OEB Consultation on Energy Issues Relating to Low-Income Consumers
Board File: EB-2008-0150

Comments of the Low-Income Energy Network (LIEN), Canadian Environmental Law Association (CELA), Advocacy Centre for Tenants Ontario (ACTO), Income Security Advocacy Centre (ISAC) and Toronto Environmental Alliance (TEA)

November 5, 2008

Table of Contents

INTRODUCTION

The Low-Income Energy Network ("LIEN")[1] welcomes this opportunity to provide comments following the presentations and discussions before the Ontario Energy Board (the "Board" or the "OEB") which took place September 22 through September 25, 2008. The slides relating to LIEN's presentation are provided as Appendix D to these comments. For reference, a description of LIEN and its mission is set out in Appendix A. The comments below will address each of the eight topics set out by Board staff and followed in the consultation presentations. By way of introduction, however, LIEN will offer a high-level commentary on the considerable information elicited by the Board's consultation.

To begin, the Divisional Court has said that the Board has jurisdiction to consider ability to pay in setting just and reasonable rates. Rates that are unaffordable cannot be seen as "just and reasonable". In light of this, LIEN proposes that the standard of energy affordability should be that energy costs do not exceed 6% of household income. Tiered discounts should then be provided for portions of the energy bill that exceed this amount.

Under Topic 2, programs currently in place in Ontario to assist low-income energy consumers are described. The gap left by these programs, combined with information presented about household incomes and consumer need in Ontario, demonstrate the unaffordability of energy for many electricity and gas consumers in Ontario. There is an "affordability gap" – the cost of energy in excess of 6% of the income of the household that is not met by government and services in the community. In light of this reality, LIEN submits that energy rates are not “just and reasonable” and are incompatible with both the Board’s mandate to act in the public interest and its statutory obligation to protect the interests of consumers. The issue of the Board’s jurisdiction and its mandate to respond to the needs of low-income consumers is addressed in the following section of this paper.

In addition to the above argument based in law, under Topic 1, LIEN addresses a practical rationale for Board action in setting rates and rate policies that are just and reasonable for low-income consumers. In Topic 8, LIEN explores program funding mechanisms for low-income energy affordability programs. Information in support of the definition of affordability is addressed under Topic 1, as is the actual burden of energy costs and their unaffordability.

Given the above, it is appropriate for the Board to examine mechanisms that can assist directly or indirectly in making energy rates more affordable. Under Topic 4 there is some discussion of different concepts of cost and how they, and a concept of cost causation, can be used in setting rates and charges that improve affordability for low-income consumers. Evidence presented under Topic 3 supports the proposition that when rate-related policies, such as those with respect

[1] Low-Income Energy Network (LIEN), Canadian Environmental Law Association (CELA), Advocacy Centre for Tenants Ontario (ACTO), Income Security Advocacy Centre (ISAC) and Toronto Environmental Alliance (TEA) have collaborated extensively to produce these written comments. For ease for reference, the comments are written under the name of LIEN.

to payment period, service disconnections, security deposits, and management of arrears, are modified for low-income consumers, utility revenues can increase and costs decrease.

LIEN does not predicate its support of low-income affordability programs on the observations that revenue under such programs can be revenue "neutral" or even increase or that such programs can actually result in utility cost reductions. However, LIEN does assert that the task of taking ability-to-pay into account, as authorized by the Ontario courts, can be good business as well as being a benefit to low-income consumers. The pursuit of good business and the implementation of rate affordability programs are not, as some would have the OEB believe, at fundamental odds with each other.

Reduction in energy consumption can also make rates and bills more affordable. Yet, without assistance, low-income consumers cannot afford to weatherize their homes or take other necessary steps to manage their energy demand. For a significant time before the court's decision in *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)*[2] utility conservation and demand management programs designed specifically for low-income consumers have been in place and are funded through utility rates. LIEN supports such programs. They are addressed under Topic 6.

There are significant issues and problems for low-income consumers still to be resolved under time-of-use pricing, sub-metering policies and practices, and retail marketing of electricity and gas. LIEN summarizes its position with respect to these matters under Topic 7 of these comments.

In conclusion, LIEN submits that there is a need for consistency in the application of rate affordability programs across Ontario, for both gas and electricity low-income residential consumers. LIEN submits that the Board should hold a generic proceeding to consider standard minimum terms of service conditions that apply to low-income consumers. Additionally, the Board should also announce its intention to impose a System Benefits Charge on all distribution system customers, with a defined low-income exemption, and call for the fund created from the charge to be used to both provide a discount to apply to bills of low-income consumers and to provide monetary and physical resources for “deep measures” low-income CDM/DSM programs applicable to gas and electricity customers. Finally, the Board should routinely include low-income energy considerations in hearings and decisions that come before it.

[2] [2008] O.J. No. 1970.

THE ISSUE OF JURISDICTION

In the case of *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)*, the Divisional Court decided that the Board has jurisdiction to take into account the ability to pay in setting rates.

> [59] …….. so long as the global amount of return to the utility based upon a "cost of service" analysis is achievable, then the rates/prices (and the methods and techniques to determine those rates/prices) to generate that global amount is a matter for the Board's discretion in its ultimate goal and responsibility of approving and fixing "just and reasonable rates."
>
> [60] The issue before the Court is that of jurisdiction, not how and the manner by which the Board should exercise the jurisdiction conferred upon it.
>
> [61] In our view, and we so find, the Board has the jurisdiction to take into account the ability to pay in setting rates.

Although the Court did not determine the mandate of the Board to take into account the ability to pay in setting rates, neither did it give the Board an unfettered discretion. The Board still must exercise its discretion so as to achieve "its ultimate goal and responsibility of approving and fixing "just and reasonable rates".[3]

There is no jurisdiction, as has been suggested by some parties to this consultation, for the Board to consider or determine whether it or the government should provide rate affordability programs for low-income consumers. To do so would be an exercise in policy making and an unlawful denial by the Board of its jurisdiction. That is not to say that the Board cannot have regard to existing government programs when determining what provision it should make for low-income consumers in order to achieve "just and reasonable rates".

Rates that are unaffordable for low-income consumers confront those consumers with:

- a choice between energy use and other essentials for normal living – in effect a choice between "heating and eating", and
- vulnerability to disconnection of service.

As such, unaffordable rates are incompatible with

- any sensible interpretation of the expression "just and reasonable rates",
- the Board's overarching mandate to act in the public interest, and
- the Board's statutory obligation to protect the interests of consumers with respect to prices and the reliability and quality of service.

If, as has been shown in this consultation, energy rates are unaffordable for low-income consumers, it follows that those rates do not comply with the Board's statutory mandate to fix or approve "just and reasonable rates". At that point, the Board's jurisdiction becomes a mandate to take into account the ability of low-income consumers to pay in setting rates and to effect adjustments in rates and rate-related terms of service to ensure that the rates will be affordable.

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[3] *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sch. B, s.36(2).

THE EXISTENCE OF UNAFFORDABLE ENERGY BURDENS IN ONTARIO

The generally accepted measure of home energy affordability involves a metric called "energy burden." A household's energy burden is the household energy bill divided by the gross household income. A household with an annual income of $10,000 and an annual home energy bill of $1,800, for example, has a home energy burden of 18% ($1,800 / $10,000 = 0.18).

A substantial number of Ontario's low-income consumers currently bear non-sustainable energy burdens. Because of these burdens, low-income consumers can be expected to experience arrears, be subject to credit and collection efforts, have their service disconnected, be forced to make unreasonable budget decisions between competing household necessities (*e.g.*, heat or eat), and be forced to engage in a wide variety of dangerous and/or unhealthy activities in an effort to keep paying their utility bills. In addition, these energy burdens have been found to represent an impediment to low-income consumers taking constructive actions to address their inability to pay.

In November 2007, the average residential electricity consumer using 1000 kWh monthly on RPP paid $114 a month ($1,368 per year). For customers of Enbridge Gas, the average natural gas bill is $125 per month ($1,500 per year). Households with electricity space heating will, of course, pay even higher burdens, and those heating with electricity would be higher again.

At these prices, adjusted downward to 85% to account for the lower consumption of lower income households,[4] energy burdens fall above 10% for households with income between $10,000 and $15,000 for a single fuel alone. Energy burdens for households with income between $5,000 and $10,000 fall between 15% and 20%. Not until incomes exceed $20,000 do home energy burdens for single fuels (only natural gas; only electricity) fall below the affordable burden of 6% of income. The combined home energy burdens for households using both natural gas and electricity, of course, would be even greater than those burdens noted above, and those heating with electricity would be higher again. Additionally, the energy burden would be even higher if prices had not been adjusted downward.

Substantial numbers of households live with incomes of this magnitude in Ontario. According to the Income Statistics Division of Statistics Canada, as of 2006, of all economic family units in Ontario:

- 11.2% live with income below $5,000;
- 5.4% live with income between $5,000 and $9,999;
- 4.8% live with income between $10,000 and $14,999;
- 4.2% live with income between $15,000 and $19,999; and
- 8.3% live income between $20,000 and $29,999.

[4] The downward adjustment is based on the relative electricity consumption for average, and for low-income, electricity heating customers in the United States. Equivalent data for Canada, and for Ontario, is not available.

SOCIAL ASSISTANCE AND ENERGY AFFORDABILITY

The Income Security Advocacy Centre

The Income Security Advocacy Centre ("ISAC") is a community legal clinic funded by Legal Aid Ontario. We have a provincial mandate to improve the income security of people living in Ontario through test case litigation, policy advocacy, and community organizing. We are governed by an elected Board of Directors that includes members of the low-income community from across the province and we work closely with sixty local legal clinics who work every day with low-income people.

In 2004, ISAC joined with a variety of groups and organizations to form the Low-Income Energy Network (LIEN), which works to promote programs and policies that help to resolve energy poverty while having a positive impact on the environment.

Introduction

This section of LIEN's comments will provide the Ontario Energy Board with information about the supports for energy costs that are offered to Ontarians receiving benefits from the province's two Social Assistance programs, Ontario Works and the Ontario Disability Support Program ("ODSP"). The latter of these programs is intended for people who are deemed statutorily disabled and thus unable to work or only able to work part-time. ODSP benefits are higher than Ontario Works benefits in recognition of these employment challenges.

This information will demonstrate that the incomes received by people relying on Social Assistance are inadequate to provide for the regular costs of living – including energy costs. There is unmet need among people receiving Social Assistance which could be greatly alleviated by a low-income rate assistance program.

It should be noted that increasing numbers of people are coming to rely on Social Assistance in Ontario due to the decreasing eligibility of people for Employment Insurance benefits. The economic downturn currently being experienced in Ontario will only exacerbate this situation.

Questions about the extent of Social Assistance supports were asked during the OEB stakeholder consultation on 24 September 2008. The transcript of that day's Conference records discussion on these questions on pages 86 through 89.

Social Assistance Programs and Support for Energy Costs

In both Ontario Works and ODSP, energy costs are specifically intended to be covered by one of the two main mandatory benefits, the Shelter Allowance. However, the Shelter Allowance is also intended to cover housing charges (rent, mortgage payments, etc.) as well as a variety of other shelter-related cost items.

The complete list of items intended to be covered by the Shelter Allowance is outlined below:

- rent;
- loan and mortgage payments (principal and interest);
- occupancy costs paid under an agreement to purchase;
- taxes;
- insurance premiums for the dwelling and contents;
- payments for home repairs approved by the Administrator;
- maintenance fees for a condominium or co-operative housing unit;
- utilities;
- heating costs;
- security deposits required for reconnection or connection of an energy source or heating; and/or
- payment of rent, utility or heating arrears.

The amount an individual or family receives as a Shelter Allowance is based on real costs, up to a statutory maximum. It should be noted, however, that the statutory maximum is not responsive to the variability of costs associated with place of residence (and thus geographic diversity in housing costs across the province or between regions), condition of residence (and thus energy efficiency), or fuel type.

In addition, the statutory maximum is calculated based on family size so that, for example, a family made up of a two adult couple is entitled to the same shelter maximum as a family of one adult and one child, as shown in the table at right.

Table 1: Shelter Allowance Maximums ($) by Program and Family Size
As of October 2008

Family Size	Maximum Monthly Shelter Allowance – Ontario Works	Maximum Monthly Shelter Allowance – ODSP
1	$349	$445
2	$549	$700
3	$595	$759
4	$647	$825
5	$697	$889
6 +	$723	$922

There is an issue of fairness here, as the costs for the family in the first example – where only a one bedroom unit would be required – are clearly less than those for the family in the second example – where a two bedroom unit would be required, and thus costs would necessarily be larger.

This example points to the central issue with regard to monthly Shelter Allowance maximums, which is their inadequacy in covering all shelter-related cost items, as listed above. A comparison of Shelter Allowance maximums, rent costs, and energy costs illustrates this issue.

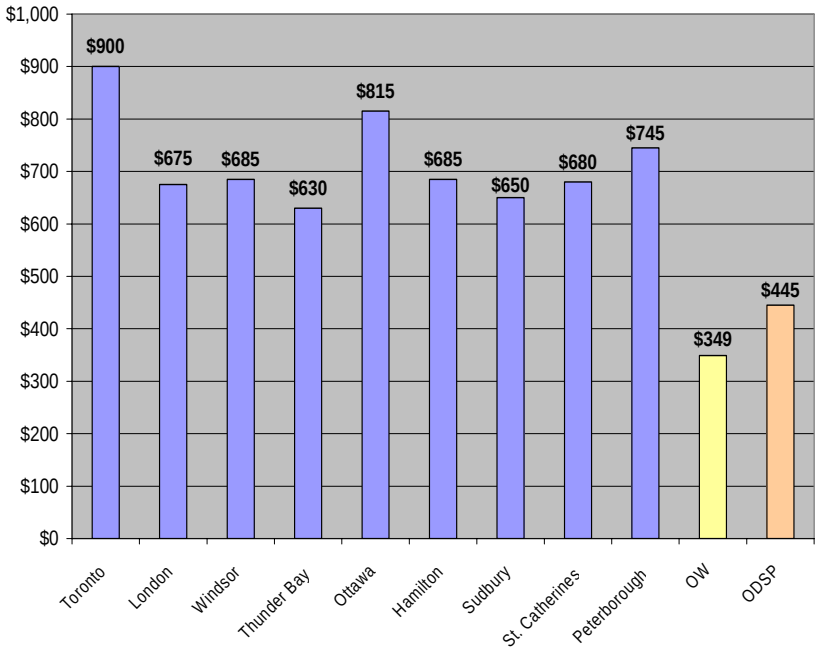
Adequacy: Shelter Allowance, Rent and Utilities

CMHC gathers information on the cost of rent and utilities on a regular basis and its statistics[5] show that 2008 median costs in Ontario of fully-serviced rents – that is, rents plus utilities – is far higher than the amounts provided in current Shelter Allowance maximums.

The charts below compare median fully-serviced rents in large communities in Ontario with the Shelter Allowance maximums provided by both Ontario Works and ODSP.

[5] Canada Mortgage and Housing Corporation. Ontario 2008 Fully Serviced Median Market Rent. *Ontario 2008 CNIT Report*. Received October 2008.

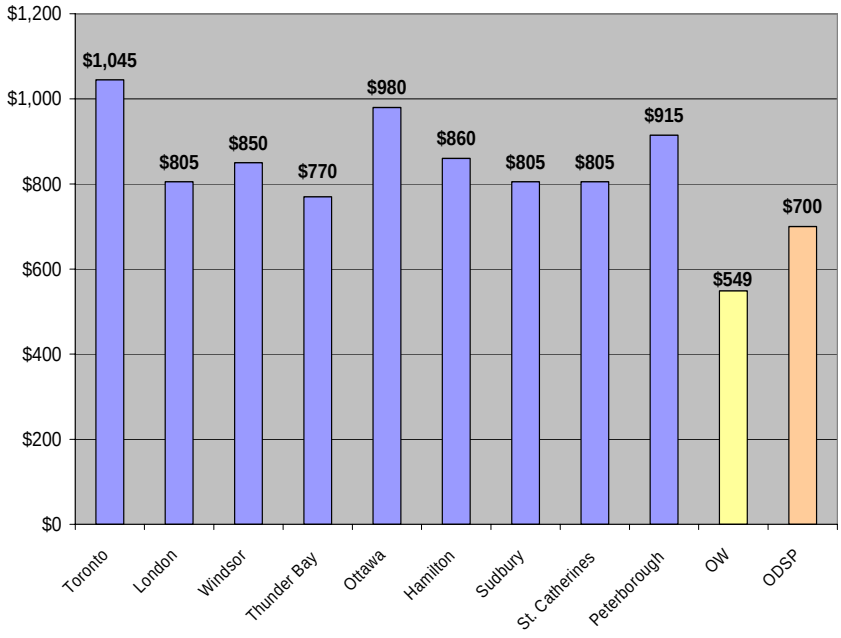
Chart 1: Shelter Allowance Maximums for One Person, by Program, Compared to One-Bedroom Fully-Serviced Median Market Rents in Major CMA Markets in Ontario for 2008



For this comparison, one-bedroom apartment rents are compared with the Shelter Allowance maximums for a single person. In the charts below, two-bedroom rents are compared with maximums for two people (a couple or single parent and child), and three-bedroom rents with maximums for three people (a couple and child or single parent with two children).

Private apartment rents were chosen for this illustration because, as statistics from the Ontario Ministry of Community and Social Services show, 80% of people receiving Ontario Works benefits and 61% of people receiving ODSP live in the private rental market[6]. Apartments as a housing type constitute approximately 70% of the private rental market[7]. Consideration of these charts shows that private apartment rents including utilities are currently between 10% and 158% higher than the Shelter Allowance maximums provided by Ontario Works and ODSP, for what would be considered regular housing arrangements. Of course, this level of financial inadequacy very often leads to situations of housing inadequacy – i.e., large families living in cramped housing. Yet even in such situations, the Shelter Allowance is inadequate.

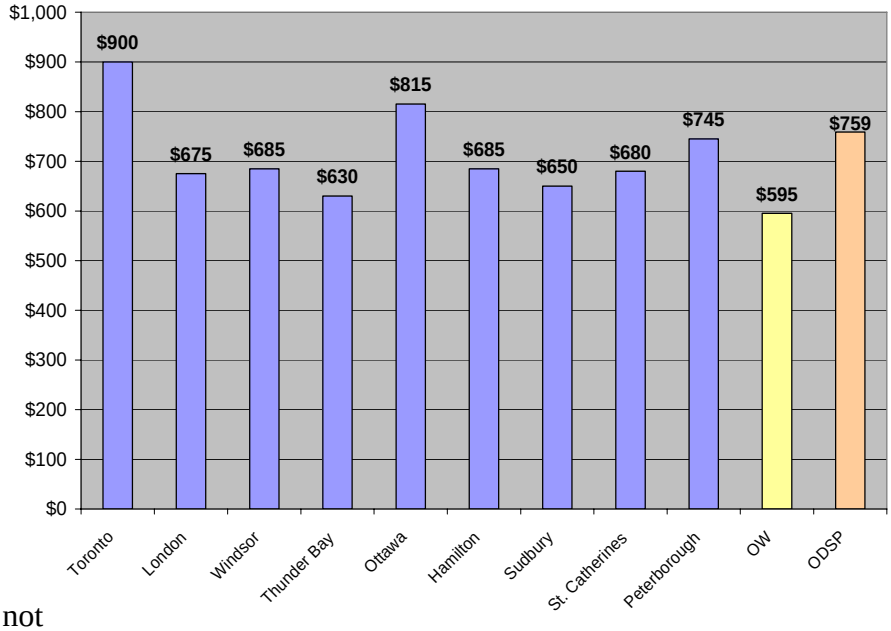
Chart 2: Shelter Allowance Maximums for Two People, by Program, Compared to Two-Bedroom Fully-Serviced Median Market Rents in Major CMA Markets in Ontario for 2008



[6] These statistics provided by the Statistics and Analysis Unit of the Social Policy Development Division of the Ministry of Community & Social Services.
[7] Statistics Canada Census 2006.

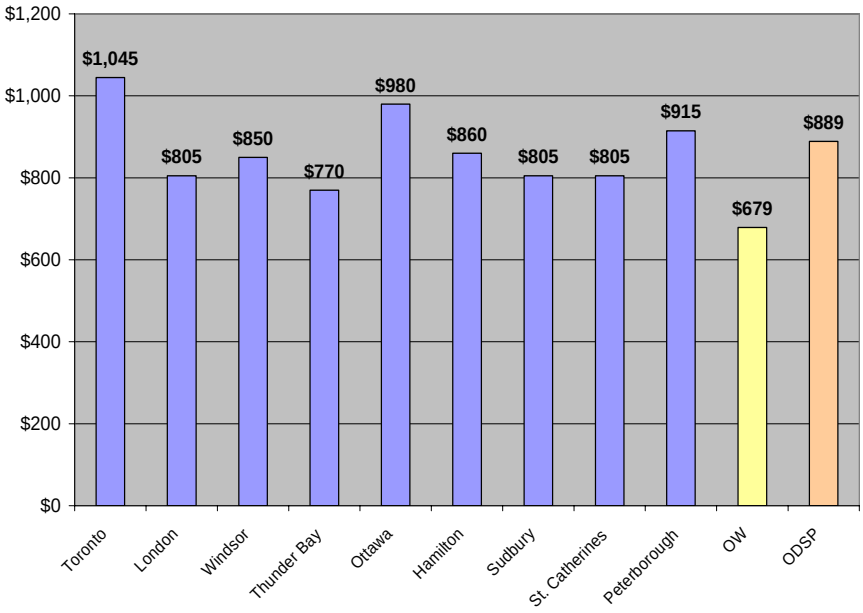
The chart at right shows that, in all major centres, the Ontario Works Shelter Maximums are not adequate to pay for rent and utilities for three people all living together in a one-bedroom unit. The ODSP Shelter Maximums are inadequate in some major centres for this same housing configuration.

Chart 4: Shelter Allowance Maximums for Three People, by Program, Compared to One-Bedroom Fully Serviced Median Market Rents in Major CMA Markets in Ontario for 2008



Two-bedroom rent plus utilities are only affordable in major centres for a family of five people receiving ODSP Shelter Maximums, as the chart below demonstrates. But that same family of five people, if they were receiving Ontario Works benefits, could not afford to live in that same two-bedroom apartment.

Chart 5: Shelter Allowance Maximums for Five People, by Program, Compared to Two-Bedroom Fully Serviced Median Market Rents in Major CMA Markets in Ontario in 2008



The inadequacy of the Shelter Allowance maximums is true both for people living in smaller, rural areas as it is for those in large urban areas.

The table on the next page[8] shows the median fully-serviced private apartment rents (that is, rent includes utilities) for various sized apartments in various areas of the province as of April 2008.

[8] The data in this table was taken from the Canada Mortgage and Housing Corporation's Rental Market Report: Ontario Highlights, released in Spring 2008.

Table 2: Fully-Serviced Rents ($) in Private Apartments by Bedroom Type in Small, Rural Areas of Ontario for 2008

	Southwestern Region <2,500 people		Southern Region < 2,500 people	Central Region < 2,500 people		Northern Region < 2,500 people				Northwest Region < 2,500 people	Ottawa & Southeast < 2,500 people
	North	South		East	North	Centre	East	North	West		
1 BR	$520	$475	$550	$620	$685	$485	$540	$405	$470	$530	$505
2 BR	$620	$615	$600	$595	$705	$570	$595	$570	$575	$655	$640

For ease of comparison, the table showing Shelter Allowance maximums has been reproduced below.

Shelter Allowance maximums available through Ontario Works are clearly far lower than fully-serviced rents, even in small rural areas of the province.

This means that current Shelter Allowance rates are inadequate to provide for rent and utilities. Additionally, they are inadequate to cover any other shelter-related costs that the allowance is intended to cover.

While Shelter Allowance maximums available through ODSP are slightly higher than those available through Ontario Works, in many areas they are also inadequate to provide for rent plus utilities, without factoring in other shelter-related costs.

($) by Program and Family Size
As of October 2008

Family Size	Maximum Monthly Shelter Allowance – Ontario Works	Maximum Monthly Shelter Allowance – ODSP
1	$349	$445
2	$549	$700
3	$595	$759
4	$647	$825
5	$697	$889
6 +	$723	$922

What this means is that people reliant upon Ontario Works and ODSP benefits are forced to supplement their Shelter Allowances with funds intended to pay for other necessities, such as

food, clothing, and other personal needs. However, these other funds are largely inadequate on their own to pay for these necessities. This means that people are regularly forced to make undesirable and unacceptable choices between competing necessities – such as the choice to "eat or heat".

Adequacy: Other Sources of Income

Basic Needs Allowance

The Shelter Allowance is one of the two mandatory financial benefits available to people receiving Social Assistance in Ontario. The other mandatory benefit is the Basic Needs Allowance. This amount is intended to cover food, clothing, travel, entertainment, and other personal needs items for an individual or family for the month.

The amount an individual or family receives for their Basic Needs Allowance varies with the size of the family and the age of any children, and is calculated according to a statutory benefits table. Place of residence is not taken into consideration (i.e., Basic Needs Allowance rates do not account for different costs in different geographical areas), nor is a family's demonstrated need.

The table below outlines the Basic Needs Allowance amounts for families of different sizes receiving benefits from either Ontario Works or ODSP, and adds the Shelter Maximum for that family to derive a total monthly benefit amount.

