

**RED FLAGS FOR CONSUMER PROTECTION POLICIES**  
**GOVERNING ESSENTIAL ELECTRIC AND GAS UTILITY SERVICES:**  
**HOW TO AVOID ADVERSE IMPACTS ON LOW-INCOME**  
**CONSUMERS**

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## INTRODUCTION

At a time when prices for essential energy services (electricity, natural gas, fuel oil) are increasing rapidly and with little relief in sight<sup>1</sup>, residential consumers and low-income consumers in particular, are also threatened with changes to consumer protection policies that are likely to lessen their ability to obtain and maintain service for essential electricity and natural gas service. These changes to customer service and consumer protection policies will manifest themselves as:

- Increases in demands for deposits for applicants and current customers based on the use of credit scores instead of the more traditional focus on the customer's prior payment history for utility service alone;
- Imposition of fees and additional charges for certain payment options;
- Higher incidence of disconnection of service as a result of elimination of personal contact and procedural requirements, restrictions on access to payment arrangements, and the use of "household" rules that seek to transfer debt among unrelated adults based on residency rules; and
- Changes in the way essential energy services are priced so that lower use customers are threatened with higher fixed charges and rate design changes that emphasize more price volatility.

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<sup>1</sup> According to the U.S. Department of Energy Short Term Energy Outlook (October 2005): "This winter, residential space-heating expenditures are projected to increase for all fuel types compared to year-ago levels. On average, households heating primarily with natural gas are expected to spend about \$350 (48 percent) more this winter in fuel expenditures. Households heating primarily with heating oil can expect to pay, on average, \$378 (32 percent) more this winter. Households heating primarily with propane can expect to pay, on average, \$325 (30 percent) more this winter. Households heating primarily with electricity can expect, on average, to pay \$38 (5 percent) more. Should colder weather prevail, expenditures will be significantly higher." See, <http://www.eia.doe.gov/steo>

Changes to a state regulatory commission's<sup>2</sup> customer rights and consumer protection rules typically happen with an “insider’s game” and involve multiple workshops, formal hearings, opportunities for written comment, and, in some states, legislative review and approval. In most cases, these proceedings happen in the State Capitol and require the use of lawyers who are familiar with rulemaking and administrative proceedings and testimony by expert witnesses. Too often, citizens groups and informal associations of low-income advocates do not have the necessary resources to participate and represent their members or clients in such proceedings. While in some states low-income advocates have organized to participate in major rate cases and other proceedings that are likely to result in price increases or opportunities to expand low income programs and services, participation in lengthy rulemaking or obscure tariff proceedings that change consumer protection policies and programs is often of secondary importance given the resources that are available.

The purpose of this report is to identify the “red flags” in ongoing consumer protection and customer service policies that should be tracked by representatives of residential customers generally and low income customers in particular. The report includes case studies organized by issues and policy initiatives that have occurred or that are being proposed in a wide variety of states. In addition, this report identifies some of the political and technological changes that are making some of these changes possible and more likely to be replicated in more states. Finally, this report suggests opportunities and arguments for participation in regulatory rulemaking and policy proceedings to prevent deterioration in

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<sup>2</sup> Each state has a “public utility commission” under various names that regulates electricity, natural gas, basic exchange telephone service, and water service provided by private entities. The National Association of Regulatory Utility Commissioners (NARUC) identifies and provides contact information for each state commission at [www.naruc.org](http://www.naruc.org)

consumer protection policies applicable to low income customers for essential utility services.

## **WHY ARE UTILITIES SEEKING TOUGHER CREDIT AND COLLECTION POLICIES AND WHY ARE STATE REGULATORS APPROVING THEM?**

Based on the case studies contained in this report, utilities are proposing and state regulatory commissions are approving the adoption of more restrictive credit and deposit policies, increased reliance on disconnection of service, rules which impose previously unpaid bills on individuals based on residency alone, additional fees and charges associated with certain payment options, experimentation with rate design and metering policies that shift costs or result in higher monthly bills for low use customers, and the introduction of some potentially beneficial payment options that are not available to low income or payment challenged customers. Why these changes are being proposed and adopted is not particularly difficult to understand.

First, utility billing and collection systems are becoming more sophisticated and the technology is available to instantaneously link utility call centers with credit reporting agency databases, to search prior bad debt records faster, and to store and access utility bill payment information based on prior locations, social security numbers, as well as names. Utilities can buy products or services that will provide these services<sup>3</sup> at a very small incremental cost. Whereas in the past the utility billing and collection systems were based on legacy hardware and software systems, the larger utilities have replaced those “clunkers” with web-based, employee-friendly, and interactive databases and billing systems. So, the first answer to the

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<sup>3</sup> A utility can purchase a service that will instantaneously link an applicant’s given Social Security number with a database that will determine whether the provided number is valid and linked to the name of the applicant in question while the applicant is on the phone with the utility representative. Utilities also have access to an applicant’s credit history score from a credit reporting agency in order to determine if a deposit will be required at the time of application of service.

question as to why utilities are seeking changes to historical deposit and credit evaluation procedures is that they can do so with little additional cost.

Second, bad debt and uncollectible expense is rising, primarily due to the rising cost of electricity and natural gas. The real question is whether this expense is rising in terms of its historical percentage relationship to the utility's sales revenues. This expense is a function of the utility's historical credit and collection practices and the implementation of the management's discretion in its implementation of the applicable consumer protection rules. For example, no utility actually disconnects every customer who has been sent a disconnection notice and who has failed to pay or make contact to negotiate a payment arrangement. Utilities are constrained by the regulatory requirements imposed to "work" a notice and schedule its available field personnel to make the necessary premise visits to physically disconnect service. However, a utility has a significant amount of discretion in this regard. If a utility that has historically failed to actually pursue collection activities for all its disconnection notices adopts a change in management policy that is determined to be more "strict" in its collection efforts, a significant increase in disconnections can occur without any change in the underlying regulatory policies and regulations. The converse is also true, however. Utilities can incur a significant increase in uncollectible expense and overdue amounts due to management changes that result in slower debt collection activities and failure to pursue valid collection activities, including disconnection of service. Utilities that are implementing new billing systems, for example, often experience a year-long transition effort that results in the failure to pursue collection activities, followed by a frantic effort to collect old overdue bills and stricter disconnection policies. In other cases, utilities interpret informal and formal regulatory signals to "go easy" on collections as a result of a

spike in prices and adverse public reaction associated with these higher bills and their potential impact on residential customers.

But what about utilities that “blame the regulator” for their bad debt and seek changes to ratemaking policies or the consumer protection regulations to crack down on late paying and non-paying customers? This approach is reflected in the rhetoric surrounding the adoption of the Pennsylvania statutory “reforms” to the historical credit and collection rules, as well as the proposals by utilities to make use of credit scoring and other means to impose more deposits prior to granting new service and to transfer debt to unrelated adults that have resided in the same location as the prior customer of record (so-called “household rule”). While often presented as a series of reforms to avoid imposing costs on good paying customers due to the tolerance of debt avoidance policies by “bad” customers, the sad fact is that low income customers are most likely to be adversely affected by these policy changes due to the delicate balance between the size of the monthly bill and their ability to afford payment no matter what type of payment plan is available. These trends may be exacerbated by the ebb and flow of financial assistance programs (both federal and state) to assist low income customers in paying unaffordable bills. If a state has adopted a direct bill payment assistance program in the form of a discount, percentage of income payment plan, weatherization, or other bill credit targeted to low-income customers, there is a tendency for utilities to assume that customers who are not on these programs do not need the same level of protections that may have been built into the historical consumer protection policies as a means of indirect assistance. In other words, states that have adopted more “liberal” consumer protection rules have in effect adopted an indirect means of providing assistance to payment troubled customers. With the advent of a direct and affirmative low income bill

payment assistance program, some utilities have taken the position that stricter consumer protection rules are now appropriate since those who needed assistance are now protected. Of course, this argument fails to take into account the very low penetration rate of eligible customers in any of these low income programs. Conversely, the lack of any direct financial assistance program for low income customers is often used by advocates to retain system-wide protections (such as winter protection rules) that are needed due to the lack of ability to identify low income customers in the utility database.

Finally, the adoption of retail competition for essential electricity and natural gas services in some states has contributed to the deterioration in consumer protection policies and programs. The theory that typically lies behind these developments is that there should be a level playing field and that the competitive market will deliver benefits to consumers that were otherwise mandated by regulators in a monopoly market.

**RECOMMENDATIONS FOR BEST PRACTICES FOR CONSUMER  
PROTECTION POLICIES AND PROGRAMS FOR ESSENTIAL ENERGY  
SERVICES**

The case studies reflected in this report reflect typical initiatives and activities undertaken by utilities and regulators that are likely to threaten the ability of many residential consumers, particularly low-income consumers, to obtain and maintain essential energy services that are affordable. This section of the report outlines three key steps that consumer representatives should pursue at the state level to assure a basic level of protection that is both reasonable and appropriate.

- First, what are the current consumer protection policies and programs in effect in your state? Is there an overarching regulation that governs all electric and natural gas utilities or are these policies resolved in individual utility tariffs or commission orders?
- Second, does your state commission mandate the collection of routine indicia of credit and collection activities by utilities for all residential customers and for low-income customers in particular?
- Third, oppose attempts to weaken historical policies and seek the adoption of best practices.

Each step is outlined more fully below.

1. What are the “rules of the road” for basic utility service and what proceedings might be underway that would result in changes? Check out recent and impending

proceedings and rulemakings at your state regulatory commission. Each commission has a consumer affairs or public affairs office that can help you locate the relevant information, copies of adopted rules, access utility tariffs (most of which are now available on the internet), and determine the answers to your specific questions concerning pending rulemaking proceedings, whether utilities can impose certain charges, etc. In addition, most states have a government official charged with representing the public before the state utility commission. Check in with your public advocate and ask to be informed of any pending or future developments on consumer protection issues and changes in utility practices or commission policies. Your state public advocate may welcome your participation and interest because these offices are often understaffed and need public involvement to determine priorities and provide “real time” information on the impacts of regulatory policies on customers, particularly low-income customers.

2. Determine whether key indicia of utility credit and collection programs is being reported and evaluated. Does your state regulatory commission collect or monitor key indicia of utility credit and collection programs, such as disconnection of service, reconnection of service, frequency of payment arrangements, participation in low income programs, deposits, uncollectible expense? It is not possible to determine the impact of a utility’s credit and collection programs or the state’s consumer protection standards unless utilities collect and state commissions require the reporting of comparable information. Too many state commissions do not even know how many customers are disconnected for nonpayment on a monthly basis and so cannot make the most elementary determination about the impact of current

regulations or the need for affirmative low income bill payment assistance programs. Those state commissions that do collect such information often do not publish it or make it available except upon request.

Maine, Pennsylvania, and Iowa are among the few states that have such tracking and reporting requirements. A recent study published by the National Energy Assistance Directors' Association<sup>4</sup> has described the need for data collection and analysis to better serve low-income customers. For example, Iowa utilities must file monthly reports for the following electric and gas residential customer statistics:

- Number of accounts;
- Number of accounts certified as eligible for energy assistance since the preceding October 1;
- Number of accounts past due;
- Number of accounts eligible for energy assistance and past due;
- Total revenue owed on accounts past due;
- Total revenue owed on accounts eligible for energy assistance and past due;
- Number of disconnection notices issued;
- Number of disconnection notices issued on accounts eligible for energy assistance;
- Number of disconnections for nonpayment;
- Number of reconnections;
- Number of accounts determined uncollectible; and
- Number of accounts eligible for energy assistance and determined

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<sup>4</sup> NEADA, Tracking the Home Energy Needs of Low-Income Households Through Trend Data on Arrearages and Disconnections, May 2004. Available at [http://www.neada.org/pubs/Tracking\\_the\\_Need.pdf](http://www.neada.org/pubs/Tracking_the_Need.pdf) This report contains the Iowa reporting regulations.

uncollectible.

