

Respondents who reported that they received LIHEAP were asked, "How important has LIHEAP been in helping you to meet your needs?" Table 69 shows the ratings of the importance of LIHEAP by region.

**Table 69**  
**Importance of LIHEAP by Region<sup>1</sup>**

	<b>Very Important</b>	<b>Somewhat Important</b>	<b>Of Little Importance</b>	<b>Not at All Important</b>	<b>Don't Know</b>
<b>All</b>	88%	8%	3%	1%	1%
<b>Northeast</b>	90%	7%	1%	1%	1%
<b>Midwest</b>	85%	9%	4%	1%	1%
<b>South</b>	85%	9%	4%	1%	1%
<b>West</b>	94%	3%	2%	0%	1%

<sup>1</sup>1,812 respondents who recall receiving LIHEAP

## VI. State-Level Report

This section displays findings from the 2003 National Energy Assistance (NEA) Survey by state. State information should be considered in careful context as states have different demographics, climates, and energy and nonenergy benefits. The analysis in this section describes the experiences faced by LIHEAP recipients within states and is not a measure of state performance. The data should not be used to make interstate comparisons. Tables presented in this section may not total to 100 percent due to rounding.

### A. LIHEAP Recipients by State

For each state in the sample, Table 70 presents the proportion of LIHEAP recipients who reported having one or more vulnerable members in the household.

Table 70  
Vulnerable Groups by State

	Household With Elderly (Age 60 or older)	Household With Disabled	Household With Child (Age 18 or younger)	Household With Young Child (age 5 or younger)	Single Parent Household <sup>1</sup>
All	41%	43%	47%	18%	22%
California	35%	45%	58%	27%	28%
Colorado	37%	43%	49%	19%	22%
Delaware	38%	48%	53%	22%	28%
Georgia	59%	60%	32%	16%	15%
Iowa	34%	45%	46%	18%	17%
Louisiana	53%	35%	41%	15%	9%
Maine	49%	31%	39%	5%	14%
Massachusetts	40%	53%	38%	17%	13%
Minnesota	43%	39%	47%	19%	20%
Montana	36%	42%	46%	22%	25%
New Mexico	28%	36%	64%	27%	39%
New York	57%	50%	39%	13%	14%
North Carolina	37%	45%	50%	25%	31%
North Dakota	33%	47%	42%	20%	20%
Ohio	38%	32%	52%	14%	33%
Pennsylvania	42%	41%	43%	17%	19%
Rhode Island	39%	35%	57%	20%	29%
Virginia	35%	52%	46%	25%	18%
Washington	30%	53%	53%	16%	20%
Wisconsin	32%	39%	47%	32%	22%

<sup>1</sup> Defined as households with only one adult residing with one or more children.

Table 71 displays the percent of LIHEAP recipients below the poverty level by state.

**Table 71**  
**Below Poverty Level by State**

	<b>Percent<sup>1</sup></b>
<b>All</b>	70%
<b>California</b>	65%
<b>Colorado</b>	67%
<b>Delaware</b>	66%
<b>Georgia</b>	84%
<b>Iowa</b>	75%
<b>Louisiana</b>	97%
<b>Maine</b>	47%
<b>Massachusetts</b>	51%
<b>Minnesota</b>	48%
<b>Montana</b>	69%
<b>New Mexico</b>	71%
<b>New York</b>	89%
<b>North Carolina</b>	82%
<b>North Dakota</b>	56%
<b>Ohio</b>	65%
<b>Pennsylvania</b>	74%
<b>Rhode Island</b>	55%
<b>Virginia</b>	82%
<b>Washington</b>	77%
<b>Wisconsin</b>	64%

<sup>1</sup> 1,965 respondents provided income information.

Respondents were asked whether in FY 2003 their household received income from employment; any form of retirement income including Social Security, pensions, and other funds; public assistance benefits from TANF, SSI, AFDC, or general or public assistance; or noncash benefits, including food stamps and public or subsidized housing. Table 72 illustrates the types of income and benefits received by LIHEAP recipients in each state.

**Table 72**  
**Types of Income and Benefits Received by State**

	<b>Wages or Self-Employment Income</b>	<b>Retirement Income</b>	<b>Public Assistance</b>	<b>Noncash benefits</b>
<b>All</b>	36%	36%	45%	57%
<b>California</b>	37%	24%	50%	49%
<b>Colorado</b>	42%	36%	36%	47%
<b>Delaware</b>	39%	29%	43%	50%
<b>Georgia</b>	20%	48%	42%	48%
<b>Iowa</b>	43%	33%	42%	54%
<b>Louisiana</b>	9%	40%	41%	59%
<b>Maine</b>	47%	46%	25%	48%
<b>Massachusetts</b>	33%	32%	46%	39%
<b>Minnesota</b>	47%	34%	36%	44%
<b>Montana</b>	43%	39%	38%	60%
<b>New Mexico</b>	38%	31%	40%	67%
<b>New York</b>	18%	40%	82%	80%
<b>North Carolina</b>	28%	32%	45%	83%
<b>North Dakota</b>	51%	29%	28%	51%
<b>Ohio</b>	37%	40%	35%	55%
<b>Pennsylvania</b>	34%	41%	44%	55%
<b>Rhode Island</b>	47%	36%	33%	44%
<b>Virginia</b>	40%	35%	47%	64%
<b>Washington</b>	40%	25%	61%	66%
<b>Wisconsin</b>	40%	29%	41%	50%

Pre-LIHEAP total residential energy burden is the proportion of income spent on total residential energy costs. Post-LIHEAP total residential energy burden is the proportion of income spent on total residential energy costs less LIHEAP benefit dollars received. Table 73 displays, by state, the pre-LIHEAP and post-LIHEAP total residential energy burdens for survey respondents for whom we could obtain state benefit amounts.

**Table 73**  
**Total Residential Energy Burden by State**

Energy Burden Intervals	Total Residential Energy Burden Percent of Households <sup>1</sup>					
	Pre-LIHEAP			Post-LIHEAP		
	0-10%	11-20%	>25%	0-10%	11-20%	>25%
All	48%	32%	20%	58%	28%	14%
California	71%	21%	8%	75%	22%	4%
Colorado	59%	23%	17%	67%	20%	13%
Delaware	54%	26%	20%	68%	25%	7%
Georgia	28%	37%	36%	31%	33%	36%
Iowa	37%	41%	22%	44%	41%	15%
Louisiana	44%	33%	23%	50%	40%	10%
Maine	51%	39%	9%	71%	23%	5%
Massachusetts	57%	27%	16%	78%	16%	7%
Minnesota	66%	27%	7%	80%	19%	1%
Montana	60%	24%	16%	66%	33%	1%
New Mexico	61%	24%	15%	61%	24%	15%
New York	45%	28%	27%	51%	28%	21%
North Carolina	40%	29%	31%	40%	29%	31%
North Dakota	67%	19%	13%	82%	12%	5%
Ohio	41%	37%	22%	49%	32%	19%
Pennsylvania	41%	38%	22%	56%	34%	10%
Rhode Island	52%	32%	16%	69%	22%	9%
Virginia	42%	34%	24%	46%	37%	17%
Washington	58%	24%	18%	71%	22%	7%
Wisconsin	49%	35%	16%	65%	29%	6%

<sup>1</sup> 1,825 respondents provided both income and energy costs information. States provided LIHEAP benefit amounts for all of these respondents.

For each state, Table 74 presents both pre-LIHEAP and post-LIHEAP mean total residential energy burdens for survey respondents for whom we could obtain state benefit amounts.

**Table 74**  
**Mean Total Residential Energy Burden by State**

	<b>Mean Total Residential Energy Burden<sup>1</sup></b>	
	<b>Pre-LIHEAP</b>	<b>Post-LIHEAP</b>
<b>All</b>	14%	11%
<b>California</b>	10%	8%
<b>Colorado</b>	13%	10%
<b>Delaware</b>	13%	9%
<b>Georgia</b>	18%	15%
<b>Iowa</b>	15%	12%
<b>Louisiana</b>	19%	10%
<b>Maine</b>	16%	9%
<b>Massachusetts</b>	12%	8%
<b>Minnesota</b>	10%	7%
<b>Montana</b>	13%	8%
<b>New Mexico</b>	13%	12%
<b>New York</b>	17%	15%
<b>North Carolina</b>	16%	15%
<b>North Dakota</b>	11%	6%
<b>Ohio</b>	15%	12%
<b>Pennsylvania</b>	15%	11%
<b>Rhode Island</b>	12%	9%
<b>Virginia</b>	15%	12%
<b>Washington</b>	13%	9%
<b>Wisconsin</b>	13%	9%

<sup>1</sup> 1,825 respondents provided both income and energy costs information. States provided LIHEAP benefit amounts for all of these respondents.

## B. Types of LIHEAP Assistance

Potential survey respondents were selected directly from state lists of FY 2003 LIHEAP recipients. Therefore, all respondents did receive LIHEAP benefits in FY 2003. However, preliminary findings being evaluated by the U.S. Department of Health and Human Services from the 2001 RECS LIHEAP Supplement have shown that some recipients do not recall or are not aware that they received benefits. Table 75 shows, by state, the proportion of respondents that reported that they received LIHEAP benefits in FY 2003.

**Table 75**  
**Recall Receiving LIHEAP by State**

	Percent Reported:		
	Yes	No	Don't Know
<b>All</b>	84%	14%	2%
<b>California</b>	85%	11%	4%
<b>Colorado</b>	93%	5%	2%
<b>Delaware</b>	69%	24%	7%
<b>Georgia</b>	80%	16%	4%
<b>Iowa</b>	94%	5%	1%
<b>Louisiana</b>	87%	12%	1%
<b>Maine</b>	88%	10%	1%
<b>Massachusetts</b>	86%	12%	2%
<b>Minnesota</b>	88%	8%	5%
<b>Montana</b>	97%	2%	1%
<b>New Mexico</b>	88%	12%	0%
<b>New York</b>	63%	36%	1%
<b>North Carolina</b>	74%	21%	5%
<b>North Dakota</b>	96%	2%	2%
<b>Ohio</b>	92%	7%	1%
<b>Pennsylvania</b>	90%	9%	1%
<b>Rhode Island</b>	78%	21%	2%
<b>Virginia</b>	86%	13%	1%
<b>Washington</b>	94%	5%	1%
<b>Wisconsin</b>	81%	15%	4%

For each state, Table 76 illustrates how many times in the past five years respondents said that they received LIHEAP benefits.

**Table 76**  
**Number of Years Received LIHEAP in the Past Five Years by State**

	Years Received LIHEAP:					
	1	2	3	4	5	Don't Know / No Recall
<b>All</b>	25%	23%	16%	8%	21%	7%
<b>California</b>	36%	23%	19%	1%	13%	8%
<b>Colorado</b>	22%	26%	17%	8%	24%	3%
<b>Delaware</b>	29%	19%	10%	4%	19%	19%
<b>Georgia</b>	24%	26%	15%	10%	11%	13%
<b>Iowa</b>	20%	18%	20%	10%	28%	4%
<b>Louisiana</b>	32%	35%	15%	4%	9%	7%
<b>Maine</b>	18%	24%	16%	10%	30%	2%
<b>Massachusetts</b>	22%	11%	25%	7%	29%	6%
<b>Minnesota</b>	21%	20%	18%	8%	31%	1%
<b>Montana</b>	19%	21%	18%	12%	29%	2%
<b>New Mexico</b>	41%	23%	15%	7%	11%	2%
<b>New York</b>	27%	17%	9%	15%	18%	14%
<b>North Carolina</b>	26%	23%	18%	8%	9%	15%
<b>North Dakota</b>	21%	22%	16%	10%	26%	5%
<b>Ohio</b>	21%	24%	19%	9%	22%	5%
<b>Pennsylvania</b>	26%	26%	18%	4%	25%	1%
<b>Rhode Island</b>	24%	28%	11%	8%	19%	11%
<b>Virginia</b>	27%	21%	19%	9%	18%	6%
<b>Washington</b>	27%	25%	21%	1%	20%	6%
<b>Wisconsin</b>	25%	33%	12%	8%	17%	5%

States were asked to provide the amount of heating, cooling, and crisis benefits received by each household. All twenty states included in the survey provided data for most of the respondents. Table 77 presents the mean state-reported LIHEAP benefits received by state.

**Table 77**  
**Mean State-Reported LIHEAP Benefits Received by State**

	Heating <sup>1</sup>	Cooling <sup>1</sup>	Crisis <sup>1</sup>	Total <sup>2</sup>
All	\$267	\$10	\$45	\$313
California	\$155	*	\$66	\$221
Colorado	\$319		\$2	\$322
Delaware	\$309	\$28	\$54	\$391
Georgia	\$196			\$196
Iowa	\$305		\$3	\$309
Louisiana	*	*		\$358
Maine	\$467		\$2	\$469
Massachusetts	\$521			\$521
Minnesota	\$373		\$54	\$427
Montana	\$426		\$21	\$448
New Mexico	\$83	*	\$26	\$109
New York	\$166	\$1	\$46	\$213
North Carolina	\$66		\$3	\$70
North Dakota	\$500		\$26	\$525
Ohio	\$157	\$9	\$55	\$221
Pennsylvania	\$225		\$144	\$369
Rhode Island	\$362		\$20	\$382
Virginia	\$168	\$45	\$47	\$260
Washington	\$378			\$378
Wisconsin	\$368		\$52	\$420

<sup>1</sup> Benefits are averaged over all recipients in the state that offers the benefits. Among just those who received benefits, the national average LIHEAP grant was \$294 for heating, \$147 for cooling, and \$264 for crisis.

<sup>2</sup> Total benefits are not a summation of the three previous benefit types, but are the mean of total benefits received by each respondent. Some recipients received more than one type of assistance. State benefits data were provided for 2,036 of 2,161 respondents.

\* Benefits data for this benefit type were not available from the state for clients surveyed. Shaded areas denote states where benefit type was not offered in 2003.

### C. Constraints, Hardships, and Unsafe Practices

For each state, Table 78 presents the proportion of respondents who reported that their household took specific constructive actions in FY 2003 to reduce their total residential energy costs.

**Table 78**  
**Constructive Actions Taken In the Past Year to Lower Energy Bills by State**

	Actions taken to bring down heating bills		Actions taken to bring down cooling bills		Other energy-saving actions taken	
	Put plastic on windows	Turn down the heat when you go to bed	Keep shades and curtains closed in daytime	Use fans and open windows	Wash clothes in cold water	Use compact fluorescent light bulbs
<b>All</b>	44%	76%	83%	78%	65%	44%
<b>California</b>	21%	71%	86%	85%	66%	55%
<b>Colorado</b>	37%	86%	85%	83%	67%	41%
<b>Delaware</b>	45%	88%	91%	77%	68%	38%
<b>Georgia</b>	37%	85%	84%	68%	77%	44%
<b>Iowa</b>	56%	81%	90%	73%	69%	38%
<b>Louisiana</b>	26%	90%	79%	56%	77%	24%
<b>Maine</b>	45%	78%	79%	82%	79%	34%
<b>Massachusetts</b>	40%	78%	78%	85%	69%	65%
<b>Minnesota</b>	35%	74%	83%	84%	61%	46%
<b>Montana</b>	36%	90%	88%	85%	63%	46%
<b>New Mexico</b>	44%	86%	84%	80%	65%	33%
<b>New York</b>	60%	48%	71%	82%	58%	51%
<b>North Carolina</b>	35%	81%	83%	62%	67%	33%
<b>North Dakota</b>	50%	74%	90%	81%	59%	41%
<b>Ohio</b>	44%	77%	84%	81%	61%	42%
<b>Pennsylvania</b>	55%	76%	88%	77%	60%	44%
<b>Rhode Island</b>	35%	82%	82%	75%	74%	46%
<b>Virginia</b>	43%	80%	92%	69%	64%	40%
<b>Washington</b>	42%	79%	86%	78%	67%	58%
<b>Wisconsin</b>	42%	77%	83%	82%	61%	45%

Note: These responses may be overestimated due to respondent compliance (i.e., desire to provide a socially desirable or positive response).

Table 79 shows the proportion of respondents, by state, that reported experiencing a specific housing problem in the past five years due to their total residential energy expenses.

**Table 79**  
**Experiences with Housing Problems**  
**Due to Energy Bills in Past Five Years by State**

	<b>Didn't make full rent or mortgage payment</b>	<b>Was evicted from home or apartment</b>	<b>Moved in with friends or family</b>	<b>Moved into shelter or been homeless</b>
<b>All</b>	28%	4%	9%	4%
<b>California</b>	29%	6%	14%	6%
<b>Colorado</b>	30%	3%	10%	2%
<b>Delaware</b>	40%	7%	11%	3%
<b>Georgia</b>	25%	1%	8%	0%
<b>Iowa</b>	27%	2%	8%	1%
<b>Louisiana</b>	33%	3%	7%	1%
<b>Maine</b>	20%	2%	4%	1%
<b>Massachusetts</b>	24%	3%	8%	8%
<b>Minnesota</b>	17%	3%	8%	3%
<b>Montana</b>	26%	0%	16%	4%
<b>New Mexico</b>	29%	2%	6%	3%
<b>New York</b>	24%	1%	15%	11%
<b>North Carolina</b>	35%	7%	12%	4%
<b>North Dakota</b>	21%	2%	9%	1%
<b>Ohio</b>	35%	4%	7%	2%
<b>Pennsylvania</b>	27%	8%	6%	4%
<b>Rhode Island</b>	31%	6%	9%	4%
<b>Virginia</b>	32%	4%	8%	1%
<b>Washington</b>	39%	6%	14%	6%
<b>Wisconsin</b>	23%	4%	12%	3%

Table 80 shows, by state, the proportion of respondents who reported that they needed to use a different name in order to obtain or continue receiving energy services in the past five years.

**Table 80**  
**Use Different Name to Obtain or**  
**Continue Receiving Energy Service In Past Five Years by State**

	<b>Percent</b>
<b>All</b>	3%
<b>California</b>	9%
<b>Colorado</b>	8%
<b>Delaware</b>	5%
<b>Georgia</b>	2%
<b>Iowa</b>	2%
<b>Louisiana</b>	4%
<b>Maine</b>	3%
<b>Massachusetts</b>	3%
<b>Minnesota</b>	2%
<b>Montana</b>	2%
<b>New Mexico</b>	4%
<b>New York</b>	1%
<b>North Carolina</b>	3%
<b>North Dakota</b>	1%
<b>Ohio</b>	4%
<b>Pennsylvania</b>	3%
<b>Rhode Island</b>	6%
<b>Virginia</b>	2%
<b>Washington</b>	4%
<b>Wisconsin</b>	3%

Table 81 shows, by state, the percentage of respondents who reported that they had a fire in their home caused by unsafe heating or lighting in the past five years.

**Table 81**  
**Fire Caused by Unsafe Heating or Lighting by State**

	<b>Percent</b>
<b>All</b>	1%
<b>California</b>	2%
<b>Colorado</b>	1%
<b>Delaware</b>	1%
<b>Georgia</b>	1%
<b>Iowa</b>	2%
<b>Louisiana</b>	0%
<b>Maine</b>	1%
<b>Massachusetts</b>	2%
<b>Minnesota</b>	2%
<b>Montana</b>	2%
<b>New Mexico</b>	1%
<b>New York</b>	1%
<b>North Carolina</b>	2%
<b>North Dakota</b>	0%
<b>Ohio</b>	1%
<b>Pennsylvania</b>	1%
<b>Rhode Island</b>	1%
<b>Virginia</b>	3%
<b>Washington</b>	1%
<b>Wisconsin</b>	1%

### D. Health: Tough Choices and Health Problems

For each state, Table 82 presents the proportion of respondents that said someone in their household went without food, medical care, or medicine in the past five years due in part to their total residential energy expenses.

**Table 82**  
**Experiences with Other Expenses**  
**Due to Energy Bills in Past Five Years by State**

	Went without food for at least one day	Went without medical or dental care	Didn't fill prescription or took less than the full dose of a prescribed medicine	Unable to pay energy bill due to medical expenses
<b>All</b>	22%	38%	30%	20%
<b>California</b>	34%	29%	29%	23%
<b>Colorado</b>	27%	55%	43%	23%
<b>Delaware</b>	26%	39%	36%	18%
<b>Georgia</b>	16%	37%	28%	20%
<b>Iowa</b>	22%	31%	40%	18%
<b>Louisiana</b>	11%	38%	39%	23%
<b>Maine</b>	9%	39%	26%	8%
<b>Massachusetts</b>	21%	39%	29%	19%
<b>Minnesota</b>	17%	25%	19%	14%
<b>Montana</b>	31%	53%	37%	24%
<b>New Mexico</b>	22%	47%	34%	19%
<b>New York</b>	17%	39%	9%	25%
<b>North Carolina</b>	21%	33%	28%	14%
<b>North Dakota</b>	17%	41%	35%	24%
<b>Ohio</b>	24%	42%	40%	22%
<b>Pennsylvania</b>	23%	37%	31%	18%
<b>Rhode Island</b>	25%	26%	27%	14%
<b>Virginia</b>	22%	43%	34%	20%
<b>Washington</b>	30%	44%	34%	20%
<b>Wisconsin</b>	28%	40%	34%	16%

For each state, Table 83 shows the proportion of respondents who said that someone in their household suffered illness in the past five years because their homes were too hot or too cold. Table 83 also illustrates the proportion of respondents in each state that reported a person in their household needed to go to a doctor or hospital due to a home-temperature-related illness.

**Table 83**  
**Health Problems Due to Energy Bills in Past Five Years by State**

	Someone in household became sick because home was too cold	Someone in household needed to go to a doctor or hospital because home was too cold	Someone in household became sick because home was too hot	Someone in household needed to go to a doctor or hospital because home was too hot
All	21%	14%	7%	5%
California	35%	23%	10%	7%
Colorado	21%	14%	5%	0%
Delaware	20%	14%	9%	7%
Georgia	5%	5%	4%	4%
Iowa	16%	10%	8%	5%
Louisiana	18%	10%	12%	8%
Maine	8%	7%	5%	4%
Massachusetts	22%	15%	5%	3%
Minnesota	10%	6%	5%	3%
Montana	20%	12%	5%	3%
New Mexico	29%	23%	2%	0%
New York	37%	25%	11%	10%
North Carolina	21%	16%	5%	3%
North Dakota	11%	7%	8%	3%
Ohio	19%	10%	7%	2%
Pennsylvania	23%	17%	7%	4%
Rhode Island	22%	14%	8%	4%
Virginia	17%	15%	7%	6%
Washington	33%	27%	9%	4%
Wisconsin	19%	12%	8%	5%

## *E. Energy Insecurity*

LIHEAP recipients were asked a series of questions designed to measure the home energy insecurity of their household. The purpose of these questions is to examine aspects of energy affordability and the experiences of households trying to meet their energy expenses. A scale of home energy insecurity will be presented at the end of this subsection.

Respondents were asked to report the frequency of actions or experiences in FY 2003 that could be considered indicators of energy insecurity. For each state, Table 84 illustrates the proportion of respondents who reported that a specific action or experience occurred during three or more months in FY 2003.

Table 85 shows, by state, the proportion of respondents who reported that in FY 2003 they experienced a loss of electricity, heating, or air conditioning due to inability to pay for fuel service or repairs for broken fuel sources.

Table 84. Actions and Experiences Occurring Some Months or More Due to Not Having Enough Money for the Energy Bill During Past Year by State

	Worried about paying home energy bill	Reduced expenses for basic household necessities	Borrowed from a friend or relative to pay home energy bill	Skipped paying or paid less than entire home energy bill	Received notice or threat to disconnect or discontinue electricity or home heating fuel	Closed off part of home because could not afford to heat or cool it	Kept home at temperature you felt was unsafe or unhealthy	Left home for part of the day because it was too hot or too cold	Used kitchen stove or oven to provide heat
All	59%	69%	29%	35%	20%	31%	18%	13%	20%
California	67%	71%	39%	49%	25%	25%	19%	22%	26%
Colorado	63%	67%	22%	38%	23%	29%	15%	9%	15%
Delaware	64%	70%	34%	44%	30%	26%	21%	12%	16%
Georgia	63%	78%	31%	31%	22%	33%	13%	8%	22%
Iowa	59%	70%	21%	36%	19%	37%	16%	11%	12%
Louisiana	73%	70%	42%	38%	28%	47%	32%	17%	39%
Maine	48%	60%	15%	25%	15%	33%	11%	9%	11%
Massachusetts	58%	69%	19%	39%	17%	35%	16%	10%	11%
Minnesota	45%	60%	21%	26%	15%	26%	16%	10%	9%
Montana	69%	77%	26%	41%	12%	42%	17%	6%	11%
New Mexico	63%	67%	31%	37%	26%	26%	24%	11%	20%
New York	52%	69%	28%	19%	6%	20%	27%	24%	36%
North Carolina	67%	64%	39%	30%	31%	34%	17%	13%	24%
North Dakota	57%	63%	22%	32%	13%	32%	9%	7%	9%
Ohio	59%	71%	29%	42%	27%	35%	15%	14%	21%
Pennsylvania	60%	72%	27%	30%	17%	30%	20%	7%	18%
Rhode Island	61%	71%	32%	49%	22%	26%	21%	16%	19%
Virginia	62%	72%	26%	35%	17%	31%	17%	10%	15%
Washington	62%	75%	28%	49%	22%	46%	28%	20%	15%
Wisconsin	61%	66%	29%	35%	16%	31%	14%	10%	8%

**Table 85**  
**Experienced Loss of Electricity, Main Source of Heating, or Air Conditioning**  
**During Past Year by State**

	<b>Electricity shut off due to nonpayment</b>	<b>Heating system broken and unable to pay for repair or replacement</b>	<b>Unable to use main source of heat because unable to pay for a fuel delivery</b>	<b>Unable to use main source of heat because utility company discontinued gas or electric service due to nonpayment</b>	<b>Unable to use air conditioner because it was broken, and unable to pay for repair or replacement</b>	<b>Unable to use air conditioner because utility company discontinued electric service due to nonpayment</b>
<b>All</b>	8%	10%	10%	11%	12%	6%
<b>California</b>	15%	18%	8%	17%	13%	13%
<b>Colorado</b>	11%	9%	6%	9%	10%	8%
<b>Delaware</b>	10%	19%	24%	12%	15%	10%
<b>Georgia</b>	11%	11%	13%	13%	5%	9%
<b>Iowa</b>	4%	10%	6%	7%	10%	3%
<b>Louisiana</b>	9%	24%	6%	13%	26%	10%
<b>Maine</b>	10%	4%	17%	5%	4%	5%
<b>Massachusetts</b>	10%	10%	8%	11%	11%	4%
<b>Minnesota</b>	9%	8%	6%	9%	9%	4%
<b>Montana</b>	0%	9%	8%	2%	6%	1%
<b>New Mexico</b>	11%	15%	15%	11%	15%	12%
<b>New York</b>	4%	2%	3%	4%	12%	1%
<b>North Carolina</b>	11%	10%	20%	12%	19%	8%
<b>North Dakota</b>	8%	13%	5%	6%	13%	3%
<b>Ohio</b>	5%	9%	8%	19%	13%	6%
<b>Pennsylvania</b>	5%	18%	11%	8%	14%	2%
<b>Rhode Island</b>	11%	9%	11%	13%	9%	8%
<b>Virginia</b>	17%	11%	20%	14%	11%	9%
<b>Washington</b>	13%	17%	9%	13%	14%	6%
<b>Wisconsin</b>	11%	4%	5%	10%	13%	7%

Respondents who had their electricity or gas shut off or who could not afford to pay for fuel were asked whether they went without showers, baths, or hot meals, and whether they used candles or lanterns. Table 86 illustrates the proportion of respondents, by state, that reported experiencing one of those problems due to discontinued energy services in FY 2003.

**Table 86**  
**Actions and Experiences**  
**Due to Discontinued Energy Services During Past Year by State**

	<b>Went without showers or baths due to nonpayment of energy service or delivery needed for hot water</b>	<b>Went without hot meals due to nonpayment of energy service or delivery</b>	<b>Used candles or lanterns due to nonpayment of energy service or delivery</b>
<b>All</b>	9%	5%	8%
<b>California</b>	14%	13%	17%
<b>Colorado</b>	5%	3%	7%
<b>Delaware</b>	12%	12%	8%
<b>Georgia</b>	11%	5%	9%
<b>Iowa</b>	6%	3%	4%
<b>Louisiana</b>	9%	6%	11%
<b>Maine</b>	3%	3%	6%
<b>Massachusetts</b>	7%	1%	3%
<b>Minnesota</b>	5%	4%	6%
<b>Montana</b>	2%	2%	0%
<b>New Mexico</b>	6%	9%	9%
<b>New York</b>	13%	3%	14%
<b>North Carolina</b>	10%	5%	10%
<b>North Dakota</b>	3%	3%	3%
<b>Ohio</b>	14%	9%	9%
<b>Pennsylvania</b>	3%	3%	3%
<b>Rhode Island</b>	11%	6%	5%
<b>Virginia</b>	12%	9%	12%
<b>Washington</b>	5%	6%	11%
<b>Wisconsin</b>	6%	4%	5%

For each state, Table 87 presents a scale that classifies the low-income population based on their level of home energy insecurity. The scale, constructed from some of the previously described NEA Survey questions, is a modified version of the home energy insecurity scale developed in Roger Colton's paper, "Measuring the Outcomes of Low-Income Energy Assistance Programs Through a Home Energy Insecurity Scale."

In summary, the scale classifies respondents as thriving, capable, stable, vulnerable, or in-crisis, based on how they answered the questions previously presented in this section. A detailed description of the scale and definitions for each threshold can be found in the text that precedes Table 44.

**Table 87**  
**Energy Insecurity Scale by State**

	<b>Thriving</b>	<b>Capable</b>	<b>Stable</b>	<b>Vulnerable</b>	<b>In-Crisis</b>
<b>All</b>	9%	1%	4%	24%	62%
<b>California</b>	5%	0%	7%	18%	70%
<b>Colorado</b>	8%	4%	1%	33%	55%
<b>Delaware</b>	9%	1%	2%	29%	59%
<b>Georgia</b>	5%	1%	2%	25%	66%
<b>Iowa</b>	9%	1%	2%	36%	51%
<b>Louisiana</b>	7%	1%	3%	20%	68%
<b>Maine</b>	17%	1%	8%	24%	51%
<b>Massachusetts</b>	7%	4%	4%	28%	57%
<b>Minnesota</b>	17%	1%	7%	28%	47%
<b>Montana</b>	2%	0%	8%	27%	63%
<b>New Mexico</b>	7%	1%	4%	32%	57%
<b>New York</b>	8%	0%	3%	15%	74%
<b>North Carolina</b>	9%	1%	0%	25%	66%
<b>North Dakota</b>	11%	2%	8%	28%	51%
<b>Ohio</b>	14%	0%	2%	20%	64%
<b>Pennsylvania</b>	5%	1%	3%	24%	67%
<b>Rhode Island</b>	6%	1%	5%	26%	62%
<b>Virginia</b>	4%	3%	4%	35%	55%
<b>Washington</b>	6%	1%	4%	27%	62%
<b>Wisconsin</b>	12%	0%	5%	23%	60%

## **F. Importance of LIHEAP**

This section examines respondents' ratings of the importance and influence of LIHEAP by state.

Respondents were asked whether they were unable to use their main source of heat in FY 2003 because they were unable to pay to repair or replace a broken heating system, unable to pay for fuel, or unable to pay to restore disconnected or discontinued energy service. Those who said they did face one of these problems were asked whether LIHEAP helped restore their main source of heat. Among those respondents who lost their heat, Table 88 reports the percentage of respondents, by state, who said that LIHEAP benefits helped them to restore their heat.

**Table 88**  
**LIHEAP Helped to Restore Heat by State**

	<b>Percent<sup>1</sup></b>
<b>All</b>	62%
<b>California</b>	67%
<b>Colorado</b>	86%
<b>Delaware</b>	69%
<b>Georgia</b>	53%
<b>Iowa</b>	64%
<b>Louisiana</b>	53%
<b>Maine</b>	69%
<b>Massachusetts</b>	64%
<b>Minnesota</b>	50%
<b>Montana</b>	91%
<b>New Mexico</b>	63%
<b>New York</b>	77%
<b>North Carolina</b>	44%
<b>North Dakota</b>	59%
<b>Ohio</b>	65%
<b>Pennsylvania</b>	68%
<b>Rhode Island</b>	52%
<b>Virginia</b>	60%
<b>Washington</b>	68%
<b>Wisconsin</b>	80%

<sup>1</sup> 373 respondents

Respondents who reported that they did not encounter some of the energy insecurity problems described in the previous subsection were asked whether they believe they would have faced these problems if LIHEAP assistance had not been available. For each state, Table 89 illustrates the proportion of respondents who would have worried about paying their bill, kept their home at unsafe or unhealthy temperature levels, or would have faced disconnection had it not been for LIHEAP benefits.

**Table 89**  
**If LIHEAP Had Not Been Available by State**

	Would you have worried about paying home energy bill? <sup>1</sup>	Would you have needed to keep home temperature at unsafe or unhealthy levels? <sup>2</sup>	Would you have had electricity or home heating fuel discontinued? <sup>3</sup>
All	66%	54%	48%
California	82%	51%	53%
Colorado	75%	72%	60%
Delaware	87%	55%	57%
Georgia	69%	57%	37%
Iowa	63%	41%	45%
Louisiana	64%	58%	42%
Maine	76%	60%	39%
Massachusetts	83%	56%	49%
Minnesota	65%	46%	44%
Montana	88%	68%	63%
New Mexico	74%	52%	55%
New York	47%	44%	21%
North Carolina	41%	33%	44%
North Dakota	61%	57%	49%
Ohio	69%	60%	56%
Pennsylvania	65%	63%	51%
Rhode Island	82%	57%	58%
Virginia	92%	52%	63%
Washington	87%	56%	66%
Wisconsin	53%	49%	47%

<sup>1</sup> 511 respondents   <sup>2</sup> 1,392 respondents   <sup>3</sup> 1,555 respondents

Respondents who reported that they received LIHEAP were asked, "How important has LIHEAP been in helping you to meet your needs?" Table 90 shows the ratings of the importance of LIHEAP by state.

