

TIER Environmental Forecast Group
 advocates for the West
 Alaska Housing Finance Corporation
 Alliance to Save Energy
 Alternative Energy Resources Organization
 American Rivers
 The Apollo Alliance
 Audubon Washington
 Bonneville Environmental Foundation
 Central Area Motivation Program
 Citizens Utility Board of Oregon
 City of Ashland
 Clackamas County Weatherization
 Climate Solutions
 The Climate Trust
 Community Action Partnership of Oregon
 Community Action Partnership Assoc. of Idaho
 Conservation Services Group
 David Suzuki Foundation
 Earth and Spirit Council
 Earth Ministry
 Ecos Consulting
 Ecological Design Center
 Formative Options, LLC
 Emerald People's Utility District
 The Energy Project
 Energy Trust of Oregon, Inc.
 nXco Development Corporation
 Environment Oregon
 Environment Washington
 Eugene Water & Electric Board
 Friends of the Earth
 Golden Eagle Audubon Society
 Grasslands Renewable Energy
 Horizon Wind Energy
 Home Performance Washington
 Housing and Comm. Services Agency of Lane Co.
 Human Resources Council, District XI
 Iberdrola Renewables
 Idaho Conservation League
 Idaho Rivers United
 Idaho Rural Council
 Idaho Wildlife Federation
 Interfaith Network for Earth Concerns
 Iotenni Environmental Alliance
 Laborers International Union of North America, NW Region
 League of Women Voters - ID, OR & WA
 Metrocenter YMCA
 Missoula Urban Demonstration Project
 Montana Audubon
 Montana Environmental Information Center
 Montana Public Interest Research Group
 Montana Renewable Energy Association
 Montana River Action
 Montana Trout Unlimited
 Montown Foundation
 The Mountaineers
 Multnomah County Weatherization
 National Center for Appropriate Technology
 Natural Resources Defense Council
 New Buildings Institute
 Northern Plains Resource Council
 Northwest Energy Efficiency Council
 Northwest Renewable Energy Institute
 Northwest Solar Center
 NW Natural
 NW SEED
 Olympic Community Action Programs
 Opportunities Industrialization Center of WA
 Opportunity Council
 Oregon Action
 Oregon Energy Coordinators Association
 Oregon Environmental Council
 Oregon HEAT
 Pacific Energy Innovation Association
 Pacific NW Regional Council of Carpenters
 Pacific Rivers Council
 The Policy Institute
 Portland Energy Conservation Inc.
 Portland General Electric
 Puget Sound Alliance for Retired Americans
 Puget Sound Energy
 Renewable Northwest Project
 River Network
 Salmon for All
 Save Our Wild Salmon
 Seattle Audubon Society
 Seattle City Light
 Sierra Club
 Sierra Club, BC and MT Chapters
 Snake River Alliance
 Solar Oregon
 Solar Washington
 South Central Community Action Partnership, Inc
 Southeast Idaho Community Action Agency
 Southern Alliance for Clean Energy



NW Energy Coalition
 for a clean and affordable energy future

May 2, 2012

Via Electronic Filing and U.S. Mail

Re: UG 221 --

Attention Filing Center:

Enclosed for filing in UG 221 are an original and five copies of:
 Direct Testimony of Nancy Hirsh on behalf of the NW Energy
 Coalition

This document is being filed by electronic mail with the Filing Center.

This document is being served upon the UG 221 service list.

Sincerely,

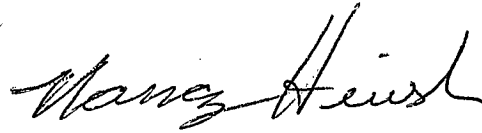
Nancy Hirsh
 Policy Director

Enclosures
 cc: Service List -UG 221

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **the direct testimony of Nancy Hirsh on behalf of NW Energy Coalition** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class Mail, postage prepaid and properly addressed, to those parties on the service list who have not waived paper service from OPUC Docket No. UG 221.

DATED this 3rd day of May, 2012.

A handwritten signature in cursive script that reads "Nancy Hirsh". The signature is written in black ink and is positioned above a horizontal line.

Nancy Hirsh

NW Energy Coalition
811 1st Ave., Suite 305
Seattle, WA 98104

**Service List – May 3, 2012
UG 221**

**CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD**
TOMMY A BROOKS, CHAD M
STOKES
1001 SW FIFTH AVE, STE 2000
PORTLAND OR 97204-1136
tbrooks@cablehuston.com

**CITIZENS' UTILITY BOARD OF
OREGON**
OPUC DOCKETS, ROBERT JENKS, G.
CATRIONA MCCrackEN
610 SW BROADWAY, STE 400
PORTLAND OR 97205
dockets@oregoncub.org
bob@oregoncub.org
catriona@oregoncub.org

**COMMUNITY ACTION
PARTNERSHIP OF OREGON**
JESS KINCAID
PO BOX 7964
SALEM OR 97301
jess@caporegon.org

**MCDOWELL RACKNER & GIBSON
PC**
LISA F RACKNER
419 SW 11TH AVE., SUITE 400
PORTLAND OR 97205
dockets@mcd-law.com

NW ENERGY COALITION
WENDY GERLITZ
1205 SE FLAVEL
PORTLAND, OR 97202
wendy@nwenergy.org

**NORTHWEST INDUSTRIAL GAS
USERS**
PAULA E PYRON
4113 WOLF BERRY CT
LAKE OSWEGO OR 97035-1827
ppyron@nwigu.org

NORTHWEST NATURAL
MARK R THOMPSON
220 NW 2ND AVE
PORTLAND OR 97209
mark.thompson@nwnatural.com
efiling@nwnatural.com

NORTHWEST PIPELINE GP
JANE HARRISON, STEWART MERRICK
295 CHIPETA WAY
SALT LAKE CITY UT 84108
jane.f.harrison@williams.com
stewart.merrick@williams.com

PORTLAND GENERAL ELECTRIC
RANDY DAHLGREN, DOUGLAS C
TINGEY
121 SW SALMON ST - 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com
doug.tingey@pgn.com

PUBLIC UTILITY COMMISSION
JUDY JOHNSON
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us
jason.w.jones@state.or.us

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3 **BEFORE THE**
4 **PUBLIC UTILITY COMMISSION OF OREGON**

5 **UG 221**

6
7
8 In the Matter of)
9) Testimony of
10 Northwest Natural Gas Corporation)
11 dba NW Natural) Nancy Hirsh
12) on Behalf of NW Energy Coalition
13 Request for a General Rate Revision)
14

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I. WITNESS AND QUALIFICATIONS

Q. Please state your name, affiliation and address.

A. My name is Nancy Hirsh and I am the policy director of the NW Energy Coalition. Our office is located at 811 1st Ave., Suite 305, Seattle, WA 98104.

Q. Please highlight some of your qualifications.

A. Since 1996, I have been the policy director for the NW Energy Coalition (“Coalition”), coordinating the work of the policy team in advocating for investments in clean and affordable energy services. The Coalition is an alliance of more than 115 environmental, civic and human service organizations, electric and natural gas utilities and clean energy businesses from Oregon, Washington, Idaho, Montana, Alaska and British Columbia. We promote energy conservation and renewable energy resources, consumer and low-income protection and fish and wildlife restoration in the Columbia River Basin. The Coalition has 35 member organizations in Oregon, including groups such as Oregon Environmental Council, Earth and Sprit Council, City of Ashland, and NW Natural Gas. In addition, I serve as Chair of the Board of the Renewable Northwest Project, a Board member of the Washington Environmental Council and sit on Idaho Power’s Energy Efficiency Advisory Group.

Previously, I spent twelve years in Washington, D.C. working for the National Wildlife Federation and Environmental Action Foundation on federal energy policy and electric utility issues, including providing assistance to state environmental and consumer organizations working on utility resource planning. I have made numerous presentations to national and state audiences on the importance of integrated resource planning and the role of energy efficiency and renewable energy resource development in keeping utility customer bills affordable.

Q. Have you testified before the Public Utility Commission of Oregon (“OPUC” or “Commission”) or Commissions in other states?

A. I presented testimony before the Oregon Commission during the 1999 Pacific Power docket regarding the sale of Centralia generating station to TransAlta. I have presented testimony to the Idaho Public Utilities Commission in the 2004 and 2011 Idaho Power rate cases and the 2010 Idaho Power Demand Side Recovery docket. I have presented testimony in the 2008 Merger docket of Puget Sound Energy before the Washington Utilities and Transportation Commission (WUTC)

1 and have submitted numerous comments before the WUTC.

2
3 **Q. Has the Coalition been involved in decoupling cases before?**

4 A. The Coalition has been a party in all of the prior OPUC dockets for NW Natural regarding
5 decoupling (UG 143, UG 152, and UG 163). In addition the Coalition has presented testimony
6 specifically on decoupling in dockets involving Avista Utilities, Puget Sound Energy, Cascade
7 Natural Gas, Idaho Power Company and Portland General Electric.

8
9 **II. SUMMARY OF TESTIMONY**

10
11 **Q. Please describe the purpose of your testimony in this case.**

12 A. I offer this testimony on behalf of the Coalition for two reasons. First, to highlight the
13 benefits of the existing WARM adjustment and decoupling mechanism approved in 2002 by the
14 Commission for NW Natural and reconfirmed as recently as 2007. The benefits of the mechanisms
15 accrue both to NW Natural's customers and the Company. Second, to raise serious concerns with
16 the Company's new proposed rate design. My testimony will show that the mechanisms are
17 working to remove the throughput incentive and the decoupling mechanism has led to an increase
18 in energy efficiency investments. The proposed alternative rate design will discourage customer
19 energy efficiency and will not remove the incentive to sell more therms.