Table 3: Basic Needs, Shelter Allowance maximums, and Monthly Benefits ($), by Program and Family Type
As of October 2008

Family Type	Ontario Works			ODSP		
	Basic Needs	**Shelter Maximum**	**Total Monthly Benefits**	**Basic Needs**	**Shelter Maximum**	**Total Monthly Benefits**
Single person	$211	$349	$560	$554	$445	$999
Single one child under 13	$355	$549	$904	$697	$700	$1,397
Single two children, one under 13, one 13 or over	$355	$595	$950	$756	$759	$1,515
Couple	$420	$549	$969	$821	$700	$1,521
Couple one child 13 or over	$437	$595	$1,032	$880	$759	$1,559
Couple two children, one under	$437	$647	$1,084	$880	$825	$1,705

13, one 13 or over						

As can be seen from a comparison of this table with the fully-serviced rent amounts in Table 2, Social Assistance benefits are inadequate to provide for rent, utilities, and the other regular costs of living incurred on a monthly basis.

The reality for many people in Ontario who receive Social Assistance benefits – whether from Ontario Works or from ODSP – is that they must use part or all of their Basic Needs Allowance to pay for shelter-related costs.

Northern Allowance

An additional amount is available for people who do not have road access and live north of the 50th parallel (which lies just north of the line demarcated by Kenora and Dryden to the west, and Hearst to the east). This is the Northern Allowance for Renters / Owners and is intended to provide additional assistance due to the increased costs experienced by people living in remote locations in the North. The table below shows the amounts of this benefit:

Table 4: Northern Allowance ($), by Program and Family Type
As of October 2008

Family Type	Northern Allowance - Ontario Works		Northern Allowance - ODSP	
	Single	Couple	Single	Couple
No children	$146	$216	$146	242
One child	$232	$245	241	284
Two children	$269	$282	281	325
Three children	$304	$319	322	366
Each additional child	Add $38		Add $41	

The Northern Allowance does provide a significant extra benefit for people in this situation. However, because the allowance is only available to people living in the north that ***do not*** have road access, and because the large majority of people receiving benefits live in large urban centres[9], the vast majority of people receiving Social Assistance are unable to access these funds.

[9] As of March 2007, 80% of all Ontario Works recipients who are single, 71% of all Ontario Works recipients with children, 70% of Ontario Works recipients who are couples, and 88% of all ODSP recipients live in major cities in Ontario. These statistics are provided by the Statistics and Analysis Unit of the Social Policy Development Division of the Ministry of Community and Children's Services.

Ontario Child Benefit

The provincial government has recently introduced a new monthly benefit for children, the Ontario Child Benefit ("OCB"), which provides $50 per month for each child under age 18 to eligible low-income families, including those receiving Social Assistance benefits.

However, people with children receiving Social Assistance benefits saw their regular Basic Needs Allowance reduced at the same time that the OCB was introduced, giving them a net benefit lower than the $50 per month per child – for example, a single mother with one child under 12 years old realizes a net benefit of only $21 per month.

It must be noted as well that the Shelter Allowance was not affected by the reduction in Basic Needs, which indicates that government policy on shelter benefits for people on Social Assistance continues to place the burden of meeting the costs of shelter – including energy costs – on the regular Shelter Allowance. As we have seen above, that allowance is inadequate, forcing many families to use not only their Basic Needs Allowance but also their Ontario Child Benefit to meet their shelter costs, including the cost of energy.

Other Federal and Provincial Benefits

People receiving Social Assistance who have children are also eligible to receive monthly amounts from the Canada Child Tax Benefit and the National Child Benefit Supplement. As well, all people receiving Social Assistance are eligible to receive small amounts of federal and provincial tax rebates (the GST rebate and the Property and Sales Tax rebate) as long as they file their tax returns.

Once again, many families receiving Social Assistance are forced to use these other benefits to pay for the basic costs of living, despite the fact that, in theory, the onus of paying for shelter-related expenses – including the costs of energy – lies in the Shelter Allowance.

Energy Costs and Total Social Assistance Incomes

LIEN is proposing that low-income consumer households should not have to commit more than 6% of total household income to pay energy costs.

It is impossible to calculate whether or not this affordability target is currently exceeded in every situation for people receiving Social Assistance, because of the infinite combination of energy costs and incomes involved. However, for the sake of illustration, Table 5 demonstrates some implications of energy costs on current total monthly household incomes (as of Oct 2008) for various representative family types in the Ontario Works and ODSP caseloads.

Total household incomes include Basic Needs amounts and Shelter Allowance maximums, Ontario Child Benefits and federal child benefits where applicable, as well as provincial and federal tax rebates, first calculated annually and then adjusted to reflect a monthly amount.

Average electricity and gas costs are taken from two sources. As of November 1, 2007, total electricity bills (RPP plus approved distribution rates) for the average Ontario residential consumer using 1000 kWh monthly (approximately 60% of homes in Ontario use 1000 kWh or less per month on average) ranged from $92 to $140 per month, with an overall average total cost of $113.74[10]. Average natural gas bills have been pegged at approximately $125 per month for customers of Enbridge Gas (3000 m^3 annual usage at $0.50 per m^3) [11].

Table 5: Comparison of Current Average Monthly Energy Costs (as of November 2007) and Proposed Monthly Energy Costs (6% of Total Monthly Income) with Total Monthly Incomes for People Receiving Social Assistance (as of October 2008), by Program and Family Type

Ontario Works Case Types	Total Monthly Income	Average electricity cost ($114) as % of Total Monthly Income	Average natural gas cost ($125) as % of Total Monthly Income	Proposed Total Monthly Energy Cost (6% of Total Monthly Income)
Single person[12]	$614	18.6%	20.4%	$36.84
Single one child under 13	$1,290	8.8%	9.7%	$77.40
Single one child under 13, one 13 or over	$1,655	6.8%	7.6%	$99.30
Couple one child under 13	$1,390	8.2%	9.0%	$83.40
Couple one child under 13, one 13 or over	$1,768	6.5%	7.1%	$106.08
ODSP Case Types				
Single[13]	$1,047	10.9%	11.9%	$62.82

[10] Average electricity bills are now likely higher than in November 2007 as the RPP has increased and new distribution rates have been approved.
[11] It has been noted that the bills of Union Gas customers may be somewhat lower due to the warmer climate of southern and southwestern Ontario. This information was provided by a consultant to the Green Energy Coalition.
[12] This case type makes up 54% of the Ontario Works caseload, as reported in *Quarterly Statistical Report*, Statistics and Analysis Unit, Policy Research and Analysis Branch, Social Policy Development Division, Ministry of Community & Social Services. December 2007.

Single one child under 13	$1,774	6.4%	7.0%	$106.44
Couple[14]	$1,588	7.1%	7.9%	$95.28

This information shows that for people receiving Social Assistance and facing average energy costs as quoted, credits or discounts under an energy affordability program would be required in order to make up for the unmet need that exists in the Social Assistance system in Ontario, to allow people both with and without children to sufficiently provide for themselves and their families. Even if these figures were adjusted downward, as was done in the Existence of Unaffordable Energy Burdens in Ontario section, an energy affordability program would still be required for almost all the case types noted in order to ensure households were not met with an unaffordable energy burden.

History of Social Assistance Benefit Rates and Future Prospects

In 1995, Ontario Works benefits were cut by 21.9%. At the same time, benefits for people with disabilities were frozen. No increases were made to both Ontario Works or ODSP benefits between then and 2005.

Since 2005, benefit rates were increased three times – by 3% in 2005, 2% in 2006, and 2% in 2007, for a cumulative compounded increase of 7.16%. Unfortunately, this increase has not quite kept up with the 8.85% rate of inflation in that same period. Another 2% increase comes into effect in November / December 2008, which in most cases will only serve to bring benefits up to the same nominal dollar amounts that existed in 1995 after benefits were cut.

It is expected that inflationary increases to benefit rates at their current level will continue to be provided by government. However, no significant benefit increases – of the magnitude that would deal with the unmet need experienced by people reliant on Social Assistance by ensuring that incomes reflect the real costs of living, including costs of energy – are expected in the foreseeable future.

People with children will see their incomes increase slightly as the monthly Ontario Child Benefit is slated to increase from $50 per month per child in 2008/09 to $92 per month per child in 2011/12. However, there is some indication that Basic Needs Allowance benefits for people with children may be reduced gradually as the Ontario Child Benefit amounts increase, which would limit the net benefit to people with children.

The need is now, not two or three years from now. Even if resolving this problem could wait, at this point there are no programs slated to assist people without children - people who, as demonstrated in the table above, experience the highest degree of unmet need.

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[13] This case type makes up 77% of the ODSP caseload. *Quarterly Statistical Report*. Statistics and Analysis Unit, Policy Research and Analysis Branch, Social Policy Development Division, Ministry of Community & Social Services. December 2007.

[14] This case type makes up 17% of the ODSP caseload. *Quarterly Statistical Report*. December 2007.

Final Remarks

The provincial government is about to unveil a Poverty Reduction Strategy for Ontario in December 2008, with initial investments to be announced in the 2009 budget.

Taking steps toward resolving energy poverty through a low-income rate assistance program, particularly one that would specifically benefit people receiving Social Assistance, would be a significant addition to the government's Poverty Reduction initiative, and would demonstrate the kind of comprehensive and cross-ministerial / cross-agency approach to the problems of poverty that a Poverty Reduction Strategy requires.

TOPIC 1 - Should the Board implement policies, programs or other measures designed to assist low-income energy consumers?
(See LIEN slides 5 to 28)

It has been demonstrated during this consultation that there is an energy burden on many low-income consumers for whom affordability of energy bills is a significant issue, even so far as impacting health and safety. Further, it is likely that this unaffordable energy burden will only increase in the face of rising energy prices.

In order to relieve energy poverty and to move forward with energy affordability programs in Ontario, there must be an accepted standard of energy affordability. LIEN submits that an appropriate affordable energy burden should be energy costs which do not exceed 6% of household income. It is generally accepted that the total cost of shelter is unaffordable if it exceeds 30% of total household income. LIEN submits that utility costs should not exceed 20% of total shelter costs. As such, utility costs are affordable at or below 6% of total household income.

In paragraph 59 of the Divisional Court's decision in *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)*, the court notes that the global amount of return to the utility must be based on a cost of service analysis but that the rates used, and the methods used to determine those rates is a matter for the Board's discretion in its ultimate goal and responsibility of approving and fixing "just and reasonable rates." Although many presenters at the consultation stressed the importance of costs and a cost causality principle in determining rates, the court does not say that the Board must use cost or a cost causality principle to determine rates. Additionally, at paragraph 61, the court clearly states that the Board has jurisdiction to take ability to pay into account when setting rates.

The Board's statutory mandate is to ensure just and reasonable rates. Its ability and requirement to do so are not frozen in time, but must respond to the circumstances of the day. It is not unusual that the criteria the Board uses to determine that rates are "just and reasonable" changes over time. For example, thirty years ago it may not have been a priority for the Board to promote competition. In the 1970s, the focus by regulators on marginal costing was in response to controlling power plant construction. Today, there is a focus on carbon reduction and rates may be set to strongly encourage conservation and to avoid the use of hydrocarbon generation, especially at periods of peak consumption. In the early 1980s, when there was excess capacity in electricity systems and in gas production, there was a focus on risk reduction. Similarly, one can find such examples in other regulatory agencies as well - for example in agencies regulating telecommunications. The Board's jurisdiction based on its "just and reasonable" authority changes all the time.

A fundamental difference in today's circumstances, which amounts to a systemic shift in energy utility markets, is the overall size of current and expected increases in energy pricing due to a large number of factors including price of supply, expansion and redevelopment of the supply and transmission system, and the existing and potential further internalization of costs such as

carbon.[15] The result is that the Board must seriously examine the affordability of the system to the most vulnerable consumers A system of rates which effectively means that certain consumers are without sufficient basic energy supply is not "just and reasonable". The Board should consider ability to pay and should implement affordable energy programs for low-income consumers.

LIEN supports an affordability program based on agreement on a reasonable energy affordability burden and credits or discounts to bills to effectively result in affordable rates. LIEN also supports low-income energy usage reduction and conservation to reduce energy bills as well as to reduce carbon emissions. However, it is important to note that conservation cannot reach the large number of people who need assistance in the short period of time needed to address the energy affordability problem. Furthermore, without aggressive targeted funding, low-income consumers are unlikely able to afford to take conservation demand management ("CDM") and demand side management ("DSM") measures to reduce consumption. CDM/DSM alone, even if fully-funded for low-income consumers, is only one part of improving affordability for low-income households. Without an effective decision by the Board on rate affordability measures other than CDM/DSM, low-income consumers are faced with very difficult decisions between energy use and essentials for normal living and are vulnerable to disconnection.

Despite the existence of an affordability gap, some presenters suggested that the creation of a low-income energy rate assistance program by the OEB would be duplicative of existing social programs. This statement is wrong; the programs that LIEN is recommending will fund only the energy affordability gap and will not duplicate other community assistance. It is clear from this consultation that there is a continuing need to address low-income energy issues and that there is certainly unmet need for low-income consumers. The programs currently in place are not sufficient.

In conclusion, LIEN submits that the Board should implement policies and programs designed to assist low-income energy consumers. Such policies should address unafforable energy rates and bills and should involve setting a standard for what is an "affordable energy burden" and then providing discounts to reduce bills to an affordable level. In *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)*, the Divisional Court decided that the Board has jurisdiction to take into account the ability to pay in setting rates. The Board must exercise its discretion so as to achieve just and reasonable rates. As has been shown throughout this consultation, the negative impacts of unaffordable rates for low-income consumers are dire. In light of these impacts, current rates cannot be said to be just and reasonable. As such, ability to pay should be taken into account when setting rates. Doing so does not require the Board to go outside its jurisdiction. The fact that it has not done this before is irrelevant. Rather, what is required is to apply sound regulatory principles to the current factual matrix.

[15] In LIEN's view, any decline in energy prices due to a recession in the US will be short-lived. As liquidity and stability return to the financial markets, the economy will adjust and being to grow again. The problem of rising energy cost levels, in real terms, will not go away in the foreseeable future.

TOPIC 2 - Are there programs in place now, including emergency assistance programs to assist low-income consumers and if so, are there agencies and organizations which currently work with utilities to co-ordinate and administer these programs? What more, if anything, should be done?
(See Slides 29 – 38)

Low-income households face a patchwork of programs to help them retain their housing and pay their heating and electricity costs. Some energy bill emergency assistance programs are funded and delivered by the provincial and municipal levels of government, utility companies, community groups, and charities. These programs are designed to address individual household crises when a household is unable to meet the financial demands of energy bills. As such, energy emergency assistance programs provide invaluable relief and must continue. However, they are ill-suited to address permanent and widespread conditions of rising energy prices and income shortfalls.

Many existing assistance programs are seasonal, have different eligibility criteria, application processes, and assistance levels, are not available in all communities, and often do not provide enough money to solve the problem faced by the consumer. While some households may be able to prevent homelessness by pooling varying amounts of assistance from each program, funds tend to run out before the heating season is over. Accessibility to energy assistance programs is further hampered by lack of awareness of the programs and by social stigma.

For a review of ongoing social assistance programs in Ontario and their failure to meet recipients' needs, see the section of this document titled Social Assistance and Energy Affordability.

An effective emergency energy assistance program should engage various local community and non-profit groups that have experience in working with low-income households and are therefore better placed to identify and direct low-income people to the program. In order to ensure that all eligible households are aware of the energy assistance programs, there has to be an aggressive public education and outreach campaign which includes utility companies, social service agencies, charitable organizations, and community and advocacy groups.

During the consultation, there seemed to have been a suggestion that the Winter Warmth fund is an adequate emergency relief program for low-income consumers. Ms. Debbie Boukydis, from Enbridge Gas Distribution stated that in the past year, only $164,000 out of $354,000 Winter Warmth fund was accessed by low-income consumers. However, to interpret this as a lack of need for energy assistance would be wrong. As LIEN explained earlier during the presentations, there are many barriers to low-income consumers accessing the existing emergency energy assistance programs. These barriers include, but are not limited to, lack of awareness of the programs, overly stringent eligibility criteria, and social stigma. Other reasons were elaborated on by Ms. Jennifer Lopinski from A Place Called Home, who administers the Winter Warmth fund in her community. Namely, the seasonal nature of the Winter Warmth fund, which runs from December to April, limits low-income consumers being unable to access the fund in their

time of need. Completion of the application form is also a barrier to low-income consumers (whether because of the length of the form, language barriers, or feeling overwhelmed).

LIEN is advocating for a low-income rate assistance program which will ensure that low-income consumers do not pay more than 6% of their total household income on energy. Such a program would ensure ongoing affordability of energy bills and serve to *prevent* energy crises rather than just *react* to them after they have occurred. Energy efficiency programs and consumer education initiatives reduce the amount of energy used by low-income households and their energy bills. However, the reality is that energy prices are likely to continue to rise over time, exacerbating the energy burden on low-income households. Energy poverty is also expected to increase as many tenants' rents will cease to include utilities with the installation of smart sub-metering. Considering the reality of circumstances facing many people living with low-income (such as insecure work, fluctuating income, and short-term financial emergencies) it is important to note that even with a rate affordability program and an energy conservation and efficiency program, there will still be a need for a permanent, adequately funded, and accessible emergency energy fund.

TOPIC 3 – What is the experience with low-income energy assistance programs in other jurisdictions?

(See Slides 39 – 54)

LIEN was pleased to have had the opportunity to hear the presentations of PPL Electricity Utilities, Dominion Peoples, and Hydro Quebec under Topic 3. These presentations demonstrated that a low-income rate affordability program is possible. In each of these jurisdictions, low-income programs provide real relief for consumers struggling to meet their energy burden.

As Sadie Kroech of Dominion Peoples explained, Pennsylvanian utility companies have been guided with respect to these programs by statute and regulation. However, LIEN notes that Pennsylvania's low-income programs predated the *66PA Consolidated Statutes* which now govern these programs. The statute simply says that, after deregulation, the Pennsylvanian utilities are required to continue the low-income programs and ensure that they are maintained at the same level. The history of the Pennsylvania program and the compelling reasons for its development are more fully described in Appendix B, the LIEN response to the Concentric Energy Alliance report. Additionally, LIEN recognizes that the detailed regulatory structure seen in Pennsylvania regarding low-income energy programs did not develop overnight. Instead, it took many years to develop and implement.

Many presenters throughout the consultation stated that low-income energy affordability programs are best funded by government through general tax revenue. In light of this argument, LIEN would like to draw the Board's attention to a comment made by Tim Dahl of PPL Electricity Utilities and Sadie Kroeck of Dominion Peoples. They noted that if the Pennsylvanian utility companies had to rely exclusively on federal and state funding, they would not have a low-income energy affordability program at all. In the absence of a program, low-income consumers would continue to suffer, facing difficult decisions between energy consumption and basic essentials for living.

The experience in other jurisdictions indicates that utility revenue can be revenue neutral or even increase when bill credits or discounts are provided to low-income consumers. Revenue neutrality in this context occurs when the discounted rates or bills sufficiently improve payment patterns to offset any loss of revenue through the offer of the rate discount. An evaluation of the "universal service programs" operated by Indiana utilities, for example, found that while low-income program participants were billed 90% of what non-participants were billed, they paid 111% what non-participants paid.

The difference between bills rendered under a low-income affordability discount and bills rendered at standard residential rates is that the former is usually funded by various "system benefit" charges. Since low-income customers do not presently pay 100% of the bills rendered at the standard rate, however, those bill credits do not represent the true cost of a low-income program. The true cost is less than the sum of the bill credits.

The suggestion of revenue neutrality is supported by the presentations of PPL Electricity Utilities, Dominion Peoples, and Hydro Quebec. As LIEN's presentation pointed out, upon the introduction of a low-income program, the incidence of service terminations for nonpayment are dramatically reduced and the intensity of collection contacts decreased. LIEN notes, however, that the reduction in these collection ***activities*** directed toward low-income customers does not necessarily yield a reduction in overall collection ***costs*** for the utility. Instead of reducing costs overall, the reduction in collection actions directed toward low-income customers frees up those collection resources to be directed toward other nonpaying customers.

Of course, LIEN does not believe that the economic and efficiency benefits of a low-income policy are the only reason, nor the primary reason, to establish a rate assistance program. There is also a social benefit to implementation as well. Rate assistance programs provide real benefits to both the consumer and the utility.

LIEN believes that a great deal can be learned from an examination of low-income affordability programs that have already been established in other jurisdictions. As such, we have attached the report "Best Practices: Low-income Rate Affordability Programs" prepared by Roger Colton as Appendix C. This paper establishes best practice in relation to low-income programs through an assessment of nine low-income rate affordability programs in the United States. We urge the Board to read this report when considering how to exercise its jurisdiction in relation to this matter.

TOPIC 4 – Rate-related measures and issues associated with the implementation of rate-related measures to assist low-income energy consumers

(See slides 55 – 63)

LIEN proposes that there are many viable approaches to rates that would take account of ability to pay and affordability. A number of examples in other jurisdictions were reviewed in Topic 8 of our presentation in slides 118 to 123. For example, one approach would provide for tiered discounts to low-income customers' bills. This would assist both with affordability and with a conservation incentive, as well as ensuring that those most in need receive the greatest assistance. This is particularly important in light of the court's acknowledgement that the Board's statutory objective of energy conservation could also justify a "method or technique" in its rate making. The rationale of many of the U.S. programs is described in Appendix B, LIEN's response to the Concentric Energy Alliance report.

Provided that the utility earns a reasonable return on its global cost, the Divisional Court majority in *Advocacy Centre for Tenants-Ontario v. Ontario (Energy Board)* tells us that the Board

> might consider it appropriate to use a specific "method or technique" in the implementation of its basic "cost of service" calculation to arrive at a final fixing of rates that are considered "just and reasonable rates." This could mean taking into account income levels in pricing to achieve the delivery of affordable energy to low income consumers on the basis that this meets the objective of protecting "the interests of consumers with respect to prices".

A rate affordability program that is sufficient to address the problem of unaffordable rates for low-income consumers will likely require the financial support of other consumers. The Divisional Court accepted this when it said at paragraph 45 that:

> A low income rate affordability program would necessarily lead to treating consumer groups on a differentiated basis with higher prices for a majority of residential consumers and subsidization of the low-income subset by the majority group and/or other classes of consumers.

This does not preclude the Board from considering approaches that include elements of economic efficiency and program design that are consistent with traditional economic approaches to ratemaking. LIEN discusses some of these below.

It is generally expected that utilities should operate in a "least-cost" fashion. Utility regulators routinely apply this principle, both in examining the efficiency of contracting supplies (for operations and for capital projects) and in making choices such as the following: Should utilities buy insurance or self-insure? Should utilities include more debt or more equity in their capital structure? Should utilities build more base-load units or more peaking units?

The same “least-cost” principle should apply to the treatment of low-income customers who cannot afford to pay their bills. If one accepts the notion that utilities will service low-income customers, and that utilities simply cannot disconnect everyone who cannot afford to pay, then the question that presents itself is "how do you provide such service in the least-cost fashion possible?" Data from other jurisdictions suggests that a discount program for low-income consumers can provide the answer and that some program designs are preferable to others. For further discussion of effective program designs, please refer to Appendix B and C of this paper.

As has been discussed in previous topics, low-income rates are not based solely on social considerations. There are also good business reasons for offering a discount to low-income consumers. Billing an unaffordable amount, results in writing a large part of that unaffordable amount off as bad debt, carrying another significant part as arrears, and spending money to collect yet a smaller part. Instead, the utility should bill what is affordable and, in turn, collect the money which in many cases is more than would have been received without offering the discount. Such programs are good utility policy.

LIEN submits that well-designed rates can still be "cost-based" in the usual sense of utility ratemaking (with all its acknowledged non-cost considerations as well), but with an "affordability" constraint. Adjustments to low-income consumer bills are required when cost-based rates result in bills that are unaffordable. Such adjustments must result in bills that are affordable. The attached Appendix B containing LIEN’s response to the Concentric Energy Alliance report presents the assessment of low-income rate affordability initiatives within this least cost framework by several regulatory utility commissions.

Some presenters under Topic 4 identified concerns about the implementation of a rate-related measure to address energy affordability. One prominent concern was the difficulty that may arise in identifying low-income consumers. LIEN submits that this concern is manageable and certainly not sufficient to support inaction on the part of the Board. This problem can be addressed in many ways: through the use of an appropriate application process, good outreach within the community, providing one window access to programs, ensuring there is no downside to participation, building trust between the utilities and the consumer, providing for community delivery, establishing uniform eligibility criteria, establishing adequate funding, and properly training service providers.

A second concern cited by some presenters was that there may be a discrepancy between the ratio of low-income consumers in small utilities and large utilities. LIEN does not believe that there should be different low-income assistance programs based on the demographics of the utility. However, as was suggested in our proposal for an Ontario Home Energy Affordability Program for Low-Income Households, LIEN recommends that a “small utility” option be established. This would be appropriate as large utility companies will have greater capacity to offer more complex programs than smaller utility companies.

Several presenters at the consultation sought to establish confidentiality and privacy concerns as an insurmountable barrier to the implementation of low-income rate affordability programs.

LIEN disagrees. A review of the experience in other jurisdictions indicates that confidentiality issues are resolvable and that the administrative concerns are manageable.