**Table 90**  
**Importance of LIHEAP by State<sup>1</sup>**

	<b>Very Important</b>	<b>Somewhat Important</b>	<b>Of Little Importance</b>	<b>Not at All Important</b>	<b>Don't Know</b>
<b>All</b>	88%	8%	3%	1%	1%
<b>California</b>	95%	3%	2%	0%	0%
<b>Colorado</b>	92%	4%	4%	0%	0%
<b>Delaware</b>	93%	5%	0%	2%	0%
<b>Georgia</b>	85%	10%	4%	0%	1%
<b>Iowa</b>	82%	15%	0%	1%	1%
<b>Louisiana</b>	92%	3%	1%	1%	3%
<b>Maine</b>	91%	7%	0%	1%	1%
<b>Massachusetts</b>	93%	4%	1%	1%	1%
<b>Minnesota</b>	90%	8%	1%	0%	1%
<b>Montana</b>	95%	4%	1%	0%	0%
<b>New Mexico</b>	93%	4%	1%	1%	1%
<b>New York</b>	93%	5%	0%	0%	2%
<b>North Carolina</b>	74%	15%	8%	3%	0%
<b>North Dakota</b>	76%	13%	5%	5%	1%
<b>Ohio</b>	89%	3%	7%	1%	1%
<b>Pennsylvania</b>	91%	5%	2%	2%	1%
<b>Rhode Island</b>	82%	15%	1%	1%	0%
<b>Virginia</b>	88%	6%	4%	0%	1%
<b>Washington</b>	93%	2%	2%	1%	2%
<b>Wisconsin</b>	82%	15%	1%	1%	1%

<sup>1</sup> 1,812 respondents who recall receiving LIHEAP

## VII. Summary of Findings

Low-income households face significant hardship in attempting to pay their energy bills. In the past five years:

- 38 percent went without medical or dental care;
- 30 percent went without filling a prescription or taking the full dose of a prescribed medicine;
- 28 percent did not make a rent or mortgage payment;
- 22 percent went without food for at least one day;
- 21 percent believe they became sick because their home was too cold; and,
- 7 percent believe they became sick because their home was too hot

due in part to unaffordable energy bills.

Some LIHEAP recipients faced life-threatening challenges. In FY 2003:

- 17 percent were unable to use their main source of heat due to discontinued utility service or an inability to pay for fuel; and,
- 8 percent had their electricity shut off due to nonpayment.

The 2003 NEA study found significant differences among LIHEAP recipients based on fuel type and homeownership. In FY 2003:

- 31 percent of bulk fuel respondents said that they experienced a loss of energy service due to discontinued utility service or an inability to pay for fuel, compared to 15 percent of respondents that use natural gas or electricity as the primary fuel for heating their home.
- 72 percent of bulk fuel respondents who were without heat due to inability to pay their energy bill said that LIHEAP helped restore their heat, compared to 49 percent of respondents that use natural gas or electricity as the primary fuel for heating their home.
- 53 percent of renters said that they needed to borrow from a friend or relative to pay their home energy bill, compared to 38 percent of homeowners.
- 56 percent of renters said that they skipped paying or paid less than the whole energy bill, compared to 46 percent of homeowners.

The National Energy Assistance (NEA) study presented in this report finds that LIHEAP is essential in helping a large number of low-income Americans meet their energy needs. LIHEAP assistance reduces the percentage of household income spent on total residential energy costs from 14 to 11 percent.<sup>57</sup> This reduction is achieved through a relatively small average grant of \$313 in FY 2003. Despite the small grant, the findings point to very large benefits:

---

<sup>57</sup> The statutory intent of LIHEAP is to reduce home heating and cooling costs for low-income households. However, information on total residential energy costs is more accessible and more apparent to LIHEAP-recipient

- 88 percent of recipients said that LIHEAP has been very important in helping meet their needs; another 8 percent said it was somewhat important.
- 62 percent of those who lost their heat due to an inability to pay their energy bills said that LIHEAP helped to restore their heat.
- 54 percent of recipients said that they would have kept their home at an unsafe or unhealthy temperature if LIHEAP had not been available.
- 48 percent of recipients said that they would have had electricity or home heating fuel discontinued if LIHEAP had not been available.

The need for LIHEAP far exceeds the availability of current appropriations. Over 4.6 million households received LIHEAP in 2003, only 13 percent of the over 34.6 million households that were eligible to receive LIHEAP under the federal LIHEAP maximum income standard.

Four key findings from the 2003 NEA study are: (1) low-income households spend an inordinate amount of their household income on residential energy; (2) households that receive LIHEAP face significant hardship in attempting to pay their energy bills; (3) LIHEAP makes a significant difference for recipient households; (4) LIHEAP still only serves a small fraction of eligible households. One apparent recommendation would be to increase funding for LIHEAP so that more needy households could be served.

### **Administering LIHEAP**

The findings from this report highlight the difficulties that low-income families face in coping with unaffordable energy bills. As long as LIHEAP appropriations fall short of the need, managing LIHEAP at the state level remains a balancing act. States must decide whether to serve more people with smaller grants or fewer people with larger grants. States have to decide whether to focus funding toward regular or crisis grants and bulk or utility fuels.

States can contemplate how best to balance limited LIHEAP resources by using the data from the 2003 NEA study to examine their own statistics and identify outcomes to target for improvement. State LIHEAP directors can address these areas for improvement using their in-depth knowledge of how LIHEAP operates in their state and how their LIHEAP benefits are used to complement other state programs and services.

States can examine whether outcomes from their state are of particular concern by comparing their statistics to those of states with similar characteristics (e.g., climate, program types, demography). Various states have attempted different program initiatives to assist households with unaffordable energy bills. State LIHEAP directors can use the 2003 NEA study findings, their understanding of various state initiatives, and their longstanding relationships with other state LIHEAP directors to modify or replicate successful program initiatives. Familiarity with LIHEAP models, state programs and services, and other factors that influence state level outcomes are necessary to interpret differences between states.

---

respondents. Moreover, any reduction in home heating and cooling costs leads to a direct reduction in total residential energy costs. Therefore, this report addresses total residential energy costs.

## **Recommendations for Future Research**

The 2003 National Energy Assistance (NEA) Survey successfully interviewed a nationally representative sample of 2,161 LIHEAP recipients, resulting in never-before-available national information on the difficult choices low-income households make in managing unaffordable energy bills.

The 2003 NEA Survey is a cross-sectional design, capturing a snapshot of LIHEAP recipients at a particular point in time. Future research could use a panel study designed to re-interview the same LIHEAP recipients. This research could tell us whether changes in LIHEAP benefits or length of time receiving LIHEAP were related to households' ability to deal with energy bills. A panel design would also provide pre- and post-benefit data that could be used for evaluation of policy interventions.

The 2003 NEA Survey was designed to provide nationally representative data. However, some states might wish to examine differences among targeted groups within their states. This would require larger state sample sizes than those used in this design. Moreover, states might be interested in having more information from their LIHEAP recipients regarding their experiences with the intake process, timeliness of benefits received, and other administrative information. Future research could extend the survey to include a program administration module that provides information regarding which administrative procedures work best and which need improvement.

While the 2003 NEA Study provides a significant amount of new and valuable information, we have just begun to scratch the surface of understanding how low-income families cope with energy unaffordability and how LIHEAP relieves some of their burdens. Additional research is needed to increase our understanding of these important issues.

## Appendix A: Methodology and Data

### A. Sample Selection

The survey design called for the selection of 20 states to represent LIHEAP households nationally. This design aimed to balance survey cost with the goal of a nationally representative LIHEAP sample. States were divided into 13 strata based on weather and geography. The number of states to be included in the survey from each strata was determined proportionally to the LIHEAP block grant for FY 2002 for each strata. The states' probability of selection within the strata was determined by the percentage of the funding in the strata that was allocated to each state. Using these allocation criteria, 20 states were randomly selected for inclusion in the survey. Florida, Illinois, Kentucky, Michigan, New Hampshire, Connecticut, and Texas were unable to participate in the survey due to data confidentiality restrictions or unavailability of programming staff to provide the LIHEAP recipient data. In all cases except for one, a substitute from the same strata was chosen to replace the state initially selected. The one state that was substituted outside of the original strata was Montana, which was chosen as a substitute for Michigan.

Table A-1 displays the states in each strata, the states initially selected for the survey, and the states in which the survey was conducted.

**Table A-1**  
**Allocation of States to Strata,**  
**States Selected for the Survey, and**  
**States Included in the Survey**

Strata	States	States Initially Selected	States Interviewed
1	TX, LA, MS, AL, FL, GA	TX, FL	LA, GA
2	OK, AK, TN, NC, SC	NC	NC
3	KY, WV, VA, MD, DE, DC	KY, DE	VA, DE
4	CA	CA	CA
5	WA, OR,	WA	WA
6	ID, MT, WY, CO, AK	CO	CO, MT
7	NV, UT, NM, AZ	NM	NM
8	ND, SD, MN, WI, MI	MI, WI, MN	ND, WI, MN
9	NE, IA, KS, MO	IA	IA
10	IL, IN, OH	IL, OH	OH
11	NY	NY	NY
12	PA, NJ, CT, RI	PA, CT	PA, RI
13	MA, VT, NH, ME	MA, NH	MA, ME

Within states, LIHEAP recipients were stratified by several characteristics in order to ensure that the sample of recipients chosen for the survey represented the characteristics of the population of LIHEAP recipients in the state. These characteristics included poverty level (under or over 100 percent of poverty) or income; the presence of disabled, elderly, or young child household members; and the type of benefits received (heating, cooling, and/or crisis). This stratification was done when these data were provided by the state.

### ***B. Development of the Survey Instrument***

The initial draft of the survey instrument was developed by APPRISE Incorporated. The survey instrument was sent to NEADA working group members, and several changes and additions were made based on their comments and suggestions. APPRISE then conducted cognitive testing of the survey instrument. Cognitive testing involved one-on-one interviews designed to determine the processes respondents use in answering a question, or to identify problems respondents have in understanding or answering a question. Using purposive and convenience sampling, APPRISE interviewed volunteers identified as *LIHEAP recipients* by local community action agencies. A variety of cognitive testing techniques were used, including asking clients to think aloud as they answered each question to determine what factors they were considering in answering the question. These techniques provided valuable insights that were used to improve the comprehension of the final questionnaire.

### ***C. Survey Procedures***

An initial sample of 200 LIHEAP recipients from each state was selected, except where the state was unable to provide phone numbers, and in these states 300 clients were selected.<sup>58</sup> Each client selected for the survey was sent an advance letter, stating that they had been selected for the survey, explaining the purpose and importance of the survey, and providing the option for the client to call in to the phone center's toll-free number rather than waiting for the call.

An additional 50 LIHEAP recipients from New Mexico, New York, Rhode Island, Virginia, and Washington were selected during the field period. This sample was sent to the phone center to increase the number of completed interviews in these states.

Braun Research was hired to conduct the telephone interviews. In addition to standard phone interviewer training provided by Braun Research, APPRISE conducted an additional two-hour training session for all interviewers to acclimate them to specific nuances and performance expectations related to the National Energy Assistance Survey. This training session provided interviewers with an overview of the project, purpose behind questions asked, and strategies to provide accurate unbiased clarification and elicit acceptable responses through neutral probing techniques.

---

<sup>58</sup> Phone numbers in these states were obtained using online or compact disc directories. About half of the clients' phone numbers were identified.

Telephone surveys, conducted at Braun Research's centralized facilities, were monitored by APPRISE staff to assess interviewer performance and provide timely feedback to control interviewer error. While interviewers knew that they would be monitored, neither interviewers nor respondents knew when a particular call was being monitored. Interviewers were monitored more intensively immediately following training, until the results from monitoring were stable, at which time the level of monitoring was reduced to a more reasonable level throughout the project field period.

Telephone interviews were conducted between November 3, 2003, and December 22, 2003. During this time period, 1,978 interviews were completed. The table on the following page lists the number of telephone interviews completed in each state.

A phone-only survey may bias findings on LIHEAP recipients, as some recipients do not have phones, and some recipients move frequently and could not be contacted with their original program information. This bias would result if clients who moved or did not have adequate contact information were different from those who could be contacted by phone. To address this concern, the survey design included a follow-up mail component. A sample of households that could not be reached by phone was sent a mail survey on January 5, 2004. Between 20 and 60 clients in each state were sent a written version of the survey.<sup>59</sup> The number of clients selected in each state depended on the number of phone completes and the number of households that had unavailable or disconnected phone numbers. States with lower numbers of completes received more mail surveys in order to try to obtain a total of at least 100 completes (phone and mail) in each state. States with higher numbers of unavailable or disconnected phone numbers received more mail surveys in order to provide greater coverage for these unreachable households. This mail follow-up survey yielded an additional 183 responses, for a total of 2,161 completed interviews.

---

<sup>59</sup> The one exception was Louisiana, where 331 clients were sent the mail survey. In this state, only 21 phone surveys were completed because, due to confidentiality restrictions, only those clients who called in to the phone center were interviewed.

**Table A-2**  
**Number of Phone Interviews by State**

<b>State</b>	<b>Number of Phone Interviews</b>	<b>Number of Mail Interviews</b>	<b>Total Completed Interviews</b>
California	94	3	97
Colorado	107	2	109
Georgia	114	1	110
Delaware	109	2	116
Iowa	92	8	100
Louisiana	21	98	119
Maine	119	3	122
Massachusetts	107	5	112
Minnesota	108	-	108
Montana	92	12	104
New Mexico	112	2	114
New York	101	7	108
North Carolina	95	9	104
North Dakota	103	11	114
Ohio	98	5	103
Pennsylvania	112	4	116
Rhode Island	92	3	95
Virginia	100	4	104
Washington	100	3	103
Wisconsin	102	1	103
<b>TOTAL</b>	<b>1,978</b>	<b>183</b>	<b>2,161</b>

#### **D. Weights**

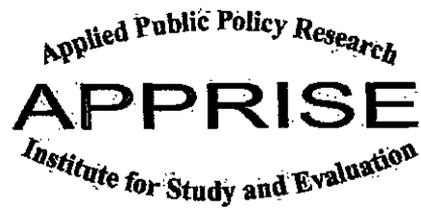
Two sets of weights were used to ensure that the findings are representative of the national LIHEAP population. First, weights were applied within states. The purpose of these weights was to adjust for response rate variation within poverty, vulnerable status, and type of benefit strata. A second set of weights was used so that the sum of the state weights was proportional to the strata size from which it was drawn. In the overall and regional level estimates, the total weight, comprised of these two separate weights, is used. In the state level estimates, only the state weight is used.

## Appendix B: Energy Insecurity Scale

### Response Patterns Used to Generate Scale

	Thriving	Capable	Stable	Vulnerable	In-Crisis
<i>Receipt of Outside Assistance</i>					
C3. Did you need to borrow from a friend or relative to pay your home energy bill?	Never	Some months	Some months	Almost every month	Almost every month
<i>Constraints on Energy Use</i>					
C6. Did you close off part of your home because you could not afford to heat or cool it?	Never	1 or 2 months	Some months	Almost every month	Almost every month
C7. Did you keep your home at a temperature that you felt was unsafe or unhealthy at any time of the year?	Never	Never	1 or 2 months	Some months	Almost every month
C8. Did you leave your home for part of the day because it was too hot or too cold?	Never	Never	1 or 2 months	Some months	Almost every month
C9. Did you use your kitchen stove or oven to provide heat?	Never	Never	Never	1 or 2 months	Some months
<i>Constraints on Household Necessities</i>					
C2. Did you reduce your expenses for what you consider to be basic household necessities?	Never	Never	Never	Some months	Almost every month
<i>Nonpayment on Energy Bills</i>					
C4. Did you skip paying your home energy bill or pay less than your whole home energy bill?	Never	1 or 2 months	Some months (combined with "never" in C5)	Some months	Almost every month
C5. Did you have a supplier of your electric or home heating service threaten to disconnect your electricity or home heating fuel service or discontinue making fuel deliveries?	Never	Never	Never	Some months	Almost every month
C10. Was your electricity ever shut off because you were unable to pay your electric bill?	No	No	No	No	Yes
C12. Was there ever a time that you wanted to use your main source of heat but could not because you ran out of fuel oil, kerosene, LPG, propane, coal, or wood because you were unable to pay for a delivery?	No	No	No	No	Yes
C13. Was there ever a time that you wanted to use your main source of heat but could not because the utility company discontinued your gas or electric service because you were unable to pay your bill?	No	No	No	No	Yes
C16. Was there ever a time that you wanted to use your air conditioner but could not because the utility company discontinued your electric service because you were unable to pay your bill?	No	No	No	No	Yes
<i>Financial Strain</i>					
C1. Did you worry that you wouldn't be able to pay your home energy bill?	Never	1 or 2 months	Almost every month	Almost every month	Almost every month

## Appendix C: Telephone Survey Instrument



NEADA LIHEAP SURVEY  
FINAL INSTRUMENT  
October 29, 2003

**Screenener**

Hello. This is (INTERVIEWER) from Braun Research calling for (NAME) regarding the National Energy Assistance study.

{Interviewer Note: The goal is to conduct the survey with either (NAME) or that person's spouse/partner. If (NAME) is not home / unavailable, politely ask, "May I speak with the spouse or partner of (NAME)".}

You should have received a letter in the mail from the National Energy Assistance Director's Association about this survey. I'm calling to ask you a few brief questions about your experiences with the (state specific LIHEAP name), home energy assistance, benefits that your household received in the past year. Your responses will help us better understand the need for (state specific LIHEAP name) energy assistance, and the problems caused by high energy bills. All your responses will be kept confidential, and will not affect your energy assistance benefits.

S1. {Interviewer: DO NOT READ, Whom are you speaking to?}

- 01 NAME
- 02 Spouse/Partner
- 03 Caretaker/Guardian
- 04 Other/Don't Know

[ASK if S1=04]

S2. When can I call back to speak with (NAME) or the spouse or partner of (NAME)? \_\_\_\_\_ WRITE DATE AND TIME FOR CALLBACK

S3. Did you receive (State specific LIHEAP name) this past year?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

**A. Experience with Energy Assistance**

[DO NOT ASK A1 IF S3=2,7,8]

A1. When did you receive (State specific LIHEAP name), winter, spring, summer, or fall, more than once, or all year round?

- 01 WINTER (DECEMBER, JANUARY, OR FEBRUARY)
- 02 SPRING (MARCH, APRIL, OR MAY)
- 03 SUMMER (JUNE, JULY, OR AUGUST)
- 04 FALL (SEPTEMBER, OCTOBER, OR NOVEMBER)
- 05 MORE THAN ONCE
- 06 ALL YEAR ROUND
- 97 DON'T KNOW
- 98 REFUSED

A2. In how many of the past 5 years have you received (State specific LIHEAP name)?

- 01 Received for the first time this year
- 02 2
- 03 3
- 04 4
- 05 5 or every year
- 07 DON'T KNOW
- 08 REFUSED

A3. Have you or will you apply for energy assistance for the coming winter or next summer?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

**B. Actions taken to meet energy expenses**

Which of the following actions did you take in the past year to bring down your heating bills in the winter:

	01	02	07	08
B1. Put plastic on windows?	YES	NO	DON'T KNOW	REFUSED
B2. Turn down the heat when you go to bed?	YES	NO	DON'T KNOW	REFUSED

Which of the following actions did you take in the past year to bring down your cooling bills in the summer?

	01	02	07	08
B3. Keep shades and curtains closed in daytime?	YES	NO	DON'T KNOW	REFUSED
B4. Use fans and open windows?	YES	NO	DON'T KNOW	REFUSED

Which of the following other energy-saving actions did you take in the past year?

	01	02	07	08
B5. Wash your clothes in cold water?	YES	NO	DON'T KNOW	REFUSED
B6. Use compact fluorescent light bulbs?	YES	NO	DON'T KNOW	REFUSED

Energy bills can take up a large part of a family's budget, and households often find it necessary to make choices about what bills they will pay or what needs they will meet. In this section of the survey we ask some questions about actions that your household may have taken when it was difficult to meet all of your expenses.

In the past 5 years, have you or any member of your family taken any of the following actions or experienced any of the following due to your energy bills:

Housing Problems	01	02	07	08
B7. Didn't make full rent or mortgage payment?	YES	NO	DON'T KNOW	REFUSED
B8. Was evicted from home or apartment?	YES	NO	DON'T KNOW	REFUSED
B9. Moved in with friends or family?	YES	NO	DON'T KNOW	REFUSED
B10. Moved into a shelter or been homeless?	YES	NO	DON'T KNOW	REFUSED

Other Expenses	01	02	07	08
B11. Went without food for at least one day?	YES	NO	DON'T KNOW	REFUSED
B12. Went without medical/dental care?	YES	NO	DON'T KNOW	REFUSED
B13. Didn't fill a prescription or took less than the full dose of a prescribed medicine?	YES	NO	DON'T KNOW	REFUSED

---

Utility Service and Health	01	02	07	08
B14. Needed to use a different person's name to obtain or continue receiving energy service?	YES	NO	DON'T KNOW	REFUSED
B15. Had someone in your household get sick because your home was too cold?	YES	NO	DON'T KNOW	REFUSED
B16. (Ask if B15=1, YES) Did you need to go to the doctor or hospital because of this illness?	YES	NO	DON'T KNOW	REFUSED
B17. Had someone in your household get sick because your home was too hot?	YES	NO	DON'T KNOW	REFUSED
B18. (Ask if B17=1, YES) Did you need to go to the doctor or hospital because of this illness?	YES	NO	DON'T KNOW	REFUSED
B19. Had fire caused by unsafe heating/lighting?	YES	NO	DON'T KNOW	REFUSED

**C. Energy Insecurity Scale**

In the past 12 months, did you almost every month, some months, only in 1 or 2 months, or never do the following because there wasn't enough money for your energy bill?

(INTERVIEWER NOTE: IF ASKED, ALMOST EVERY MONTH MEANS 10 OR MORE MONTHS, AND SOME MONTHS MEANS 3 TO 9 MONTHS.)

	01	02	03	04	07	08
C1. Did you worry that you wouldn't be able to pay your home energy bill?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C2. Did you reduce your expenses for what you consider to be basic household necessities?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C3. Did you need to borrow from a friend or relative to pay your home energy bill?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C4. Did you skip paying your home energy bill or pay less than your whole home energy bill?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C5. Did you have a supplier of your electric or home heating service threaten to disconnect your electricity or home heating fuel service, or discontinue making fuel deliveries?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C6. Did you close off part of your home because you could not afford to heat or cool it?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C7. Did you keep your home at a temperature that you felt was unsafe or unhealthy at any time of the year?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C8. Did you leave your home for part of the day because it was too hot or too cold?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C9. Did you use your kitchen stove or oven to provide heat?	ALMOST EVERY MONTH	SOME MONTHS	1 OR 2 MONTHS	NEVER/ NO	DON'T KNOW	REFUSED
C10. In the past 12 months, was your electricity ever shut off because you were unable to pay your electric bill?		01 YES	02 NO	07 DON'T KNOW		08 REFUSED

Was there ever a time during the past 12 months when you wanted to use your main source of heat, but could not for one or more of the following reasons?

	01	02	07	08
C11. Your heating system was broken and you were unable to pay for its repair or replacement?	YES	NO	DON'T KNOW	REFUSED
C12. You ran out of fuel oil, kerosene, LPG, propane, coal, or wood because you were unable to pay for a delivery?	YES	NO	DON'T KNOW	REFUSED
C13. The utility company discontinued your gas or electric service because you were unable to pay your bill?	YES	NO	DON'T KNOW	REFUSED

(Ask C14 if C11=1, YES, C12=1, YES, OR C13=1, YES)

	01	02	07	08
C14. Did (State specific LIHEAP name) help you to restore use of your main source of heat?	YES	NO	DON'T KNOW	REFUSED

Was there ever a time during the past 12 months when you wanted to use your air conditioner, but could not for one or more of the following reasons?

	01	02	07	08
C15. Your air conditioner was broken and you were unable to pay for its repair or replacement?	YES	NO	DON'T KNOW	REFUSED
C16. The utility company discontinued your electric service because you were unable to pay your bill?	YES	NO	DON'T KNOW	REFUSED

(ASK C17 - C19 IF C12=1, YES OR C13=1, YES, or C16=1, YES)

Was there ever a time during the past 12 months when you had to do the following because the utility company discontinued your gas or electric service or because you ran out of fuel and could not pay for a delivery?

	01	02	07	08
C17. Did you have to go without showers or baths because you didn't have hot water?	YES	NO	DON'T KNOW	REFUSED
C18. Did you have to go without hot meals because you didn't have cooking fuel?	YES	NO	DON'T KNOW	REFUSED
C19. Did you have to use candles or lanterns because you didn't have lights?	YES	NO	DON'T KNOW	REFUSED

(READ IF S3=1 AND [C1=4, NEVER or C7=4, NEVER] or [C12=2, NO, C13=2, NO, AND C16=2, NO])

You stated that you did not face some of these problems that we asked about in the past year. In the next few questions we ask whether you think you may have had some of these problems if (State specific LIHEAP name) assistance had not been available.

	01	02	07	08
C20. (Ask if C1=4, NEVER) Would you have worried about paying your home energy bill if (State specific LIHEAP name) assistance had not been available?	YES	NO	DON'T KNOW	REFUSED
C21. (Ask if C7=4, NEVER) Would you have needed to keep your home at a temperature that you felt was unsafe or unhealthy at any time of the year if (State specific LIHEAP name) assistance had not been available?	YES	NO	DON'T KNOW	REFUSED
C22. (Ask if [C12=2, NO, C13=2, NO, AND C16=2, NO]) Would you have had your electricity or home heating fuel shut off or discontinued during a time when you needed it to heat or cool your home if (State specific LIHEAP name) assistance had not been available?	YES	NO	DON'T KNOW	REFUSED

[DO NOT ASK C23 IF S3=2,7,8]

C23. How important has STATE SPECIFIC LIHEAP NAME been in helping you to meet your needs?

- 01 VERY IMPORTANT/HAS MADE A VERY BIG DIFFERENCE
- 02 SOMEWHAT IMPORTANT/HAS MADE A DIFFERENCE
- 03 OF LITTLE IMPORTANCE/HAS MADE A SMALL DIFFERENCE
- 04 NOT AT ALL IMPORTANT/NOT BIG ENOUGH BENEFIT TO HELP
- 07 DON'T KNOW
- 08 REFUSED

**D. Demographics**

D1. Do you own or rent your home?

- 01 OWN
- 02 RENT
- 03 OTHER \_\_\_\_\_
- 07 DON'T KNOW
- 08 REFUSED

D2. Including yourself, how many people normally live in this household? (Interviewer instruction: if someone asks if a child who is away at college should be included, instruct them that the child should only be included if he/she is listed as a dependent on the household's tax form.) (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ OCCUPANTS

D3. How many are 60 or older? (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ OCCUPANTS OVER AGE 60

D4. How many are 18 or under? (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ CHILDREN 18 OR UNDER

(ASK D5 IF D4 IS NOT EQUAL TO 0)

D5. How many are 5 or under? (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ CHILDREN 5 OR UNDER

D6. How many are disabled? (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ DISABLED OCCUPANTS

D7. How many are veterans? (USE CODES 97 FOR 'DON'T KNOW' AND 98 FOR 'REFUSED')

\_\_\_\_\_ VETERANS

D8. What is your marital status?

- 01 MARRIED
- 02 SINGLE, SEPARATED
- 03 SINGLE, DIVORCED
- 04 SINGLE, NEVER MARRIED
- 05 WIDOW
- 95 OTHER \_\_\_\_\_
- 97 DON'T KNOW
- 98 REFUSED

D9. What is the highest level of education reached by any member of your household?

- 01 LESS THAN HIGH SCHOOL
- 02 HIGH SCHOOL DIPLOMA OR EQUIVALENT
- 03 SOME COLLEGE/ASSOCIATES DEGREE
- 04 BACHELOR'S DEGREE
- 05 MASTER'S DEGREE OR HIGHER
- 06 VOCATIONAL TRAINING
- 95 OTHER \_\_\_\_\_
- 97 DON'T KNOW
- 98 REFUSED

D10. Are you Spanish/Hispanic/Latino?

- 01 NO, NOT SPANISH/HISPANIC/LATINO
- 02 YES, MEXICAN, MEXICAN AMERICAN, OR CHICANO
- 03 YES, PUERTO RICAN
- 04 YES, CUBAN
- 05 YES, OTHER SPANISH/HISPANIC/LATINO
- 07 DON'T KNOW
- 08 REFUSED

D11. What is your race? PROBE: Are you White, Black, American Indian, Aleut or Eskimo, Asian or Pacific Islander or something else? (Can choose more than one)

- 01 WHITE
- 02 BLACK
- 03 AMERICAN INDIAN, ALEUT, OR ESKIMO
- 04 ASIAN OR PACIFIC ISLANDER
- 05 OTHER \_\_\_\_\_
- 07 DON'T KNOW
- 08 REFUSED

D12. Which fuel is used most for heating your home?

- 01 GAS; FROM UNDERGROUND PIPES SERVING THE NEIGHBORHOOD
- 02 GAS: BOTTLED, TANK OR LPG, OR PROPANE
- 03 ELECTRICITY
- 04 FUEL OIL, KEROSENE, ETC.
- 05 COAL OR COKE
- 06 WOOD
- 07 SOLAR ENERGY
- 08 OTHER FUEL
- 09 NO FUEL USED
- 97 DON'T KNOW
- 98 REFUSED

[ASK IF D1 ≠ 01]

D13. Is heat included in your rent?

- 01 YES
- 02 NO
- 03 DO NOT PAY RENT
- 07 DON'T KNOW
- 08 REFUSED

D14. What is the main way that you cool your home on the hottest days of the summer?

- 01 CENTRAL AIR CONDITIONER
- 02 WINDOW OR WALL AIR CONDITIONER
- 03 EVAPORATIVE COOLING OR SWAMP COOLERS
- 04 FANS
- 05 NONE
- 07 DON'T KNOW
- 08 REFUSED

D15. In the past 12 months, what was the cost of electricity, gas, and other fuels (oil, coal, kerosene, wood, etc.) for your home?

- 01 <\$500
- 02 \$500 - \$1,000
- 03 \$1,000 - \$1,500
- 04 \$1,500 - \$2,000
- 05 \$2000 OR MORE
- 07 DON'T KNOW
- 08 REFUSED

D16. Does your family have health insurance?

- 01 NO (ENTIRE FAMILY)
- 02 YES (PRIVATE, ENTIRE FAMILY)
- 03 CHILDREN ONLY (MEDICAID, CHIP)
- 04 ADULTS ONLY (MEDICAID)
- 05 ADULTS AND CHILDREN (MEDICAID)
- 06 ADULTS ONLY (MEDICARE)
- 07 OTHER \_\_\_\_\_
- 97 DON'T KNOW
- 98 REFUSED

D17. In the past 12 months, did you not pay your home energy bill or not pay your bill in full because of expenses for medical bills or prescription medicine?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D18. In the past 12 months, did you or any member of your household receive employment income from wages and salaries or self-employment income from a business or farm?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D19. In the past 12 months, was any member of your household unemployed and looking for work?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D20. In the past 12 months, did you or any member of your household receive retirement income from Social Security or pensions and other retirement funds?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D21. In the past 12 months, did you or any member of your household receive benefits from Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or general assistance or public assistance?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D22. In the past 12 months, did you or any member of your household receive Food Stamps or live in public/subsidized housing?

- 01 YES
- 02 NO
- 07 DON'T KNOW
- 08 REFUSED

D23. What is your household's annual income? (give option to provide monthly income)

- 01 ≤\$5,000
- 02 \$5,001 - \$10,000
- 03 \$10,001 - \$15,000
- 04 \$15,001 - \$20,000
- 05 \$20,001 - \$25,000
- 06 \$25,001 - \$30,000
- 07 \$30,001 - \$35,000
- 08 \$35,001 - \$40,000
- 09 >\$40,000
- 10 DON'T KNOW
- 11 REFUSED

That was my last question. Thank you very much for your time and cooperation. Have a pleasant day/evening.

## Appendix D: Mail Survey Instrument

HOME ENERGY ASSISTANCE PROGRAM  
2003 RECIPIENT EXPERIENCE SURVEY

Thank you for taking the time to complete this survey. Your responses will help us better understand the need for energy assistance and the problems caused by high energy bills. All of your responses will be kept confidential and will not affect your energy assistance benefits. When you have completed the survey, please use the enclosed postage-paid envelope to mail it back to APPRISE, 403 Wall Street, Princeton, NJ 08540.

Si usted desea tomar este examen sobre el teléfono en español, por favor llame el numero de teléfono que sigue: 1-888-527-7779, extension 3874. Las llamada es gratis.

**EXPERIENCE WITH ENERGY ASSISTANCE**

**S3. Did your household receive energy assistance this past year?**

- 1  Yes  
2  No *(Please skip to Question A2.)*

**A1. When did you receive energy assistance?**

- 1  Winter                      4  Fall  
2  Spring                        5  More than once  
3  Summer                        6  All year round

**A2. In how many of the past 5 years have you received energy assistance?**

- 1  1 year                            4  4 years  
2  2 years                            5  All 5 years  
3  3 years                            9  Never received

**A3. Have you or will you apply for energy assistance for the coming winter or next summer?**

- 1  Yes            2  No            7  Don't know

**ACTIONS TAKEN TO MEET ENERGY EXPENSES**

Which of the following actions did you take in the past year to bring down your heating bills in the winter *(Check all that apply)*:

- B1.  Put plastic on windows  
B2.  Turn down the heat when you go to bed

Which of the following actions did you take in the past year to bring down your cooling bills in the summer *(Check all that apply)*:

- B3.  Keep shades and curtains closed in daytime  
B4.  Use fans and open windows

Which of the following other energy-saving actions did you take in the past year (Check all that apply):

- B5.  Wash your clothes in cold water
- B6.  Use compact fluorescent light bulbs

**ACTIONS TAKEN OR EVENTS EXPERIENCED DUE TO ENERGY BILLS**

In the past 5 years, have you or any member of your household taken any of the following actions or experienced any of the following due to your energy bills (Check all that apply):

Housing Problems

- B7.  Didn't make full rent or mortgage payment
- B8.  Was evicted from home or apartment
- B9.  Moved in with friends or family
- B10.  Moved into a shelter or been homeless

Other Expenses

- B11.  Went without food for at least one day
- B12.  Went without medical/dental care
- B13.  Didn't fill a prescription or took less than the full dose of a prescribed medicine.