The Pennsylvania PUC requires electric and natural gas utilities to report more detailed information, including the number of confirmed and estimated low income customers, basic termination and reconnection information, the termination rate, the ratio of reconnections to termination, the number of residential customers in debt and on an agreement, a variety of statistics that relate the dollars in debt for residential and residential low-income customers, the percent of that debt on an agreement, average arrears balances, gross and net write-off dollars, and annual collection operating expenses.<sup>5</sup>

3. Demand reforms and resist degradation of consumer protection policies and programs. There is no substitute for participation in state regulatory proceedings, meetings with your state public advocate, development of coalitions, and education of state policymakers and regulators. There are many resources to identify best practices among the various state policies. The purpose of this report is to alert the community that represents low income customers of pending and adopted changes to long standing consumer protection policies and programs that may not be known or understand as a result of changes in technology and the adoption by utilities of more strict approaches to bill collection, deposit policies, and disconnection practices. Appendix A to this report contains a list of resources to assist local organizations in identifying best practices and pending developments in this area.

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<sup>5</sup> 52 Pa. Code Sections 54.75 and 62.5. See the most recent report presenting these statistics for Pennsylvania's electric and natural gas utilities prepared by the PUC's Bureau of Consumer Services and available on the PaPUC's website: [www.puc.state.pa.us](http://www.puc.state.pa.us)

## BEST PRACTICES AND RECOMMENDATIONS FOR REFORM

- I. Does your state commission have a regulation in place that governs residential utility credit and collection standards and policies? What role does the utility tariff on file with the commission play in the implementation of these rules? If formal regulations exist, do they supersede the language of the utility tariff? If the formal regulations are full of “holes” or vague, the role of utility specific tariffs will be significant.

**Recommendation:** If there is no comprehensive and minimum set of utility credit and collection standards in effect in your state, it is likely that any consumer protection policies are reflected in the occasional order or utility tariff. This makes it impossible to educate consumers on their rights and responsibilities and significantly impacts the ability of either the commission or a consumer representative to enforce any set of standards or minimum requirements. Seek the adoption of a comprehensive regulation or order applicable to all gas and electric utilities. Several examples of states with such regulations include Maine, Idaho, Pennsylvania,<sup>6</sup> and Massachusetts.

- II. What direct and affirmative low income programs are required for each natural gas and electric utility in your state or area of interest? This information may not be obvious because the programs may be small, labeled a “pilot”, and reflected in a commission order that is not obviously labeled without a referral from an insider. For example, while the state regulation may determine the criteria under which deposits can be required and the maximum amount of the deposit, the

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<sup>6</sup> 52 Pa Code Chapter 56 has not yet been formally amended to reflect the statutory changes described in this report so that the current version remains a well regarded example of state consumer protection regulations.

utility may be required by tariff to offer a low income payment assistance program that was negotiated or ordered as part of a recent revenue requirement or rate case.

**Recommendation:** While the purpose of this report is not to evaluate or reflect recent developments in the design and implementation of programs that provide direct benefits to low income customers, such information is available and organized by state in several of the references included in Appendix A of this report.

- III. Determine whether the electric or natural gas utility actually charges (or can charge) the following fees and charges:
- Late fees on overdue balances; whether such fees are imposed on balances due subject to a payment arrangement;
  - Additional charges for payment in person at an official payment center or other third party;
  - Additional charges for payment by credit card or other electronic payment option;
  - Reconnection fees (during normal business hours and after hours, which is typically much higher); or
  - Premise visit fees associated with pursuing a notice of disconnection.

**Recommendation:** A utility should not be allowed to charge an additional fee for any specific payment options offered by the utility. Rather, the cost of providing a wide range of payment options to its customers should be reflected in the rates paid by all customers. There are two main arguments in opposition to the notion that utilities should be

able to impose an additional fee for certain payment options. First, there are incremental fees incurred by a utility associated with every type of payment, including check processing. Those fees are not imposed on individual customers who pay by check, but reflected in the expenses that are included in rates paid by all customers. To charge additional fees to customers to make use of one of several payment options offered by the utility suggests that some payment options are appropriate for all customers to pay for and others are not. This is particularly troublesome because any of these methods of electronic bill payment are likely to reduce utility cash working capital costs compared to the processing of paper check payments. An additional concern is whether a merchant is allowed to charge additional fees to those customers who pay by credit card under the federal and state Truth in Lending Act. Fees charged for premise visits are likely to adversely impact lower income customers due to their more frequent payment troubled status, however, the collection of overdue utility bills should be reflected in all customer rates for the same reasons that most businesses reflect the average cost of overdue and unpaid bills in their prices charged to all customers.

- IV. When an applicant seeks service, can your local utility transfer unpaid debt from a prior customer's account to the applicant's new account on the grounds that the applicant was present when the debt was incurred? Determine if this "household" or "benefit of service" rule is reflected in state approved regulations or utility tariff or is used by the utility without any written criteria or regulatory guidance. Obtain the written criteria applicable to the implementation of such a policy and determine what type of information is provided to the new customer who is

saddled with the older unpaid balance, and whether dispute rights are provided in writing at the time of the demand.

**Recommendation:** There are typically two issues with regard to a utility's demands concerning prior debt owed by someone other than the applicant for service: (1) whether the prior debt can be transferred to the applicant's new account; and (2) whether a deposit can be required as a condition of service based on the other person's failure to pay. Many states allow a utility to transfer debt to the current applicant if the prior debt was avoided due to misrepresentation of identity or fraud, for example, if the applicant attempts to seek service by using an incorrect Social Security number, or by requesting service in name of fictitious individual, or in the name of a minor.

A more controversial issue is the utility proposal or practice to transfer prior unpaid debt from one unrelated adult to another on the grounds that the current applicant for service received the benefit of the prior service while residing at the location where the prior bad debt was incurred. This may arise among family members or roommates. In neither case is there a legal basis for transferring debt (unless the state law establishes such responsibility among married spouses or the debt transfer involves a minor). The normal "rule" is that individuals have a right to their own credit history and cannot be held liable for the contract or debt incurred by another. The extent to which a utility can hold an applicant for service "hostage" because there is a former customer present in the same household should be extremely narrow, if allowed at all. There are significant problems with "proof" in such situations. Will the rule allow utilities to shift the burden to the applicant to "prove" that the former customer is no longer a resident at that location? What proof will be required to avoid the allegation that a former customer is

living in the same residence? How will applicants be informed of their right to service in their own name and under what conditions? Will applicants be denied service [where service was previously disconnected for nonpayment or where the meter is not otherwise connected for new tenants] until these disputes are resolved? Furthermore, there is the potential for discriminatory application of such a rule against certain groups of residential customers based on language, ethnicity, immigration status, and economic status. The Maine PUC has adopted a regulation<sup>7</sup> that reflects the preferred practice:

Payment of Unpaid Account Balance. A utility may require that the applicant pay an undisputed unpaid residential account balance with the utility that accrued within the past six (6) years if the applicant was legally responsible for the debt. A utility must offer a payment arrangement to the applicant according to the provisions of Section 6(A). A utility cannot require the applicant to pay for residential service provided in the name of another person (for example, a separated spouse or a co-tenant) unless a court or administrative agency has determined that the applicant is legally obligated to pay for that service.

In all cases other than those described in paragraph 4, in order to determine whether an applicant is "likely to be a credit risk," a utility may attribute to an applicant the credit and financial condition or credit history of a second person, regardless of the legal relationship between the applicant and the second person, only if the applicant is dependent for his or her support upon the other person. An applicant is not "dependent" upon the second person for support if the applicant has a reasonably certain supply of funds from other sources to pay the bill for the utility service (estimated by the method described in subsection B).

- a. In any calendar year, a child of divorced or legally separated parents may be considered dependent on a parent only if that parent has custody of the child for at least one-half of the calendar year, regardless of the actual amount of support received from that parent.
- b. In the case of an applicant who is a full-time student at an educational institution, amounts received as scholarships for study at the educational institution cannot be taken into account in determining whether the applicant is dependent for his or her support upon any second person.

A utility may require an applicant to comply with the requirements of a guarantor of a deposit if:

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<sup>7</sup> Maine PUC, Chapter 81, Residential Utility Service Standards, Section

- a. the applicant applies for service at the location of a customer who was disconnected for nonpayment;
- b. the billing address remains at the disconnected customer's location; and
- c. the applicant resides at a different location.

Utility customer service rules should also reflect the policy issues that may arise in the context of Identity Theft. First, from the perspective of an applicant or customer who alleges that their identity has been stolen, the utility should be obligated to treat such a contact as a customer dispute that requires investigation and resolution. Second, from the perspective of one who is alleged to have committed identify theft, the utility should be obligated to report such activity to the local prosecutor or police. It is not the utility's obligation to determine whether such a crime has been committed.

Under the recently adopted amendments to the Fair Credit Reporting Act, "identity theft" is defined as "a fraud committed using the identifying information of another person." 15 U.S.C.A. §1681a(q)(3). Under these provisions, a credit reporting agency has certain obligations when notified by consumers who allege they have been or are likely to be the victim of fraud or a related crime or identity theft. This type of communication triggers a "fraud alert" that must be placed in the consumer's file. A higher level or "extended alert" is issued when a consumer submits the documentation of fraud or identity theft to a consumer reporting agency. These notifications trigger certain consumer protections in the establishment of new credit arrangements for the affected consumer. Given the recent authorization for utilities to use this information from credit reporting agencies in determining service requirements for customers, the regulations should assure that utilities will follow the appropriate procedures in cases of possible identity theft.

V. What are the criteria for a deposit as a condition of service for an applicant? For a current customer? Can or does a utility make use of credit scores to make a deposit requirement? If the state regulation fails to limit the deposit demands to situations in which the customer has failed to pay for regulated utility service, a utility may be using credit scoring without any regulatory knowledge or oversight. Ask the utility for a written copy of their credit and deposit policies for residential customers. What is the maximum deposit amount and can the customer pay the deposit over a period of time? Are more lenient rules in effect for low income customers?

**Recommendation:** The Commission's rules should set forth the process for application for service. A deposit is only one aspect of this process. The rules should require utilities to adopt a written policy governing application for service (what information is required to obtain utility service; criteria for a deposit; criteria for denial of service; criteria for transfer of previously unpaid account balance, dispute rights), make this policy available to any applicant or customer upon request, and process an oral or written application for service in a timely manner and provide a response no later than 3 business days after the application for service. A denial of service or a requirement that service be conditioned upon payment of a deposit or payment of a previously incurred debt is a significant barrier to entry for a monopoly service for which the customer has no alternative provider. Therefore, affected applicants should be informed of their obligations and rights in writing. This is particularly important in light of the growing use of credit scores to trigger a deposit, as well as the potential exemption to a deposit requirement based on an applicant's participation in low-income programs. Therefore,

this writing should include the information that an applicant's deposit requirement is based on the applicant's credit score and how a low-income applicant can avoid this deposit. As a result, the rules should require a utility that denies an application for service or that seeks to condition a request to provide service on payment of a deposit or other requirement (such as a transfer of prior debt or unpaid balance) to provide a notice in writing that includes the following key disclosures:

- the basis for the denial or the requirement to pay a deposit<sup>8</sup>;
- the amount of the deposit;
- how the deposit must be paid (i.e., the payment arrangement terms);
- the information concerning how a low income customer can avoid a deposit based on a credit score;
- the criteria for returning the deposit to the customer; and
- how the customer can dispute or appeal this decision with the utility, and, if not satisfied, with an informal appeal to the Commission's complaint handling division.

