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New York City Water Board

Regulation Governing the Discontinuance of Water Supply and/or Sewer Service Because of Nonpayment

Statement of Basis and Purpose

The regulation is authorized by Sections 1045-h(8) and 1045-j(5) of the New York Public Authorities Law, which provide that the rules and regulations of the New York City Water Board (the "Board") may provide for the discontinuance or disconnection of the supply of water or the provision of sewerage service, or both, for nonpayment of charges imposed by the Board.

The regulation authorizes the New York City Department of Environmental Protection ("DEP") to terminate water and sewer services to customers because of nonpayment of assessed charges. The regulation sets forth the conditions under which DEP may terminate service, the notice requirements to which DEP shall adhere, the days of the week and the times of day during which DEP may terminate service, special procedures to be followed in the case of medical emergencies and the procedures for avoiding service termination by making payment of, or entering into an installment agreement covering, all delinquent charges.

The regulation is intended to assist in the collection of delinquent water and sewer charges and to benefit water and sewer ratepayers by improving system collection rates. It provides the Board with a further mechanism - - - the ability to terminate service- - - to enforce collection of such charges. While fully intended to supplement (and not to replace) the Board's other rights and remedies in the event of nonpayment, the ability to terminate service is a useful mechanism to secure payment of delinquent charges. Most water utilities have shut-off regulations as an integral part of their enforcement policy. Water utilities with high collection rates tend to use shut-offs more frequently than utilities with lower rates.

This Regulation was considered at a public hearing held on June 17, 1999, and was approved by the New York City Water Board at its meeting of June 22, 1999.

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Section 1. Definitions

As used in this Regulation, the following terms shall have the respective meanings ascribed to them below:

- (1) “Board” shall mean the New York City Water Board.
- (2) “City” shall mean The City of New York.
- (3) “Customer” shall mean any person or entity, including (without limitation) any individual, sole proprietorship, partnership, corporation, association or joint venture, to whom or for whose benefit the Board is supplying water and/or providing sewer service, and who has an account established with the Board for payment of charges associated with such water and/or sewer service.
- (4) “DEP” shall mean the New York City Department of Environmental Protection.
- (5) “Delinquent charges” shall mean fees, rents or other charges imposed by the Board on a customer’s account for the supply of water and/or the provision of sewer service, which remain open and unpaid after the due date thereof.
- (6) “Nonpayment” shall mean the failure or refusal, by a customer, to pay any fees, rents or other charges imposed by the Board on such customer’s account for the supply of water and/or the provision of sewer service, on or before the same are due, thereby rendering such fees, rents or other charges delinquent charges.
- (7) “Termination of service”, “Terminate Service”, “Terminate”, and all such similar word forms shall mean the discontinuance or disconnection of the supply of water and/or the provision of sewer service to any customer.

Section 2. General

- 2.1 Authorization to Terminate Service. DEP may, and it is hereby authorized by the Board, to terminate the supply of water and/or the provision of sewer service to any customer for nonpayment, in such circumstances as are specified in, and subject to the requirements of, this Regulation.
- 2.2 No Alteration of Rights, Powers and Privileges of DEP and Board. Nothing contained herein shall be deemed to alter, amend or modify the rights, powers, or privileges of DEP or the Board otherwise conferred by law, or to subject DEP or the Board to the jurisdiction of any other governmental agency, authority, board, bureau, department or other body with respect to any termination of service.
- 2.3 Termination in Addition to Other Remedies. Anything in this Regulation to the contrary notwithstanding, termination of service shall be in addition to, and not in lieu of, any other right or remedy available to DEP or the Board in respect of delinquent charges, including (without limitation) the imposition of a lien on real property to the extent permitted by applicable law.

Section 3. Termination of Service

- 3.1 Classes of Accounts where Service May be Terminated. Subject to Section 4 below, service may be terminated for the following classes of accounts:
 - (i) Commercial and all other non-residential accounts: At least one delinquent charge must exist on the account which has remained open and unpaid for at least two (2) years after its due date.
 - (ii) Residential accounts with one to five units: At least one delinquent charge must exist on the account which has remained open and unpaid for at least three (3) years after its due date.
 - (iii) Residential accounts with six or more units: At least one delinquent charge must exist on the account which has remained open and unpaid for at least two (2) years after its due date.

