility service, renegotiating deferred payment arrangements during the month;*
- 10) *the number of customers, by customer class and type of utility service, assessed late payment fees or charges during the month;*
- 11) *the number of customers, by customer class and type of utility service, taking service at the beginning of the month under existing medical payment arrangements;*
- 12) *the number of customers, by utility service, completing medical payment arrangements during the month;*
- 13) *the number of customers, by utility service, enrolling in new medical payment arrangements during the month;*
- 14) *the number of customers, by utility service, renegotiating medical payment arrangements plans during the month;*
- 15) *the number of customers, by customer class and utility service, with required deposits with the company at the beginning of the month;*
- 16) *the number of customers, by customer class and utility service, required to submit new deposits or increased deposits during the month;*
- 17) *the number of customers, by customer class and utility service, whose required deposits were reduced in part or forgone during the month;*

- 18) ~~the number of customers, by customer class and utility service, whose deposits were returned in full during the month;~~
- 19) ~~the number of customers, by customer class and utility service, with past due amounts greater than 30 days past due at the beginning of the month and taking service at the beginning of the month under existing deferred payment arrangements;~~
- 20) ~~the total accrued amount of past due accounts, by customer class and utility service, for customers with past due amounts greater than 30 days past due at the beginning of the month and taking service at the beginning of the month under existing deferred payment arrangements;~~
- 21) ~~the number of customers, by customer class and utility service, with past due amounts greater than 30 days past due at the beginning of the month and not taking service at the beginning of the month under existing deferred payment arrangements; and~~
- 22) ~~the total accrued amount of past due accounts, by customer class and utility service, for customers with past due amounts greater than 30 days past due at the beginning of the month and not taking service at the beginning of the month under existing deferred payment arrangements;;~~
- 23) **the total number of customers who currently qualify as low income residential customers; and**
- 24) **the number of customers who did not qualify as low income residential customers due to the utility's possession of proof of tampering.**

VII. The Limits on Charging Late Fees to Low Income Residential Customers Should Be Reiterated at Several Points in the CEJA Amendments.

We commend the Commission's efforts in drafting these regulations, which are generally faithful to the text and spirit of CEJA's protections for low income residential customers. However, in reviewing the CEJA Amendments, we noted several instances where the current language of Part 280 either appears to conflict with these new protections, or should be clarified to explicitly reflect that these new protections exist. This will help to avoid any confusion or debate about the applicability of these new protections in the future.

We therefore propose the following minor amendments to the CEJA Amendments:

Section 280.60

[...]

d) Late Payment Fees:

- 1) If a utility elects to assess late **payment** fees, it shall file a tariff describing the late **payment** fees, **subject to the prohibition in this Part on charging low income residential customers late payment fees.**

[....]

Section 280.80

[....]

- i) Late Payments: No late payment ~~charge~~ **fee** shall be assessed on a budget payment plan unless there is an overall budget deficit balance in an account when the late payment occurs, **but no late payment fee shall be assessed on any low income residential customer on a budget payment plan.** The late payment ~~charge~~ **fee** shall be computed on the late installment only, not on the accumulated budget deficit in the account.

[....]

- k) Cancellation:
- 1) A customer may cancel a budget payment plan at any time.
 - 2) A utility may cancel a customer's budget payment plan when the customer either submits a payment that is less than the full budget payment plan amount or the customer's payment is 21 days in arrears. Late **payment** fees may be assessed on undisputed budget installment amounts owing on a budget payment plan as an alternative to termination of participation in the plan, **but no late payment fee shall be assessed on any low income residential customer on a budget payment plan.**

Section 280.100

[....]

- e) Payment:
- 1) If a utility issues a makeup bill for previously unbilled service, it shall offer the customer a special payment arrangement to retire the amount by periodic payments, without interest or late **payment** fees, over a time equal to the amount of time for the delay in billing.
 - 2) The special payment arrangement does not exhaust a customer's right to a DPA or medical payment arrangement (MPA), provided however, that neither the special payment arrangement nor the DPA nor the MPA may be used simultaneously unless it is agreed to by both the utility and the customer.
 - 3) Late **payment** fees may be assessed on any installment amount on the special payment arrangement that is unpaid after two days beyond the due date on the bill

containing that installment, **provided that no late payment fee shall be assessed on any low income residential customer except as otherwise allowed by this Part.**

Section 280.120

[....]