VI. If a residential customer does not pay the entire bill in full each month, is there an official "right" to a payment arrangement? If so, what criteria govern a utility's implementation of this right? Is the customer informed of any payment arrangement in writing and offered their right to informally dispute the terms of an arrangement if they are not satisfied? Does a customer have the right to seek a second payment arrangement and, if so, under what criteria and circumstances?

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<sup>8</sup> These disclosures may require information that is mandated by the Equal Credit Opportunity Act (15 U.S.C. §§ 1691-1691f, as amended) and, if a credit report is used, the Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681(u), as amended).

**Recommendation:** It is important for the utility to be required to offer a payment arrangement to any customer with an overdue amount as a means to avoid disconnection of service. Assuming your state regulation is clear on this point, the next issue is what criteria the utility must consider to negotiate this payment plan or whether the utility can impose a “one size fits all” approach to such negotiations. The best rule will require the utility to take the customer’s individual circumstances into account. Consider a policy that would eliminate late payment fees on payment arrangements (or, at the least, for low income customers participating in assistance programs). Finally, consider the recent regulation adopted in Iowa that allows customers under certain circumstances to enter into a second payment arrangement to avoid disconnection of service. The Iowa Utility Board adopted a rule that requires electric and natural gas utilities to offer low income customers a second payment plan in the event that the customer defaults on the first payment plan. To qualify for the second payment plan, the customer must have made a good faith effort to make payments, which is considered demonstrated if the customer has made at least two consecutive full payments under the first agreement, which could be payments made by an assistance agency (e.g., LIHEAP).<sup>9</sup>

- VII. What are the procedural steps that a utility must follow prior to disconnection of service for nonpayment? What is the minimum notice period? How long is a notice effective? Is a separate notice required for a broken payment arrangement? What is the content of this notice and does it include notice of a customer’s right to avoid disconnection with a payment arrangement, the right to declare a medical

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<sup>9</sup> Iowa Utility Board, Declaratory Ruling, Docket DRU-05-01 (May 17, 2005), available at: [http://www.state.ia.us/government/com/util/\\_private/Orders/2005/0517\\_dru051.pdf](http://www.state.ia.us/government/com/util/_private/Orders/2005/0517_dru051.pdf)

emergency to avoid disconnection for a period of time, or the right to dispute the disconnection with the utility and, if not satisfied, with the state regulatory commission? Disconnection for nonpayment typically is preceded by a written notice, but it is also important to determine whether a utility is required to make an effort to personally contact the customer by phone and by premise visit prior to the disconnection. In addition, does a utility have an obligation to contact the customer or responsible adult at the location at the time of disconnection? What is the customer's right to orally declare a medical emergency to avoid disconnection while a written notice from a medical professional is sought?

**Recommendation:** States that have adopted comprehensive regulations governing the policies and procedures for disconnection of service include Pennsylvania, Illinois, Massachusetts, New Jersey, Iowa, Maine, Idaho, among others. The purpose of these regulations is to assure detailed regulatory oversight of a process that result in the lack of essential energy services by a monopoly provider<sup>10</sup> and for which the consumer has no reasonable substitute. As part of the proposed rulemaking that was halted recently by the Indiana Commission, the following language could be considered a “best practice”:

**(b) Requirements for disconnection without a customer's request are as follows:**

**(1) A utility may disconnect service without request by the customer of the service and without prior notice only:**

**(A) if a condition dangerous or hazardous to life, physical safety, or property exists;**

**(B) upon order by any court, the commission or other duly authorized public authority;**

**(C) if fraudulent or unauthorized use of service is detected and the utility has reasonable grounds to believe the affected customer is responsible for the use;**

**(D) if the utility's equipment has been tampered with and the utility has reasonable grounds to believe that the affected customer is responsible for the tampering; or**

**(E) if the utility's equipment is used in a manner disruptive to the service of other customers.**

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<sup>10</sup> Whether or not a state has adopted retail competition, it is the distribution utility that is responsible for accepting applications and providing service, which then allows the customer to select an alternative energy supplier for the generation or supply portion of the bill. The only exception to this approach is in Texas, where the retail energy suppliers are the sole point of contact for retail customers for all aspects of electric service.

**(2) A utility may disconnect service to a customer based on a delinquent account with the same class of service (such as residential service) for that customer.**

**(c) Requirements for prohibited disconnections are as follows:**

**(1) Except as otherwise provided in subsections (a) and (b), a utility shall postpone the disconnection of electric service for thirty (30) days if, before the disconnect date specified in the disconnect notice, the customer provides the utility with a medical statement from a licensed physician or public health official that states that disconnection would be a serious and immediate threat to the health and safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one (1) additional ten (10) day period upon the provision of an additional medical statement to the utility. The utility shall be required to provide the customer a total of forty (40) days postponement of disconnection for medical reasons under this subsection only once in any twelve (12) month period. Further postponement of disconnection may be made at the utility's discretion.**

**(2) A utility may not disconnect electric service to the customer for any of the following reasons:**

**(A) Nonpayment of any nonutility or unregulated utility services.**

**(B) Upon the customer's failure to pay for services to a previous occupant of the premises being served unless the utility has reasonable grounds to believe that the customer is attempting to defraud the utility.**

**(C) On the basis of the delinquent character of an account of any other person, except if the customer is the guarantor of that other person's account for electricity service.**

**(D) If the customer makes payment arrangements under section 6 of this rule.**

**(E) If a customer is unable to pay a bill that is unusually large due to prior incorrect billing, incorrect application of the rate schedule, prior estimates where no actual reading was taken for over two (2) months, or any human or mechanical error of the utility, and the customer:**

**(i) makes a payment arrangement in accordance with the guidelines set forth in section 6 of this rule; and**

**(ii) agrees to pay all undisputed future bills for electric service as they become due, provided, however, that the utility may not add to the outstanding bill any late fee and, provided further, that the payment arrangement agreement in item (i) and this item shall be put in writing by the utility and sent by mail to the customer.**

**(d) No utility may disconnect service unless the disconnecting is done between the hours of 8 a.m. and 3 p.m., prevailing local time. Disconnections under subsections (a) and (b) are not subject to this limitation. The utility may not disconnect service for nonpayment:**

**(1) on any:**

**(A) Friday after noon;**

**(B) Saturday;**

**(C) Sunday; or**

**(D) other day the utility's offices are not open for business; or**

**(2) after noon on any day immediately before a day the utility's office are not open for business.**

**(e) Requirements for notice required before involuntary disconnection are as follows:**

**(1) Except as otherwise provided in this section, service to any customer shall not be disconnected for a violation of any rule of the utility or for nonpayment of a bill, except after fourteen (14) days from the postmark date of a written notice sent to the customer at the address shown on the records of the utility or the notice is personally served upon the customer or a responsible member of the customer's household. No disconnect notice for nonpayment may be rendered before the date on which the account becomes delinquent.**

**(2) The disconnection notice shall be in language that is clear, concise, and easily understandable to a layperson and shall state, in separately numbered large print paragraphs, the following information:**

**(A) The date of the proposed disconnection.**

**(B) The specific reason and factual basis for the proposed disconnection.**

**(C) The telephone number of the utility office at which the customer may call during regular business hours to question the proposed disconnection or seek information concerning the customer's rights.**

**(D) The local and toll-free telephone numbers and office hours of the commission.**

**(E) That the customer may refer to the pamphlet furnished under 170 IAC 4-1-18 for information as to the customer's rights.**

**(F) Information as to the customer's rights, under this rule, including, but not limited to, the following:**

**(i) That the customer may obtain a temporary waiver of disconnection for a serious illness or medical emergency under subsection (c).**

**(ii) That the customer may file a complaint with the utility.**

**(iii) That if the complaint is not resolved by the utility to the customer's satisfaction, the customer may file a complaint with the commission.**

**(iv) That the customer may make payment arrangements under section 6 of this rule.**

**(f) Utility employees conducting disconnections of service shall follow the following procedures:**

**(1) Immediately preceding the actual disconnection of service, the employee of the utility designated to perform the function shall make a reasonable attempt to identify himself or herself to the customer or any other responsible person then upon the premises and shall announce the purpose of his or her presence and shall make a record thereof to be maintained for at least thirty (30) days.**

**(2) The employee shall have in his or her possession information sufficient to enable the employee to inform the customer or other responsible person the reason for the disconnection, including the amount of any delinquent bill of the customer, and shall request from the customer any available verification that the outstanding bill has been satisfied or is currently in dispute and under review by the utility or the commission. Upon the presentation of such credible evidence, service shall not be disconnected.**

**(3) The employee shall not be required to accept payment from the customer, user, or other responsible person in order to prevent the service from being disconnected. The utility shall notify the customers under 170 IAC 4-1-18 of its policy with regard to the acceptance or nonacceptance of payment from the employee and shall uniformly follow the policy without discrimination.**

**(4) When the employee has disconnected the service, the employee shall give to a responsible person at the customer's premises, or if no one is at home, shall leave at a conspicuous place on the premises, a notice stating that service has been disconnected and stating the address and telephone number of the utility where the user may arrange to have service reconnected.**

**(g) If a utility disconnects service in violation of this rule, the service shall immediately be restored at no charge to the customer**

VIII. Does your state have special disconnection rules in effect for winter or high temperature periods? Is this process a reflection of a temperature based restriction or a calendar date? Are customers with identifiable criteria which increase their vulnerability to loss of utility service (e.g., elderly, infants, disabled, presence of medical equipment dependent on electricity) required to be provided a heightened

level of scrutiny prior to collection activities? What are utility obligations with respect to payment arrangements and programs to avoid disconnection during this period or when the criteria for additional scrutiny present?

**Recommendation:** Maine, Wisconsin, and Pennsylvania are among those states that have adopted the most detailed regulations governing “winter” disconnections. Texas has adopted a “summer” disconnection rule that reflects the dangers associated with the loss of air conditioning and electric power during extremely high temperatures. The Massachusetts disconnection rule prohibits utilities from disconnecting in the winter for households with infants, elderly, or disabled individuals. The state-by-state chart showing the key criteria of the various state rules is available at [www.ncat.org/liheap](http://www.ncat.org/liheap).

Utilities that “do nothing” because of restrictions on disconnection and then argue that their uncollectible expenses are increasing due to the commission’s regulations are arguably negligent in collections because it is not necessary to threaten disconnection of service to attempt contact with customers, negotiate an affordable payment arrangements, or other take steps available to any creditor to collect an overdue bill. In fact, under the Wisconsin rules, a utility is able to collect a substantial deposit or go to court to seek treble damages (three times the overdue amount) from customers who take advantage of their strict winter disconnection rule and avoid payment when there is an ability to pay.<sup>11</sup>

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<sup>11</sup> Wis. Admin. Code Sec. PSC 113.0304 prohibits disconnection of a residential account for nonpayment during the period between November 1 and April 15<sup>th</sup> each year for households where the quarterly income is at 250% or below the federal poverty guidelines. PSC 134.061(4)(a)3 provides that a utility can require a cash deposit as a condition of service (even for a current customer) if the customer had the ability to pay during the winter moratorium period and incurred an arrears amount during that period that was 80 days or more past due. The deposit amount may not exceed the highest gross annual bills for any four consecutive months within the prior 12 months. In addition, Wis. Stat Sec. 196.642 provides that a court can award treble damages (three times the outstanding balance) for a customer who has “abused” the winter rule.