Utility Service and Health

- B14.  Needed to use a different person's name to obtain or continue receiving energy service
- B15.  Had someone in your household get sick because your home was too cold
  - ↳ B16.  (Skip if B15 is not checked)  
This person needed to go to the doctor or hospital because of this illness
- B17.  Had someone in your household get sick because your home was too hot
  - ↳ B18.  (Skip if B17 is not checked)  
This person needed to go to the doctor or hospital because of this illness
- B19.  Had fire caused by unsafe heating/lighting?

In the past 12 months, did you almost every month, some months, only in 1 or 2 months, or never do the following because there wasn't enough money for your energy bill (Check one box for each statement):

	Almost Every Month	Some Months	One or Two Months	Never
C1. Did you worry that you wouldn't be able to pay your home energy bill?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C2. Did you reduce your expenses for what you consider to be basic household necessities?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C3. Did you need to borrow from a friend or relative to pay your home energy bill?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C4. Did you skip paying your home energy bill or pay less than your whole home energy bill?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C5. Did you have a supplier of your electric or home heating service threaten to disconnect your electricity or home heating fuel service, or discontinue making fuel deliveries?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C6. Did you close off part of your home because you could not afford to heat or cool it?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C7. Did you keep your home at a temperature that you felt was unsafe or unhealthy at any time of the year?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>
C8. Did you leave your home for part of the day because it was too hot or too cold?	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>

C9. Did you use your kitchen stove or oven to provide heat? 1  2  3  4

C10. In the past 12 months, was your electricity ever shut off because you were unable to pay your electric bill?  
1  Yes 2  No

Was there ever a time during the past 12 months when you wanted to use your main source of heat but could not for one or more of the following reasons (*Check one box for each statement*):

	Yes	No
C11. Your heating system was broken and you were unable to pay for its repair or replacement?	1 <input type="checkbox"/>	2 <input type="checkbox"/>

C12. You ran out of fuel oil, kerosene, LPG, propane, coal, or wood because you were unable to pay for a delivery?	1 <input type="checkbox"/>	2 <input type="checkbox"/>
--	----------------------------	----------------------------

C13. The utility company discontinued your gas or electric service because you were unable to pay your bill?	1 <input type="checkbox"/>	2 <input type="checkbox"/>
--	----------------------------	----------------------------

C14. Did energy assistance help you to restore use of your main source of heat?  
1  Yes 2  No

Was there ever a time during the past 12 months when you wanted to use your air conditioner but could not for one or more of the following reasons (*Check one box for each statement*):

	Yes	No
C15. Your air conditioner was broken and you were unable to pay for its repair or replacement?	1 <input type="checkbox"/>	2 <input type="checkbox"/>

C16. The utility company discontinued your electric service because you were unable to pay your bill?	1 <input type="checkbox"/>	2 <input type="checkbox"/>
---	----------------------------	----------------------------

Was there ever a time during the past 12 months when you had to do the following because the utility company discontinued your gas or electric service, or because you ran out of fuel and could not pay for a delivery (Check one box for each statement):

- |   | Yes                        | No                         |
|---|----------------------------|----------------------------|
| C17. Did you have to go without showers or baths because you didn't have hot water? | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| C18. Did you have to go without hot meals because you didn't have cooking fuel?     | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| C19. Did you have to use candles or lanterns because you didn't have lights?        | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |

In the next few questions we ask whether you think you may have had some of these problems if energy assistance had not been available (Check one box for each statement).

- |  | Yes                        | No                         |
|--|----------------------------|----------------------------|
| C20. Would you have worried about paying your home energy bill if energy assistance had not been available?  | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| C21. Would you have needed to keep your home at a temperature that you felt was unsafe or unhealthy at any time of the year if energy assistance had not been available?                       | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
| C22. Would you have had your electricity or home heating fuel shut off or discontinued during a time when you needed it to heat or cool your home if energy assistance had not been available? | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> |
- C23. How important has energy assistance been in helping you to meet your needs?  
 1  Very important      2  Somewhat Important      3  Of little importance      4  Not at all important

**DEMOGRAPHICS**

D1. Do you own or rent your home?

- 1  Own                      3  Other  
 2  Rent

D2. Including yourself, how many people normally live in this household?  
 \_\_\_\_\_ Total Occupants

Of the number of occupants listed above, how many fit into each of the following groups:

- D3. \_\_\_\_\_ Adults 60 or older  
 D4. \_\_\_\_\_ Children 18 or under  
 D5. \_\_\_\_\_ Children 5 or under  
 D6. \_\_\_\_\_ Disabled occupants  
 D7. \_\_\_\_\_ Veterans of the U.S. armed forces

D8. What is your marital status?

- 1  Married                      4  Never Married  
 2  Separated                  5  Widow  
 3  Divorced                    95  Other

**D9. What is the highest level of education reached by any member of your household?**

- 1  Less than High School
- 2  High school diploma or equivalent
- 6  Vocational training
- 3  Some college / Associate's degree
- 4  Bachelor's degree
- 5  Master's degree or higher
- 95  Other \_\_\_\_\_

**D10. Are you Spanish/Hispanic/Latino?**

- 1  No, Not Spanish/Hispanic/Latino
- 2  Yes, Mexican, Mexican American, or Chicano
- 3  Yes, Puerto Rican
- 4  Yes, Cuban
- 5  Yes, Other \_\_\_\_\_

**D11. What is your race? (Please check all that apply.)**

- 1  White
- 2  Black or African-American
- 3  American Indian, Aleut, or Eskimo
- 4  Asian or Pacific Islander
- 5  Other \_\_\_\_\_

**D12. Which fuel is used most for heating your home?**

- 1  Gas; from underground pipes serving the neighborhood
- 2  Gas: bottled, tank or LPG, or propane
- 3  Electricity
- 4  Fuel oil, kerosene, etc.
- 5  Coal or coke
- 6  Wood
- 7  Solar energy
- 8  Other fuel \_\_\_\_\_
- 9  No fuel used
- 97  Don't know

**D13. Is heat included in your rent?**

- 1  Yes    2  No    3  Do not pay rent

**D14. What is the main way that you cool your home on the hottest days of the summer?**

- 1  Central air conditioning
- 2  Window or wall air conditioner
- 3  Evaporative cooling or swamp coolers
- 4  Fans
- 5  No cooling method used

**D15. In the past 12 months, what was the cost of electricity, gas, and other fuels (oil, coal, kerosene, wood, etc.) for your home?**

- 1  less than \$500      4  \$1,501 - \$2,000
- 2  \$500 - \$1,000      5  More than \$2,000
- 3  \$1,001 - \$1,500

**D16. Does your family have health insurance?**

- 1  No (entire family)
- 2  Yes (private, entire family)
- 3  Children only (Medicaid, state program)
- 4  Adults only (Medicaid, state program)
- 5  Adults and children (Medicaid, state program)
- 6  Adults only (Medicare)
- 7  Other \_\_\_\_\_

- D17.** In the past 12 months, did you not pay your home energy bill or not pay your bill in full because of expenses for medical bills or prescription medicine?
- 1  Yes      2  No
- D18.** In the past 12 months, did you or any member of your household receive employment income from wages and salaries or self-employment income from a business or farm?
- 1  Yes      2  No
- D19.** In the past 12 months, was any member of your household unemployed and looking for work?
- 1  Yes      2  No
- D20.** In the past 12 months, did you or any member of your household receive retirement income from Social Security or pensions and other retirement funds?
- 1  Yes      2  No
- D21.** In the past 12 months, did you or any member of your household receive benefits from Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or general assistance or public assistance?
- 1  Yes      2  No
- D22.** In the past 12 months, did you or any member of your household receive Food Stamps or live in public/subsidized housing?
- 1  Yes      2  No
- D23.** What is your household's yearly income?
- 1  less than \$5,000      6  \$25,001 - \$30,000  
2  \$5,001 - \$10,000      7  \$30,001 - \$35,000  
3  \$10,001 - \$15,000      8  \$35,001 - \$40,000  
4  \$15,001 - \$20,000      9  >\$40,000  
5  \$20,001 - \$25,000

Thank you for your comments. Please return your completed questionnaire in the enclosed postage-paid envelope to:  
**APPRISE Incorporated, 403 Wall Street, Princeton, NJ 08540**

**Customer Deposit Demands by U.S. West:**  
**Reasonable Rationales and the Proper Assessment of Risk**

***PREPARED ON BEHALF OF:***

The Staff of the  
Washington Utilities and Transportation Commission  
Docket No. UT-930482  
*U.S. West Communication Inc.'s Request of Temporary Waiver  
of WAC 480-120-056 and 480-120-061*

**PREPARED BY:**

Roger D. Colton  
Fisher, Sheehan and Colton  
Public Finance and General Economics  
34 Warwick Road  
Belmont, MA 02178  
617-484-0597

August 1994

## 1.1 INTRODUCTION

Given the problems that low-income households face today with high utility bills<sup>11</sup> as well as with high telephone bills, it is vitally important for policymakers to ensure that undue burdens are not placed on already overburdened households. Little question exists but that low-income households simply do not have sufficient funds to pay their utility bills in Washington State.<sup>12</sup> This lack of funds carries over to the payment of deposits.

An onerous and unnecessary deposit jeopardizes continuing telephone service to a low-income household.<sup>13</sup> A 1987 Michigan study found, for example, that 60 percent of those households who lacked telephone service cited unaffordable deposits as a primary reason.<sup>14</sup>

Inability to obtain affordable telephone service can create life threatening situations for the poor. Frequently, the most important problem arising from the lack of access to telephone service is the denial of access to agencies and institutions that can provide help. For example, the most frequently cited danger that results from lack of telephone service involves access to timely medical attention. The elderly, in particular, suffer more acutely from problems compounded by their physical isolation. In one Connecticut study,<sup>15</sup> three groups were found to be "at greater-than-normal risk" because of lack of telephone service, including "persons over 60 and living alone." The study found that of 59 "no-telephone households" with elderly members, 30 were senior citizens living alone, 23 had a disability or serious medical problem, and 10 of those disabled seniors lived alone. More than half of the seniors living alone (17 of 30) lived more than three minutes away from the telephone they would need to rely upon in an emergency.

Findings from a Michigan study on telephone usage among the elderly indicate that the elderly were far more likely to consider the reason for

<sup>11</sup> See e.g., R.Colton, *Customer Service Regulations for Residential Telephone Customers in the Post-Divestiture Era: A Study of Michigan Bell Telephone Company* (1989); see also, M.Sheehan, *On the Brink of Disaster: A State-by-State Analysis of Low-Income Winter Home Heating Bills* (1994).

<sup>12</sup> See generally, M.Sheehan, et al., *An Assessment of Low-Income Energy Needs in Washington State* (1993).

<sup>13</sup> See e.g., *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 18 (1978); see also, *Palmer v. Columbia Gas Co. of Ohio*, 342 F.Supp. 241, 244 (N.D. Ohio 1972) (citations omitted); see also, *Stanford v. Gas Service Company*, 346 F.Supp. 717, 721 (D.Kan. 1972). An excellent canvass of cases is found in *Montalvo v. Consolidated Edison Company of New York*, 110 Misc. 2d 24, 441 N.Y.S.2d 768, 776 (N.Y. 1981).

<sup>14</sup> M.Cooper, *Low Income Households in the Post-Divestiture Era: A Study of Telephone Subscribership and Use in Michigan* (1986).

<sup>15</sup> RPM Systems, *An Exploratory Study of Low-Income Telephone Subscribers and Non-subscribers in Connecticut*. New Haven: RPM Systems, 1988.

their telephone calls to be essential than were non-elderly callers.<sup>61</sup> Medical calls were cited by 22 percent (compared to 1 percent of non-elderly); social service calls were mentioned first by 10 percent (as compared to zero percent of non-elderly).

In *Butte Community Union v. Lewis*,<sup>71</sup> a Montana court found that lack of telephone service was a significant barrier to employment since the types of employment low-income households generally obtain involve jobs offered and accepted via telephone.

Finally, while the lack of telephone access ramifies throughout a household's social and economic wellbeing, one of the most serious impacts is on the ability of a household to retain energy service. Whether the non-access to telephone service does, in fact, restrict access to energy assistance has never been directly studied. However, prior research provides a basis to conclude that this result will be found. A 1988 study conducted for the Maine Public Utilities Commission discovered that 80 percent of the Maine households whose energy service was disconnected during the winter months lacked telephone service.<sup>81</sup> The lack of telephone service was found to jeopardize continuing energy service by denying the household an opportunity to contact the utility so as to enter into payment plans, make contact with social service agencies to receive public assistance and otherwise respond to the household's inability to pay.

In addition to the serious impacts on consumers, onerous and unnecessary deposit demands are bad business from the perspective of the utility and its ratepayers as well. This recognition is based on the two fundamental principles that:

- o The *sole* purpose of a deposit is to minimize the possible money loss to the utility due to nonpayment of bills.
- o The collection of deposits must lead to the provision of least-cost service to ratepayers as a whole.

Unfortunately, despite their universal acceptance, these principles are often ignored when public policy concerning deposits is considered. More specifically, particular language contained in the proposed amendments to Washington Utilities and Transportation Commission (WUTC) telecommunication deposit regulations do not recognize and act upon these two principles. In light of this broad observation, the

---

<sup>61</sup> Cooper, Mark. *Low Income Households in the Post-Divestiture Era: A Study of Telephone Subscribership in Michigan*. Washington D.C.: Consumer Federation of America, 1986.

<sup>71</sup> 745 P.2d 1128, 1131 (Mont. 1987).

<sup>81</sup> Roger Colton, *An Evaluation of Low-Income Utility Protections in Maine: Winter Requests for Disconnect Permission*, at 16 - 18 (July 1988).

specific purpose of these comments is four-fold. *Part 1* of the comments below will briefly outline the function of a deposit. *Part 2* will consider whether the *de facto* reliance upon commercially available consumer credit reports, as proposed by U.S. West, is legitimate. *Part 3* considers whether the demand for a deposit when a customer's only demonstration of "risk" is a late payment is rational. *Part 4* considers whether the demand for a deposit from a customer when a roommate has an unpaid bill from a different address is reasonable or lawful.

## 2.1 THE FUNCTION OF A DEPOSIT

The function of cash deposits required of utility customers is generally defined within the context of bad debt.<sup>101</sup> That context, however, needs greater explanation. Bad debt is an expense to the utility just like any other expense. As such, it is an expense that a utility can and should seek to reduce where possible. The reduction of bad debt, however, is not an end unto itself. Also like any other expense, a utility is not justified in spending more on the means to reduce bad debt expense than the savings that are generated through such an effort. The goal of a utility, in other words, is to minimize *total* expenses to the ratepayers, not simply to minimize bad debt expenses.

The collection of a cash deposit is one means to gain protection against the potential loss of revenue through bad debt. The deposit serves the function of security to protect against the risk of default. As an expense avoidance mechanism, however, a utility's deposit scheme must be subjected to an economic analysis just like a self-insurance plan which might be pursued in lieu of the purchase of insurance policies, just like backing out oil-fired capacity with coal, just like maintaining compensating bank balances in lieu of paying bank fees, and the like. Again, the ultimate goal is the provision of least-cost service.

Aside from basic fairness, therefore, from a sound *business* perspective, deposits should result in a reduction in uncollectibles at least equal to the cost of obtaining and servicing the deposits. In order for this reduction to occur, the customers from whom deposits are demanded must represent a risk of loss to the utility.<sup>1101</sup> If, in other words, the customer does not represent a potential situation where the utility will experience a permanent loss of arrears, any deposit collected from that customer --whatever the size-- has no relation to the risk of loss due to uncollectibles.

---

<sup>101</sup> For purposes of this analysis, "bad debt" will be deemed to be coterminous with uncollectibles.

<sup>1101</sup> This risk, it should be noted, is only a significant problem to the extent that it is not "set right" after the fact. A default on payments is not, in other words, necessarily a risk of permanent loss of the entire remaining balance of payments. Either a complete, albeit late, payment or a partial payment reduces the risk of loss. A utility's deposit must be adequate, but no more than adequate, to offset the losses on that fraction of bills which are involved in default and on which losses are accrued.

### 3.1 THE USE OF COMMERCIALY AVAILABLE CONSUMER CREDIT REPORTS

In its proposed amendment to WUTC telecommunications deposit regulations, U.S. West is seeking regulatory permission to use commercially available consumer credit reports in assessing the creditworthiness of potential or existing utility customers. Presumably, since these reports could not be used directly to deny service, they will instead be used as a basis upon which to demand greater deposits from residential consumers.

This use of third-party, non-utility, credit information represents a failing in the determination of whether deposits should be sought by U.S. West. Indeed, to the extent that U.S. West uses third-party supplied non-utility credit information as a basis for deposit demands, it would face particular problems with justifying its customer deposits.

#### 3.1.1 Consumer Bill Paying Habits

The use of third-party supplied credit information as a basis for making utility deposit decisions constitutes a problem when the third party information is not itself comprised of utility payment histories. Substantial research has found that consumers tend to pay their utility bills before paying nearly any other outstanding credit (other than rent or mortgage obligations). As a result, information from a credit reporting agency that indicates a lack of creditworthiness based on non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill.

A 1983 study by the Wisconsin Public Service Corporation was designed "to find out why customers pay late, why they miss payments, what percentage is unable to pay, and what percentage could pay but do not."<sup>111</sup> The Wisconsin study looked at, among others, three different groups of low-income households: (1) the poor and the helpless who blame themselves for their status; (2) the poor and the helpless who are angry with their life; and (3) the poor who are in transition.

If Group 1 had to make choices in which bills to pay first, the Wisconsin utility found, they would pay the bills in the following order:

---

<sup>111</sup> Michael Kiefer & Ronald Grosse, "Why Utility Customers Don't Pay Their Bills," *Public Utilities Fortnightly*, at 41 (June 21, 1984); see also, *Wisconsin Public Service Corporation: Lifestyle Study: Selected Payment Patterns*, at ii (July 1983).

1. Pay the utility bill first ..... 79%
2. Pay the telephone bill second ..... 74%
3. Pay the gas credit card third ..... 68%
4. Pay the charge account last ..... 76%

If Group 2 households had to make choices in which bills to pay first, the utility continued, they would pay bills in the following order:

1. Pay the utility bill first ..... 77%
2. Pay the telephone bill second ..... 71%
3. Pay the gas credit card third ..... 74%
4. Pay the charge account last ..... 81%

If Group 3 households had to make choices in which bills to pay first, the Wisconsin utility found, they would pay bills in the following order:

1. Pay the utility bill first ..... 79%
2. Pay the telephone bill second ..... 71%
3. Pay the gas credit card third ..... 67%
4. Pay the charge account last ..... 71%

When deciding whether it is appropriate to use commercially available consumer credit reports regarding non-utility credit as a basis for making utility deposit demands, these bill paying priorities present information to consider. For each group, nearly eight of ten low-income households said that, if a choice were forced between which bills to pay, they would pay their utility bill first.<sup>121</sup> These households went on to say that payment of credit card bills would come last. As a result, it should be clear that consumer credit reports involving bills other than utility bills should be rejected as a basis for making utility credit and collection decisions. More particularly, electric, natural gas and telephone deposit demands should not be based upon nonpayment of a non-utility bill that households consistently ranked as "last" in their order of priorities.

Similar results have been reached in more recent studies in different states. A 1989 Washington Natural Gas study, for example, was based upon a survey undertaken for the Washington Utility Group.<sup>131</sup> The purpose of this study was to "develop() a mutually acceptable understanding of the ability of delinquent utility customers to pay their energy bills. Is it that most can pay these bills on time, but choose not to, or is it that they truly are unable to pay\* \* \*?"<sup>141</sup>

Like the households in Wisconsin, payment of utility bills was high on the list of bill payment priorities. Most households (82%) said they would pay their rent or mortgage payment first with 13 percent saying they would pay their heating bill first. Nearly six of ten persons (56%) said they would pay their heating bill as the second bill while only 21 percent said they would pay it as the third bill.<sup>151</sup> An additional 10

<sup>121</sup> Remember, too, these households did *not* know the survey was being sponsored by the local utility company.

<sup>131</sup> This group consisted of Washington Natural Gas, Pacific Power and Light, Washington Water Power, Northwest Natural Gas, Cascade, and Puget Power.

<sup>141</sup> Mildred Baker, *Utility Collection Customers: Understanding Why They Don't Pay on Time*, at 1 (1989). Baker states that this paper only "represents the interpretations of Washington Natural Gas Company, one of the principal survey sponsors." The broader survey was titled: *Investor Owned Utility Group Credit Customer Survey*, Market Trends Research Corp. (1989).

<sup>151</sup> *Id.*, at 10.

percent said they would pay their heating bill as the fourth bill. In general, most customers said they would pay their utility bills after their rent or house payment but before medical bills and car payments.

As can be seen, to collect a utility deposit from a household which does not pay its Sears bill has no rational *utility*-related basis. Unless nonpayment of a non-utility bill is an indicator of risk to the utility -- a conclusion disproved by the existing literature-- collecting a deposit provides security against a non-existent risk.

### 3.1.2 Other Reasons for "Bad" Low-Income Credit Reports

In addition to placing lower priorities on non-utility bills than on utility bills, it has been found that low income consumers frequently acquire poor credit ratings by refusing to complete payments on installment purchases of defective or shoddy merchandise. According to one study, 35 percent of the debtors in default who were studied "gave reasons for their default that implicated the creditor in varying degrees."<sup>116</sup> According to this study, "by far the largest category of credit-related reasons consists of allegations of fraud and deception. Nineteen percent mentioned such wrongdoing by the seller as part of the reason for their default, and for 14 percent of all debtors, it was the *primary* reason." (emphasis added).<sup>117</sup> Among the problems experienced by low-income households included defective merchandise coupled with breach of both express and implied warranties, the delivery of wrong or "used" merchandise, the failure to deliver all merchandise ordered, and deceptive pricing practices.<sup>118</sup>

The study found that not only were low-income households more likely to face these types of problems,<sup>119</sup> but that they were more likely to pay higher prices as well.<sup>120</sup> Nearly 40 percent of the households who purchased from merchants serving primarily low-income households

---

<sup>116</sup> Caplovitz, *Consumers in Trouble: A Study of Debtors in Default*, at 91 (MacMillan Publishing: 1974).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*, at 92.

<sup>119</sup> *Id.*, at 37.

<sup>120</sup> *Id.*, at 33. These higher prices were paid for the same merchandise as would be purchased from merchants selling to more moderate income households. *Id.*

were not told the true price of their purchase,<sup>121</sup> with the actual cost being understated by more than 25 percent in roughly one-in-five cases.<sup>122</sup> Moreover, the study found that low-income merchants often tend to circumvent interest rate ceilings "by having exorbitant markups on their goods."<sup>123</sup> "Bound by law not to charge more than 18 percent interest on a credit sale, the ghetto merchant does not hesitate to mark up his goods by one, two, or even three numbers, each number, in this quaint jargon of the trade, representing a 100 percent increase of the wholesale price."<sup>124</sup>

Given these problems, it would be unconscionable to permit low-income households to be denied a household necessity such as telephone service due to "bad" credit reports for non-utility payment problems.

### 3.2 COLLATERAL MATTERS

The denial of service --even if indirect through the demand for an unaffordable deposit-- for non-utility related reasons is a violation of long-standing utility regulatory principles proscribing the denial of service for "collateral" matters. It matters not to other ratepayers whether a household fails to pay its Sears bill, for example, if that household *will* pay its utility bill. Given the fact that nonpayment of non-utility bills has little relevance to whether utility bills will be paid, basic fairness requires that third-party credit information on non-utility transactions not serve as a basis for deposit demands.

Public utilities occasionally seek to impose conditions upon consumers requesting utility service that have nothing to do with the consumer's present utility contract or account. The decisions are generally in accord in holding that a public utility corporation cannot refuse to render the service which it is authorized by its charter to furnish because of some collateral matter not related to that service.<sup>125</sup> Synthesizing the various

---

<sup>121</sup> For example, a merchant might quote a cash price rather than the credit price.

<sup>122</sup> *Id.*, at 39.

<sup>123</sup> *Id.*, at 303.

<sup>124</sup> *Id.*

<sup>125</sup> Annotation, *Right of public utility corporation to refuse its service because of collateral matter not related to that service*, 55 A.L.R. 771 (1928); see also, 43 Am. Jur., *Public Utilities and Services*, §23 (1942).

cases leads to a reasonable general definition of what matter can be found to be "collateral": a dispute which is the subject of a separate transaction, either between the utility and the consumer, or between the utility and some other person, which is distinct from, and irrelevant to, the utility's immediate duty to furnish a particular service.

When a utility engages in a business other than that of providing the particular service in question, it may not intertwine the businesses and disconnect service for matters relating to the non-utility enterprise.<sup>1261</sup> A utility, for example, which furnishes utility service and garbage collection is engaged in two separate and distinct enterprises and may not terminate utility service to coerce payment for nonpayment of the garbage collection fees.<sup>1271</sup> Moreover, a municipal offering both water and electric service may not disconnect one for nonpayment of the other.

The oft-cited *Henry Ten Broek v. Swan A. Miller*<sup>1281</sup> provides insight into what constitutes a "collateral" matter. In *Ten Broek*, the defendant-utility was the proprietor of a summer resort which sold cottage lots and supplied owners with water and light. There was no village or town; the resort company controlled everything. The record showed "there was much bad blood" between the plaintiff-owner and the head of the company. The lot owner had decided to build a cesspool instead of a septic tank, as required by the resort company, which resulted in the company's decision to terminate utility service. The plaintiff claimed \$1,000 in damages from lost rental business from two cottages. The court noted that "unfriendly feelings" had undoubtedly influenced the company's actions.

The question was whether the company was entitled to deprive the consumer of water and light because he refused to comply with septic tank rules set forth by the company. The court held that installation of a septic tank had no relation to the company's duty to provide water and light and was thus a collateral matter. If in refusing to install a septic tank, the plaintiff was violating a rule of the state health department, the court said, there existed a proper forum to hear the dispute. Using this established forum "would be a more orderly way of disposing of the

---

<sup>1261</sup> See generally, Note, "Updating a Municipal Utility's Right to Refuse Service: Sebring Utilities Commission v. Home Savings Association, 508 So.2d 26 (Fla. 2d DCA 1987)," 17 *Stetson L.Rev.* 807 (1988). ("This note will trace the history and application, first nationwide, then in Florida in particular, of the common law rule disallowing the tie-in of unrelated collateral services by utility companies as discrimination against utility customers.") *Id.*, at 810 - 816 (citations omitted).

<sup>1271</sup> Annotation, *Right of municipality to refuse services by it to resident for failure to pay for other unrelated service*, 60 *A.L.R.3d* 707 (1974); Annotation, 55 *A.L.R.* 771 (1959) (a utility's rate classification for consumers living outside the city limits is discriminatory as "entirely collateral and unconnected with the particular service rendered.")

<sup>1281</sup> 240 *Mich.* 667, 216 *N.W.* 385 (1927).

dispute than [the utility seeking] to substitute itself for a court and punish [the consumer] by cutting off his water and light."<sup>29)</sup> The court declared:

20 C.J. 33\* \* \*says: "Payment of proper charges for service supplied is a reasonable condition of the right to receive it, and for nonpayment of such charges the service may be discontinued, but *service cannot be cut off to enforce payment of a disputed claim, or a claim for service rendered at some other place, or of a collateral liability not connected with the particular service.*"<sup>30)</sup>

Underlying the common law doctrinal prohibition against utilities disconnecting service because of collateral disputes is the recognition that utilities are "quasi-public" corporations empowered with monopoly status to provide essential services to citizens who are, in effect, the public franchise. Intolerable to the wisdom and sense of fairness of the common law is the tactic of coercion extant when a utility threatens to withhold the necessities of life from a consumer in order to collect on some other separate and distinct obligation. To prevent such coercion and injustice, the courts command the utility to use the judicial process, like any other corporation would have to use in order to settle a dispute, rather than punish the consumer for not automatically acceding to its unscrutinized demands.

A utility may not deny service based on a collateral matter. A different service provided by the *same* utility is considered an "unrelated service" and thus a collateral matter. The only consistent situation where two services are *not* unrelated (*i.e.*, that denial of one can permissibly serve as the basis for denying the other) is water and sewer service. Moreover, charges for a *separate business* are universally considered to be collateral matters. Given these observations, I conclude that the service provided by *different* companies in different industries is necessarily an "unrelated service," and thus a "collateral" matter, as well. Accordingly, service may not be disconnected, directly (or indirectly through imposition of a deposit), based upon that unrelated matter.

### 3.3 SUMMARY AND CONCLUSION

Based on the above, it is necessary to conclude that information from a credit reporting agency indicating a lack of creditworthiness based on

---

<sup>29)</sup> *Id.*, at 386.

<sup>30)</sup> *Id.* (emphasis added).

non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill. Accordingly, deposit demands based on consumer credit reports, when those credit reports do not reflect utility bill payments, are bad public policy.

Moreover, such demands are probably unlawful. Utilities are prohibited from denying service based on "collateral" matters. Since non-utility transactions provide no insight into utility bill payment practices, to deny service based on such a non-utility transaction is to run afoul of this prohibition.

#### 4.1 DEMANDING A DEPOSIT BASED UPON PRIOR LATE PAYMENTS

Amongst the proposed Rules regarding telecommunications deposits for Washington State is a rule allowing the demand for a deposit if the household applying for service has been late on its bill payment more than once within the last six months. This Rule is unreasonable and should not be adopted. In all of the evaluation work that I have done, as well as my work in designing and implementing low-income programs, as well as my research and work on credit and collection techniques, I have found late payment to be a virtually non-existent predictor of the loss of revenue due to bad debt. I have undertaken empirical work in a variety of places, including Vermont, Maine, Connecticut, Pennsylvania, Ohio, Colorado, Massachusetts, North Carolina, Michigan, Montana and New York in this regard.

Attachment A to these comments presents data from 25 utilities in Colorado, Massachusetts, Michigan, New York, Vermont and Ohio. It presents data for gas, electric and combination (gas/electric) companies. It presents geographically disaggregated data. It presents data from small and large companies. It presents data using some 30-day arrears and some 60-day arrears. While it presents data only for energy companies, my experience leads me to conclude that the same results would obtain for telecommunications companies as well.

The data is designed to test whether a customer who pays late poses a risk to the company of ultimately losing revenue due to disconnection and bad debt. As was noted above, the *only* purpose of a deposit is to protect against revenue loss, *not* to protect against late payments.

Attachment A shows empirically that late payment is no predictor of the potential loss of revenue through disconnection and bad debt. The number of delinquent accounts that are actually eventually disconnected ranges from one percent (1%) to five percent (5%). In the case of the *best* case of prediction, therefore, use of late payment as the predictor of the potential loss of revenue would be wrong 95 out of 100 times. And even *that* rate of success was obtained in only one of 25 companies. In six (6) of the 25 companies, use of late payment as a predictor would be wrong 96 out of 100 times; in eight (8) of the 25 companies, it would be wrong 97 out of 100 times; in seven (7) of the 25

companies, it would be wrong 98 out of 100 times; in three (3) of the 25 companies, it would be wrong 99 out of 100 times.

Being late on one's payment more than once in a six month period may indeed represent an "unsatisfactory payment history" from several different perspectives. Such a payment history may impose working capital costs on a utility. It may cause a utility to incur credit and collection costs. But these adverse consequences are not the consequences against which a deposit is designed to protect. And, from the perspective of whether a customer is going to ultimately contribute to the permanent loss of revenue through bad debt, the only consequence that a deposit is to guard against, the mere fact that a customer has been late in his or her payment is no predictor at all.

Two observations are important about Attachment A. First, the mismatch between those *deemed* to be at risk and those *actually* presenting a risk is overwhelming. If the measurement proposed by the Rules were applied to each of the utilities in these jurisdictions, the measurement would be wrong 95 percent of the time and more. Second, the mismatch between those deemed to be at risk and those actually presenting a risk is universal. In *no* instance is delinquent payment an indicator of the risk of revenue loss to the utility. In *every* instance, the measurement included in the proposed Rules (*i.e.*, late payment) would have been wrong.

In sum, when it comes to measuring the likelihood of causing a loss to the utility --and the loss is a loss of revenue due to bad debt, nothing more-- in more than 95 out of 100 cases, there is no difference between the timely paying consumer and the consumer identified by the measure of risk in the proposed Rule. The Rule permitting the denial of service without posting a deposit, based on such a mismatch, should be disapproved.

## **5.1 DEMANDING A DEPOSIT BASED ON THE UNPAID BILL OF A ROOMMATE**

### ***5.1.1 Fair Credit Collection Statutes***

The proposed regulation allowing U.S. West to collect a deposit based on the unpaid bills of a roommate represents an unreasonable credit collection activity as defined by Washington State's own *fair debt collection practices act*. The WUTC can take guidance from the state debt collection statute on what represents reasonable collection activities.

In Washington, as elsewhere, a utility, in its capacity of providing utility services, has no right to communicate the existence of a debt of any person to a third party, let alone deny service based on that extraneous debt. U.S. West, in other words, as the provider of telephone service,

has no legitimate interest in even *disclosing* the existence of one person's debt to anyone other than the debtor himself. As a result, it is highly inappropriate for U.S. West to become involved with the debt collection process through the denial of service, or through the demand for a deposit, from a person or customer who does not owe the debt at issue.

A review of Washington state statutes reveals that the state Fair Debt Collection Practices Act provides that no debt collector in the state may:

Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings\* \* \*.<sup>311</sup>

Whether or not directly applicable to U.S. West as a debt collector, this statute describes appropriate standards of conduct for those entities acting as collection agents and provides a meaningful guidepost for this commission to evaluate the effect of the proposed deposit regulation in light of the dictates that all rates and activities of the utility be "just and reasonable."

There is other support, also, for the conclusion that the disclosure of debt to third parties is not a reasonable collection activity. Even though the federal Fair Debt Collection Practices Act (FDCPA) is not directly applicable --a utility collecting its own debts is not a "debt collector" under the federal statute-- the language, reasoning and legislative history of the Act certainly give insights into whether disclosure of the consumer's debt to a third party carrier is either "just" or "reasonable."

The FDCPA prohibits a debt collector from communicating with any person other than the debtor absent the debtor's consent. Since the FDCPA is not directly applicable, however, it is the legislative history which is most important for gleaning lessons as to the reasonableness of U.S. West's proposed deposit regulation. According to the Senate Report underlying the FDCPA:

[T]his legislation adopts an extremely important protection.\* \* \*it prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives or employer. *Such contacts are not legitimate collection practices* and result in serious invasions of privacy\* \* \*. (emphasis added).