In the United States, which does not have substantially less stringent privacy constraints than Ontario, the issue of privacy has not posed such a barrier. In the U.S., establishing partnerships between social service agencies and utilities operating rate affordability programs is considered to be a "best practice."

While obviously, Ontario operates under a different legal framework regarding privacy than the United States utilities, the U.S. experience demonstrates that the issue of privacy is not fatal to a low-income program. We reiterate, the issue is resolvable and the administrative concerns are manageable.

In summary, under this Topic LIEN has addressed the importance of a variety of considerations in public utility ratemaking. Today's need to consider a customer's ability to pay introduces a major new approach to which all stakeholders and the Board must adapt. LIEN has acknowledged the role of traditional accounting costs in setting an overall utility cost-based revenue requirement which rates in total must be set to recover. LIEN understands traditional approaches of assigning cost responsibility to utility functions and to customer groups. However, the fact is that in order to protect the interests of low-income consumers, rates will now have to be set subject to an affordability constraint.

TOPIC 5 – Customer Service Issues (Payment Period, Disconnection Rules, Security Deposits and Specific Service Charges) and Arrears Management Programs
(See slides 64 – 73)

LIEN supports terms and conditions for utility service (e.g. consumer security deposit requirements, payment time-lines and plans, disconnection and reconnection policies, termination moratoria) that are in the best interests of low-income consumers, and:

- will not add to the service costs and penalize low-income consumers who are experiencing payment difficulties,
- will assist low-income consumers in accessing and maintaining essential utility service.

Equal billing

Equal billing can help low-income consumers avoid falling into arrears by leveling the price peaks in gas and electricity bills that can accompany the winter heating load and summer cooling load. Gas and electricity distributors should be required to provide equal billing as a payment option to low-income consumers and all efforts should be made to maximize participation in equal billing by low-income consumers through incentives and removal of barriers. For example, as indicated in slide 66 of the LIEN presentation, credit history should not disqualify a low-income consumer, nor should being in arrears, as the arrears are likely an indicator of payment difficulties due to higher bills during heating and cooling seasons.

In addition, equal billing should be available to low-income consumers who have enrolled with an energy retailer.

As the OEB's March 6, 2008 Discussion Paper on Electricity Distributors - Customer Service, Rate Classification and Non-payment Risk notes on page 19:

> The benefit of equal billing to a customer is that it allows the customer to better budget for electricity payments, and "smoothes out" seasonal fluctuations in electricity consumption. This may increase the customer's ability to pay in each billing period, which may in turn reduce the risk to the distributor of customer non-payment.

"Pick-a-date" program

Customers on fixed incomes may need the ability to specify the date on which they make payments to ensure that payments are not due before income is received. For example, Entergy in the U.S. (a large utility serving many states in the mid-South with high poverty rates) offers a "pick-a-date" program which allows customers to co-ordinate bill payment due dates with their cash flow situation.

Waiver of late payment fees

Low-income consumers who are experiencing financial difficulty in meeting the costs of basic necessities and are unable to pay their gas and electricity bills in full and in a timely manner should not be penalized with the imposition of late payment fees. Late payment fees are not an effective incentive to pay for low-income consumers. Instead, late payment fees only add to the energy cost burden faced by low-income consumers and are an additional barrier to accessing utility service. Low-income consumers should be exempted from the imposition of late payment charges.

According to November 2006 testimony from Roger Colton filed before the New Mexico Public Regulatory Commission:

> [R]esearchers at Penn State University closely examined the priority in which residential customers pay various household bills. These researchers found that, low-income or not, residential customers overwhelmingly place the payment of their utility bills as their highest priority. One research study after another, ranging from my NLIEC work, to the two NEADA studies, to a seminal survey of Iowa LIHEAP recipients, have confirmed that customers place the payment of utility bills as a priority over other household necessities, including the purchase of food, medicine and health care services. If utility bill payments are the highest bill payment priority with which to begin, a late payment charge cannot (and will not) be an effective "incentive" to promote prompt payment. [16]

The New Mexico commission agreed. It directed that Public Service Company of New Mexico to reduce its late fee to 8% (its weighted cost of capital), and to exempt natural gas low-income customers from being charged that fee.[17] The New Mexico commission subsequently extended that order to PNM's electricity customers.[18] In addition, New Mexico's Zia Natural Gas Company, rather than litigating the issue, agreed to exempt its low-income customers from being charged a late fee.

Arrears Management Program

An arrearage management program component is necessary to help get low-income customers "even" so they have a chance at future success in making payments. In order for the program to be effective, households cannot be subject to service termination for past due bills incurred

[16] Direct Testimony and Exhibits of Roger D. Colton on Behalf of Community Action of New Mexico (CANM) Albuquerque, New Mexico, In the Matter of the Petition Of Public Service Company of New Mexico for a Revision to its Rates Rules and Charges Pursuant to Advice Notice Nos. 755 and 756, State of New Mexico Before the New Mexico Public Regulatory Commission, November 2006. Pages 10-11.

[17] In the Matter of the Petition of Public Service Company of New Mexico for a Revision to its Rates, Rules and Charges Pursuant to Advice Notices Nos. 755 and 766, Case No. 06-00210-UT, Final Decision and Order, June 29, 2007

[18] In the Matter of the Petition of Public Service Company of New Mexico for a Revision to its Rates, Rules and Charges Pursuant to Advice Notices No. 344, Case No. 07-00077-UT, Final Decision and Order, April 28, 2008.

before the program began. In addition, having current bills be affordable will be of little benefit if the total bill is unaffordable due to payment obligations required to retire past arrears.

LIEN's proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households* includes an arrearage management program comprised of the following components:

- Arrears are to be retired over a two-year period;
- Customers are to make co-payments toward their arrears;
- Co-payments are to be set equal to an affordable percentage of income (1% per year);
- No pre-condition is established for the grant of arrearage management credits; and
- The appropriate response to non-payment is to place the program participant in the same collection process as any other residential customer.

Disconnection moratoria

Unaffordable home energy bills leading to disconnection of utility service poses serious public health and safety risks for low-income households.[19] LIEN has recommended that the OEB should protect against weather-induced illness and death by establishing mandatory disconnection moratoria for the heating and cooling seasons.

Disconnection of utility service is particularly devastating for infants, the elderly and those who are ill or disabled. Accordingly, LIEN also recommends that the OEB establish year round disconnection moratorium conditions that address age and medical conditions.

Disconnections and Disconnect Notices; Consumer security deposits

The data recently supplied by Ontario's public utilities in the low-income consultation largely confirms the concerns that LIEN expressed with respect to two issues: (1) the issuance of shutoff notices; and (2) the collection of cash security deposits. Four utilities provided responses to the OEB's request for information: Union Gas; Enbridge Gas, Hydro One Networks, and Toronto Hydro. These responses, however, generally reported a lack of data. This lack of data maintained by the four utilities is as telling as the information that *was* reported.

Disconnections and Disconnect Notices

The information provided by Ontario's utilities to the OEB confirms that the provincial utilities tend to over-notice the possibility of the disconnection of service for nonpayment. Union Gas

[19] See *Public Health Outcomes Associated with Energy Poverty: An Analysis of 2007 Iowa Behavioural Risk Factor Surveillance System (BRFSS) Data from Iowa*, prepared for Iowa Department of Human Rights, Bureau of Energy Assistance, Des Moines, Iowa, by Roger D. Colton. June 2008. Also see *Unhealthy Consequences: Energy Costs and Child Health*, draft report prepared by the Child Health Impact Working Group, Boston, Massachusetts, November 2006.
http://www.mlpforchildren.org/files/Energy%20Costs%20and%20Child%20Health%20-%20Full%20Report.pdf

provides the most glaring example, with Hydro One close behind. From 2006 through 2008 (YTD), Union Gas printed shutoff notices on between 15 and 20 customer bills for every shutoff the company actually implemented. In the year with the *highest* follow-up (2006), only 7% of the Union Gas shutoff notices was actually followed-up by an actual disconnection of service.

Hydro One reported similar data. Between 2006 and 2008, Hydro One issued between 10 and 16 shutoff notices for each shutoff that the Company actually implemented. In the year with the highest follow-up, only 10% of Hydro One's shutoff notices were followed-up with an actual disconnection of service. Toronto Hydro more narrowly targeted its disconnect notices, with a follow-up of close to 20% in 2006 and 2007; no 2008 data was reported by Toronto Hydro.

Only Enbridge Gas targets its disconnect notices to customers it intends to actually disconnect, with a follow-up rate of between 80% and 85% for 2006 and 2007.[20]

Aside from threatening collection activities when no present intent exists to engage in those activities, the provision of a notice of a service discontinuance when there is no present intent to engage in the discontinuance is counterproductive to the entire purpose of notice with which to begin. The purpose of a notice is to provide a clear and believable warning that a service termination is about to occur. In response to such a notice, the customer must either take the steps necessary to prevent the service termination or take those steps needed to protect him or herself against the dangers to life, health and property that might result from the loss of service.

A utility shutoff notice should be made at a meaningful time and in a meaningful manner. To meet these standards, the notice should contain specific information and meet specific standards. For example:

- The notice should state the reasons for having the utility seek the termination of service.

- To fulfill the standard that the notice be meaningful, it should give a clear and believable warning that termination is about to occur.

- The notice must inform the consumer of the required procedure by which the proposed termination can be avoided. It should, for example, mention the available procedure by which a disputed termination can be challenged.

In sum, through a shutoff notice, the customer should be informed clearly of the pending shutoff along with the means to avoid it. A repeated issuance of shutoff notices with no intent to carry through with the threatened service termination violates each of these principles.

The issuance of a shutoff notice must be read in light of the purpose of a notice. To meet the requirement that the notice be "meaningful," it must give a clear and believable warning that termination is about to occur. The key word in this formulation is that the notice be "believable."

[20] One question for Enbridge is how it defines the "disconnect notice" that it reported. If Enbridge reports only posted disconnect notices, for example, even though it includes disconnect notices on its bills (or on mailed notices), then its data is misleading.

When a utility repeatedly issues shutoff notices warning customers of an imminent pending service disconnection unless bills are paid in full, without following up those notices by performing the threatened collection activity, it conveys the message that customers may ignore the shutoff notice with no adverse result arising.

These observations about notice are particularly important with respect to the termination of utility service because shutoff notices serve a number of different functions. One function is to permit the customer to contact the utility, make payment, or arrange an affordable deferred payment arrangement. However, other functions can be served as well. One *different* function of a shutoff notice is to permit the customer to make alternative plans after service is, in fact, terminated. Consider, for example, that the right to receive notice does not depend upon the right to contest the disconnection of service. Regardless of whether a customer has a right to contest a discontinuance of service, they certainly have a right to know that service is being discontinued to enable them to protect themselves from damages that might occur.

By sending repeated disconnect notices, with no collection follow-up, a utility destroys the message contained by the notice. As LIEN requested in its presentation, the OEB should act to remedy this over-noticing of shutoffs. Additionally, LIEN recommends a waiver of disconnection fees as well.

Consumer Security Deposits

LIEN has requested that low-income customers be exempted from the imposition of cash security deposits. The most common utility response to this request, however, is that cash security deposits are needed in order for the utility to secure itself against nonpayment. The cash security deposit, under this reasoning, would be applied against bills that would otherwise go unpaid and, as a result, help the utility reduce its bad debt.

At best, Ontario's utilities cannot empirically support that role for cash security deposits. Of the four utilities providing responses to the OEB, three (Enbridge Gas, Hydro One, Toronto Hydro) could inform the OEB of the number of accounts for which the utility holds a cash security deposit, and the dollar value of the deposits held. However, the utilities could *not* report the number of deposits (or value of dollars) applied against an account that would have otherwise gone unpaid in the absence of the deposit.

Moreover, the only utilities that *could* provide data regarding how frequently deposits were applied against an outstanding account documents the extent to which that utility over-secures itself by its cash security deposits. For the three years 2006 through 2008 (YTD), Union Gas held cash security deposits for between 90,000 and 100,000 accounts, while applying those deposits against fewer than 3,000 accounts per year. In more than 95% of the cases in which the Company deemed an account to pose a risk of nonpayment in the absence of a deposit, in other words, Union Gas was wrong in its risk assessment.

Union Gas would appear to be getting worse in its prediction of nonpayment risk. From 2006 through 2008, the Company increased both the number of accounts from which deposits were demanded (from 91,565 in 2006 to 99,073 in 2008) while, at the same time, decreasing the number of accounts against which deposits were applied. The same trend is evident with the dollars of security deposits held by Union Gas. While Union Gas has increased the value of security deposits it holds, from $24.5 million in 2006 to $26.8 million in 2008, the value of security deposits applied against accounts that would have gone unpaid in the absence of a deposit has decreased.[21]

Other than Union Gas, the other three utilities have no idea of the extent to which cash security deposits protect those companies against the potential loss of revenue in the absence of the security deposit. None of these companies could report either the number of accounts or the value of dollars applied against accounts that would have gone unpaid in the absence of the security deposit.

Further, security deposits are posted disproportionately by low-income consumers. These deposits, in many jurisdictions, are considered "customer contributed capital" (akin to "contributions in aid of construction" or "CIAC"). As customer contributed capital, those dollars are deducted from the rate base. This deduction from the rate base will generate a benefit to all customers as customers will not have to pay a return on that amount of the rate base that has been offset by the customer contributed capital. As such, security deposits are used to reduce rates for all customers.

According to an interpretation of the "cost-causation" rule, if low-income customers post the deposits that generate the benefit, those benefits should be returned directly to low-income consumers in the design of rates as they are the group of customers "causing" the benefit. One way to do this would be to impute interest on these security deposit balances and transfer this amount to the account where the accumulated systems benefit charge is kept.

Another approach, of course, is to retain security deposits in a "deferral account" and accumulate interest on the balances in the account at some short-term cost-of-debt rate. Costs of non-payment could be debited to this account. The adjusting amount to "balance"/"true-up" this account over time could come from a partial utilization of the funds collected through a system benefits charge. Arguably, when security deposits were returned to customers, they could be returned "with interest".

LIEN submits that the impact of security deposits on making utility bills unaffordable to low-income customers, the barrier that the imposition of such deposits creates for continuing utility service, and the inability of Ontario's utilities to document the usefulness of deposits in protecting against the loss of revenue due to nonpayment, all provide substantial support for LIEN's request that such deposits be waived for low-income customers.

[21] LIEN recognizes that 2008 presents partial year data.

TOPIC 6: Conservation Demand Management and Demand-Side Management Programs for Low-income Consumers

(See slides 74 – 90)

Energy efficiency programs cannot solve the problem of energy affordability alone. However, efficiency measures can make a significant contribution to the reduction of energy burden, and can have environmental benefits as well. In developing CDM and DSM programs for low-income consumers, one must ensure that they are effective. Programs focused upon behavioral education and changes may not result in a huge reduction in energy costs but they have important cumulative effects. That being said, the greatest benefits will be achieved through the introduction of deep weatherization measures, such as the installation of energy efficient appliances, proper attic and wall insulation, and an efficient heating system. Provinces, including Manitoba, Nova Scotia, and New Brunswick, have low-income energy efficiency programs that provide such deep weatherization measures.

As some presenters noted during Topic 6, in some jurisdictions there is low consumer uptake of existing weatherization programs. This should not be interpreted to mean that a need does not exist for such programs. There are often barriers to low-income consumers accessing weatherization programs. These barriers may include a lack of awareness about the program, discouragement or disenchantment with previous initiatives, and mistrust of utilities. These problems can be addressed through program design and should not serve to limit the availability of weatherization programs for low income-consumers.

LIEN supports low-income conservation programs. However, these must be offered in conjunction with an energy affordability approach to rates by the Board. Conservation cannot reach the number of people needed in the time needed. Even if conservation budgets were increased very significantly, it would likely take many years, perhaps even decades, to reach all low-income households that require affordability assistance. Before concluding that conservation programs alone are sufficient, LIEN would ask the Board to assess how many low-income housing units need conservation? How big of a budget would be required to treat all those units? How many years would it take to develop the capacity to deliver the conservation to that number of units? LIEN submits that the answers demonstrate the imperative for energy affordability through rates to be an immediate and integral component of the approach to ensuring just and reasonable access to energy services for low-income consumers.

TOPIC 7: Miscellaneous Issues – Time of Use Pricing; Sub-metering issues; Consumers on direct market contracts.

(See slides 91 – 112)

Smart sub-metering in the private multi-residential rental sector in Ontario

The majority of low-income households in Ontario are tenants who reside in multi-residential buildings and currently pay for their utilities in their monthly rent. Under section 137 of the *Residential Tenancies Act, 2006* ("RTA"), a section still to be proclaimed, landlords will be able to proceed with the installation of Smart Meters and smart sub-metering systems, without the consent of sitting tenants and provided certain requirements are met. Landlords will be able to transfer the costs of in-suite electricity consumption to the tenants who will pay for an electricity bill directly and separately from their monthly rent. The landlord will be required to reduce the tenant's rent once the in-suite electricity service costs are paid directly by the tenant.

However, smart sub-metering activity is currently proceeding in the multi-residential sector (both through unit turnover to a new tenancy and under RTA s.125 with sitting tenant consent) despite the fact that section 137 of the RTA has not been proclaimed. As a result, tenants' housing affordability and security is threatened and the motivation to pursue conservation is transferred from the landlord to the tenant. Effectively, energy conservation opportunities are lost.

The current smart sub-metering activity in the multi-residential rental sector is occurring:

- without landlords being required to meet energy conservation criteria for the rental units in their building;
- with the expectation that tenants will be able to reduce and/or shift their discretionary in-suite electricity use, even if they are stuck in energy inefficient buildings and suites;
- without the requirement for smart sub-metering providers working in the rental sector to be licensed by the Ontario Energy Board;
- with the only control over costs being billed by smart sub-metering providers on behalf of exempt distributors (i.e. building owners) contained in section 4.0.1 of O. Reg. 161/99 – Definitions and Exemptions, made under the *Ontario Energy Board Act, 1998*[22];
- without clarity or guidance on how rent reductions are calculated;
- with tenants ill-equipped and lacking the full information required to assess whether they will be better off or worse off financially after agreeing to pay for in-suite electricity costs directly;

[22] To maintain status as an exempt distributor, this section requires that electricity be distributed "for a price no greater than that required to recover all reasonable costs". However, the OEB has no rules or guidelines in place with respect to what it will consider as "reasonable" costs. Reviews of whether costs are "reasonable" are undertaken by the Board on a reactive, complaints basis. This assumes some degree of knowledge and expertise that consumers may not have, and puts the onus on the tenant customer to monitor charges and bring forward complaints to the Board for resolution.

- with landlords contracting with electricity retailers for the commodity at prices per kWh that may be greater than the Regulated Price Plan (RPP), which the tenant must pay because the tenant deals with the landlord not the distribution utility; and
- without formal confirmation from the Ministry of Community and Social Services that smart sub-metered tenants will be eligible to apply for assistance from the provincial Emergency Energy Fund.

As time proceeds without RTA s.137 being proclaimed and in force, tenants in Ontario will become responsible for directly paying for in-suite electricity consumption, without landlords having done the energy conservation/efficiency retrofits that would be required under the regulations, teants will become responsible for their electricity consumption without detailed, transparent rules for the calculation of a fair rent reduction. Tenants will be paying for utilities despite landlords doing nothing to remedy old appliances, the inefficiencies of old heating systems, and poorly insulated building envelopes.

Even with the proclamation of RTA s. 137, the onus for enforcement will fall on tenants who will have to apply to the Landlord and Tenant Board or file complaints with the Ministry of Municipal Affairs and Housing's Investigation and Enforcement Unit.

The rollout of the smart meter initiative in the multi-residential rental sector should not further impoverish low-income tenants, and the costs of reducing energy use should be fairly shared between landlords and tenants.

Time-of-Use Pricing

The provincial government's rationale behind the expansion of the Smart Meter initiative to the multi-residential rental sector is to engage landlords and tenants in the "Culture of Conservation" being promoted as part of the plan to reduce peak electricity demand. The intended goal is to give multi-residential households direct control over their electricity use, and to allow these consumers to get credit for changing the amount or the timing of their electricity consumption.

However, low-income households, especially families with children, seniors, the disabled, and the unemployed, have the least capacity to shift their energy use to lower-cost, off-peak time.

Tenant households in particular have fewer appliances and fewer opportunities to conserve. This is relevant with respect to time-of-use pricing, since tenant households are the least likely to have washing machines, dryers or dishwashers in their home - appliances that might allow a consumer to derive a benefit from time-of-use pricing. Additionally, they have no control over the energy efficiency of landlord-purchased refrigerators.

Time-of-use pricing may mean that low-income households will pay higher electricity bills. That is, it may increase the financial burden on low-income households and threaten their ability to keep the lights on, maintain their housing and pay for food, medicine and other basic necessities.

A recent report prepared for the New Jersey Department of Public Advocate concluded that "…utility investments in AMI are not the least cost approach to reducing the annual energy use of residential customers in New Jersey, or the bills and air emissions associated with that annual energy use. Those reductions in annual electricity use, annual bills, and annual air emissions can be achieved at less cost through investments in energy efficiency and voluntary participation in direct load control programs."[23]

Retail energy contracts and early termination fees

If a low-income consumer has signed a retail contract for gas or electricity without fully understanding the financial implications and pays more for the commodity than that charged by the distributor, the consumer should be able to cancel the contract without paying a penalty fee for early termination. Better customer education about energy retailing and improved retail sales practices can overcome some of the current problems. However, there is still the need to be able to cancel a retail contact without a penalty when a low-income customer faces an unaffordable energy burden.

[23] Advanced Metering Infrastructure – Implications for Residential Customers in New Jersey. July 8, 2008. Paper prepared by Synapse Energy Economics, Inc. for New Jersey Department of Public Advocate, Division of Rate Counsel. Page 15. http://www.nj.gov/publicadvocate/utility/docs/AMI_White_Paper-_final.pdf

TOPIC 8: Program Funding Mechanisms

(See slides 113 – 123)

LIEN submits that the Board should exercise its jurisdiction and take ability to pay into consideration when deciding upon "just and reasonable rates." LIEN also submits the most appropriate method to fund such a low income rate assistance program is through a system benefits charge paid by all customers, with a defined low-income exemption.

A rate-payer funded program provides the stability, equity, and predictability that a government funded program cannot. Additionally, LIEN submits that all rate classes should contribute through the system benefits charge. LIEN's reasons for this proposition are articulated on slide 117 of its presentation. LIEN also submits that low-income DSM programs should be provided to eligible customers free of charge. Such programs and other energy efficiency programs should also be funded primarily through the systems benefits charge and may be supplemented by federal and provincial funding when possible. LIEN's view, however, is that a system benefits charge permits continuous, stable funding of these very necessary programs, whereas federal and provincial funding would be less dependable.

Some presenters noted their concern that ratepayers will be unable to afford the extra burden of a system benefit charge or a charge on distribution rates. LIEN submits that evidence from other jurisdictions which have imposed a system benefit charge shows that the charge does not impose an affordability burden beyond those eligible for the program. For example, PPL Electricity Utilities and Dominion Peoples noted that the system benefits charge for their utilities in Pennsylvania amounted to only $50 a year for the consumer. This does not present an unmanageable burden for most middle to high income earners and commercial consumers.

Additionally, submissions were made that low-income programs will not substantially address the many aspects of poverty facing low-income households. LIEN submits the benefit of an low-income energy affordability program a case would be significant. Unaffordable energy burdens can have dire effects on a low-income consumer – they are forced to make difficult decisions about energy consumption and provision of necessities and are often at a constant risk of disconnection. While it is true that broader concerns of poverty may be beyond Board's jurisdiction, the specific issue of setting rates that are just and reasonable, including consideration of ability to pay, is certainly within the purview of the Board.

Finally, some presenters expressed concern that establishing a low-income energy affordability program funded through ratepayers would result in an unmanageable number of requests for similar special consideration. Again, LIEN submits that evidence from other jurisdictions which have imposed a low-income affordability program funded through a system benefits charge have not experienced this problem. The California low-income program was adopted in 1989 and Ohio's in 1983. The Pennsylvania and Maine programs were both adopted in 1990. Each of these substantial low-income programs are roughly 20 years older or more. None of these jurisdictions have experienced the "floodgate" problem predicted by these parties. Such an argument is not merited based on experience.

Low-income energy assistance programs are best funded through a systems benefits charge applied to all utility consumers. As highlighted during LIEN's presentation, this model has worked well in other jurisdictions. The concerns brought forward by some under Topic 8 can be properly addressed through program design and certainly do not negate the value of a rate-payer funded system.

CONCLUSION

(See slide 124)

LIEN submits that the Board should exercise its jurisdiction and take ability to pay into consideration when deciding upon just and reasonable rates. Low-income assistance programs currently in place are not sufficient. As demonstrated in the presentations and elaborated on in these comments, there is an “affordability gap” between low-income consumer needs and available assistance. Furthermore, there is a continuing need to address low-income energy issues.

LIEN submits that an affordable energy burden of 6% should be established and tiered discounts should be provided for low-income consumers for the portion of their bill that exceeds this amount. Such a low income rate affordability program, as well as low-income energy efficiency programs, should be rate-payer funded.

Throughout this consultation, many presenters suggested that a task force be set up to deal with the issue of low-income energy and related issues. In LIEN's view, a task force could sideline resolution of these issues at this time. LIEN urges the Board to seize the initiative to find solutions and implement them.