- IX. What are the criteria for reconnection of service? Can a utility demand payment in full of the overdue amount, as well as a deposit? If so, is this theoretical right actually implemented uniformly or does the utility have internal policies that alter this practice. If so, find out what they are and review them for the potential of discriminatory impact on low income customers.

**Recommendation:** Most state rules do not require the utility to renegotiate a failed payment arrangement as a condition of reconnection of service, but as a practical matter most utilities negotiate payment plans, perhaps with a larger down payment, as a condition of reconnection. This is particularly true when the utility is able to obtain financial assistance payments on behalf of the customer. However, the state rule should make it clear that reconnection of service should be accomplished promptly (within one business day) and that a proper declaration of a medical emergency should result in immediate reconnection without additional payment, the terms of which to be resolved during the medical emergency period.

- X. Find out whether any utility has sought permission to install pre-payment meters, adopt Time-of-Use meters and rate programs, or other means of changing the way that energy is priced in your state. If so, determine the impact of such a proposal on low use residential customers. Since on average most low income customers use less energy than higher income residential customers, any attempt to shift energy usage to lower cost time periods by increasing the price of energy during high cost time periods (or other efforts to adopt “real time” meters) is likely to have an adverse impact on low income customers. This is because they have less discretion in their energy usage and cannot shift their basic usage patterns or

adopt new technologies to reduce usage or employ more costly energy efficiency devices.

**Recommendation:** Any utility proposal to adopt “real time” meters or prepayment meters should be evaluated closely for their potential impact on low income customers. Such “experiments” are rarely cost effective and have the potential for highly discriminatory impacts on low income customers.

XI. Finally, determine whether utilities have obtained approval to offer “fixed bill” or “fixed price” programs to residential customers. If so, find out whether such programs are being marketed to only a preferred subset of residential customers. Ask why all residential customers cannot be offered basic energy services at stable and affordable prices.

**Recommendation:** Any payment option that is offered to a subset of residential customers in order to reduce price volatility or provide price stability should not discriminate among customers based on their payment history. Furthermore, it is appropriate to ask regulators why a utility cannot be required to manage its portfolio of gas supply or electric generation service to assure greater price stability to all residential customers.<sup>12</sup>

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<sup>12</sup> See Alexander, Barbara, “Managing Default Service to Provide Consumer Benefits in Restructured States: Avoiding Short Term Price Volatility” (2003), available at [http://www.neaap.ncat.org\\_experts\\_index](http://www.neaap.ncat.org_experts_index) and “Natural Gas Price Volatility: Regulatory Policies to Assure Affordable and Stable Gas Supply Prices for Residential Customers,” (2004), available at <http://www.ncat.org/liheap/news/Feb04/gaspricevol.htm>

**CASE STUDIES: STATE ACTIONS THAT THREATEN  
CONSUMER PROTECTIONS FOR ESSENTIAL  
ENERGY SERVICES**

## PENNSYLVANIA:

### STATUTORY ADOPTION OF CHANGES TO LONG STANDING PUC REGULATIONS

In a stunning reversal of decades-long leadership in consumer protection for residential utility customers, the Pennsylvania Legislature has enacted statutory changes to its residential customer protection rules that have already resulted in a significant increase in disconnection of service.

Initiated by Philadelphia Gas Works, a municipally-owned utility with historic bad debt and inefficient collection practices, and supported by most Pennsylvania gas and electric utilities supported legislative amendments to the PUC Chapter 56 rules that protect residential customers.<sup>13</sup> The proponents of the statutory changes alleged that the historical protections had resulted in abuse and evasion of lawful debt by those with the ability to pay (and thus contributing to uncollectible bill expense). The bill was enacted and signed by Governor Rendell (D) in late 2004.<sup>14</sup> However, there were no public hearings on this legislation or other documentation of the widespread occurrence of fraud, abuse, or even rising bad debt and uncollectible expense. While waivers from Chapter 56 provisions were available and have been granted in the past, the only utility which had sought waivers recently from Chapter 56 on the matters addressed in this bill was PGW, most of which the Commission denied earlier in the year. Some of the more significant impacts are summarized below:

Application for Service; Transfer of Debt. Responding to anecdotes of “name game”, the new legislation allows a utility to require applicants for service to provide proof of identify for themselves and all the adult occupants whose name appears on the mortgage, deed, or lease of the property where service is requested. The definitions of “applicant” and “customer” were changed and the Commission has made clear that a former “customer” becomes an “applicant” when disconnection of service has occurred and the final bill has been issued. Utilities who seek this information can deny service until it is provided. Furthermore, utilities are given an explicit right to demand to know all the adult occupants of the residence where service is requested. These provisions allow a utility to transfer debt incurred by an identified member of the household to a new “applicant” for service if there is evidence that the current applicant for service was living at the residence at the time the prior debt was incurred.

If the service is disconnected, any adult who lived at the residence can be held responsible for payment of all or part of the overdue bill if that adult wants service

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<sup>13</sup> 52 Pa. Code Chapter 56, Standards and Billing Practices for Residential Utility Service.

<sup>14</sup> SB 677, Act 201 of 2004, amending 66 Pa. C.S. by adding Chapter 14, Responsible Utility Customer Protection Act. An earlier version of this legislation contained even more radical changes to Chapter 56.

restored in their name. Adult occupants include those over 18 years of age who lived with the prior customer during the time the outstanding balance was accrued. The utility can determine occupancy by checking names on the mortgage, deed, lease, or information from a credit reporting agency.

Increased Deposits. Under Chapter 56, the utilities historically could not require a deposit from applicants if the applicant could demonstrate their creditworthiness in a number of ways, including relying on their past payment performance for prior utility services. In 2000, the Commission granted a waiver of this requirement of Chapter 56 and allowed several gas and electric utilities to implement a pilot program to rely on credit scoring to trigger a deposit for new applicants for service. Act 201 now makes the use of credit scores a routine option for all utilities to determine creditworthiness.<sup>15</sup> While utilities could historically demand a deposit from current customers when a customer defaulted on a payment arrangement or as a condition of reconnection of service, this option was not routinely implemented but some utilities may now seek to more routinely implement this right. The deposit amount is 1/6 of the annual bill and a utility can deny service until the deposit is paid in full, but utilities must provide a 90-day period to pay a deposit required prior to reconnection, which the Commission has interpreted as allowing the utility to require 50% of the deposit at the time of reconnection and the balance in two equal monthly payments.

Payment Agreements. The legislation specifically allows the customer one payment agreement<sup>16</sup> and prohibits the Commission from renegotiating these agreements unless the utility has failed to negotiate in good faith or has not considered the individual customer criteria set forth in the statute. In general, a utility can refuse to renegotiate payment agreements unless certain specific criteria are met and demonstrated by the customer: 10% drop in household income (household income less than 200% of federal poverty guidelines)-20% drop in household income (household income more than 200% of federal poverty guidelines); onset of chronic or acute illness that results in a significant loss of income; catastrophic damage to residence that results in significant cost to customer; loss of customer's residence; increase in number of customer's dependents in the household. The statute also establishes maximum pay back periods for payment arrangements established by the Commission that vary by household income. Customers on the utility low income bill assistance programs (Customer Assistance Programs) are not allowed to have any other payment agreement.

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<sup>15</sup> While the Commission's orders allowing the specific utilities who sought the waiver from Chapter 56 to use of credit scoring to trigger a deposit required the applicable utilities to exempt low income customers from this requirement, it is not yet clear whether the Commission can continue to condition the use of credit scoring with this exemption.

<sup>16</sup> While utilities generally sought to interpret this statutory guidance as allowing the utility to consider any historical payment agreement made by the customer (and kept) as triggering its right to deny the customer a new payment agreement, the Commission has interpreted this provision more narrowly to allow the utility to refuse a second payment agreement when there is a payment plan that has been broken. Pennsylvania PUC, Chapter 14 Implementation: Second Implementation Order, Docket No. M-00041802F0002, at 38. Available at: <http://www.puc.state.pa.us/PcDocs/560560.doc>

Disconnection/Termination of Service. Specific events may result in disconnection without notice to the customer, including fraud or misrepresentation of identity for the purposes of obtaining service, unauthorized use, tampering with the meter, or violating a tariff provision that threatens safety or integrity of the utility's delivery system. A 10-day notice is required for other reasons for termination. A utility must attempt personal contact either in person or by telephone at least three days prior to the actual termination, thus eliminating the Chapter 56 provision that the utility was obligated to seek personal contact with the customer or a responsible adult at the premises and if this was not accomplished, the utility had to delay disconnection and post a 48-hour notice. During the winter period (December through March), the personal contact requirement must include attempts at telephone contact, followed by a posted notice at the premises within 48 hours of the scheduled termination date. Termination is also allowed to occur Monday through Friday as long as the utility can accept payment to restore service in the following day.

Winter Termination Procedures. Utilities are specifically authorized to terminate an inhabited dwelling during the winter for the "no notice" provisions specified above. In addition, with regard to the typical disconnection for nonpayment notice, customers with household income above 250% of federal poverty guidelines<sup>17</sup> can be disconnected without Commission oversight or approval. This provision is altered for PGW where the utility can disconnect natural gas service in the winter without PUC oversight for customers with household income above 150% of federal poverty level, with some limitations related to the presence of children, elderly and disabled.

Reconnection of Service. If service is disconnected and reconnection is requested, the utility can demand the reconnection fee, payment of the bill in full, refuse payment agreements, and require a deposit as a condition of restoration for customers with household income over 300% of federal poverty level or if the customer has defaulted on two or more payment arrangements (without regard to income). Those with income between 150%-300% federal poverty level can be required to pay the reconnection fee and the balance owed over a 12 month period and, if income is below 150% of poverty, over 24-months.

Disconnections have increased significantly since the enactment of Act 201. According to data gathered by the PUC's Bureau of Consumer Services, terminations in the January-April 2005 period increased 113% over the same period in 2004. Some utilities

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<sup>17</sup> The legislation does not specify the manner in which the utility can determine household income or whether the utility or the customer bears the burden of providing evidence of this information. Utilities have acquired household income information for the customers enrolled in the low-income programs (Customer Assistance Programs), but whether this type of information is routinely gathered in the context of contacts associated with pending terminations and negotiation of payment agreements is unclear. In its consideration of this issue in the Second Implementation Order (supra), the Commission stated that the burden of obtaining the household income information that would allow disconnection during the winter is on the utility and can be obtained in a variety of means. The Commission also determined that termination notices must be revised to inform customers of their rights based on various income guidelines and how to assert those rights. Second Implementation Order at 14-15.

termination rates have soared. For example, PPL has terminated 261% more customers in this period compared to 2004, Pennsylvania Electric Co. (Penelec), 164%, Metropolitan Edison (Met-Ed), 326%. Equitable Gas, which disconnected almost no customers in 2004 while a new billing system was being installed, disconnected 3,287 customers in this period.