DEP may, but shall not be obligated to, establish additional criteria within each such class of account, to further prioritize and select accounts where service will be terminated. Such criteria may include, but shall not be limited to: the dollar amount of delinquent

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charges; the length of time the delinquent charges have remained open and unpaid; the expected effectiveness and cost of other collection methods; the type of property which is receiving service; the current use of such property; and the eligibility of such property for inclusion in any program for the sale or other transfer of liens held by the Board as security for the payment of delinquent charges.

3.2 Notice of Termination. (a) Except as provided in Sections, 3.4(g), 4.4 and 6.3 below, prior to any termination of service under this Regulation, DEP shall, at least forty-five (45) days prior to the earliest date on which DEP will effect such termination of service, serve a written notice of termination on the following parties:

- (i) the subject customer; and
- (ii) the owner of the premises which will be affected by such termination of service.

Such notice in every case shall be served either personally on the person, firm or corporation to which it is directed, or by mailing the same via regular mail to such person, firm or corporation. In the case of service on the owner of the affected premises, DEP shall be entitled to rely on the name and address of the record owner as reflected in the records of the New York City Department of Finance, as of the date the notice is served.

- (b) Each notice served pursuant to Section 3.2(a) above shall clearly state and include:
 - (i) the earliest date on which termination of service may occur;
 - (ii) the reasons for termination of service, including the total amount required to be paid to the Board to avoid termination of service, and the date by which such payment must be made;
 - (iii) a description of the actions which the customer must take to avoid termination of service;
 - (iv) the address and telephone number of a DEP representative that the customer may contact in reference to the subject account;
 - (v) a description of the procedures specified in Section 4 below, which are

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available to the customer to register a complaint about the subject account, and to have such complaint considered before termination of service;

- (vi) a summary of the exceptions set forth in Section 5 below, together with a notice that any customer eligible for any such exception should contact DEP at the telephone number indicated;
 - (vii) a statement that any payment of charges due with a check or draft that is subsequently dishonored does not constitute payment, and shall entitle the Board and DEP to terminate service on the account without further demand or notice; and
 - (viii) an opportunity to enter into an installment payment agreement with DEP; the terms and conditions of such an agreement are described more fully in Section 6 of this Regulation.
- (c) The total amount specified in any notice of termination as being required to be paid to avoid termination of service may include all delinquent charges then open on the subject customer's account.

3.3 Additional Notice for Multiple Dwellings. (a) If any termination of service would result in the discontinuation of water service to an entire multiple dwelling (as defined in the New York Multiple Dwelling Law or the New York Multiple Residence Law), DEP shall, in addition to serving the notice required by Section 3.2(a) above, also post and/or mail all additional notices required under Section 116 of the New York Public Service Law, in the manner specified in such Section.

3.4 Physical Termination of Service. (a) DEP shall effect terminations of service only on the days of the week and during the times of day permitted under Section 89-b of the New York Public Service Law.

- (b) DEP shall verify, on the day termination of service is scheduled to take place, that payment on the subject account, in the full amount required to avoid termination of service, has not been posted to the account as of the opening of business on such day.
- (c) Except as provided in Sections 3.4(g), 4.4 and 6.3, DEP shall not terminate service on a date which is more than ninety (90) days after the date of service of the related notice of termination required under Section 3.2 above, unless

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it has, since such date of service, issued a new notice of termination in the manner required by Section 3.2 above.

