



UTILITIES DEPARTMENT
33 ANDREWS PARKWAY
DEVENS, MA 01434
(978)784-2915



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TERMS AND CONDITIONS FOR UTILITY SERVICES

The following Terms and Conditions are a part of all rates, and compliance by the Customer is a condition precedent to the initial and continuing supply of utility services (electricity, natural gas, sewerage, water) at Devens by Massachusetts Development Finance Agency ("Mass Development", The "Agency" or "MDFA"), a body politic and corporate and a public instrumentality of the Commonwealth of Massachusetts, created and existing under the provisions of Mass. St. 1998, c. 289, Sections 23-29, 33. It is intended that these Terms and Conditions apply with equal force to supplying all utility services. To the extent possible they shall be reasonably interpreted to fulfill that intent.

General

1. The Schedule of Rates for electricity, gas, water, and sewer may be revised, amended supplemented or supplanted in whole or in part from time to time by the Agency Board of Directors. When effective, all such revisions, amendments, supplements or replacements will appropriately supersede the existing Schedule of Rates. In cases of conflict between these Terms and Conditions and the Utility Sales Agreement, the Utility Sales Agreement shall apply.
2. The provisions of these Terms and Conditions apply to all persons, partnerships, corporations or others (hereinafter "Customers" or the "Customer") who obtain service from the MDFA under the Schedule of Rates, except as these Terms and Conditions are explicitly modified in writing by a special contract.
3. Except as may otherwise be provided in a specific rate, any Customer taking service under a rate that contains a charge based upon a rate of taking service stated in kilowatts is expected to maintain a power factor of not less than 90 percent lagging or leading. The MDFA may require any Customer failing to satisfy this power factor requirement to furnish, install, and maintain, at no cost to MDFA, such corrective equipment as MDFA may deem necessary in the circumstances. Alternatively, MDFA may elect to install such corrective equipment at the expense of such Customer. In addition, MDFA may charge for capacity demand based on 90 percent kilovolt-amperes when a Customer fails to meet the power factor requirement.
4. Utility service to applicants for new service or service not in use for 12 months or greater, or additional demand of utility to present Customers, is contingent upon MDFA's ability to supply such service without jeopardizing the service to others on the system.
5. The supply of utility service is contingent upon MDFA's ability to secure and retain the necessary location for its pipes, gas equipment, poles, wires, conduit, cable and other apparatus. The character of service to be made available at each location will be determined by MDFA. In general, the standard voltage for electric service supplied will be 120/240 volts, single phase and 120/208 or 277/480 volts, three phase. The standard pressure for the supply of natural gas shall be 6 inch water column. Contact the MDFA for information on availability of other voltages and service characteristics.
6. Such piping, wiring, gas equipment, electrical equipment and apparatus as may be necessary in order to utilize the service shall be provided, installed, maintained, and used by the Customer in accordance with the requirements, if any, of the National Electrical Safety Code, or the American Gas Association and of all public authorities having jurisdiction of the same, and the requirements of MDFA. In general, MDFA will not provide any service until the Customer's wiring and piping have been inspected and approved by MDFA.

7. All rates in the Schedule of Rates are predicted on service to a Customer at a single delivery or receiving point and metering installation, except as otherwise specifically provided by a given rate. Where service is supplied to an account at more than one delivery point or metering installation, each single point of delivery or metering installation shall be considered to be a separate account for purposes of applying the Schedule of Rates, except when a Customer is served through multiple points of delivery or metering installations for MDFA's own convenience.
8. Service cannot be supplied unless and until the Customer completes a "Utilities Sales Agreement," with MDFA.
9. No agent or employee of the MDFA is authorized to orally modify any term, provision or rate of MDFA.
10. A Customer shall be the signatory to the Utility Sales Agreement and shall remain the Customer of record and shall be liable for service taken until such time as the Customer of record requests termination of service and a final meter reading is recorded. In the event that the Customer of record fails to give notice of termination of service to MDFA, the Customer of record shall continue to be liable for service taken until MDFA either disconnects the meter or a new party becomes a Customer of MDFA by taking service at such service location. If there is no Customer of record, a recipient of service shall be obligated to apply for service.
11. Customer using more than one meter is not entitled to be classified as a single customer, under any Rate Schedule, unless otherwise agreed to in writing by MDFA. At locations where more than one meter is installed at the request of the Customer, the consumption may be billed separately for each meter. Metering equipment for a Customer will not be installed in series with the metering equipment of another customer, except where necessary by the design of the existing supply system and where approved by MDFA.