e) Bill Itemization

- 1) Each bill rendered to a customer who has established a DPA with the utility and has not defaulted shall include the following information:
 - A) The total balance remaining on the DPA;
 - B) The amount of the installment;
 - C) The number of remaining installments on the DPA; and
 - D) A statement explaining that:
 - i) a late or partial payment may result in the cancellation of the DPA, causing the total deferred amount and current charges to become immediately due in full; and
 - ii) non-payment of the full amount due may result in disconnection.
- 2) If a DPA defaults and is not reinstated prior to the next bill statement, the utility shall notify the customer of the default by at least one of the following methods:
 - A) A message on the next bill statement stating the amount required to reinstate the DPA if paid in full by a specific date and that a later payment may result in additional charges or the cancellation of the DPA; or
 - B) A separate written notice stating the amount required to reinstate the DPA if paid in full by a certain date and that a later payment may result in additional charges or the cancellation of the DPA, **provided that the utility will not assess late payment fees on customers qualified to be low income residential customers;** or
 - C) A live phone call to the customer. The utility shall make a record of the date, time of day and utility personnel involved in the phone call, and retain the record for two years. If the utility is unable to speak with the customer directly, it shall provide either a message on the next bill

statement or separate written notice of default in accordance with subsection (e)(2)(A) or (B).

[...]

Section 280.180

[...]

- d) *After the former customer's eligibility has been established in accordance with subsections (a) and (b), and, upon the establishment of a deferred payment agreement, the former customer shall pay $\frac{1}{3}$ of the amount past due (including reconnection charge, if any) and $\frac{1}{3}$ of any deposit required by the utility, **but no late payment fee or deposit shall be applied to or required of any individual qualified as a low income residential customer except as otherwise allowed by this Part.***
- e) Reconnection:
- 1) *Upon payment of the $\frac{1}{3}$ of the amount past due and $\frac{1}{3}$ of any deposit required by the utility, the former customer's service shall be reconnected as soon as possible. The company and the former customer shall agree to a payment schedule for the remaining balances which will reasonably allow the former customer to make the payments on the remainder of the deposit and the past due balance while paying current bills during the winter heating season.*
 - 2) Notwithstanding the requirements of subsection (e)(1), a former customer who demonstrates to the utility, or to the Commission through formal or informal complaint under Sections 280.220 or 280.230, a financial inability to meet the requirement of the $\frac{1}{3}$ of the amount past due and $\frac{1}{3}$ of any deposit requested by the utility shall be reconnected upon paying a reasonable amount and upon entering into a deferred payment agreement
 - A) In determining financial inability under this subsection (e)(2), the following factors, among others, shall be considered:
 - i) The combined income and financial resources of all persons residing in the former customer's household;
 - ii) The combined living expense of the former customer's household;
 - iii) The former customer's payment history; and
 - iv) The reasons for the accumulation of past due amounts.

- B) A low income residential customer as defined by this Part shall automatically qualify for financial inability under this subsection (e)(2), **including as to any late payment fee or deposit.**
- C) For purposes of this subsection (e)(2), a "reasonable amount" shall be 20 percent of the amount past due and 20 percent of any deposit required by the utility.
- 3) *However, the utility is not obliged to make payment arrangements extending beyond the following November. The utility shall allow the former customer a minimum of four months in which to retire the past due balance and a minimum of three months in which to pay the remainder of the deposit. The former customer shall also be informed that payment on the amounts past due and the deposit, if any, plus the current bills must be paid by the due date or the customer may be subject to disconnection of service.*

[...]

Section 280.210

[...]

- e) Deposit: When a utility has proof that PAL is occurring, it may require the applicant to provide a deposit under the following conditions:
- 1) A deposit required under this Section shall be equal to 1/3 of the estimated annual charges for the premises.
 - 2) The utility may require payment of the deposit in full prior to service.
 - 3) The deposit shall earn interest as described in Section 280.40.
 - 4) The deposit plus interest shall be refunded as described in Section 280.40.
 - 5) **No deposit shall be required for a low income residential customer except as otherwise provided by this Part.**

[...]

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For the foregoing reasons, Legal Action Chicago and the National Consumer Law Center support the CEJA Amendments to Part 280, with the suggested modifications. We strongly encourage the Commission to adopt the CEJA Amendments with the modifications discussed above.



Respectfully submitted for consideration,

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