- (d) DEP shall discontinue termination of service if, prior to the time that termination is to take place, (x) the customer files a complaint with DEP with respect to any charges giving rise to such termination, (y) such complaint is received after service of, and in the manner specified in, the related notice of termination, and (z) such complaint remains under consideration by DEP, provided that this shall not prevent DEP from terminating service for nonpayment of any undisputed charges.
- (e) DEP shall discontinue termination of service if, at the time that termination of service is to take place,
 - (i) the customer claims that payment in full of all delinquent charges giving rise to the termination has been made, and produces a written record of payment, or
 - (ii) the customer claims that a complaint with respect to the subject account was filed with DEP after service of, and in the manner specified in, the related notice of termination, and that such complaint is still under consideration by DEP, provided that in each case the DEP field representative is able to verify after reasonable efforts, on the date that termination is to take place, that the claim made by the customer is correct.
- (f) DEP shall discontinue termination of service if, at the time that termination of service is to take place, the customer offers to immediately pay, and does immediately pay to DEP, the full amount demanded in the related notice of termination. DEP shall be entitled in such circumstances to require that payment be made by postal money order, certified check, or such other form of payment as may be acceptable to DEP. If such immediate payment is made, the DEP field representative shall provide the customer with a receipt showing the date, account number, the amount received, the form of payment, and either the name or identification number of the DEP representative.
- (g) DEP shall discontinue termination of service if (x) at the time that termination of service is to take place, the customer immediately offers to enter into an installment agreement, in accordance with the provisions of

Section 6 hereof, and (y) within three (3) days thereafter, the customer executes such agreement, in form and substance satisfactory to DEP, and pays the down payment or initial installment specified therein at the time of execution. If the customer has elected to accept an installment agreement, and the customer thereafter fails or refuses to execute such agreement and/or pay the down payment or initial installment specified therein within such three-day period, DEP may proceed to terminate service without further demand or notice.

- (h) Anything in this Regulation to the contrary notwithstanding, whenever, pursuant to Sections 3.4(d), (e), (f) or (g) above, DEP is obligated or elects to discontinue termination of service to a customer in respect of certain delinquent charges, nothing contained herein shall prevent or prohibit DEP from terminating service to such customer, in accordance with this Regulation, in respect of any other fees, rents or charges owing to the Board for the supply of water or the provision of sewer service (that is, fees, rents or charges other than those giving rise to the termination which has been discontinued).

Section 4. Complaints

- 4.1 If a customer receiving a notice of termination wishes to register a complaint about the subject account, with regard to the charges giving rise to such notice of termination (any such complaint being referred to as a "Termination Complaint"), such customer shall observe the procedures set forth in Section 4.2 or 4.3 below (as applicable) in registering such complaint. DEP may require a good faith payment of a portion of the outstanding charges due on the subject account for which termination is sought, up to a maximum of 25% of such charges, for a Termination Complaint filed under subsection 4.2 or 4.3 below to effect a discontinuance of termination as provided by Sections 3.4(d) and 3.4(e) above. If the complaint is resolved wholly or partially in favor of the customer, the Board shall refund that portion of such good faith payment which exceeds the actual charges determined to be due on the account, if any, plus interest accrued at the same rate charged by the Board for delinquent charges, from the payment date to the refund date.
- 4.2 If such customer had not previously used the existing procedure set forth in Part IX of the Board's Water and Wastewater Rate Schedule (the "Existing Procedure"), to address his/her Termination Complaint, the customer shall be

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afforded the opportunity, and shall be required, to utilize the Existing Procedure to register and seek resolution of his/her Termination Complaint.

- 4.3 If such customer had already used the Existing Procedure to seek resolution of his/her Termination Complaint, the customer may request an expedited reconsideration of such Complaint. A request for reconsideration of a previously decided billing complaint must be submitted in writing by the customer. Such request must be addressed to and received by the Executive Director of the Board within fifteen (15) days of the date of the subject notice of termination issued by DEP. The Executive Director shall make best efforts to render a final decision with respect to a request for reconsideration of a billing complaint resulting from a notice of termination within fifteen (15) days of its receipt. DEP may not terminate service earlier than ten (10) days after a final decision in connection with a request for reconsideration has been rendered to the customer.
- 4.4 Any notice of termination issued by DEP pursuant to Section 3.2(a) above shall contain a description of the procedures described in Sections 4.2 and 4.3 above, including a description of the Board's Existing Procedure. The failure by a customer to provide any information required to be provided and set forth in a notice of termination issued in accordance with Section 3.2(a) above, may be deemed by DEP to constitute a failure by the customer to avail himself of the billing complaint procedures provided under Sections 4.2 and 4.3 above, and shall entitle DEP to terminate service on the account without further demand or notice.