The specific issues can then be dealt with appropriately. LIEN submits that the Ontario Energy Board has not only the jurisdiction (which the Court confirmed) but also, in the face of evidence such as that provided during this consultation, the mandate to take into account the ability of low-income consumers to pay when fixing or approving energy rates and to deal with the other low income energy issues mentioned in this submission.

LIEN submits that the Board should take the following steps:

- Hold a generic proceeding to consider standard minimum terms of service conditions that apply to low-income consumers (both "standard minimum" and "low-income" to be defined) and to decide other issues that might be decided as facets of a low-income rate affordability program;
- Announce the Board’s intention to impose a System Benefits Charge on all distribution system customers (with a defined low-income exemption) and call for the fund created from the charge to be used in two ways:
    - i) provide a tiered discount to apply to bills of low-income consumers on a basis to be developed based on consultation and hearings by the Board;
    - ii) provide monetary and physical resources for “deep measures” low-income CDM/DSM programs applicable to gas and electricity customers;
- Routinely include low-income energy considerations in hearings and decisions that come before the Board.

APPENDIX A: LIEN AND ITS MISSION STATEMENT

The Low-Income Energy Network ("LIEN") has members from a broad range of organizations from across Ontario including: energy, public health, legal, tenant/housing, education and social and community organizations. LIEN is directed by a Steering Committee, including members from the Canadian Environmental Law Association, Tenants Advocacy Centre Ontario, Income Security Advocacy Centre and the Toronto Environmental Alliance. In addition to the Steering Committee, members and supporting organizations have also indicated their support for the Network.

Mission Statement:

The Low-Income Energy Network:

- aims to ensure universal access to adequate, affordable energy as a basic necessity, while minimizing the impacts on health and on the local and global environment of meeting the essential energy and conservation needs of all Ontarians.
- promotes programs and policies which tackle the problems of energy poverty and homelessness, reduce Ontario's contribution to smog and climate change, and promote a healthy economy through the more efficient use of energy, a transition to renewable sources of energy, education, and consumer protection.

APPENDIX B: REVIEW OF CONCENTRIC ENERGY ALLIANCE'S REPORT

The purpose of this appendix is to respond to certain assertions made in the report prepared by Concentric Energy Advisors presenting a review of low-income energy assistance measures adopted in other jurisdictions. The objective of this section is *not* to respond to the Concentric Energy report on a point-by-point basis. Rather, the objective is to respond to certain unsupported, or erroneous, observations that Concentric Energy set forth as factual.

Low-Income Programs are Frequently Found to be Fundamentally Consistent with the Underlying Goals of Utility Regulation

The Concentric Energy report ("Concentric") asserts that the adoption of low-income rates "may be incompatible with the primary underlying purpose of public utility regulation which is to act as a substitute for competitive markets." (Concentric, at 3). Concentric perpetuates the erroneous assertion that there is a conflict between low-income rates and the *real* role of regulators when it states that "regulatory authorities are placed in the difficult position of trying to balance the mandate for just and reasonable rates with the social pressure to help those in need of rate assistance." (Concentric, at 63).[24]

Concentric errs in its observation that low-income discounts are formulated exclusively to "provide a significant social benefit." (Concentric, at 3). Based on this formulation of the basis for low-income programs, Concentric urges that "this benefit must be weighed against the cost to subsidize this customer segment, and the regulator must consider whether it is equitable for taxpayers or utility customers to finance this subsidy." (Concentric, at 3 – 4).

Concentric misses the point again when it urges, without a thorough review of the implementation of low-income programs, that "traditionally, utility regulation has sought to establish rates that are cost-based, and which do not discriminate between or within customer classes. However, low-income programs tend to distort this regulatory principle by introducing rates that result in cross-subsidization of one specific group of customers by the general body of ratepayers." (Concentric, at 21). Concentric asserts that "for a variety of reasons, public utility ratemaking may not be equipped to deal with this social problem efficiently." (Concentric, at 22).

A review of the basis for the adoption of various low-income rate assistance programs in the United States reveals that such programs are not grounded simply on "the social pressure to help those in need of rate assistance." Rather, low-income rate assistance programs are found to serve fundamental regulatory purposes quite apart from, and in addition to, their social functions. The regulatory foundation for low-income programs in three separate states is reviewed below. The programs in these three states support the conclusion that, despite the fact that Concentric Energy (and others) urge that the low-income rate affordability programs are exclusively "social programs" that are, at a minimum, in a tension with regulatory principles and, more likely, in direct conflict with such principles, in reality, such programs have sound regulatory foundations grounded in fundamental utility regulatory principles.

[24] In this respect, Concentric's word play should be acknowledged and rejected. LIEN disputes that whereas there is a "mandate" for just and reasonable rates, there is merely "social pressure" to help those in need. LIEN further disputes that there is a conflict between those two regulatory goals.

Ohio's Percentage of Income Plan ("PIP")

The State of Ohio initiated the first straight Percentage of Income Payment Plan ("PIPP") in the United States.[25] The Ohio PIPP was developed by the Public Utility Commission of Ohio ("PUCO"). There were two distinct programs, one for natural gas and one for electricity. The electricity program is now under the administration of the Ohio Department of Development ("ODOD"). Currently both programs operate under the framework established by the PUCO prior to the transfer to ODOD.[26] However, statutes grant ODOD with authority to redesign the electricity program through the regulatory process.[27]

The incorporation of the Ohio electricity PIPP into statute and regulation culminated a nearly two-decade long initiative to address the problems of low-income Ohio residents who could not afford to pay their home energy bills. The PUCO created the Ohio PIPP in 1983 in response to an emergency arising from the inability of low-income Ohio residents to maintain their home energy service.[28] The Commission found that the disconnection of utility service for nonpayment by those who were financially unable to pay constituted an "emergency" as described by Ohio statute.[29]

The Ohio PIPP, as initially conceived by the PUCO, did not represent a discounted rate for low-income customers. Instead, the PIPP was designed to enable low-income customers to retain their utility service by entering into an agreement pursuant to which the customer would make a utility bill payment equal to a prescribed percentage of income. Customers entering into such agreements, however, would not be relieved of paying bills in excess of the percentage of income. Rather, customers would continue to be liable for those arrears. Those accrued arrears would be subject to repayment by the customers when such customers left the PIPP.

In its 1983 decision, the PUCO found that there were both legal and "practical" reasons to adopt the proposed PIPP. According to PUCO, no legal impediment existed to the adoption of PIPP:

> Contrary to the arguments of those who oppose the percentage of income payment plan, the plan adopted by the Commission. . .does not constitute income redistribution, and is reasonable and lawful. This plan does not constitute income redistribution because those customers who qualify for the plan are still liable for any arrearages on their bills. There is no debt forgiveness. The Commission is just foreclosing one method by which a utility may exercise its rights to collect for

[25] A "straight PIPP" is a rate that bases bills on a percentage of household income for income-qualified customers. It stands in contrast to a "fixed credit" program or a "tiered discount" program, both of which are income-based. LIEN explained the various types of programs in its September presentation to the OEB.
[26] ODOD regulations provide that "payment arrangements, and responsibilities for a percentage of income payment plan program customer shall follow the procedures set forth in [specified sections of the Ohio Administrative Code]." See, Ohio Administrative Code, §4901:1-18-04 (2007).
[27] O.R.C., §4928.53(B)(3). ODOD has begun the process of redesigning the rules.
[28] Docket No. 83-303-GE-COI (November 23, 1983).
[29] O.R.C., § 4909.16 (2007).

> the debt. The utility still has available to it all of its other remedies at law. Because the customer is still liable for his/her arrearages, the Commission's percentage of income payment plan does not constitute free service or a rebate as charged by opponents to the plan. . .Nor does the plan adopted by the Commission unlawfully discriminate. All residential consumers similarly situated can take advantage of this plan. The policy of this Commission to prevent those without the present ability to pay their utility bills from freezing is a valid state purpose and is the basis upon which the Commission has established this plan. We believe it to be a rational basis.[30]

The PUCO proceeding that gave rise to Ohio's PIPP in 1983 did not exclusively concern establishment of the PIPP. Instead, the proceeding considered a broad range of issues relating to payment plans, deposits, and voluntary fuel check-offs as a means to generate energy assistance funding. Early in the proceeding, the PUCO declared that an "emergency" existed because of the number of residential gas and/or electricity customers who were unable to obtain service for the winter heating season because of the disconnection for nonpayment attributable to economic recession, increases in the cost of gas and electricity service, and a decrease in the level of governmental assistance. Based on that emergency, PUCO prohibited the disconnection of gas or electricity service during the ensuing winter season, and ordered the reconnection of service by customers who paid either one-third of their outstanding balance or $200, whichever was less. This is commonly referred to as the Winter Reconnect Order. This Order is still issued annually as an "emergency" measure though the payment requirement has been change to $175, while customers using the rule are required to enroll in a payment plan; PIPP is one of the optional payment plans.[31]

Consideration of the PIPP arose out of ***utility*** objections to the Commission's "failure to take into consideration a customer's ability to pay before imposing the moratorium. . ." At least in partial response to that objection, the PUCO docketed an investigation into "long-term solutions to the problems arising from the winter emergency situations."

The Commission rejected arguments by Ohio's utilities that proposals such as the PIPP were not "long-term solutions" to winter inability to pay problems. PUCO noted that "the utility position in this proceeding is that the only long-term solution to the problem is economic assistance and that all other proposals, falling short of being long-term solutions, are outside of the scope of this proceeding."

In dismissing this argument, the Commission agreed that "the legislature needs to adequately fund energy assistance and weatherization and conservation programs for low-income consumers. That does not mean that such aid is the ***only*** ingredient of a comprehensive solution to the problem, only that it is a necessary ingredient" [emphasis added]. Moreover, the PUCO found that the proposed Ohio PIPP best accomplished the goals the Commission sought relative to other available alternatives. The goal, PUCO noted, involves protection of the interests of two disparate groups of ratepayers:

[30] Docket No. 83-303-GE-COI, Opinion and Order, at 14.
[31] Docket No. 06-1075-GE-UNC, Entry (September 6, 2006).)

> We are not willing to stand by while others, too poor to pay for utility service during the winter, freeze. At the same time, we are ever mindful of protecting the vast majority of customers of utilities under our jurisdiction who pay their bills in full from responsibility for greatly increasing uncollectibles.

The proposed PIPP, according to the Commission, best served both of those goals given available alternatives:

> We have in this proceeding looked at such alternatives to the percentage of income plan as maintaining the status quo, extending payment plans from six months to twelve or more months, and having another moratorium. All things considered, the percentage of income plan adopted by the Commission today will do the most to assist those in need to maintain utility service while protecting the companies' remaining ratepayers."

In sum, the PUCO found that "from our perspective, the true long-term solution to the problem is three-fold: adequate tax funded energy assistance programs, adequate tax funded weatherization and conservation programs, and adequate Commission rules. Of those, only the first, energy assistance, is totally outside of this Commission's jurisdiction."

The PUCO's decision to adopt the PIPP for Ohio was affirmed by the Supreme Court, even though the court originally disapproved the original cost-recovery mechanism.[32] Despite this disapproval of the PIPP cost recovery,[33] the Supreme Court approved the lawfulness of the underlying PIPP decision. The Court noted:

> Pursuant to its emergency powers under R.C. 4909.16, the PUCO created the PIP plan as a response to growing concern "about the number of residential gas. . .[and] electric customers unable to obtain service as a result of disconnection for nonpayment of bills because of the economic recession, increases in the cost of gas and electric service, and a decrease in the level of governmental assistance . . ." (internal citation omitted). . .[I]t is the opinion of this court that it is clearly within the PUCO's emergency powers under R.C. 4909.16 to fashion such relief as that provided by the PIP plan and we find the plan of the commission to be manifestly fair and reasonable as a solution to the crisis.[34]

In sum, while the Ohio electricity PIPP is today embedded in statute, its original development occurred under the general regulatory authority of the Ohio state utility commission. In Ohio,

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[32] Montgomery County Board of Commissioners v. Public Utilities Commission of Ohio, 28 Ohio St.3d 171, 503 N.E.2d 167, 171 (Ohio 1986).

[33]The Court informed the PUCO: "while we cannot condone the recovery of arrearages through the EFC rate in light of the specific statutory language of R.C. 4905.01 and 4909.191, we do not express the opinion that the PUCO would be precluded from fashioning an alternative accelerated recovery mechanism which is not contrary to statute, including recovery of arrearages on a more current basis rather than only after a twelve-month delinquency." Id., at fn4. The PUCO quickly approved an alternative cost recovery mechanism. Docket No. 87-244-GE-UNC.

[34] 503 N.E.2d at 170 (internal footnotes omitted).

the commission has authority to take action under circumstances that it deems to be an "emergency." Having declared that emergency, the commission was authorized to develop payment plans responding to that emergency. As originally adopted, the Ohio PIPP was simply one type of payment plan.

Contrary to the views expressed by Concentric, it is clear that programs such as those in Ohio have sound regulatory foundations grounded in fundamental utility regulatory principles and applied in public utility regulation for many years.

Pennsylvania's Customer Assistance Program ("CAP")

The rate affordability programs operated by Pennsylvania natural gas and electricity utilities for their low-income customers began nearly 20 years ago with a small pilot project by Columbia Gas Company.[35] Since that time, the universal service concept has expanded for Pennsylvania's energy utilities so that the companies now devote more than $240 million each year to supporting their low-income customers.[36] While the genesis of the Pennsylvania universal service programs can be found in the Pennsylvania PUC's generic authority over the operations of energy utilities, the preservation of those programs has since been written into statute.

Two utilities in Pennsylvania pioneered the use of affordable rates as a means to address the payment troubles experienced by low-income customers. Columbia Gas Company responded with a willingness to pursue a program first proposed by the state Office of Consumer Advocate. Equitable Gas Company also proposed an income-based rate for its low-income customer population.

The Columbia Gas of Pennsylvania Energy Assurance Program ("EAP")

The Pennsylvania Office of Consumer Advocate ("OCA") proposed that Columbia Gas Company adopt an "Energy Assurance Program" ("EAP") as part of Columbia's 1990 rate case. According to the OCA, the issue was one of collection efficiency. "The issue in this proceeding," OCA said, "is not to devise a social response to the broad inability to pay problems of low-income households. The issue is one of what is the most cost-effective means of collection. It is the same issue as whether a utility should pursue new central station capacity, cogeneration or conservation. . .The requirement that utilities provide least-cost service should govern utility collection activities too."[37] The OCA continued: "the issue is this: how can

[35] Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, R-891468, Final Order, at 150 – 160 (September 19, 1990). (hereafter Columbia Gas EAP Order).
[36] Pennsylvania PUC, Bureau of Consumer Service, 2005 Report on Universal Service Programs and Collections Performance of the Pennsylvania Electricity Distribution Companies and Natural Gas Distribution Companies, at 48 – 49 (2005). (Electricity CAP delivered benefits of $104 million in 2005; natural gas CAP delivered benefits of $138 million in 2005.)
[37] Columbia Gas EAP Order, at 152.

Columbia Gas most effectively and least expensively collect as much as possible from households [that] cannot afford to pay?"[38]

Columbia Gas of Pennsylvania did not oppose the OCA's proposal in Pennsylvania given the experience of Columbia Gas of Ohio with the Ohio PIPP. "Columbia reiterated its policy position that it is not philosophically opposed to percentage of income payment plans, provided that the plan fully recognizes the costs of such a program and provides for the timely and full recovery of such costs."[39]

The Pennsylvania Commission agreed. The Commission found that "it is incumbent upon us to initiate a pilot project to test empirically some of the claims made by [OCA] for an EAP. Hopefully, the results of the pilot will prove [OCA's] thesis that EAP will enable more customers to avoid termination and collection actions, while also reducing the uncollectible expense that can be anticipated if existing approaches remain unchanged."[40] The PUC then articulated its philosophy that would govern Pennsylvania's regulatory policy for the next two decades:

> We, in conjunction with utilities, and social service agencies, have all worked hard to devise ways to [e]nsure that low-income Pennsylvanians have utility services which really are necessities of life as the tragic fire deaths associated with the loss of utility service underlined. . .
>
> However, for the poorest households with income considerably below the poverty line, exiting initiatives do not enable these customers to pay their bills in full and to keep their service. . .Consequently, to address realistically these customers' problems and to stop repeating a wasteful cycle of consecutive, unrealistic payment agreements that cannot be kept, despite the best of intentions, followed by service termination, then restoration, and then more unrealistic agreements, we believe that new approaches like PECO's CAP program and the OCA's proposed EAP program should be tried.[41]

Based on this analysis, the Commission directed Columbia Gas to begin a 1,000 customer pilot EAP.

The Equitable Gas Low-Income Rate

Shortly after directing Columbia Gas to implement a pilot low-income rate affordability program, the Pennsylvania commission further approved a proposal by Equitable Gas Company

[38] Id., at 153.
[39] Id., at 157.
[40] Id., at 158.
[41] Id., at 159.

to pursue a similar program.[42] Unlike the Columbia Gas program, which had been proposed by the state Office of Consumer Advocate (and not opposed by the Company), the Equitable Gas program originated with the gas utility, itself.[43] According to the Company, the proposed program was:

> Needed to (1) remove these customers from the discouraging and expensive collection cycle, (2) motivate them to increase conservation, (3) increase their annual participation in available funding assistance programs, and (4) encourage consistent bill-payment efforts.[44]

The proposed Equitable program would be available to customers with income at or below 150% of the Federal Poverty Level. The program would require participants to not exceed their pre-program level of consumption, to apply annually for low-income energy assistance, and to pay at least eight percent of their household income toward their gas service.[45]

The Equitable Gas program was, at first, disapproved by the hearing examiner who decided the Equitable rate case. While the program was "an apparently well-intentioned attempt to assist those of Equitable's ratepayers who most need assistance in paying their bills," the hearing examiner "concluded that this Commission is without authority to approve a program such as the EAP." The hearing examiner reasoned that if the commission "were to approve the subject [energy affordability] program, our action would be tantamount to authorizing a utility to collect money from one group of ratepayers and to use that money for another group of ratepayers for a reason completely unrelated to the ratemaking process (the subsidization of low-income individuals who are unable to pay their utility bills)."[46] The hearing examiner finally concluded that "neither judicial precedent nor the Public Utility Code discuss our statutory authority for the implementation of utility rates based solely on 'ability to pay.'"[47]

The Pennsylvania commission, however, reversed the hearing examiner's disapproval of the proposed Equitable Gas low-income program. Noting that "we are aware that this Commission's main function in ratemaking is to assure that every rate made, demanded, or received by any public utility shall be just and reasonable," the commission found that the Pennsylvania statute prohibits only ***unreasonable*** preferences or advantages to any person. The statute, the commission said, prohibits any ***unreasonable*** difference as to rates between classes of service.[48] "The relevant question, therefore, is whether or not the funding of Equitable's proposed [energy affordability] program results in the 'unreasonable' rate discrimination prohibited by the Public Utility Code."[49]

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[42] Pennsylvania Public Utility Commission v. Equitable Gas Company, Docket No. R-901595, Final Order, at 63 – 74 (November 21, 1990). (hereafter Equitable Order).
[43] Equitable Gas had been working with the state Bureau of Consumer Services (BCS), a bureau of the state utility commission, to develop an appropriate program design. Equitable Order, at 63.
[44] Id., at 63.
[45] Id., at 64.
[46] Id., at 66.
[47] Id.
[48] Id., at 69 (emphasis in original).
[49] Id., at 69.

Whether any particular classification or preference is reasonable is a question of fact, the commission said. "A mere difference in rates does not violate" the Pennsylvania statute.[50] The commission then found, on a number of bases, that "the record in this proceeding clearly demonstrates that any 'preference' that EAP would yield to program participants is reasonable, and further, the creation of EAP is in the best interest of all Equitable ratepayers, not just program participants."[51]

The commission found that "the company's total costs of service will be less with implementation of [the program] than they would be in the program's absence." While the company currently collects approximately 7.5% of household income of prospective EAP participants, the commission found, the program requires a payment of 8% of income toward their gas bill, thus increasing revenues.[52] The requirement that each EAP participant apply for the federal Low Income Home Energy Affordability Program ("LIHEAP") and designate the company as the beneficiary will also assure greater revenue collection, since only one-third of eligibility customers traditionally apply for LIHEAP. Third, the commission said, the program cost is substantially less than the uncollectible expense associated with the program participants. Customers that are eligible for the Equitable Gas program "who currently have payment arrangements either negotiated by BCS or the Company pay on average little more than 50 percent of the presubscribed amount." In sum, the commission concluded that:

> This analysis suggests that the $1.8 million future test year [program] expenses should result in an overall reduction to the Company's cost of service, through its uncollectible expense and savings in credit and collection expenses.[53]

In sum, the commission said that "we commend Equitable for taking the initiative to propose the [energy affordability] pilot. This program could make it one of the leaders among utilities in the uncollectible arena."[54]

The Permanent Pennsylvania Low-Income Affordability Programs

Only two years after initiating the Columbia Gas pilot, the Pennsylvania PUC decided to expand the use of universal service programs to the state's other natural gas and energy utilities.[55]

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[50] Id., at 70.
[51] Id., at 70.
[52] Id., at 71.
[53] Id., at 71.
[54] Id., at 73.
[55] The Commission directed that utilities adopt pilot projects. The PUC decision was based on the BCS recommendation that CAP pilots "should be large enough to provide some relief to the low-income, payment-troubled customer problem and at the same time small enough that changes can be made to the programs without incurring major costs." Bureau of Consumer Service, Final Report on the Investigation of Uncollectible Balances, Docket No. I-900002, at 115 (February 1992). (hereafter BCS Uncollectibles Report). The Commission directed that pilot programs were to involve either 1,000 customers or 2% of a company's residential customer base, whichever was greater.

Consistent with its view of the function of such programs as expressed in the early Columbia Gas decision, the policy decision of the Commission was that low-income rate affordability programs were a necessary tool for utilities to use in combating the problem of nonpayment. Indeed, the decision to implement what would become known as Pennsylvania's Customer Assistance Programs ("CAPs") arose out of the PUC's investigation into the control of uncollectible accounts.[56] Through that investigation, the Pennsylvania PUC's Bureau of Consumer Services ("BCS") had developed recommendations for implementation of CAPs.

> CAPs provide alternatives to traditional collection methods for low-income, payment troubled customers. Generally, customers enrolled in a CAP agree to make monthly payments based on household family size and gross income. These regular monthly payments, which may be for an amount that is less than the current bill, are made in exchange for continued provision of utility service.[57]

The Commission continued:

> As a result of our investigation, the Commission believes that an appropriately designed and well implemented CAP, as an integrated part of a company's rate structure, is in the public interest. To date, few utilities have implemented CAPs. The purpose of this Policy Statement is to encourage expanded use of CAPs and to provide guidelines to be followed by utilities who voluntarily implement CAPs. These guidelines prescribe a model CAP which is designed to be a more cost-effective approach for dealing with issues of customer inability to pay than are traditional collection methods.[58]

The original Pennsylvania CAPs were directed toward "low-income negative ability to pay customers."[59]

The Subsequent Pennsylvania Statutory Directive

The Pennsylvania PUC revised its CAP Policy Statement in 1999, both in response to legislation providing for the restructuring of Pennsylvania's electricity utility industry and in response to the experience with CAPs to date. In 1996, the Pennsylvania legislature had enacted a statute

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[56] In the Matter of the Investigation into the Control of Uncollectible Accounts, Docket No. I-900002 (initiated October 11, 1990).

[57] Policy Statement on Customer Assistance Programs (CAP), Docket No. M-00920345, at 2 (July 2, 1992).

[58] Id., at 2. This Commission decision was supported by the BCS Final Report, which indicated: "The Bureau's position is that ratepayers are already bearing significant costs attributable to the problems of payment troubled customers and uncollectible balances. Further, BCS believes that incorporating the following recommendations into utility operations will lead to a more rational and cost effective use of existing resources. Over time, proper implementation of the recommendations may result in a reduction of total utility costs." BCS Uncollectibles Report, at 120

[59] Id., at Annex A, Section 69.264 (1992). A "negative ability to pay customer" was one whose "financial condition is such that expenses exceed income" as determined through application of factors prescribed by regulation. Id., at Section 69.262, citing 52 Pa. Code §56.97(b).

relating to the restructuring of the electricity utility industry.[60] That statute contained three important universal service provisions.