12. The utility services supplied by MDFA are for the exclusive use of the Customer. No resale will be allowed.

Requirements of Providing Service

13. The Customer shall pipe, wire, or other equipment to the point designated by MDFA, at which point MDFA will connect its service.
14. All meters, services, and other utility equipment owned by MDFA regardless of location shall be and will remain the property of MDFA and no one other than an employee or authorized agent of MDFA shall be permitted to remove, operate, or maintain such property. The Customer shall not interfere with, or alter the meter, seals or other property used in connection with the rendering of service or permit this to be done by persons other than the authorized agents or employees of MDFA. The Customer shall be responsible for all damage to or loss of such property unless occasioned by circumstances beyond the Customer's control. Such property shall be installed at points most convenient for MDFA's access and service and in conformance with public regulations in force from time to time. The costs of relocating such property shall be borne by the Customer when done at the Customer's request, or for the Customer's convenience, or if necessary to remedy any violation of public law or regulation caused by the Customer.
15. MDFA shall construct or install overhead or underground distribution facilities or other equipment determined by MDFA to be appropriate for a Customer under the following conditions:
 - A. The owners of record shall grant MDFA, without cost, perpetual rights and easements, including rights of ingress and egress, free and clear of encumbrances of record, the form and content of which shall be acceptable to MDFA. Such rights and easements must be granted to and accepted by MDFA prior to the start of construction.
 - B. When the Customer requests an overhead electric service extension, MDFA shall install, own, and maintain the service to the point of attachment on the Customer's structure in accordance with MDFA's specifications.
 - C. MDFA shall own and maintain all underground primary electric service which includes all underground service to the low voltage side of the transformer. When a Customer requests an underground primary electric service extension, the Customer shall be responsible for the arrangements and expenses.
16. MDFA shall not be required to install a service or meter for a garage, barn or other out-buildings, so located that it may be supplied with utility service from that of the main building.

17. MDFA may, in the exercise of reasonable judgment, refuse to supply service to loads of unusual characteristics that might adversely affect the quality of service supplied to other customers, the public safety, or the safety of MDFA personnel. In lieu of such refusal, MDFA may require a Customer to install at its expense any necessary regulating and protective equipment in accordance with requirements and specifications of the MDFA.
18. The Customer shall furnish and install upon its premises such service conductors, service equipment, including oil circuit breaker if used, and meter mounting device to conform with specifications issued from time to time by MDFA. The MDFA may seal such service equipment and meter mounting device, and adjust, set and seal such oil circuit breaker and such seals shall not be broken and such adjustments or settings shall not be changed or in any way interfered with by the Customer.
19. The Customer's wiring, piping, apparatus, and equipment shall, at all times, conform to the requirements of all legally constituted authorities and to those of MDFA, and the Customer shall keep such wiring, piping, apparatus, and equipment in proper repair.
20. If necessary, MDFA shall make, or cause to be made, application for any necessary street permits, and shall not be required to supply service until a reasonable time after such permits are granted. The Customer shall obtain or cause to be obtained all permits or certificates, except street permits, necessary to give MDFA or its agents access to the Customer's equipment and to enable its conductors to be connected therewith.
21. The Customer shall furnish and maintain, at no cost to MDFA, the necessary space, housing, fencing, and foundations for all equipment that is installed on its premises in order to supply the Customer with electricity, whether such equipment is furnished by the Customer or MDFA. Such space, housing, fencing, and foundations shall be in conformity with MDFA's specifications and subject to its approval.
22. Sewer customers shall adhere to the Devens Sewer Use Rules & Regulations, including the Industrial Pretreatment Program and water customers shall adhere to the Devens Cross Connection Control Rules, all approved by the Agency Board of Directors.
23. Whenever the estimated expenditures for the equipment necessary to supply electricity or gas to a Customer's premises shall be of such an amount that the income to be derived therefrom at the applicable rates will, in the opinion of MDFA, be insufficient to warrant such expenditures, MDFA may require a Customer to guarantee a minimum annual payment or commitment for a term of years or to pay the whole or a part of the cost of such equipment.