Section 5. Termination of Residential Service - Special Procedures

- 5.1 **Significant Medical Conditions.** DEP shall not terminate or refuse to restore service to a residential premises when a significant medical condition exists. A significant medical condition exists when a resident of such premises suffers from a serious illness or medical condition that severely affects his or her well-being, as certified in writing by a licensed medical doctor (M.D.) or the New York City Department of Health ("NYCDOH") in accordance with the provisions of this Section, and the absence of water service at the subject residential premises will aggravate such existing significant medical condition.

Such written certification shall:

- (a) be submitted on stationary of a licensed medical doctor or the NYCDOH, and be signed by the medical doctor or an official of the NYCDOH qualified to

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make a medical judgement;

- (b) state the name and address of the certifying medical doctor, and the doctor's State registration number;
- (c) state the name and address of the ill person; and
- (d) include an affirmation that the absence of water service will aggravate an existing significant medical condition at the customer's premises.

5.2 Procedures for Initial Certification.

- (a) Initial certification of a significant medical condition may be made to DEP by a licensed medical doctor or the NYCDOH either writing or telephoning the Deputy Commissioner, Bureau of Customer and Conservation Services.
- (b) Initial certification is effective for 30 calendar days from the date DEP receives it.
- (c) If the initial certification is made by telephone, DEP must receive a written certification from the licensed medical doctor or the NYCDOH within five (5) business days or the initial certification by telephone will be void.
- (d) Within five business days of receipt of written certification, DEP shall provide the customer with a written notice that:
 - (i) DEP received such certification and such certification is effective for 30 calendar days;
 - (ii) advises the customer of the procedures required for renewal of certification, including specifically a statement that if the customer does not renew the certification before the 30-day period expires and arrangements for payment acceptable to DEP are not made, DEP may proceed with termination.

5.3 Procedures for Renewal of Certification.

- (a) If the significant medical condition is likely to continue beyond the expiration of any written certification, the certification may be renewed, provided that before the expiration of the initial certification a licensed medical doctor

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(M.D.) or official of the NYCDOH submits a new written certification that also states the expected duration of the significant medical condition and explains the reasons why termination of service would aggravate the significant medical condition.

- (b) A renewed certification remains in effect for 30 calendar days, except for cases certified as chronic by a licensed medical doctor or official of the NYCDOH. Renewed certification for those chronic cases shall be in effect for 60 calendar days. In the case of a chronic condition, the customer may request that the renewed certification remain in effect for a period longer than 60 days. Any such request shall be made in writing to the Deputy Commissioner, Bureau of Customer and Conservation Services, who shall be authorized to approve such longer period stating any special conditions to be met by the customer.
- (c) DEP may only terminate service to a customer who has submitted a certification of a significant medical condition after written notice has been provided to the customer of DEP's determination that the certification of a significant medical condition is no longer in effect.

5.4 Customers who are Elderly, Blind or Disabled. DEP shall not terminate or refuse to restore service to residential premises where any residents of such premises is known or identified to DEP as being blind, disabled, 62 years of age or older, or 18 years of age or under, without complying with the procedures set out in this Section 5.4. As used in this Section 5.4, the following terms shall have the respective meanings assigned to each below:

- (i) a "blind person" shall mean a person who has central vision acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye with a limitation in the fields of vision such that widest diameter of the visual field subtends an angle no greater than 20 degrees, shall be considered as having a central vision acuity of 20/200 or less.
- (ii) a "disabled person" shall mean a person with a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, as defined in the State Human rights Act (State Executive Law, section 292[21]); or a person who is unable, because of mental or physical

problems to manage his or her own resources or to protect himself or herself from neglect or hazardous situations without the assistance of others.