This increase in disconnections was widely publicized in Pennsylvania and, perhaps as a result, utility disconnections slowed down in the May-August period compared to 2004. According to data gathered by the PUC<sup>18</sup> for the January – August period, disconnections have increased by 47% for electric service and by 53% for gas service in 2005 compared to 2004 to date. However, some utilities continue to report even higher disconnection rates than these statewide averages. Metropolitan Edison (FirstEnergy), Penelec (FirstEnergy), Penn Power (FirstEnergy) all reported disconnection rates over 100% higher than the similar period in 2004. PPL reported a 97% increase in disconnections. Among the natural gas companies, Columbia Gas, Equitable Gas, and National Fuel increased their disconnections by 100% or more.

In May 2005, a house fire in Hastings, PA killed an adult and three children under the age of 18. The home had been without electricity for four days due to a disconnection of service by Penelec. The fire started with a candle. This incident resulted in widespread news accounts and reporting on the changes to Pennsylvania's consumer protection policies as a result of the adoption of Chapter 14 and the significant increase in utility disconnections and adoption of more strict payment requirements, as well as the reduction in efforts for personal contact and renegotiation of payment arrangements.<sup>19</sup> The Commission opened an investigation of this disconnection and is considering a settlement of the investigation that would require the utility to pay an additional \$250,000 to its low income assistance fund and adopt certain changes to its termination practices, including procedures relating to the explanation of medical certification information on its notices, and restoration practices upon receipt of a valid medical certification.<sup>20</sup>

On August 11, 2005, in a Joint Motion by two new PUC Commissioners<sup>21</sup>, the PUC adopted a statement that solicited comments on a proposal to permit the Commission (in addition to instances where there has been a change of income as specified in Chapter 14) to establish one payment arrangement that meets the terms of Chapter 14 before the prohibition against a second payment agreement set forth in Chapter 14 applies. In this Order seeking comments, the Commission noted that over 24,000 residential customers had been turned away from requests submitted to the Bureau of Consumer Services to renegotiate a payment agreement since the law was enacted.

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<sup>18</sup> Available at [http://www.puc.state.pa.us/general/pdf/Terminations\\_Table\\_Jan-Aug04-05.pdf](http://www.puc.state.pa.us/general/pdf/Terminations_Table_Jan-Aug04-05.pdf)

<sup>19</sup> See, e.g., "Flaws found in Pennsylvania utility law," *The Patriot News*, September 16, 2005.

<sup>20</sup> [http://www.puc.state.pa.us/general/press\\_releases/press\\_releases.aspx?ShowPR=1383](http://www.puc.state.pa.us/general/press_releases/press_releases.aspx?ShowPR=1383)

<sup>21</sup> <http://www.puc.state.pa.us/PcDocs/561347.doc>

## NEW YORK

### **INCREASED CONSUMER PROTECTIONS APPLICABLE TO RETAIL COMPETITIVE ENERGY MARKETERS IN RETURN FOR ALLOWING DISCONNECTION OF REGULATED ELECTRIC SERVICE FOR NONPAYMENT OF UNREGULATED CHARGES**

The **New York** Public Service Commission has been the most aggressive in pushing for retail competition rules that favor the alternative retail energy providers, known as Energy Service Companies or ESCOs. However, the Commission lacked the statutory authority to amend the utility consumer protection rules, known as the Home Energy Fair Practices Act (HEFPA). HEFPA is New York's utility consumer "bill of rights." It was adopted in 1981 to establish and consolidate in Article 2 of the Public Service Law the basic rights and remedies of New York's residential energy consumers. It is one of the strongest consumer protection statutes for electric and gas customers in the nation, and implements much of the State's universal service policy. Beginning in 1996 and 1997, the New York Public Service Commission (PSC) allowed uncertified alternative gas and electric companies to sell electric energy, natural gas, and other services to residential utility customers. It also determined that, when these new gas and electric service companies made residential sales, HEFPA would not apply. In 2002 the New York Legislature adopted the Energy Consumer Protection Act<sup>22</sup> (ECPA 2002) that reversed this determination and assures that customers will have the same rights and remedies no matter which company provides service.

Under ECPA, all of the protections defined by HEFPA are made applicable to the transactions between the competitive suppliers and residential consumers. With respect to the commencement and continuation of service, these include rules with respect to deposits, budget billing, estimated bills, plain language bills, third-party notices, deferred payment agreements and other protections found in HEFPA for households experiencing medical emergencies, for households with elderly, blind or disabled customers, and for households that might experience a loss of service in a cold weather season. One of the key reforms obtained in this legislation is to make clear that neither a distribution utility nor an ESCO can impose a deposit on a request for service from a residential customer unless the applicant fails to provide reasonable proof of identity or is delinquent in prior debts to the utility/ESCO. In other words, requiring a deposit based on an application for service using credit scoring is not allowed. Finally, this bill allows the residential customer taking service from a competitive supplier who has a billing or service dispute with that supplier under

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<sup>22</sup> The Energy Consumer Protection Act of 2002 (ECPA) was supported by several New York consumer organizations, including the Public Utility Law Project (PULP) and AARP, as well as a coalition of new providers of energy services. ECPA 2002 is Chapter 686 of the Laws of 2002, eff. June 18, 2003. The Commission undertook a year-long process to consider various interpretation and implementation practices to reflect this law and issue final regulations. New York PSC, *In the Matter of the Implementation of Chapter 686 of the Laws of 2002, Proposed Changes to the Requirements Contained in HEFPA, 16 NYCRR Parts 11 and 12, and in Commission Orders in Cases 28080, 91-M-0744, 91-M-0500 and 88-W-187, Case 03-M-0117, Memorandum and Resolution Adopting Amendments to 16 NYCRR Parts 11 and 12* (June 9, 2004).

HEFPA to take that complaint for hearing and written determination to the Public Service Commission. However, this law does not impose an obligation to serve on ESCOs.

However, this legislation also now allows ESCOs to initiate disconnection of service for nonpayment of unregulated supply charges, a right that is not applicable to most alternative energy providers in other states.<sup>23</sup> An ESCO can terminate its own supply service for nonpayment and seek disconnection of delivery service by the utility for this nonpayment, even if the customer is current on delivery charges. Finally, this right to control the customer's ability to get regulated delivery service (or default service for the supply portion of the bill) is applicable for a full year after the customer incurs the arrears balance with the ESCO and leaves the supplier. ESCOs must provide separate notice for their actions to the customer and offer to enter into a Deferred Payment Agreement to avoid suspension of supply service. Both ESCOs and distribution utilities must determine whether a customer or resident at the property qualifies for special protections (medical emergencies, elderly, blind, or disabled customers, special procedures during cold weather for heat-related services). The distribution utility must attempt to collect the amount due for the service in arrears and restore service when the full amount in arrears for the service that was terminated (or the amount that reflects any agreement between the ESCO and the customer on a deferred payment plan). Alternatively, the customer has the right under the new law to pay the lesser of the sum of the ESCO supply and utility delivery service charges or bundled utility service charges (i.e., default service) to end the suspension of service.<sup>24</sup> No doubt in part a response to the complications and additional costs that ESCOs would bear to assume direct responsibility for the new HEPFA rules, most distribution utilities and larger ESCOs that seek to provide service to residential customers in New York have negotiated agreements by which the utility has purchased the ESCO's accounts receivables. This allows the utility to combine the procedures for termination of the ESCO and utility delivery services.

The new consumer protections applicable to ESCOs also require them to collect information about their customers in order to implement the Special Needs protections of HEFPA and the PSC rules. The Commission rejected an argument by the ESCOs that this information should be transmitted from the distribution utility and instead required the ESCOs to independently gather the information necessary to determine if a customer is required to be provided special disconnection protections.

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<sup>23</sup> In most other states that have adopted retail energy competition, the alternative energy provider can terminate service if a customer defaults on the contract, but contract termination results in the automatic return of the customer to utility basic service. The only other jurisdictions that allow a competitive energy provider to physically disconnect service for nonpayment of unregulated charges are Texas (electric) and Georgia (natural gas).

<sup>24</sup> The ESCOs sought a reconsideration of this policy decision in order to allow an ESCO to seek a suspension or disconnection of service for arrears remaining after service is reconnected, thus allowing a repeated disconnection for the same amount if the reconnection payment does not fully cover the ESCO's supply charges. The Commission rejected this proposal. In addition, the Commission has rejected ESCO requests that the distribution company must notify the ESCO when the customer applies for service and seek payment of any ESCO arrears prior to initiating distribution service. Order on Petitions for Rehearing and Clarification, Case 98-M-1343, Case 99-M-0631, Case 03-M-0117 (June 15, 2005).

Additional complications exist when either the distribution utility or the ESCO is issuing a consolidated bill. In order to implement this provision, the Commission has had to adopt specific rules to allocate partial payments and the procedures by which the ESCO notifies the utility to disconnect service in the field. As a result, customer payments are now allocated on a pro rata method so that a customer could in fact be terminated for nonpayment of unregulated charges by the ESCO even though the total of the customer's partial payments would have paid the regulated utility charges in full.

## **TEXAS: PROMISES NOT KEPT**

### **CONSUMER PROTECTIONS: DEPOSIT AND DISCONNECTION RULES GOVERNING RETAIL ELECTRIC COMPETITION**

#### **RAIDING THE LOW INCOME PUBLIC BENEFITS PROGRAM**

#### **CREDIT SCORING**

The **Texas** restructuring legislation promised that consumer protections and customer service would not deteriorate as a result of the implementation of retail electric competition. Low income customers were promised rate discounts funded through a public benefits program that was funded by all ratepayers. The public was generally promised that retail competition would result in lower prices. None of these promises have been kept.

- Under the Texas method of providing default service<sup>25</sup> to customers who do not choose an alternative energy provider, prices for the generation portion of the electric bill have increased over 200% since January 2002. Texas residential customers now pay the highest rates in the country for essential electric service!
- The low income fund paid for by all electric customers has been raided by the State Legislature to fund other budget priorities and the low income discounts were eliminated.
- Finally, the relatively strong consumer protection rules that were adopted in 2001 to govern retail electricity sales have been subsequently amended by the Texas PUC to reflect proposals by retail energy providers.

The PUC originally adopted strong consumer protection rules to accompany the rollout of retail electric competition which began in January 2002. However, under pressure from competitive energy providers (known as Retail Electric Providers or REPs), the Texas PUC undertook a comprehensive review of these rules in early 2004 and adopted<sup>26</sup> a wide range of amendments to the original rules that have the effect of degrading the original consumer protections, particularly with respect to the ability of REPs to charge deposits and

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<sup>25</sup> Under the Texas market model, the incumbent electricity provider is an affiliate of the former electric utility. This affiliate REP has the obligation to provide Provider of Last Resort service under a regulated method of setting prices that allows the provider to raise the Price the Beat rates twice per year based on the short term wholesale market price for natural gas, whether or not this price change reflects the price impact on the provider's generation portfolio. As a result, the Texas affiliate REPs or Price to Beat providers have increased the total price for electric service for their customers by over 40% since January 2002. Less than 20% of the residential customers have chosen an alternative REP, most of whom charge only slightly less than the Price to Beat or, in some cases, more. Under the Texas market model the REP has the sole retail relationship with the customer and bills and collects for generation supply and the distribution/transmission services.