In sum, had the debt being collected by U.S. West been between a debtor and a debt collector as defined by federal law (rather than between a

---

<sup>311</sup> R.C.W.A., §19.16.250 (1994).

debtor and U.S. West), to disclose the existence of the debt to anyone other than the debtor would be unlawful under that federal statute. Notwithstanding the fact that the FDCPA may not be directly applicable to the U.S. West collection endeavors, U.S. West is under an obligation to engage only in activities that are "just and reasonable." Accordingly, even though the FDCPA is not directly applicable to this situation, there is much to learn from the policies behind the Act and the means adopted to advance those policies. Efforts involving contacts with "third parties," Congress has declared, "are not legitimate collection practices."

That the federal legislation includes cotenants, or roommates, within its contemplation seems clearly consistent with its designation of "friends, neighbors, relatives." Moreover, that the legislation contemplated the inclusion of roommates is apparent from particular prohibited activities. For example, in the event a collect phone call is made by a debt collector, if the collection purpose of the call is specified to the operator, who in turn conveys the information to a third-party answering the phone, the FDCPA has been violated. In addition, a debt collector may not use a name or other information on an envelope indicating that its contents pertain to debt collection.<sup>132)</sup>

### 5.1.2 Lessons from Constitutional Analysis

There can be no question but that a utility customer can *not* be held liable for the debts of a third part merely because they live together. That is settled law.<sup>133)</sup> In *Re Tampa Electric Co.*,<sup>134)</sup> the commission ordered the company to delete from its rules a provision that permitted such liability. The commission concluded that:

The company may hold only the customer of record responsible for the customer's bill. The company can protect itself and its other rate payers from nonpayment by requiring an adequate deposit. If the deposit does not fully satisfy the arrearage, the company can sue the customer. What the company cannot do is force another person, not legally responsible for the debt, to pay the debt in order to obtain or continue receiving electric service.<sup>135)</sup>

---

<sup>132)</sup> See generally, R. Hobbs, *Fair Debt Collection*, National Consumer Law Center Consumer, Credit and Sales Legal Practice Series, at § 2.4.2 (2d edition 1991 and 1993 cumulative supplement).

<sup>133)</sup> *Smith v. Tri-County Electric Membership Corporation*, 689 S.W.2d 181 (Tenn. App. 1985); *Re Tampa Electric Co.*, 49 P.U.R.4th 547 (Fla. Public Service Commission 1982).

<sup>134)</sup> 49 P.U.R.4th 547, 591 (La. PSC 1982).

<sup>135)</sup> *Id.*

Moreover, in *Baylor v. Philadelphia Electric Co.*,<sup>361</sup> the Pennsylvania Public Utility Commission held that a woman who resided with her mother could not be charged with her mother's pre-existing utility debt before initiating service. Similarly, a utility may not withhold service to a new customer until he or she pays the delinquent bill of a prior customer who formerly lived at the same residence, albeit not with the customer. This rule is universal.<sup>371</sup> Where state action is involved, attempts to impose third party liability have been held to be unconstitutional.<sup>381</sup>

For purposes of evaluating the reasonableness of this Rule, however, just as important as the constitutional holding, is the reasoning of the respective courts. The seminal case is *Davis v. Weir*,<sup>391</sup> which involved water service provided by the Atlanta (Georgia) Municipal Utility. Davis, a tenant paid for his water service through his rent, which payments were current. Davis' landlord fell behind in his water payments which the landlord disputed, and service to Davis was disconnected. Davis then sought to have the water account placed in his own name and to have service restored. The utility refused, however, unless the landlord's arrearage was paid. The court agreed with Davis' contention that the water company's practice violated both Equal Protection and Due Process. It found first that there was "no rational basis" for the water company's "discriminatory rejection of new applications for water service based on the financial obligations of third parties."<sup>401</sup> According to the Court:

The water works divided those who *apply* for its services into two categories: applicants whose contemplated service address is encumbered with a pre-existing debt (for which they are not liable) and applicants whose residence lacks the stigma of such charges. Although there is nothing in these definitions, standing alone to distinguish either group as a better or worse credit risk, the Department only furnishes its services to the latter class.

---

<sup>361</sup> Docket No. F-8532525 (April 17, 1986) (PA PUC).

<sup>371</sup> *Oliver v. Hyle*, 513 P.2d 806 (Ore. 1973); *Bettini v. City of Las Cruces*, 485 P.2d 967 (N.M. 1971); *Moore v. Metropolitan Utilities Company*, 477 P.2d 691 (Okla. 1970).

<sup>381</sup> *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974); *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1 (1978); *Smith v. Tri-County Electric Membership Corporation*, 689 S.W.2d 181 (Tenn. App. 1985).

<sup>391</sup> 497 F.2d 139 (5th Cir. 1974).

<sup>401</sup> *Id.*, at 144.

The court concluded:

The fact that a *third party* may be financially responsible for water service provided under a prior contract is an irrational unreasonable and quite irrelevant basis upon which to distinguish eligible applicants for water service. *Davis v. Weir*, 359 F. Supp. at 1027 (emphasis in original). The Department's actions offend not only equal protection of the laws but also due process.<sup>411</sup>

Following *Davis* is the case of *Smith v. Tri-County Electric Membership Corporation*,<sup>421</sup> a case almost exactly on all fours. In *Smith*, the plaintiff lived with Debbie Hix, who owed the electric company on a delinquent account from a former residence. Hix requested electric service in the plaintiff's name. The utility advised her that the plaintiff or a close relative would have to sign an application for the service and Smith then went to sign up. However, the electric company had a policy of denying service to a customer when anyone owing on an old bill planned to live in the residence establishing service. Since Hix was delinquent on an old account, the utility explained that service would be denied to Smith. The utility agreed to begin service to Smith when he stated that Hix would not be living with him, but the utility warned that if it determined she was in fact living with him, service would be terminated.

Subsequently, when a utility employee ascertained that Hix was living with Smith, electric service was terminated "even though plaintiff contracted for the electric service, was using the service, was not delinquent, owed the defendant no bills for prior service at any location, and had no connection with the delinquent customer when her bill were incurred."<sup>431</sup> The court reiterated the *Davis* reasoning and concluded that the collection scheme was unreasonable, arbitrary and violated both equal protection of the law and due process.<sup>441</sup>

### 5.1.3 Lessons from Contract Law

---

<sup>411</sup> *Id.*, at 145.

<sup>421</sup> 689 S.W.2d 181 (Tenn. App. 1985).

<sup>431</sup> *Id.*, at 185.

<sup>441</sup> *Id.*

A telephone company may not impose liability for third party bills on one of its customers unless that customer has expressly contracted to undertake such liability. The constant theme in each of the situations considering this rule is that a utility is seeking to transfer liability from one person's account to another person's account. As one legal analysis concludes, however: "without a contract between the utility and the customer it seeks to charge, liability cannot be imposed by the company except in very limited circumstances."<sup>451</sup> The general rule is that utilities may not terminate or deny an application<sup>461</sup> for service to one person based upon charges incurred on another person's account.

The doctrine is one based upon straight contract law.<sup>471</sup> Generally, when there is an express contract between parties, such an agreement will not support liability by parties other than those who have contracted.<sup>481</sup> Thus, when an applicant for utility service enters into an express contract for the service, through which the utility agrees to provide service and the applicant agrees to pay for the service provided, liability for that service cannot be transferred to a person not a party to the express contract.<sup>491</sup>

The basic contract doctrine is very clear. One legal encyclopedia states for example, that:

as a general rule, there can be no implied contract where there is an express contract between the parties in reference to the same subject matter. In other words, an express contract on a given contract excludes the possibility of an implied contract of a different or contradictory nature.<sup>501</sup>

---

<sup>451</sup> "Third Party Liability for Gas, Electric, Water and Telephone Bills," *PULP News*, at 4 (Fall 1989).

<sup>461</sup> This second prohibition, the prohibition of "denying" service is important. It covers the situation where there is no shutoff, but rather a person applies for, but is denied, connection to service. Moreover, it covers the situation where service is predicated on meeting some precondition such as payment of a deposit.

<sup>471</sup> See generally, Annotation, *Arrearages: charges upon property or against present owner, irrespective of person who enjoyed the service*, 19 *A.L.R.3d* 1227, 1231 (1968). The annotation goes on to state: "in this connection, it is irrelevant whether the supplier and collecting authority is a municipality or a public utility company, since the results, all other things being equal, are the same in either case." *Id.*

<sup>481</sup> See e.g., *New York Telephone Company v. Teichner*, 69 Misc.2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972); *Veeco Concrete Co. v. Tray Lumber Co.*, 124 S.E.2d 905 (N.C. 1962).

<sup>491</sup> "Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and who did nothing to assume its obligations." *Gold v. Gibbons*, 3 Cal.Rptr. 117, 118 (1960). (emphasis added).

<sup>501</sup> 17 *C.J.S.*, *Contracts*, §6 (1963). See also, 17A *Am.Jur.2d*, *Contracts*, §14 (1990). ("As a general rule, if an express contract between the parties is established, a contract embracing the identical

Moreover, *C.J.S.* continues:

It is generally held that where there is an express contract the law will not imply a quasi or constructive contract. The courts will not indulge in the fiction of a quasi or constructive contract where contracts implied in fact must be established, *and will not substitute one promisor or debtor for another.*<sup>151</sup>

Both of these propositions, that involving implied in fact contracts and that involving implied in law contracts,<sup>152</sup> will be discussed in more detail below.

### *5.1.3.1 Implied in Fact Contracts*

The doctrine of implied-in-fact contracts does not stand as an exception to this rule.<sup>153</sup> Many times, the attempted transfer of liability is based on the argument that the person resided with the person who contracted for service, and benefitted from that service, and thus has an implied-in-fact contract to pay for that service. Contract principles state, however, that for an implied-in-fact contract to arise, the court must find there was an intention to form a contract even though the intention was never put into words.<sup>154</sup> If the utility has entered into an *express* contract with a different person, however, that finding cannot be made. A contract cannot be implied in fact when there is an express contract covering the same subject matter.<sup>155</sup>

(. . . continued)

subject cannot be implied; in such a case, an implied agreement cannot co-exist with the express contract.")

<sup>151</sup> *Id.*, at §6. (emphasis added). See also, 17A *Am. Jur.2d, Contracts*, §14 (1990). ("There may be a contract implied in law on a point not covered by an express contract, but there is no implied contract on a point fully covered by an express agreement.")

<sup>152</sup> This doctrine is sometimes referred to a gaining recovery in *quantum meruit*.

<sup>153</sup> See e.g., *G & S Business Services v. Fast Fare*, 380 S.E.2d 792 (1989).

<sup>154</sup> See e.g., *Travelers Fire Ins. Co. v. Brock & Co.*, 47 Cal. App.2d 387, 392, 118 P.2d 25, 27 (1941). ("A contract implied in fact is one not expressed by the parties, but implied from facts and circumstances showing a mutual intention to contract.")

<sup>155</sup> See e.g., *Pellegrino v. Almasian*, 10 A.D.2d 507, 510 (3rd Dept. N.Y. 1960); *LaRose v. Backer*, 11 A.D.2d 314, 319 (3rd Dept. N.Y. 1960), *amended on other grounds*, 11 A.D.2d 969, *aff'd*, 11 N.Y.S.2d 760; *New York State Telephone*, *supra*, 69 Misc.2d at 137.

### 5.1.3.2 Implied in Law Contracts (*Quantum Meruit*)

Neither does the doctrine of quasi-contract, sometimes known as an implied-in-law contract (or *quantum meruit*), create a basis for transferring arrears.<sup>1561</sup> For an implied-in-law contract to exist, the REC must show an absence of *both* an express contract *and* an implied-in-fact contract.<sup>1571</sup> In addition, someone must have acted wrongfully towards the REC and the person to be charged must have been unjustly enriched for an implied-in-fact contract to arise.<sup>1581</sup> However, merely continuing to use service contracted for by another does not constitute such "wrongful" behavior. Instead, the "wrongful" behavior must involve some behavior such as deceit, oppression or extortion.<sup>1591</sup>

There are three "familiar, essential elements of recovery under *quantum meruit*."<sup>1601</sup> All three elements must be met.<sup>1611</sup> First, there must be valuable services rendered to the person sought to be charged. Second, the services must have been accepted by the person sought to be charged, used and enjoyed by that person. Finally, and most importantly for purposes here, the acceptance must have been under such circumstances as "would reasonably inform the person sought to be charged that plaintiff, in performing such services, was expecting to be paid *by the person sought to be charged*."<sup>1621</sup> In short, an implied in law contract is not a "contract" at all, but rather an equitable doctrine that involves a legal fiction created so that a person who benefits from the use of a particular service is not "unjustly enriched" by such use.<sup>1631</sup>

---

<sup>1561</sup> Such a claim cannot lie where an express contract covers the subject matter. *See e.g., Keith v. Day*, 343 S.E.2d 562 (N.C. App. 1986).

<sup>1571</sup> *Robbins v. Frank Cooper Associates*, 19 A.D.2d 242, 244 (1st Dept. 1963), *rev'd on other grounds*, 14 N.Y.S.2d 913 (1964).

<sup>1581</sup> *New York State Telephone, supra*, 69 Misc.2d at 137.

<sup>1591</sup> *See also*, Colton, "Heightening the Burden of Proof in Utility Shutoff Cases Involving Allegations of Fraud," 33 *Howard Law Review* 137 (1990).

<sup>1601</sup> For purposes of this discussion, seeking recovery under an implied in law contract is deemed to be identical to seeking recovery in *quantum meruit*.

<sup>1611</sup> *Fontaine v. Home Box Office*, 654 F.Supp. 298, 303 (C.D.Cal. 1986) (construing California law).

<sup>1621</sup> 654 F.Supp. at 303. (emphasis added).

<sup>1631</sup> *Id.*

The key term in this test is "unjust" enrichment. The courts have made clear that "to recover on this theory, *it is not enough to show that goods or services were furnished to another*\* \* \*."<sup>64</sup> Rather, the courts state, "it must *also* be shown that the person to whom the goods or services were furnished received a substantial benefit therefrom and that it would be unconscionable to permit him to retain the benefit without paying for its reasonable value."<sup>65</sup>

As a matter of law, where an express contract exists, an implied in law contract cannot be found. More particularly, if an express contract exists under which one person is the party responsible for paying for services, an implied in law contract will not serve to transfer liability to a third party. An implied in law contract will not substitute one promisor or debtor for another.<sup>66</sup> Under the terms of the tests as articulated above, if there is an express contract for one person to pay the telephone bill, the third element of the *Fontaine* case cannot be met: that the utility company provided the service "expecting to be paid *by the person sought to be charged.*"

Moreover, the courts have articulated a number of factors to consider regarding whether it would be "unconscionable to permit him to retain the benefit without paying for its reasonable value" as per the *Newman Company* decision. For example, in the instance of the rendition of services, a third person is less likely to be charged in *quantum meruit* since the person sought to be charged does not have the opportunity to choose to return the services as an alternative to payment.<sup>67</sup> Second, it would be inequitable to impute the charges to a third party since the third party did not control the usage nor have any power to restrict or interrupt the rendition of the service.<sup>68</sup> The *Griffith Company* case represents the situation similar to that faced by a utility company. In *Griffith Company*, no unjust enrichment was found to have occurred because it was not the defendant who had requested the services to be provided and it was not the defendant who was in a position to halt the provision of such services.

---

<sup>64</sup> *Harold A. Newman Co. v. Nero*, 31 Cal.App.3d 490, 107 Cal. Rptr. 464, 468 (5th Dist. 1973).

<sup>65</sup> *Id.*, at 468.

<sup>66</sup> See e.g., *Moll v. Wayne County*, 332 Mich. 274, 50 N.W.2d 881 (1952); *City of Detroit v. City of Highland Park*, 326 Mich. 78, 39 N.W.2d 325 (1949).

<sup>67</sup> *Wal-Noon Corp. v. Hill*, 45 Cal.App.3d 605, 613, 113 Cal.Rptr. 646 (Cal.App. 1975) (distinguishing the payment of money or the delivery of goods).

<sup>68</sup> See, *Griffith Company v. Hofues*, 201 Cal. App.2d 502, 19 Cal. Rptr. 900, 904 (5th Dist. 1962) (at time services were being rendered, defendant in no position to stop it); accord, *City of Detroit, supra*, 39 N.W.2d at 334 (in denying recovery under implied in law contract, or *quantum meruit*, the courts must consider the fact that "it would be impractical if not impossible for defendant to refuse to accept the services\* \* \*.")

A related and persuasive line of reasoning was followed in the Michigan case of *Cascaden v. Magryta*.<sup>691</sup> In that case, certain contractors made repairs to a fire-damaged home at the request of the insurance company adjusters. When the insurance company subsequently denied payment for the work, the contractors sought recovery from the owner of the property based on theories of both implied in fact contract and implied in law contract. The court denied the implied in fact recovery, noting:

\* \* \*the work was not done and the materials not furnished under circumstances authorizing plaintiffs to entertain an expectation of payment from defendants. The plaintiffs expected the insurance company to make payment out of the insurance, and only after denial of liability by the adjuster did they seek to fasten liability upon defendants, under an implied contract.<sup>701</sup>

Moreover, the court denied recovery under an implied in law contract, stating: "the defendants could not, while the insurance company was exercising the option right to repair, do otherwise than to submit. Out of such submission, no implied contract to pay plaintiffs could arise."<sup>711</sup>

In short, "the utility may not transfer charges to a person's account simply because the person resided where the service was furnished. If the person has not contracted for the service or has not been unjustly enriched by receiving the service, the transfer of arrears to the person's account is not permitted."<sup>721</sup> It matters not that the third person who is not a party to the contract is a spouse. Where there is an express contract, the third person cannot be held liable.<sup>731</sup>

In sum, the fact that there is an express contract for the utility to provide service, and for the contracting party to pay for the service provided,

---

<sup>691</sup> 247 Mich. 267, 225 N.W. 511 (1929).

<sup>701</sup> *Id.*, at 512.

<sup>711</sup> *Id.*

<sup>721</sup> *PULP News, supra*, at 4 - 5.

<sup>731</sup> *See, Presbyterian Hospital v. McCartha*, 66 N.C. App. 177, 310 S.E.2d 410 (1984).

prevents the imposition of third party liability in all but the most limited of circumstances.<sup>174)</sup> When an express contract exists, a third person not a party to that contract cannot be held liable for payment of arrears under either an implied-in-fact contract theory or an implied-in-law (or *quantum meruit*) contract theory.

#### 5.1.4 Summary and Conclusions

By its own operation, the mere demand for a deposit from one customer due to the unpaid bills of a roommate will notify the customer of the *existence* of the unpaid arrears of the debtor. Moreover, to the extent that the size of the deposit demand is based on the size of the arrears, U.S. West will be disclosing not only the existence of the debt, but the size of the debt as well. The unreasonable nature of such disclosure, as well as the unreasonable nature of trying to collect from a third party, is established by reference to state and federal law.

### 6.1 SHOULD THE U.S. WEST DEPOSIT RULES BE ADOPTED

Should the WUTC adopt the proposal to allow U.S. West to impose demand cash deposits under the circumstances included in the proposed Rules, the WUTC should impose a sunset provision on the regulation. At the end of 24 months, unless U.S. West can demonstrate that the deposits have been effective in reducing bad debt, the deposit permission should be dropped.

The means for a utility to make such a demonstration are reasonably available. Perhaps the best mechanism would involve the company preparing and submitting a "payment pattern" analysis for one group of households subject to the deposit demands and another who are not.

A payment pattern analysis provides useful insight into the effectiveness --and cost-effectiveness-- of utility credit and collection practices such as deposits. Payment pattern analysis looks at the "collection experience" of a business enterprise that sells to its customers on credit ("credit sales"). The originators of the payment pattern analysis define "collection experience" simply as "the rate at which remittances for credit sales are received over time; that is, the chronological pattern according to which the receivables created during a given interval are converted into cash."<sup>175)</sup>

---

<sup>174)</sup> These circumstances include when there has been some wrongdoing such as deceit, oppression or extortion.

<sup>175)</sup> Wilbur Lewellen and Robert Johnson, "Better way to monitor accounts receivable," *Harvard Business Review*, (May-June 1972): 101.

Taking a month to be the standard unit of account, Lewellen and Johnson state:

the issue is the liquidation rate for each month's new credit sales. A *constant* collection experience\* \* \*denotes a situation wherein the fractions of credit sales still uncollected as time passes follow a stable and predictable pattern from month to month.<sup>1761</sup>

The concept of collection experience, Lewellen and Johnson conclude, "refers to nothing more than this standard notion of the rate of accounts conversion into cash."<sup>1771</sup> Other analysts agree. One refers to a "payment pattern" as "the time distribution of cash flows that arise from credit sales at a point in time."<sup>1781</sup> Stone states that "a monthly payment pattern can be characterized by the proportion of credit sales in a given month that become cashflows in that month and a series of subsequent months."<sup>1791</sup>

A payment pattern analysis creates a receivables status report that follows from this definition of the term "collection experience." Such a report provides:

*balances outstanding as a percentage of the respective original sales that gave rise to those balance. In this fashion, customer payment rates are automatically traced to their source, and the appraisal of collection success is rendered independent of sales patterns and of the impact of changes in relative account composition.*<sup>1801</sup>

The use of payment pattern analysis allows the credit manager to perform a number of functions that are not possible using other traditional credit and collection measurement techniques. The manager can, for example, distinguish between seasonal payment patterns, and

---

<sup>1761</sup> *Id.* (emphasis in original).

<sup>1771</sup> *Id.*

<sup>1781</sup> Bernell K. Stone, "The Payments-Pattern Approach to the Forecasting and Control of Accounts Receivable," *Financial Management*, (Autumn 1976): 65.

<sup>1791</sup> *Id.*

<sup>1801</sup> *Id.* (emphasis in original).

disaggregate the impacts of changes in payment behavior from the seasonal changes in sales. Such a distinction can be ascertained merely by comparing the different rates of conversion into cash as betwixt different months of the year. If, in Attachment A, for example, the January "same month" data was 50 percent while the July "same month" data was 86 percent, the credit manager would determine a seasonal variation in payment patterns. Use of payment pattern analysis, Stone says, will allow accurate monitoring of credit policy decisions such as relaxing or tightening credit granting decisions, changing discount terms, or eliminating discounts altogether. In short, Stone asserts:

Meaningful measures of the performance of a company's collection effort must be based on measures of behavior that do not depend on factors beyond the control of those responsible for collections, *e.g.*, the sales pattern, the level of interest rates, and the quality of the accounts, the latter being determined by the company's credit granting decisions.

Underlying basic payment proportions represents such a measure, he concludes.

Pursuing a payment pattern analysis recognizes the reality that U.S. West is asserting in its request to charge deposits: *i.e.*, that charging a rate and collecting a rate are two separate actions. Simply because a utility charges a particular rate does not mean that the utility will ever collect that money from a customer. U.S. West, however, proposes no means of testing the efficacy of its response to that problem.

A payment pattern analysis can do exactly that. Such an analysis reveals the rate at which *billed* revenue is turned into *collected* revenue over time. Payment pattern analysis allows a utility to track how quickly billed revenues are converted into cash for any particular period. If U.S. West is correct in its assertion that the proposed ability to collect deposits will protect against the ultimate loss of revenue through non-payments, the reduced nonpayments should show up in a payment pattern analysis.

The payment pattern analysis is reasonably easy to prepare. An illustrative payment pattern analysis is presented in Attachment A below..

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

PUB SVC CO OF COLORADO: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
Quarter 1	329,571	9,587	0.029
Quarter 2	335,229	12,239	0.037
Quarter 3	267,444	12,467	0.047
Quarter 4	247,344	7,651	0.031
TOTAL	1,179,588	41,944	0.036

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

CENDEL Electric: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
Quarter 1	24,984	476	0.019
Quarter 2	26,244	504	0.019
Quarter 3	25,851	466	0.018
Quarter 4	25,449	528	0.021
TOTAL	102,528	1,974	0.019

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Boston Gas: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	56,088	737	0.013
FEBRUARY	57,791	716	0.012
MARCH	53,618	1,120	0.021
APRIL	53,177	1,935	0.036
MAY	51,993	2,667	0.051
JUNE	49,984	3,567	0.071
JULY	46,945	3,102	0.066
AUGUST	47,616	3,506	0.074
SEPTEMBER	45,090	2,093	0.046
OCTOBER	46,327	2,221	0.048
NOVEMBER	46,012	1,288	0.028
DECEMBER	60,087	803	0.013
TOTAL	614,728	23,755	0.039

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Boston Edison: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	45,316	139	0.003
FEBRUARY	47,184	99	0.002
MARCH	46,365	108	0.002
APRIL	45,240	1,454	0.032
MAY	n/a	n/a	n/a
JUNE	n/a	n/a	n/a
JULY	41,220	1,249	0.030
AUGUST	44,136	1,769	0.040
SEPTEMBER	42,332	1,185	0.028
OCTOBER	41,226	1,977	0.048
NOVEMBER	44,998	727	0.016
DECEMBER	43,352	97	0.002
TOTAL	441,369	8,804	0.020

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Mass Electric Co.: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	79,153	318	0.004
FEBRUARY	89,914	251	0.003
MARCH	76,331	359	0.005
APRIL	81,164	1,392	0.017
MAY	79,349	2,194	0.028
JUNE	74,709	3,135	0.042
JULY	76,932	2,708	0.035
AUGUST	79,697	3,675	0.046
SEPTEMBER	82,530	3,419	0.041
OCTOBER	78,031	4,093	0.053
NOVEMBER	73,434	1,873	0.026
DECEMBER	79,413	229	0.003
TOTAL	950,657	23,646	0.025

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

West'n Mass Electric Co.: 1990	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	25,338	0	0.000
FEBRUARY	17,894	0	0.000
MARCH	22,723	8	0.000
APRIL	21,801	381	0.018
MAY	18,041	693	0.038
JUNE	22,598	717	0.032
JULY	24,567	520	0.021
AUGUST	20,545	753	0.037
SEPTEMBER	21,686	746	0.034
OCTOBER	15,092	1,017	0.067
NOVEMBER	23,046	366	0.016
DECEMBER	24,096	0	0.000
TOTAL	257,427	5,201	0.020

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Mich. Consolidated Gas: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	103,870	48	0.001
FEBRUARY	129,062	46	0.000
MARCH	112,904	120	0.001
APRIL	95,585	5,429	0.057
MAY	91,148	5,559	0.061
JUNE	82,878	4,945	0.060
JULY	70,608	3,963	0.056
AUGUST	75,592	3,413	0.045
SEPTEMBER	79,650	2,768	0.035
OCTOBER	74,285	1,602	0.022
NOVEMBER	89,361	346	0.004
DECEMBER	104,606	28	0.000
TOTAL	1,109,549	28,267	0.026

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Detroit Edison: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	112,295	2,948	0.026
FEBRUARY	116,413	3,854	0.033
MARCH	127,895	4,480	0.035
APRIL	120,793	6,837	0.057
MAY	115,288	6,604	0.057
JUNE	118,566	5,826	0.049
JULY	116,197	2,570	0.022
AUGUST	122,026	5,502	0.045
SEPTEMBER	133,713	5,499	0.041
OCTOBER	129,274	5,623	0.044
NOVEMBER	129,786	4,311	0.033
DECEMBER	126,008	2,047	0.016
TOTAL	1,468,254	56,101	0.038

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Consumers Power: 1991	NO. 30-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	142,675	1,774	0.012
FEBRUARY	152,673	2,432	0.016
MARCH	169,071	3,291	0.020
APRIL	159,679	4,506	0.028
MAY	171,318	5,298	0.031
JUNE	141,052	4,545	0.032
JULY	112,582	3,657	0.033
AUGUST	127,676	3,423	0.027
SEPTEMBER	135,490	4,037	0.030
OCTOBER	100,756	4,037	0.040
NOVEMBER	103,562	2,956	0.029
DECEMBER	131,239	2,558	0.020
TOTAL	1,647,773	42,514	0.026

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Montana Dakota: 1991	NO. DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	11,009	4	0.000
FEBRUARY	22,510	9	0.000
MARCH	30,719	13	0.000
APRIL	27,702	377	0.014
MAY	23,204	178	0.008
JUNE	31,322	175	0.006
JULY	30,906	168	0.005
AUGUST	18,292	128	0.007
SEPTEMBER	14,491	63	0.004
OCTOBER	15,467	49	0.003
NOVEMBER	16,622	2	0.000
DECEMBER	13,259	0	0.000
TOTAL	255,503	1,166	0.005

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

Commonwealth Edison: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	207,142	7,925	0.038
FEBRUARY	230,320	7,696	0.033
MARCH	203,697	8,000	0.039
APRIL	183,672	9,570	0.052
MAY	181,208	8,034	0.044
JUNE	192,133	8,147	0.042
JULY	190,668	8,180	0.043
AUGUST	183,009	7,502	0.041
SEPTEMBER	199,895	8,356	0.042
OCTOBER	195,561	9,191	0.047
NOVEMBER	215,929	6,997	0.032
DECEMBER	233,945	3,875	0.017
TOTAL	2,417,179	93,473	0.039

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

LONG ISLAND LTG CO.: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	101,788	805	0.008
FEBRUARY	106,491	1,038	0.010
MARCH	111,129	1,209	0.011
APRIL	106,789	2,319	0.022
MAY	107,855	2,994	0.028
JUNE	112,006	3,007	0.027
JULY	106,252	3,005	0.028
AUGUST	104,177	2,076	0.020
SEPTEMBER	106,622	2,509	0.024
OCTOBER	101,069	2,766	0.027
NOVEMBER	107,985	868	0.008
DECEMBER	110,454	693	0.006
TOTAL	1,282,617	23,289	0.018

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

NYSEG: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	44,807	506	0.011
FEBRUARY	48,442	670	0.014
MARCH	46,733	624	0.013
APRIL	43,477	2,023	0.047
MAY	53,861	2,602	0.048
JUNE	45,475	2,760	0.061
JULY	47,285	2,492	0.053
AUGUST	46,606	2,322	0.050
SEPTEMBER	48,966	1,971	0.040
OCTOBER	41,639	2,341	0.056
NOVEMBER	49,979	544	0.011
DECEMBER	40,132	319	0.008
TOTAL	557,402	19,174	0.034

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

NIAGARA MOHAWK:1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	109,336	911	0.008
FEBRUARY	109,793	1,261	0.012
MARCH	107,100	1,156	0.011
APRIL	116,505	4,244	0.036
MAY	128,797	6,332	0.049
JUNE	137,430	6,873	0.050
JULY	140,580	6,132	0.044
AUGUST	130,042	5,614	0.043
SEPTEMBER	115,058	5,424	0.047
OCTOBER	98,097	4,709	0.048
NOVEMBER	96,180	755	0.008
DECEMBER	98,640	581	0.006
TOTAL	1,387,558	43,992	0.032

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

ORANGE & ROCKLAND: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	19,682	115	0.006
FEBRUARY	19,751	182	0.009
MARCH	19,457	191	0.010
APRIL	18,794	834	0.044
MAY	18,279	804	0.044
JUNE	19,267	740	0.038
JULY	19,126	676	0.035
AUGUST	19,135	796	0.042
SEPTEMBER	18,132	650	0.036
OCTOBER	19,328	371	0.019
NOVEMBER	18,961	95	0.005
DECEMBER	20,658	110	0.005
TOTAL	230,570	5,564	0.024

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

ROCHESTER G & E: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	29,553	527	0.018
FEBRUARY	30,653	660	0.022
MARCH	34,793	44	0.001
APRIL	30,861	966	0.031
MAY	29,274	2,066	0.071
JUNE	27,966	1,768	0.063
JULY	28,897	1,550	0.054
AUGUST	29,239	1,530	0.052
SEPTEMBER	27,982	1,475	0.053
OCTOBER	27,772	1,554	0.056
NOVEMBER	28,681	525	0.018
DECEMBER	31,999	303	0.010
TOTAL	357,670	12,968	0.036

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

NAT'L FUEL GAS: 1991	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	30,304	257	0.009
FEBRUARY	30,116	353	0.012
MARCH	32,273	750	0.023
APRIL	35,822	3,558	0.099
MAY	37,024	3,994	0.108
JUNE	38,118	3,645	0.096
JULY	38,476	3,225	0.084
AUGUST	36,944	2,475	0.067
SEPTEMBER	36,009	1,860	0.052
OCTOBER	35,242	1,017	0.029
NOVEMBER	30,314	168	0.006
DECEMBER	29,920	200	0.007
TOTAL	410,562	21,502	0.052

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

CENTRAL VT. PUB SVC: 1991	NO. DISCONNECT NOTICES	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	17,646	53	0.003
FEBRUARY	25,129	56	0.002
MARCH	17,839	140	0.008
APRIL	18,032	488	0.027
MAY	15,404	370	0.024
JUNE	13,168	321	0.024
JULY	14,170	310	0.022
AUGUST	14,323	254	0.018
SEPTEMBER	14,246	287	0.020
OCTOBER	13,307	243	0.018
NOVEMBER	15,969	63	0.004
DECEMBER	20,597	20	0.001
TOTAL	199,830	2,605	0.013

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

VERMONT GAS SYSTEMS: 1991	NO. DISCONNECT NOTICES	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	2,848	4	0.001
FEBRUARY	3,422	9	0.003
MARCH	3,830	11	0.003
APRIL	3,505	93	0.027
MAY	3,225	96	0.030
JUNE	1,964	92	0.047
JULY	1,413	86	0.061
AUGUST	1,067	32	0.030
SEPTEMBER	948	27	0.029
OCTOBER	1,041	14	0.013
NOVEMBER	1,568	2	0.001
DECEMBER	2,469	7	0.003
TOTAL	27,300	473	0.017

## ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

COLUMBIA GAS: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	81,388	207	0.003
FEBRUARY	87,899	222	0.003
MARCH	92,835	1,326	0.014
APRIL	101,142	7,374	0.073
MAY	118,753	7,266	0.061
JUNE	87,973	6,246	0.071
JULY	82,102	5,421	0.066
AUGUST	65,697	4,336	0.066
SEPTEMBER	64,670	5,334	0.083
OCTOBER	65,221	2,563	0.039
NOVEMBER	62,063	85	0.001
DECEMBER	71,739	29	0.000
TOTAL	981,482	40,409	0.041

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

CINCY GAS & ELEC: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	71,139	448	0.006
FEBRUARY	76,371	202	0.003
MARCH	76,675	350	0.005
APRIL	73,175	665	0.009
MAY	72,176	1,674	0.023
JUNE	71,550	1,344	0.019
JULY	68,948	199	0.003
AUGUST	69,635	1,314	0.019
SEPTEMBER	71,307	929	0.013
OCTOBER	72,302	1,153	0.016
NOVEMBER	74,248	546	0.007
DECEMBER	74,242	53	0.001
TOTAL	871,768	8,877	0.010

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

CLEVE. ELEC. ILLUM.: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	82,209	1,765	0.022
FEBRUARY	81,871	1,983	0.024
MARCH	85,268	2,033	0.024
APRIL	88,789	2,449	0.028
MAY	89,750	1,598	0.018
JUNE	87,760	2,859	0.033
JULY	76,961	2,109	0.027
AUGUST	80,673	3,904	0.048
SEPTEMBER	68,076	3,199	0.047
OCTOBER	77,238	4,778	0.062
NOVEMBER	60,972	869	0.014
DECEMBER	62,802	455	0.007
TOTAL	942,369	28,001	0.030

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

MONONGAHELA PWR: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	1,293	0	0.000
FEBRUARY	1,431	0	0.000
MARCH	1,432	1	0.001
APRIL	1,484	37	0.025
MAY	1,410	91	0.065
JUNE	1,441	57	0.040
JULY	1,327	64	0.048
AUGUST	1,234	74	0.060
SEPTEMBER	1,243	53	0.043
OCTOBER	1,270	75	0.059
NOVEMBER	1,353	1	0.001
DECEMBER	1,467	0	0.000
TOTAL	16,385	453	0.028

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

EAST OHIO GAS: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	175,913	2,032	0.012
FEBRUARY	212,454	2,143	0.010
MARCH	239,135	3,762	0.016
APRIL	257,921	9,156	0.036
MAY	276,350	9,445	0.034
JUNE	283,294	8,391	0.030
JULY	261,756	7,371	0.028
AUGUST	251,402	7,081	0.028
SEPTEMBER	236,322	6,464	0.027
OCTOBER	222,695	4,409	0.020
NOVEMBER	211,873	1,308	0.006
DECEMBER	182,094	1,028	0.006
TOTAL	2,811,209	62,590	0.022

ATTACHMENT A: LATE PAYMENTS AND DISCONNECTIONS

OHIO POWER: 1990	NO. 60-DAY DELINQUENT ACCTS	NO. OF SERVICE TERMINATIONS	PERCENT DISCONNECTED
JANUARY	33,405	248	0.007
FEBRUARY	37,547	295	0.008
MARCH	35,766	376	0.011
APRIL	34,074	1,666	0.049
MAY	32,714	2,582	0.079
JUNE	31,838	1,806	0.057
JULY	33,259	1,772	0.053
AUGUST	33,232	1,652	0.050
SEPTEMBER	34,438	1,626	0.047
OCTOBER	33,726	1,457	0.043
NOVEMBER	35,516	302	0.009
DECEMBER	33,446	140	0.004
TOTAL	408,961	13,922	0.034

ATTACHMENT A

STATUS REPORT ON RECEIVABLES OUTSTANDING  
AS A PERCENT OF ORIGINAL SALES

	MONTH											
	J	F	M	A	M	J	J	A	S	O	N	D
Percentages outstanding for 1970 from sales of:												
Same month	90%	89%	91%	95%	97%	93%	86%	92%	91%	90%	91%	90%
One month before	60	62	59	68	73	69	59	54	62	63	61	60
Two months before	20	19	18	35	37	33	23	20	17	21	22	20

**NOTE**

To ascertain the payment figures for one month's original sales, see the numbers in a descending left-to-right diagonal pattern. Thus, the sequence 86%-54%-17%, singled out for July-August-September of 1970, refers to balances originating in July's sales as they remain outstanding as of the end of three consecutive months.