- (a) Procedure Before Termination Of Service: (i) DEP shall make a diligent effort to contact personally an adult resident at the subject premises at least 72 hours before termination of service to attempt to secure an agreement that would avoid termination and arrange for payment of the outstanding charges; (ii) Where efforts at personal contact are unsuccessful or where DEP and a customer are unable to agree on an agreement, DEP must notify the NYC Human Resources Administration/Department of Social Services (“NYCDSS”) of the name and address of the customer and the date of termination so that such office may ascertain if the customer is eligible for any assistance. DEP must continue service for at least 15 business days after providing this notice, unless notified by such office that other arrangements have been made.
- (b) Procedures After Termination Of Service: (i) in cases where service has been terminated and DEP is later notified that the customer should have received the protections under this Section 5.4, DEP shall make a diligent effort to contact personally an adult resident at the subject premises, within 24 hours of such notification, to attempt to secure an agreement that would restore service and arrange for payment of outstanding charges; and (ii) where efforts at personal contact are unsuccessful or where the DEP and the customer are unable to agree on an agreement, notify the NYCDSS of the name and address of the customer and the date of termination so that such office may ascertain if the customer is eligible for any assistance.
- (c) In cases where DEP has terminated service consistent with the provisions of this Section, DEP shall make a diligent effort to contact personally an adult resident at the subject premises within 10 calendar days after termination, to determine whether alternative arrangements have been made for the provision of service and, if none have been made, attempt to secure an agreement that would restore service and arrange for payment of outstanding charges.

5.5 Newborn Baby Exception. DEP shall not terminate or refuse to restore service to a residential premises when a newborn baby is in residence at such premises. A newborn baby shall mean an infant human being not more than six months in age. This section shall apply when either the father or the mother of such newborn baby resides at the premises which DEP has identified as eligible for a potential

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termination of service. The newborn baby exception shall be subject to DEP's review of a birth certificate or such other evidence that will substantiate the infant's date of birth, parentage and the parent's legal residence.

5.6 Procedures During Cold Weather Periods for Premises with Heat-Related Service. During cold weather periods, before terminating water service to any residential premises with heat-related service, DEP shall first make an attempt to determine whether a resident of the subject premises may suffer serious impairment to health or safety as a result of termination, in accordance with the procedures set forth below. Doubts as to whether a person may suffer serious impairment to health or safety as a result of termination must be resolved in favor of making such a finding. As used in this Section 5.6, the following terms shall have the respective meanings assigned to each below:

- (i) A "cold weather period" shall mean that period of time beginning November 1st of each year and ending April 15th of the following year.
- (ii) "Heat related service" shall mean water service which is necessary for the on-going operation of a customer's primary heating system.
- (a) For the purposes of this Section 5.6, a person may suffer serious impairment to health or safety as a result of termination when there is evidence of any of the following:
 - (i) dependency on such service due to age, poor physical condition or mental incapacitation;
 - (ii) use of life support systems, such as dialysis machines or iron lungs;
 - (iii) serious illness; or
 - (iv) disability or blindness.
- (b) Procedures: DEP shall not terminate service to customers known to be receiving heat-related service during cold weather periods, unless DEP has made a diligent effort to contact personally the customer or an adult resident at the subject premises at least 72 hours before the intended termination, and if unsuccessful, at the time of termination, in order to determine whether a resident may suffer a serious impairment to health or safety as a result of termination, to fully explain the reasons for termination and to provide the

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customer with information on the protections available under this Section 5.6.

- (c) Where DEP determines that a resident may suffer a serious impairment to health or safety as a result of termination, DEP shall not terminate service unless:
 - (i) DEP notifies the NYCDSS orally and within five calendar days in writing, that a resident may suffer a serious impairment to health or safety as a result of termination; and
 - (ii) such office, after an investigation, informs DEP that the reported condition is not likely to result in a serious impairment to health or safety, or that an alternative means for protecting the person's health or safety has been arranged.
 - (iii) If DEP has notified such office under subparagraph (i), it must inform the customer of the referral and explain its purpose.
- (d) Termination of Service
 - (i) If DEP terminates service to a customer under this Section 5.6, and the customer or an adult resident of the subject premises was not personally contacted by DEP before termination of service and the customer has not contacted DEP for the purpose of requesting reconnection before 12 noon on the day following termination of service, DEP must, by onsite personal visit with the customer or other adult resident, immediately attempt to determine whether there is continuing occupancy and whether a serious impairment to health or safety may result if service remains terminated. If DEP determines that a serious impairment to health or safety may result, it must immediately restore service. If DEP is unable to make an onsite personal visit with the customer or an adult resident, and does not have reasonable grounds to believe that the premises have been vacated, DEP must immediately refer the name and address of the customer to the NYCDSS.
 - (ii) If after the discovery of tampered equipment, DEP decides to terminate service to a residential premises because of an unsafe condition arising out of such tampered equipment, it must determine, in accordance with this Section, whether a resident of the subject premise may suffer a serious impairment to health or safety as a result of termination. If DEP determines that a resident

