

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE.)
)
CONSUMERS' ENERGY) **DOCKET NO. TF-07-156**
COOPERATIVE)

RESPONSE OF THE IOWA DEPARTMENT OF HUMAN RIGHTS

COMES NOW, the Iowa Department of Human Rights, Bureau of Energy Assistance (DHR/BEA), by and through its undersigned representative, and submits its Response to the Application of Consumers' Energy Cooperative for Approval of its "Service Extender Program and Request for Any Necessary Waivers." In response, DHR/BEA states as follows:

1. The Iowa Department of Human Rights, Bureau of Energy Assistance, is the state agency that administers the federal Low-Income Home Energy Assistance Program (LIHEAP) in Iowa. As the state LIHEAP administrator, DHR/BEA distributes federal funding to more than 85,000 Iowa low-income households on a statewide basis. DHR/BEA works with Iowa's 18 Community Action Agencies through which to distribute LIHEAP assistance. DHR/BEA is an "interested party" as referenced by Ordering Paragraph 3 of the Iowa Utilities Board order of September 28, 2007 in this docket.

2. DHR/BEA opposes the request of Consumers' Energy Cooperative (hereafter, "Consumers' Energy" or "Co-op") to install Service Limiters on residential accounts. DHR/BEA asks that the Application of Consumers' Energy for approval of the installation of such Service Limiters, along with its request for "any necessary waivers," be denied in its entirety.

Part I. Factual Objections.

3. DHR/BEA disputes the factual statements, provided entirely without empirical support, in the Consumers' Energy Application that "members who accrue those large balances during the winter often either: (1) leave the location once the winter moratorium has expired and the member becomes subject to disconnection, leaving the Cooperative with an outstanding debt that is likely uncollectible; or (2) the member remains at the location and service is disconnected." (Application, at para. 8).

4. DHR/BEA disputes the Co-op's factual statements, again provided with no empirical support, that: (1) members accrue large balances during the winter; (2) that those members who do accrue large balances "often" leave the location once the winter moratorium has expired; (3) that consumers leaving their homes "often" leave the Co-op with an outstanding

debt that “is likely uncollectible”; and (4) that those members not leaving their homes remain in their home and “often” have service disconnected.

5. DHR/BEA disputes the unsupported factual assertion in the Consumers’ Energy Application that the use of Service Limiters will appreciably: (1) decrease the incursion of unpaid balances, especially during the winter heating season; (2) reduce the rate at which service will be disconnected for nonpayment; and (3) limit the number of customers who leave their homes with unpaid bills that contribute to the Co-op’s uncollectibles. (Application, at para. 9 and para. 15). The simple statement that the Co-op “believes” these results will accrue does not provide empirical support for such belief or for the accuracy of the assertion.

- a. Consider, for example, that the State of Minnesota has statutorily restricted the use of “load limiters” by Minnesota’s electric utilities. The Minnesota cold weather statute, with its applicability to Service Limiters, is appended to these comments as Attachment A. Consumers’ Energy cannot show that Minnesota cooperatives and/or municipal utilities experience noticeably more severe cold weather collection problems, bad debt, or disconnection rates than do utilities not operating under these Service Limiter restrictions.
- b. The Utah state utility commission has, by regulation, placed substantial restrictions on the use of load limiters (also known as “service limiters”) for residential accounts. The Utah regulation restricting Service Limiters is appended to these comments as Attachment B. Consumers’ Energy cannot show that Utah electric utilities experience noticeably more severe cold weather collection problems, bad debt, or disconnection rates than do utilities not operating under these Service Limiter restrictions.

6. DHR/BEA finally disputes that households in danger of losing their electric service due to nonpayment can be reasonably expected to have ready access to a telephone to effect a reconnection of service after a disconnection without notice attributable to a Service Limiter. According to the Federal Communications Commission (FCC), while telephone penetration rates for residential consumers in general exceed 95%, penetration rates for households relying exclusively on public assistance for income fall to only 45%.

Part II. Legal Objections.