**SOURCE:**

Wilber Lewellen and Robert Johnson, "Better way to monitor accounts receivable," *Harvard Business Review*, at 101, 107 (May-June 1972).

# The Legality of Conditioning Utility Service on Payment of a New Roommate's Old Debt

*35 Clearinghouse Review 330 (September/October 2001)*

*By Roger D. Colton*

This article evaluates the lawfulness of a public utility company refusing, or discontinuing, service to a customer because a third person, who owes the utility money from an account at a previous residence, lives with the customer. The article considers a customer who has existing utility service and is current on her bills. She allows a roommate to move in, who, it turns out, is delinquent on her utility bill from her former residence. The customer had no connection with the roommate at the time the previous bill was incurred. Nor did the customer ever agree to pay the utility the money owed by her roommate from the prior address. Upon learning that the delinquent bill payer resides with the customer, the utility threatens to terminate the customer's service unless the roommate's old bill is paid (or the roommate moves out).

The issue is governed not only by principles of public utility law, but by basic contract law as well. It does not matter whether the utility in question is an electric, natural gas, water/sewer or telephone utility. The principles are the same in each situation. The discussion is divided into four parts. Part one evaluates a utility's threat to disconnect service using basic contract law principles.<sup>1</sup> Part two examines the law of implied contracts. Part three examines how the utility action in question can be assessed using-utility regulatory principles. Finally, Part four explores the applicability of fair debt collection law.

---

<sup>1</sup>This article speaks of disconnection of service. Each principle discussed herein, however, applies with equal force to the denial of an application for new service. *See generally*, *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974) (Clearinghouse No. 5,162); *Re Tampa Elec. Co.*, 49 Pub. Util. Rep. 4<sup>th</sup> (PUR) 547 (Fla. Pub. Serv. Comm'n 1982).

This article concludes that a utility acts unlawfully when it seeks to disconnect service to a current customer for nonpayment of a roommate's bill, when the unpaid bill at issue was incurred at a prior residence with which the customer had no connection.

## I. Basic Contract Law

The provision of utility service is a relationship governed by the law of contract.<sup>2</sup> The contract relationship is governed by the Uniform Commercial Code,<sup>3</sup> and the unlawful disconnection or denial of service gives rise to an action for breach of contract.<sup>4</sup>

A utility company may not hold a customer liable for an unrelated third party's debt when the customer was neither a party to the third person's contract with the utility nor a party contracting independently with the utility to pay the third person's debt.<sup>5</sup> In order to be held liable for a third person's debt, a customer must enter into a valid and binding contract with the utility company for payment of such debt. Otherwise, even if an agreement is made to pay the debt, it constitutes nothing more than an unenforceable gratuitous promise.<sup>6</sup> A binding contract requires mutual assent on all essential terms of the contract.<sup>7</sup> In addition, the contract must be supported by consideration.<sup>8</sup> Without any one of these elements, the contract is void.<sup>9</sup>

Contract principles have been applied frequently by public utility commissions considering this type of condition on service. The Florida Public Service Commission, for example, has embraced the rule that a customer may not be held responsible for a

---

<sup>2</sup>Williams v. City of Mount Dora, 452 So.2d 1143 (Fla. App. 5th Dist. 1984); *see generally*, 64 AM. JUR. 2D. *Public Utilities* §28 (1972).

<sup>3</sup>*See*, Gary Spivey, *Electricity, Gas or Water Furnished by Public Utilities as "Goods" within the Provisions of UCC Art. 2 on Sales*, 48 A.L.R.3D 1060 (1973).

<sup>4</sup>*See*, 64 AM. JUR. 2D *Public Utilities* §28 (1972); *see e.g.*, DeLong v. Osage Valley Elec. Co-op Ass'n, 716 S.W.2d 320 (Mo. App. 1986).

<sup>5</sup>Smith v. Tri-County Electric Membership Corporation, 689 S.W.2d 181 (Tenn. App. 1985); *Re-Tampa Electric Co.*, 49 P.U.R.4th Pub. Util. Rep. 4th (PUR) 547 (Fla. Pub. Svc. Serv. Comm'n 1982).

<sup>6</sup>17 AM. JUR. 2D *Contracts* §2 (1964)

<sup>7</sup>*Id.* at §18.

<sup>8</sup>*Id.* at §86.

<sup>9</sup>*Id.* at §1.

third person's bill. In *Re Tampa Electric Company*, the commission ordered the company to delete from its rules a provision that permitted such liability.<sup>10</sup> The commission concluded that:

The company can hold only the customer of record responsible for the customer's bill. The company can protect itself and its other rate payers from nonpayment by requiring an adequate security deposit. If the deposit does not fully satisfy the arrearage, the company can sue the customer. What the company cannot do is force another person, not legally responsible for the debt, to pay the debt in order to obtain or continue receiving electric service.<sup>11</sup>

The general rule is that utilities may not terminate or deny an application for service to one person based upon charges incurred on another person's account.<sup>12</sup> "[I]t is irrelevant whether the supplier and collecting authority is a municipality or a public utility company, since the results, all other things being equal, are the same in either case."<sup>13</sup>

#### A. The Doctrine of Consideration

Principles of consideration were applied in a utility context in *Meridian Light and Railway Company v. Steele*.<sup>14</sup> In *Meridian*, Steele entered into a contract with a utility to

---

<sup>10</sup>*Re Tampa Electric Company*, 49 Pub. Util. Rep. 4th (PUR) 547, 591 (Fla. Pub. Serv. Comm'n 1982).

<sup>11</sup>*Id.*

<sup>12</sup> See generally, Annotation, *Liability of premises or their owner or occupant, for electricity, gas or water charges, irrespective of who is the user* 19 A.L.R.3D 1227 (1968). ("A broadly stated general proposition, recognized in numerous cases within the scope of the present annotation, is that, at least in the absence of an authorized lien, specific statute, or express agreement, no liability ordinarily can be imposed on premises, or their owner or occupant for unpaid utility charges, irrespective of who is the user.") *Id.* at 1231 - 1232. One legal analysis concludes, "without a contract between the utility and the customer it seeks to charge, liability cannot be imposed by the company except in very limited circumstances." *Third Party Liability for Gas, Electric, Water and Telephone Bills*, PULP NEWS (Fall 1989), at 4.

<sup>13</sup> 19 A.L.R.3D at 1231.

<sup>14</sup>*Meridian Light and Ry. Co. v. Steele*, 83 So. 414, 121 Miss. 114 (1920).

furnish electricity for her home. Later, when Steele moved to a new residence, she entered into a contract with the utility in which she agreed that she would pay the arrearage that she incurred at her former residence, or face termination. The court held that the contract signed by Ms. Steele, "in so far as she may be bound to pay the arrearage on her former residence before installment of lights in her present residence was without consideration and void . . . ." <sup>15</sup>

In the case of a roommate's debt, a utility's attempt to procure payment of the third party's debt from the customer is not supported by consideration. Moreover, there is no promise on the part of a customer to pay the debt. Originally, the utility company promised to provide the customer with electric service to her residence. In return, the customer agreed to pay the utility at a certain rate. The utility provided the service and the customer paid the rate for that service in a full and timely fashion. The utility subsequently threatens to disconnect service unless the customer pays the back bills of the roommate. Even if the customer had agreed to pay the additional amount, she would have received no new benefit, nor would the company have suffered any new detriment. <sup>16</sup> Such a transaction cannot be considered a binding contract. <sup>17</sup>

#### **B. The Doctrine of Duress**

In addition to needing consideration to form a contract, there must be consent. One doctrine governing whether consent exists is the doctrine of duress. Even if a customer knowingly enters into a contract with her utility imposing liability for the debt of a third party, that contract provision is voidable because it is contaminated by duress.

The general doctrine of duress today is that any threat which overcomes the free will of a party constitutes duress. <sup>18</sup> The doctrine of duress makes the customer's consent to be bound by the roommate's prior debt in order to avoid the disconnection of service

---

<sup>15</sup>*Id.* at 415.

<sup>16</sup>*See*, 17 AM. JUR. 2D *Contracts* §§85, 96 (1964).

<sup>17</sup>*Meridian*, 83 So. at 414.

<sup>18</sup>*See e.g.*, *Kaplan v. Kaplan*, 25 Ill. 2d 181, 182 N.E.2d 706, 709 (1962).

irrelevant in that the presence or not of consent is not at issue. Consent is conceded; the argument is that the consent was coerced and thus not a product of free will.

Because of the monopolistic position of utility companies, public utilities are particularly subject to claims of duress when they threaten to breach a contract by disconnecting service.<sup>19</sup> The threat of service termination, combined with the monopolistic character of a utility, raises the specter of duress.

Remedies for duress are primarily aimed at the cancellation of the unjust gain.<sup>20</sup> Coerced payment of an unrelated third party's debt by an innocent customer represents such a gain.

In sum, a public utility may not unilaterally impose an obligation upon a customer without some manifestation of consent. Even if consent is obtained, it must be obtained without duress, and there must also be some exchange of consideration. Without all of these elements of a contract, any effort to disconnect service for nonpayment of the roommate's old debt is invalid and unlawful.

## II. No Implied Contract

While utilities frequently argue that there is an implied obligation to pay, this argument is not grounded in the law. Generally, when there is an express contract between a utility company and one of its customers, such an agreement will not support liability by parties other than the person who has contracted.<sup>21</sup> Thus, when an applicant for service enters into an express contract for the service, liability for that service cannot be transferred to a person not a party to the express contract.<sup>22</sup>

---

<sup>19</sup> See, John Dalzell, *Duress by Economic Pressure*, 20 N.C.L. REV. 237 (1942).

<sup>20</sup> See, RESTATEMENT (SECOND) OF CONTRACTS §318, cmt. a; see also, John P. Dawson, *Economic Duress—An Essay in Perspective*, 45 MICH. L.REV. 253, 283-85 (1947).

<sup>21</sup> See e.g., *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

<sup>22</sup> Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and

The basic doctrine is very clear. One legal encyclopedia states, for example, that : "As a general rule, if an express contract between the parties is established, a contract embracing the identical subject cannot be implied; in such a case, an implied agreement cannot co-exist with the express contract."<sup>23</sup>

Moreover, this encyclopedia continues:

There may be a contract implied in law on a point not covered by an express contract, but there is no implied contract on a point fully covered by an express agreement.<sup>24</sup>

Both of these propositions, that involving implied-in-fact contracts and that involving implied-in-law contracts, will be discussed in more detail below.

### **A. Implied-in-Fact Contracts.**

The courts will not find a contract implied in fact where an express contract exists. Application of implied-in-fact contracts has been denied even when the attempted transfer of liability for a utility bill is based on the argument that the person resided with the person who contracted for service, and used the service or benefited from that service, and thus has an implied-in-fact contract to pay for that service.<sup>25</sup> For an implied-in-fact contract to arise, the court must find there was an intention to form a contract even though the intention was never put into words.<sup>26</sup> If the utility has entered into an *express* contract with a different person, that finding of intention cannot be made.<sup>27</sup> The reason for

---

who did nothing to assume its obligations." *Gold v. Gibbons*, 3 Cal. Rptr. 117, 118 (1960).

<sup>23</sup> 17A AM. JUR. 2D *Contracts* §14 (1990).

<sup>24</sup> 17A AM. JUR. 2D *Contracts* §14 (1990).

<sup>25</sup> See e.g., *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

<sup>26</sup> See e.g., *Travelers Fire Ins. Co. v. Brock & Co.*, 47 Cal. App. 2d 387, 392, 118 P.2d 25, 27 (1941) ("A contract implied in fact is one not expressed by the parties, but implied from facts and circumstances showing a mutual intention to contract.")

<sup>27</sup> The California courts have been unequivocal on this point. "Indeed, there simply cannot exist a valid express contract on the one hand and an implied contract on the other, each embracing the identical subject but requiring different results and treatment." *Tollefson v. Roman Catholic Bishop of San Diego*, 268 Cal. Rptr. 550, 557, 219 Cal. App. 3d 843 (Cal. App. 4th Dist. 1990) (citations omitted); see also, *Wal-Noon Corp. v. Hill*, 45 Cal. App. 3d 605, 613, 119 Cal. Rptr. 646

this rule is "simply that where the parties have freely, fairly and voluntarily bargained for certain benefits in exchange for undertaking certain obligations, it would be inequitable to imply a different liability and to withdraw from one party benefits for which he has bargained and to which he is entitled."<sup>28</sup>

The principle particularly applies if the party seeking to recognize an implied-in-fact contract has proceeded on the notion that the contract "was a valid, subsisting, enforceable contract."<sup>29</sup> The local utility company and the customer (i.e., the person entering into the express contract) have "freely, fairly and voluntarily" entered into a bargain: the utility company agreed to provide service and the customer agreed to pay for it. Through the contract, the utility company obtained the benefits of the sales of its service (and the profit in each unit charge). Having obtained the benefits of the express contract, and having asserted the contract as a "valid, subsisting, enforceable" agreement each time it rendered a bill, the utility company cannot seek later to abandon the express contract and to proceed on an implied contract theory against a third person.<sup>30</sup>

### **B. Implied-in-Law Contracts.**

For an implied-in-law contract (or recovery in *quantum meruit*) to exist, a utility must show an absence of *both* an express contract *and* an implied-in-fact contract.<sup>31</sup> In addition, someone must have acted wrongfully towards the utility company and the person to be charged must have been unjustly enriched for an implied-in-fact contract to

---

(Cal. App. 3d Dist. 1975) ("There cannot be a valid, express contract and an implied contract, each embracing the same subject matter, existing at the same time."). For application of this principle to the collection of telephone debts from a third party, see *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

<sup>28</sup> *Wal-Noon*, 45 Cal. App. 3d at 613.

<sup>29</sup> *Id.*

<sup>30</sup> "Until an express contract is avoided, an implied contract, essential to an action on a common count cannot arise, and it necessarily follows that until an express contract is avoided, an action on an implied contract cannot be maintained. . . A party cannot retain substantial benefits under an express contract and recover under the theory of an implied contract." *Lloyd v. Williams*, 227 Cal. App. 2d 646, 649, 38 Cal. Rptr. 849 (1964) (citations omitted).

<sup>31</sup> See, note 25 and accompanying text. For purposes of this discussion, seeking recovery under an implied-in-law contract is deemed to be identical to seeking recovery in *quantum meruit*.

arise.<sup>32</sup> The "wrongful" behavior must involve some behavior such as deceit, oppression or extortion.<sup>33</sup>

There are three "familiar, essential elements of recovery under *quantum meruit*."<sup>34</sup> All three elements must be met.<sup>35</sup> First, there must be valuable services rendered to the person sought to be charged. Second, the services must have been accepted by the person sought to be charged, used and enjoyed by that person. Finally, and most importantly for purposes here, the acceptance must have been under such circumstances as "would reasonably inform the person sought to be charged that plaintiff, in performing such services, was expecting to be paid *by the person sought to be charged*."<sup>36</sup> In short, an implied-in-law contract is not a "contract" at all, but rather an equitable doctrine that involves a legal fiction created so that a person who benefits from the use of a particular service is not unjustly enriched by such use.<sup>37</sup>

The key term in this test is "unjust" enrichment. As the courts have made clear, "to recover on this theory, *it is not enough to show that goods or services were furnished to another . . .*"<sup>38</sup> Rather, "it must also be shown that the person to whom the goods or services were furnished received a substantial benefit therefrom and that it would be unconscionable to permit him to retain the benefit without paying for its reasonable value."<sup>39</sup>

As a matter of law, where an express contract exists, an implied-in-law contract cannot be found.<sup>40</sup> More particularly, if an express contract exists under which one person is the party responsible for paying for services, an implied-in-law contract will not

---

<sup>32</sup> N.Y. Tel. Co. v. Teichner, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

<sup>33</sup> See, Roger D. Colton, *Heightening the Burden of Proof in Utility Shutoff Cases Involving Allegations of Fraud*, 33 How. L.J. 137 (1990).

<sup>34</sup> Fontaine v. Home Box Office, 654 F. Supp. 298, 303 (C.D. Cal. 1986) (construing California law).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 303 (emphasis added).

<sup>37</sup> *Id.*

<sup>38</sup> Harold A. Newman Co. v. Nero, 31 Cal. App. 3d 490, 107 Cal. Rptr. 464, 468 (5th Dist. 1973). (emphasis added)

<sup>39</sup> *Id.*

<sup>40</sup> Wal-Noon Corp. v. Hill, 45 Cal. App. 3d 605, 613, 119 Cal. Rptr. 646 (Cal. App. 3d Dist. 1975).

serve to transfer liability to a third party. An implied-in-law contract will not substitute one promisor or debtor for another.<sup>41</sup> If there is an express contract for one person to pay the utility bill, the last of the three essential elements for recovery in *quantum meruit* is not met: that the utility provided the service "expecting to be paid *by the person sought to be charged*."<sup>42</sup>

Moreover, courts have articulated a number of factors to consider regarding whether it would be "unconscionable to permit [one] to retain the benefit without paying for its reasonable value."<sup>43</sup> For example, in the instance of the rendition of *services*, a third person is less likely to be charged in *quantum meruit* since the person sought to be charged does not have the opportunity to choose to return the services as an alternative to payment.<sup>44</sup> Second, it would be inequitable to impute the charges to a third party since the third party did not control the usage nor have any power to restrict or interrupt the rendition of the service.<sup>45</sup>

A related and persuasive line of reasoning was followed in the Michigan case of *Cascaden v. Magryta*.<sup>46</sup> In that case, certain contractors made repairs to a fire-damaged home at the request of the insurance company adjusters. When the insurance company subsequently denied payment for the work, the contractors sought recovery from the owner of the property based on theories of both implied-in-fact contract and implied-in-law contract. The court denied recovery under an implied-in-fact contract theory, noting:

---

<sup>41</sup>See e.g., *Moll v. Wayne County*, 332 Mich. 274, 50 N.W.2d 881 (1952); *City of Detroit v. City of Highland Park*, 326 Mich. 78, 39 N.W.2d 325 (1949).

<sup>42</sup>*Fontaine v. Home Box Office*, 654 F. Supp. 298, 303 (C.D. Cal. 1986).

<sup>43</sup>See *infra* note [ ] and accompanying text.

<sup>44</sup>*Wal-Noon*, 45 Cal. App. 3d at 613 (distinguishing the payment of money or the delivery of goods).

<sup>45</sup>See, *Griffith Co. v. Hofues*, 201 Cal. App. 2d 502, 19 Cal. Rptr. 900, 904 (5th Dist. 1962) ( finding that defendant had not requested the services, and, at the time services were being rendered, defendant was in no position to stop it); accord, *City of Detroit*, 39 N.W.2d at 334 (finding that in denying recovery under implied-in-law contract, or *quantum meruit*, the courts must consider the fact that "it would be impractical if not impossible for defendant to refuse to accept the services. . .")

<sup>46</sup>*Cascaden v. Magryta*, 247 Mich. 267, 225 N.W. 511 (1929).

[T]he work was not done and the materials not furnished under circumstances authorizing plaintiffs to entertain an expectation of payment from defendants. The plaintiffs expected the insurance company to make payment out of the insurance, and only after denial of liability by the adjuster did they seek to fasten liability upon defendants, under an implied contract.<sup>47</sup>

The court denied recovery under an implied-in-law contract, stating: "the defendants could not, while the insurance company was exercising the option right to repair, do otherwise than to submit. Out of such submission, no implied contract to pay plaintiffs could arise."<sup>48</sup>

In sum, if the current customer has not contracted for the service or has not been unjustly enriched by receiving the service, the transfer of arrears to the person's account is not permitted. More generally, the fact that there is an express contract for the utility to provide service, and for the contracting party to pay for the service provided, prevents the imposition of third party liability in all but the most limited of circumstances. When an express contract exists, a third person not a party to that contract cannot be held liable for payment of arrears under either an implied-in-fact contract theory or an implied-in-law contract theory.

### **III. Disconnection for Collateral Matter.**

Any threat to disconnect service for nonpayment of another's bill must be analyzed in light of basic utility regulatory law in addition to contract law. One regulatory principle is that a customer must pay for service that she has taken.

---

<sup>47</sup> *Id.* at 512.

<sup>48</sup> *Id.*

Conversely, however, if a customer requests service and pays for it, the utility may not deny it.<sup>49</sup>

In addition to paying for the service they take, utility customers have a duty to comply with the reasonable regulations of the utility.<sup>50</sup> For a disconnection to be predicated upon a violation of a utility regulation, however, the regulation must be found to be reasonable. Among those regulations universally held *not* to be reasonable include disconnecting service for a collateral matter,<sup>51</sup> disconnecting service for nonpayment of a third party's debt,<sup>52</sup> and disconnecting service for nonpayment of an unrelated service.<sup>53</sup>

The utility practice examined in this article seeks to accomplish one of two ends: either (1) to obtain payment from the customer for a debt with which the customer has no connection; or (2) to force the customer to refuse to live with a person who has a pre-existing debt. Both goals run afoul of the rule on collateral matters.

It has been well established that a utility has no legally enforceable interest in obtaining payment for the debt of a third party. In *Koger v. Guarino*, for example, a federal district court held that a utility "has no legitimate interest in collecting delinquent water bills from those who have no responsibility therefor."<sup>54</sup> According to the *Koger* court, "a collection scheme that divorces itself entirely from the reality of legal accountability for the debt involved is devoid of logical relation to the collection of unpaid water bills from the defaulting debtor."<sup>55</sup> The first of the two possible grounds for

---

<sup>49</sup>See e.g., *Denver Welfare Rights Org. v. Pub. Util. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976) (Clearinghouse No. 12,655); *Josephson v. Mountain Bell Tel. and Tel. Co.*, 576 P.2d 850 (Utah 1978); *Miller v. Roswell Gas and Elec. Co.*, 166 P. 1177 (N.M. 1917); *Komisarek v. New England Tel. and Tel. Co.*, 282 A.2d 671 (N.H. 1971).

<sup>50</sup>64 AM. JUR. 2D *Public Utilities* §16 (1972).

<sup>51</sup>Annotation, *Right of public utility corporation to refuse its service because of collateral matters not related to that service*, 55 A.L.R. 771 (1928).

<sup>52</sup>C. C. Marvel, Annotation, *Liability of Premises, or Their Owner or Occupant, for Electricity, Gas, or Water Charges, Irrespective of Who is the User*, 19 A.L.R.3D 1227 (1968).

<sup>53</sup>Maurice T. Brunner, *Right of Municipality to Refuse Services Provided by it to Resident for Failure of Resident to Pay for Other Unrelated Services*, 60 A.L.R.3D 714 (1974); but see, Annotation, *Right to cut off water supply because of failure to pay sewer service charge*, 26 A.L.R.2D 1359 (1952).

<sup>54</sup>*Koger v. Guarino*, 412 F. Supp. 1375, 1392 (E.D. Pa. 1976) (Clearinghouse No. 18,181).

<sup>55</sup>*Id.*; accord, *Sterling v. City of Maywood*, 579 F.2d 1350 (7th Cir. 1978).

the utility regulation in question, therefore, provides no reasonable basis for disconnecting service.

Neither does the utility have a basis for forcing the customer to refuse to live with a person with a pre-existing debt from a prior address. If the new roommate results in future bills going unpaid, the utility has a remedy at that time. A utility can unquestionably terminate its provision of service for nonpayment of a current bill.<sup>56</sup>

The rule banning the disconnection or denial of service for collateral matters is strictly enforced. Numerous courts, for example, have supported the principle that utility companies may not coerce payment of an old utility bill from a previous residence by refusing or terminating service at a new residence.<sup>57</sup> This is so because the previous bill was based on a separate contract involving separate premises.

In *Elwell v. Atlanta Gas and Electric Company*,<sup>58</sup> the court stated:

If in the case at bar, the former claim was a past-due indebtedness and was incurred at some other place of residence and was a wholly separate transaction, it must be collected in the usual way in which debts are collectible, and the defendant cannot force from the plaintiff his present right, under the contract, to the gas service, which is a necessity, so long as the plaintiff will promptly pay current installments and otherwise conform to the reasonable rules governing the supply of gas. The relation of the parties to each other (growing out of their past separate transactions) have no influence upon their rights and obligations in their present transaction.<sup>59</sup>

---

<sup>56</sup>See e.g., Annotation, *Right to Cut Off Water Supply Because of Nonpayment of Water Bill or Charges for Connection, etc.*, 28 A.L.R. 472 (1924); Annotation, *Right to Cut Off Supply of Electricity or Gas Because of Nonpayment of Service Bill or Charges*, 112 A.L.R. 237 (1938).

<sup>57</sup>*Wright v. So. Bell Tel. and Tel. Co.*, 313 S.E.2d 150, 169 Ga. App. 454 (1984); *Elwell v. Atlanta Gas and Light Co.*, 181 S.E. 599, 51 Ga. App. 919 (1935); *Miller v. Roswell Gas and Elec. Co.*, 166 P. 1177, 22 N.M. 594 (1917); *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd* 224 U.S. 148, 56 L.Ed. 703, 32 S.Ct. 465 (1912).

<sup>58</sup>*Elwell*, 181 S.E. 599.

<sup>59</sup>*Id.* at 601.

Some courts have even held that where the same customer has separate but current contracts for utility service at different locations, the utility company may not terminate service at one location because of a default at another.<sup>60</sup> Similarly, a utility may not withhold service to a new customer until he or she pays the delinquent bill of a prior customer who formerly lived at the same residence.<sup>61</sup>

#### IV. Consumer Credit Law

The reasonableness of a utility seeking to impose the debt of a roommate on a customer who has no connection with the incursion of that debt should be considered from the perspective of the roommate/debtor, as well as from the perspective of the customer. Any regulation or tariff must, to be enforceable, pass the test of being just and reasonable.<sup>62</sup> Whether imposed by statute on utilities subject to state public utility commission regulation, or imposed by the common law on otherwise unregulated utilities, the duty to render just and reasonable service precludes the enforcement of unreasonable requirements or regulations.<sup>63</sup>

Aside from the protections discussed above that extend to the customer of the utility, some protections extend to the debtor/roommate as well. The utility has no legitimate interest in even disclosing the existence of the prior debt to anyone other than the debtor/roommate herself. The customer, in other words, should not even be informed of the prior debt to the utility.

---

<sup>60</sup>Josephson v. Mountain Bell Tel. and Tel. Co., 576 P.2d 850 (Utah 1978); Komisarek v. New England Tel. and Tel. Co., 282 A.2d 671, 111 N.H. 301 (1971).

<sup>61</sup>Oliver v. Hyle, 513 P.2d 806 (Ore. 1973) (Clearinghouse No. 7,391); Bettini v. City of Las Cruces, 485 P.2d 967 (N.M. 1971); Moore v. Metro. Util. Co., 477 P.2d 692 (Okla. 1970) (Clearinghouse No. 4,387).

<sup>62</sup>National Consumer Law Center, *The Regulation of Rural Electric Cooperatives*, at nn. 1 – 6 (“In contrast to legislative and constitutional restraints on public utilities is the common law duty to serve. The fundamental common law “rule” requires a utility to serve on reasonable terms all those who desire the service it renders. . . . In short, under the common law, a utility must make its service available to all members of the public to whom its public use and scope of operations extend, who apply for such service, and who comply with its reasonable rules and regulations.”)

<sup>63</sup>Id., at nn 8 – 11 (“The duty of a public utility “is one implied at common law and need not be expressed by statute, or contract, or in the charter of the public utility.”) (“The duty may well be incorporated into state statutes for regulated utilities.”)

Even though the federal Fair Debt Collection Practices Act is not directly applicable -- a utility collecting its own debt is not a "debt collector" under the statute -- the language, reasoning and legislative history of the Act certainly give insights into whether disclosure of the roommate/debtor's debt is either just or reasonable.<sup>64</sup> The Act prohibits a debt collector from communicating with any person other than the debtor (with very narrow exceptions not relevant herein, such as the debtor's attorney, the debt collector's attorney, a credit reporting agency) absent the debtor's consent.<sup>65</sup> Since the Act is not directly applicable, however, the legislative history is most important for gleaning lessons as to the reasonableness of the utility practice at issue here. According to the Senate Report:

[T]his legislation adopts an extremely important protection . . . [I]t prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives or employer. *Such contacts are not legitimate collection practices* and result in serious invasions of privacy. . . .<sup>66</sup>

Roommates are third persons like "friends," "neighbors," or "relatives." Moreover, the particular activities prohibited in the legislation make clear that the legislation contemplates the inclusion of roommates among those whom debt collectors may not contact. For example, in the event a debt collector makes a collect phone call, he violates the Act if he specifies to the operator the collection purpose of the call and the operator in turn conveys the information to a third-party answering the phone. In addition, a debt collector may not use a name or other information on an envelope indicating that its contents pertain to a debt collection.<sup>67</sup>

---

<sup>64</sup>Fair Debt Collection Practices Act, 15 U.S.C. §1692 (1994).

<sup>65</sup>15 U.S.C. §1692c(b) (1994).

<sup>66</sup>SEN. REP. NO. 95-382, at 4 (1977) (*emphasis added*).

<sup>67</sup>*See generally*, ROBERT HOBBS, FAIR DEBT COLLECTION §5.6.8 (4<sup>th</sup> ed. 2000). In addition to being unlawful under federal law, the action would be unlawful under state debt collection practices acts. *Id.* at § 11.2.3.

Contacting third persons such as a consumer's friends, neighbors or relatives, Congress has declared, is not a legitimate collection practice. Even though the Fair Debt Collection Practices Act is not directly applicable to a public utility, a commission or court reviewing the reasonableness of disclosing to a utility customer a roommate's debt, which was incurred at a prior address with which the customer had no connection, should hold to this same privacy principle and disapprove the practice.<sup>68</sup>

A public utility may not threaten to terminate service, or refuse to provide service, to a customer because of the presence of a roommate who has a debt at a separate address with which the customer has no connection. If such a threat arises, the utility customer has several avenues of redress. Basic principles of contract and utility law prohibit this practice. In addition, quite apart from the customer, the roommate with the prior debt has grounds for redress as well. Not only should the customer be free of responsibility for the prior debt, the customer should be free of any *knowledge* of the prior debt without the roommate's express consent.

---

<sup>68</sup>Even where the utility is not covered by a debt collection practices act, the activity may well be unlawful under a state Unfair and Deceptive Acts and Practices statute. *Id.* at § 11.3.