- It provided that the state's electricity utilities were to continue, at a minimum, the protections, policies and services that now assist low-income customers to afford electricity service;

- It specifically defined "universal service and energy conservation policies" to include customer assistance programs (CAPs);[61] and

- It required the Commission to ensure that universal service and energy conservation policies, activities, and service would be "appropriately funded and available" in each electricity utility service territory.[62]

As the Commission found in promulgating new regulations to implement the electricity restructuring act, "the [Public Utility] Code, as now amended by the Act, for the first time imposes a ***mandate*** for universal service and energy conservation policies, programs and protections that are 'appropriately funded and available in each electricity distribution territory.'"[63] Accordingly, rather than merely implementing "pilot" programs, utilities should implement programs the participation limit on which should:

> Reflect a needs assessment, consideration of the estimated number of low-income households in the utility's service territory, the number of participants currently enrolled in the pilot CAP, participation rates for assistance programs, and the resources available to meet the needs of the targeted population.[64]

In considering revisions to the CAP Policy Statement to conform it to policies articulated in response to the electricity restructuring statute, the Pennsylvania PUC reported that it would be guided not simply by the statute, but by the experience that Pennsylvania utilities had developed with CAPs to date. At the time of the revision, the Commission reported, 12 of the state's 15 utilities had voluntarily implemented CAPs, with a participation of approximately 50,000 customers. In deciding to direct the state's utilities to adopt CAPs (or pre-approved CAP alternative designs), the PUC noted that the experience to date documented that "participants enrolled in a CAP increase the number of payments they make while maintaining the same level of energy usage."[65]

One decision that the Commission did ***not*** adopt in its CAP Policy Statement was placing either a floor or a ceiling on the size of a CAP, as measured by numbers of participants or dollar of

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[60] 66 Pa. C.S.A., §§ 2801 et seq. (2007).
[61] 66 Pa. C.S.A., §2803 (2007).
[62] 66 Pa. C.S.A., §2804(9) (2007).
[63] Re. Guidelines for Universal Service and Energy Conservation Programs, Docket No. M-00960890, 178 PUR4th 508 (Penn. PUC July 11, 1997). (hereafter Universal Service Guidelines Order).
[64] §69.261 (revised).
[65] Re. Revisions to the Customer Assistance Program Policy Statement Made Pursuant to 52 Pa. Code, Chapter 69, Docket No. M-00991232, at 2 (April 9, 1999).

expenditures. The Commission indicated, however, that the pilot project stage of CAPs had come to an end:

> In order to meet our charge under the statute, it is necessary that the needs of the [electric distribution utilities] territory be assessed. Such a study of the community is necessary to ensure that programs are well directed to meet the greatest need in the community for affordable energy. The needs assessment should examine the market for and acceptance of universal service programming in the territory. Current CAP pilots serve a limited number of customers. Given the results of impacts evaluations already reviewed, we expected that [electric utilities] will choose to enhance their CAPs as a cost-effective strategy for serving low-income customers.[66]

In sum, the development of the Pennsylvania CAP programs provides considerable insight into most of the major issues facing utility-funded percentage of income programs at the state level. While preservation and expansion of the CAP programs was eventually written into statute as part of the restructuring of the electricity and natural gas industries, the Pennsylvania CAP programs were initiated by the state PUC without explicit statutory authorization. Instead, the PUC found that CAPs should be an "integrated part of a company's rate structure." The purpose of these programs, the Commission found, was not a social purpose. Rather, the CAPs represent "a more cost effective approach for dealing with issues of customer inability to pay than are traditional collection methods."

The focus of the Pennsylvania CAPs as a tool to respond to low-income payment troubles has continued throughout the years. CAPs were considered to be an *alternative* to a way of doing business that simply wasn't working. The objective of CAP was "to stop repeating a wasteful cycle of consecutive, unrealistic payment agreements that cannot be kept, despite the best of intentions, followed by service termination, then restoration, and then more unrealistic agreements. . ."

Once again, contrary to the views expressed by Concentric, it is clear that programs such as those in Pennsylvania have sound regulatory foundations grounded in fundamental utility regulatory principles and applied in public utility regulation for many years.

Indiana's Universal Service Programs ("USP")

Three major Indiana natural gas utilities have adopted low-income rate affordability programs in recent years. The three programs reach tens of thousands of low-income Indiana residents each year, distributing millions of dollars of benefits. The three major Indiana utilities grounded their low-income programs in the flexible regulation provided by statute to the Indiana Utility Regulatory Commission ("IURC").[67] The flexible regulation allowed under this Indiana statute, permits the Indiana commission to set aside traditional regulation for all or part of a utility's rates or services.

[66] 178 PUR4th at 518.
[67] Indiana Code, §§ 8-1-2.5-1, et seq. (2007).

The Indiana Affordability Program Designs

In response to the statute allowing utilities to propose alternative regulatory plans, three Indiana utilities (Citizens Gas & Coke Utility; Vectren Energy; Northern Indiana Public Service Company—"NIPSCO") submitted proposals for low-income rate affordability programs. Two of the utilities (Citizens & Vectren) submitted a joint proposal with a common design for a "universal service program." NIPSCO's proposed the Winter Warmth program substantively altered in both purpose and design.

The Citizens/Vectren program design offers income-eligible customers a discount off of the natural gas bill they would otherwise receive from the respective companies. Both companies divide their low-income customer population into three tiers. Customers are placed in each tier based on the "State Benefit Matrix" used in the distribution of federal fuel assistance through LIHEAP. Low-income customers must participate in LIHEAP in order to receive the utility discounts. Enrollment in LIHEAP automatically places the customer into the respective utility discount program.

Citizens Gas provides a discount of either 9%, 18% or 24%; Vectren provides a discount of 15%, 26% or 32% applied to their residential gas service bill. When combined with LIHEAP benefits, the combined benefit of the discount tiers and LIHEAP will represent an approximate reduction of 27%, 40% or 50% reduction in the overall heating costs to Citizens eligible low-income customers. Vectren's low-income customers will experience a reduction of approximately 35%, 50% or 60%. The highest benefits go to the households with the lowest income. The discount tiers are designed so that, when combined with LIHEAP benefits, the resulting bills to low-income customers will approximate an affordable home energy burden under average incomes and usage levels.

NIPSCO's Winter Warmth program offered not only a different design, but also a substantively different approach. Winter Warmth is a low-income energy assistance program directed toward assisting income-eligible households to avoid the disconnection of service, achieve the reconnection of service, and avoid unaffordable winter heating bills. Customers may become eligible for Winter Warmth in either of two ways. First, customers who meet the State of Indiana's Energy Assistance Program ("EAP") guideline are automatically qualified. Second, customers who are classified as "hardship" by local Gift of Warmth agencies, the local community-based organizations that administer the program, are also qualified to receive benefits under the Winter Warmth Program. These local agencies have the sole discretion for developing criteria for determining whether a customer qualifies as hardship.

Through Winter Warmth, program participants receive benefits up to $400 per customer per heating season. The local agencies administering the program may utilize the customer's program benefits to pay deposit requirements.

In addition to the direct cash assistance provided under Winter Warmth, disconnected EAP qualified customers will be required to pay a maximum security deposit of $150 and "hardship" qualified customers will be required to pay a maximum deposit of $300. All customers under the Program will be required to pay a minimum before receiving any benefits. The program, however, provides Gift of Warmth agencies with complete discretion to determine whether an eligible customer can afford to pay the minimum payment or whether the minimum payment should be waived.

Application of Indiana's Statutory Standards

The three Indiana utilities proposed their respective low-income programs pursuant to the Indiana statute allowing an Indiana energy utility to submit a plan to the state utility commission[68] seeking state regulatory approval of a plan for alternative regulation.[69] In setting forth the framework for flexible regulation, the Indiana legislature "declared" that "the provision of safe, adequate, efficient and economical retail energy services is a continuing goal of the commission in the exercise of its jurisdiction."[70] Moreover, the Indiana legislature said, "the public interest requires the commission to be authorized to issue orders and to formulate and adopt rules and policies. . .giving due regard to the interest of consumers and the public, and to the continued availability of safe, adequate, efficient, and economical energy service."[71]

When an Indiana utility requests approval of its decision to elect to operate under a plan of alternative regulation, the state utility commission must commence a proceeding to determine whether to approve the utility election. The issue in this proceeding is whether the commission should "decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both." In deciding that question, the commission is required to consider four factors, including in relevant part:

- Whether. . .operating conditions. . .render the exercise, in whole or part, of jurisdiction by the commission unnecessary or wasteful;

- Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state;

- Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency; and

[68] The Indiana statute provides that the statutory sections on alternative regulation "do not apply to an energy utility unless the energy utility voluntarily submits a verified petition to the commission stating the energy utility's election to become subject to such section or sections." Indiana Code, §8-1-2.5-4 (2007); see also, Indiana Code, §8-1-2.5-8 (2007).
[69] Indiana Code, §8-1-2.5-4 (2007).
[70] Indiana Code, §8-1-2.5-1(1) (2007).
[71] Indiana Code, §8-1-2.5-1(6) (2007).

- Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.[72]

Under the statute, when a utility elects to petition for an alternative regulatory plan, the state utility commission is explicitly authorized to "establish rates and charges that are in the public interest as determined by consideration of the [statutorily-prescribed] factors. . ."[73]

The three Indiana utilities electing to proceed with an alternative regulatory plan for their low-income customers noted a variety of circumstances that justified their proposals under the statute. Primarily, however, according to their petition, the plan was developed "in recognition of the concerns over price volatility resulting from imbalances between gas supply and demand, as well as weather-related price spikes often occurring during the heating season, and the resulting increased financial needs of the[…] low-income customers."[74]

NIPSCO, too, observed that the need for the program was warranted by the operating conditions facing the company, including "the impact of increased and volatile natural gas prices on low income customers."[75] NIPSCO specifically argued that its Winter Warmth Program satisfied the statutory standards under the law authorizing alternative regulatory plans. It said that its program would "promote efficiency in the rendering of retail energy services" and would "timely address and ease the impact of volatile natural gas prices on low-income customers."[76]

An Alternative to Unnecessary and Wasteful Regulation of Collections

In justifying their low-income rates under the ARP statute, Indiana's three utilities discussed the statutory criteria underlying their alternative regulatory plans. First, they noted, the collection responses allowed (or required) by IURC regulation simply don't work for the companies' low-income customers under the identified operating circumstances involving high and volatile natural gas prices. The existing state regulatory regime mandating a series of notices leading up to the disconnection of service, and the offer of payment plans that do not address the underlying affordability of current bills, is ineffective and wasteful. The existing regulatory regime,

[72] Indiana Code, §8-1-2.5-5 (2007).
[73] Indiana Code, §8-1-2.5-6(a)(1) (2007).
[74] Verified Joint Petition of Indiana Gas Company, Inc., Southern Indiana Gas and Electricity Company and the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, d/b/a Citizens Gas & Coke Utility, Pursuant to Ind. Code §8-1-2.5, et seq. For Approval of an Alternative Regulatory Plan Which Would Establish a Pilot Universal Service Program, Case No. 42590, Verified Joint Petition, at 4, March 4, 2004. (hereafter 2004 ARP Petition).
[75] Verified Petition of Northern Indiana Public Service Company, Pursuant to Ind. Code § 8-1-2.5 et seq. for Approval of Alternative Regulatory Plan which would Establish a Pilot low Income Energy Assistance Program, Docket No. 42722, Verified Petition, at 5 (hereafter NIPSCO I Petition).
[76] Verified Petition of Northern Indiana Public Service Company, Pursuant to Ind. Code §8-1-2.5 et seq., for Approval of an Alternative Regulatory Plan that would become Effective on January 1, 2007, and Extend Northern Indiana Public Service Company's Previously Approved Pilot Low Income Energy Assistance Program in Cause Nos. 42722 and 42927, which is set to Expire on December 31, 2006, Docket No. 43077, Verified Petition, at 6 (June 26, 2006) (hereafter NIPSCO II Petition).

according to the companies, resulted in continuing to disconnect low-income customers, and writing-off low-income accounts as bad debt, while spending considerable utility money in the pursuit of collection actions that cannot be expected to succeed.

In contrast, the companies said, the alternative regulatory plans proposed by each company would improve collections and reduced unpaid bills. Citizens Gas/Vectren both noted that the proposed alternative regulatory plan would increase the efficiency of their respective utilities by reducing the number of utility terminations and decreasing payment defaults and untimely payments, all of which contribute to higher collection and uncollectible costs to the Company.[77] Similarly, NIPSCO noted, its proposed Winter Warmth program would improve the efficient operation of the utility by crafting a low-income rate that would "reduce the number of service terminations attributed to low-income customers' inability to pay for gas service." The Winter Warmth program also would help decrease "the number of defaults and untimely payments which ultimately result in higher uncollectible costs. . ."[78]

Benefits to the Utility, to Customers, and to the State as a Whole

The proposed rate affordability programs, Indiana's three utilities asserted, would generate benefits to the utility, to its customers and to the state under the alternative regulatory plan statute. One attribute of the public interest that Indiana regulators are required by statute to consider in administering public utility regulation involves public health and safety. Citizens Gas and Vectren both noted that there was public safety issues involved with providing affordable rates to their low-income customers. Reporting that more than 11,000 of their customers receiving LIHEAP assistance "still failed to meet one or more payment obligations for gas service during a twelve month period," these two companies asserted that one goal of their program was "to protect the health and safety of Petitioners' low income customers by helping them to maintain affordable natural gas service."[79]

Northern Indiana Public Service Company ("NIPSCO") also noted that its proposed Winter Warmth program would "protect the health and safety of [the utility's] low income customers by helping them maintain affordable natural gas service. . ."[80] The health and safety of its customers would further be advanced, NIPSCO noted, by "helping low-income customers conserve energy and reduce residential heating bills."[81]

Aside from these positive health and safety impacts of the proposed low-income affordability programs, the Indiana utilities argued that the low-income programs would improve the competitiveness of Indiana's business and industry.

[77] 2004 ARP Petition, at 7 – 8.
[78] NIPSCO I Petition, at 5.
[79] 2004 ARP Petition, at 3 – 4.
[80] NIPSCO I Petition, at 2.
[81] Id.

Efficient Utility Operations

Finally, the proposed alternative regulatory plans, according to Indiana's three utilities, would not only promote the efficient operation of the utility, as described above, but would also promote the efficient use of energy by low-income customers. When a customer has no hope of being able to pay for their bill in the first place, the utilities posited, that customer loses much of their incentive to control their home energy use. In contrast, when a low-income affordability program makes possible the complete payment of bills, the customer can be expected to manage their bills to stay within a payable range. According to Citizens Gas and Vectren, "because the Program envisions participating customers to continue to be responsible for the payment of a significant portion of their gas usage, customers will continue to have an incentive to monitor and control usage, if possible, and better to manage their monthly gas bills."[82]

The Regulatory Program Approvals

In a series of orders from 2004 through 2006, the Indiana Utility Regulatory Commission ("IURC") approved the initiation and continuation of the three Indiana low-income rate affordability programs. The IURC accepted testimony documenting that the statutory criteria set forth for alternative regulatory plans had been met. The IURC held with respect to NIPSCO's initial proposal for Winter Warmth that "the record reflects that the Program satisfies the statutory standards." For example, the Commission said, "the Program will reduce the number of service terminations attributable to low-income customers' inability to pay for gas service. Fewer terminations, and the reduced need to dispatch personnel to effectuate those terminations of service, will result in more efficient utility operation."[83]

In addition to the efficiency of utility operations, the Commission observed how the low-income programs of the Indiana utilities would enhance the value of the utility service, consistent with the alternative regulatory statute. NIPSCO's Winter Warmth program, the Commission said, "will be beneficial for [NIPSCO], its low income natural gas customers, and all other customers, while promoting energy utility efficiency and maintaining, if not enhancing, the value of NIPSCO's utility retail energy service."[84] With natural gas utilities in particular, the primary use of the natural gas service is in the provision of home heating. The problems faced by the low-income customers of the Indiana utilities, however, are most likely to occur in the heating months. These months are not only when bills are highest, but bills are the most volatile as well. When the utilities' low-income customers face unaffordable bills under these circumstances, they tend to pay even less than they are capable of paying.

Addressing the unaffordability of the underlying bill thus has the following impacts.

[82] 2004 ARP Petition, at 8.
[83] Cause No. 42722, Order, at 7, Approved December 15, 2004.
[84] Id., at 7.

- First, it helps improve the efficiency of the utility collection efforts. As the IURC found with respect to NIPSCO's Winter Warmth program, "these discounts are intended to make winter heating bills more manageable for Petitioners' low-income gas customers and provide them with an opportunity to break the cycle of disconnection and reconnection. This break in the cycle is expected to reduce service termination, costs related to collections, customer arrearages and Petitioners' outstanding accounts receivable."[85]

- Second, it creates an incentive for the customers, themselves, to manage their bills more closely. The closer a customer gets to facing an affordable bill that can be paid in full, the utilities argued, the more likely the customer will manage their consumption to reach that level of affordability. The IURC noted that the utilities had urged in support of their affordability program that "the Program will further promote energy efficiency by requiring participants to be responsible for a manageable portion of their natural gas bill, thereby giving them an incentive to monitor and reduce usage, and if possible, to lower their monthly gas bills."[86]

- Third, the program helps "focus assistance."[87] Rather than spreading rate relief "across all customers and hav[ing] a minimal incremental impact on rates, given the current high cost of gas," the Commission noted that the proposed program "will help provide more timely relief to those customers most in need and least able to afford the dramatic price spikes that have occurred this winter."[88]

The IURC conclusion that "the program has demonstrated benefits," was a fact-specific finding for the specific program presented to it. According to the IURC's 2006 decision approving extension of the Winter Warmth ("WW") program for another year:

> In reviewing the specific proposal presented in this matter, the Commission notes that the testimony presented demonstrates a number of benefits from the existing program, which lead us to conclude that the program should be extended for an additional year. In reaching this conclusion, we note specific testimony regarding evidence of increased payment records by WW participants, as well as indications that WW participants had a higher rate of payment than other [energy assistance] eligible customers simply by virtue of being in the program. As a direct result of enrollment of customers faced with disconnection into the WW program, additional funds were made available to these rates which allowed them to remain connected.[89]

While Indiana does not have a single statewide rate affordability program, three of Indiana's largest utilities have implemented a series of rate affordability programs for their individual

[85] 2004 Order, Cause No. 42590, at 7.
[86] Id., at 7.
[87] Cause No. 42590, Order, at 4, January 4 2006 (hereafter 2006 Order).
[88] Id., at 4.
[89] Cause No. 42927, Order, at 10, January 31, 2006.

service territories. Rather than seeking regulatory approval of these low-income programs under the traditional regulatory statutory framework, however, the three Indiana companies invoked the state statute authorizing the implementation of an "alternative regulatory plan." Whether such a plan should be approved is governed by prescribed statutory criteria, including whether utilization of traditional regulation is unnecessary or wasteful; whether the commission declining to exercise its regulatory jurisdiction over some part of the company's rates and services would generate benefits to the utility, its customers, or the state as a whole; or whether the plan would promote efficiency in utility operations.

The Indiana utilities argued, and the Indiana commission approved, the universal service programs advanced by Citizens Gas & Coke Utility and Vectren Energy as in compliance with the statutory criteria underlying an alternative regulatory plan. Similarly, the IURC approved the Winter Warmth program proffered by Northern Indiana Public Service Company ("NIPSCO").

The companies noted that the current conditions under which they operate –including high and volatile natural gas prices—create the need for the plans. They noted that continuing the traditional collection processes contemplated by the existing regulatory regime is ineffective, inefficient and wasteful. They noted how their respective programs would improve not only the efficiency of their operations, but the efficient use of energy by low-income customers. They documented how the proposed alternative plans would generate health and safety benefits for their customers (and the population as a whole), and would improve the competitive posture of the business and industry in their respective service territories.

Once again, contrary to the views expressed by Concentric, it is clear that programs such as those in Indiana have sound regulatory foundations grounded in fundamental utility regulatory principles and applied in public utility regulation for a number of years.

Rates need not just be cost-based but should meet other important criteria; there may be rate discrimination, so long as it is not unreasonable

On page 21 of its report, Concentric's asserts that "traditionally, utility regulation has sought to establish rates that are cost-based, and which do not discriminate between or within customer classes." This statement is overly simplistic and wrong.

Firstly, by failing to mention all of the non-cost considerations, it implies essentially that rates can and should be cost-based and nothing else, as if that were even precisely determinable given the multiplicity of common costs and the non-cost considerations that enter the attempts to allocate such costs to customer classes or groups. LIEN does not accept that rates should be cost-based and nothing else. Other criteria are of significant importance in setting rates that are just and reasonable.

Secondly, LIEN disagrees that "utility regulation has sought to establish rates ... which do not discriminate between or within customer classes." Rather, the ability of a monopoly to price discriminate and the fact that it does so is acknowledged by regulators and the discrimination is

examined in relation to costs and other criteria (including now "ability to pay") in order to determine whether or not the rate/price discrimination is "due". Regulators have traditionally approved discrimination "between or within customer classes", but only that which is in their judgment "due". Bonbright, in his famous text to which Board staff referred at the beginning of the consultation, explores, for example, several ways in which a regulator can test rate/price discrimination in order to ascertain if it is due.[90]

Low-Income Rate Affordability Programs are Administratively Manageable

Despite LIEN's disagreement with Concentric's ongoing assertion that low-income rates are non-cost-based, discriminate between or within customer classes, and are merely social programs, LIEN acknowledges the legitimacy of Concentric's articulation of "issues to consider in designing and implementing low-income energy programs" (Concentric, at 58 – 62). Concentric identified the following implementation issues:

- How is low-income defined?
- How is the program funded?
- What are the eligibility criteria?
- Who determines customer eligibility requirements?
- Who administers the logistical aspects of the program?
- How are customers notified of program availability?
- Is there a procedure for review the programs after some period of time?
- How do you measure the success?

Twenty-five years ago, these issues may have posed substantial logistical problems for Ontario's public utilities. Today, however, with low-income rate affordability programs commonplace, the manageability of resolving these issues is evident by the very fact that such issues *have* been addressed and resolved.

In response to Concentric's questions regarding program implementation, LIEN submits a report prepared by Roger Colton (November 2007) regarding "best practices" in low-income rate affordability programs. This report is attached to LIEN's comments as Appendix C. The issues addressed by this report are strikingly parallel to the questions posed by Concentric. The "best in

[90] Bonbright, James C., Principles of Public Utility Rates, New York: Columbia University Press, 1961; also Bonbright, James C., Albert L. Danielson, David R. Kamerschen, Principles of Public Utility Rates, Arlington, Virginia: Public Utilities Reports, Inc., 1988.

class criteria for rating low-income rate affordability programs" include the following five criteria:

- Criterion #1: Is the program reasonably open to all households in need?
- Criterion #2: Does the program recognize the multiple facets of energy affordability "need"?
- Criterion #3: Does the program efficiently use program funding?
- Criterion #4: Does the program provide for continuous improvement? and
- Criterion #5: Does the program provide for reasonable cost recovery?

The chart below is a replication of a chart from that report which further explains the best-in-class criteria for low-income rate affordability programs.

As is evident from the attached "best practices" report, the implementation issues identified by the Concentric report have not only been repeatedly addressed, but have been adequately resolved in multiple jurisdictions. No reason exists to believe that the OEB and Ontario's public utilities are any less capable of resolving such implementation issues.

Best-in-Class Criteria for Low-Income Rate Affordability Programs

1 Reasonably open to all in need

a. Considers empirical needs assessment.

b. Provides appropriate scope of eligibility.

c. Allows ease of program entry.

d. Allows open enrollment.

e. Provides ease of recertification.

2 Recognizes and incorporates multi-faceted nature of "need."

a. Addresses affordability of bills for current usage.

b. Addresses resolution of pre-program arrears.

c. Targets assistance to high usage/high benefit participants.

d. Allocates risk of bill volatility based on weather and/or prices.

3 Efficiently uses program funds.

a. Matches payments to needs.

b. Imposes maximum benefit/minimum payment.

c. Integrates with other utility payment processes (e.g., budget billing).

d. Integrates financially with other energy assistance programs.

e. Incorporates conservation incentives.

4 Provides mechanism for continuous improvement.

a. Provides for periodic outcome evaluation relative to objectives.

b. Provides for standardized data reporting.

5 Provides for reasonable cost recovery.

a. Spreads costs over appropriate customer base.

b. Ensures timely and reasonably certain recovery of program costs.

c. Accounts for cost offsets generated by program.

d. Recovers program costs independently of utility service territory limits.

APPENDIX C: BEST PRACTICES: LOW INCOME RATE AFFORDABILITY PROGRAMS

Best Practices:
Low-Income Rate Affordability Programs

Articulating and Applying Rating Criteria

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Table of Contents

Glossary

Affordable home energy burden: A home energy bill which, as a percentage of household income, can regularly be paid on a full and timely basis without substantial household hardship. An affordable home energy burden can be calculated for a household's total home energy bill or for specific fuels (e.g., electricity, natural gas). Contrast to *un*affordable home energy burden.

Arrearage forgiveness: A program or process through which a utility grants credits to retire an unpaid past-due bill owing the company.

Case management: A process through which a utility seeks to address not only the utility-related payment problems of a customer, but the holistic socio-economic conditions of the household giving rise to the payment problems.

Crisis assistance: A cash payment made to a utility on behalf of a utility customer designed to prevent a scheduled disconnection of service for nonpayment or to resolve amounts outstanding sufficiently to permit a reconnection of service after a disconnection for nonpayment.

Customer co-payment: A customer payment required to be made in order to trigger a credit by a rate affordability program to be applied against pre-existing arrears.

Direct vendor payment: A cash payment from a rate affordability program paid directly to a utility on a customer's behalf rather than being paid to the customer.

Empirical evaluation: A program evaluation based on data collected from a utility or other entity associated with the administration of a low-income rate affordability program rather than being based on generalized knowledge or on data not specific to the program or program service territory.

Empirical needs assessment: A needs assessment for a low-income rate affordability program in a specified geographic area that is based on data collected from the area served by the program rather than being based on generalized knowledge or on data not specific to the area.