7. The loss of service subject to a Service Limiter, when a member’s usage at any one time exceeds a pre-established demand limit, represents the disconnection of service. Consumers’ Energy acknowledges quite explicitly that “if a member exceeds the preset kW limitation, *service will automatically disconnect.*” (Application, at para. 17) (emphasis added). In order to regain service, the customer would need to call the Co-op and have the device remotely “reset.” (Application, at 17).

8. The Iowa Code provides that “a utility shall not, except in cases of emergency, discontinue, reduce or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so

is obtained from the board.” (Iowa Code, §476.20(1)). The automatic disconnection of service for exceeding a “preset kW limitation” is a discontinuance, reduction or impairment of service for something other than nonpayment of account or violation of rules and regulations and is thus contrary to this statutory section. Being statutory, this prohibition on when the Co-op may “discontinue, reduce or impair service” may not be waived by the Board.

9. The Iowa Code provides that “a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.” (Iowa Code, §476.20(3)). This statutory section does not distinguish between customers who use electricity as their primary space heating and customers who do not. Being statutory, this prohibition on service disconnections may not be waived by the Board.

10. The loss of service subject to a Service Limiter, when a member’s usage at any one time exceeds a pre-established demand limit, represents the disconnection of service *without notice*. The Iowa Utilities Board (IUB) regulations provide an extremely limited set of circumstances under which service may be disconnected without notice. (Iowa Admin. Code, §199-20.4(15)(b)). Having a Co-op member exceed a “preset kW limitation” is neither: (1) one of the listed circumstances under which service may be disconnected without notice, nor (2) *sui generis* of the circumstances under which service may be disconnected without notice.

11. The loss of service subject to a Service Limiter, when a member’s usage at any one time exceeds a pre-established demand limit, represents the disconnection of service. IUB regulations provide that “disconnection of a residential customer *shall be postponed* if the disconnection of service would present an especial danger to the health of any permanent resident of the premises. An especial danger to health is indicated if a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage the person’s own resources, to carry out activities of daily living, or to be protected from neglect or hazardous situations without assistance from others. *Indicators of an especial danger to health* include but are not limited to: age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other *factual circumstances* which indicate a severe or hazardous health situation.” (Iowa Admin. Code, §199-20.4(15)(d)(9)). (emphasis added).

12. This regulation imposes a mandatory duty on the utility to postpone a disconnection of service if an “especial danger to health” is present. Regulatory reference to “postponing” the disconnection documents that the determination of whether the disconnection of service would present an especial danger to health is to occur *prior to* the disconnection of service. Regulatory reference to the “indicators of an especial danger to health” further documents that this “especial danger” is a fact-specific, situation-specific, inquiry. The regulatory reference to the “factual circumstances” which indicate an especial danger to health also documents that whether there should be a postponement should involve a fact-specific, situation-specific inquiry. The automatic disconnection of service, without notice, when usage exceeds a preset kW limitation does not allow for this postponement of a service disconnection when such a disconnection presents an especial danger to health. Nor does it allow for the pre-disconnection, fact-specific, situation-specific, inquiry required by law.

13. The loss of service subject to a Service Limiter, when a member's usage at any one time exceeds a pre-established demand limit, represents the disconnection of service without notice. IUB regulations provide, however, that "if the utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, *there shall be no disconnection of service* for 30 days from the date the utility is notified to allow the customer time to obtain assistance." (Iowa Admin. Code, §199-20.4(10)). (emphasis added). Postponing the disconnection of service is mandatory under the regulation. The automatic disconnection of service without notice for exceeding a preset kW limit neither allows the customer notice to seek energy assistance nor provides the customer with a pre-disconnection opportunity to inform the Co-op that the customer may qualify for winter energy assistance or weatherization funds. The regulatory language ("there shall be no disconnection of service") makes clear that the service disconnection process must allow this opportunity to seek assistance to occur *prior* to the disconnection of service.