Author credit:

Roger D. Colton, formerly a staff attorney and utility specialist with the National Consumer Law Center, is a consultant with Fisher, Sheehan & Colton, Public Finance and General Economics, 34 Warwick Road, Belmont, MA 02478; 617.484.0597; [rcolton101@aol.com](mailto:rcolton101@aol.com)

## Limiting The "Family Necessaries" Doctrine as a Means of Imposing Third Party Liability for Utility Bills

*35 Clearinghouse Review 193 (July/August 2001)*

Roger D. Colton  
Fisher, Sheehan & Colton  
Public Finance and General Economics  
34 Warwick Road, Belmont, MA 02478  
(voice) 617-484-0597 \*\*\* (fax) 617-484-0594  
(e-mail) roger@fsconline.com

Low-income households seeking protection from the disconnection of utility service often are faced with allegations of liability for service for third parties. One of the most troubling such allegations involves the claim by a public utility that one separated spouse is responsible for the bills of the other spouse under a state's "family necessities" doctrine.<sup>1</sup> Under such a claim, a creditor seeks to impose liability on both spouses for the "necessities of the family."<sup>2</sup> While judicially overturned in some jurisdictions,<sup>3</sup> family necessities

---

<sup>1</sup>There are also "family expense" statutes. A "family expense" is defined much more broadly than a "family necessity." A "family expense" may include: books, pictures and ornaments for the home; a piano or other musical instruments; and clothing for one member, because it preserves health for the benefit of all, HUSBAND AND WIFE, AM. JUR. 2D §373 *What Constitutes Family Expenses and Household Supplies* (1968). *See also*, 45, *infra*, and accompanying text.

<sup>2</sup>*See generally*, Karol Williams, *The Doctrine of Necessaries: Contemporary Application as a Support Remedy*, 19 STETSON L.REV. 661 (1990); Comment, *The New Doctrine of Necessaries in Virginia*, 19 U.RICH. L.REV. 317 (1985); Note, *The Unnecessary Doctrine of Necessaries*, 82 MICH. L.REV. 1767 (1984); Comment, *The Doctrine of Necessaries & Wisconsin's Attempt to Modify The Doctrine to Conform to the Equal Protection Clause*, 1 LAW AND INEQ. 407 (1983).

<sup>3</sup>*See e.g.*, *Condore v. Prince George County*, 425 A.2d 1011, 1019 (Md. App. 1981); *Schilling v. Bedford County Memorial Hospital*, 225 Va. 539, 303 S.E.2d 905, 908 (1983); *Kilbourne v. Hanzelik*, 648 S.W.2d 932 (Tenn. 1983).

statutes have survived constitutional challenge in other states.<sup>41</sup>

Given the continuing viability of this doctrine as a general rule of liability in many jurisdictions,<sup>51</sup> the purpose of this memo is to introduce the limits of the doctrine.<sup>61</sup> A public utility does not have *carte blanche* approval to impose the debts of one spouse upon the other spouse, even in those jurisdictions where the family necessities doctrine is alive and well. Several defenses exist for the low-income advocate even in those instances where a utility seeks to impose liability under a family necessities doctrine of continuing validity. In such an instance, the utility may not simply rely upon the doctrine, but must show also:

1. That a "family" exists in fact on whose behalf the doctrine is invoked;
2. That the expense is one on behalf of the family and not a personal expense;

---

<sup>41</sup>See e.g., *Jersey Shore Medical Center--Fitkin Hospital v. Estate of Sidney Baum*, 417 A.2d 1003 (N.J. 1980); *Marshfield Clinic v. Discher*, 105 Wis.2d 506, 314 N.W.2d 326 (1982). The most common response has been simply to expand the doctrine to include both spouses. See e.g., *Borgess Medical Center v. Smith*, 190 Mich. App. 796, 386 N.W.2d 684 (1986); *North Carolina Baptist Hospital v. Harris*, 319 N.C. 347, 354 S.E.2d 471 (1987); *In Re. Rauscher*, 40 Ohio App. 3d 106, 531 N.E.2d 745 (1971); *Richland Memorial Hospital v. English*, 295 S.C. 511, 369 S.E.2d 395 (1984).

<sup>51</sup>See generally, Ian Freeman and M. Todd Haynie, *Creditors' Rights: Court Examines the Application of the Necessaries Doctrine and the Preconditions of a Person's Liability for the Debts of a Spouse*, 48 S.C.L.REV. 53 (1996); Elizabeth Heaney, *Pennsylvania's Doctrine of Necessities: An Anachronism Demand Abolishment*, 101 DICK. L.REV. 233 (1996); see also, Jay Zitter, *Modern status of rule that husband is primarily or solely liable for necessities furnished wife*, 20 A.L.R.4TH 196 (1983); Jay Zitter, *Necessity, in action against husband for necessities furnished wife, of proving husband's failure to provide necessities*, 19 A.L.R.4TH 432 (1983); Jay Zitter, *Wife's liability for necessities furnished husband*, 11 A.L.R.4th 1160 (1982).

<sup>61</sup>This memo is not intended to be a comprehensive treatment. The law in this area is very state-specific.

3. That the expense is for a "necessity" of life;
4. That the utility relied upon the credit of the noncontracting spouse in extending the credit; and
5. That the obligation has not been satisfied, or in some other fashion limited, by a court order of a specified sum of child support.

These limits need not be raised in the alternative. A utility must demonstrate *each* in order to rely upon the family necessities doctrine to impose liability on a non-contracting spouse as a matter of law. Each of these potential limits is discussed in more detail below.

The purpose of this memo, in short, is to explore the defenses an advocate may raise when a public utility relies upon the family necessities doctrine (a.k.a., family expense doctrine) as a basis to impose third party liability for utility bills, accepting the validity of the doctrine as a starting point for analysis.<sup>17</sup> First, however, an overview of the necessities doctrine in general is in order.

#### I. OVERVIEW OF FAMILY NECESSARIES DOCTRINE.

"Under the traditional common law doctrine of necessities, a husband has the duty to support his wife and is responsible for the cost of necessary goods and services furnished to his wife by third parties if he has failed to provide the necessities himself."<sup>18</sup> Under the common law doctrine of necessities, if a husband neglects to furnish necessities to his wife,

---

<sup>17</sup>This is a strategic decision, as opposed to a decision as to the merits of the doctrine. If the controversy is litigated in an administrative forum, before the state public utilities commission (PUC), it seems unlikely that an advocate would succeed in convincing the PUC that the agency had authority to declare the family necessities doctrine unconstitutional.

<sup>18</sup> Comment, *The New Doctrine of Necessaries in Virginia*, 19 U. RICH. L. REV. 317 (1985).

she may purchase them herself on his credit.<sup>9</sup> According to one commentator, "this doctrine was once widely accepted as necessary to protect dependent wives and is based on the husband's general duty to support his family."<sup>10</sup>

The doctrine of necessities should not be applied blindly in this respect. The doctrine does not flow from a finding of joint liability on the part of both parties to a marriage. Rather, it historically has been a doctrine of protection. One review summarizes:

Prior to legislative enactments occurring in the twentieth century, married women had no right under traditional common law to own property or otherwise control their financial affairs. The extension of credit to a wife was only in her husband's name, because a married woman had no legal status to contract in her own right.<sup>11</sup>

The commentary then notes:

Due to this legal impediment, the common law placed the burden of providing support to a wife and children solely on the husband. The common law doctrine of necessities developed as a protective remedy for the hapless wife and children facing economic abandonment by the husband. The doctrine of necessities imposes liability on the husband to third parties who provide essential goods or services to the wife and children, when the husband abandons his duty to family support.<sup>12</sup>

Importantly, as this commentator notes, the doctrine of necessities is *not* intended to

---

<sup>9</sup> Note, *Inequality in Marital Liabilities: The Need for Equal Protection When Modifying the Necessaries Doctrine*, 17 U. MICH. J. L. REFORM. 43, 43 - 44 (1983).

<sup>10</sup>Id.

<sup>11</sup>Monrad Paulsen, *Support Duties Between Husbands and Wives*, 9 VAND. L.REV. 709 (1956). (notes omitted).

<sup>12</sup>Id., at 709.

be a creditor's remedy.<sup>13</sup> Rather, it is a "protective device" for the spouse needing support. One case summarizing the doctrine of necessities as recently as 1978 observed that "the duty of a husband to support his wife is a moral as well as a legal obligation; it is a marital duty, in the performance of which the public as well as the parties are interested."<sup>14</sup> The duty, the case concludes, is a "duty which is incident to the marriage and arises from the relation of marriage."<sup>15</sup> While some progressive thinking has gone into the usefulness of this doctrine,<sup>16</sup> in a utility shutoff situation, the doctrine often redounds to the detriment of low-income households, with a utility seeking to impose liability for a separated (but not divorced) spouse's utility bills incurred at a separate address.

Before turning to the common law and statutory law regarding family expenses in general, however, and the defenses that may be raised, it is instructive first to look at how the unique law of utility credit liability has treated the issue of spousal responsibility.

## II. UTILITY COMMON LAW AND THIRD PARTY SPOUSAL LIABILITY.

The courts have repeatedly, and correctly, held that a spousal relationship between customers does not create a special exception to the general rule at common law designed to

---

<sup>13</sup>See e.g., *Holliday Hosp. Ass'n v. Schwarz*, 166 So. 493, 495 (Fla. 1964).

<sup>14</sup>*Newport v. Newport*, 219 Va. 48, 56, 245 S.E. 134, 139 (1978); see generally, Robert Brown, *The Duty of the Husband to Support the Wife*, 18 VA. L.REV. 823 (1932).

<sup>15</sup>*Id.*

<sup>16</sup>See, Michael Ferry, Nina Balsam & Ruth Przybeck, *Litigation of the Necessaries Doctrine: Funding for Battered Women's Shelters*, 17 CLEARINGHOUSE REV. 1192, 1193 (1984).

protect vulnerable customers in disputes with monopoly utilities.<sup>17</sup> In *Cumberland Telephone and Telegraph Co. v. Hobart*,<sup>18</sup> the husband had arranged for a phone to be installed in his wife's business. When she sold the business, but left an overdue balance, the utility terminated the husband's residential account (which was also overdue at the time). Relying on *Burk v. City of Water Valley*,<sup>19</sup> *Wood v. Auburn*,<sup>20</sup> and other common law pronouncements, the *Hobart* court held that a husband is not liable for a wife's utility bills insofar as the two accounts at issue were separate and independent of each other.<sup>21</sup>

Other courts have reached this same result under the common law. In *Sulkin v. Brooklyn Edison Company*,<sup>22</sup> the New York courts disallowed the utility's termination of a residential account because of the wife's delinquent business account. So, too, in *DePass v. Broad River Power Company*,<sup>23</sup> did the court disallow a consumer's spouse's unpaid utility

---

<sup>17</sup>*Southwestern Bell Telephone Company v. Bateman*, 223 Ark. 432, 266 S.W.2d 289, 292 (1954). ("We agree that service could not be denied for the sole reason that her husband owed the company for a phone rental, which he had refused to pay\* \* \*.")

<sup>18</sup>*Telephone and Telegraph Co. v. Hobart*, 89 Miss. 252, 42 So. 349 (1906).

<sup>19</sup>*Burk v. City of Water Valley*, 40 So. 819, 820 (Miss. 1906).

<sup>20</sup>*Wood v. Auburn*, 87 Me. 287, 32 A. 906 (1895).

<sup>21</sup>*Hobart*, *supra* note 18..

<sup>22</sup>*Sulkin v. Brooklyn Edison Company*, 145 Misc. 484, 261 N.Y.S. 245, *aff'd*, 237 App. Div. 850, 261 N.Y.S. 929 (1932).

<sup>23</sup>*DePass v. Broad River Power Company*, 173 S.C. 387, 176 S.E. 325, 95 A.L.R. 545 (1934).

debt over a year old to be a basis for denying service to the consumer.<sup>24</sup>

Likewise, a wife is not responsible for a husband's utility bill. In *Vanderberg v. Kansas City Missouri Gas Co.*,<sup>25</sup> the wife, who resided with her husband and children, opened a boarding house, but was refused utility service due to a debt from a previous family residence, as well as a debt in the husband's name from his previous business. The wife agreed to pay the "family debt," but steadfastly refused to pay her spouse's obligation to the utility. The *Vanderberg* court held that a utility must enter a contract with a consumer despite nonpayment of the consumer's spouse's utility bill and reasoned as follows:

\* \* \*there is no more reason for compelling a married woman to pay her husband's debt, for the payment of which she is not legally bound, than there would be for compelling her to pay the debt of a stranger. The attempt made by [the utility] to coerce her into paying such debt was unreasonable and her refusal to submit to such coercion afforded no lawful excuse for\* \* \*refusal to enter into a contract with her.<sup>26</sup>

So, too, the Illinois Commerce Commission ruled in two separate cases that two complainants were not responsible for outstanding utility bills incurred by their husbands at residences where the complainants had never lived.<sup>27</sup> The Illinois Commission held that a utility could not refuse to provide service to the complainants under a "family expenses

---

<sup>24</sup> Rather than as a spousal liability case, however, *DePass* is most often cited as authority for the proposition that collection of a utility debt may be barred by estoppel to a creditor who abandons collection of a claim and later seeks to resurrect it after permitting it to become stale.

<sup>25</sup> *Vanderberg v. Kansas City Missouri Gas Co.*, 126 Mo. App. 600, 105 S.W. 17 (1907).

<sup>26</sup> *Id.*, at 20.

<sup>27</sup> *Burnside v. Central Illinois Light Co.*, Docket 89-0196 (Nov. 29, 1989); *Petty v. Central Illinois Light Co.*, Docket No. 89-0198 (November 29, 1989), *Public Utilities Fortnightly*, at 48 (Feb. 1, 1990) (abstract only).

statute" since there was "no family in fact" where the complainants and their husbands were separated and maintained separate residences.

As can be seen, the treatment of whether one spouse may legitimately be held responsible for the other spouse's bill is intermeshed with a number of independent limits on utility collection activity. It is generally held that the utility service at one address may not be disconnected for nonpayment of service at a different address.<sup>28</sup> A utility may not disconnect one service for the nonpayment of another, unrelated, service,<sup>29</sup> or due to a collateral matter.<sup>30</sup> A utility may not disconnect service for a third party's bill.<sup>31</sup> The fact that a spouse may be the third party involved does not change these basic common law principles.

### III. THE EXISTENCE OF A "FAMILY" IN FACT

---

<sup>28</sup>William Danne, Jr., *Denial of service: Right of public utility to deny service at one address because of failure to pay past service rendered at another*, 73 A.L.R.3d 1292 (1976); see also, Annotation, *Right of public utility to discontinue or refuse service at one address because of refusal to pay for past service rendered at another*, 95 A.L.R. 556 (1935).

<sup>29</sup>Maurice Brunner, *Unrelated service, right of municipality to refuse services provided by it to a resident for failure of resident to pay for other unrelated services*, 60 A.L.R.3d 714 (1974); see also, Annotation, *Right of municipal utility to cutoff water supply for nonpayment of charges for unrelated service*, 26 A.L.R.2d 1359 (1952).

<sup>30</sup> Annotation, *Right of public utility corporation to refuse its service because of collateral matter not related to that service*, 55 A.L.R. 771 (1928).

<sup>31</sup> Annotation, *Making payment for water or light (or gas) a charge upon the property or against the present owner or occupant irrespective of the person who enjoyed the service*, 13 A.L.R. 346 (1921), supplemented 55 A.L.R. 789 (1928), superseded, 19 A.L.R.3d 1227 (1968); see also, Roger Colton, *Utility Services for Tenants with Delinquent Landlords*, 20 CLEARINGHOUSE REV. 554 (1986).

The power of the state to create economic liability chargeable to either spouse for each other's purchases is said to be found in its authority to regulate the duty to support the families of its citizens.<sup>132</sup> It must be emphasized, however, that it is essential to recovery that a "family" exists in fact.

What is a "family"? In *Neasham v. McNair*,<sup>133</sup> the Iowa state supreme court found that "family is defined as a collective body of persons who live in one home, under one head or manager."<sup>134</sup> Similarly, in *Gilman v. Matthews*,<sup>135</sup> the court refused to impose liability on a wife for her husband's tuxedo and other suits because they had separated several months prior to his purchases and, accordingly, no "family" existed. Citing *Webster's Dictionary*, the *Gilman* court stated in terms nearly identical to Iowa's: "a family is defined to be a collective body of persons who live in one house and under one management."<sup>136</sup>

Cohabitation under one roof, however, is not an *absolute* prerequisite to the presence of a "family." A family relationship can be found to exist for purposes of applying the statute, imposing liability upon a spouse, despite the fact that husband and wife live apart. The family relationship may be found to exist even if spouses live in separate states.

In *Hudson v. King Bros.*,<sup>137</sup> the wife was found liable for her husband's purchases of clothing despite the husband having left the marital home to drift and travel around the

---

<sup>132</sup>41, *Husband and Wife*, AM.JUR.2D §§ 371 *et seq.* (1968), *citing*, *Mandell Bros. v. Fogg*, 182 Mass. 582, 66 N.E. 198 (1903).

<sup>133</sup>*Neasham v. McNair*, 103 Iowa 695, 72 N.W. 773 (1897).

<sup>134</sup>*Id.*, *citing*, *Menefee v. Chesley*, 66 N.W. 1038 (Iowa 1896). *Menefee* stated quite explicitly that "at law, [the word 'family'] has a well-defined meaning." *Id.*

<sup>135</sup>*Gilman v. Matthews*, 20 Colo. App. 170, 77 P. 366 (1904).

<sup>136</sup>*Id.*, at 369.

<sup>137</sup>*Hudson v. King Bros.*, 23 Ill. App. 118 (1887).

country. In *Hudson*, the couple had settled their marital differences and had divided all real estate and personality. The court imposed liability because the separation was amicable and relations remained cordial. The husband visited his wife and children and was allowed to remain when he became ill. The court observed: " \* \* \* he was treated as one of the family, ate at the same table, and occupied the same bed with his wife, a part of the time"<sup>38</sup> Thus, there was no marital separation sufficient to avoid liability for "family expenses."

In *Russell v. Graumann*,<sup>39</sup> the Washington hospital where the husband died was allowed to recover medical care costs from the widow despite the fact she resided across country in Pennsylvania. The court held that whether a family relationship was severed to make the family expense statute inapplicable was a question of intent. The court reasoned:

\* \* \* It is not necessary that the husband and wife shall at all times reside together under the same roof, in order that the legal status of the family may be preserved. It is a matter of common knowledge that many husbands in their struggles for a livelihood are often required to be far from home and for long periods of time \* \* \*. Such absence may be strong evidence of affection and regard for the family \* \* \*.<sup>40</sup>

In *Russell*, the court was presented with the wife's letters to her husband's nurses evidencing affection towards him and definite intent that the family bonds not be severed.

In contrast, in *Featherstone v. Chapin*,<sup>41</sup> the husband was a violent alcoholic whose dangerous behavior forced the wife and children to reside elsewhere. A former police officer was hired to supervise the husband in his long periods of intoxication. The court disallowed application of the family expense law to require the wife to pay for the husband's

---

<sup>38</sup>Id., at 123.

<sup>39</sup>*Russell v. Graumann*, 40 Wash. 667, 82 P. 998 (1905).

<sup>40</sup>Id., at 990.

<sup>41</sup>*Featherstone v. Chapin*, 93 Ill. App. 223 (1901).

"supervision." The court found that the husband's alcoholism and attendant misconduct had scattered his "family," so that the "family expense" doctrine was inoperative. A family separated by one adult member's inability to support the rest would not be charged with his expenses, as a family did not exist.<sup>42\</sup>

As can be seen, the best argument against a creditor's attempt to charge one spouse for goods and services furnished to the other is some objective demonstration of a decision to no longer live together as a family.

#### IV. EXISTENCE OF A "FAMILY EXPENSE."

A closely related, but nevertheless separate, test that expenses must meet is that goods or services purchased must be expenses for the "family," as opposed to those " \* \* individual, personal, or business expenses of a member of the family which do not contribute to family convenience, enjoyment or comfort."<sup>43\</sup>

Although the definition of "family expense" is more liberal than that of "family necessity" under the common law, the term would include the same essentials, including water, heat, light and telecommunications.<sup>44\</sup> When comparing these two distinct doctrines, there are, in general, fewer qualifications of need and frugality when charging spouses with "family expenses" than with "necessities."<sup>45\</sup>

#### V. THE EXISTENCE OF "FAMILY NECESSITIES."

---

<sup>42\</sup>Id., at 226 - 227.

<sup>43\</sup> AM. JUR. 2D., supra note 1.

<sup>44\</sup>Id., at §§ 373 - 374.

<sup>45\</sup>Id., at §§ 371 *et seq.*; see, *Hyman v. Harding*, 162 Ill. 357, 44 N.E. 754, *aff'g* 54 Ill. App. 434 (1896), defining "family expenses" as those articles that "conduce in a substantial manner to the welfare of the family generally and tend to maintain its integrity," *cited in*, *Carson Pirie Scott & Co. v. Hyde*, 235 N.E.2d 643, 645 (Ill. 1968).

In addition to other elements of a family expenses statute, a creditor must plead and prove that the expenses sought to be collected are, in fact, family "necessities." To date, no cases have been reported which specifically focused on whether utility service is a "necessity." It is safe to assume, however, that the courts would include heat, water and light as a family necessity.<sup>46</sup> Presumably, the courts would find telephone service<sup>47</sup> to be a family necessity as well.<sup>48</sup>

---

<sup>46</sup>The availability of public utility services has been judicially recognized as essential not only to modern convenience, but to modern health and welfare as well. The U.S. Supreme Court noted in *Craft v. Memphis Gas, Light and Water Division*, 436 U.S. 1 (1978), that "utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health or safety." 436 U.S. at 18. Similarly, an Ohio federal district court has stated that "the lack of heat in the winter time has very serious effects upon the physical health of human beings, and can easily be fatal." *Palmer v. Columbia Gas Co. of Ohio*, 342 F.Supp. 241, 244 (N.D. Ohio 1972) (citations omitted); see also, *Stanford v. Gas Service Company*, 346 F.Supp. 717, 721 (D.Kan. 1972). An excellent canvass of cases is found in *Montalvo v. Consolidated Edison Company of New York*, 110 Misc.2d 24, 441 N.Y.S.2d 768, 776 (N.Y. 1981).

<sup>47</sup>One exception to this finding for telephone service is a bill rendered for the use of 900 or 976 audiotext services.

<sup>48</sup>But see, *Hochheim v. Cortland Tele. Co.*, 1933E P.U.R. 449 (Neb. 1933). See generally, NATIONAL CONSUMER LAW CENTER, A CALIFORNIA ADVOCATE'S GUIDE TO TELEPHONE CUSTOMER SERVICE REGULATIONS (July 1991). According to that Manual:

"Inability to obtain affordable, accessible telephone service can create life threatening situations for the poor. The most frequently cited danger that results from lack of telephone service involves access to timely medical attention. The elderly, in addition, suffer more acutely from problems compounded by their physical isolation. In one Connecticut study, three groups were found to be 'at greater-than-normal risk' because of the lack of telephone service, including 'persons over 60 and living alone.' The study found that of 59 'no-telephone households' with elderly members, 30 were senior citizens living alone, 23 had a disability or serious medical problem, and 10 of those disabled seniors lived alone. More

---

than half of the seniors living alone (17 of 30) lived more than three minutes away from the telephone they would need to rely upon in an emergency. RPM SYSTEMS, AN EXPLORATORY STUDY OF LOW-INCOME TELEPHONE SUBSCRIBERS AND NON-SUBSCRIBERS IN CONNECTICUT (May 1988).

"Findings from a Michigan study on telephone usage among the elderly indicate that the elderly were far more likely to consider the reason for their telephone calls to be essential than were non-elderly callers. Medical calls were cited by 22 percent (compared to one percent of non-elderly); social service calls were mentioned first by 10 percent (as compared to zero percent of non-elderly); and maintaining communication was cited by 25 percent (as compared to 15 percent of non-elderly). COOPER, LOW-INCOME HOUSEHOLDS IN THE POST-DIVESTITURE ERA: A STUDY OF TELEPHONE SUBSCRIBERSHIP AND USE IN MICHIGAN (October 1988).

"The loss of telephone service also impedes the ability of the poor to seek and to obtain employment. In Montana, the lack of telephone service was recently found to be a significant barrier to employment for low-income households. The types of employment low-income households generally obtain, the court found, involve jobs offered and accepted via telephone. *Butte Community Union v. Lewis*, 745 P.2d 1128, 1131 (Mont. 1987). If a person is unavailable to a potential employer because the household lacks access to a phone, the jobs are simply offered to persons who *are* available. After all, there is no law requiring employers to seek personal contact with potential employees.

"The loss of telephone service finally impedes the ability of the poor to obtain public benefits. This lack of telephone service, for example, has direct implications for obtaining Social Security. Less than 70 percent (66.5%) of all telephone calls to Social Security Telephone Service Centers (TSCs) and less than 60 percent (58.2%) of all telephone calls to statewide Social Security offices were done with easy accessibility, according to a 1988 General Accounting Office (GAO) study. U.S. GENERAL ACCOUNTING OFFICE, SOCIAL SECURITY: LITTLE OVERALL CHANGE IN TELEPHONE ACCESSIBILITY BETWEEN 1985 AND 1988, GAO/HRD-88-129 (Sept. 1988). Busy signals, unanswered calls, disconnected calls and calls placed on hold for longer than two (2) minutes were all difficulties experienced by households seeking to contact the Social Security Administration. Overall, for example, more than one-in-seven phone calls to a Social Security office received a busy signal; a repeat call made within one minute generated a busy signal in 60 percent of the cases. For a

It has been stated that "whatever naturally and reasonably tends to relieve distress, or materially and in some essential particular, promote comfort of either body or mind, may be deemed a necessity."<sup>49</sup>

## VI. RELIANCE ON COMBINED CREDIT.

Even in those states where the family necessities doctrine (or family expense doctrine) has continuing validity, in order for a creditor to hold the husband liable for the bills of his wife (or *vice versa*), the creditor must show a reliance upon the husband's credit prior to entering the transaction with the wife. According to one legal commentary, "the rule appears to be well settled both at common law and under modern statutes, that if the credit for necessities furnished to the wife is given exclusively to her, the husband is not ordinarily liable therefor."<sup>50</sup> Indeed, the wife and creditors must understand that the husband's credit is being used for the husband to be held liable.<sup>51</sup>

A rather dated annotation reports: "If one, in selling an article, gives credit for the purchase price exclusively to the person with whom he deals, it seems that he cannot afterwards\* \* \*shift this credit to some other person, and hold the latter liable;\* \* \*. And the

---

household using a telephone in the home, this difficulty is a nuisance. For a household that lacks telephone service in the home, and lacks easy access to a pay telephone, this difficulty may lead to the denial or loss of Social Security benefits."

<sup>49</sup>See generally, *Husband and Wife*, 41 AM.JUR.2D §365 (What Are Necessities) (1968).

<sup>50</sup>Annotation, *Liability of husband for necessities as affected by question of whether or not they were purchased on his credit*, 27 A.L.R. 554 (1923). (citations omitted).

<sup>51</sup>See e.g., *Alexander v. Duffee-Freeman Furniture*, 52 Ga. App. 244, 183 S.E. 86 (1935); *Matthews Furniture v. La Bella*, 44 So.2d 160 (La. Ct. App. 1950); *Pritchard v. Bigger*, 288 Mich. 447, 285 N.W. 17 (1939); *Saks & Co. v. Barrett*, 109 N.J.L. 42, 160 A. 405 (1932); *Wickstrom v. Peck*, 179 A.D. 855, 165 N.Y.S. 408 (N.Y. App. Div. 1917); *Tille v. Finley*, 126 Ohio St. 578, 186 N.E. 448 (1933); *Heym v. Juhasz*, 68 N.E.2d 119 (Ohio Ct. App. 1943); see also, Annotation, *Husband's liability to third person for necessities furnished to wife separated from him*, 60 A.L.R.2D 7 (1958).

fact that the parties are husband and wife does not apparently affect this doctrine."<sup>52</sup>

A separate, but earlier, annotation reports the law to be less certain:

There is considerable uncertainty as to whether goods must be supplied on the credit of the husband in order to render him liable where the spouses are separated. It has been held that a husband is not liable for necessities furnished during a separation where credit was given solely to the wife. A few cases extend this rule by holding that it must appear that the husband's credit was in fact pledged.<sup>53</sup>

Many courts have held that there simply is a priority in seeking to collect bills, a priority not based upon spousal relationship or earning capacity. "Generally reasoning that a spouse who incurs a necessary expense is primarily liable and the other spouse is secondarily liable therefore, the courts in\* \*(many) cases held or recognized that the wife is primarily liable for her necessities, while her husband is secondarily liable."<sup>54</sup> Note that under this rule, the primary liability is imposed upon the person incurring the debt with which to begin. The priority is established by the relationship between the debtor and creditor, not by the relationship between the husband and wife.

At least one state has held that a creditor may not hold one spouse liable without taking into consideration the responsibility of the contracting spouse. In *Jersey Shore*

---

<sup>52</sup> Annotation, *Liability of husband for necessities as affected by question whether or not they were purchased on his credit*, 27 A.L.R. 554 (1923).

<sup>53</sup> Annotation, *Husband's liability to third person for necessities furnished to wife separated from him*, 60 A.L.R.2D 7, 23 (1958).

<sup>54</sup> See e.g., *Memorial Hospital v. Hahaj*, 430 N.E.2d 412 (Ind. App. 1982); *Busch v. Busch Constr. Inc.*, 262 N.W.2d 377 (Minn. 1977); *Jersey Shore Medical Center-Fitkin Hosp. v. Estate of Baum*, 84 N.J. 137, 417 A.2d 1003 (1980); *Surgical and Medical Neurology Associates v. Levan*, 7 Ohio Misc.2d 11, 454 N.E.2d 604 (1982).

*Medical Center -- Fitken Hospital v. Estate of Sidney Baum*,<sup>155</sup> the decedent died after a long illness which exhausted his medicaid benefits and left a balance due. The hospital successfully persuaded the lower court to expand the necessities doctrine to hold the wife liable for the husband's debts. The rule in *Jersey Shore* operates as follows: While both spouses are liable for necessary expenses incurred by either spouse in the course of the marriage, and as long as the marriage exists, the financial resources of both spouses should be available to pay a creditor who provides necessary goods and services to either spouse. A judgment creditor must first seek satisfaction from the income and property of the spouse who incurs the debt for necessities. Only if those financial resources are insufficient may a creditor then seek satisfaction from the income and property of the non-contracting spouse.<sup>156</sup>

## VII. COURT ORDERED CHILD SUPPORT AS A LIMIT ON NECESSARIES.

Even in those instances where the doctrine of necessities clearly applies, and holds one spouse liable for the bills of the other spouse, there may be some defense if the non-contracting spouse has been judicially ordered to pay child support. There is a "sharp conflict of authority" on this issue.<sup>157</sup> An annotation observes:

On the one hand, the view is taken that a judicial decree or court order obligating a father to pay a certain sum for the support of his child constitutes the absolute limit of his liability, until and unless the decree or

---

<sup>155</sup> *Jersey Shore Medical Center -- Fitken Hospital v. Estate of Sidney Baum*, 417 A.2d 1003 (N.J. 1980).

<sup>156</sup> See generally, Jay Zitter, "Modern Status of Rule That Husband is Primarily or Solely Liable for Necessaries Furnished Wife," 20 A.L.R.4TH 196, 204 (1983).

<sup>157</sup> See, Annotation, *Support provisions of judicial decree or order as limit of father's liability for expenses of child*, 7 A.L.R.2D 491 (1949); see generally, Note, *Alamance County Hospital v. Neighbors: North Carolina Rejects Child Support Provisions as a Limit on The Doctrine of Necessaries*, 65 N.C.L. REV. 1308 (1987).

order is modified. \* \* \* on the other hand, in a number of jurisdictions, the rule is sharply different \* \* \* and recovery is permitted, the courts holding that the financial liability is not limited by the support provisions of a judicial decree or order.<sup>158</sup>

any further comments or brief explanation of the split in analysis?

### VIII. COMMUNITY PROPERTY STATES.

The fact that a state may be a community property state substantially changes the analysis when viewing spousal responsibilities under a family necessities or family expense doctrine. Even in community property states, however, the doctrine is not uniform. "In cases involving debts for products or services, the courts have generally held that the mass of community property, including that set aside to the noncontracting spouse, is subject to a judgment for the community debt, or have held that specific community property set aside to the noncontracting spouse is subject to a judgment for the debt."<sup>159</sup>

However, and it is a huge however, "in the cases involving debts for products and services where a noncontracting spouse's *personal* liability was discussed, the courts have generally held that the noncontracting spouse could *not* be held liable." (emphasis added).<sup>160</sup>

In sum, spousal responsibility might be imposed in community property states. Even in these instances, however, liability is not open-ended. Liability is not a *personal* liability. Rather, it is bounded by the extent of the community property "set aside for the noncontracting spouse." Once that property has been exhausted, even if in only partial satisfaction of the debt, liability ceases.

---

<sup>158</sup> *Support provisions of judicial decree or order as limit of father's liability for expenses of child, supra* note 57, at 492.

<sup>159</sup> Sonja Soehnel, *Spouse's liability, after divorce, for community debt contracted by other spouse during marriage*, 20 A.L.R.4TH 211, 213 - 214 (1981; supp. 1998).

<sup>160</sup> *Id.*, at 214.

## SUMMARY

Low-income households facing the disconnection of utility service often are faced with allegations of liability for the service of a third party. One form of this claimed third party liability occurs when a utility seeks to collect the debts of a separated, but not divorced, spouse, under a state's "family necessities" doctrine. Under such a claim, the utility seeks to impose liability on both spouses for utility service as a "necessity of the family." While judicially overturned in some jurisdictions, the family necessities doctrine has survived constitutional challenge in one form or another in other states.

Even when of continuing validity, however, this doctrine can face significant limits. Such limits can be raised as defenses<sup>61</sup> to alleged liability under the doctrine, even where the advocate may not wish to challenge the doctrine itself. A utility does not establish liability under a family necessities doctrine by demonstrating a spousal relationship alone. In addition, the utility must show: (1) that there is a "family" in fact; (2) that the expense is one on behalf of the family and not a personal expense; (3) that the expense is for a "necessity" of life; (4) that the utility relied upon the credit of the noncontracting spouse in extending the credit; and (5) that the obligation has not been satisfied, or in some other fashion limited, by a court order of a specified sum of child support.