20
21 **III. THE BENEFITS OF DECOUPLING TO REMOVE THE**
22 **THROUGHPUT INCENTIVE**

23
24 **Q. Before commenting on Northwest Natural's specific decoupling mechanism, please**
25 **review the incentives and disincentives that are embedded in traditional utility regulation and**
26 **the effect that they have on utility behavior.**

27 A. All ratemaking regulation provides utilities with incentives or disincentives to behave in a
28 certain manner. Ideally, utilities should be rewarded based on how well they meet their customers'
29 energy service needs in a fair and reasonable manner. Traditional rate design ties recovery of fixed
30 costs directly to commodity sales. While this stimulates consumers to limit their use of energy, it
31 also encourages utilities to promote increased energy use and discourages utilities from supporting

1 even the most economical investments if they are likely to reduce throughput. If sales of natural
2 gas go down, for example, utility shareholders forego cost recovery of recognized and prudent
3 costs with every unsold therm. Conversely, if sales are going up, the utility has no interest in
4 meeting that demand with energy efficiency, peak load management and distributed energy
5 resources.

6 This regulatory paradigm places the utility's interest (to increase sales) in conflict with the
7 customers' interest (to reduce their total energy costs). Not only does this foster a corporate culture
8 that opposes direct utility investments in programs that reduce energy use, it further motivates the
9 utility to discourage customer-financed reduction measures and to oppose efforts to tighten
10 building codes and appliance standards.

11 Traditional regulation also has the effect of magnifying weather and economic cycle risks
12 and volatility to both the utility and to customers. During periods of higher than average usage
13 caused by weather extremes, low commodity prices, or economic boom, customers overpay
14 distribution costs and utilities may earn more than their allowed return on equity (ROE).
15 Conversely, with mild weather, high commodity prices, or during more difficult economic times,
16 consumers reduce usage. Their payments fall short of covering allowed distribution costs and the
17 utility suffers a decline in net income.

18
19 **Q. How does decoupling overcome the disincentives to conserve energy that are**
20 **embedded in traditional regulation?**

21 A. Breaking the link between the utility's commodity sales and revenues removes both the
22 utility's incentive to increase energy sales and the disincentive to run effective energy efficiency
23 programs or invest in or encourage other activities that may reduce load. Decision-making can
24 then focus on making lowest reasonable cost investments to deliver reliable energy services to
25 customers even when such investments reduce therm sales. The result is a better alignment of
26 shareholder, management and customer interests to provide for more economically and
27 environmentally efficient resource decisions. A decoupling mechanism can also help establish a
28 corporate culture that promotes substantial and aggressive cost-effective conservation investments.
29 Additionally, it allows for Commission reviewed and allowed distribution cost recovery without an
30 increase in fixed customer charges. As I will discuss in more detail, the Company's proposed
31 increase in the fixed charge seriously erodes the ratepayers' economic incentive to invest in energy

1 efficiency.

2
3 **Q. Has the Commission supported use of a decoupling mechanism?**

4 A. The Commission's interest in decoupling goes back to the mid-1990's when it first adopted
5 a decoupling mechanism for Portland General Electric in 1995 (Order 95-322). In the case of NW
6 Natural, the Commission first authorized a partial decoupling mechanism in September 2002 in UG
7 143 (Order 02-634). In August 2003, the Commission adopted a Stipulation implementing the
8 experimental Weather Adjusted Rate Mechanism (WARM) in UG 152 (Order 03-507).
9 Subsequently, the Commission adopted a Stipulation in Order 05-934 in UG 152/163 extending the
10 decoupling mechanism until September 2009, changing the deferral recovery from 90% to a full
11 100% recovery of allowed costs, and extending WARM through September 2008. Again in
12 September 2007, the Commission found that extending Northwest Natural's WARM and
13 Distribution Margin Normalization (DMN or decoupling) mechanism was in the public interest and
14 that the Stipulation produced a just and reasonable result. (Order 07-426, Docket UG-152/UG-163).
15 In that order, the Commission adopted a Stipulation extending WARM and the DMN mechanism
16 through October 2012. All of the approved Stipulations regarding the DMN mechanism and
17 WARM adjustment included Commission staff and the NW Energy Coalition. None found major
18 flaws in the mechanisms or resulted in wholesale changes. Rather, the modifications have been
19 modest since the DMN tariff was first adopted in 2002 and reflect findings that the mechanisms
20 continue to address the throughput incentive and the need for timely recovery of costs.

21
22 **Q. What is the WARM adjustment and why is it important?**

23 A. The weather has a significant impact on natural gas usage and impacts both customers bills
24 and revenues of the utility. WARM adjustment is meant to help reduce the impact of weather
25 variability on both the Company and its customers. At the end of each month the company adjusts
26 bills to account for colder or warmer weather than expected. This adjustment is capped and it is a
27 voluntary program, as such, customers can opt-out of having their bill adjusted due to weather. No
28 mechanism is perfect for every customer because the weather adjustment is applied across the
29 customer class and some customers are more or less sensitive to weather changes than others.
30 That said, the WARM adjustment is an important tool for providing revenue stability and generally
31 protecting customers from wide swings in costs due to weather.

1

2 **Q. Have the decoupling mechanism and WARM adjustment achieved their goals?**

3 A. According to the Company data provided in Ms. Siores' testimony,¹ both mechanisms have
4 provided revenue stability and have benefited customers when the weather was colder than average
5 and usage was higher than average. This demonstrates one of the important features of the
6 mechanism: allowing the deferral to rebate to customers when the Company has collected more
7 than authorized and surcharging customers if revenue is lower than expected. This is particularly
8 important as the mechanisms were in place during one of the hottest decades in recorded history²
9 and the region suffered a major economic recession causing loads to decline significantly.

10 Ms. Siores shows that the WARM adjustment surcharged customers in 5 of the past 9 years
11 and the DMN mechanism surcharged customers in 7 of the past 9 years.

12

13 **Q. What rationale does the Company provide for phasing out WARM and DMN in favor**
14 **of its proposed rate design?**

15 A. That is a good question because the rationale is hard to find. Ms. Siores outlines the
16 impacts of the mechanisms and suggests minor modifications but does not present flaws to the
17 manner in which the mechanisms work that would justify the proposed wholesale change in rate
18 design. Throughout his testimony, Mr. Feingold outlines a number of concerns with volumetric
19 rate design in general and promotes the fixed variable rates.³ Yet he also points out that "NW
20 Natural proposes this type of transition to promote rate stability."⁴ The data presented by the
21 Company, as noted above, shows that the WARM adjustment and decoupling mechanism provide
22 rate stability and revenue support.

23 Mr. Feingold also asserts in his testimony that volumetric rates create "climate-related
24 inequity in NW Natural's current volumetric rate design" because residential customers in higher
25 than average HDD zones will pay a larger share of fixed costs than customers in lower than
26 average HDD zones.⁵ In his testimony Mr. Feingold identifies eight different climate zones in NW
27 Natural service territory. He concludes that the difference in HDD between these zones leads to

¹ NWN/1200/Siores/Table 1 and Table 3

² <http://www.nytimes.com/2010/01/22/science/earth/22warming.html>

³ NWN/1100/Feingold

⁴ NWN/1100/Feingold/55

⁵ NWN/1100/Feingold/41

1 excess recovery of fixed costs from seven of the eight climate zones.⁶

2
3 **Q. Do you agree with Mr. Feingold’s assertion that under volumetric rates customers in**
4 **the Portland area are paying less than their share of fixed costs?**

5 A. No. Mr. Feingold states “there is no reason to believe that the underlying delivery service
6 costs are lower in other areas.”⁷ However, a chart depicting residential customer density produced
7 for Staff Data Request 207 clearly shows the density of customers in the Portland climate zone is
8 30-70% higher than in the other climate zones.⁸ Customers in higher density areas may well
9 impose lower than average distribution costs due to cheaper/shorter service lines and greater
10 density of main utilization, justifying any marginal affects from a high HDD climate zone. This
11 issue requires more analysis. Furthermore, even if further analysis demonstrates some level of
12 climate related inequity, I recommend investigating other opportunities to address these inequities
13 through the adjustment of WARM or means other than a dramatic shift in rate design.

14
15 **Q. Do you support the “minor proposed changes” outlined in Ms. Siores’ testimony⁹?**

16 A. Keeping the input assumptions used in the adjustments current and up to date is important. I
17 have no objections to using the most current use-per-customer, heating degree day and statistical
18 coefficients. I also have no objection to changing the timing of the adjustments to ease
19 calculations. I support NW Natural’s proposal to eliminate the elasticity adjustment because I
20 believe they are correct that it will simplify the mechanism without having an appreciable impact
21 on the final calculations for customers. I have no opinion at this time on the Company’s proposal to
22 remove the WARM opt-out provision.

23
24
25 **IV. THE IMPORTANCE OF EXPLICIT SUPPORT FOR CONTINUED FUNDING OF**
26 **ENERGY EFFICIENCY AND LOW-INCOME ENERGY SERVICES AS A COMPONENT**
27 **OF THIS CASE**
28

⁶ NWN/1100/Feingold/42-43

⁷ NWN/1100/Feingold/42

⁸ Company response to Data Request 207.

⁹ NWN/1200/Siores/10-12

1 **Q. Is funding for energy efficiency and low-income energy services a part of this filing?**

2 A. The underlying Stipulation and Order from Docket UG-143 and Order 02-634 specifically
3 outline funding levels and responsibilities for demand-side management programs as part of the
4 agreement to implement the DMN mechanism. The Company is not proposing specific changes to
5 its public purpose funding levels or program implementation for Energy Trust of Oregon or low-
6 income energy efficiency (OILEE) as part of this filing. The Company does propose an increase for
7 low-income bill assistance funding (OLGA), which I will discuss later in my testimony.