14. DHR/BEA concurs with the Iowa Department of Justice, Office of Consumer Advocate, that a residential customer is entitled to the opportunity to enter into a deferred payment plan in all circumstances, and entitled to enter into a second payment plan under specified circumstances, without being subjected to the reduction of service imposed under a Service Limiter. A customer who is current on a reasonable deferred payment plan stands in the same position relative to the Co-op as a customer who is not in arrears to the Co-op. Imposing a Service Limiter as a condition of a deferred payment plan imposes disparate treatment for similarly-situated customers.

15. When a customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the utility for residential service and is not in default of a payment plan, a utility "shall offer" the customer an opportunity to enter into a reasonable payment agreement. (Iowa Admin. Code, §199-20.4(11)). Importantly, the "reasonableness" of a payment plan is to be determined after a situation-specific factual inquiry by the utility. "Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including defaults on similar agreements, the size of the bill, the amount of time and reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household." (Ibid.) The Co-op's Service Limiter proposal does not allow for this fact-specific inquiry should it be applied to customers that have not previously been offered, and then defaulted, on a first or second reasonable payment agreement.

16. Finally, the loss of service subject to a Service Limiter, when a member's usage at any one time exceeds a pre-established demand limit, represents the disconnection of service without notice. IUB regulations provide, however, service may only be disconnected between the hours of 6 a.m. and 2 p.m. on Monday through Friday. (See, e.g., Iowa Admin. Code, §199-20.4(15)(d)(3)). The Service Limiter proposed by Consumers' Energy cannot ensure that service will not be disconnected during hours and on days during which the disconnection of service is prohibited. Indeed, the Co-op's proposal explicitly anticipates the disconnection of service during prohibited hours. The Co-op's proposed tariff states that "During normal business hours, the Cooperative's member service representatives can reset the device and offer support to the member. *After hours*, the Cooperative's after hour's service can do the same." (emphasis added).

Part III. Health and Safety Consequences.

17. DHR/BEA opposes the Consumers' Energy proposal because of the threats to health and safety the Service Limiter proposal imposes on low-income customers. The Co-op states that it will establish the kW limitation "based on the Cooperative's understanding of the electrical needs at the residential premise." (Additional Information Filed by Consumers' Energy Cooperative, at Response to Request #4).¹ The Co-op then identifies only "the size of the residence or the type of space heating equipment utilized by the member-consumer" as being relevant factors to consider. (Ibid.) The electrical needs of low-income consumers go far beyond these factors.

18. The Consumers' Energy proposal to use Service Limiters will place households with young children in serious medical jeopardy. The disconnection of electricity represents a distinct public health threat, particularly to low-income households with children. The impacts of such service disconnections on the public's health and safety can hardly be debated in light of recent research. Recent Congressionally-funded research undertaken on behalf of the National Energy Assistance Directors Association (NEADA) examined the impacts that unaffordable home energy bills have on low-income households with children. According to the 2005 NEADA study (hereafter "NEADA 2005"), 38% of households receiving benefits through the Low-Income Home Energy Assistance Program (LIHEAP) had one or more children aged 18 or younger; 12% of the surveyed LIHEAP population had one or more children age 5 or younger. These households with children tended to be very low-income. More than two-thirds of each population had income at or below 100% of the Federal Poverty Level.

19. These low-income home energy assistance recipients frequently face the loss of utility service due to their inability to pay. According to the NEADA survey, between 8% and 11% of households with children age 18 or younger faced the loss of electric service in 2003 and 2005. Not surprisingly, this loss of service was most heavily concentrated in the lowest income bracket.

20. The loss (and threatened loss) of home heating service has significant health consequences to these low-income households with children. NEADA found that survey respondents reported becoming ill because their home was too cold in the winter heating months. Nearly 1-in-6 of all energy assistance recipients reported that someone in the home became sick because the home was too cold in the past five years. While clearly the lack of health insurance for all household members exacerbated this impact, the fact that a household might have health insurance for all household members did not prevent this adverse health care outcome. In 2005, 14% of energy assistance recipients reported that someone in the household became sick because the house was too cold, even though all members of the household were covered by health insurance. These illnesses were frequently severe enough to require medical treatment. In both 2003 and 2005, 11% of the surveyed energy assistance recipients reported that someone in the home had become ill enough to require going to a doctor or hospital because the home was too cold in the past five years.