---

<sup>61</sup>Whether the points raised in this memo are affirmative defenses, to be pleaded and proved by the defendant, or whether they are necessary elements of the utility's initial case, is an issue *not* addressed by this memo. On the face of the matter, it would appear that use of the court ordered child support limitation, or the exhaustion of community property, would be affirmative defenses, while each of the other issues would need to be pleaded and proved by the utility seeking to invoke the family necessities doctrine.



## **Where Consumers Go For Help Paying Utility Bills**

**The National Regulatory Research Institute (NRRI) releases results from its Consumer Utility Benchmark Survey.**

**Posted to Website April 2003**

---

Hispanic consumers, low income consumers and consumers over age 55 tend to seek help from different sources when they have trouble paying their utility bills, according to NRRI's national survey on customer service by utilities and telecommunications companies. Hispanics go more frequently to friends and relatives than either low-income consumers or seniors. Low-income consumers are more likely to look for help from social service agencies. Consumers over age 55 are more likely to look for help directly from the utility company. The results are important information for state regulatory commissions, utilities and others concerned about consumer education, particularly for sometimes hard-to-reach groups.

As Figure 1 shows, the survey results suggest that when those of Hispanic origin look for help, close to half think first of friends or relatives. (Hispanics are indicated by the yellow bar; all others, by the red one. Respondents could make more than one choice.) Non-Hispanics are also likely to go to a friend or relative for help, but not to the same degree. Non-Hispanics are more likely than Hispanics to contact the utility that sent them the bill. The 380 Hispanics who responded to the survey are also more likely to go to state government for help than non-Hispanics.

Figure 2 shows results for the same question by income. The low-income consumers appear more connected to social service agencies than Hispanics or at least more willing to approach them.

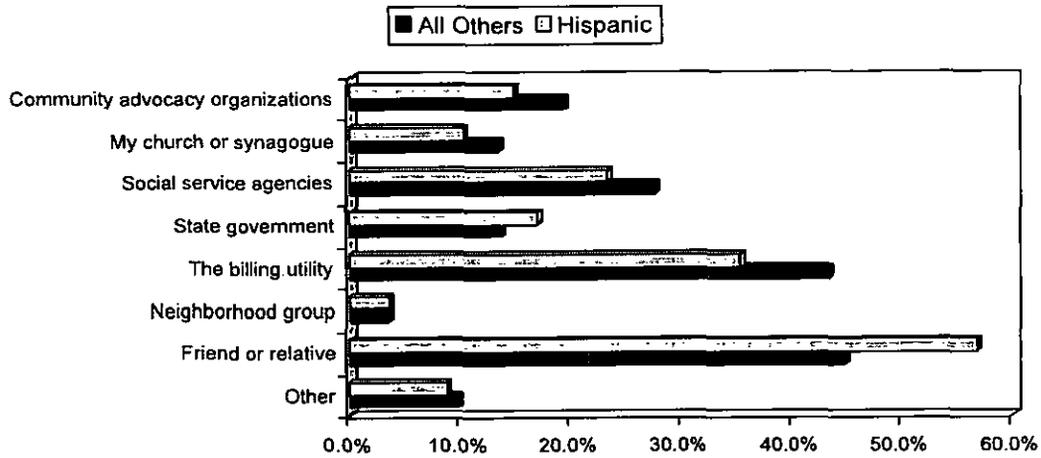
The results could suggest that utilities and commissions need to assess their outreach to Hispanic customers to inform them of programs like Lifeline and Link-Up. Nontraditional consumer education such as grass-roots campaigns might be more appropriate for hard-to-reach groups such as Hispanics.

Figure 3 shows where people aged 55 and above say they would go to get help, compared to all the respondents in the survey who were younger than 55. This

age cohort relies much less on people close to them, compared to younger people, and much more on the utility company.

A total of 18,793 Internet users offered opinions on their utility service quality in a survey conducted by the National Regulatory Research Institute and BIGresearch between Jan. 9, 2003, and Feb. 3, 2003. The purpose of the survey was to provide state public utility commissions, utilities, telecommunications industries and other stakeholders with insights into consumer perceptions of utility service, as well as the impact of competition on consumer perceptions of utility service and prices.

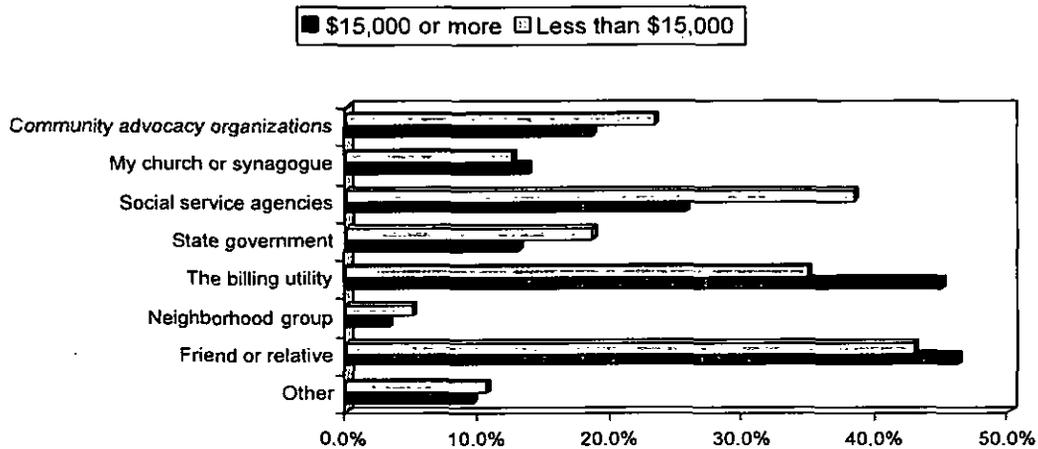
## Finding Help Paying Utility Bill: Hispanic vs. All Others



Source: NRR/BIGresearch, FEB-03, n=18,793

Fig. 1. Finding help paying utility bill: Hispanic vs. all others.

## Finding Help Paying Utility Bill: Less than \$15,000 vs. \$15,000 and more



Source: NRR/BIGresearch, FEB-03, n=18,793

Fig. 2. Finding help paying utility bill: Income of less than \$15,000 vs. \$15,000 and more.

## Finding Help Paying Utility Bill: 55 and above vs. less than 55

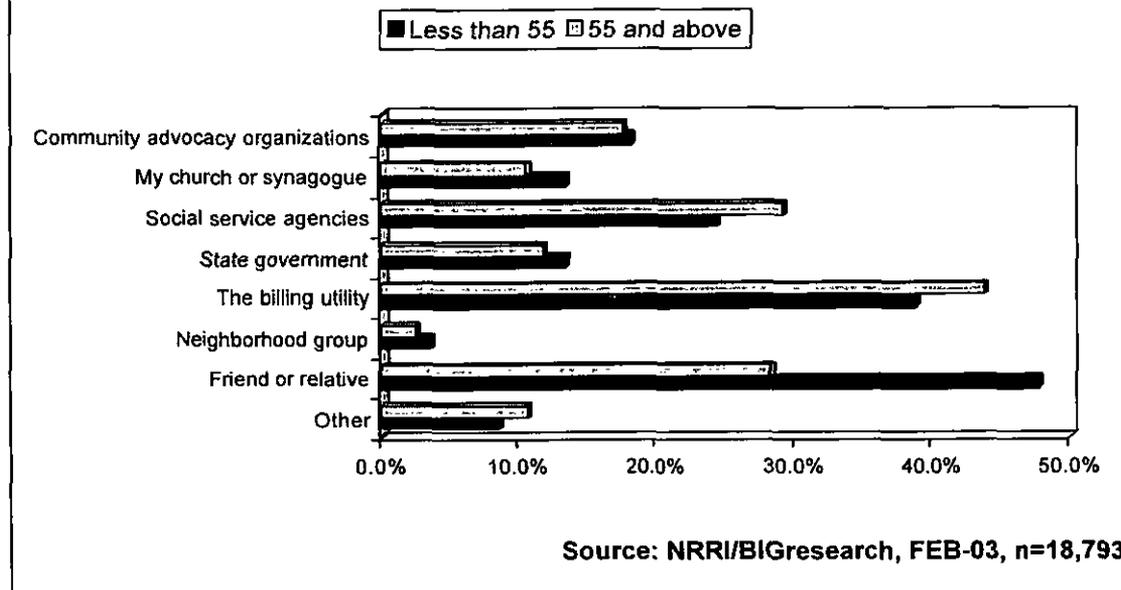


Fig. 3. Finding help paying utility bill: Age less than 55 and 55 and above.

### CONTACT

Vivian Witkind Davis, Ph.D.  
[Davis.241@osu.edu](mailto:Davis.241@osu.edu)  
 (614) 292-9423

The NRRI was established by the National Association of Regulatory Utility Commissioners in 1976 at the Ohio State University. The NRRI provides client-driven research and services to inform and advance regulatory policy. NRRI programs of regulatory research and service include utility infrastructure; utility markets; consumer affairs and education; and commission organization, process and development. <http://www.nrri.ohio-state.edu>.

BIGresearch is a consumer market intelligence firm that provides unique consumer insights that are gathered online utilizing very large sample sizes. BIGresearch's syndicated *Consumer Intentions and Actions* survey monitors the pulse of more than 7,000 consumers each month providing insights for identifying opportunities in today's competitive and changing marketplace. <http://www.bigresearch.com/>.

**MEASURING LIHEAP'S RESULTS:  
RESPONDING TO HOME ENERGY UNAFFORDABILITY**

**May 1999**

**Prepared By:**

*Fisher, Sheehan & Colton*  
*Public Finance and General Economics*  
Belmont, Massachusetts

## **MEASURING LIHEAP'S RESULTS:**

### **Responding to Home Energy Unaffordability**

**Project Director:** Roger D. Colton

Fisher, Sheehan and Colton  
Public Finance and General Economics  
34 Warwick Road, Belmont, MA 02478  
617-484-0597 (voice) \*\*\* 617-484-0594 (fax)  
roger@fsconline.com \*\*\* <http://www.fsconline.com>

#### **Acknowledgement:**

A special acknowledgement is given to the following two individuals who provided valuable assistance and insight into the collection and analysis of data for this document: Steve Tryon, Director of the Wisconsin Low-Income Home Energy Assistance Program (Madison, WI); and Owen Heiserman, Research and Planning Director, Mid-Iowa Community Action (MICA) (Marshalltown, IA). The analysis and conclusions expressed herein are solely those of the author and do not necessarily represent the views of either MICA or the Wisconsin LIHEAP office.

May 1999

## ABSTRACT

Congress is increasingly requiring federal agencies to address not simply the question "what have you done," but also the question "what have you accomplished." While it is easy to determine what the federal Low-Income Home Energy Assistance Program (LIHEAP) "does" --it distributes financial assistance and reduces low-income home energy burdens-- it is more difficult to determine what it accomplishes. This research identifies a comprehensive list of actions which low-income consumers might take in response to the unaffordability of home energy bills and develops a system of categorizing those consumer reactions. The research finds that: (1) the "affordability" of home energy bills cannot be deduced from the mere fact that bills are being paid by consumers. Bills can be paid but nonetheless still be unaffordable; (2) the "negative" responses available to a low-income customer facing an inability-to-pay far outstrip the available constructive responses. All too frequently, the customer is faced with an immediate need (*i.e.*, bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need; (3) for purposes of measuring program outcomes, the concept of bill "affordability" should be replaced with a concept of bill "sustainability." The sustainability of bill payment looks not simply at *whether* a bill gets paid, but at *how* a bill gets paid; and (4) the existence of bill affordability assistance results in objectively measurable outcomes. The presence of negative customer responses to bill unaffordability evidences a need, the elimination or reduction in which represents an outcome of LIHEAP.

In Fiscal Year 1999, the federal government will spend over \$1.0 billion to provide home energy assistance to low-income consumers. Known as the Low-Income Home Energy Assistance Program (LIHEAP),<sup>11</sup> this fuel assistance program was first begun in 1981. Since that time, the federal government has spent over \$30 billion on low-income energy assistance.<sup>12</sup>

What has that money bought? That seems to be a legitimate question, particularly given the increasing efforts by Congress to impose performance-based evaluation of government expenditures. Through the Government Performance and Results Act

Congress requires federal agencies to address not simply the question "what have you done," but also the question "what have you accomplished."

(GPRA) of 1993,<sup>13</sup> Congress has required federal agencies to address not simply the question "what have we done," but also the question "what have we accomplished"?<sup>14</sup>

We know what LIHEAP "does." We know that LIHEAP distributes "x" dollars of federal aid to "y" number of low-income households each year. We know further that LIHEAP makes home energy bills more "affordable" to recipients of program benefits.<sup>15</sup> We know that LIHEAP reduces the home heating burden<sup>16</sup> imposed on low-income consumers.<sup>17</sup>

<sup>11</sup> 42 U.S.C. §§ 2601, *et seq.*

<sup>12</sup> The Department of Health and Human Service's *Low Income Home Energy Assistance Program Annual Report to Congress* reports the appropriations and expenditures by year since the inception of federal fuel assistance. The LIHEAP report to Congress indicates that over 70% of all LIHEAP expenditures are used on heating assistance, with smaller amounts being used for crisis intervention, weatherization and administration. A small portion of funding is used for cooling assistance.

<sup>13</sup> For a good general discussion of GPRA, see, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, Comptroller General of the United States, U.S. General Accounting Office, GAO/GGD-96-118 (June 1996).

<sup>14</sup> See generally, General Accounting Office, *Managing for Results: State Experiences Provide Insights for Federal Management Reforms* (GAO/GGD-95-22) (December 21, 1994); General Accounting Office, *Managing for Results: Experiences Abroad Suggest Insights for Federal Management Reform* (GAO/GGD-95-120) (May 2, 1995); General Accounting Office, *Performance Budgeting: Past Initiatives Offer Insights for GPRA Implementation* (GAO/AIMD-97-46) (March 27, 1997).

<sup>15</sup> Any bill that is offset in whole or part by some type of public aid would be "more" affordable. That does not address the question of whether bills are "affordable" in some objective sense after distribution of assistance.

<sup>16</sup> In some states, LIHEAP is primarily a cooling program.

<sup>17</sup> This assumes there is no "take back" from making bills more affordable. An illustration of a "take back" would involve a person who is living with all but two rooms of his or her home closed off. If bills are made more affordable, the person may decide to "open up" and use the rest of his or her home.

Despite all of this, the answer to the question "what has LIHEAP *accomplished*" by doing all these things remains unclear.

Some would argue that LIHEAP is simply a multi-billion dollar program providing "welfare" to the utility industry. Under this reasoning, all the program *really* does is to offset utility bad debt and collection expenses, thus increasing that industry's net profits. Advocates for this position believe that if a need exists giving rise to low-income payment problems, it should be the responsibility of the industry to respond to that need. Devoting public dollars to low-income fuel assistance, proponents of this line of thought assert, is simply a public subsidy that offsets what otherwise would be utility bad debt. The utility industry, they conclude, is perfectly capable of taking care of itself without public subsidy.

Others argue that LIHEAP is the last line of protection against unaffordable home energy bills and the resulting disconnection or denial of service accompanying unaffordability. Under this reasoning, the disconnection of service denies low-income consumers access to a fundamental necessity of life, thus leading to illness, death, housing abandonment and homelessness. The loss of winter heating service in cold weather states --as well as cooling service in warm weather states--<sup>181</sup> poses obvious dangers to health and property. Under this reasoning, a publicly funded fuel assistance program is primarily a mechanism to prevent these dangers by supplementing income to avoid utility bill non-payment.

At their core, both of these lines of reasoning equate, or at least closely associate, the concepts of "unaffordability" and "inability-to-pay" with the concept of "bill nonpayment."

Whether it is accurate to equate "unaffordability" and "bill nonpayment" can be empirically tested. This paper concludes that it is not. The analysis below finds both that: (1) an inability-to-pay does not necessarily lead to nonpayment; and

Many consumer responses exist to an inability-to-pay home energy bills, only one limited set of which involves *not* paying the bill.

that, conversely, (2) actual bill payment does not necessarily imply an *ability* to pay. In fact, what the analysis below finds is that *many* consumer responses exist to an inability-to-pay home energy bills, only one limited set of which involves *not* paying the bill. Rather than using bill nonpayment as the indicator of unaffordability, therefore, the discussion below seeks to identify alternative objective measures to use.

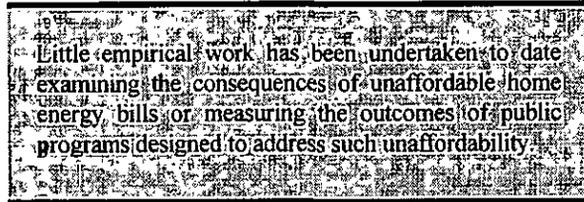
---

<sup>181</sup> See generally, Roger Colton and Michael Sheehan. (1995). *The Other Part of the Year: Low-Income Households and Their Need for Cooling: A State-by-State Look at Low-Income Summer Electric Bills*, Flying Pencil Publications: Portland (OR); Kathy Kuntz (March 1998). *Heat Related Death: Risk Factors and Prevention Strategies*, Energy Center of Wisconsin: Madison (WI).

In addition to the policy implications such an effort has with respect to assessing low-income energy needs, these measures also can be used to define the outcomes generated by LIHEAP and, therefore, to measure the performance of LIHEAP or other energy affordability programs.

#### THE BROAD CATEGORIES OF LOW-INCOME RESPONSES TO BILL UNAFFORDABILITY.

Little empirical work has been undertaken to date examining the consequences of unaffordable home energy bills or measuring the outcomes of public programs designed to address such unaffordability. Program outcomes are often assumed rather than measured or documented.<sup>191</sup> The



research presented below represents an effort to define the more broad-based *affordability* "outcomes" of low-income fuel assistance.<sup>1101</sup> While the discussion is presented in terms of LIHEAP, it could apply to any type of low-income affordability assistance (including cash assistance, rate discounts and energy efficiency). A generalized description of program planning within an outcome-based measurement scheme is presented in Appendix A.

Consumer responses to the lack of affordable home energy bills can take many forms. A consumer response should be characterized by a verb-noun structure. The verb-noun structure connotes a consumer decision to do or to refrain from doing some action. The consumer "does" (verb) "something" (noun) in response to unaffordability.

---

<sup>191</sup> There is a growing body of literature on the *payment* outcomes of low-income programs. These analyses are generally performed within the context of evaluations of utility-based low-income rate and energy efficiency programs. See e.g., H.Gil Peach (September 1996). *Evaluation of Equitable Gas Energy Assistance Program*, Equitable Gas Company: Pittsburgh (PA); David Carroll (January 1993). *Philadelphia Gas Works Energy Assurance Program Year One Report*, Response Analysis: Princeton (NJ); A&C Enercom (1993). *An Extended Analysis of the Columbia Gas 1990 Low-Income Usage Reduction Program*, Columbia Gas Company: Columbus (OH); Merrilee Harrigan (1992). *Evaluating the Benefits of Comprehensive Energy Management for Low-Income, Payment-troubled Customers: Final Report on Niagara Mohawk Power Partnerships Pilot*, Alliance to Save Energy: Washington D.C.

<sup>1101</sup> Other research has examined specific outcomes of an inability-to-pay. See e.g., D.A. Frank, *et al.* (Sept. 1992). *Seasonal changes in weight for age in a pediatric emergency room: a heat or eat effect?*, Boston City Hospital: Boston (MA); Temple University Institute for Public Policy Studies (June 1991). *An examination of the relationship between utility terminations, housing abandonment, and homelessness*, Energy Coordinating Agency: Philadelphia (PA); Roger Colton (Sept. 1996). "The Road Oft Taken: Unaffordable Home Energy Bills, Forced Mobility and Childhood Education in Missouri." 2 *Journal on Children and Poverty* 23.

This process of identifying household responses is to be distinguished from identifying all of the adverse consequences of unaffordable home energy bills. Property impacts such as "frozen pipes," health impacts such as hypothermia and death, and social/economic impacts such as below-grade educational attainment may all be adverse *consequences* of unaffordability. They are not, however, consumer responses.<sup>111</sup>

In the broadest sense, three categories of consumer responses have been identified:

1. There are before-the-fact actions that consumers take in response to the anticipated future lack of bill affordability. Shutting off substantial parts of a consumer's home while heating or cooling only one or two rooms in anticipation of high bills is such a preventative action.<sup>112</sup>

2. There are contemporaneous actions that consumers take in response to the immediate lack of bill affordability. The action is deemed "contemporaneous" since the customer action and the bill payment are undertaken more or less at the same time.<sup>113</sup> Reducing expenditures for food or medicine in order to pay home energy bills is such a contemporaneous action. In this case, the energy has been used and the bill rendered but not yet paid.

3. Finally, there are after-the-fact actions that consumers take in response to the lack of bill affordability. These actions accept the fact of the bill, as well as the fact of nonpayment, and consider those two circumstances operating in tandem. Transferring delinquent accounts to fictional names is such a retrospective action.

These categories are clearly not mutually exclusive. If a low-income person receives an unaffordable home energy bill, for example, that person may take *both* a contemporaneous action with respect to the existing bill (pay the heating bill and not take medicine) *and* a before-the-fact action with respect to future bills (close off all but one room to lower future bills). Moreover, one contemporaneous action in response to an unaffordable home energy bill is simply nonpayment of the bill.

---

<sup>111</sup> The adverse consequences of bill unaffordability are not unimportant. They are merely beyond the scope of this inquiry.

<sup>112</sup> A person may close off some rooms after receiving a high winter heating bill. It is nonetheless categorized as a before-the-fact action. Closing off a room cannot lower a previously incurred bill. It can only lower *future* bills.

<sup>113</sup> A reduction in alternative expenditures may also be a before-the-fact action. A person may fail to purchase medicine or food in anticipation of an unaffordable home energy bill.

## METHODOLOGY

This research did not engage in direct survey work. Instead, secondary reports were solicited and evaluated. A simple survey form was developed and circulated to nearly 500 individuals involved with the delivery of low-income energy assistance in one form or another throughout the country. Individuals receiving the request included state LIHEAP administrators; state administrators of the federal low-income weatherization assistance program (WAP); state and local community action administrators; and local Legal Services Corporation (LSC) and other community-based low-income advocates. In addition, survey requests were sent to each state office that is a member of the National Association of State Utility Consumer Advocates (NASUCA) as well as to the consumer services staffmember at each state public utility commission.

The survey form requested recipients to fill in the blank left by the following statement:

***When my clients cannot afford to pay their home energy bills,  
the things they do include: \_\_\_\_\_***

The form provided six illustrative responses, including:

1. Reduce their spending on food.
2. Reduce their spending on medicine.
3. Place their accounts in the name of children (or even pets) after their service has been disconnected for nonpayment.
4. Cut off heating to all of their rooms except one or two.
5. Move from home to home trying to stay ahead of the bill collector.
6. Let their natural gas be disconnected during the summer and then be reconnected during the cold weather months.

Space for ten additional responses was provided. A total of 106 surveys were returned, all of which provided more than one response. Responses that were not individually provided (e.g., if one of the six illustrative responses was simply circled), that circled response was not included in the tabulation.

After tabulating the responses, the responses were then grouped into 14 descriptive categories. Each separately-identified household action was then further categorized as a before-the-fact, contemporaneous, or after-the-fact response to unaffordability. Each of the household actions was also, in turn, categorized as a "constructive," a "negative," or a "neutral" response.<sup>114)</sup> Finally, the action was categorized as having its basis in actual bill payment or not. The data is presented in Table 1 below. The number of times each response appeared on one of the 106 forms was tracked and reported.<sup>115)</sup>

## DISCUSSION OF THE DATA

The process discussed above generated two results. The first result was to identify a comprehensive list of actions which low-income consumers might take in response to the unaffordability of home energy bills. The second result was to develop a system of categorizing those consumer reactions.

The presence of negative customer responses to bill unaffordability evidences a need, the elimination or reduction in which represents an accomplishment of LIHEAP.

This process should help to define a means to document the accomplishments/outcomes of LIHEAP. This paper presents the following decision rule: the presence of negative customer responses to bill unaffordability evidences a need, the elimination or reduction in which represents an accomplishment of LIHEAP (*i.e.*, an "outcome" in the parlance of GPRA).

Within this context, two primary conclusions can be derived from the data generated in this research.

### *Conclusion #1: "Constructive" and "Negative" Customer Responses*

The range of negative options available to a consumer facing unaffordable home energy bills far outstrips the range of constructive options available to such a low-income consumer.

<sup>114)</sup> In some cases, labelling an action as either "constructive" or "negative" was not possible. In other cases, labelling an action as "constructive" or "negative" would depend on the context in which the action was taken.

<sup>115)</sup> No particular statistical significance is attributed to the number of appearances or non-appearances of any given response, however. The purpose of this paper is to identify the actions and build the list. The purpose is not to draw conclusions about the prevalence of any particular action.

The range of negative options available to a consumer facing unaffordable home energy bills far outstrips the range of constructive options available to such a low-income consumer. The range of "negative" options available to consumers can be further classified into two categories. Some options "merely" represent a significant degradation in a low-income consumer's quality of life. Other options are counter-productive. Not only do they not solve the consumer's inability-to-pay problem, they affirmatively contribute to or exacerbate that problem.

### **Negative Actions**

**Counter-productive actions:** Many payment practices not only fail to address a consumer's inability-to-pay problem, but they are actually counter-productive. To the extent that a low-income consumer borrows money to pay current bills, for example, that consumer will face current bills *plus* additional debt service obligations at some point in the future. To the extent that a low-income consumer is forced into a pattern of mobility to stay ahead of bill collectors, that consumer will be faced with the current bills *plus* the out-of-pocket expenses associated with moving (*e.g.*, rental deposits, utility connect charges). Any action that enlarges the financial hole in which a low-income consumer finds himself or herself would seem to be counter-productive.

One of the most common counter-productive actions reported for low-income consumers involves the choice to forego the payment of other bills to free up cash to pay utility bills.<sup>116</sup> The foregone bills reported for low-income consumers include:

- ◆ Failing to pay the electric bill in order to pay the heating bill;
- ◆ Using rent money to pay for utilities;
- ◆ Foregoing payment of other bills (*e.g.*, water/sewer, car payments, auto or home insurance) to pay for utilities.

In this respect, a deferred repair is a type of foregone expenditure. A refrigerator that does not refrigerate will eventually need to be fixed or replaced. A roof that leaks will eventually need to be fixed. A non-working automobile will eventually need to be repaired or replaced.

---

<sup>116</sup> These reports are consistent with published literature on low-income consumer bill-payment priorities, which place payment of home energy bills second in priority behind rent/mortgage. See generally, Roger Colton (1991). *Understanding Why Customers Don't Pay: The Need for Flexible Collection Practices*, National Consumer Law Center: Boston (MA).

In most instances, to the extent that a consumer forgoes payment of a current bill, that consumer will face increased payments at some point in the future. Since the consumer will eventually be called upon to pay current bills *plus* the arrears, "foregone" expenditures tend not to be "foregone" at all. If a person skips a monthly rent payment or a monthly car payment to pay a utility bill, the true effect of this customer action is simply to borrow against future income. At some point, the current month's utility bill will need to be paid in addition to both current and past due rent or car payments.

to the extent that the consumer forgoes payment of a current bill, that consumer will face increased payments at some point in the future. Since the consumer will eventually be called upon to pay current bills *plus* the arrears, "foregone" expenditures tend not to be "foregone" at all.

This type of foregone expenditure differs from those expenditures that are truly avoidable (whether appropriately or not). Food and medicine, for example, are truly avoidable expenses. If a person does not eat on Monday, it does not follow that he or she eats twice as much on Tuesday. If a person takes two pills in the morning rather than the prescribed three, it does not follow that he or she would take four pills at night.

In some instances, whether expenditures are "truly avoidable" is not clear. Failing to obtain medical treatment for an illness may or may not involve a truly avoidable expense. Similarly, deferred maintenance may or may not be truly avoidable. While it is *likely* that the lack of an automobile oil change will create mechanical problems, it is not certain that those problems will occur. While it is likely that continuing to neglect maintenance of a home will result in a future repair, it is not certain. While it is possible that not seeing a doctor for an illness, or not taking medicine for an illness, will lead to a more serious illness, that result is not a certainty. While it is possible that driving while uninsured may result in serious financial (as well as either civil or criminal) consequences, it is not a certainty.

Another type of counter-productive action involves increasing the indebtedness of the household. Borrowing money is one of the most commonly reported mechanisms used to pay unaffordable home energy bills, including:

Borrowing money is one of the most commonly reported mechanisms used to pay unaffordable home energy bills. Money that is borrowed, of course, must some day be repaid. Borrowing money to pay a utility bill simply substitutes one debt for another.

- ◆ Borrowing from friends and/or family;
- ◆ Borrowing from a loan company;

- ◆ Purchasing fuel, food, or medicine on credit cards.

Money that is borrowed, of course, must some day be repaid. Borrowing money to pay a utility bill simply substitutes one debt for another. Borrowing defers unaffordability problems; it does not address them.

In this respect, getting advances on pay checks is simply one type of borrowing. Instead of borrowing from a third party, the consumer is borrowing against his or her own future income. Nonetheless, the advance is a debt that will need to be repaid at some point in the future (as work is performed with no current compensation).

**Unsustainable actions:** Many payment practices, even if not counter-productive, are not sustainable in the long-term. While these actions might allow a utility bill to be paid in the short-term, they are actions that can not be sustained over time. For a payment practice to be sustainable, it should be stable, repeatable and dependable. If a consumer is selling or pawning household items to generate cash, that source of income will eventually run out. If a consumer is stealing fuel or electricity, whether from a neighbor or from a utility (through meter tampering or fraud), that consumer eventually will be "caught" and the practice terminated.

**Non-cost-effective actions:** Many payment practices may not be cost-effective in the long-term. Such practices, even if beneficial in the immediate term, quickly leave the consumer worse off. A consumer, for example, may well generate short-term cash by selling the household automobile. The sale of that car, however, may well impose significant limits on the ability of the consumer to maintain employment. In addition, some short-term expense savings will generate even larger longer-term expenditures. Avoiding medical care and the purchase of prescription medicines were both cited as responses to utility inability-to-pay. Both such actions, however, are likely to generate more serious illness in the future, accompanied by increased expenses and lost wages. Neglecting necessary home and appliance maintenance and repairs will likely yield more expensive bills in the future as well.

The trade-off of telephone service for home energy service presents a difficult cost-effectiveness decision for the low-income consumer. A 1988 study conducted by the National Consumer Law Center (NCLC) for the Maine Public Utilities Commission discovered that 80 percent of the Maine households whose energy service was disconnected during the winter months lacked telephone service.<sup>177</sup> The lack of telephone service was

---

<sup>177</sup> Roger Colton (1988). *Low-Income Utility Protections in Maine An Evaluation of Low-Income Utility Protections in Maine: Winter Requests for Disconnect Permission*, National Consumer Law Center: Boston.

found to jeopardize continuing energy service by denying the household an opportunity to contact the utility so as to enter into payment plans, make contact with social service agencies to receive public assistance and to otherwise respond to the household's inability-to-pay.

Lack of access to a telephone jeopardizes access to public assistance programs as well. According to one study looking at why households do not participate in the Food Stamp program in Vermont, even for those households who knew who to contact for assistance in understanding the application and income reporting requirements, the inability to contact the agencies by phone was one of the most significant problems in obtaining such assistance.<sup>118)</sup> Similarly, in *Butte Community Union v. Lewis*,<sup>119)</sup> the court found that lack of telephone service was a significant barrier to employment since the types of employment low-income households generally obtain involve jobs offered and accepted via telephone.

It would appear that a choice to drop telephone service in order to generate cash to pay for home energy service may be counter-productive in the long-term.

**Quality-of-life degradation:** Finally, irrespective of "sustainability" or "cost-effectiveness" considerations, some consumer responses represent an unacceptable degradation in a low-income consumer's quality of life. Disconnecting a hot water heater to reduce home energy bills, spending every day in public places (such as shopping malls or libraries) to allow the home heating to be turned off during the day, and temporarily abandoning one's home during cold weather all represent degradations in quality of life.<sup>120)</sup>

Setting sustainability and cost-effectiveness considerations aside, some consumer responses represent an unacceptable degradation in a low-income consumer's quality of life. One aspect of a degradation in quality of life involves a forced reliance on unsafe or dangerous heating strategies.

One particular aspect of a degradation in quality of life involves a forced reliance on unsafe or dangerous heating strategies. Amongst the responses to an inability-to-pay reported were:

<sup>118)</sup> Sandage Advertising & Marketing (1989). *Food Stamp Program: Focus Group Research Report*, at 8 - 9, Vermont Department of Social Welfare: Waterbury (VT).

<sup>119)</sup> 745 P.2d 1128, 1131 (Mont. 1987).

<sup>120)</sup> One report involved a consumer decision to disconnect the hot water heater to save on natural gas bills. The consumer subsequently decided to stop sending her children to school since they could not bathe or wear clean clothes.

- ◆ Turning down the temperature to unsafe temperatures during cold weather;
- ◆ Failing to use cooling equipment during hot weather;
- ◆ Using unsafe heat sources such as ovens, stove-top burners, charcoal grills, and unvented space heaters as the primary source of heating; and
- ◆ Doing without heat altogether.

In addition, several reports were made of low-income consumers sleeping in running cars, campers or vans as an alternative to staying in an unheated home.

Running the constant risk of an "invisible shutoff" is a related type of dangerous degradation in life-style. An invisible shutoff occurs when a consumer runs out of fuel because of an inability to obtain new supplies rather than because of the affirmative action of an energy vendor disconnecting supplies. The danger of an invisible shutoff increases when consumers respond to an inability-to-pay by:

- ◆ Purchasing kerosene or fuel oil in \$5 increments rather than by the tankful;
- ◆ Buying LP cylinders rather than obtaining a tank refill; and
- ◆ Substituting small purchases of diesel fuel for refills of fuel oil.

These small volume purchases represent a dual threat. On the one hand, they mean that any individual purchase of a heat source will be more likely to be inadequate during cold weather. In addition, it means that the consumer is faced with a constant decision of whether sufficient resources exist to heat a home (or to heat hot water) "tomorrow." The number of opportunities for the fuel source to run out increases to once every several days rather than to once a month.

### **Constructive Actions**

Clearly, not all customer responses to inability-to-pay are negative in nature. Consider, for example, the range of before-the-fact actions that have been reported to reduce bills to a level that is capable of being paid. Some of these actions involve a positive restructuring of a low-income consumer's financial obligations:

- ◆ Moving to a living situation where utilities are included in the rent;

- ◆ Negotiating rent decreases during the high cost winter heating months;
- ◆ Taking on roommates to help share expenses;
- ◆ Entering into levelized budget billing plans;
- ◆ Seeking out utility low-income assistance programs.