8
9 **Q. What is your concern regarding funding for energy efficiency and low-income energy
10 services?**

11 A. The sections of the Stipulation approved by the Commission in Order 02-634 related to
12 Company acquisition of energy efficiency have not been modified since 2002. There has been a
13 presumption that those obligations remain in effect as they are tied to the DMN mechanism. In this
14 rate case filing, Northwest Natural is making its on-going investment of public purpose funds in
15 energy efficiency and low income energy programs contingent upon the final rate design approved
16 in this proceeding. The Company is proposing to phase out the WARM adjustment and DMN
17 mechanism and replace them with a new rate design. Ms. Siores states in her direct testimony,
18 “The Company will continue to employ public purpose charges to fund ETO programs as long as
19 the final rate design adopted in this proceeding continues to remove the financial disincentive to
20 the Company of encouraging increased energy efficiency for our customers.”¹⁰ This statement
21 seems to put the future of public purpose funding in question. Yet, the cost-effectiveness of the
22 conservation programs delivered via the Energy Trust of Oregon (ETO) and the benefits to NW
23 Natural customers have not been challenged in this proceeding.

24
25 **Q. Is the ETO effective in using NW Natural’s customer’s dollars?**

26 A. ETO’s 2011 Annual Report to the Commission, filed April 18, 2012, shows on page 8:
27 **Gas efficiency projects completed in 2011** saved more than 5.4 million annual
28 therms of natural gas at a levelized cost of 35 cents per therm. Gas savings exceeded
29 the 2011 stretch goal by 4 percent and the conservative goal by 23 percent. Gas
30 results for 2011 are 17 percent higher than 2010 gas savings. At 35 cents per annual

¹⁰ NWN/1200/Siores/9

1 therm, the levelized cost of 2011 gas savings is lower than the OPUC benchmark of
2 60 cents per therm.
3

4 **Q. But, don't you agree that the financial disincentive to encourage energy efficiency**
5 **should be removed?**

6 A. Yes, of course, that is a fundamental element of our support for properly designed
7 decoupling mechanisms. The Company, on the other hand, is proposing a wholesale change in the
8 rate structure away from the current decoupling mechanism to a straight fixed variable (SFV) rate
9 design. As I discuss below, I do not believe that SFV is the appropriate means for removing the
10 financial disincentive to the Company. And as such, the future of public purpose funding should
11 not be tied to adoption of such a rate design.
12

13 **Q. Would you say NW Natural has increased its support for energy efficiency since the**
14 **Commission approved its original decoupling mechanism?**

15 A. The data presented by Ms. Siores in Table 4 shows a clear trend of increased support for
16 energy efficiency since 2003.¹¹ There is a correlation between the size of the decoupling surcharge
17 as shown in Table 3 and the level of public purpose funding transferred to the ETO.¹²
18

19 **Q. What action do you recommend to the Commission regarding public purpose**
20 **funding?**

21 A. The Commission should require NW Natural's continued public purpose investment in the
22 Energy Trust of Oregon at levels that capture all cost effective energy savings and support
23 appropriate low-income weatherization investment. Reaffirming the basic commitments in Articles
24 II and IV approved in the Stipulation adopted in Order 02-634 regardless of the rate design
25 mechanism approved in this docket is an important indication that the Commission expects the
26 Company to continue investments in energy efficiency.
27

28 **Q. Do you recommend a change to the Company's return on equity (ROE) as part of the**
29 **approval of the WARM adjustment and decoupling mechanism?**

¹¹ NWN/1200/Siores/8

¹² Id.

1 A. Not as a condition of continuation of the mechanisms. The Coalition does not take a
2 position on what the authorized ROE should be as there are many factors that go into the
3 calculation of ROE of which decoupling is only one. I also agree with the Regulatory Assistance
4 Project that, to the extent decoupling makes possible changes in utilities' capital structure that
5 reduce total costs to customers, those savings can and should be passed through to customers once
6 achieved.

7 I would like to point out that the only independent study of the Company's decoupling
8 mechanism was completed in 2005¹³. This evaluation was conducted prior to changes made to the
9 mechanism in UG 163, which I discussed previously, and did not sufficiently evaluate the impact
10 of the mechanism on the Company ROE. It may be timely to conduct another independent
11 evaluation of the Company's current decoupling mechanism.

12
13
14 **V. STRAIGHT FIXED VARIABLE RATE DESIGN IS BAD FOR**
15 **CONSERVATION AND CONSUMERS**

16
17 **Q. Please describe Northwest Natural's current residential rate design, and the**
18 **Company's proposed changes to that rate design.**

19
20 A. Northwest Natural has two rate schedules applicable to residential customers. Rate
21 Schedule 1 ("General Sales Service") applies to residential and commercial customers with certain
22 gas-fired equipment that do not qualify as primary heating or water heating systems.¹⁴ Rate
23 Schedule 2 ("Residential Sales Service") applies to gas-fired equipment used in residential
24 dwellings for the purpose of full household application.¹⁵

25

¹³ Christensen Associates, *A Review of Distribution Margin Normalization as Approved by the Oregon Public Utility Commission for Northwest Natural*, March 30, 2005.

¹⁴ [https://www.nwnatural.com/AboutNWNatural/RatesAndRegulations/
OregonTariffBook/RateSchedules/](https://www.nwnatural.com/AboutNWNatural/RatesAndRegulations/OregonTariffBook/RateSchedules/)

¹⁵ Id.

1 Northwest Natural currently has a fixed customer charge of \$6/meter for its Residential 2
2 rate schedule and \$5/meter for its Residential 1 rate schedule.¹⁶ These rates approximate the cost of
3 bimonthly metering and billing, which we consider appropriate costs to be recovered on a per-
4 customer basis. The Company proposes the Commission move to a straight fixed variable (SFV)
5 rate design, in which residential customers in Rate Schedules 1 and 2 will pay a “full cost-based
6 customer charge” following a two-year transition period.¹⁷ In other words, Rate Schedule 2
7 customers will pay a fixed charge of \$29.09/month by year three (an increase of 385%!), and Rate
8 Schedule 1 customers will pay a fixed charge of \$11.65/month by year three (an increase of
9 133%).¹⁸ According to the Company, that customer charge will include “all fixed distribution-
10 related costs of delivery service incurred by NW Natural to serve these customers.” Customers will
11 continue to pay on a volumetric basis for gas commodity costs as well as storage and transmission
12 services.¹⁹

13
14 **Q. Please describe straight fixed variable rate design.**

15
16 A. SFV rate design is intended to recover in a fixed charge all costs that do not vary
17 significantly with sales volume in the short run. The per therm rate then includes only variable
18 charges.

19
20 **Q. What are the downsides of this type of rate design?**

21
22 A. Increasing the basic charge suppresses the rate paid per-therm, which reduces the incentive for
23 customers to reduce usage through participation in conservation programs and making independent
24 conservation investments. This type of rate design also predominantly raises bills of low-use
25 customers, which includes a substantial number of low-income customers. Additionally, SFV rate
26 design creates a deviation between marginal rates and marginal costs by recovering only those
27 costs that vary in the short-run, not the costs that vary over a longer period of time, but which need
28 to be reflected in marginal rates to align consumers’ long-term behavior with their economic

¹⁶ Feingold/4.

¹⁷ Feingold at p. 54, lines 1-3.

¹⁸ Feingold/1.

¹⁹ Feingold at p. 36, lines 10-18.

1 interest.

2

3 According to the Regulatory Assistance Project (RAP),

4

5 SFV is attractive due to simplicity, but has numerous adverse side effects. These include:
6 • Energy prices are set far below long-run marginal cost, leading to uneconomic usage;
7 • Small users, particularly seniors and apartment dwellers, pay much higher electric and gas
8 bills;
9 • Consumer investment in energy efficiency is discouraged, since the bill savings are small;
10 • A mismatch occurs between the cost-responsibility and cost-collection for seldom-used
11 peaking facilities (for which the costs should be recovered in incremental usage block rates).
12 Some studies have estimated that SFV pricing can cause usage to go up 10% or more,
13 enough to offset much or all of the benefit of energy efficiency programs.²⁰
14

15 Here is a rough calculation of what could happen to usage if the Company's SFV proposal is
16 adopted:

17	Current price per therm:	\$1.05365	
18	SFV price per therm:	<u>\$0.62466</u>	
19	Difference	= \$0.42899	[A 40% reduction in price per therm]
20	Elasticity assumption range:	-0.172 to -0.36 ²¹	

21 Usage could increase 6% to 14%²² given the elasticity assumptions and the reduction in the price
22 per therm under the Company's proposed rate design. This change in rate design could wipe out
23 much of the past decade of energy efficiency and conservation savings that NW Natural and its
24 customers have been working to achieve. This is exactly the opposite direction that the utility and
25 its customers should go.

26

27 **Q. But won't a high basic charge ensure the utility recovers its fixed costs?**

28

29 A. No. In fact, it could lead to a spiraling increase in the basic charge as the customer base

²⁰ Regulatory Assistance Project. *Revenue Regulation and Decoupling: A Guide to Theory and Application* (June 2011), section 11.3

²¹ Range of elasticity adjustments: -0.172 - NW Natural short-term elasticity adjustment, UG 221 Data Request 471, Attachment #1; -0.36 – RAND Corporation Study for National Renewable Energy Laboratory, *Regional Differences in Price Elasticity of Demand for Energy*, Table 3.4, page 23, February 2006.

²² Where usage change = elasticity factor multiplied by reduction in price per therm. Low end calculation is $(0.40 \times 0.172) = .068$ and high end calculation is $(.40 \times 0.36) = 0.144$.

1 | shrinks due to the increase in the basic charge.

2
3
4 **Q. Please explain this further.**

5
6 A. In response to a \$30 customer charge, those customers with bills lower than \$30/month
7 should respond by abandoning natural gas service in favor of electricity or propane. This group
8 represents approximately 15% of the current residential customer base. Once they discontinue
9 service, the company will need to recover the loss of those fixed costs through an increase from
10 \$30/month to \$35/month (roughly) for remaining customers. Eventually, only the largest
11 customers would remain connected, and they may not be sufficient to support the system, given
12 evolution of high-efficiency heat pumps, high-efficiency heat pump water heaters, and microwave
13 clothes dryers. At that point, the company might become unable to recover its fixed costs from
14 consumers under any rate design.