Protection of MDFA Property

24. MDFA shall have the right of access at all reasonable times to the premises on which its meters, other appliances and equipment are located for the purpose of examining or removing the same.
25. All Customer's apparatus shall be suitable for operation with the service supplied by MDFA. The Customer shall not use the service supplied for any purpose, or with any apparatus, that would cause a disturbance to any part of MDFA's system sufficient to impair the service rendered by MDFA to its other Customers.
26. The Customer shall not injure, interfere, destroy or tamper with the meter or other property of MDFA nor suffer or permit any person to do so. The Customer shall not permit access for any purpose whatsoever, except by authorized employees of MDFA, to the meter or other appliances and equipment of MDFA, and shall provide for their safekeeping. The Customer shall use all reasonable precautions to protect the property of MDFA located on the premises of the Customer from damage and interference and shall be responsible for all damages to, or loss of, such property of MDFA.

27. The Customer shall so maintain and operate their electric, gas, process water, and wastewater pretreatment equipment and apparatus as not to endanger or interfere with the service of MDFA. All connections to the MDFA system shall be reviewed and approved by the MDFA. Electric, gas, and water meters are the property of MDFA. No one but authorized MDFA personnel shall cut and open MDFA padlock seal on a meter, remove and install a meter, install jumper pieces or other bypassing devices, remove or install sleeves, change the meter registration, or tamper in any way with the meter. Meters damaged accidentally or otherwise will be replaced at the expense of the property owner where the meter is located. When a meter is found to be tampered with, service to that meter will be disconnected. To have service restored, the Customer must first pay a \$45.00 reconnection fee, payable in cash to MDFA. In addition to charges for electricity and gas used, but not metered as a result of the tampering, all costs attributable to investigation of the tampering, calculation of amounts owed and any other administrative costs will be charged to the Customer. All instances of meter tampering will be reported to proper legal authorities for investigation and prosecution. To restore service after it has been disconnected, application must be made in person at MDFA's offices. In addition to the fee for tampering, a deposit will be required, equal to three months' average consumption on the premises in question. Service will be reconnected within 24 hours after payment of the aforementioned fees and deposit, if the matter has been resolved to the satisfaction of MDFA.
28. Whenever MDFA determines there was unauthorized use of electricity, gas, or water by a Customer, MDFA may make such changes in its meters, appliances, or other equipment on said premises or take such other corrective action as may be appropriate to ensure the safety and security of the general public, the equipment and its installation under the circumstances. MDFA shall have the right, when an unauthorized use of utility has occurred, to assess reasonable estimated service charges as well as all costs incurred in correcting the condition. MDFA may require full payment of all charges and costs prior to restoring service. Nothing in this paragraph shall be deemed to constitute a waiver of any other rights of redress which may be available to MDFA or to limit in any legal recourse which may be open to MDFA, including M.G.L. c.164, S127 and 127A.
29. The Customer shall notify MDFA in writing and obtain MDFA approval before making any significant change in the Customer's equipment which would affect the capacity or other characteristics of MDFA's facilities required to serve the Customer. The Customer shall be liable for any damage to MDFA's property caused by Customer's additional or changed installation if made without prior notification to and approval by the MDFA.