<sup>26</sup> PUC of Texas, PUC Rulemaking to Revise Customer Protection Rules, *Order Adopting Amendments to Chapter 25* (April 15, 2004).

disconnect electric service for the nonpayment of unregulated electricity charges. Some of the most significant changes include:

1. As of June 1, 2004, all competitive REPs can now pursue disconnection of electric service for any of its customers for nonpayment, failure to pay a deposit, or keep a payment arrangement. This process will be done by the REP sending a disconnection order to the distribution utility. Under the prior rule, the REP terminated its contract with the defaulting customer and “dropped” the customer back to the Price to Beat provider. The Commission adopted this change to make the disconnection rules uniform among the incumbent or affiliate REP (with the Price to Beat obligation) and all competitive REPs and stated, “Uncollectible revenues incurred by REPs will ultimately be borne by other customers, as retail prices are adjusted upward to recover these costs. Such rate impact is to the detriment of all customers and the development of the competitive market. Extending the ability to request disconnection by all REPs should therefore enable non-affiliated REPs to compete more vigorously on price.”<sup>27</sup> At the same time the Commission did clarify that all competitive REPs had to offer deferred payment plans to customers as a means to avoid disconnection of service. A proposal that would have allowed a REP to deny service to an applicant until prior unpaid bills owed to any other REP were paid was rejected.
2. Deposit amounts were increased to 1/5 of the expected annual bill (from 1/6 of the annual bill). A REP can use credit scoring to determine whether an applicant is creditworthy to trigger a deposit request. Current customers can be required to pay a deposit if they pay late more than once during the last 12 months of service. Competitive REPs can set their own deposit and application requirements as long as they are not discriminatory.
3. The Commission’s rules specifically authorize a REP to require prepayment of electric service as a contractual requirement.

In a nationwide first, TXU Energy proposed in 2004 to use credit scoring to price electric service to customers outside of its Price to Beat territory, where it was able to offer competitive energy services without any price regulation by the PUC. Under this approach, customers with a lower credit score would pay a higher price for electric service than customers with a good credit history. The resulting uproar concerning this proposal resulted in TXU withdrawing the proposal. The consumer advocates attempted to get legislation enacted to restrict or prohibit this practice in the future, but the proposed legislation was not adopted.

Finally, the Texas restructuring statute mandated a public benefits fund to assure bill payment assistance to low income customers. As of December 2003, 744,831 low income customers were receiving a discount with a funding level of \$149 million. Customers were automatically enrolled through a computer match between the electric company customer records and the Texas Department of Human Service client assistance database. The

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<sup>27</sup> April 15, 2004 Order at 11.

discount, originally established at 10%, was increased by the Texas PUC to 17% with the rising electricity prices in mid-2002. The following year, however, the Commission adopted a recertification requirement that was widely viewed by consumer advocates as responsible for a dramatic drop in program participation to approximately 400,000 customers. However, beginning in 2003, the Texas Legislature reduced the funding available for the electric discounts and directed the funds collected from ratepayers to other budget priorities. As a result, the 17% discount was reduced to 10%. Finally, in 2005 the Texas Legislature completed eliminated funding for the electric discount program and transferred the ratepayer funding to other programs. As a result, approximately 370,000 poor Texas began paying an additional 10% increase for their electric service in September 2005.

The loss of the discount for low income customers has been exacerbated by the astounding rise in residential prices for default or Price to Beat customers in Texas. Since the onset of retail competition in January 2002, the Price to Beat has increased over 200%, resulting in an overall total electric bill increase of 100%. A monthly electric bill for a residential customer in Houston now costs \$147 for 1,000 kwh. This means that residential customers are paying over 14 cents per kwh for electricity. While customers can shop and obtain service from competitive energy providers, only 20-25% have done so. Furthermore, many of the REPs are offering service at a price that jumps up in lockstep with the Price to Beat rate increases, maintaining a very small percentage savings for the customer.

Texas is not alone among the states whose public benefit funds have been directed to other non-utility purposes. **Wisconsin** and **Connecticut** legislatures have redirected ratepayer funding for energy conservation and weatherization to solve budgetary woes in the past several years. Finally, the courts themselves have struck down some state public benefit funding for low income customers. In **Arkansas** the Circuit Court struck down the newly enacted Low-Income Weatherization Fund when it ruled that the charge attached to utility bills was a "tax" and not a fee.

**PENNSYLVANIA  
ILLINOIS**

**USING CREDIT SCORING TO DEMAND A DEPOSIT**

The use of credit scores to determine whether an applicant for utility service should be charged a deposit (typically equal to two months of service) as a condition of granting service is being widely implemented. Under this approach, a utility obtains an applicant's social security number as part of the application process and electronically queries a credit reporting agency to obtain a credit score (or a determination that the social security number's credit score is above or below a preset number). A credit score reflects an individual's prior credit history with a wide variety of credit experiences and is not limited to the payment of utility bills. Whether or not a utility can make use of credit scoring to trigger a deposit is dependent on whether the state consumer protection rules promulgated by the utility regulator allow a utility to require a deposit based on specific criteria that relate to prior payment of utility service. If a utility can only seek a deposit based on prior nonpayment of utility service or risks that relate to the payment of utility services, the utility cannot rely on credit scoring. However, if the consumer protection rule has only general language that allows a utility to seek a deposit based on the applicant's "creditworthiness," the utility can most likely institute the use of credit scoring to trigger a deposit requirement without regulatory approval. Even where the state rules would seemingly prevent the use of credit scores, utilities are seeking waivers or rule changes to use this approach.

In 2000, Columbia Gas and PP&L Electric sought a waiver from the **Pennsylvania** PUC to use credit scoring, both to obtain a valid identification of the customer and to determine whether a security deposit should be required. The Commission granted the application<sup>28</sup> for a pilot program based on a Stipulation reached between the utilities and the Office of Consumer Advocate (OCA). Under the Pennsylvania PUC rules in effect at that time, a security deposit can be required as a condition of service only if the applicant fails to meet one of three specified standards. The two utilities proposed to use Equifax's Energy Risk Assessment Model (ERAM), which was developed specifically for electric and natural gas utilities. Columbia Gas claimed that its affiliates in other states used credit scoring and recovered 10-34% of their uncollectible expenses with security deposits compared to less than 1% of such recovery by the Columbia Gas utility in PA. Also, PP&L did a "validation" study of the use of the model and applied the model retroactively to prior applications. The model identified 84.5% of the accounts that became delinquent (defined as 90 days past due, disconnected for nonpayment and uncollectible).

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<sup>28</sup> Docket Nos. P-00001807 and P-00001808, Order Entered February 8, 2001. [http://puc.paonline.com/agenda\\_items/2001/pm020801/L-0018.doc](http://puc.paonline.com/agenda_items/2001/pm020801/L-0018.doc) The program was extended in 2003 and then the passage of Act 201 in late 2004 authorized any Pennsylvania utility to rely on credit scoring to determine a deposit or verify a customer's identity and place of residence without any of the conditions previously approved in these pilot programs.

The agreement with the OCA established a specific, uniform, state-wide credit score below which a deposit would not be collected (750 using the ERAM model identified above) for the initial six- month period, followed by the adjustment of this score by the utilities based upon their experience. The utilities must notify the PUC and OCA of any changes in the threshold score. Furthermore, the threshold credit score will be applied uniformly throughout the utility's service territory.

Under the Pennsylvania approach, if a customer receives a credit score of less than 750, the customer will be asked to produce information to demonstrate that he/she is not a credit risk. As a result, the credit score alone is not conclusive as to whether a customer is required to pay a security deposit. In addition, the applicant will be referred to the appropriate local agency to determine if he/she is eligible for available low-income programs. The security deposit will be waived for low-income customers (typically identified by participation or qualification under the Low Income Home Energy Assistance Program or the utility-funded bill payment assistance program, known in Pennsylvania as Customer Assistance Program).<sup>29</sup>

Other conditions include a requirement that if a customer disputes the credit scoring result and the investigation of the dispute lasts longer than 3 days, the applicant will be provided service pending resolution of the dispute. In addition, customers will be provided with the option of obtaining a third party guarantee in lieu of a deposit should one be required by the credit score. The Pennsylvania Commission also made it clear that credit denials based on the credit score must be provided in writing to the customer, identify that a credit score was used to make a security deposit determination, and inform customers how to challenge a failed credit score.

The Pennsylvania utilities agreed to allow OCA to review their employee training manuals. Finally, reporting requirements are in effect and therefore the utilities must report the following information to the PUC and OCA every six months:

- Number of credit scores for applicants;
- Number of applicants who received a passing credit score;
- Number of applicants who received a failing credit score;
- Number of deposits obtained from new applicants; and
- Number of times security deposits were waived (credit score challenged and waived).

In 2003, **Illinois** gas and electric utilities sought a change in the Illinois Commerce Commission's rules to specifically authorize credit scoring, alleging that the rule in effect at that time, which allowed a utility to base a deposit on a current customer's late payment of

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<sup>29</sup> A presentation by a representative of Columbia Gas at the NLIEC conference in June 2005 indicated that the utility relied on the customer's self identification as low income, but that the deposit was required (if so indicated by the credit score) and the customer was required to be qualified for the CAP or low income program in order to result in a reimbursement of the deposit.

utility bills<sup>30</sup> was causing higher bad debt expense because the rule allowed the customer to incur debt and leave utility service prior to the imposition of a deposit. After considering testimony from a variety of parties, the Commission approved the rule change to allow utilities to use a credit scoring system, but included a provision that exempts low income customers eligible for LIHEAP from the imposition of a deposit based on a credit score. The Commission deferred to each utility's tariff what credit score would trigger a deposit. Nor did the Commission specifically require disclosures to affected customers and opportunity for dispute of the credit score used to make the deposit decision. According to one Illinois utility, the dollar amount of residential deposits obtained during the eight month period following the implementation of this change increased by \$250,000 with a 29% reduction in residential write offs for customers with less than 12 months service.<sup>31</sup>

One of the most important implications of the use of credit scoring and access to credit reporting data by utilities is that applicants who fail to provide a social security number are effectively denied service until an alternative means of identification is provided. Furthermore, this approach also means that the accuracy of an applicant's credit history (on which the credit score is based) as it exists in the credit reporting agency database is crucial to obtaining essential utility services.

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<sup>30</sup> Part 280.50 in effect prior to this amendment allowed a utility to require a deposit if a customer was late making 4 payments in the first 24 months of service.

<sup>31</sup> Presentation by Ameren Illinois utility executive to a Utility Credit and Collections Conference, Electric Utility Consultants, Inc., September 2004, St. Louis, MO.