15
16 **Q. Has the Company already factored in a loss of customers in calculating the fixed**
17 **charge?**

18
19 A. Yes, the Company has already factored in those that will leave the system with the
20 implementation of this new rate design and they have set the basic charge to account for this.²³
21 However, I question the logic of driving low use customers off the system. Are the reduced
22 expenses really more than the margin those customers pay? Absent a very high basic charge,
23 would the number of low use gas customers increase over time as more urban density drives multi-
24 family housing? Historically, many gas utilities, including NW Natural, did not even have a basic
25 customer charge as they were struggling to gain market share against traditionally very low-cost
26 electricity service. Clearly these days are over and the pendulum appears to have swung in the
27 other direction—but how far can Northwest Natural push monthly customer charges before the
28 consumer finds gas to be a non-economical choice?

29 In addition, the high customer charge proposed seems to conflict with the “non-

²³ Kevin McVay and Natasha Siores at p. 7, lines 12-16.

1 discrimination” principle discussed by Mr. Feingold in his discussion of rate design principles.²⁴
2 Here Mr. Feingold discusses fairness and undue discrimination. Yet NW Natural's filing says it
3 will lose 33% of customers using less than 200 therms (4,957 customers) and 10% of customers
4 using between 200-300 therms (2,672 customers), which equals a total of lost customers of 7,629.²⁵
5 So in essence, the new rate design is expected to drive almost 10% of the Company’s low use
6 customers off the system. This approach appears to be rather discriminatory, ignoring the
7 significant contribution to cost recovery which these customers provide, and does not seem
8 consistent with the non-discriminatory principle outlined by Mr. Feingold.

9
10 **Q. How much do these small-use customers contribute to the system cost recovery at NW**
11 **Natural?**

12 A. This group of customers uses about 15 million therms/year of natural gas. At the current
13 distribution margin of about \$0.40/therm, they are providing nearly \$4 million per year towards
14 distribution system cost recovery. Assuming that the current customer charge covers bimonthly
15 metering and billing costs, this \$4 million would be a net loss in margin with no offsetting
16 reduction in distribution costs. It could easily trigger a requested rate increase – one that is entirely
17 avoidable with a continuation of the current rate design and DMN mechanism.

18
19 **Q. What does RAP say about the volumetric cost causation of utility distribution**
20 **systems?**

21
22 A. I agree with RAP that it is important to recognize that a utility’s decision to provide access
23 to gas and how to size its pipes and valves is primarily volume-driven with considerations given to
24 seasonal and time of day use.

25
26 To the extent that regulation is a substitute for market forces, regulators should be careful in
27 considering higher basic charges to recover costs that are incurred for utility infrastructure.
28 In general, all distribution costs other than operating expenses, such as basic metering and
29 billing, should be recovered through volumetric rates, reflecting the fact that utility
30 distribution grids are justified only where usage levels are high enough to justify grid
31 construction. In the long run, there are no fixed costs.

²⁴ NWN/1100/Feingold/27-28.

²⁵ NW Natural response to Data Request #192 attachment 1.

1
2 Many utilities are incurring additional costs for smart grid investments, including new
3 sophisticated meters, meter data management systems, and new billing software. These
4 additional costs are being incurred to reduce expenses beyond those for meter reading and
5 billing, such as reducing outage management costs and the future cost of energy supply.
6 Therefore any costs beyond those for basic metering should be recovered in usage rates, not
7 in the fixed customer charge.²⁶
8
9

10 **Q. How does the line extension policy interplay with the proposed rate design?**

11
12 A. The Company line extension policy, Schedule X, allows customers 5 times their annual
13 margin if they hook up to gas. Under the current system, a customer in an apartment, using 250
14 therms/year, at \$0.40/therm in margin, would be allowed 250 x \$0.40 x 5, or \$500 in free line
15 extension, while a customer with a gas-heated swimming pool, using 2,500 therms/year, would be
16 given \$5,000 in free line extension. The Company's rate design proposal would make the free
17 line extension allowance for every customer identical, because every customer would be providing
18 \$29.03/month in margin.
19

20 **Q. Does this double dip on small-use customers?**

21 A. Yes. Those low-use customers who paid significant amounts to hook up to gas would now
22 be required to pay the average margin contribution through the SFV customer charge, even though
23 they paid up front for most of the cost of the distribution plant that serves them. Those large-use
24 customers that received free line extensions costing thousands of dollars would no longer have to
25 pay for this through the volumetric recovery of distribution costs, and would get a free ride at the
26 expense of small-use customers.
27

28 **Q. What about new versus old customers?**

29 A. In today's high-cost construction environment, under modern growth-management laws,
30 most new dwellings are either multi-family/condo/townhouse developments, or are small-lot
31 subdivisions. The era of sprawling McMansions appears to be over. These smaller dwellings, and
32 common walls, mean lower use per customer, but they also mean lower costs per customer to

²⁶ Lazar, J. et al. Regulatory Assistance Project. *Pricing Do's and Don'ts: Designing Retail Rates as if Efficiency Counts* (April 2011), pp. 6-7.

1 install distribution facilities, because they are closer together. In the case of a condo development,
2 the company connects one service line, installs multiple meters, and gets dozens of small-use
3 customers. The line extension cost may be no more than to a single large-lot suburban customer,
4 but the sales and revenues are much greater for the condo complex. Under SFV pricing, the
5 Company would collect \$29.03/month from each individual condo, and \$29.03 from the large-lot
6 suburban home. This is unfair to the customers who have chosen a more energy-efficient dwelling
7 type.

8
9 **Q. Please describe how SFV rate design affects low-income customers.**

10
11 A. According to Company data, the average annual gas use for low-income customers in its
12 service territory is about the same as the whole residential population.²⁷ As the Company
13 recognizes, “a smaller number of low-income customers will experience benefits under NW
14 Natural’s rate design proposal than are typically observed at other gas utilities. Instead, the
15 majority of NW Natural’s low-income customers will experience bill impacts that are in line with
16 those of its average residential customer.”²⁸ The Company’s conclusion about low-income use
17 relies on incomplete analysis because it utilizes only current bill assistance customers rather than
18 household income level²⁹. At the current level of funding, NW Natural bill assistance is sufficient
19 to provide funding to approximately 3 - 5% of eligible households – an insufficient sample upon
20 which to base decisions. I believe the Company analysis may underestimate the negative impacts
21 from the new rate design on low-income households. For example, Company responses to Data
22 Requests 203 and 380 in this case show that average annual consumption of customers in multi-
23 metered, multifamily dwellings (apartments) is 269.8 therms and in multifamily dwellings that are
24 not apartments (duplex’s, townhomes) is 308 therms. Both of these customer usage levels are well
25 below average residential usage of 639 therms.

26 While all these customers may not be low-income, all of them have lower distribution costs
27 per customer, simply because they are in multifamily developments. More analysis is necessary to
28 determine if NW Natural’s proposed new rate design is regressive and places additional burden on

²⁷ Feingold at p. 62, lines 18-19.

²⁸ Feingold at p. 62 line 20 – p. 63 line 1.

²⁹ Company response to UG 221 Staff Data Request 211 Attachment #1.

1 the part of the customer population who can least afford it, low-income renters. Energy is one of
2 many competing demands for limited budgets. Choosing whether to heat or eat leaves many low-
3 income customers in the situation of being relatively low energy users. For those low users,
4 increasing the basic charge will result in an even greater bill to try to pay and no way to avoid that
5 increase. Under the current rate design, customers have the choice to turn down the heat to save
6 money; however, under the SFV rate design, turning down the heat will no longer save them nearly
7 as much money – they will be forced to turn the gas off and then face an even higher reconnect fee
8 when and if they can afford the bill.

9 Financial circumstances also force low-income households to conserve and curtail, which
10 will not be as effective if they face a high unavoidable charge. Yet energy efficiency measures
11 benefit the individual household (through increased comfort, for example), and benefit other
12 customers by reducing the upward pressure on gas consumption, and, therefore, costs. SFV rate
13 design reduces risk for the utility, but sends an improper price signal to all customers in terms of
14 energy conservation and imposes a greater burden on low-income customers.

15
16 **Q. Does NW Natural offer bill payment assistance for its low-income customers?**

17
18 A. Yes. NW Natural’s Schedule 310 establishes its Oregon Low-Income Gas Assistance
19 (OLGA) program for residential customers in Rate Schedules 1 and 2, and funding is collected for
20 this program through Schedule 301. The public purposes surcharge for low-income energy
21 assistance is 0.58% of total residential energy use billed, which collects about \$2.6 million. The
22 Company is proposing to increase that funding level to 0.75%, which it estimates will increase
23 annual program funding to approximately \$3.4 million.³⁰ According to the Company, “The
24 increase in bill payment assistance funding will help to partially offset recent funding reductions in
25 Oregon’s Low-Income Heating Energy Assistance Program (LIHEAP).”³¹

26
27 **Q. Do you support the proposed increase in funding for low-income energy assistance?**

28

³⁰ King at p. 9, lines 13-18.

³¹ King at p. 9, lines 19-20.

1 A. Yes, I fully support NW Natural's proposed increase of its low-income bill assistance
2 program. Reductions in federal funds for low-income energy services have made it even more
3 imperative for local utilities to strengthen their bill payment assistance programs.
4

5 **Q. What about the Company's assertion that low-income customers will be able to take**
6 **advantage of its bill assistance program to mitigate the impact of moving to SFV rate design?**
7

8 A. Given my experience with other utilities' low-income programs, and that the Company is
9 proposing to increase funding to help offset LIHEAP reductions, I surmise that funding already is
10 not sufficient to meet demand. As I stated earlier in my testimony, I estimate that the Company's
11 current level of low-income bill assistance funding is sufficient to serve approximately 3-5% of
12 eligible customers. It is my understanding that federal assistance this year was sufficient to provide
13 assistance to an additional 10-15% of low-income customers. In fact, the lack of sufficient funding
14 for low-income energy assistance in Oregon was the topic of two OPUC workshops last fall.
15 Company witness Feingold asserts, "NW Natural provides energy assistance programs that will
16 mitigate the impact of its full cost-based Customer Charge proposal on low-income customers."³²
17 Yet moving to SFV rate design will have the effect of increasing demand for bill assistance.