¹ This language reserving the right to the Co-op to determine an appropriate kW limitation based on its "understanding" of the electric needs of a particular household is mirrored in the Co-op's proposed tariff.

21. The loss of *electric* service (not merely heating service) poses an immediate threat to the health of Iowa households with children as well. NEADA reports that the home electric service that is being disconnected to low-income households is frequently essential to the operation of some medically-necessary equipment in the home. A full 25% of all energy assistance recipients surveyed, that had children under the age of 18, reported that a member of the household used medical equipment that requires electricity. (NEADA 2005, at 15). A full 6% of all energy assistance recipients surveyed by NEADA reported that the equipment using electricity was used to treat asthma. (NEADA 2005, at 18). Nearly as many (4%) said that someone in the household was taking medication that required refrigeration. (NEADA 2005, at 18).

22. Public safety will be impaired as well. The Johns Hopkins School of Medicine has documented the fact that public health and safety fire hazards are strongly associated with the termination of service due to nonpayment. In the spring of 2005, Johns Hopkins undertook an analysis of the safety impacts of “power terminations” on households with children. According to Johns Hopkins, over an 18-month period from 2003 - 2004, there were 34 flame injuries admitted to Johns Hopkins Hospital. Of these 34, seven (7) (21%) died. Five (5) of the 34 fires (15%) were associated with power termination. At least one additional person associated with a power termination died before reaching the hospital. According to Johns Hopkins, three-fifths (60%) of the “power-termination” burn admissions ultimately died. Johns Hopkins reached two significant conclusions based on its data: (1) power termination is associated with a significant subset of fires involving children; and (2) if power termination leads to a burn, it has a high probability of being fatal.

23. On a broader scale, the National Fire Protection Association (NFPA) reports data confirming the Johns Hopkins data and conclusions. According to the NFPA, “not being able to afford utilities” is one of the “major factors of increased fire risks” for low-income households. Aside from low-income status being associated with an increased incidence of home fires generally, it is associated with deadly fires as well. The NFPA has found several factors that contribute to this result:

- Not being able to afford smoke detectors. “Three fifths of all home fire deaths occur in the approximately seven percent of homes without detectors.” One-third of all homes with detectors that have fires have detectors that are not working.
- Not always being able to afford child care and leaving children unattended or unsupervised. Unattended children are those left completely alone with no adult or babysitter to look after them.
- Not being able to afford a telephone. According to the NFPA, “without a telephone, the chance of a delay in alarm when reporting a fire to the fire department increases.”

24. Finally, unaffordable home energy has a substantial adverse impact on the nutrition of low-income households. According to the Congressionally-funded NEADA study

cited above, in both 2003 and 2005, one-in-five low-income energy assistance recipients went without food for at least one day due to energy bills in the past five years. Renters experience food deprivation more frequently than do homeowners. According to the NEADA study, while 10% of elderly homeowners went without food because of the need to pay home energy bills, 17% of elderly renters did. While 24% of non-elderly owners went without food due to energy bills, 28% of non-elderly renters did.

25. There has been significant recent academic research documenting the relationship between unaffordable home energy bills and nutritional deficiencies. One November 2006 article published in *Pediatrics*, the journal of the American Academy of Pediatrics, reports that “convergent evidence suggests that the periodic stress of home heating and cooling costs may adversely impact the health and nutritional status of children and other vulnerable populations.” According to this *Pediatrics* article, a study of children 6 to 24 months of age in Boston (MA) found higher proportions of children with weight-for-age below the 5th percentile in the three months after the coldest months, compared with all of the other months of the year.

26. The article reports further that “there is also evidence that hunger and food insecurity are associated with high utility costs and cold weather. In the United States, data show that families reporting unheated days or threats of utility turnoff are more likely to report that their children were hungry or at risk for hunger than families without either experience. In addition, national data collected from 1995 to 2001 as part of the Current Population Survey Food Security Supplement suggest that rates of food insecurity with hunger increased during the winter and early spring among low-income families in areas with high winter heating costs and during summer in regions with high summer cooling costs.”