In addition to addressing the expense side of the equation, some actions involve responsible income-enhancing behavior:

- ◆ Taking on boarders to generate additional income;
- ◆ Asking or requiring children to work to contribute to household expenses;
- ◆ Seeking extra hours of work (or an additional job) to generate additional income;
- ◆ Applying for public fuel assistance;
- ◆ Applying for additional public aid (such as SSD).

Some consumers take actions to directly address the size of their home energy bills:

- ◆ Applying for government or utility-sponsored weatherization to reduce energy consumption;
- ◆ Covering off-grade foundations to reduce cold air infiltration;
- ◆ Placing plastic on windows or rags in cracks.

Low-income customers, however, frequently have little incentive, and even fewer choices, to pursue one of these constructive responses to bill unaffordability. Enrolling in an energy efficiency program to reduce high bills on a going-forward basis, for example, does not help pay the existing arrears unless coupled with a reasonable long-term deferred payment plan. Conversely, agreeing to a deferred payment arrangement does not address affordability on a going-forward basis unless some adjustment can be made in either the level of the bill or the level of household resources available to pay for the bill.

All too frequently, the customer is faced with an immediate need (i.e., bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need. Given the immediate consequences of failing to address the short-term nonpayment crisis, the customer is pushed into the negative actions identified in this research.

the customer is faced with an immediate need (i.e., bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need.

The public policy implications of the division of customer responses into "constructive" and "negative" categories can be substantial. Focusing the attention of LIHEAP (or other low-income energy assistance programs) primarily on bill nonpayment addresses only one small subset of the potential consumer responses to bill unaffordability. From a public policy perspective, there appears to be a three-part need: (1) to encourage consumers not only to engage in full and timely energy bill payment, but to engage in other constructive responses to their inability-to-pay situations as well; (2) to expand the constructive options that are available to consumers; and (3) to provide incentives for consumers to pursue those constructive responses when they are available. An exclusive focus on bill payment not only does not accomplish these three needs, but may impede their accomplishment.

**Conclusion #2: Relationship Between Bill Payment and "Affordability"**

A second conclusion to be derived from this research is that bill payment and bill affordability are not synonymous terms. Quite simply, it is possible for a person to pay an unaffordable bill. Indeed, it is possible for a person to make continuing, full and timely payments of an unaffordable bill. Merely because a bill has been paid does not mean that it is affordable. This conclusion is subject to objective verification.

Bill payment and bill affordability are not synonymous terms. [I]t is possible for a person to make continuing, full and timely payments of an unaffordable bill. This conclusion is subject to objective verification.

Public policy might reasonably question as follows: If a particular utility has 100 low-income consumers, none of whom have faced the disconnection of service for nonpayment within the past year, is it accurate to conclude there is no need for low-income fuel assistance on that utility system? Similarly, if a utility has 100 low-income consumers, all of whom have made regular, full and timely payments of their bills for the past year, is it

accurate to conclude that there is no need for fuel assistance on that utility system? The research in this paper leads to the conclusion that the answer to each of these questions is "no."

### **Full and Timely Payment of Unaffordable Bills**

The categorization of before-the-fact and contemporaneous actions helps in the assessment of the relationship between affordability and bill nonpayment. Neither of these categories involves bill nonpayment. By definition, a "before-the-fact" action occurs before energy is consumed and bills are rendered. By definition, a "contemporaneous" action occurs in order for bill payment to be made.

Consider the range of reported actions that households pursue in order to reduce utility consumption to a level capable of being paid in a full and timely fashion:

- ◆ Burning non-utility "fuels" such as furniture, clothes, newspapers, used tires, doors and woodwork in a wood stove or fireplace might allow a utility bill to be paid in full and on time;
- ◆ Doing without heat completely during the day, while spending the day at shopping malls, libraries, friends' homes, or emergency shelters might allow a bill to be paid in full and on time;
- ◆ Doing without heat completely during the day, while spending the day in bed under covers or dressed in outdoor winter clothing might allow a bill to be paid in full and on time;
- ◆ Doing without heat completely during the night (while using extra blankets, heavy coats, and clothes to sleep in) might allow a bill to be paid in full and on time.

In each of these instances, the adverse consequences of bill unaffordability are separate from any full and timely bill payment. The full and timely bill payment does not reveal the hardship or deprivation underlying the payment. It seems wrong, however, to argue that a home heating bill which is paid in a full and timely fashion because the consumer is systematically burning the furniture in his or her home is "affordable-because-paid." It seems wrong to conclude that a natural gas bill paid in a full and timely fashion because the consumer is burning used tires in the fire place to heat his or her home is "affordable-because-paid." It seems wrong to conclude that a natural gas bill paid in a full and timely fashion because the consumer is wearing a coat *inside* his or her home during cold weather is "affordable-because-paid."

So, too, contemporaneous actions assume that bill payment occurs. At the least, bill *non*-payment is not a necessary element to these contemporaneous actions. Consider the range of reported actions that households pursue in order to have sufficient funds to pay their home heating bill:

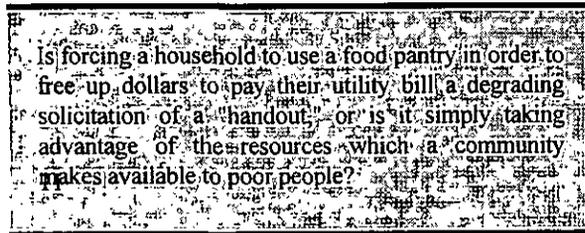
- ◆ Foregoing taking prescribed medicines;
- ◆ Going one or more days without food;
- ◆ Not buying children's clothes, school supplies, or holiday presents.

Along these lines, whether some customer actions are "negative," or whether they simply represent "sound money management" for a person of limited income is not evident on its face. Amongst actions that low-income consumers are reported to take include:

- ◆ Freeing up cash for utility bill payments by not buying food, because food is available through a local pantry;
- ◆ Freeing up cash for utility bills payments by not paying rent, because rent crisis benefits are available through a local housing agency;
- ◆ Freeing up cash for utility bills by not buying clothes, because free clothing is available through a local crisis center;
- ◆ Generating cash for utility bills by not paying utility bills, because utility crisis dollars are available in the event of a threatened "shutoff" (or refusal to fill for bulk fuels) once a minimum arrears is obtained.

Whether low-income customers should be "forced" to use food pantries, emergency rental assistance programs, and local emergency clothing programs as a mechanism to generate cash to pay home energy bills seems to depend on one's social/political beliefs as much as anything.

Is such an action a degrading solicitation of a "handout," or is it simply taking advantage of the resources which a community makes available to poor people? Regardless of the answer to that question, a home energy bill that is paid in a full and timely fashion because the consumer relies on free food from a



community food pantry hardly seems to qualify for the term "affordable."

### "Sustainability": An Alternative to "Affordability"

In measuring the "outcomes" of a low-income energy assistance program, the concept of a "sustainable" energy bill may be a more appropriate objective than "affordability." This is true for several reasons. While the concept of "affordability" has a sense of subjectivity to

The sustainability of bill payment considers the underlying forces at work behind the bill payment. It looks not simply at *whether* a bill gets paid, but at *how* a bill gets paid.

it, the concept of "sustainability" can be objectively measured; the question becomes: can this payment practice be kept up over time? Moreover, the concept of "sustainability" eliminates the exclusive (or primary) focus on bill payment. The sustainability of bill payment must consider the underlying forces at work behind the bill payment. It looks not simply at *whether* a bill gets paid, but at *how* a bill gets paid.

Substituting this concept of sustainability into our outcome measurement results in the following goal for a low-income energy assistance program such as LIHEAP: to increase/maintain the sustainability of energy bills for low-income consumers. Given this goal, the objectives of a low-income program such as LIHEAP would be four-fold:<sup>1211</sup>

- ◆ To minimize nonpayment manifestations of non-sustainability such as service terminations and arrears.
- ◆ To minimize the "before-the-fact" manifestations of non-sustainability.
- ◆ To minimize the contemporaneous manifestations of non-sustainability.
- ◆ To minimize the after-the-fact manifestations of non-sustainability.

Measuring these outcomes needs to distinguish between "reaching" sustainability and "moving toward" sustainability. In the first instance, there is a line (or a point) that a program is seeking to reach. Where you end up is important. In the second instance, it is the direction of movement which is important, whether or not the program ever reaches the goal. Progress is more important than reaching the goal.

<sup>1211</sup> Objectives are to be both attainable and quantifiable.

## SUMMARY AND CONCLUSIONS

This paper introduces the following important concepts into any discussion of low-income home energy assistance:

- ◆ The "affordability" of home energy bills cannot be deduced from the mere fact that bills are being paid by consumers. Bills can be paid but nonetheless still be unaffordable. Accordingly, low-income bill affordability programs such as LIHEAP should not be focused (or justified) exclusively (or even primarily) on the existence of payment problems, particularly payment problems resulting in the disconnection or denial of service.
- ◆ The "negative" responses available to a low-income customer facing an inability-to-pay far outstrip the available constructive responses. All too frequently, the customer is faced with an immediate need (*i.e.*, bill payment by a date certain) with the available constructive responses to an inability-to-pay unable to deliver assistance either in the form, the time period, or the magnitude necessary to meet that need. The focus on resolving the immediate nonpayment problem is more than ineffective, however. It has additional significant individual and institutional ramifications. On an individual basis, the customer may be pushed into a series of "bad" decisions to meet his or her short-term payment needs. On an institutional basis, the system fails to create constructive responses to an inability-to-pay or to provide incentives to pursue those constructive responses when they exist.
- ◆ For purposes of measuring program outcomes, the concept of bill "affordability" should be replaced with the concept of bill "sustainability." Full and timely payment of bills can be the result of consumer actions that cannot be sustained over time. The sustainability of bill payment considers the underlying forces at work behind the bill payment. It looks not simply at *whether* a bill gets paid, but at *how* a bill gets paid. Actions such as borrowing money, selling or pawning household items, and burning alternative "fuels" (such as furniture, old tires, or clothes), along with a host of others, cannot be maintained over the long term.
- ◆ The existence of bill affordability assistance --whether fuel assistance through LIHEAP, or energy efficiency through weatherization or utility programs, or rate discounts-- results in objectively measurable outcomes. These outcomes involve more than merely reducing energy burdens. An appropriate decision rule for low-income assistance is as follows: The presence of adverse or negative customer actions evidences a need, the elimination or reduction in which represents an accomplishment

of LIHEAP (*i.e.*, an "outcome" in the parlance of GPRA).<sup>1221</sup> The incidence of these negative actions (*i.e.*, how many consumers are forced to engage in such actions), and the frequency of such actions (*i.e.*, how often are such customers forced to take such actions), both lend themselves to measurement.

## NECESSARY FUTURE RESEARCH

Having reached the foregoing conclusions, several next steps become evident:

- ◆ A systematic set of "baseline" data needs to be collected documenting the extent to which low-income consumers engage in negative actions as a result of non-sustainable home energy bills.
- ◆ The baseline data, as well as data collection over time, needs to document both the breadth and depth of the problem. The breadth of the problem involves measuring the number of households engaging in such negative or adverse actions. The depth of the problem measures how often customers are engaging in negative or adverse actions in response to unaffordable home energy bills. "Breadth" and "depth" are different measurements.
- ◆ The baseline data should be evaluated to determine to what extent, if at all, the negative actions resulting from non-sustainable home energy bills can be associated with specific levels of home energy burdens. Such research would query whether some specific level of burden results in an identifiable change in either the breadth or the depth of "negative" responses as identified above. The identification of such a point might provide important insights into a determination of an objective measurement of "affordability" based on energy burden.
- ◆ An experimental set of data should test whether specific types of affordability assistance (*e.g.*, LIHEAP, Weatherization, discount rates) result in a reduction in either the breadth or depth (or both) of the negative responses identified above.
- ◆ An experimental set of data should test whether *particular* energy affordability programs (*e.g.*, LIHEAP, Weatherization, discount rates) are *more* effective at reducing either the breadth or depth (or both) of the negative outcomes. Comparisons should be made to each other (*e.g.*, is weatherization more effective than fuel assistance, or *vice versa*) as well as to a more generalized income transfer program (*e.g.*, is fuel assistance more effective than a general income transfer program).

---

<sup>1221</sup> A similar decision rule could be adopted for any other energy assistance program as well. It is not unique to LIHEAP.

Table 1  
Low-Income Customer Responses to Unaffordable Home Energy Bills

Activity/Number of Mentions	Non-Payment Prerequisite	Constructive/Negative/Neutral	Before/After/Contemporaneous	
<b>Change fuel suppliers</b>				
14	Burn wood, kerosene	N	0	B / A
15	Request/obtain space heaters	N	-	B / A
12	Change energy suppliers	Y	0	A
<b>Restructure (positively) their expenses and debts</b>				
8	Move to (subsidized) housing with heat included in rent	N	+	B
4	Sign up for utility low-income program	N	+	B / A
11	Negotiate budget payments or payment extension with vendors, try to get reasonable and affordable payment plans	Y	+	A
1	Ask landlord for lower rent in winter	N	+	B
1	Declare bankruptcy	Y	-	A
4	Put children in foster homes/give up children to family members	N	-	B / A
<b>Increase their indebtedness</b>				
23	Borrow from friends and/or family	N	-	A / C
4	Borrow from loan company	N	-	A / C
3	Try to get advance on pay check	N	-	A / C
3	Skip payments until tax time	Y	-	A / C
1	Cash in life insurance	N	-	A / C
4	Purchase fuel, food, medicine on credit cards	N	-	B / A / C
3	Give up; don't pay and worry about later	Y	-	A / C

Decrease/compromise quality of life				
2	Don't make needed purchases: kids clothes, eye glasses, dentures	N	-	B/A
2	Forego home, appliance repair and maintenance	N	-	B/A
2	Sell car/do without transportation	N	-	B/A
1	Keep kids out of school due to lack of bathing or clean clothes	N	-	A
17	Pawn/sell valuables to pay energy bills (TVs, bikes, clothes, vehicles, furniture)	N	-	C
Seek emergency shelter (short and long run)				
4	Spend day time in public spaces (malls, grocery stores, libraries)	N	-	B
5	Abandon own dwellings to move in to temporary housing (shelters)	N	-	B
4	Seek emergency shelter on coldest days	N	-	B
3	Nothing: get evicted; become homeless	Y	-	C
Resort to unsafe heating strategies/techniques				
12	Turn down thermostat to dangerously low temperatures; stay in house with no heat; don't run a/c in hot weather	N	-	B
29	Use alternate (unsafe) heat sources (ovens, burners, electric blankets), change fuel types, electric space heaters	N	-	B
7	Do without heat	N	-	B
8	Burn furniture, clothes, siding, tires, doors, woodwork in wood stove or fireplace	N	-	B

Make energy use pay, as you go				
4	Sleep in (running) car, campers, vans	N	-	B
8	Purchase kerosene, fuel oil in \$5 increments; buy LP cylinders rather than fill tank; buy small quantities of diesel fuel	N	-	C
Cut back on usage				
7	Spend a lot of time in bed (all day)	N	-	B
10	Wear multiple layers of clothing; use lots of blankets	N	-	B
9	Let gas/electric be disconnected in winter/summer, reconnected in warm/cold weather, live without heating or cooling	Y	-	A
4	Cover off grade foundations to reduce cold air infiltration; plastic on windows; rags in cracks	N	+	B
1	Don't use lights	N	-/0	B
12	Reduce heating to 1 or 2 rooms	N	-	B
1	Turn off heat at night	N	-	B
2	Turn off hot water heater completely	N	-	B
Steal fuel/energy/commit fraud				
9	Illegal reconnect after disconnect	Y	-	A
7	Tamper with meter	Y	-	A
5	Write bad checks to get fuel/maintain service	Y	-	C
6	Lie about income to get assistance/commit fraud to get assistance	N	-	C
16	Open new accounts under new names or false names (children, pets)	Y	-	C
8	Move around to avoid bill collectors	Y	-	A
3	Wait for disconnect and then move	Y	-	C
Defer or avoid other legitimate expenses (play creditors off against each other)				

2	Disconnect telephones	N	-	B
2	Don't pay electric to pay heat	Y	-	C
5	Use rent money for utilities (because eviction is more difficult than disconnect)	N	-	C
13	Don't pay other bills (water, rent, car payments, car or house insurance)	N	-	C
3	Don't buy Christmas or birthday presents for kids	N	-/0	C
7	Buy less food/stop special diets	N	-	C
4	Don't treat illness until it is advanced	N	-	C
7	Stop purchasing medicine/don't use all medicine	N	-	C
<b>Get someone else to pay for energy/other expenses</b>				
9	Run extension cord to neighbors	Y	-	B
25	Request government assistance	N	+	C/A
25	Move in with friends or family who have service	Y	-/0	A
18	Get private fuel assistance (church, Salvation Army, etc.)	Y	+	C
8	Free up cash by going to food pantries, clothing centers, emergency rent programs	N	+/0	B/A/C
<b>Seek permanent use/cost reduction</b>				
6	Request weatherization/utility energy audit	N	+	B

Increase income				
2	Expect children to work and contribute to housing costs	N	+ / 0	B
3	Take in friends, family, boarders, tenants for extra income	N	+	B
4	Look for (more or extra) work	N	+	B
1	Seek SSI	N	+	B
Use system protections				
4	Don't pay bills because of winter moratorium protection	Y	-	C
2	Quit paying in summer and wait for LIHEAP to start	Y	-	C
1	Run up arrears high enough to qualify for emergency crisis assistance	Y	-	C
3	Get doctor's note to prevent shutoff	Y	-	C
4	Agree to deferred payment arrangement they know they can't keep	Y	-	C
2	Use electric space heaters since electricity cannot be disconnected in winter	Y	-	C

**APPENDIX A:  
A CONCEPTUAL OVERVIEW OF PROGRAM PLANNING AND OUTCOME REVIEW**

LIHEAP is but one of a variety of energy affordability programs.<sup>1231</sup> Basic planning principles dictate that certain steps occur in the planning and implementation of *any* program. These planning steps are as applicable to LIHEAP as they are to any program of any nature. The fundamental planning principles involved in program design include the following steps:

1. **Articulating the program goal:** The program goal is the ultimate end-in-view resulting from the program. (**Illustration:** To maintain better contacts within one's family.)
2. **Establishing one or more program objective(s):** Program objectives are to be both attainable and measurable. It is against program objectives that program performance is subsequently measured. (**Illustration:** To be home for holidays.)
3. **Identifying the strategy to accomplishing the objective(s):** The "strategy" of a program is the overall direction in which the program intends to move. The strategy is important in that it is disconnected from tactics. A tactic may be effective and yet still not accomplish the program goal if the strategy is flawed with which to begin. (**Illustration:** To acquire frequent flyer miles to fund airplane tickets for holiday trips home.)
4. **Identifying one or more tactics through which to implement the strategy:** Program "tactics" are the specific action steps through which a strategy is implemented. Tactics are those program elements which would be included in a work plan. A program may, and likely will, have multiple tactics to implement the strategy. (**Illustration:** To limit all business trips solely to a single airline to increase the accumulation of frequent flyer miles.)
5. **Measuring program performance:**<sup>1241</sup> Measuring a program's performance involves

---

<sup>1231</sup> "A 'program' may be any activity, project, function, or policy that has an identifiable purpose or set of objectives." U.S. General Accounting Office, *Performance Measurement and Evaluation: Definitions and Relationships, Glossary*, at 1 (April 1998). Other affordability programs might involve weatherization or baseload energy efficiency, utility rate discounts, and the like.

<sup>1241</sup> "Performance measures may address the type or level of program activities conducted (process), the direct products and services delivered by a program (outputs), and/or the results of those products and services (outcomes)." *Performance Measurement and Evaluation, supra*.

measuring outcomes.<sup>1251</sup> Measuring outcomes is different from measuring outputs or activities. (**Illustration (outcome measure):** Was I home for New Year's Day, Labor Day, Father's Day?). (**Illustration (activity measure):** Did I fly all my business trips on one airline?). (**Illustration (output measure):** Did I accumulate sufficient frequent flyer miles to fund a trip home for the holidays?) It is important to notice that, in this illustration as is true generally, neither the output measures nor the activity measures contribute to a determination of whether the program objective is being met. Accomplishment of an objective can only be measured through an analysis of program outcomes.

6. **Evaluating program performance in light of the program objectives:** Program performance should be measured relative to the program objective.<sup>1261</sup> This involves creating a feedback loop. The feedback loop provides the planner with the ability to determine if the objective was met, and if not, what changes need to be made to improve performance.<sup>1271</sup>

Two important observations need to be made about this planning process. First, it is critical to distinguish between strategy and tactics. Even successful tactics fail if the strategy is flawed in the first place (*e.g.*, I flew enough business trips on one airline to accumulate sufficient miles for an airline ticket, but my home town does not have an airport; *e.g.*, I flew enough trips on one airline to accumulate sufficient miles for an airline ticket, but one cannot use frequent flyer miles for trips over holidays). If a strategy is in error, the effectiveness of the tactics becomes irrelevant, since successful tactics cannot be used within a flawed strategic framework to accomplish program objectives.

Second, an appropriate strategy can fail due to unsuccessful tactics (*e.g.*, the airline on which I took all my business trips does not fly to my home town; *e.g.*, I flew 100% of my business trips on a single airline, but I took only three business trips). Under these circumstances, the appropriate planning response is to determine whether the tactics had some underlying flaw, or whether they were simply poorly implemented.

---

<sup>1251</sup> "Performance measurement focuses on whether a program has achieved its objectives, expressed as measurable performance standards." *Performance Measurement and Evaluation, supra*. As is thus evident, it is possible to know that a program reduces energy burdens and/or energy bills, without documenting what *outcome* that program result generates.

<sup>1261</sup> "Performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress towards preestablished goals." *Performance Measurement and Evaluation, supra*.

<sup>1271</sup> "A program evaluation's typically more in-depth examination of program performance and context allows for an overall assessment of whether the program works and identification of adjustments that may improve its results." *Performance Measurement and Evaluation, supra*.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Petition of Philadelphia Gas Works : Docket Nos. P-00042090  
For Waiver of Public Utility Commission : R-00049157  
Customer Service Rules : M-00021612  
: P-00032061  
:

DOCUMENT

ORAL REBUTTAL TESTIMONY AND EXHIBITS OF

ROGER D. COLTON

ON CREDIT AND COLLECTION ISSUES

DOCKETED  
JUL 13 2004

OCA Statement No. FCI-1R

7/6/04  
phila PK

ON BEHALF OF THE  
Office of Consumer Advocate (OCA)

Harrisburg, Pennsylvania

SECRETARY'S BUREAU

2004 JUL 12 PM 10:41

RECEIVED

July 6, 2004

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Roger Colton. My address is 34 Warwick Road, Belmont, MA  
3 02478.

4  
5 Q. ARE YOU THE SAME ROGER COLTON THAT PREVIOUSLY  
6 TESTIFIED IN THIS PROCEEDING ON BEHALF OF THE OFFICE OF  
7 CONSUMER ADVOCATE?

8 A. Yes, I am.

9  
10 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY  
11 TODAY?

12 A. The purpose of my surrebuttal testimony today is to respond to the proposal of  
13 OSBA witness Robert Knecht to cap participation in the PGW Customer  
14 Responsibility Program (CRP) at 60,000 customers. Mr. Knecht proposes that “to  
15 the extent that the Commission does not approve a cap for CRP participants, I  
16 recommend that any cost incurred by PGW above that associated with 60,000  
17 participants be recovered in a separate “CRPA” charge that applies only to  
18 residential customers.”

19  
20 Q. DO YOU AGREE WITH MR. KNECHT THAT PGW’S CRP  
21 PARTICIPATION SHOULD BE CAPPED AT 60,000 PARTICIPANTS?

22 A. Mr. Knecht has established no reason why the CRP program should be capped at  
23 60,000 customers. He acknowledges that this is arbitrary. Mr. Knecht’s concern for

1 a cap on program participation also seems to stem from some unfounded  
2 assumptions. Consider that:

- 3 ➤ Mr. Knecht states that “if all eligible customers were to enroll in the CRP,  
4 PGW’s ratepayers would face a USC increase of some \$30 million, or about 60  
5 cents per MCF.” (Knecht, at page 6). It is unreasonable to base decisions on  
6 what might happen if *all* eligible customers were to enroll in any particular  
7 program. There is not a low-income rate affordability program that I am aware  
8 of that has a participation rate even approaching 100% of those customers that  
9 are eligible.
- 10 ➤ Mr. Knecht states further that the level of rates charged to CRP customers is not  
11 sufficient to recover even the short-run marginal costs of providing gas service. I  
12 agree that such an analysis should be performed, but he provides no empirical  
13 analysis to support his conclusion. In the original 1992-1993 proceeding in  
14 which Ms. Happy Fernandez reached the conclusion (on behalf of the  
15 *Philadelphia Gas Commission*) that the CRP customers covered their short-run  
16 marginal costs, her analysis considered much of what the PUC requires in its  
17 CAP Policy Statement, including an estimate not only of the magnitude of the  
18 CRP credits directly provided to participants, but of the offsetting expense  
19 savings. There is absolutely no basis to determine, based on the information now  
20 available, whether CRP participants cover their short run marginal costs or not.

21  
22 **Q. WOULD PLACING A CAP ON CRP PARTICIPATION CREATE ANY**  
23 **OTHER CONCERNS FOR YOU?**

1 A. Placing an arbitrary cap on CRP participation would be inconsistent with the needs  
2 assessment that has been prepared by PGW and submitted to the PUC. To cap CRP  
3 participation below the acknowledged needs as determined by the Company's own  
4 needs assessment could create a program that is neither available nor adequately  
5 funded as required by statute.

6

7 **Q. DO YOU AGREE THAT IN THE ABSENCE OF A CAP ON CRP**  
8 **PARTICIPATION, ALL CRP COSTS SHOULD BE ALLOCATED TO THE**  
9 **RESIDENTIAL CUSTOMER CLASS?**

10 A. No. As was established in the PGW restructuring proceeding, all customer classes  
11 should be allocated responsibility for paying Mr. Knecht's proposed CRPA charge.  
12 The CRP benefits all customer classes. All customer classes contribute to the need  
13 for CRP. In the event that CRP did not exist, there would be substantial municipal  
14 costs that would be paid by all customer classes. Creation of the CRPA charge as  
15 suggested by Mr. Knecht is inconsistent with cost allocation principles. No more  
16 reason exists for a non-low-income residential customer to pay for the CRPA charge  
17 than for any other CRP non-participant. Moreover, creation of the CRPA charge is  
18 inconsistent with the principle that the costs of universal service programs be  
19 nonbypassable and inconsistent with the Commission's order in PGW's  
20 restructuring proceeding.

21

1 **Q. DOES OCA SUPPORT A COMPREHENSIVE EXAMINATION OF THE**  
2 **PGW CRP PROGRAM GIVEN THE HIGH COMMODITY COSTS OF**  
3 **NATURAL GAS?**

4 A. Yes. As I stated in my Direct Testimony, there can be little question but that the  
5 costs that the CRP program are imposing upon PGW, like the costs of Customer  
6 Assistance Programs (CAPs) for other Pennsylvania natural gas utilities, are being  
7 stretched due to increasing natural gas prices today. It is necessary to consider the  
8 impacts of the historically high natural gas prices on CRP (and other CAP  
9 programs). The OCA would welcome such an inquiry and would seek to  
10 participate in discussions on how to reconcile the very real tension between the  
11 increased need for universal service programs caused by historically high natural  
12 gas rates, on the one hand, and the need to keep overall costs within reasonable  
13 bounds for nonparticipating customers, given historically high natural gas rates,  
14 on the other hand. Unfortunately, the limited time provided by this procedural  
15 schedule did not provide an opportunity for such an investigation.

16  
17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.

Investigation into Financial and Collections Issues  
Regarding the Philadelphia Gas Works

Docket Nos. P-00042090, R-00049157,  
M-00021612, and P-00032016

OCA Cross Examination Exhibit No. FCI-1

Dated Entered: 7/6/04  
*Phila TX*

**DOCKETED**  
JUL 13 2004

**DOCUMENT**

RECEIVED

2004 JUL 12 PM 10:43

SECRETARY'S BUREAU

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-1:** For each BCS income tier, please provide the number of PGW residential accounts written off as bad debt by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** See Answer to OTS-CD-8.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-2:** For each BCS income tier, please provide the dollars of residential bills written off as bad debt by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available in the system but programming is required to extract the information. The information could be available within 3 to 4 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set 1-3:** Please provide the number of accounts written off by month, by size of write-off, for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The Information is available in the system but programming is required to extract the information. The information could be available within 3 to 4 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-4:** For each BCS income tier, please provide the number of PGW residential accounts on levelized monthly budget billing plans by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make intelligible. It could be available in 2 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-5:** For each BCS income tier, please provide the dollars of residential bills billed through levelized monthly budget billing plans by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make intelligible. It could be available in 2 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-6:** For each BCS income tier, please provide the number of PGW residential accounts in arrears, by age of arrears, by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/02 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-7:** For each BCS income tier, please provide the dollars of residential bills in arrears by age of arrears by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/02 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-8:** For each BCS income tier, please provide the number of PGW residential accounts in arrears but not on payment agreements by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-9:** For each BCS income tier, please provide the dollars of residential bills in arrears but not on payment agreements by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-10:** For each BCS income tier, please provide the number of PGW residential accounts in arrears subject to payment agreements by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-11:** For each BCS income tier, please provide the total dollar amount of residential bills in arrears subject to payment agreements by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available from 9/1/03 forward but requires reformatting to make it intelligible. It could be available in 2 to 3 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-12:** For all PGW residential customers on levelized budget billing plans, please provide the following by month for the months January 2001 to present:

- a. Number of accounts written off as bad debt.
- b. Total dollar amount of bills written off as bad debt.
- c. Number of accounts in arrears.
- d. Total dollar amount of bills in arrears.
- e. Number of accounts in arrears subject to payment agreements.
- f. Total dollar amount of bills in arrears subject to payment agreements.
- g. Number of accounts in arrears *not* subject to payment agreements.
- h. Total dollar amount of arrears in arrears *not* subject to payment agreements.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** Programming would be required to extract information. It could be available within 6 to 8 weeks. (Additional clarification would also be needed.)

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-13:** For each BCS income level, please provide the total number of Automated Clearinghouse (ACH) payments received by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-14:** For each BCS income level, please provide the dollars of ACH payments received by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-15:** For all accounts in arrears subject to payment agreements, please provide the number of ACH payments made to PGW by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-16:** For all accounts in arrears subject to payment agreements, please provide the dollars of payments made to PGW via ACH payments by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-17:** For each BCS income tier, please provide the average monthly bill by month for the months January 2001 to present.

**Response provided by:** Kenneth Dybalski

**Response:** Average bills by month are not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-18:** For each BCS income tier, please provide the number of PGW residential accounts who "broke" their payment agreement by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** See answer to OTS-CD-9

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-19:** For each BCS income tier, please provide the dollars of "broken" payment agreements by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available in the system but programming is required to extract the information. The information could be available within 3 to 4 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-20:** Please provide the number of PGW residential accounts who "broke" their payment agreement by month for the months January 2001 to present, disaggregated by the size of the initial arrears subject to the payment agreement.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-21:** Please provide the dollars of "broken" payment agreements by month for the months January 2001 to present, disaggregated by the size of the initial arrears subject to the payment agreement.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-22:** For each BCS income tier, please provide the dollars of arrears subject to payment agreements by size of arrears subject to the agreement by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-23:** For each BCS income tier, please provide the numbers of accounts in arrears subject to payment agreements by size of arrears subject to the agreement by month for the months January 2001 to present.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is not available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-24:** For each BCS income tier, please provide the number of accounts in arrears that were subject to a payment agreement by the number of months the payment agreement was maintained before it was broken.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is limited to one year but requires reformatting to make it intelligible. It could be available in 2 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-25:** For each BCS income tier, please provide the dollars of arrears that were subject to a payment agreement by the number of months the payment agreement was maintained before it was broken.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available in the system but programming is required to extract the information. The information could be available within 6 weeks. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-26:** For each BCS income tier, please provide the number of accounts in arrears by size of arrears.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available but requires reformatting to make it intelligible. It could be available in 2 weeks. Need to specify arrearage ranges. No income tier information is available.

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**INVESTIGATION INTO PGW's FINANCIAL and COLLECTION ISSUES**  
**DOCKET NOS.P-00042090/R-00049157 and M-00021612/P-00032061**

**Question OCA Set I-27:** For each BCS income tier, please provide the dollars of arrears by size of arrears.

**Response provided by:** Randy Gyory, Vice President of Customer Affairs

**Response:** The information is available but requires reformatting to make it intelligible. It could be available in 2 weeks. Need to specify arrearage ranges. No income tier information is available.

Investigation into Financial and Collections Issues  
Regarding the Philadelphia Gas Works

Docket Nos. P-00042090, R-00049157,  
M-00021612, and P-00032016

DOCUMENT

OCA Cross Examination Exhibit No. FCI-2

Dated Entered: 7/6/04  
Phila *JK*

DOCKETED

JUL 13 2004

RECEIVED

2004 JUL 12 PM 10:43

SECRETARY'S BUREAU

**2003 Cold Weather Survey Results  
Natural Gas**

<b>Survey Outcome:</b>	<b>Columbia</b>	<b>Dominion Peoples</b>	<b>Equitable</b>	<b>NFG</b>	<b>PG Energy</b>	<b>PGW</b>	<b>PPL Gas</b>	<b>TW Phillips</b>	<b>UGI</b>	<b>TOTAL</b>
<b>Total Vacant Residences</b>	675	665	695	714	282	1,104	206	199	592	5,132
<b>Total Households Using Potentially Unsafe Heating Sources*</b>	196	469	507	253	119	918	109	76	296	2,943
<b>Total Households Without Service After Completion of the Survey (Excludes Both Vacant Residences and Households Using Potentially Unsafe Heating Sources)</b>	832	642	1,627	303	2	4,567	91	74	923	9,061

\*Potentially Unsafe Heating Sources include kerosene heaters, electric space heaters, oil-filled space heaters, fireplaces, kitchen stoves or ovens, and use of extension cords to neighbor's service.