Payment of Bills - Remedies, Security

30. All bills shall be due and payable upon receipt. Accounts shall be considered delinquent, and subject to late fees, if payment is not received within thirty (30) days of invoice date.
31. When a bill rendered is not paid within 30 days after the date of invoice, interest at the rate of 1-1/2 % per month will be charged on the unpaid balance, including any outstanding interest charges, from the date of invoice until the date of payment.
32. MDFA shall have the right to discontinue its service on due notice and to remove its property from the premises in case the Customer fails to pay any bill due MDFA for each service, or fails to perform any of its obligations to MDFA. After such discontinuance, a reconnection fee and security deposit may be required of the Customer by MDFA for restoration of service.
33. MDFA may require a deposit of cash or other collateral satisfactory to it as security for the prompt payment of any indebtedness for: (a) any new Customer; (b) any present Customer requesting service at a new location if service to the Customer, under the same or any other name, was lawfully terminated for non-payment during the preceding 18 months; or (c) from any present non-residential Customer. The deposit required will not exceed the equivalent of three months' average use plus appropriate connection and meter costs.
34. MDFA will credit to the Customer's account, once each year, interest on all cash deposits held for more than six months at a rate equal to the average rate paid on 2-year Treasury notes during the preceding calendar year.
35. A Fifteen Dollar fee shall be charged to the Customer for each check presented to MDFA for which there are insufficient funds to honor the check. This fee shall be applicable only where the check has been dishonored after being deposited for a second time.

Measurement of Consumption - Billing Period

36. Meters of either the indoor or outdoor type shall be installed by MDFA at locations to be designated by MDFA. MDFA may at any time change any meter installed by it. MDFA may also change the location of any meter or change from an indoor type to an outdoor type, provided that the cost of the change shall be borne by MDFA. If more than one meter is installed, except for the convenience of MDFA, the Base Charge for Service delivered through each meter shall be computed separately under the applicable rate.
37. Whenever reference is made to "month" in connection with electricity and gas delivered, service furnished, or payments to be made, it shall mean the period between two successive regular monthly meter readings, the second of which occurs in the month to which reference is made. Whenever, reference is made to "quarter" in connection with water delivered or sewer service, or payments to be made, it shall mean the period between two successive regular quarterly meter readings, the second of which occurs in the quarter to which reference is made.
38. The electric demand is the maximum rate of taking electricity. Under ordinary load conditions it will be based upon one or more fifteen-minute peaks as herein defined. A fifteen-minute peak is the average rate of delivery of electricity during any fifteen-minute period as determined by any suitable instrument. In the case of extremely fluctuating loads, however, where the demand based on the average over fifteen minutes does not fairly represent the maximum demand imposed by the Customer, the demand will be based upon the instantaneous peak or the peak for a shorter period than fifteen minutes. If the fluctuating load causes a deterioration of MDFA's service to its other Customers, the MDFA shall specify a service arrangement that avoids the deterioration and the Customer owning or operating the equipment that causes the fluctuation shall pay the cost to implement the new service arrangement together with applicable taxes.
39. MDFA shall construct or install overhead or underground distribution facilities or other equipment determined by MDFA to be appropriate for a Customer under the following conditions: applicable to the MDFA's tariffs are as follows on the dates that they are observed in the MDFA's service territory are New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

Auxiliary and Temporary Service

40. Service supplied by MDFA shall not be used to supplement or relay, or as a standby to any other service, unless the Customer shall make such guarantees in respect to the payment for such service as shall be just and reasonable in each case. Service cannot be resold. Where such service is supplied, the Customer shall not operate its plant in parallel with MDFA's system without the consent of MDFA, and then only under such conditions as MDFA may specify from time to time.
41. Temporary service is service which will not continue for a sufficient period to yield MDFA adequate revenue at its regular rates to justify the expenditures necessary to provide such service. MDFA may require a Customer requesting temporary service to pay the full amount of the estimated cost of installing and removing the requested connection, in advance of the installation of the connection by MDFA. In addition, the Customer will be required to make payments for electricity, gas, and water at the regular rates.
42. Whenever MDFA reasonably believes the integrity of their utility system may be threatened by conditions on its system or on a part or parts of any system with which MDFA is interconnected, MDFA, in its sole judgment, may curtail, interrupt, or modify service to the Customer and such curtailment, interruption, or modification shall not constitute default by MDFA. MDFA shall not be responsible for any failure to supply service nor interruption or abnormal voltage or pressures, or any damage resulting from the restoration of service, if such failure, interruption, abnormal voltage or pressure, or damage is without willful default or gross negligence on its part. MDFA may, from time to time, test all or portions of its utility systems in accordance with good utility practice. These tests may include, but are not limited to, equipment operation performance, momentary service interruptions and voltage or pressure reductions.