27. The article reports that “findings from the Consumer Expenditure Survey and the Third National Health and Nutrition Examination Survey also suggest a “heat or eat” effect in low-income families with children. Although both rich and poor families increased their expenditures on home fuel in unusually cold months, in poor families, this expenditure was associated with a decreased expenditure on food.” The “winter resource shift” was confirmed by the finding that adults and children in poor households reduced their caloric intake by 10% in the winter months, whereas there was no reduction among members of wealthier families.

28. In addition to the impact on households with children, a November 2006 article in *The Journal of Nutrition* examined the association between household food insecurity and seasonally high heating and cooling costs for low-income elderly Americans. The study “examined the extent to which greater proportions of poor households, especially poor elderly households, experienced very low food security (the more severe range of food insecurity) during times of the year when home heating and cooling costs were high, controlling for important covariates.” “Very low food security” is a severe range of food insecurity, which the U.S. Department of Agriculture referred to as “food insecurity with hunger” in its pre-2006 reports. The study found that “the odds of very low food security were 27% higher in the summer than in the winter in a high-cooling state. In a high-heating state, the odds of very low food security were 43% lower in the summer than in the winter. . .”

Part IV. The Availability of Reasonable Alternatives.

29. The Consumers' Energy Cooperative should not be heard to complain of high winter arrears and excessive post-winter rates of service disconnection unless and until the Co-op appropriately implements the energy assistance funding options provided by Iowa law.

30. Section 216A.102 of the Iowa Code provides that "an energy crisis fund is created in the state treasury. Moneys deposited in the fund shall be used to assist low-income families who qualify for the low-income home energy assistance program to avoid loss of essential heating." The statute provides that "the fund may receive moneys including, but not limited to, the following: . . . After July 1, 1988, unclaimed patronage dividends of electric cooperative corporations or associations shall be applied to the fund following the time specified in section 556.12 for claiming the dividend from the holder." To date, DHR/BEA is unaware of any unclaimed patronage dividends deposited in the State Treasury by Consumers' Energy pursuant to this statutory section. Prior to even advancing a proposal to impose Service Limiters on its residential customers as a means to control arrears, post-winter service disconnections and bad debt, Consumers' Energy should be required to provide a full accounting of what unclaimed patronage dividends have been paid to the "energy crisis fund" pursuant to Section 216A.102 of the Iowa Code.

WHEREFORE, the Iowa Department of Human Rights prays that the Iowa Utilities Board grant the following relief:

1. Deny the Application of Consumers' Energy Cooperative to implement a Service Limiter program in its entirety. This denial should explicitly cite not only the substantive problems with the Consumers' Energy proposal (and its request for a waiver of IUB regulations), but should cite the legal impediments to the pursuit of the Service Limiter program as well.
2. In the alternative, and not in derogation of the DHR/BEA request that the Application and Request for Waivers be denied in its entirety, in the event that the IUB might approve some limited Service Limiter program, the IUB should:
 - a. prohibit the use of Service Limiters in any household meeting any one or more of the following criteria:
 - i. The household in which the customer lives has a child or children age six years old or younger; or
 - ii. The household in which the customer lives has a household member age 65 years old or older; or
 - iii. The household in which the customer lives has a disabled person; or
 - iv. Any permanent resident of the household has a medical condition which would be exacerbated or which would pose a danger to health and safety should electric service be discontinued; or
 - v. The household income for the household in which the customer lives is equal to or less than 50% of State Median Income; or