## INDIANA

### CONSUMER PROTECTION REFORMS PUT ON THE BACK BURNER

After a winter in which thousands of households went without heat because they could not afford deposits required for reconnection by the natural gas utilities, the Indiana Utility Regulatory Commission (IURC) initiated a rulemaking (RM 04-02) on July 21, 2004 to modify its current administrative rules on customer service rights and responsibilities. The IURC has issued 50 pages of proposed changes affecting several rules for electric, natural gas, telecommunications, sewer and water utilities that are under its jurisdiction. Highlights included:

- **Deposits for new service and service reconnection:** Utilities would be allowed to establish creditworthiness based on either of two factors: 1. The consumer's credit score or 2. Any unpaid debt the consumer has for such utility service. Deposit amounts would be capped at two months (one-sixth) of the customer's estimated annual bill. Current rules allow natural gas utilities to request up to four months (one-third) of a customer's estimated annual bill.
- **Winter reconnection requirements:** Between December 1 and March 15, electric and natural gas utilities would be required to reconnect any customer that pays 20% of his or her past due amount and 20% of any required deposit, and enters into a payment arrangement for the remaining balances over three months or until March 15. Failure to make payments on the past due and deposit amounts or to pay current bills in full would subject the customer to disconnection.
- **Estimated bills:** The new rules would specifically require any electric, gas or water bill based on an estimate, rather than an actual meter reading, to be clearly and conspicuously marked as estimated. Utilities would not be allowed to issue estimated bills for more than three consecutive months, with consumers obligated to comply with reasonable requests for meter access.
- **Longer disconnection warning periods for water and sewer customers:** The new rules would lengthen the warning period for water utilities from 7 to 14 days, while establishing a 10-day warning period for regulated sewer utility customers. Electric and natural gas utilities' current 14 day notice requirement would be maintained.
- **Longer disconnection postponements for medical emergencies:** The new rules would extend the disconnection postponement for medical emergencies from 10 to 30 days for electric, gas, sewer and water utilities (with one optional 10-day extension). The 30-day limit is already in force for telecommunications utilities. A written statement from a doctor or public health official is required for this postponement.
- **Weekend disconnection:** Utilities would specifically be barred from disconnecting service after Noon on any Friday or at any time on Saturdays and Sundays. Under

current rules, disconnection is not allowed after Noon on any day preceding a day on which the utility's offices will be closed.

The Indiana Office of Utility Consumer Counselor (OUCC) filed initial comments on the proposal. The OUCC generally supported the proposed rule, but did recommend several changes including:

- **Criteria to establish creditworthiness:** Maintain current creditworthiness criteria, with slight modifications, and do not allow the use of credit scores as allowed under the proposed rule.
- **Maximum deposit amounts:** Support the proposed rule's deposit cap of two months (one-sixth) of the customer's estimated annual bill with the exception that the cap be reduced to one month (one-twelfth) if a natural gas or electric customer enrolls in the utility's budget bill program during a non-peak use period.
- **Winter reconnection requirements:** Support the proposed rule's new winter reconnection provisions, provided they are limited to consumers with incomes less than 250 percent of the federal poverty level and can be used only once per heating season.

The Commission held two public hearings and conducted an extensive comment period. Unfortunately, after widespread public participation in the hearings and almost total utility opposition to many aspects of the proposed rules, the Commission withdrew the current rulemaking in May 2005 and announced it would begin a new process to consider specific rule changes for natural gas deposits, disconnections, and reconnections. As a result, the reforms and improvements in the proposed rule were put on hold.

In August 2005 the IURC initiated a very limited rulemaking<sup>32</sup> to address the issue of gas deposits and reconnection of service. The Commission proposed a rule that would continue the cap on the deposit amount equal to four months of service (one of the highest deposit amounts in any state rule) if the customer owed an outstanding bill within the last four years, has had more than two late bills in the last year (or only one late bill if a customer less than 12 months), or has been disconnected for nonpayment in the past two years. However, the proposed rule would lower the deposit amount to two months of the estimated annual bill if the applicant is new and can demonstrate creditworthiness, is enrolled in LIHEAP and the deposit is being required during the winter disconnection moratorium, or the customer agrees to enroll in the utility's budget billing program. The rule also addresses the minimum requirements for reconnection of service (extending the pay back requirement of the overdue amount from 8 weeks to 12 weeks). Clearly, the proposed rules reflect only modest changes and fail to adopt any of the important reforms reflected in the original rulemaking.

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<sup>32</sup> A description of the proposed rule is available from the Indiana Office of Utility Consumer Counselor's website: <http://www.in.gov/oucc/gas/Rulemaking0503.html>

**WISCONSIN  
RHODE ISLAND  
ALASKA**

**NEW FEES FOR PAYMENT OPTIONS: CREDIT CARDS, PAYMENT AGENTS**

The option for the customer to go “online” and pay the bill is becoming common among utilities and other consumer service providers (i.e., wireless, cable, Internet service providers, credit cards, newspaper subscriptions, etc.). Two forms of electronic payment are typically offered: authorization to debit funds from a consumer’s checking account and authorization to pay via credit card. In either type of transaction, there is also usually the option to make a one-time payment for the current bill or authorize a recurring monthly payment that occurs on the same date each month. These payments have the same legal effect as payment by check or cash in that the seller marks the customer’s record as “paid.” The transactions are also subject to Electronic Funds Transfer Act and the Fair Credit Billing Act (part of the Truth in Lending Act). Both federal laws establish dispute resolution and liability provisions for each type of transaction. The FCBA generally applies only to credit card charges (whether issued by a bank or a merchant). The EFTA applies to electronic fund transfers, such as those involving automatic teller machines (ATMs), point-of-sale debit transactions, and other electronic banking transactions. Both statutes address disputed payments or charges, mistakes in payments or charges, and failure to reflect payments or charges properly on the account.

Many utilities are now charging an additional fee to process a customer’s payment by credit or debit card, or, in some cases, pay in person at an authorized payment agency. Utilities argue that such fees should be allowed because they are offering an additional service that would otherwise increase their costs for processing payments. Utilities also argue that these fees should not be imposed on customers who do not use this service. The typical fee is a flat charge for paying by credit card due to the utility’s hiring of a third party to process such payments on their behalf. These fees are often not reflected in the utility’s tariff and are charged without any specific authorization from the state regulatory commission.

These additional charges by **Wisconsin** utilities vary, but Wisconsin Power and Light charges \$5.95 for this “service.” WPL’s website and its disconnection notices prominently inform customers that they can make last minute payments by these methods and avoid disconnection of service. The disconnection notice states, “For your convenience, you can make payment over the phone with a check or your credit card with Speedpay. Call 1-877-429-4126 and follow the simple automated payment instructions. There is a transaction fee of \$5.95 for this service.” The next paragraph informs the customer of the option of paying via the mail, but states, “Please note that payments sent by postal mail may take several days to be processed and posted to your account.”

The **Rhode Island** Public Utilities Commission examined the reasonableness of rolling the cost of credit card payments into utility rates in its Docket No. 3569, Investigate the Feasibility of Using Credit Cards as a Method of Paying Utility Bills. On April 4, 2004, it determined that accepting credit cards appears to be one of the most expensive methods of accepting payments for Rhode Island utilities. The Rhode Island Public Utilities Commission determined that the credit card user should pay any associated fees and relied upon the argument that other customers should not have to subsidize payments incurred by the utility to process credit card payments.

The Regulatory Commission of **Alaska** has opened a docket to explore this issue in light of recent customer complaints concerning a \$3.50 charged by Enstar Natural Gas Co. when a customer selects the option to pay by credit card.<sup>33</sup>

A national survey has recently confirmed that low and middle income households are using credit cards to pay for essential services, such as utility bill payments.<sup>34</sup> According to a Puget Sound Energy executive<sup>35</sup>, the use of the last minute payment by credit card option is primarily relied upon by low income customers to avoid disconnection of service. Other

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<sup>33</sup> The Regulatory Commission of Alaska, In the Matter of the Tariff Revision, Designated as TA135-4, Filed by Enstar Natural Gas Co., a Division of Semco Energy, Inc., for Revision of its Bill Payment Methods, Docket U-05-54, Order Suspending Tariff Filing and Allowing Interim Use of Third Party Program (June 27, 2005).

<sup>34</sup> Center for Responsible Lending, “The Plastic Safety Net: The Reality Behind Debt in America,” (October 2005). According to the national survey of low and middle-income households, 33% of the respondents reported the use of credit card debt within the past year to pay for basic living expenses, such as rent, groceries, and utilities. Available at: <http://www.demos.org/pub654.cfm>

<sup>35</sup> Presentation by Puget Sound Energy (Washington) at a Credit and Collections Conference, September 2004.

utility representatives have confirmed this estimate at informal workshops and conferences. As a result of the widespread use and availability of credit cards by most U.S. households, the imposition of these additional fees have increased the cost of essential energy services without any oversight of the regulatory commission in most states.

There are two main arguments in opposition to the notion that utilities should be able to impose an additional fee for certain payment options. First, there are incremental fees incurred by a utility associated with every type of payment, including check processing. Those fees are not imposed on individual customers who pay by check, but reflected in the expenses that are included in rates paid by all customers. ‘to charge additional fees to customers to make use of one of several payment options offered by the utility suggests that some payment options are appropriate for all customers to pay for and others are not. This is particularly troublesome because any of these methods of electronic bill payment are likely to reduce utility cash working capital costs compared to the processing of paper check payments.

An additional concern is whether a merchant is allowed to charge additional fees to those customers who pay by credit card under the federal and state Truth in Lending Act.<sup>36</sup> The TILA strictly regulates how a merchant or service provider discloses “finance charges” so as to avoid the temptation to state a lower interest rate and then impose additional charges that are actually finance charges in disguise. This general prohibition is why buyers are not charged a fee for using a credit card (and which is not otherwise imposed on buyers paying by cash) to pay a merchant in person or for Internet-based credit card payments. While extensions of credit directly by public utilities is exempt from the TILA when the credit is otherwise directly regulated by government, this exemption does not appear to cover the utility’s acceptance of credit card payments in the normal course of business.<sup>37</sup>

A quick survey of the websites for major utilities in Maine, Pennsylvania, Michigan, Minnesota, Iowa and other states indicate a growing use of additional fees for certain electronic bill payment options offered to residential customers.

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<sup>36</sup> The Truth in Lending Act was adopted as Title I of the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq. The regulations that implement the Truth in Lending Act are promulgated by the Board of Governors of the Federal Reserve Board as Regulation Z, 12 CFR Part 226. Supplement I to Part 226 contains the Official Staff Interpretations.

<sup>37</sup> 12 C.F.R. Section 226.3

## NEVADA

### PREPAYMENT METERS: THE EXPERIMENT THAT WON'T GO AWAY

An experiment that never seems to die is the attempt by investor owned utilities to initiate “pilot programs” that involve the installation of prepayment meters. A prepayment meter is a separate device installed in the customer’s home that records and displays “real time” usage and prices for electricity. A customer must swipe the meter console to add funding for ongoing usage so that this approach eliminates utility billing and collection activities except for installing and maintaining the meter and providing sufficient locations for the customer to add funding to the smart card to feed the meter. Obviously, this type of program has a potentially significant impact on low income and payment troubled customers because the prepayment feature eliminates the customer’s ability to incur arrears, enter into payment arrangements, or avoid termination under extreme weather or under other special protections for vulnerable customers in effect in many states. The potential impact of these meters for such customers results in disconnections of service that are not known by the utility or the regulators, thus eliminating any regulatory oversight of this process or impacts on vulnerable customers.

Utilities have attempted to experiment with and introduce prepayment meters for years. Not one prepayment pilot program initiated by an investor owned utility has ever demonstrated these meters or the pilot program itself was cost effective. However, utilities keep trying to get Commissions to experiment with these programs. In 2004, both the Kentucky PSC and the Florida PSC dropped expensive prepayment “pilot” programs initiated at Louisville Gas and Electric<sup>38</sup> and Florida Power and Light<sup>39</sup>, respectively, after the data clearly demonstrated that the cost of the meters and associated installation and maintenance outweighed the billing and payment expense benefits. In order to be effective, a utility would have to install prepayment meters in all dwellings to avoid the ongoing billing and collection systems that are currently in place, as well as replace the current meter base, a scenario that is not likely to be implemented in the U.S. Furthermore, there is no avoiding the obvious conclusion that any prepay meter program aimed specifically at payment troubled customers will have a discriminatory impact and intent.<sup>40</sup> Finally, these programs

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<sup>38</sup> Kentucky PSC, In the Matter of An Adjustment of the Gas and Electric Rates, Terms, and Conditions of Louisville Gas and Electric Co., Case No. 2003-00433 (June 30, 2004).