18 Further, low-income energy services programs typically have relatively low penetration
19 rates when compared with the number of potentially eligible households. This is true for a variety
20 of reasons, but the end effect is that a move to SFV rate design will create more competition for
21 limited bill assistance dollars, and still leave stranded a significant portion of the low-income
22 population with monthly charges that are difficult to afford.
23

24 **Q. Is SFV rate design consistent with state policy?**
25

26 A. No. A rate design change promoting increased gas use is not good policy, and is not in line
27 with long-standing legislative intent:
28

29 It is the goal of Oregon to promote the efficient use of energy resources and to develop
30 permanently sustainable energy resources. The need exists for comprehensive state
31 leadership in energy production, distribution and utilization. It is, therefore, the policy of

³² Feingold at p. 63, lines 3-5.

1 Oregon ... That through state government example and other effective communications,
2 energy conservation and elimination of wasteful and uneconomical uses of energy and
3 materials be promoted.³³
4

5 **Q. Does the Coalition have a policy position regarding straight fixed variable rate design?**
6

7 A. Yes, in 2009, the Coalition’s Board adopted by consensus a resolution related to incentives
8 for utilities to invest in energy efficiency and disincentive-removal mechanisms. That resolution
9 states in part, “Master metering and straight fixed variable rate design are not acceptable solutions
10 if they create a disincentive to consumer investment in energy efficiency.”
11

12 **Q. How does NW Natural’s current and proposed residential customer charge compare
13 with other investor-owned gas utilities in the region?**
14

15 A. As seen in the following table, NW Natural’s current residential customer charge is in line
16 with the residential monthly basic charges being assessed by its counterparts in the region and
17 California.

Utility	State	Basic Charge (per meter per month)
San Diego Gas & Elec.	CA	No basic charge
Pacific Gas and Electric	CA	No basic charge (~\$3.00/month minimum bill for delivery service)
Intermountain Gas	ID	\$2.50 (April – November)
Cascade Natural Gas	OR	\$3
Cascade Natural Gas	WA	\$4
Avista	ID	\$4.25
<i>Northwest Natural</i>	<i>OR</i>	<i>\$5 (Rate Schedule 1)</i>
So. Cal Gas	CA	\$5
<i>Northwest Natural</i>	<i>OR</i>	<i>\$6 (Rate Schedule 2)</i>
Avista	WA	\$6
Intermountain Gas	ID	\$6.50 (December – March)
Northwestern Energy	MT	\$6.75
Northwest Natural	WA	\$7
Avista	OR	\$7
Puget Sound Energy	WA	\$10

18

³³ ORS 469.010(2)

1 In contrast, each of the Company's proposed new basic charges for residential customers would
2 exceed the highest current customer charge in the region, with proposed Rate Schedule 2 being
3 almost three times higher than the highest basic monthly charge.

4
5 **Q. What are the essential characteristics of residential natural gas service?**

6
7 A. First, there are a few costs that actually vary with the number of customers. These are the
8 cost of meters, periodic meter reading, and periodic billing.

9 Second, there is "baseload" gas usage, for water heating, clothes drying, and cooking, that
10 amounts to approximately 20-30 therms per month. This is fairly stable throughout the year, and
11 independent of weather. This can be served with pipeline capacity and flowing gas. It has the
12 lowest cost, and should be provided in an initial block at a lower-than-average rate.

13 Third, there is the "predictable" space heating gas usage that occurs every winter. This can
14 be served with pipeline capacity, and a mix of flowing gas and storage gas. This has a low annual
15 load factor, requires storage, and has a higher cost per therm than baseload usage.

16 Finally, there is the extreme-year space heating gas usage. This is extremely expensive to
17 supply, since the utility must own liquefied natural gas (LNG) or other peaking facilities, which
18 have costs every year, but the utility only utilizes these for a few days every few years. To recover
19 the associated costs from the associated usage, a third block needs to be priced much higher than
20 the initial blocks of usage. Clearly the existing WARM adjustment addresses recovery of both the
21 predictable and extreme usage costs.

22
23 **Q. Do you recommend a change to the existing rate design as an alternative to the SFV?**

24
25 A. First, maintain the existing WARM and decoupling adjustments for the reasons described
26 earlier in my testimony.

27 Second, most utilities in the region have a modest basic customer charge that covers the
28 cost of pipe to the meter, meters, reading and installing meters, services and billing. These are the
29 only customer specific costs that do not vary with energy usage or demand. This view of the
30 customer charge is shared by the WUTC: "The only costs which should be considered customer-
31 related are the costs of meters, services, meter reading and billing. Our staff believes that is the

1 most common approach taken by Commissions around the country” (emphasis in original).³⁴ A
2 basic charge of \$6.00 should be adequate to cover these basic costs; though I have not done a full
3 review of the most recent cost of service study.

4 Thirdly, adopt a two-tiered rate structure that has an inclining rate for the second tier of
5 higher usage. The first tier could be set at 20-30 therms per month to reflect baseload gas usage
6 for water heating and other appliances. A second higher rate tier for usage over 20-30 therms per
7 month reflects the use of peaking resources and uncertainty of weather associated with providing
8 space heating service.

10 VI. CONCLUSION

12 Q. Do you have any concluding comments and recommendations?

14 A. Low fixed customer charges and cost-based inclining-block usage rates can guide
15 customers to participate in energy conservation programs and reduce peak demand. Accurate price
16 signals depend upon including in usage-based prices all usage-sensitive costs: the costs of energy,
17 capacity, losses, and distribution system investment and expenses necessary to address growth and
18 maintain reliability, as well as wasteful energy use. While SFV rate design stabilizes utility
19 revenues when usage varies as a result of customer conservation or weather, consumers typically
20 face a usage-based price that is less than full long-run marginal cost (including societal costs not
21 reflected in the revenue requirement). The end result - consumption increases, costing everyone
22 over the long-term.

23 Shifting charges from volumetric to fixed is exactly the wrong signal to give customers, and,
24 moreover, is unnecessary for stabilizing the utility’s margin recovery. Rates should be structured to
25 provide clear and strong incentives for customers to use energy efficiently. The existing WARM
26 adjustment and decoupling mechanism provide an important means to help stabilize revenues and
27 remove the disincentive to encourage efficiency and maximize therm throughput.

28 A recent article published on Electricity Policy.com by John Howat, National Consumer

³⁴ Letter from Paul Curl, Secretary of Washington Utilities and Transportation Commission, to Julian Ajello of the California Public Utility Commission, regarding review of the NARUC Electric Utility Cost Allocation Manual, June 11, 1992.

1 Law Center and Ralph Cavanagh, Natural Resources Defense Council echoes our principle
2 arguments in this testimony when Mr. Howat says:

3 “But a well-structured decoupling mechanism is in my view far preferable to ‘straight-
4 fixed variable’ (SFV) design, for example, that penalizes low-volume utility consumers while
5 removing volumetric pricing efficiency incentives – e.g., inverted rates – for all utility
6 customers.”³⁵ The full article is attached.

7 In summary, I recommend that the Commission:

- 8 • Continue the Company’s decoupling and WARM mechanisms in their current forms,
9 except for the modest changes proposed by Ms. Siores, for at least five years.
- 10 • Reject the proposed SFV rate design.
- 11 • Adopt a two-tiered inclining block rate structure that sets a low usage first block of
12 20-30 therms per month and a second rate tier for usage above the first block.
- 13 • Approve the proposed increase in low income bill payment assistance funding
14 to .75% of total residential energy use billed.
- 15 • Require NW Natural’s continued public purpose investment in the Energy Trust of
16 Oregon at levels that capture all cost effective energy savings and support
17 appropriate low-income weatherization investment.

18
19 Q. Does this conclude your testimony?

20 A. Yes.

21

³⁵ Cavanagh, Ralph and Howat, John, *Finding Common Ground Between Consumer and Environmental Advocates*. Electricity Policy.com, May 2012, page 5.

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ATTACHMENT 1

FINDING COMMON GROUND BETWEEN CONSUMER AND
ENVIRONMENTAL ADVOCATES

Ralph Cavanagh and John Howat

Electricity Policy.com

May 2012

Finding Common Ground Between Consumer and Environmental Advocates

Despite their sometime differences, there is both incentive and logic for consumer and environmental representatives to find agreement in such areas as revenue decoupling, prepaid service, and low-income energy services.

by Ralph Cavanagh and John Howat

Over the years, environmental and consumer advocates have sometimes been at odds in state proceedings over policies designed to accelerate energy efficiency progress as

Ralph Cavanagh is a senior attorney and co-director of the Natural Resource Defense Council's energy program. He has been a Visiting Professor of Law at Stanford University and UC Berkeley. The recipient of numerous academic and industry awards, he is a graduate of Yale College and the Yale Law School. John Howat, senior policy analyst at National Consumer Law Center, has been involved with energy programs and policy issues since 1981. He has a Master's Degree from Tufts University's Graduate Department of Urban and Environmental Policy and a BA from The Evergreen State College. The authors appreciate the insightful comments of Carolyn Carter, Alex Jackson, Patricia Remick, Dylan Sullivan and Olivia Wein.

well as promoting access to affordable utility service for all consumers. Yet, environmental and consumer representatives share a strong common interest in ensuring that America secures all practicable opportunities to save energy when that option is cheaper than the cost to produce energy. We agree that there are significant market barriers to cost-effective energy efficiency resources, and we want utilities that effectively remove those barriers – while lowering customers' costs and enhancing customer service – to be more profitable than utilities that don't even try, or actively resist. We also oppose rate designs that reduce customers' rewards for saving energy, and we don't want to reward utilities that promote wasteful uses of energy or resist efficiency standards for buildings and equipment.