External benefit program: A low-income rate affordability program under which funding is provided to a non-utility entity, whether a state agency or independent third party administrator, for the purpose of distributing benefits to a utility on behalf of a rate affordability program participant.

External source of funding: A source of funding generating a stream of revenue intended to be provided to a non-utility entity, whether a state agency or independent

third party administrator, for the purpose of distributing benefits to a utility on behalf of a rate affordability program participant.

Federal Poverty Level: The dollar amounts, referred to by this phrase, published annually by the U.S. Department of Health and Human Services demarcating the income level, disaggregated by household size, which represents being "poor" in the United States. The Federal Poverty Level is sometimes referred to simply as "Poverty Level." Separate Poverty Levels are published for the 48 contiguous states (plus the District of Columbia), for Hawaii and for Alaska.

Fixed credit (fixed credit program): A utility rate affordability program under which a program participant receives a fixed dollar payment toward his or her monthly bill individually calculated to reduce the bill to an affordable home energy burden assuming the bill remains no higher than historic levels. Under a "fixed credit," the program participant is responsible for paying the difference between the fixed credit amount and the monthly bill at standard residential rates.

Fixed monthly system benefits charge: A funding mechanism imposed on utility ratepayers under which the per-customer payment is the same irrespective of consumption. A fixed monthly system benefits charge may impose a uniform charge on all customers, or may impose a uniform charge on all customers within any given customer class (with charges differing between customer classes).

Home energy affordability gap: The dollar difference between actual home energy bills and affordable home energy bills. The Home Energy Affordability Gap can be calculated on a per-household basis or can be aggregated for geographic areas (e.g., states, utility service territories). Historic calculations of Home Energy Affordability Gap data for various jurisdictions in the United States can be found on-line at: *www.HomeEnergyAffordabilityGap.com*.

Home energy burden: A household's home energy bill as a percentage of the household's gross income. Home energy burdens can be calculated for total home energy bills or for the bills associated with specific fuels (e.g., electricity, natural gas).

Levelized budget billing: A utility billing process under which customers are asked to pay a levelized monthly bill calculated by dividing the estimated annual bill by 12. Some utilities offer 11-month levelized budget billing amounts. Some, but not all, utilities subtract federal fuel assistance benefits from the annual bill before calculating the levelized budget-billing amount.

LIHEAP: The federal Low-Income Home Energy Assistance Program.

Low-income Home Energy Assistance Program: The United States federal home energy assistance program through which federal funding is provided primarily for heating and cooling assistance to be distributed through state program administrators.

Low-income rate affordability program: A program or rate directed to low-income households designed to reduce utility bills to an affordable level by supplementing bill payments or by reducing billed revenue independent of usage. Low-income rate affordability programs are to be distinguished from programs aimed at usage reduction, household budgeting, or credit and collection alternatives not involving reduced bills.

Means-tested financial assistance program: A financial assistance program the eligibility for which is determined by a household's income and/or the ratio of the household's income to the Federal Poverty Level.

Net program donor: In a state where low-income rate affordability programs are not operated on a utility-specific basis, but rather on a statewide basis, a utility where the aggregate system benefits charge revenue paid by its customers exceeds the aggregate rate affordability assistance received by its customers.

Net program recipient: In a state where low-income rate affordability programs are not operated on a utility-specific basis, but rather on a statewide basis, a utility where the aggregate rate affordability assistance received by its customers exceeds the aggregate system benefits charge revenue paid by its customers.

Overpayment of rate affordability assistance: A payment of rate affordability assistance to an individual customer which is *more* than the amount needed to reduce the customer's home energy bill to an affordable home energy burden.

Percentage-of-income based program: A low-income rate affordability program that is explicitly designed to reduce the utility bills of program participants to a predetermined home energy burden.

Poverty Level: The Federal Poverty Level published annually by the U.S. Department of Health and Human Services (HHS).

Pre-existing arrears: The arrears of a participant in a low-income rate affordability program incurred prior to the date the participant enrolled in the program.

Preprogram arrears: See, pre-existing arrears.

Program cost offsets: In reviewing the ratemaking treatment of total expenditures on a low-income rate affordability program, a set of credits to be applied against the total gross expenditures on the program to reflect both: (1) reduced expenditures on the normal operating costs of the utility created by the program; and (2) those expenditures on the program that have already been reflected in the utility's base rates for other purposes.

Program eligibility: That set of characteristics that a customer must necessarily exhibit in order to qualify to receive low-income rate affordability assistance should an application for such assistance be made. Eligibility criteria may include income criteria

(e.g., household income at or below 150% of Federal Poverty Level) or non-income criteria (e.g., household must be payment-troubled).

Program entry: The process by which an eligible household applies for and is enrolled in a low-income rate affordability program.

Program recertification: The process by which a participant in a low-income rate affordability program periodically demonstrates to the satisfaction of the program administrator that the household remains eligible to continue participating in the program.

Public benefit program: A low-income rate affordability program under which benefits are distributed to a customer through a cash payment to the customer or a cash payment to a utility on the customer's behalf to be reflected as a payment on the customer's bill. A "public benefit" program is to be contrasted to a "rate structure" program.

Rate structure program: A low-income rate affordability program under which the customer receives a reduced bill from his or her utility. The utility offering the reduced bill may be compensated for the foregone revenue either by receiving payments from an external fund or by a funding mechanism directed to the utility's own customers. A "rate structure" program is to be contrasted to a "public benefit" program.

Reconcilable rate rider: A ratemaking process by which actual expenditures on a low-income rate affordability program are collected through a rate rider independently of a utility's distribution rates. A rate rider is reconcilable when the actual expenditures in an historic period are periodically compared to the revenues generated by the rate rider in that period, with over-collections or under-collections rolled over into the calculation of the appropriate level of the rate rider to be charged in a future period.

Retail choice: A program or process through which retail electricity and/or natural gas customers are given the choice of selecting the provider of their supply service.

System Benefits Charge: A mandatory charge imposed on all or some portion of a utility's customers to fund a low-income rate affordability program. A System Benefits Charge may be imposed on a volumetric or on a fixed monthly charge basis.

Tariffed discount: A bill reduction underlying a low-income rate affordability program appearing in the tariffs of a natural gas or electricity utility. A tariffed discount may be either: (1) a percentage discount off bills at standard residential rates; or (2) a percentage-of-income based rate. A tariffed discount is to be contrasted to low-income rate affordability assistance received from an external party and reflected as a payment on the customer's bill.

Tiered rate discount: A program or billing process under which a participant in a low-income rate affordability program receives a bill for current usage set at a predetermined percentage of the bill at standard residential rates. A rate discount is "tiered" when the

predetermined percentage discount varies based on household income or the ratio of household income to the Federal Poverty Level.

Unaffordable home energy burden: A home energy bill which, as a percentage of household income, either: (1) can not regularly be paid on a full and timely basis, or (2) can not regularly be paid on a full and timely basis without substantial household hardship.

Underpayment of rate affordability assistance: A payment of rate affordability assistance to an individual customer which is *less* than the amount needed to reduce the customer's home energy bill to an affordable home energy burden.

Volumetric system benefits charge: A funding mechanism imposed on utility ratepayers under which the per-customer payment varies based on consumption. A volumetric system benefits charge may impose a uniform volumetric charge on all customers, or may impose a uniform charge on all customers within any given customer class (with charges differing between customer classes).

Weatherization Assistance Program (WAP): The federal low-income energy efficiency program administered by the U.S. Department of Energy. For purposes here, weatherization assistance provided with funding through "oil overcharge" funds are deemed to be part of WAP.

Executive Summary

The analysis presented in this paper examines selected low-income affordability programs currently in operation around the United States as determined by the author to be best-in-class. Eight United States programs have been reviewed in addition to the low-income initiatives of Electricité de France (EDF) in France.

Necessary Program Components

Based on this analysis, we conclude that a best-in-class low-income rate affordability program has five necessary components to it. A low-income rate affordability program should:

- Reduce bills for current usage to an affordable percentage of income. The program should recognize the essential role played by home energy burdens in defining home energy affordability.

- Retire pre-existing arrears within a reasonable time period, without raising the overall monthly asked-to-pay amount to an unaffordable level.

- Protect against unexpected monthly bill volatility associated with changes in price and/or weather through facilitating or requiring entry into levelized budget billing plans.

- Promote the efficient use of energy, both through investments in usage reduction measures for the housing unit and the preservation of conservation incentives within the affordable rate structure.[91]

- Preserve funding to address crisis situations caused by the fragility of income experienced by poverty-level households.

Lessons Learned

In addition to these necessary components, the analysis below supports the following lessons learned from best-in-class programs:

- **Lesson #1:** A best-in-class rate affordability program should recognize the essential role played by home energy burdens in defining home energy affordability.

[91] Conservation incentives can be preserved through mechanisms such as offering percentage-of-income based benefits through a fixed credit on the bill or imposing bill or benefit caps.

- **Lesson #2:** A best-in-class rate affordability program addresses not simply the affordability of charges for future consumption, but the charges for pre-existing arrears as well.

- **Lesson #3:** A best-in-class rate affordability program must be reasonably open to all households in need, both in terms of the scope of eligibility and in terms of the ease of entry into (and retention in) the program.

- **Lesson #4:** A best-in-class rate affordability program targets its rate affordability assistance to eliminate or minimize the underpayment or overpayment of benefits.

- **Lesson #5:** A best-in-class rate affordability program allows a full and timely recovery of program expenditures, responsive to changes in factors affecting program expenditures in ways outside the ability of a utility to control.

- **Lesson #6:** A best-in-class rate affordability program integrates its low-income initiative into its existing rate structure within the constraints of efficient program spending.

- **Lesson #7:** A best-in-class rate affordability program represents a more cost-effective approach for dealing with issues of customer inability to pay than are traditional collection methods.

- **Lesson #8:** A best-in-class rate affordability program recognizes that low-income home energy affordability consists of more than helping a customer to pay their bill for current usage.

- **Lesson #9:** A best-in-class rate affordability program need not be explicitly authorized by the government's legislative body, so long as the local distribution utility offers the program as a mechanism to improve the effectiveness and/or efficiency of utility operations, rather than exclusively as a social benefit.

- **Lesson #10:** A best-in-class rate affordability program provides for reasonable certainty in both the level and timing of program funding through utility-based funding.

- **Lesson #11:** A best-in-class rate affordability program provides for timely cost recovery through periodic reconcilable rate riders.

- **<u>Lesson #12</u>:** A best-in-class rate affordability program views the program expenditures as a cost of operating as a public utility, the payment of which all ratepayers must share some responsibility.

- **<u>Lesson #13</u>:** A best-in-class rate affordability program, in its program cost recovery, accounts for the benefits generated by the program as well as the expenditures made to support the program.

Part 1. Introduction

The analysis presented in this paper examines selected low-income affordability programs currently in operation around the United States as determined by the author to be best-in-class. Eight United States programs have been reviewed, in addition to the low-income initiatives of Electricité de France (EDF).[92] The purpose of the assessment is three-fold:

- To articulate a set of standards by which to measure the design and operation of a low-income rate affordability program;
- To identify a set of design decisions and implementation practices that favorably distinguish particular programs from their low-income counterparts in other states or service territories; and
- To apply those standards, design decisions, and implementation practices to a set of programs to determine their prevalence among best-in-class programs.

The analysis will focus exclusively on rate affordability programs. Initiatives involving usage reduction programs, as well as credit and collection practices directed primarily at low-income households,[93] are set aside not because they are unimportant, but rather simply because they are beyond the scope of this review.

The analysis below examines nine programs:

- New Jersey's Universal Service Fund (USF);
- The Columbia Gas Customer Assistance Program (CAP) (Pennsylvania);
- The Equitable Gas Company Customer Assistance Program (CAP) (Pennsylvania);
- The Ohio Percentage of Income Payment Plan (PIPP);
- The Citizens Gas & Coke Utility/Vectren Energy Delivery Universal Service Program (USP) (Indiana);
- The National Fuel Gas Distribution Corporation Low-Income Rate Assistance (LIRA) program (Pennsylvania);

[92] Because the EDF "social tariff" is different in kind from the United States affordability initiatives, this analysis describes the program, but does not apply the best-in-class criteria to the French program. Such application was found to seek to compare what are fundamentally non-comparable programs.

[93] Such practices might include deferred payment plans, the waiver of late fees or other designated charges, or the use of alternatives to the disconnection of service (e.g., service limiter adapters).

- The Electricity Assistance Program (EAP) (New Hampshire);
- The Electricity Universal Service Program (EUSP) (Maryland); and
- The "social tariff" of Electricité de France (France).

After providing a brief description of the structure of each program and its funding, the discussion below will consider the background of each program. That background will review what events triggered the promulgation of each program and the market environment within which the program now operates. Finally, the discussion below will apply the best-in-class criteria to each program.

Before turning to a discussion of each program, however, the first section below will provide a brief overview of the criteria that will be used to determine best-in-class.

Part 2.
Defining the Best-in-Class Criteria for
Rating Low-Income Rate Affordability Programs

Five criteria have been applied in the review of whether the programs below constitute a set of "best in class" low-income rate affordability programs. Each individual criterion, in turn, has different components to it. The criteria include:

2.1 Criterion #1: Is the program reasonably open to all households in need?

A best-in-class program should be reasonably open to all households in need. This criterion is comprised of multiple components. To be reasonably open to all households in need, the program administrator must be able to empirically define those customers in need. While it is possible to do that in the abstract, programs that have an empirical needs assessment examining the specific territory to be served are more favorably viewed.

A program must be open to all households in need based on both the scope of eligibility and on the ease of entry into the program. The scope of eligibility should recognize the breadth of an inability-to-pay problem without imposing artificial eligibility criteria unrelated to the lack of affordability. Ease of entry refers to the actual process of enrolling in the program. Being "eligible" for an affordability program does not deliver benefits to a household if that household cannot actually participate in the program. Enrollment generally consists of applying for, and being found eligible for, the program. Ease of entry finally involves not only *becoming* a program participant, but also *remaining* a program participant over time.

2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need"?

Low-income home energy affordability consists of more than helping customers to be able to pay their bill for current usage. The unaffordability of home energy does not always manifest itself through an unpaid bill. When home energy burdens –energy burdens are the home energy bill as a percentage of household income--[94] reach a certain point, the household will *either* not be able to pay the bill on a full and timely basis *or* not be able to pay the bill without substantial household hardship. For a low-income program to represent best-in-class, the program should recognize the essential role played by home energy burdens in defining home energy affordability.

[94] A household with an annual income of $8,000 and a home energy bill of $1,600 will, in other words have a home energy burden of 20% ($1,600 / $8,000 = 0.20).

Paying the bill for current usage, however, can not be the exclusive focus of home energy affordability. Addressing the affordability of bills for current usage does not provide comprehensive assistance to a household if that household has incurred substantial pre-existing arrears because of a past inability-to-pay. The affordability of home energy consists of the ***total*** asked-to-pay amount, not simply the bill for current usage. If a customer cannot afford to pay a total home energy bill, it makes no difference whether the bill's unaffordability is caused by the charges for current usage or by the charges for pre-existing arrears. Not only should a program address the affordability of future consumption, but the program must address pre-existing arrears as well.

The affordability of home energy bills generally involves the size of the ***annual*** home energy bill. Best-in-class programs address the affordability of annual home energy bills relative to annual household income. The volatility of bills, however, in addition to the magnitude of bills, also contributes to home energy unaffordability. Volatility can occur through seasonal variations in bills. Volatility can also occur through atypical changes in weather and prices.[95] Best-in-class low-income programs help protect customers against unexpected bill volatility associated with changes in price and/or weather.

Finally, while the unaffordability of home energy is generally caused more by the lack of income than by excess energy consumption, investments in the efficient use of energy can be an important tool to use in reducing energy consumption (and thus reducing home energy burdens). Efficiency investments cannot be the exclusive tool for several reasons. At certain levels of income, nearly ***any*** energy consumption will impose an unaffordable home energy burden. Even reasonably low consumption can be unaffordable when such bills are combined with extremely limited household incomes to yield high home energy burdens. Moreover, low-income energy efficiency programs can reach perhaps thousands of households each year in a typical jurisdiction. In contrast, the need for home energy affordability programs typically requires addressing the home energy needs of tens (or even hundreds) of thousands of customers. Investments in energy efficiency address an important affordability need, but cannot be the exclusive affordability tool.

2.3 Criterion #3: Does the program efficiently use program funding?

Having created a low-income home energy affordability program, a best-in-class program will adopt specific program elements that promote the efficient use of program funding. An affordability program is not simply a mechanism through which to supplement the resources of a low-income household. It is instead designed to redress an excessive home energy burden.[96] As a result, a best-in-class program seeks to avoid underpaying or overpaying assistance to program participants. A program underpays if the assistance to the household is insufficient to reduce the home energy burden to an affordable level. A program overpays if the assistance to the household is more than is necessary to reduce

[95] Atypical changes in price are often associated with, or even caused by, atypical weather patterns.
[96] The excess bill over an affordable home energy burden is generally called the Home Energy Affordability Gap. For a comprehensive review of the Home Energy Affordability Gap in the United States, see generally, the materials at http:\\www.HomeEnergyAffordabilityGap.com.

the home energy burden to an affordable level. In the first case, the program is not likely to be able to achieve its affordability objectives (e.g., reducing bill nonpayment, reducing the non-energy consequences of paying unaffordable bills). In the second case, the program is devoting more resources than needed to achieving its affordability objectives.

Quite aside from matching program payments to household home energy affordability needs, an efficient use of program funding recognizes that minimum customer payments and maximum benefit payments are appropriate tools. It is not unreasonable for a program to require a program participant to make a minimum payment, so long as such payments do not substantially violate affordability provisions. While minimum monthly customer payments of $30 to $50 may be unreasonable, payments that equal fixed monthly customer charges are not. Conversely, affordability programs need not be open-ended in their payments either. Placing reasonable limits on either consumption (or bills) to be covered by an affordability payment helps prevent a program from paying for wasteful participant consumption.[97]

Finally, a home energy affordability program should not operate independently of other public and private initiatives that are designed to provide assistance to customers in need. Private utility initiatives, for example, might include levelized budget billing to help address the unaffordability issues associated with seasonal bill volatility. Public initiatives might involve partnerships with government energy assistance programs;[98] they may also involve programs designed to supplement household resources for non-energy expenses. Integrating a home energy affordability program with other public and private initiatives is a best-in-class efficient use of program funds.

2.4 Criterion #4: Does the program provide for continuous improvement?

Best-in-class home energy affordability programs engage in a process of continuous self-assessment and improvement. The first step in such an assessment and improvement is the generation of standardized periodic data reporting on program operations and outcomes. Developing standardized data reporting requires the program to identify those data elements that are needed to evaluate the efficacy of program operation. Only then, can the program put into place the processes and technology needed to ensure that this data is generated and retained in accessible form when called upon. Ad hoc data collection too frequently results in data that has either not been retained, or that has been retained in a format that cannot be reasonably accessed. In such circumstances, evaluations are based on data that is available rather than data that is appropriate to answering the evaluation questions. Developing and implementing standardized data

[97] Such benefit ceilings should have an exception for consumption or bills that are outside of the ability of the participant to control.

[98] Government "energy assistance" can come through non-energy programs. In the United States, for example, the federal Food Stamp program has an income-offset for "excess shelter burdens." Shelter costs that exceed 50% of a household's income are used to reduce household income for purposes of calculating the amount of Food Stamp benefits. The "shelter costs" used include both rent/mortgage payments and all utilities (including telephone). Through this program, high energy bills relative to income may result in increased Food Stamps even if they do not result in increased energy assistance.

reporting has implicit within it not only the data generation and capture, but also the planning processes needed to determine what data is necessary and appropriate to use in program evaluation. Standardized data collection, in other words, involves formulating appropriate questions in addition to capturing appropriate pieces of data.

The data must not only be generated, but should be periodically used to evaluate the affordability program in order to determine what, if any, improvements should be implemented. Program evaluations should be scheduled frequently enough to be meaningful, but not so frequently as to be repetitive or to fail to allow the program's outcomes and operations to manifest themselves over time.

2.5 Criterion #5: Does the program provide for reasonable cost recovery?

Best-in-class home energy affordability programs should provide for reasonable certainty in the level and timing of program funding. Given the nature of the home energy affordability problem, all customer classes should contribute to the funding of these programs. As one regulatory staff found, "the problem of the inability of some low income customers to pay their entire home energy bills is caused primarily by societal economic conditions that *are unrelated to any one rate class*. The costs for [low-income rate affordability] programs should be viewed as a cost of operating as a public utility for which all ratepayers must share the costs."

Given this cost recovery, a program should be allowed prompt program cost recovery and a reasonably certain year-to-year stream of revenue. Program expenditures that are subject to year-to-year uncertainty, in either their existence or their magnitude, impede efficient program operations. Program planning processes are interrupted, staff retention and training is impeded, and even medium-term capital expenditures (often in information technology hardware, software, or programming time) are avoided. Cost-recovery should be complete and reasonably timely as part of a best-in-class program.

Cost-recovery also should not be limited to specific utility service territories. It is unreasonable to expect that needs and resources will be equal between service territories. Statewide funding of programs, allowing for a distribution of funds based on need, allow for a greater certainty that funding will be adequate. Indeed, utility service territories with the greatest number of low-income customers, and thus the highest level of need, may be least able to be self-supporting in their offer of rate affordability funding. Funding not tied to specific utility service territories further ensures that program benefits to individual households will be similar, rather than being dependent on the fortuity of where a customer lives.

Finally, cost-recovery should recognize that program expenditures generate cost offsets as well as cost expenditures. To the extent that a home energy affordability program helps reduce payment troubles, a participating utility should realize savings in credit and collection costs and reduced write-offs. To the extent that a home energy affordability program reduces participant arrears, a participating utility will realize reductions in the

working capital associated with carrying those arrears. Not all cost-offsets involve cost reductions. Some offsets simply account for program costs that are already incorporated into a utility's cost-of-service and which, accordingly, can not be separately attributed to the low-income rate affordability program.[99] A best-in-class affordability program should account for the cost offsets generated by the program as well as the expenditures made to support the program.

2.6 Summary

Best-in-class home energy affordability programs can be demarcated by five general criteria. These criteria define the design of the program, the availability of the program, the operation of the program, and the funding of the program. The criteria, all of which have implementing metrics, include:

- Whether the program is reasonably open to all in need;
- Whether the program recognizes and incorporates the multi-faceted nature of "need";
- Whether the program efficiently uses program funds;
- Whether the program provides for continuous improvement; and
- Whether the program provides for reasonable funding.

The table below provides a more detailed assessment of what is involved with each of these best-in-class criteria.

[99] Perhaps the best example of this involves labor costs devoted to the rate affordability program which, in the absence of the program, would otherwise be associated with other utility customer service activities.

Best-in-Class Criteria for Low-Income Rate Affordability Programs

1 Reasonably open to all in need

a. Considers empirical needs assessment.

b. Provides appropriate scope of eligibility.

c. Allows ease of program entry.

d. Allows open enrollment.

e. Provides ease of recertification.

2 Recognizes and incorporates multi-faceted nature of "need."

a. Addresses affordability of bills for current usage.

b. Addresses resolution of pre-program arrears.

c. Targets assistance to high usage/high benefit participants.

d. Allocates risk of bill volatility based on weather and/or prices.

3 Efficiently uses program funds.

a. Matches payments to needs.

b. Imposes maximum benefit/minimum payment.

c. Integrates with other utility payment processes (e.g., budget billing).

d. Integrates financially with other energy assistance programs.

e. Incorporates conservation incentives.

4 Provides mechanism for continuous improvement.

a. Provides for periodic outcome evaluation relative to objectives.

b. Provides for standardized data reporting.

5 Provides for reasonable cost recovery.

a. Spreads costs over appropriate customer base.

b. Ensures timely and reasonably certain recovery of program costs.

c. Accounts for cost offsets generated by program.

d. Recovers program costs independently of utility service territory limits.

Part 3.
Assessing Nine Low-Income Rate Affordability Programs

In this chapter, the criteria that demarcate best-in-class home energy affordability programs are applied to a series of existing low-income programs across the United States to determine the prevalence of best-in-class practices. In addition, because of the unique relationship which Quebec maintains with France, the low-income initiatives of Electricité de France (EDF), the major French distribution electricity utility, are considered as well.

The programs below have been selected to represent a range of best-in-class practices. Not all programs have every best-in-class practice. Indeed, the programs have been selected to provide a range of practices. Conversely, not all programs that exhibit best-in-class practices are included. Appendix A provides information on the applicability of best-in-class criteria to each program. Appendix B rates each program relative to each best-in-class criterion.

3.1 Program #1: The New Jersey Universal Service Fund (USF)

The New Jersey Universal Service Fund (USF) is a creature of statute. In directing the state to move to electricity retail choice, the New Jersey legislature also provided that "there is established in the Board of Public Utilities a non-lapsing fund to be known as the Universal Service Fund." The legislation provided that the Board of Public Utilities, the state utility regulatory commission, was to determine, amongst other things:

- The level of funding and appropriate administration of the USF;
- The "purposes and programs" to be funded with monies from the fund;
- Which "social programs" should be provided by an electricity utility "as part of the provision of its regulated services";
- How to integrate the other public funds available for low-income energy assistance with the USF.

The New Jersey commission established the Universal Service Fund through a proceeding devoted exclusively to this issue. With the legislation enacted in 1999, the New Jersey commission adopted an "interim" rate affordability program in 2001 and a permanent program in 2003.