<sup>39</sup> The Florida Power and Light prepay meter program was targeted directly to low income and payment troubled customers. Approximately 600 residential customers participated in a two-year program that began in 2001. They were charged a slightly higher per kWh rate for participating in the program (to recoup the cost of the meters), but not charged certain service fees associated with disconnection (deposits, reconnection fees, etc.) The Company’s evaluation demonstrated that it was not cost effective due to the cost of the meters, the provision of “pay stations”, the maintenance of the meters in customer homes, the changes associated with call center procedures and training. Finally, the program showed the utility that customers would use less, thus reducing the utility’s sales and revenues, not a good combination for an investor owned utility!

<sup>40</sup> There are a number of publicly owned utilities that have reported a widespread installation and use of such meters. These utilities are not required to demonstrate the cost effectiveness of such programs since, in most states, regulators do not review or approve rates. One utility, Salt River Project in Arizona, has targeted prepayment meters specifically to payment troubled and low income customers, but that program has never been evaluated or determined to be cost effective. Furthermore, the impact of the program on retention of

typically do show that participating customers reduce their usage, although with respect to low-income households who use on average less than other residential customers already, it is not clear whether that reduced usage is due to the lack of funding to support essential needs.

The most recent pilot program was approved by the Nevada PUC in late 2004 on the application of Nevada Power prepayment meter pilot program that will involve 50 employee volunteers and 50 residential customer volunteers.<sup>41</sup> Under the Nevada Power program, the participating customers will pay an equipment deposit of \$30 (which will be returned when the unit is returned) and pay \$20 for the energy programmed in the start up unit. No additional fees are required other than the kwh charge for the ongoing energy usage (prorated to reflect the fixed customer charge as well as the per kWh charge). Customers eligible for medical emergencies will not be allowed to participate in the program. Customers will be allowed a 24-hour emergency usage credit no more than once per month or three in a six-month period. Otherwise, the meter will shut off the electricity if it is not “fed” with customer payments.

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service and health and safety of the “voluntary” participants has not been evaluated either, although the utility has conducted customer satisfaction surveys of participants who have given high marks to the program because it is presented as an alternative to outright disconnection of service.

<sup>41</sup> Public Utilities Commission of Nevada, In re: Application of Nevada Power Co. filed under Advice Letter No 310 to revise its Electric Tariff 1-A to implement Prepaid Power, an optional program that allows the customer to prepay for electric service, Docket No. 04-5003, Compliance Order (August 25, 2004)

**WISCONSIN  
INDIANA  
KENTUCKY  
GEORGIA**

**FIXED BILL PROGRAMS FOR GAS AND ELECTRIC SERVICE: AN OPTION  
TYPICALLY DENIED TO PAYMENT TROUBLED CUSTOMERS**

A number of electric and gas utilities have sought and received approval to offer a “fixed bill” option to residential and small commercial customers. Under this type of program, the customer is made an individual offer of a fixed monthly bill which will not change over the coming program year no matter the customer’s usage or the impact of any fuel adjustments or other price changes. Utilities typically seek approval of this program for a “pilot” program, but the recent programs have grown substantially, particularly in the southern states where prices for electricity are already low compared to other regions of the U.S.

Southern Companies Fixed Bill Program. The Georgia Power fixed bill program is typical. The program was first introduced in 2000 and by 2002 Georgia Power had 250,000 electric customers on this program, over a 10% market penetration for residential customers. The program is currently tariffed at Georgia Power, Duke Power, Progress Energy (NC and SC), Gulf Power, and Indianapolis Power and Light. Pilots are operating at Jacksonville Electric Authority, Oklahoma Gas and Electric, Alabama Power, and are pending approval or roll –out at Savannah Electric, East Kentucky Power Cooperative, Public Service of Indiana, and Electric Power Board of Chattanooga. Of these state-approved programs, 7 are electric and 3+ are for natural gas. The Florida PSC recently approved a proposal by Fulk Power Co. to add a permanent fixed bill program to its residential tariffs. While the pilot program did not include a “risk adder,” the permanent program includes a “risk-adder” that allow the utility to collect higher revenues than they would otherwise have from standard rate customers. This risk adder is set at 5%, but can be changed by the utility at least once per year.<sup>42</sup>

The design of the pricing program is typically offered to the utility by a consultant. It is designed to offer the utility a profit on the program and there are typically restrictions associated with the type of customer to whom the program option is offered. In almost all cases, the fixed bill option is not marketed to payment troubled or low credit rating customers. The price offered to the customer reflects a profit, but it is not clear whether this profit is reported to the regulatory commission as part of regulated earnings or “below the line.” The degree of profit usually reflects whether customers use more or less than expected based on their usage history and weather. The advantage of such a product for a

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<sup>42</sup> Florida PSC, Re Gulf Power Co., Docket No. 040442-EI, Order No. PSC-04-1052-TRF-EI (October 27, 2004).

utility is that it will provide a fixed income stream to the utility and even out the difference that normally occurs in customer billing revenues. For example, a summer peaking utility would benefit from the higher than normal revenues from Fixed Bill program customers during the off peak months.

The product will provide a customer-specific fixed bill offer based on that customer's weather normalized usage history, a factor to reflect expected usage change, a risk premium (potential for changes not otherwise reflected in other factors; profit potential), the expected natural usage increase/growth for the type of customer, and the standard rate that would be otherwise applicable (including all clauses, fees, but excluding taxes). Obviously, the volatility of fuel costs at the utility will make a significant impact on the calculation.

The product reflects a factor that assumes that the customer will increase usage with this product, especially in year 1. One utility representative estimated this usage increase at 5-6% for electric customers, but a natural gas utility representative indicated that this usage premium was less than 1% for residential gas customers in a multi-year program.

Most customer satisfaction surveys of participating customers demonstrate a very high level of satisfaction with this product and the program.

Rely-a-Bill by WEnergies: This program has been approved by the Wisconsin PSC for a three-year pilot for residential natural gas customers only. There is a limit of 20,000 for enrollment, and 13,700 enrolled by November 1, 2004 for a 12-month period. This company bought the gas for this program last July and included a 7% premium in the fixed bill price offered to the customers. High risk customers were excluded from the marketing effort so that 680,000 of the 1 million R customers were solicited for the program. The utility obtained assistance from Weatherwise in modeling and gas purchasing for this program.

Both programs include an early termination fee (unless the customer moves from the service territory or there are special circumstances). Renewal offers are made prior to the end of the program year and customers are presumed to renew unless they communicate otherwise (so-called "negative option")

Kentucky Rejects Fixed Bill Proposal. In an unusual move, one state commission has rejected a proposal for a fixed bill option. The Kentucky PSC recently rejected a fixed bill option proposed by East Kentucky Power Cooperative, Inc., no doubt in part due to the proposal by the utility to replace its budget billing program with a fixed bill option. The Commission stated that it feared the program would encourage higher or wasteful energy usage and result in revenue losses for the coop.<sup>43</sup>

New York PSC Orders a Phase Out of a Fixed Price Program. Closely related to the notion of a "fixed bill" is the "fixed price" option in which the provider offers a fixed price for the gas supply portion of the bill. This approach would not guarantee a fixed bill because the monthly bill will vary according to the customer's actual usage. Whether this or any other fixed bill approach can be offered by the gas utility in retail competition states has been

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<sup>43</sup> Kentucky, PSC, Re East Kentucky Power Cooperative, Inc., Case No. 2004-00330 (May 4, 2005).

addressed in New York.<sup>44</sup> The New York Commission has ordered natural gas utilities to eliminate or phase out such programs on the basis that any such option should be offered in the retail competitive market and not by the “default” provider of natural gas.<sup>45</sup> As a result, consumers who had participated in such programs are being notified of its elimination at a time when natural gas prices are expected to spike 30-70% higher this winter compared to 2004.

A fixed bill option is a profit making program for utilities that is designed for a segment of residential customers. Customers with a poor credit history or deemed high risk are not offered the program, to the detriment of low income and credit challenged customers. At least with natural gas programs, there is a risk that this product will send the “wrong” signal about usage and dampen efforts to implement energy conservation programs. These programs require a careful review and analysis of marketing materials, terms of service documents, early termination penalty policies, and renewal procedures to assure basic customer understanding and consumer protection.

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<sup>44</sup> Although, the Pennsylvania PUC authorized Equitable Gas to offer a fixed natural gas supply price product several years ago, but the utility did not in fact implement its approval. Furthermore, this product was not designed to provide a fixed bill, even for the natural gas supply portion of the bill, because the customer’s usage would determine the actual monthly bill. It only offered a fixed price per therm for the product.

<sup>45</sup> According to the NY PSC, New York’s larger gas utilities were ordered to offer their core customers a fixed price option for gas supply service to alleviate the then-occurring gas price volatility. However, with the Commission’s implementation of retail gas competition, this rate option has been discouraged and as of 2004-2005 only one gas utilities (Central Hudson Gas & Electric) was offering this option. In response to a petition by retail gas marketers, the Commission ordered the termination of this fixed price option after the 2005-2006 hearing season. Petition of Small Customer Marketer Coalition for a Declaratory Ruling Regarding the Fixed Price Option for all Customers..., Order Directing the Future Termination Subject to Conditions of a Fixed Price Offer, Case 05-G-0311 (July 22, 2005).

## APPENDIX A: RESOURCES ON STATE CONSUMER PROTECTION POLICIES AND PROGRAMS

National Consumer Law Center ([www.nclc.org](http://www.nclc.org)) publishes legal manuals, including Access to Utility Service (2005) for a fee. This manual contains descriptions, state regulatory and court citations, and discussion of the key legal principles for energy and telecommunications utility services organized by issue. Recent developments and papers are available on their website.

LIHEAP Clearinghouse ([www.ncat.org/liheap](http://www.ncat.org/liheap)) The National Center for Appropriate Technology maintains a website that provides official information on the implementation of the Low Income Home Energy Assistance Program funded by the U.S. Department of Health and Welfare, as well as state-based databases on low income program developments and other state regulatory actions that affect low income customers, including charts on disconnection policies, existing state or ratepayer funded low income programs, and access to relevant and valuable publications, such as "[Energy Advocacy and Intervention: Basic Skills](#)," John Howat, National Consumer Law Center, June 2005.

Fisher, Sheehan, and Colton ([www.fsconline.com](http://www.fsconline.com)). This website maintained by a consulting group contains the historical work of one of the low income advocate's most valuable resources, Roger Colton. The library maintained on this website contains many valuable papers and reports concerning low income energy issues and regulatory policies and programs.

National Association of State Utility Consumer Advocates (NASUCA) ([www.nasuca.org](http://www.nasuca.org) )

Contains a directory of the state public utility consumer advocates.

National Association of Regulatory Utility Commissions (NARUC) ([www.naruc.org](http://www.naruc.org) )

NARUC has a Committee on Consumer Affairs that has its own web page with “resources” that include state consumer oriented education materials, as well as presentations from recent committee meetings.

AARP ([www.aarp.org](http://www.aarp.org)) : AARP maintains a website that provides public policy reports, survey results, and publications that can be accessed under the “energy” topic:

<http://www.aarp.org/research/utilities/> Among these publications are important surveys done in several states concerning consumer protection and low income policies and programs.