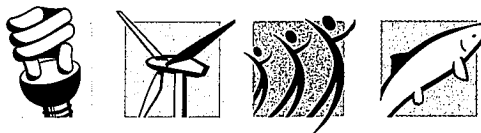


3TIER Environmental Forecast Group
 Advocates for the West
 Alaska Housing Finance Corporation
 Alliance to Save Energy
 Alternative Energy Resources Organization
 American Rivers
 The Apollo Alliance
 Audubon Washington
 Bonneville Environmental Foundation
 Central Area Motivation Program
 Citizens 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
 eFormative Options, LLC
 Emerald People's Utility District
 The Energy Project
 Energy Trust of Oregon, Inc.
 enXco Development Corporation
 Environment Oregon
 Environment Washington
 Eugene Water & Electric Board
 Grasslands Renewable 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
 Kootenai Environmental Alliance
 Laborers International Union of North America, NW Region
 League of Women Voters - ID, OR & WA
 Local Energy Alliance of Washington
 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
 Moontown 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 Alliance
 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
 One PacificCoast Bank
 Oregon Action
 Oregon Energy Coordinators Association
 Oregon Environmental Council
 Oregon HEAT
 Oregonians for Renewable Energy Policy
 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 Montana Chapter
 Silicon Energy
 Snake River Alliance
 Solar Oregon
 Solar Washington
 South Central Community Action Partnership, Inc
 Southeast Idaho Community Action Agency
 Southern Alliance for Clean Energy
 Spokane Neighborhood Action Programs
 Smart Grid Oregon
 Student Advocates for Valuing the Environment
 SustainableWorks
 Sustainable Bainbridge
 Tahoma Audubon Society
 Trout Unlimited
 Union Of Concerned Scientists
 United Steelworkers of America, District 11
 WA CTED - Housing Division
 Washington CAN!
 Washington Environmental Council
 Washington State University Energy Program
 A World Institute for a Sustainable Humanity
 World Steward



NW Energy Coalition

for a clean and affordable energy future

May 8, 2012

Via Electronic Filing and US Mail

RE: UG 221

Attention Filing Center:

Enclosed for filing in UG 221 are an original and five copies of the revised Attachment 1 of Nancy Hirsh, witness for the NW Energy Coalition. The Attachment was revised to include a header with Exhibit number and page number on the top of each page.

Sincerely,

Nancy Hirsh
Policy Director

Cc: Service List, UG 221



NW Energy Coalition/101
Hirsh/1

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

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

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).

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,

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

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

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

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

to 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

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

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/ORNLCN-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).