While we wholeheartedly favor energy efficiency program designs that promote affordability for all consumers and enhance home energy security for vulnerable households, we reject the use of energy efficiency or conservation rhetoric to promote billing and rate structures that undermine such security.

With these goals in common, it is timely to examine three vital areas that have at times divided us in the past to see how our interests might be better accommodated. This article takes a fresh look at three issue areas: (1) “decoupling” mechanisms that aim to break the link between utilities’ financial health and increased energy use; (2) the use of “prepaid service”, which some tout as a low-cost way to get consumers to save energy; and (3) coordinated government and utility strategies for ensuring that low-income customers retain access to essential energy services. Based on more than six decades of cumulative experience, we provide below a problem statement, a dialogue, and our joint proposals on all three issues, illustrating the strong common ground between our communities.

This article is coauthored; however, in a few places we dialogue in our separate voices to work toward a joint conclusion.

I. Energy Efficiency and Decoupling

America’s top physicists, business consultants and environmental visionaries have increasingly affirmed a common theme: energy efficiency is the fastest, cheapest and cleanest solution available

Energy efficiency is the fastest, cheapest, and cleanest solution for overstressed power grids.

for overstressed power grids. Increasingly, inexpensive ways to get more work out of less electricity are now understood worldwide as

invaluable utility system resources, just like new power plants or enhanced distribution systems. Highlights of independent assessments include:

- Energy efficiency measures in buildings and appliances could cut US global warming pollution by almost a billion tons a year by 2030 (CO₂ equivalent, or more than one-eighth of total current greenhouse-gas emissions) at *negative cost* (McKinsey & Co.);¹
- Energy demand from US buildings and everything plugged into them (from houses, to light bulbs and appliances, to office towers, to retail

¹ McKinsey & Co., REDUCING US GREENHOUSE GAS EMISSIONS: HOW MUCH AT WHAT COST? , at x-xiv (assessment includes “lighting retrofits, improved heating, ventilation, air conditioning systems, building envelopes, and building control systems; [and] higher performance for consumer and office electronics and appliances”) (Dec. 2007).

stores) would not grow *at all* from 2008 to 2030 if we deployed energy efficiency measures costing less than the energy they displaced (American Physical Society);²

- Closing the electricity efficiency gap between the top ten performing states and the rest would achieve electricity savings equivalent to more than 60 percent of US coal-fired generation (Rocky Mountain Institute);³
- Capturing efficiency opportunities in low-income homes could cut energy use and expenditures for low-income households 40 percent by 2020.⁴

Energy efficiency is an excellent resource from both consumer and environmental perspectives, but market impediments peculiar to energy efficiency dictate that it needs a boost to reach anything close to its full cost-effective potential.

“[C]ustomers are generally not motivated to undertake investments in end-use efficiency unless the payback time is very short, six months to three years. . . . The phenomenon is not only independent of the customer sector, but also is

² American Physical Society, *ENERGY FUTURE: THINK EFFICIENCY* (Sept. 2008).

³ Rocky Mountain Institute, *ASSESSING THE ELECTRIC PRODUCTIVITY GAP AND THE US EFFICIENCY OPPORTUNITY* (Feb. 2009).

⁴ See McKinsey & Co., note 1 above, at 39 (low-income defined as households earning less than \$30,000 annually).

found irrespective of the particular end uses and technologies involved.”⁵

These widely documented market breakdowns generate “systematic underinvestment in energy efficiency” that otherwise would minimize cost and improve energy efficiency, resulting in electricity consumption at least 20-40 percent higher than cost-minimizing levels.⁶

There are many explanations for the almost universal reluctance to make long-term energy efficiency investments. Customers – particularly low-income customers – may have difficulty financing such investments. Also, decisions about efficiency levels often are made by people who will not be paying the electricity bills, such as landlords or developers of commercial office space. Many buildings are occupied by very temporary owners or renters, who are unwilling to make long-term improvements that would mostly reward subsequent users. And sometimes what looks like apathy about efficiency merely reflects inadequate information or time to

⁵ National Association of Regulatory Utility Commissioners, *Least Cost Utility Planning Handbook*, Vol. II, p. II-9 (Dec. 1988).

⁶ See M. Levine, J. Koomey, J. McMahon, A. Sanstad & E. Hirst, *Energy Efficiency Policy, and Market Failures*, 20 ANN. REV. ENERGY AND THE ENV'T. 535, 536 & 547 (1995); Alliance to Save Energy et al., *Energy Innovations: A Prosperous Path to a Clean Environment* (June 1997). For a comprehensive update on energy-efficiency barriers and opportunities, see McKinsey Global Energy and Materials, *Unlocking energy efficiency in the U.S. economy* (July 2009).

evaluate it, as everyone knows who has rushed to replace a broken water heater, furnace or refrigerator. For the nation as a whole, these market barriers mean that energy prices alone are a grossly insufficient incentive to exploit some of the most inexpensive savings. As the National Association of Regulatory Utility Commissioners concluded more than two decades ago, “a customer paying average rates of 7 cents/kWh can be expected to forego demand-side measures with costs of conserved energy of more than 0.9 cents/kWh,” in spite of a two-year payback.⁷ In other words, electricity prices by themselves won’t deliver anything close to America’s full potential for cost-effective energy efficiency.

A. Getting Rate Design Right

Electricity pricing isn’t the entire solution for energy efficiency but it certainly is not irrelevant. For that reason, we join in resisting any trend toward reducing customers’ rewards for saving energy by raising the fixed charges in utility bills. That’s a step in the direction of what might be termed “all you can eat” rates, which reduce or eliminate customers’ rewards for saving energy by making much more of the bill independent of energy consumption.

Some claim that recovering utilities’ fixed costs as part of volumetric usage charges for electricity is somehow “inefficient,” by making additional consumption look

⁷ National Association of Regulatory Utility Commissioners, note 11 above, at II-10. *See also* McKinsey Global Energy and Materials, note 6 above.

more costly than it should. We strongly disagree. As we explained earlier, the rationale for energy efficiency programs and standards rests in part on the conclusion that extensive market failures continue to block energy savings that are much cheaper than additional energy production even at today’s electricity prices. What we need now is not rate design that encourage electricity waste, but a strong move toward intelligently designed inverted rates, where the rule is “the more you use, the more you pay.” We are confident that inverted block rate and consumer protection structures can be designed in a manner consistent with the objective of promoting efficient energy usage, without compromising the well being of customers who require an affordable basic block of service for meeting essential needs.

Of course, that means that utilities will go on relying on variable charges to recover all or most authorized fixed costs of service, which on the face of it creates a disincentive for utilities to promote energy efficiency. We turn next to an exchange regarding potential solutions to that problem that do not require any regressive changes in rate design.

B. Strategies for Changing Utility Incentives

Under typical regulatory practices, in both the gas and electric sectors, most utilities’ financial health is tied directly to retail sales, because their fixed costs are recovered in whole or part through volumetric usage charges. This creates an

apparent conflict between the interest of utility shareholders and that of consumers and the general public in energy efficiency and clean distributed generation, such as solar photovoltaics, small wind turbines, fuel cells, and combined heat and power (CHP).

Much attention has focused recently on options for removing this disincentive, and for aligning shareholder interests with those of consumers in order to (i) promote investments that reduce energy costs as well as the environmental and public health impacts of energy use, and (ii) prevent either over- or under-recovery of utilities' previously approved fixed costs. Under "decoupling," a system of periodic true-ups in base rates either restores to the utility or gives back to customers the dollars that were under- or over-recovered as a result of fluctuations in retail sales. This corrects for disparities between the utility's actual fixed cost recovery and the fixed cost revenue requirements approved by utility regulators.

{Dialogue on Revenue Decoupling}

Cavanagh: John, we've recently been in a hearing room together where, not for the first time, environmental and consumer advocates were at odds over whether to introduce revenue decoupling as part of a strategy for enhancing energy efficiency investment. What is your view here?

Howat: The National Consumer Law Center has on many occasions been critical of revenue decoupling mechanisms

that blindly reward companies for reductions in sales for reasons that have nothing to do with utility-sponsored energy efficiency. But a well-structured decoupling mechanism is in my view far preferable to "straight-fixed variable" (SFV) design, for example, that penalizes low-volume utility consumers while removing volumetric pricing efficiency incentives – e.g., inverted rates – for all utility customers.

I urge colleagues to accept revenue decoupling that is directly tied to new investment in comprehensive, cost-effective energy efficiency programs and measures and that includes (1) rate increase collars that limit upside rate volatility, (2) explicit regulatory review and adjustment of return on equity to account for altered utility risk profiles (retrospective, but in a reasonable timeframe is fine with me), (3) review and adjustment of baseline utility cost structure assumptions including cost of capital on some regular basis, and (4) the "Tucson model" of implementing inclining block rates, where decoupling surcharges are tied to higher usage blocks and bill credits to the initial usage block. Again, such a structure would, in my view, be far preferable to implementation of SFV in the name of promoting energy efficiency. Further, I've long agreed with you about the need to address the utility "throughput addiction," and that best-quality energy efficiency represents our most valuable energy resource.

Cavanagh: Let's unpack this a bit, because I don't see anything here that should divide us. I agree on the need to

pair revenue decoupling with enhanced energy efficiency performance and benefits, and we have supported rate increase collars of three percent for electric utilities and five percent for gas utilities (with no limit on rate reductions associated with decoupling). I supported the Tucson

Electric proposal that you cite, which would apply any decoupling-related rate increases to the highest use block of consumption in

a rate structure, and apply any reductions to the baseline block (so that any decoupling adjustments would amplify rather than mute the rewards for saving energy that inclining block rates provide to customers). So far so good?