3.1.1 An Outline of the Program

In the first "full" year of the permanent program, the New Jersey USF enrolled roughly 133,000 accounts (or about 100,000 households, since some households have separate natural gas and electricity accounts). Roughly 22,000 of the initial households were paying more than 20% of their pre-tax income on energy bills, even after federal and state energy assistance was applied against their bills. Another roughly 35,000 families were paying between 15% and 20% of their pre-tax income on energy. According to the Commission, "without USF, it would be very difficult for any of these customers to consistently pay their energy bills."

3.1.1.1 Program Description

The purpose of the USF, the commission said, was to "ensure that low-income customers have access to affordable energy." The commission determined that the program design should:

- Operate on a statewide basis;
- Be available to households with income at or below 175% of the Federal Poverty Level; and
- By available to customers "with automatic screening for eligibility from means-tested financial assistance programs."

The New Jersey commission included an arrearage program under which USF participants with arrears greater than $60 could participate. Under the arrearage program, if a program participant pays his/her monthly utility bill for a 12-month period, then all of his/her remaining arrears will be forgiven at the end of the 12 months. The program does not require a customer to make 12 consecutive on-time payments. Instead, customers will be evaluated at the end of the 12-month period to see if they have made the required payments. Customers that do not receive forgiveness after the 12-month period will have a 3-month grace period to make-up the payments.

3.1.1.2 Relationship to Utility Rate Structure

The basic affordability benefits provided through the New Jersey USF are delivered through a percentage-of-income-based "fixed credit" program. The fixed credit provided through the New Jersey USF was designed to reduce participant natural gas and electricity bills to an affordable percentage of income, deemed to be 6%. For customers taking natural gas and electricity service from different utilities, no more than 3% of income would be devoted to each service respectively. In contrast, in 2006, the electricity burden for households with statewide average incomes in New Jersey was 1.8%; the natural gas burden for New Jersey residents with average incomes was 1.2%.

The New Jersey USF is a blended rate structure/public benefit program. The blended nature of the program appears most clearly in the delivery of benefits. On the one hand, the affordability benefits provided by New Jersey's USF do not appear as payments from an external third party. Rather, they are bill credits provided by the utility. In addition, each customer's benefit is individually determined based on the actual bills that the customer is expected to pay to the utility. In this respect, the USF has attributes of a rate structure program.

The dollars provided in the form fixed credits, however, are not simply collected from each utility's own ratepayers. Rather, the statewide USF compensates each utility for the affordability benefits credited against bills. Depending on the amount of credits provided as affordability assistance, a utility can be either a net donor or a net recipient from the statewide Fund. Through this process, it is the utility that receives money from the statewide Fund, not the client. Moreover, each utility's contributions to the USF fund are tied to statewide funding needs, not to the specific needs of the utility's own customers. In this sense, the program adopts characteristics of an external benefit program. As can be seen, the USF has characteristics of both a rate structure program and an external benefit program.

3.1.1.3 Program Funding

The New Jersey commission approved the collection of universal service costs through a system benefits charge (SBC). This SBC is structured as a uniform volumetric charge imposed on the electricity and natural gas bills of all customers. Since the SBC is set prospectively each year, *actual* program expenditures may be greater than or less than the program revenues generated by the SBC. Should this occur, the difference between actual SBC costs and SBC recoveries is subject to deferral. The SBC is then reset annually to amortize the over- or under-recovered balances in addition to providing for current program cost recovery in the immediately ensuing year.

Finally, the commission decided that it would "segregate the USF revenues and benefits for gas and electricity customers such that the total USF recoveries from gas customers will be used to provide payment assistance to gas customers and the total revenue recoveries from electricity customers will be used to provide payment assistance to electricity customers." This matching of revenues and benefits, however, does not occur on a utility-by-utility basis. Some companies may be net donors while other utilities may be net recipients.

3.1.1.4 Program Background

The New Jersey legislature enacted the USF when it approved the state's move to retail choice for the electricity industry. The state-funded Division of Ratepayer Advocate (DRA) had long-advocated for a low-income rate affordability program. The DRA urged the state's utility commission to incorporate a low-income program into each retail choice plan filed with the commission pursuant to the 1999 statute. Rather than implementing a rate affordability program on a utility-specific basis, the commission initiated a single

proceeding through which to establish a uniform statewide program. Since 1999, a competitive retail market has not developed for residential customers in New Jersey.

3.1.2 Application of Best Practices Criteria

The New Jersey USF is one of the best designed and implemented utility rate affordability programs in the United States. The program is rated "exceptional" in ten of the 20 best-in-class criteria.

3.1.2.1 Criterion #1: Is the program reasonably open to all households in need.

The New Jersey program is reasonably open to all households in need. The program defines income eligibility at 175% of the Federal Poverty Level.[100] The program commits to serving all customers in need with no ceiling on participation rates. To the extent that participation increases, program funding will be expanded to meet that need.

The New Jersey USF leads the nation in its ease of program entry. Program enrollment may occur year-round. Households enrolling in the federal fuel assistance program (called the Low-Income Home Energy Assistance Program, LIHEAP) are automatically enrolled in the USF as well. While program participants must recertify their income annually, they may do so either in-person through local community-based organizations or by mail through the state USF administrator.

3.1.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The New Jersey program recognizes the multiple facets of energy affordability "need." The program defines an affordable home energy bill as one that does not exceed 6% of household income for both natural gas and electricity (or for all electricity homes). In those circumstances where customers use natural gas for heating, the affordable home energy burden is allocated equally between natural gas (3%) and electricity (3%).

The USF provides the opportunity for program participants to earn the forgiveness of preprogram arrears over a reasonable time period. The program provides a reasonable opportunity for participants to "cure" missed payments in order to earn their forgiveness.

One potential problem with the New Jersey USF is that it does not yet allocate federal fuel assistance benefits over multiple months. Instead, federal fuel assistance is applied

[100] The generally accepted measure of "being poor" in the United States today indexes a household's income to the "Federal Poverty Level" published each year by the U.S. Department of Health and Human Services (HHS). The Poverty Level looks at income in relation to household size. This measure recognizes that a three-person household with an annual income of $6,000 is, in fact, "poorer" than a two-person household with an annual income of $6,000. The federal government establishes a uniform "Poverty Level" for the 48 contiguous states. A household's "level of Poverty" refers to the ratio of that household's income to the Federal Poverty Level. For example, the year 2005 Poverty Level for a two-person household was $12,830. A two-person household with an income of $6,415 would thus be living at 50% of Poverty.

against a customer account in a lump sum, thus creating bill credits on participant bills in the early months of each year of program participation. The result of these bill credits is that program participants frequently skip bill payments in months where they receive a credit on their bill. Without these regular monthly payments, subsequent high winter bills sometimes prove to be unaffordable in the month received.[101] If customer payments had been made each month, if fuel assistance had been allocated across multiple months, or if bills had been rendered on an equal monthly budget billing basis, these months of unaffordable bills might have been avoided.

3.1.2.3 Criterion #3: Does the program efficiently use program funding?

The New Jersey USF efficiently uses program funding. The individual calculation of home energy burdens ensures that program funds do not underpay or overpay benefits relative to need. While no minimum customer payment has been established, the program does establish a maximum benefit amount.[102]

The USF integration with the federal fuel assistance program provides substantial program efficiencies. Affordable energy burdens are determined after subtracting federal fuel assistance dollars to avoid the overpayment of benefits.[103] The automatic enrollment of program participants through the federal fuel assistance program also provides an efficiency of operation.

The program finally provides significant conservation incentives. USF benefits are distributed as a fixed-credit on the bills of program participants. To the extent that program participants can reduce their bills through energy efficiency efforts, the participants are allowed to retain the bill savings, thus creating a conservation incentive. The "down" side of this approach is that by making the level of the credit fixed, any fluctuation in bills yields a fluctuation in customer payment responsibility. Under this approach, it is the customers that bear the complete risk of bill volatility attributable to extreme weather or price fluctuations. If winter heating bills increase because of extreme cold, for example, program participants must pay the increase.

3.1.2.4 Criterion #4: Does the program provide for continuous improvement?

The USF provides for a reasonable, though not exceptional, process of continuous improvement. Program objectives have been articulated by statute and commission decision. Based on those stated objectives, the New Jersey utility regulatory commission requires regulated state utilities to provide limited standardized data reporting on program outcomes. While the commission has contracted for a program evaluation –this evaluation was completed in 2007—a regular evaluation of the USF, at prescribed time intervals, has not been incorporated into the program design.

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[101] Monthly bills, in other words, can be unaffordable even if the annual home energy bill is not.
[102] Whether the ceiling on benefits is ***appropriately*** set is not considered at this juncture.
[103] For example, if a household's income is $10,000, a home energy bill of $2,000 would result in a home energy burden of 20%. If the household receives $500 in federal fuel assistance, however, the home energy burden is considered to be only 15% (($2,000 - $500) / $10,000 = 0.15).

3.1.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

New Jersey provides for stable, adequate funding of its USF program. Program budgets are estimated on an annual basis, with a proceeding before the state utility regulatory commission to determine the volumetric charge needed to generate those program dollars. Cost recovery is obtained from all customer classes, both to recognize the benefits provided to the utility as a whole along with its various customer classes, and to recognize the societal commitment to support universal service for essential home energy needs. The New Jersey USF, however, does not account for the cost savings generated by the program. To this extent, participating utilities receive windfall benefits on an inter-rate-case basis.[104]

3.2 Program #2: The Columbia Gas Customer Assistance Program (CAP) (Pennsylvania)

The Columbia Gas Company (Pennsylvania) Customer Assistance Program (CAP) is one of the oldest low-income rate affordability programs in Pennsylvania. Begun as a pilot program in 1990, the program was seen by the Pennsylvania utility regulatory commission as a way "to address realistically these customers' problems and to stop repeating a wasteful cycle of consecutive, unrealistic payment agreements that cannot be kept, despite the best of intentions, followed by service termination, then restoration, and then more unrealistic agreements. . ."

3.2.1 An Outline of the Program

The Columbia Gas CAP is one of the biggest natural gas home energy affordability programs in the state of Pennsylvania.[105] As of December 31, 2006, Columbia Gas served more than 24,000 low-income customers, roughly 40% of its confirmed low-income eligible population.[106] In 2006, Columbia Gas provided bill credits averaging $965 to participating customers. Customers with preprogram arrears received an additional $72 in arrearage credits each year.

3.2.1.1 Program Description

The Columbia Gas CAP is a percentage of income based program. Bill credits are provided to CAP participants so as to reduce annual natural gas bills to an affordable

[104] At the time of a base rate case, the determination of revenue requirement will capture any cost reductions generated by a universal service program and pass those cost reductions on to ratepayers on a going forward basis through a reduced revenue deficiency.

[105] Two natural gas utilities serving the Philadelphia metropolitan area have more participants, PECO and the Philadelphia Gas Works.

[106] The participation rate would be much lower if the rate reflected the estimated number of eligible customers rather than the number of confirmed low-income customers.

percentage of income. In fact, Columbia Gas offers three primary payment options to participating customers. Customers may pay the lowest of a bill based on a percentage of income payment (either 7% or 9% depending on income) or a flat rate of 50% of their budget billing amount.[107] In contrast, in 2006, the electricity burden for Pennsylvania households with statewide average income was 2.0%. The natural gas burden for households with statewide average income was 1.5%.

In every case, a customer must pay at least the average of the bill payment made in the year before entering the program. The program is available to payment-troubled heating customers in the Columbia Gas service territory.

Columbia Gas provides for the forgiveness of preprogram arrears over a maximum of a six year period. Customers are required to make a $5 monthly co-payment and to maintain complete and timely payments in order to earn their arrearage forgiveness credits.

3.2.1.2 Relationship to Utility Rate Structure

The Columbia Gas CAP is an integral part of the company's rate structure for low-income customers. The program is operated under guidelines promulgated by the Pennsylvania utility regulatory commission. Bills are reduced; the asked-to-pay amounts are lower. The program does not simply provide a standard bill with external assistance payments credited against the bill.

In mandating low-income programs, the Pennsylvania commission found that "an appropriately designed and well-implemented CAP, as an integrated part of a company's rate structure, is in the public interest." The Commission stated that its "guidelines prescribe a model CAP that is designed to be a more cost-effective approach for dealing with issues of customer inability to pay than are traditional collection methods."

3.2.1.3 Program Funding

The Pennsylvania legislature included in its statute providing for the move of Pennsylvania to retail choice a requirement that the utility regulatory commission "ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electricity distribution territory." Moreover, the statute defined the low-income programs operated by the state's electricity utilities (known as Customer Assistance Programs, or "CAPs") as a component of universal service. Similar language was also subsequently included in the natural gas retail choice statute.

While the statute provided that each CAP be "appropriately funded" and "available" in each utility service territory, the statute further mandated that sponsoring utilities would be allowed to "fully recover" their universal service costs, including CAP costs. The

[107] A "Senior CAP" provides that seniors (over age 60) with no history of bill payment troubles may pay 75% of the budget amount.

Commission has since held that this statutory language allows each utility to recover its CAP costs through a reconcilable rate rider should it choose to do so.

3.2.1.4 Program Background

The Pennsylvania Office of Consumer Advocate (OCA) proposed that Columbia Gas Company adopt an "Energy Assurance Program" (EAP) as part of Columbia's 1990 rate case. According to the OCA, the issue was one of collection efficiency. "The issue in this proceeding," OCA said, "is not to devise a social response to the broad inability to pay problems of low-income households. The issue is one of what is the most cost-effective means of collection. It is the same issue as whether a utility should pursue new central station capacity, cogeneration or conservation. . .The requirement that utilities provide least-cost service should govern utility collection activities too." The OCA continued: "the issue is this: how can Columbia Gas most effectively and least expensively collect as much as possible from households [that] cannot afford to pay?"

Columbia Gas did not completely oppose the OCA's proposal given its experience with the Ohio Percentage of Income Payment Plan (PIPP). "Columbia reiterated its policy position that it is not philosophically opposed to percentage of income payment plans, provided that the plan fully recognizes the costs of such a program and provides for the timely and full recovery of such costs."

The Pennsylvania utility regulatory commission ordered the company to implement a 1,000 participant pilot project. The Company expanded its program after the Pennsylvania legislature mandated continuation of such programs as part of the move to retail choice. After filing its initial comprehensive universal service plan in 1999, and obtaining temporary funding for that plan, the company received a permanent funding stream in 2003 through its distribution charge. The funding is adjusted on a quarterly basis as part of the quarterly gas cost adjustment proceeding.

The Columbia Gas CAP operates in a retail choice environment. Indeed, Columbia Gas sought to aggregate the participants in its CAP in Pennsylvania. Columbia Gas began its aggregation program in 1997. The CAP customers were grouped together for the purpose of obtaining lower cost gas from a marketer/supplier. Columbia served as the appointed purchasing agent for CAP customers. The aggregation program, however, no longer generates savings from CAP participants. Columbia Gas reported in 2004 that no marketer was participating in its CAP aggregation, a situation that continues through today. Marketers could not procure gas at prices below that which Columbia Gas could for its residential ratepayers generally.

3.2.2 Application of Best Practices Criteria

The Columbia Gas CAP is one of Pennsylvania's best-designed, and most mature, low-income rate affordability programs. The program is rated "exceptional" in nine of the 20 best-in-class criteria.

3.2.2.1 Criterion #1: Is the program reasonably open to all households in need.

The Columbia Gas CAP is reasonably open to all households in need. Columbia Gas defines income eligibility as 150% of the Federal Poverty Level. The Company limits its program participation to payment-troubled customers. Payment-troubled refers to any customer that has failed a payment plan within the prior 12 months or has been identified as payment-troubled through cross-referral or credit scoring. Any customer that self-declares himself or herself as a payment-troubled customer in a contact with the company's call center is referred to dedicated universal service staff to determine the customer's eligibility for CAP. CAP enrollment is open year-round. The company places no ceiling on CAP enrollment.

Columbia Gas requires customers to recertify their program eligibility annually. However, customers participating in the federal fuel assistance program or in some other Columbia Gas universal service program are exempted from recertification. In addition, elderly and disabled program participants are allowed biannual recertification.

3.2.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The Columbia Gas CAP provides exceptional rate affordability assistance. The program limits customer bill payments for current usage to the *lesser* of either 7% or 9% of income (based on Poverty Level) or a designated percentage of the customer's budget bill for current usage. A customer, however, must pay at least the average of what he or she has paid in the past twelve months immediately preceding program enrollment (for customers on the Columbia Gas system for at least six months).

The company provides arrearage forgiveness for customers who maintain current bill payments and make a $5 co-payment toward their preprogram arrears. One weakness in the Columbia Gas program, however, is its requirement that preprogram arrearage forgiveness be spread over a six year period, longer than that which is reasonable.

High usage customers are given priority for treatment by the company's low-income usage reduction program. Customers are enrolled in all available weatherization programs at the same time they are enrolled in the CAP.

3.2.2.3 Criterion #3: Does the program efficiently use program funding?

Columbia Gas appropriately matches benefit payments to customer needs. Individual determinations are made of the most affordable bill payment option available to the customer, so long as the customer pays at least as much as he or she paid in the year prior to entering the program. While matching benefit payments to customer-specific needs, the company does impose both minimum customer payment requirements ($25) and benefit ceilings.

The Columbia Gas CAP is not integrated administratively with the federal fuel assistance program. No automatic referral or enrollment exists between the fuel assistance program and CAP. Program participants are required to apply for federal fuel assistance, however, with fuel assistance dollars being used to reduce the shortfall between the customer's affordable payment and the bill for current usage at standard residential rates.

The company seeks to integrate its CAP with other aspects of its residential customer service operations. Customers who self-declare themselves as payment-troubled are automatically referred to a dedicated, specially-trained universal service staff to determine eligibility for the CAP. The company waives deposits for its CAP participants. It does not, however, require mandatory levelized budget billing.

3.2.2.4 Criterion #4: Does the program provide for continuous improvement?

Columbia Gas complies with state-imposed requirements for standardized data reporting to the Pennsylvania state utility regulatory commission. That commission further provides, by regulation, for periodic program evaluations performed by an independent third party. In addition to these mandatory program evaluations, Columbia Gas performs independent empirical evaluations of particular program operations in support of decision making regarding proposed program modifications. In 2003, for example, Columbia Gas undertook a study of why customers did not complete the enrollment process to enter CAP. In 2005, the company undertook a study of the barriers to program recertification and why customers failed to remain on CAP.

3.2.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The Columbia Gas CAP provides for reasonable certainty in funding and a timely cost recovery for the company. The company's cost recovery mechanism is adjusted quarterly to take into account program participation rates and the amount of bill credits provided. Over- and under-collections are rolled forward into the next quarter's cost recovery mechanism. One weakness in the Columbia Gas program involves the decision to recover CAP costs only from the residential customer class. In addition, Columbia Gas does not take cost offsets into account in establishing its cost recovery.

3.3 Program #3: The Equitable Gas Company Customer Assistance Program (CAP) (Pennsylvania)

The Equitable Gas Company Customer Assistance Program (CAP)[108] is a utility-funded rate affordability program based on energy burdens. First adopted as a pilot program in 1990, according to the company, the program was:

[108] Prior to 2007, the Equitable Gas CAP had been referred to as the Energy Assistance Program (EAP). The company decided to change the name to CAP, both to standardize it with similar rate affordability programs offered by other Pennsylvania utilities and to avoid customer confusion with the federal fuel assistance program (LIHEAP).

> Needed to (1) remove these customers from the discouraging and expensive collection cycle, (2) motivate them to increase conservation, (3) increase their annual participation in available funding assistance programs, and (4) encourage consistent bill-payment efforts.

The Equitable program is available to customers with income at or below 150% of the Federal Poverty Level.

3.3.1 An Outline of the Program

The Equitable Gas CAP is an explicit percentage of income program, with customer payments tied directly to an affordable percentage of income. It is a utility rate program, with revenues foregone from the utility discount collected from the company's own ratepayers as part of the rate structure. By 2007, the Equitable Gas program was projected to serve more than 22,000 low-income customers.

3.3.1.1 Program Description

The Equitable Gas CAP is an explicit percentage of income program. The program ties its affordable percentages to three levels of the Federal Poverty Level. Affordable home energy burdens range from 7% (0 – 50% of Poverty Level), to 8% (51 – 100% of Poverty Level), to 10% (101 – 150% of Poverty Level). In contrast, in 2006, the electricity burden for Pennsylvania households with statewide average income was 2.0%. The natural gas burden for households with statewide average income was 1.5%.

The affordability provisions of the Equitable Gas CAP differ from most percentage of income programs. Under the Equitable Gas program, a customer must make his or her affordable monthly payment in order to earn a credit equal to the difference between the affordable bill and the bill for that month's consumption at standard residential rates. If a customer does not make a complete and timely payment, he or she forfeits the affordability credit. A missed monthly payment cannot be "cured" such that the credit can be earned after-the-fact.

Equitable Gas offers arrearage forgiveness as part of its CAP program as well. The Equitable Gas arrearage forgiveness is based on matching credits. The first five dollars ($5) of each customer payment is deemed to be a payment toward arrears. For each arrearage payment made in a timely fashion, the company matches the customer payment with an arrearage credit of $15 (a match of $3 credit for each $1 of customer payment). If a customer payment is not made, or not timely paid, no matching credit is provided.

3.3.1.2 Relationship to Utility Rate Structure

The Equitable Gas CAP is an integrated part of the company's rate structure. The company provides discounts to its low-income customers. In approving the Equitable Gas initiative in 1990, the Pennsylvania state regulatory commission noted that "we are

aware that this Commission's main function in ratemaking is to assure that every rate made, demanded, or received by any public utility shall be just and reasonable." The commission said that "the relevant question. . .is whether or not the funding of Equitable's proposed [energy affordability] program results in the 'unreasonable' rate discrimination prohibited by the Public Utility Code." In holding that it did not, the Pennsylvania commission held that "a mere difference in rates does not violate" Pennsylvania statutes. The commission then found, on a number of bases, that "the record in this proceeding clearly demonstrates that any 'preference' that EAP would yield to program participants is reasonable, and further, the creation of EAP is in the best interest of all Equitable ratepayers, not just program participants."

3.3.1.3 Program Funding

As with funding for other low-income affordability programs offered by Pennsylvania utilities, funding of the Equitable Gas CAP is provided through the company's ratepayers. The natural gas utility collects its non-administrative costs through a reconcilable rate rider imposed only on residential customers. The rider is reconciled on an annual basis based on the actual number of CAP participants and the actual credits provided to those participants. Those credits may vary based on weather, prices, the mix of program participants between income tiers –a higher mix of lower income customers would result in lower percentage of income payments and thus higher amounts of affordability credits—and the number of program participants actually earning their credits by making full and timely payments.

3.3.1.4 Program Background

As with the National Fuel Gas and Columbia Gas affordability programs discussed elsewhere, the Equitable Gas Company CAP was offered to the Pennsylvania utility regulatory commission as a cost-effective way for the company to respond to low-income nonpayment. The Pennsylvania legislature, in adopting its natural gas retail choice statute, provided that universal service programs offered by natural gas utilities were to be continued in a retail choice environment. Universal service programs, defined to include each company's CAP, were to be appropriately funded and "available" in each company's service territory.

Retail choice has not developed a competitive residential natural gas market in Pennsylvania. Spiraling natural gas prices since 2005, however, have dramatically increased the need for the affordability programs such as that offered by Equitable Gas.

3.3.2 Application of Best Practices Criteria

The Equitable Gas CAP is one of Pennsylvania's best-designed low-income rate affordability programs. The program is rated "exceptional" in eleven (11) of the 20 best-in-class criteria.

3.3.2.1 Criterion #1: Is the program reasonably open to all households in need.

The Equitable Gas CAP program is reasonably open to all households in need. Income eligibility is set at 150% of the Federal Poverty Level. In addition to being income-eligible, customers must also be payment-troubled, as is the case with other Pennsylvania low-income rate affordability programs. The company prepares a periodic needs assessment that empirically determines the number of estimated low-income customers in its service territory and reports the number of "confirmed" low-income customers (along with the proportion of those confirmed low-income customers that are payment-troubled).

The company has committed to serving all customers in need. Program enrollment is open year-round. There is no ceiling on program participation.

The company makes exceptional efforts to ease program entry. Payment-troubled customers may enter the Equitable Gas CAP through either customer service representatives at the company or through designated community-based organizations. Rather than requiring substantial income documentation, however, Equitable Gas accepts self-certification of income. The company then randomly audits 10% of its CAP participant base each year to determine whether the self-certification process results in significant eligibility errors. To date, it has not.

In addition to easing entry into the program, Equitable Gas seeks to facilitate customers remaining in the program as well. Equitable Gas requires recertification once every three years to remain in the program. Recipients of federal fuel assistance, however, are automatically re-enrolled. Moreover, the company engages in a data exchange with electricity companies serving a coterminous service area and automatically re-enrolls program participants who are also participating in the corresponding electricity company CAP.

3.3.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The Equitable Gas CAP recognizes the multiple facets of energy affordability need. The company provides a three-tier home energy burden by which to measure energy affordability for bills for current usage. The energy burdens deemed to be affordable range from 7% for households at 0 – 50% of the Federal Poverty Level, to 8% for households with income between 51% and 100%, to 10% for households with income at 100% to 150% of Poverty. Given the income-based asked-to-pay amount, the risk of bill volatility attributable to prices or extreme weather rests with the program and not with the low-income program participant.