43. MDFA shall make every reasonable effort to maintain uninterrupted service for all Customers, but it shall not be liable for loss or damage caused by reason of any interruption or reduction of the supply, or by reason of any abnormal voltage, pressure, or quality, whether as a result of accident, labor difficulties, condition of fuel supply, the actions of any public authority, failure to receive any electricity or gas for which in any manner it has contracted, the implementation in accordance with good utility practice of an emergency load reduction program by MDFA or one with whom it has contracted for a supply of gas or electricity, or inability for any other reason beyond MDFA's control to maintain normal voltage, pressure or quality, or uninterrupted and continuous service.
44. MDFA shall be excused from performing under the Schedule of Rates and shall not be liable in damages or otherwise if and to the extent that it shall be unable to do so or prevented from doing so by statute or regulation or by action of any court or public authority having or purporting to have jurisdiction on the premises; or by loss, diminution, or impairment of electrical service from its generating plants or suppliers or the systems of others with which it is interconnected; or by break or fault in its transmission or distribution system; failure or improper operation of transformers, switches, valves or other equipment necessary for electric or gas distribution; or by reason of storm, flood, fire, earthquake, explosion, civil disturbance, labor dispute, act of God, or public enemy, failure of any supplier to intervening cause, whether or not similar thereto; MDFA shall use reasonable efforts under the circumstances to overcome such cause and to resume full service.
45. MDFA shall not be liable for damage to the person or property of the Customer or any other persons resulting from the use of electricity, gas, or water or the presence of MDFA's appliances and equipment on the Customer's premises. In any event, for non-residential Customers served under general service rates, MDFA shall not be liable in contract, in tort (including negligence under G.L. c. 258 and Mass. G.L. c.93A), strict liability or otherwise for any special, indirect, or consequential damages whatsoever including, but not limited to, loss of profits or revenue, loss of use of equipment, overtime, business interruption, spoilage of goods, claims of customers of the Customer or other economic harm.
46. Neither by inspection nor non-rejection nor in any other way does MDFA give any warranty, expressed or implied as to the adequacy, safety or other characteristics of any equipment, wiring or devices, installed on the Customer's premises. MDFA shall not be liable for damages resulting in any way from the supplying or use of electricity, gas, or water or from the presence or operation of the MDFA's service, conductors, appurtenances or other equipment on the Customer's premises.
47. The Customer assumes full responsibility for the proper use of electricity, gas, and water furnished by MDFA and for the condition, suitability, and safety of any and all pipes, valves, wires, cable, devices, or appurtenances energized by electricity or through which gas, water, or wastewater flows on the Customer's premises, or owned or controlled by the Customer that are not MDFA's property. The Customer shall indemnify and save harmless the MDFA from and against any and all claims, expenses, legal fees, losses, suits, awards, or judgments for injuries to or deaths of persons or damage of any kind, whether to property or otherwise, arising directly or indirectly by reason of (1) the routine presence in or use of electricity, gas, or water over or through the wires, pipes, cables, devices or appurtenances owned or controlled by the Customer; or (2) the failure of the Customer to perform any of his or her duties and obligations as set forth in the Tariffs, Terms and Conditions and Requirements for Service where such failure creates safety hazards; or (3) the Customer's improper use of electricity, gas, or water or pipes, electric wires, gas appliances, cables, devices, or appurtenances. Except as otherwise provided by law, MDFA shall be liable for damages claimed to have resulted from MDFA's conduct of its business only when MDFA, its employees or agents have acted in a grossly negligent, or intentionally wrongful manner.
48. MDFA may discontinue the supply of service and/or remove its equipment from the Customer's premises if the Customer fails to comply with the provisions of the Tariffs, Terms and Conditions and Requirements for Service or any supplementary or special agreement entered into with MDFA. The MDFA may also discontinue service and remove its equipment from the Customers' premises in case of violation of any general laws, local ordinances or by-laws, or government regulations. MDFA may assess an Account Restoration Charge upon such discontinuance of service.