- vi. The household is a recipient of federal Food Stamp assistance, federal fuel assistance through the Low-Income Home Energy Assistance Program (LIHEAP), or is a recipient of Supplemental Security Income (SSI); or
 - vii. The customer does not have a landline telephone in the home; or
 - viii. The customer is not in default of a reasonable deferred payment arrangement.
 - b. prohibit the use of Service Limiters under each of the following circumstances:
 - i. Service Limiters may not be used for any customer between November 1 and April 15 of any winter heating season; and
 - ii. Service Limiters must be subject to programming which prevents the disconnection of service for exceeding a preset kW limitation between the hours of 8:00 p.m. and 7:00 a.m.; and
 - iii. The kW limitations established for the Service Limiter must be disclosed to the consumer, along with a comprehensive list of the electric end-uses that could reasonably be expected to operate within those limits. Each consumer must be given the opportunity to appeal the specific kW limitations established for his or her dwelling unit to the Iowa Utilities Board *before* the Service Limiter is installed and made operational; and
 - iv. Service Limiters may not be installed and activated without the express written consent of the customer whose service will be limited.
- 3. Prior to considering any request from Consumers' Energy to implement a Service Limiter initiative, the IUB should:
 - a. direct Consumers' Energy to provide a full accounting of its unclaimed patronage capital dividends since 1988 and the extent to which such unclaimed post-1988 patronage capital dividends have been paid to the state energy crisis fund pursuant to Section 216A.102 of the Iowa Code.
- 4. Grant such other and further relief as may seem just in the premises.

Respectfully submitted,

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Attachment A: Minnesota statute

216B.097. Cold weather rule, cooperative or municipal utility

Subdivision 1. Application; notice to residential customer. (a) A municipal utility or a cooperative electric association must not disconnect and must reconnect the utility service of a residential customer during the period between October 15 and April 15 if the disconnection affects the primary heat source for the residential unit and all of the following conditions are met:

(1) The household income of the customer is at or below 50 percent of the state median household income. A municipal utility or cooperative electric association utility may (i) verify income on forms it provides or (ii) obtain

verification of income from the local energy assistance provider . A customer is deemed to meet the income requirements of this clause if the customer receives any form of public assistance, including energy assistance, that uses an income eligibility threshold set at or below 50 percent of the state median household income;

(2) A customer enters into and makes reasonably timely payments under a payment agreement that considers the financial resources of the household ; and

(3) A customer receives referrals to energy assistance, weatherization, conservation, or other programs likely to reduce the customer's energy bills.

(b) A municipal utility or a cooperative electric association must, between August 15 and October 15 each year, notify all residential customers of the provisions of this section.

Subd. 2. Notice to residential customer facing disconnection. Before disconnecting service to a residential customer during the period between October 15 and April 15, a municipal utility or cooperative electric association must provide the following information to a customer:

(1) a notice of proposed disconnection;

(2) a statement explaining the customer's rights and responsibilities;

(3) a list of local energy assistance providers;

(4) forms on which to declare inability to pay; and

(5) a statement explaining available time payment plans and other opportunities to secure continued utility service.

Subd. 3. Restrictions if disconnection necessary. (a) If a residential customer must be involuntarily disconnected between October 15 and April 15 for failure to comply with subdivision 1, the disconnection must not occur:

(1) on a Friday , unless the customer declines to enter into a payment agreement offered that day in person or via personal contact by telephone by a municipal utility or cooperative electric association;

(2) on a weekend, holiday, or the day before a holiday;

(3) when utility offices are closed; or

(4) after the close of business on a day when disconnection is permitted, unless a field representative of a municipal utility or cooperative electric association who is authorized to enter into a payment agreement, accept payment, and continue service, offers a payment agreement to the customer.

Further, the disconnection must not occur until at least 20 days after the notice required in subdivision 2 has been mailed to the customer or 15 days after the notice has been personally delivered to the customer.

(b) If a customer does not respond to a disconnection notice, the customer must not be disconnected until the utility investigates whether the residential unit is actually occupied. If the unit is found to be occupied, the utility must immediately inform the occupant of the provisions of this section. If the unit is unoccupied, the utility must give seven days' written notice of the proposed disconnection to the local energy assistance provider before making a disconnection.

(c) If, prior to disconnection, a customer appeals a notice of involuntary disconnection, as provided by the utility's established appeal procedure, the utility must not disconnect until the appeal is resolved.

Subd. 4. Application to service limiters. For the purposes of this section, "disconnection" includes a service or load limiter or any device that limits or interrupts electric service in any way.

Attachment B: Utah Regulations

R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities--

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.
2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.
3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.