Howat: Yes, there is plenty of room to work together here. We need to break the link between utility profits and sales, and design the decoupling mechanism in a way that makes sense for consumers interested in stable prices and appropriate regulatory treatment of the utility cost structure and risk profile.

Cavanagh: On cost of capital adjustments, the crucial phrase in your response is “retrospective, on a reasonable timeframe.” Our latest proposal, which you heard me defend before the Washington Utilities and Transportation Commission, also reflects your call for “review and adjustment of baseline utility

cost structure assumptions including cost of capital on some regular basis.” We recommend that commissions not link decoupling mechanisms with prospective reductions in cost of capital, which may or may not materialize (and have yet to be documented empirically after three

decades of experience). But we support continuous review of any changes in utilities’ capital structure, whatever the cause, and full pass-through of any associated cost savings to customers.

If, as authorities like

the Regulatory Assistance Project maintain, decoupling should help establish a long-term foundation for consumer-friendly changes in capital structure, our proposal ensures prompt and full delivery of benefits if and when they appear.

Howat: I agree that the key, with respect to cost of capital adjustments, is in the assurance of periodic regulatory review. I was gratified to hear you state at the Washington hearing that revenue decoupling should not be viewed as a means of doing away with regulatory process. Rather, it is a means of re-aligning incentives to eliminate utility aversion to effectively promoting energy efficiency programs that work.

Cavanagh: Finally, can we agree that revenue decoupling appropriately treats the “throughput addiction” to which you refer, in the simplest possible way, by avoiding efforts to adjudicate inevitably

A well-structured decoupling mechanism would be far preferable to “straight-fixed variable” design, for example, that penalizes low-volume utility consumers.

speculative causes of increases or reductions in sales, and simply ensuring instead that utilities' ability to recover fixed-cost revenue requirements is not affected by changes in retail sales that regulators did not anticipate when they set retail rates?

Howat: That is a great question that I frankly have struggled with over the years. Like many advocates, I have bristled at the prospect of “rewarding” utility companies for declining sales that have absolutely nothing to do with their efforts to enhance energy efficiency. After all, sales will decline in times of economic downturn, during mild weather conditions, when appliances become more efficient, when end-users invest in energy efficiency improvements on their own, and, in some instances, when fuel prices increase. However, because utilities inevitably file for rate increases anyway if revenues erode for any of the reasons listed above, and because revenue decoupling provides consumers with declining rates as sales increase for any reason, my thinking on this issue has evolved over time. I have come to agree that, as long as a utility company's return on equity is appropriately adjusted to reflect changes in the sales risk faced by that company through implementation of revenue decoupling – and the measures mentioned above are part of the design– it is appropriate to embrace a full, rather than partial, decoupling mechanism.

Cavanagh: This is very helpful and I seek only one final clarification: Can we agree that such regulatory adjustments should reflect observed changes in cost of

capital once the mechanism has been adopted? To use your earlier phrase: “retrospective, but in a reasonable timeframe.” We would support both regular reviews and immediate pass-throughs of any saving. Our objection is to imposing reductions in costs of capital prospectively, before there is evidence of whether and to what extent they have occurred.

Howat: I agree that as long as regulators retain full authority and responsibility to adjust return on equity to reflect changes in a company's risk profile, adjustments specifically related to a company's cost of capital may be made in a timely manner, after evidence of actual increases or decreases is presented.

II. Prepaid utility service: Risks to lower income consumers

With recent advances in metering and communication technology along with growth in residential customer arrears, electric and natural gas utilities in numerous states have sought to replace traditional credit-based service with prepaid service delivered through prepayment meters or advanced, digital meters with remote disconnection and reconnection capabilities. As utility prepaid service proposals increase, so may new opportunities for consumer-environmental differences or collaboration.

Prepaid service, as the name implies, requires customers to pay in advance with prepaid account balances decreasing as service is delivered.

In most instances, service is automatically suspended when account balances are depleted. While consumers using prepaid service may receive electronic notification that billing credits are running low, there is no obligation on the part of the utility to deliver shutoff notification securely through the mail, to continue providing service for some period of time (e.g., days or weeks) after credits are exhausted, or to work with payment-challenged customers by offering reasonable payment plans or other means of retaining access to basic utility service. At least one utility company has proposed a prepayment program as part of its demand response program portfolio,⁸ and the service is often marketed to customers as a means of reducing energy usage.⁹

Consumer advocates are concerned that any actual usage reductions associated with prepayment may come as a result of untenable economic choices facing lower-income utility customers. We know that prepaid service, wherever it is offered in the US and Europe, is concentrated among low-income customers, and that it is often

⁸ See, e.g., Arizona Public Service Company in Docket No. E-10345A-10-0075.

⁹ Recent claims that prepayment results in usage reduction are usually based on results of analyses provided to the Electric Power Research Institute by Salt River Project. In a report on the SPR M-Power prepayment program, EPRI stresses that it did not conduct an independent assessment of the electric consumption impact of M-Power. Electric Power Research Institute, “Paying Upfront: A Review of Salt River Project’s M-Power Prepaid Program,” at 5-1 (2010).

marketed to customers facing disconnection for non-payment or as a means of avoiding payment of a security deposit that may pose a barrier to establishment or retention of service.¹⁰ We also know that customers using prepayment tend to make several payments each month,¹¹ often incurring substantial service and transaction fees, and sometimes experiencing the inconvenience of paying at a remote terminal.¹² Finally, while US utilities offering prepayment do not provide information on the frequency of service interruptions, survey data from the UK indicates that disconnection rates among prepayment customers are over ten times greater than those of traditional, credit-based customers.¹³

¹⁰ In SRP’s M-Power program, the largest prepayment program in the US, the 2010 median income of program participants was \$17,900; 82 percent of program participants had a household income of less than \$30,000.

¹¹ In 2009, SRP M-Power customers averaged 7.1 payments per month during the summer months.

¹² SRP prepayment customers must pay a variety of fees and deposits before obtaining service and after service is established. There is an initial \$99 deposit for an in-home display box, as well as a \$28 (plus tax) service establishment fee. There are additional fees if the in-home display needs to be cleaned or replaced. If there is a credit balance remaining when a customer wishes to discontinue service, a \$25 fee is charged to obtain a refund. In addition, there are fees charged to customers to use a remote pay center and for some telephone payment activities.

¹³ Natl. Housing Federation, Pre-Payment Meter Utilities Customers, Final Report, June 2008, at 12.

For consumer advocates, prepayment, despite claims of some proponents, does nothing to enhance the affordability of utility service, but instead results in added fees, more frequent loss of service, and forfeiture of basic regulatory consumer protections, including those related to payment plans, and prohibitions on disconnection of service to the elderly or the sick. We believe that, rather than introducing prepaid service, utilities should address problems with customer arrearages through comprehensive, effective low-income energy efficiency programs, bill payment assistance programs, “arrears management” programs, reductions of burdensome late payment fees and security deposits, and implementation of deferred payment agreements that are truly reasonable and based on a household’s actual income and expenses.

{Dialogue on Prepaid Service}

Howat: Ralph, while there is limited evidence that some customers taking prepaid utility service reduce usage, important questions remain regarding the extent to which these reductions are attributable to “feedback” mechanisms (e.g., in-home display units that provide real time consumption and expenditure information) and those that are attributable to deprivation (e.g., disconnections that come automatically as billing credits are exhausted). Clearly,

Prepayment, despite claims of some proponents, does nothing to enhance the affordability of utility service.

feedback benefits may be provided to customers without the constant threat of disconnection and the requirement to prepay for service. What are your thoughts about the potential for consumer and environmental advocates to find common ground in addressing the

numerous new utility company proposals to implement prepaid utility service?

Cavanagh: I have been working with advocates for

low income communities for more than thirty years, and I have great sympathy for the proposition that mandatory prepayment is inevitably inequitable (or worse) in practice. I also agree with you entirely on preferred approaches to addressing arrearages in paying utility bills. We can address this agenda in more detail below.

Because there is some evidence that well designed voluntary prepayment programs, coupled with other measures, can help customers reduce their energy needs without adverse consequences, I would like to see if we can find a way to create “opt in” prepayment plans for at least some of the customers who want them. We know from the work of Daniel Kahneman and Amos Tversky, recently detailed in the bestselling book *Thinking, Fast and Slow*, that “loss avoidance” can be a powerful motivator for customers other than those

in low-income households. In prepayment, “loss avoidance” will be activated not just in a customer’s desire to avoid disconnection, but in seeing a declining balance in their prepaid account. As we explore ways to use behavioral science to reduce energy consumption cost-effectively, prepaid service could be a useful tool that I’m reluctant to dismiss completely. But for the reasons you state, I agree that prepaid service may be inappropriate for certain types of customers and that it should not be offered or marketed as an alternative to disconnection.

Howat: I appreciate your longstanding commitment to the design and implementation of comprehensive energy efficiency programs that deliver meaningful home energy security benefits in low-income households. But I must note that existing programs operating in the US and Europe are rarely, if ever, presented as “mandatory.” But cash-strapped customers facing either disconnection or the prospect of an unaffordable security deposit may “opt-in” to a prepayment program in order to retain service in the short term, even if doing so increases the risk of future loss of service.

One of the most troubling aspects of prepaid service, in my view, is the use of the term “voluntary” to justify the shift from a structure based on consumer protections and regulatory oversight of disconnections to one where loss of service is invisible and undocumented. This rhetorical and marketing shift, coupled with the reality that the service is

invariably concentrated among low-income ratepayers, renders hollow the touted benefits associated with energy savings, better information for consumers, and “increased control” over electric bills. The notion that low-income household managers voluntarily opt to go without service or reduce usage to levels that may have detrimental impacts on well-being is not defensible in my view. As you have said, there are numerous, less punitive ways to assist low-income households with managing burdensome security deposits and arrearages, using regulatory and programmatic models that operate successfully in many states around the country.

