Treatment of Utility Customers that File for Bankruptcy

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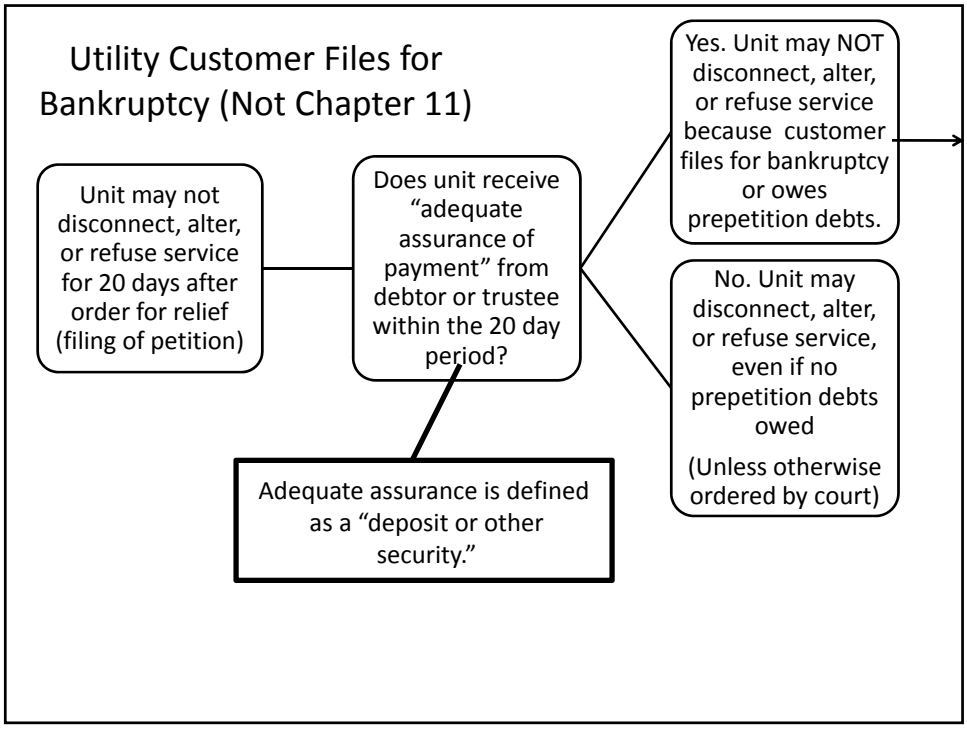
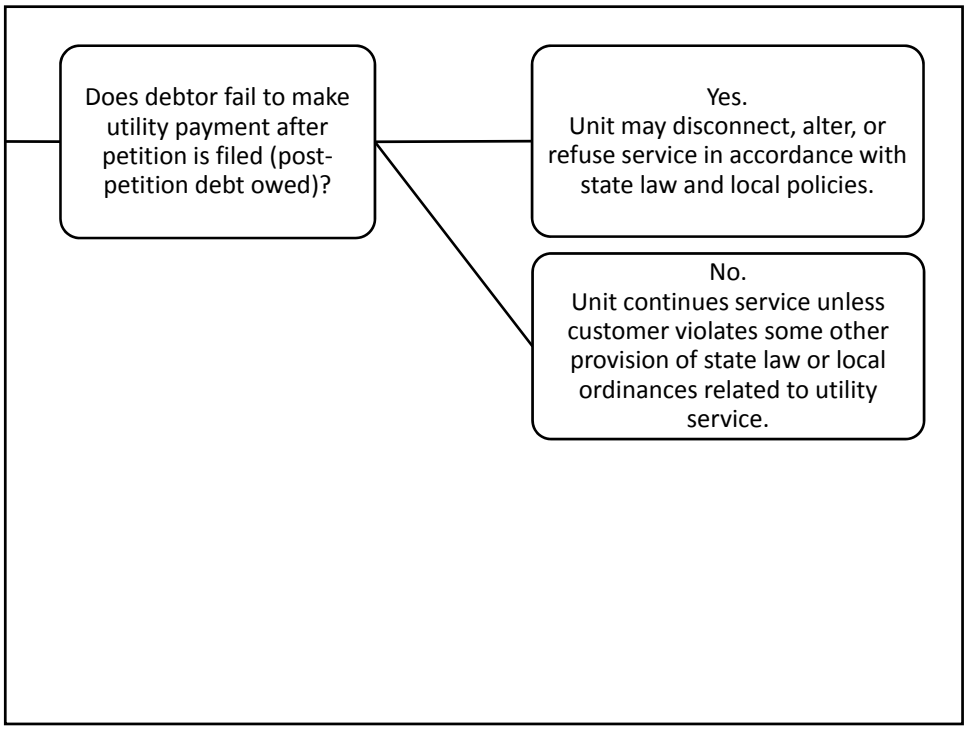
Utility Customers that File for Bankruptcy: Alteration or Disconnection of Service

- 11 U.S.C. 366
  - Allows temporary reprieve from disconnection of utility services for customers that file for bankruptcy <u>and/or</u> that owe pre-petition utility debts
  - Affords different treatment for customers in Chapter 11 bankruptcies than in all other bankruptcies


Utility Customer Files for Bankruptcy (Not Chapter 11)
Unit may not disconnect, alter, or refuse service for 20 days after order for relief (filing of petition)
Does unit receive "adequate assurance of payment" from debtor or trustee within the 20 day period?
Adequate assurance is defined as a "deposit or other security."
Yes. Unit may NOT disconnect, alter, or refuse service because customer files for bankruptcy or owes prepetition debts.
No. Unit may disconnect, alter, or refuse service, even if no prepetition debts owed
(Unless otherwise ordered by court)


Does debtor fail to make utility payment after petition is filed (post-petition debt owed)?
Yes.
Unit may disconnect, alter, or refuse service in accordance with state law and local policies.
No.
Unit continues service unless customer violates some other provision of state law or local ordinances related to utility service.

Utility Customer Files for Chapter 11 Bankruptcy

Unit may not disconnect, alter, or refuse service for 30 days after filing date of petition

Does unit receive "adequate assurance of payment" that is satisfactory to the unit from debtor or trustee within the 30 day period?

Yes. Unit may NOT disconnect, alter, or refuse service because customer files for bankruptcy or owes prepetition debts.

No. Unit may disconnect, alter, or refuse service, even if no prepetition debts owed

(Unless otherwise ordered by court)

Adequate assurance of payment is defined as:

- A cash deposit;
- A letter of credit;
- A certificate of deposit;
- A surety bond;
- A prepayment of utility consumption; or
- Another form of security that is mutually agreed on between the unit and the debtor or trustee

(It may NOT be an administrative expense priority)

Does debtor fail to make utility payment after petition is filed (post-petition debt owed)?

Yes.
Unit may disconnect, alter, or refuse service in accordance with state law and local policies.

No.
Unit continues service unless customer violates some other provision of state law or local ordinances related to utility service.

A unit may recover or set-off against a security deposit for prepetition or post-petition debts without notice to the bankruptcy court.