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may suffer a serious impairment, it must follow the procedures set forth in subdivisions (b), (c), and (d) above; provided however, that continued service is not required if it is impractical for DEP to eliminate such unsafe condition. In any cases where a resident of the subject premises may suffer a serious impairment to health or safety and DEP terminates service to preclude the continuation of an unsafe condition, DEP shall notify the NYCDSS on the same day service is terminated and request an immediate consideration of the case.

Section 6. Installment Agreement.

- 6.1 General. DEP shall offer each customer issued a notice of termination an installment payment agreement in lieu of immediate payment of the full amount demanded by such notice. Execution of such an agreement by a customer and DEP in accordance with the terms set forth herein will enable the customer to avoid termination of service provided that the customer shall, at all times, remain in full compliance with all terms of such Agreement. Each offer of an installment agreement shall: inform the customer of the availability of an agreement; state the minimum terms which would be accepted by DEP in such agreement; explain any alternate terms that may be available; state the date by which the customer must contact DEP and execute an agreement in order to avoid termination of service; indicate the name and telephone number of a DEP representative that the customer may call to discuss an agreement; state what action DEP will take if an installment agreement is not executed and returned by its due date.
- 6.2 Terms of Agreement. Any such installment agreement shall set forth:
- (a) the total amount and dates of the delinquent charges covered by such agreement;
 - (b) the time period over which such total amount shall be paid;
 - (c) the number, due date and amount of each periodic payment due under the agreement;
 - (d) the amount of the required down payment or initial installment, which shall be at least equal to twenty-five percent (25%) of the total amount covered by the agreement, and shall be due and payable upon execution of the agreement by the customer; and

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- (e) the interest rate to be charged on the unpaid balance under the agreement, which shall be equal to the interest rate charged by the City (as then in effect) for unpaid real estate taxes on a property where the annual real estate taxes are \$2,750 or less.

- 6.3 Reservation of Rights to Terminate. Anything in this Regulation to the contrary notwithstanding, DEP reserves the right to terminate service to any customer who/which has executed an installment agreement, in the following circumstances: (x) forthwith, without further demand or notice, if the customer fails to pay any installment or other amount owing under such installment agreement when the same is due; or (y) in accordance with and subject to the notice and other provisions of this Regulation if the customer thereafter fails to pay any other fees, rents or charges owing to the Board for the subject account for the supply of water or the provision of sewer service (that is, fees, rents or charges other than those covered under such installment agreement).

Section 7. Other

- 7.1 Fee for Termination of Service and for Reconnection. (a) The Board may establish, and may from time to time revise, fees to be charged to customers in connection with (x) any termination of service to a customer under this Regulation, and (y) for any restoration of service to such customer. Such fees shall respectively be due and payable to the Board thirty (30) days after termination of service is effected, and thirty (30) days after service is restored. If any such fee is not paid when due, it shall, to the fullest extent permitted by law, become a lien and charge against the subject real property.
- (b) Once service is terminated pursuant to this Regulation, it shall not be restored unless and until any outstanding fees owing to the Board for termination of service, or for the restoration of service, shall have been paid to the Board in full.

Section 8. Public Service Law

- 8.1 In accordance with the requirements of the New York City Municipal Water Finance Authority Act, all terminations of service shall be carried out in accordance with the provisions of Subdivisions three-a, three-b and three-c of Section 89-b and Section 116 of the Public Service Law, as applicable.