For these reasons, and numerous others, NCLC stands firmly opposed to implementation of new prepaid utility service programs. However, should approval be granted to go forward with new programs on a pilot basis, can we agree that each of the terms outlined below, as taken directly from a resolution adopted in 2011 by the National Association of State Utility Consumer Advocates, must be adhered to?

NASUCA Resolution Provisions:

All regulatory consumer protections and programs regarding disconnection, limitations or prohibitions, advance notice of disconnection, premise visits, availability of payment plans or deferred payment agreements, availability of bill payment assistance or arrearage forgiveness, and billing disputes are maintained or enhanced;

In the event that the billing credits of a customer receiving prepaid residential electric or natural gas

If the extra costs of prepaid program won't pay for themselves over time with energy savings, utilities should look elsewhere for those savings.

associated with reduced cash working capital requirements, uncollectibles amounts and shareholder risk affecting a utility's return on equity;

service are exhausted, the customer shall be given a reasonable disconnection grace period, after which the customer shall revert to traditional, credit-based service, subject to all rules and customer protections applicable to such service;

Prepayment households include no one who is

- a) income-eligible to participate in the federal Low Income Home Energy Assistance Program (LIHEAP); or
- b) protected under state law from disconnection for health or safety reasons;

Prepaid service is only marketed as a purely voluntary service and is not marketed to customers facing imminent disconnection for non-payment;

Utilities offering prepaid service also offer effective bill payment assistance and arrearage management programs for all customers, including customers with arrearages who choose prepayment service;

Rates for prepaid service are lower than rates for comparable credit-based service, reflecting the lower costs

Utilities demonstrate the cost effectiveness of any proposed prepaid service offerings through a cost versus benefit analysis and reveal how costs will be allocated among various classes of customers;

Prepayment customers are not subjected to any security deposits or to additional fees of any kind, including but not limited to initiation fees or extra fees assessed at any time customers purchase credits;

Utilities ensure there are readily available means for prepayment customers to purchase service credits on a 24-hour a day, seven-day a week basis;

Prepayment customers can return to credit-based service at no higher cost than the cost at which new customers can obtain service;

Payments to prepaid accounts are promptly posted to a customer's account so as to prevent disconnection or other action adverse to the customer under circumstances in which the customer has in fact made payment; and;

Adequate financial mechanisms are developed and in place within the state to

At the state level, there is still resistance to the proposition that regulators may approve utilities' recovery of the cost of low-income services.

energy, compared to 4 percent for the rest of the population.¹⁴For many low income households, keeping up with

guarantee that funds prepaid by customers are returned to the customers who prepaid them if and when a company becomes insolvent, goes out of business or is otherwise unable to provide the services for which the funds were prepaid.

Cavanagh: Your arguments are compelling and I agree with the NASUCA recommendations. To me, the bottom line is that utilities should only offer opt-in prepaid service to customers that are neither credit-challenged nor low-income, and that the extra costs of providing prepaid service (enhanced billing systems, card readers, etc.) should be borne by those customers that opt in. And if the extra costs of the prepaid program won't pay for themselves over time with energy savings, utilities should look elsewhere for those savings.

III. Low-Income Energy Services and LIHEAP

Nowhere are the benefits of improved energy efficiency more acutely felt than in low income households. The Department of Energy estimates that the average low income household in the US spends as much as 17 percent of its income on

utility bills comes at the expense of other basic needs.¹⁵ Reducing energy expenditures through improved efficiency can significantly alleviate this burden; heating and cooling costs for low income households that participate in DOE's Weatherization Assistance Program (WAP), for instance, drop on average more than 30 percent.¹⁶ Through 2008,

¹⁴ DOE, "WAP Factsheet", available at: http://www1.eere.energy.gov/wip/pdfs/wap_factsheet.pdf. On average, this translates into an annual energy bill of over \$1,800 for low income households.

¹⁵ [2] See, e.g., "2009 National Energy Assistance Survey," National Energy Assistance Directors Association (April 2010), available at: http://www.neada.org/communications/pres/NEADA_2009_Survey_Report_4-16-10.pdf. (survey of households that received home energy assistance over a five year period under the federal Low Income Home Energy Assistance Program (LIHEAP) found that, as a result of home energy costs, 30 percent went without food for at least a day; 41 percent went without medical or dental care; 33 percent did not fill a prescription or took less than the prescribed dose; and 31 percent did not make their full mortgage or rent payment).

¹⁶ McKinsey & Co., UNLOCKING ENERGY EFFICIENCY IN THE US ECONOMY, at 40-41 (July 2009). (citing Martin Schweitzer, Estimating the National Effects of the US

the WAP program had weatherized more than 6.2 million homes, generating annual savings of roughly 100 trillion end-use BTUs.¹⁷ Over the past three years, the program has helped another 860,000 households reduce their energy bills,¹⁸ while also increasing occupants' comfort and health.¹⁹ ²⁰ DOE estimates that the average annual heating bill for

Department of Energy's Weatherization Assistance Program with State-Level Data: A Metaevaluation Using Studies from 1993 to 2005" (Oak Ridge National Laboratory, US Dept. of Energy, Sept. 2005), available at: http://weatherization.ornl.gov/pdfs/ORN_L_CON-493.pdf (2005 dollars converted to 2009 dollars).

¹⁷ *Id.* (through 2008).

¹⁸ Testimony of DOE Secretary Steven Chu Before the Committee on Oversight and Government Reform, US House of Representatives, March 20, 2012, at 3.

¹⁹ Various studies have shown that weatherization can result in reductions in a range of health problems, including asthma and bronchitis. *See, e.g.* National Center for Healthy Housing/Enterprise Community Partners, Inc., "Case Study: Creating Green and Healthy Affordable Homes for Families Living at Viking Terrace, Worthington, Minn." (2010). That study showed significant declines in bronchitis, sinusitis, and asthma (in adults) and respiratory allergies and ear infections (in children) following renovations that employed "green and healthy" principles.

²⁰ L. Berry & M. Schweitzer, "Metaevaluation of National Weatherization Assistance Program Based on State Studies, 1993–2002" (Oak Ridge National Lab, RNL/CON-488). Ex. Summ., at x. The authors found that WAP achieved energy savings in gas-heated households of 21.9 percent of the average pre-weatherization consumption of natural gas for all end uses and 30.8 percent of pre-weatherization space heating consumption.

participating households will be reduced by \$437.²¹ NCLC has urged Congressional appropriators to fund FY 2013 weatherization at \$250 million.²²

The Low Income Heating Assistance Program (LIHEAP) is a federally-funded program implemented by the states and designed to help low-income households afford essential heating and cooling. Program funding has been volatile in recent years, rising from \$3.2 billion in 2006 to \$5.1 billion in 2009 and 2010, and then dropping to \$3.5 billion in 2012. The President's FY2013 budget would fund the program at \$3.0 billion. In addition to using the funds to reduce household energy bills, states may allocate up to 15 percent (25 percent with a waiver) of their LIHEAP funding to help recipients weatherize their homes, thereby reducing their energy costs. Finally, up to 5 percent of a state's LIHEAP allocation may also be used to "encourage and enable households to reduce their home energy needs and thereby the need for energy assistance."²³

²¹ US Dep't of Energy, *Weatherization Assistance Program*, <http://www1.eere.energy.gov/wip/wap.html> (last updated Jan. 30, 2012).

²² Testimony of the National Consumer Law Center, on behalf of our low-income clients, Before the House Appropriations Committee, Subcommittee on Energy and Water Development, prepared by Charles Harak (March 30, 2012).

²³ ACF Memorandum to LIHEAP Grantees, March 15, 2000, available at http://www.acf.hhs.gov/programs/ocs/liheap/guidance/special_topics/im00-12.html.

{Dialogue on Low-Income Services}

Cavanagh: John, our institutions have a long tradition of support for LIHEAP generally and its energy efficiency elements, in particular, and I know that this will continue. It is important to note that we also unite on the need for targeted utility investment in low-income services, to ensure that all communities have comparable opportunities to participate in energy efficiency programs. What should we be doing to build on what is already a substantial record of achievement here?

Howat: Complacency is hardly the order of the day, particularly when budgetary pressures push a pro-LIHEAP administration to seek an FY13 LIHEAP budget that cuts by 40 percent the level achieved four years earlier and a Congress that only provided \$68 million for Weatherization in FY 2012. We both acknowledge the constructive role of gas and electric utilities in supporting enhanced LIHEAP and weatherization appropriations, but we need to broaden the base of support for coordinated federal and state efforts to deliver targeted energy services to low-income communities.

At the state level, we still find resistance even to the basic proposition that state commissions have authority to approve utilities' recovery of the cost of low-income services; astonishingly, as recently as April 2012, an appellate court in Michigan saw fit to deprive the state's neediest households of almost \$40 million in such assistance, on the ground that "the

PSC's general regulatory powers . . . do not include the authority 'to approve of a utility collecting funds from its ratepayers in general to fund a program designed to offer protection against interruptions in services, or other such relief, to distressed ratepayers.'"²⁴ In states as diverse as California, New York, Arkansas, Idaho and Montana, by contrast, longstanding coalitions of consumer and environmental groups have helped create a robust tradition of utility support for targeted low-income services, including but not limited to energy efficiency programs.

Conclusion

Utility regulation is primarily about services "affected with a public interest,"²⁵ and consumer and environmental advocates have a long tradition of standing up for overlapping majorities of that public, which lack the means to represent themselves before some of the nation's most important regulators. We are most effective in that role when we speak with one voice. This article only begins a concerted effort to ensure that we do so more frequently. ■

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²⁴ *ABATE v. Michigan PSC*, No. 296374, p. 5 (State of Michigan Court of Appeals, April 10, 2012), [http://coa.courts.mi.gov/documents/OPINIONS/FINAL/COA/20120410_C296374_47_296374.OPN.PDF]

²⁵ *Munn v. Illinois*, 94 US 113 (1876).