In addition to the program component directed to current bills, Equitable Gas incorporates arrearage forgiveness into its CAP. The company deems the first $5 of each customer payment to be a payment toward preprogram arrears. For each such payment made, Equitable provides a matching $15 arrearage credit (a matching grant of 3-for1).

Equitable Gas finally recognizes the need for energy efficiency investments as a way to address low-income affordability problems. High usage program participants are not only referred to the company's usage-reduction program, but are also given priority for the receipt of usage reduction services. Bill reductions achieved through usage reduction not only protect program participants against bill volatility and high bill burdens (in the absence of the CAP), but also protect the CAP against bill volatility and high program expenditures so long as the customer remains on CAP.

3.3.2.3 Criterion #3: Does the program efficiently use program funding?

The Equitable Gas CAP has implemented a variety of program measures that promote the efficient use of program funds. Bill assistance benefits are individually determined on a household-specific basis. Payments are, as a result, neither too little nor too much, to reduce the household's bill for current usage to an affordable burden. Despite this individual affordability determination, the company requires program participants to take some minimum bill payment responsibility by making at least a minimum payment each month. The company also imposes a benefit cap on program benefits to ensure that the program does not pay for wasteful usage. Exceptions to the benefit cap can be granted to the extent that current usage is beyond the ability of the program participant to control.

Unlike most bill affordability programs, the Equitable Gas CAP requires program participants to make their monthly bill payment on a complete and timely basis in order to earn their monthly bill credit. If payments are *not* made, the bill credit for current usage is charged back to the customer account. Moreover, a customer does not earn a matching arrearage credit unless the current bill has been paid in a full and timely fashion. Past missed payments must be resolved before future bills credits may be earned. Customers are required to participate in the company's levelized budget billing plan to participate in the CAP.

3.3.2.4 Criterion #4: Does the program provide for continuous improvement?

Equitable Gas complies with data reporting and evaluation requirements imposed by the Pennsylvania utility regulatory commission. Standardized data reporting on program operations and outcomes are provided on a monthly basis.[109] Regular periodic evaluations are prepared by an independent third party evaluator and submitted to both the company and the regulatory commission. The evaluation considers uniform evaluation questions prescribed by the commission for all Pennsylvania utilities and offers program design and operations recommendations based on the empirical analysis. A new "universal service" plan is submitted to the commission on a triennial basis and considered for implementation after opportunity for hearing.

[109] The actual submission of data may be done less frequently than monthly. Each submission, however, is of monthly data.

3.3.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

Equitable Gas has reasonable certainty in its budgeting and cost recovery process. The company recovers its CAP costs through a rate rider that is reconciled on an annual basis. Reconciliation of actual against budgeted expenditures may find differences based on the number of program participants, the price of natural gas, the mix of participants by income, and other relevant factors.

The Equitable Gas cost recovery is problematic in that it assigns cost recovery only to the residential class. Cost recovery also does not account for cost savings to the company (e.g., reductions in working capital, bad debt, credit and collection expenditures) generated by the operation of the program.

3.4 Program #4: The Ohio Percentage of Income Payment Plan (PIPP)

The Ohio Percentage of Income Payment Plan (PIPP) is a creation of the Ohio state utility regulatory commission. The Ohio PIPP is an affordability program designed to limit low-income home energy bills to an affordable home energy burden. First approved in 1983, the Ohio PIPP had grown to serve nearly 210,000 households in 2006.

3.4.1 An Outline of the Program

The Ohio Percentage of Income Payment Plan (PIPP) is an explicit percentage of income program. Customer bills are tied directly to a percentage of income deemed to be affordable by the state.

3.4.1.1 Program Description

Under the Ohio PIPP, customer bills are limited to a prescribed percentage of income. For customers taking service from two separate utilities, the customer is required to pay 10% of his or her income toward his or her primary heating source (generally natural gas), with 5% of income being paid to the electricity company. Customers with income at or below 50% of the Federal Poverty Level are required to pay only 3% of income for non-heating electricity service. In contrast, in 2006, the electricity burden for Ohio households with the statewide average income was 2.0%; the natural gas burden for households at the statewide average income was also 2.0%.

The Ohio PIPP also offers arrearage forgiveness to low-income customers. The most common *electricity* arrearage forgiveness program involves the Ohio PIPP's "graduate" program. Under this program, in the first year after a customer leaves PIPP, the customer's bills are still limited to the percentage of income payment. In the second year, the customer's bills are set equal to the residential bill at standard residential rates. In the third year, and years thereafter, a customer is required to make a monthly arrears

payment of an amount not to exceed $20. The utility matches these payments on a dollar-for-dollar basis.

Ohio's natural gas utilities offer a somewhat more generous arrearage forgiveness program. Preprogram arrears are forgiven over a three-year period in the Ohio natural gas PIPP. In order to gain arrearage forgiveness, a PIPP participant must make his or her payments on a full and timely basis. When such payments are made, one-third (33%) of the preprogram arrears are forgiven at the end of the first year of participation, one-half (50%) of the arrears are forgiven at the end of the second year, and the remaining 17% of arrears is forgiven at the end of the third year.

3.4.1.2 Relationship to Utility Rate Structure

The Ohio PIPP is part of the rate structure of each natural gas and electricity utility. The revenue shortfall between bills at standard residential rates and the percentage of income payment requirement are tracked individually by each utility and recovered from that utility's ratepayers through either a rate rider or a system benefits charge.

Despite these linkages to the utility rate structure, the Ohio PIPP is not *completely* a rate structure program. The program administrator pays the bills of program participants. Customer payments, federal fuel assistance dollars, and monies generated by supportive rate riders and system benefits charges are aggregated by the administrator as the pool from which to generate payments. To the extent that the Ohio PIPP does not simply reflect a discount off of the asked-to-pay amount of program participants, it can be viewed as an external program rather than as a low-income component to the rate structure.

3.4.1.3 Program Funding

Under Ohio's statutory framework, the universal service fund is to include revenues from a variety of sources, dedicated exclusively to the statutorily-created universal service fund. The statute provides that Ohio's electricity universal service programs are to be funded through a "universal service rider." In addition to the revenues generated by this rider, the fund is to include all revenues previously collected through previously-established riders approved by the state utility regulatory commission, revenues from federal energy assistance programs, and general fund appropriations. The rider, which is placed under the jurisdiction of the utility regulatory commission, is to be sufficient to "provide adequate funding for these programs." The programs to be funded include rate assistance through PIPP, weatherization, and consumer education.

The Ohio universal service rate rider is applied to all "retail electricity distribution service rates," so long as the regulation commission action in setting or adjusting the rider does not "shift among the customer classes of electricity distribution utilities the costs of funding low-income customer assistance programs."

Natural gas cost recovery is somewhat different. Cost recovery for the difference between low-income percentage of income payments and low-income bills at standard residential rates revenue is through a PIPP Rider which is embedded in distribution rates. Utilities file to increase or decrease the rider based on their judgment regarding the need to adjust revenues to cover the shortfall in customer payments.

3.4.1.4 Program Background

The Public Utility Commission of Ohio (PUCO) created the Ohio PIPP in 1983 in response to an emergency arising from the inability of low-income Ohio residents to maintain their home energy service. The commission found that the disconnection of utility service for nonpayment by those who were financially unable to pay constituted an "emergency" as described by Ohio statute.

The Ohio PIPP, as initially conceived by the state regulatory commission, did not represent a discounted rate for low-income customers. Instead, the PIPP was designed to enable low-income customers to retain their utility service by entering into an agreement pursuant to which the customer would make a utility bill payment equal to a prescribed percentage of income. Customers entering into such agreements, however, would not be relieved of paying bills in excess of the percentage of income. Rather, customers would continue to be liable for those arrears. Those accrued arrears would be subject to repayment by the customers when such customers left the PIPP.

The regulatory proceeding that gave rise to Ohio's PIPP in 1983 did not exclusively concern establishment of the PIPP. Instead, the proceeding considered a broad range of issues relating to payment plans, deposits, and voluntary fuel check-offs as a means to generate energy assistance funding. The proceeding was initiated by Columbia Gas, who filed a proposal to allow for the reconnection of service to customers upon payment by those disconnected customers of one-half of the outstanding arrears and entry into an agreement through which the remaining half would be paid in equal monthly installments.

Early in the proceeding, the state regulatory commission declared that an "emergency" existed because of the number of residential gas and/or electricity customers who were unable to obtain service for the winter heating season because of the disconnection for nonpayment attributable to economic recession, increases in the cost of gas and electricity service, and a decrease in the level of governmental assistance. Based on that emergency, the commission prohibited the disconnection of gas or electricity service during the ensuing winter heating season and ordered the reconnection of service by customers who paid either one-third of their outstanding balance or $200, whichever was less.

Consideration of the PIPP arose out of *utility* objections to the commission's "failure to take into consideration a customer's ability to pay before imposing the moratorium. . ." At least in partial response to that objection, the commission docketed an investigation into "long-term solutions to the problems arising from the winter emergency situations." In responding to that search for long-term solutions, the commission found that the proposed PIPP "will do the most to assist

those in need to maintain utility service while protecting the companies' remaining ratepayers."

Since the inception of Ohio's PIPP, the state has sought to promote the development of a competitive retail choice environment for both natural gas and electricity service. While some municipal aggregation has occurred for electricity service, efforts to bring competition to the provision of PIPP services have failed.

The State of Ohio sought to reduce the unaffordability of natural gas prices for participants in Ohio's Percentage of Income Payment Program (PIPP). In Ohio's PIPP, the home energy bills of income-qualified households are capped at a designated percentage of income. Bills in excess of the designated percentage of income are paid through dollars generated by a System Benefits Charge. The State of Ohio first sought to reduce the cost of the Ohio PIPP program through the aggregation of natural gas PIPP customers. For natural gas PIPP customers, the aggregation initiative resulted in minimal dollar savings. The failure to generate savings occurred because PIPP customers were a tough pool to serve. Efforts to aggregate natural gas PIPP customers were eventually abandoned.

The effort to aggregate Ohio's electricity PIPP customers never succeeded either. Ohio's state LIHEAP office (the Ohio Department of Development or "ODOD") issued a Request for Proposals (RFP) in 2002 seeking a supplier to aggregate electricity PIPP customers, either statewide or in selected regions or utility territories. ODOD received three bids, but did not find savings significant enough to accept any of them. The RFP was re-issued in 2004 but was subsequently withdrawn. Aggregation would have required expensive and time-consuming technology and accounting changes for all parties. At the time, ODOD concluded that any savings were likely to be minimal, and the change possibly could result in higher rather than lower PIPP costs.

3.4.2 Application of Best Practices Criteria

The Ohio Percentage of Income Payment Plan (PIPP) is one of nation's oldest low-income rate affordability programs. The program is rated "exceptional" in five of the 20 best-in-class criteria.

3.4.2.1 Criterion #1: Is the program reasonably open to all households in need.

The Ohio Percentage of Income Payment Plan (PIPP) is reasonably open to all households in need. The Ohio PIPP is open to households that have income at or below 150% of the Federal Poverty Level. The program imposes no non-income-based eligibility criteria. The program commits to serve all customers in need. The program accepts enrollment year-round. No ceiling is placed on program enrollment.

The Ohio PIPP allows reasonable, though not exceptional, access to the affordability program. Customers must make in-person application (and provide income verification) through local community-based organizations. The application for PIPP is a uniform

application allowing customers to apply for all available fuel assistance (including energy efficiency programs) at the same time.

The Ohio PIPP requires program participants to recertify annually. The program seeks to ease the process of recertification. In this process, the program first matches PIPP participants to participants in the federal fuel assistance program to determine if the information required for recertification has already been obtained. If not, recertification can be achieved through the mail; in-person income verification is not required.

3.4.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The Ohio PIPP recognizes the full range of energy affordability needs. While Ohio's percentage of income payments (10% for primary heating; 5% for electricity) are considered somewhat too high to be truly affordable, the PIPP nonetheless limits bill payments for program participants to a percentage of income. Households with income at or below 50% of the Federal Poverty Level need pay only 3% of their income toward their electricity bill. The Ohio PIPP, as the very first model of utility rates taking account of household energy burdens, does not otherwise tier its percentage of income payments.

The Ohio PIPP provides for limited arrearage forgiveness. Ohio operates separate programs for natural gas and electricity arrears. Through each program, program participants may earn the forgiveness of preprogram arrears. The natural gas forgiveness program, which provides complete forgiveness over a three-year period, offers more reasonable relief than the electricity matching grant program. The electricity program provides matching grants for every dollar paid toward arrears by persons who have "graduated" from the underlying PIPP due to an increase in income. This matching grant program spreads the retirement of arrears over an indefinite period of time after the household leaves PIPP.

Finally, the Ohio PIPP recognizes the need for energy efficiency services. High usage PIPP participants are referred to public and private usage reduction programs and given priority for the receipt of usage reduction services.

3.4.2.3 Criterion #3: Does the program efficiently use program funding?

The Ohio PIPP provides for an efficient use of program funds. Bill affordability benefits are determined on a customer-specific basis, with required bill payments tied to a prescribed percentage of income. No under- or over-payments are made. The Ohio PIPP imposes no minimum customer payment requirement, nor does it impose a ceiling on program benefits.

While the Ohio PIPP does integrate with the federal fuel assistance program, the program does not well integrate with company billing processes. PIPP participants are not required, for example, to participate in budget billing as part of the PIPP program.

3.4.2.4 Criterion #4: Does the program provide for continuous improvement?

The Ohio PIPP has been subjected to an empirical outcome evaluation. Such evaluations, however, are ad hoc and not prescribed by law or program regulation. As with other state programs, the Ohio PIPP is subject to a periodic sunset review. During this review process, potential program modifications and improvements are examined through a multi-stakeholder work group. Proposed regulations governing program operations are further subject to a public hearing process. Despite the lack of periodic outcome evaluations, the Ohio state utility regulatory commission has adopted extensive standardized data reporting by Ohio utilities on their PIPP participants.

3.4.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The Ohio PIPP provides for reasonable certainty in budgeting and cost recovery. While the specific processes differ, PIPP costs for both the natural gas and electricity programs are recovered through a volumetric charge imposed on all customer classes. The volumetric charge may be changed by the Ohio regulatory commission upon application of either the state's utilities or the Ohio Department of Development (ODOD), the PIPP program administrator.

3.5 Program #5: The Citizens Gas & Coke Utility/Vectren Energy Delivery Universal Service Programs (USP) (Indiana)

The Universal Service Programs (USPs) operated by Citizens Gas & Coke Utility (CGCU) and by Vectren Energy Delivery (collectively referred to as Indiana Utilities) are grounded in the flexible regulation provided by statute to the Indiana Utility Regulatory Commission (IURC). The flexible regulation allowed under this Indiana statute permits the Indiana commission to set aside traditional regulation for all or part of a utility's rates or services should the commission find it is in the public interest to do so.

Arguing that the Indiana utility low-income programs met that public interest standard, Carey Lykins, president and Chief Executive Office of CGCU, noted that the objectives of the USP were three-fold: (1) to protect the health and safety of the utilities' low-income customers by helping them maintain affordable natural gas service; (2) to help low-income customers conserve energy and reduce residential heating bills; and (3) to significantly lower the number of payment defaults by low-income customers, thereby benefiting all of the utility's customers.

3.5.1 An Outline of the Program

The Indiana Universal Service Programs represent tiered rate discount programs directed toward participants in the federal Low-Income Home Energy Assistance Program (LIHEAP, known simply as EAP in Indiana). The Citizens Gas program served roughly

17,300 low-income customers during the 2006/2007 winter heating season, while the Vectren USP served 23,800 low-income customers.

3.5.1.1 Program Description

The Citizens/Vectren program design offers income-eligible customers a discount off of the natural gas bill they would otherwise receive from the respective companies. Both companies divide their low-income customer population into three tiers. Customers are placed in each tier based on the "State Benefit Matrix" used in the distribution of federal fuel assistance through the federal Low-Income Home Energy Assistance Program (LIHEAP). The discount tiers are designed to approximate a 4% affordable home energy burden under average incomes and usage levels. In contrast, in 2006, the electricity burden for Indiana households with the statewide average income was 2.2%; the natural gas burden for households at the statewide average income was 1.7%.

Low-income customers must participate in LIHEAP in order to receive the utility discounts in Indiana. Enrollment in LIHEAP automatically places the customer into the respective utility's discount program.

3.5.1.2 Relationship to Utility Rate Structure

The Indiana USPs are an integral component of the utility rate structures. Citizens provides a discount of either 9%, 18% or 24%; Vectren provides a discount of 15%, 26% or 32% applied to their residential gas service bill. When combined with LIHEAP benefits, the combined benefit of the discount tiers and LIHEAP will represent an approximate reduction of 27%, 40% or 50% in the overall heating costs to CGCU's eligible low-income customers. Vectren's low-income customers will experience a reduction of approximately 35%, 50% or 60%. The highest benefits go to the households with the lowest income. Vectren's discounts are somewhat higher since the company has somewhat higher rates than Citizens Gas.

3.5.1.3 Program Funding

Program funding for both Indiana low-income tiered rate discount programs is provided through a rate rider imposed on all customer classes. The volumetric charges, while imposed on all customer classes, are not uniform between classes. The per therm residential charge for CGCU, for example, is $0.0048, while the commercial charge is $0.0026 per therm. The corresponding payments by the large volume customers will be $0.0005, but will not exceed $200 per year. Vectren, too, collects is universal service rider volumetrically from all customer classes, but using non-uniform per therm charges.

Both utilities use an annual true-up based on the balance of its USP funds, the projected average residential bill for the upcoming 12-month period, and the projected enrollment/eligibility requirements of the State's fuel assistance program. While neither utility has needed to place a ceiling on program participation, both utilities place a cap on the maximum per therm charge to be imposed. CGCU, for example, agreed that in no

event would the per therm charge exceed $0.0068 for residential customers or $0.0036 for commercial customers.

3.5.1.4 Program Background

The Indiana programs were adopted at the behest of the respective utilities. Unlike many other states, the Indiana programs did not arise out of a move to a retail choice environment. According to Niel Ellerbrook, Chairman of the Board and Chief Executive Officer of Vectren Utility Holdings, the parent company of Vectren Energy Delivery, the primary driving factor behind his utility's low-income proposal involved "the dramatic rise in natural gas prices and the resulting impact on customers and the economy." According to Ellerbrook, "the impact of significantly higher energy costs creates especially acute problems for low-income customers." The company CEO justified the program by stating:

> Given the magnitude of the situation, no single solution has been found to ensure that low income customers can obtain and retain utility service that is necessary to sustain life. For Vectren, the Universal Service Fund has been part of the package of efforts designed to help those customers in need of assistance. There is a cost to serve customers who need heat but are unable to pay the full cost of service for any number of reasons, including job loss, cost of medicine, or the number of their dependents. Like other real costs to provide service to our entire customer base, this cost must be recognized and addressed in a constructive manner to assure that people have service.

Ellerbrook concluded by noting that the universal service program "provides an answer in conjunction with LIHEAP and other available programs, by identifying customers with true need, determining in a consistent and accepted manner how much they can pay for service, and providing them with more affordable bills that better match their ability to pay."

As can be seen, rather than being driven by a move to retail choice, the Indiana natural gas low-income programs have been driven by spiraling natural gas commodity prices and the adverse impacts those prices have had not only on low-income customers but also, by extension, on the utilities serving those low-income customers (and their remaining ratepayers).

3.5.2 Application of Best Practices Criteria

The Universal Service Program (USP) operated by Citizens Gas & Coke Utility and by Vectren Energy Delivery is one of the nation's best examples of a "tiered rate discount" program that ties tariffed discounts for low-income customers to a determination of affordable home natural gas bills. The Indiana USPs are rated "exceptional" in five of the 20 best-in-class criteria.

3.5.2.1 Criterion #1: Is the program reasonably open to all households in need.

The Indiana Universal Service Programs (USPs) are reasonably open to households in need. The USPs are directly tied into the administration of the federal fuel assistance program (LIHEAP). A CGCU/Vectren customer enrolling in the fuel assistance program is automatically enrolled into the USPs as well. No separate application forms, and no additional customer steps, are required for the utility program.

The fuel assistance program eligibility has been set at 150% of the Federal Poverty Level in Indiana. While the Indiana utilities contracted for an empirical needs assessment in 2007, such needs assessments are not periodically prepared either by the companies or by the state LIHEAP office.

The integration of the company programs with the federal fuel assistance program has both advantages and disadvantages. While tying USP enrollment to enrollment in the federal fuel assistance program eases program entry, it also limits the time period of enrollment to those months in which the federal program takes applications. Since the federal program is primarily a heating program, USP enrollment does not occur year-round. Moreover, no special efforts have been made to ease the retention of program participants from year-to-year. USP participation from year-to-year is simply tied to LIHEAP participation.

3.5.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The Indiana USPs do not fully reflect the multiple aspects of home energy affordability needs. On the one hand, the Indiana programs are designed to promote the affordability of bills for current usage. Citizens Gas and Vectren provide a tiered rate discount, with three tiers tied primarily to the ratio of participant income to the Federal Poverty Level. The discount tiers have been calculated so that, when coupled with the receipt of federal fuel assistance benefits, net participant natural gas bills (i.e., bills minus benefits) are reduced to an affordable percentage of income. The Indiana programs do not address the affordability of electricity.

The Indiana USPs do not offer an arrearage forgiveness program component. While making bills for current usage more affordable has been found to also help reduce pre-existing arrears, and to help prevent the incursion of new arrears, there is no specific initiative to help retire pre-existing arrears so as to bring total bill payments down to an affordable level.

Having said that, unlike most affordability programs, the Indiana utilities do offer substantial crisis assistance as part of their affordability programs. This crisis assistance leverages private funding with utility-sponsored contributions to provide a supplemental source of funding to customers facing the potential loss of service due to outstanding arrears. As with most such crisis assistance programs, the need for arrearage assistance considerably outstrips the amount of funding provided.

Both Indiana utilities fund low-income energy efficiency initiatives. While high-use USP program participants are referred to these usage reduction programs, however, high-use program participants receive no priority over other households that are income-qualified for the low-income efficiency programs.

3.5.2.3 Criterion #3: Does the program efficiently use program funding?

The Indiana utilities provide for reasonable efficiencies in the use of program funding. The integration of the utility program intake and eligibility determinations with the administrative activities of the federal fuel assistance program allows for nearly 100% of utility funding to be distributed as benefits (rather than being devoted to administrative purposes).

The tiered discounts provided by the companies have also been designed to reduce the over- and under-payment of benefits often associated with discount programs. Typically, discounts provide identical benefits to customers with identical usage, irrespective of the income or home energy burden experienced by that customer. As a result, some customers receive more benefits than needed to reduce their bills to an affordable burden while others receive fewer benefits than are needed. This problem of over- and under-payments is exacerbated when the level of discount is not calculated to result in any preset determination of affordability. In contrast, the Indiana tiered rate discounts are explicitly calculated to result, when combined with federal fuel assistance benefits, in an affordable burden. So long as program participants are at average income and consumption level within their tier, benefits will match needs. To the extent that participants diverge from average consumption and income levels, the program will somewhat over- or under-pay benefits relative to need.

The Indiana utilities are seeking to increase the integration of their tiered discount programs with existing bill payment processes. Both companies have announced that they will target the promotion of levelized budget billing to program participants. Neither company, however, will require budget billing as a condition of program participation.

3.5.2.4 Criterion #4: Does the program provide for continuous improvement?

The Indiana utilities engage in a process of continuous improvement based on an empirical review of program operations and outcomes. The companies have agreed to report a set of standardized monthly metrics documenting program impacts on arrears, payments, bills, and various collection activities. The programs have operated with annual evaluations through their first three years of operation. In 2007, the programs were extended for four years with ongoing review and data reporting continuing throughout that time period. A comprehensive program evaluation will occur at the end of three years and serve as the basis for any consideration of additional extensions of the programs.

3.5.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The Indiana utilities provide for reasonable certainty in program budgeting and cost recovery. Program costs are recovered from all customer classes through a volumetric rate rider. The rate rider is reconciled annually to prevent under- or over-recovery of program costs by the utilities. Customers are protected from excess program costs by a maximum cap placed on the volumetric charge. The 2007 universal service charge, however, is considerably below the allowed cap. In addition to the overall cap on the per unit of energy rate rider charge, a separate cap has been placed on the total payment obligation which can be imposed on any individual industrial customer. This separate cap is to prevent a disproportionate imposition of universal service charges on large user customers.

3.6 Program #6: The National Fuel Gas Distribution Corporation's Low-Income Rate Assistance (LIRA) Program (Pennsylvania)

The Low-Income Rate Assistance (LIRA) program operated by National Fuel Gas Distribution Corporation (NFGDC) is another excellent example of a "tiered rate discount" program that ties tariffed discounts for low-income customers to a determination of affordable home natural gas bills.

3.6.1 An Outline of the Program

The National Fuel Gas LIRA program represents a blending of tiered rate discounts and percentage of income principles. While LIRA is primarily a tiered rate discount program, its discount tiers are explicitly tied to achieving predetermined levels of affordability as defined by home energy burdens deemed to be affordable to low-income customers. By 2007, the NFG LIRA program's blended approach to rate affordability was serving more than 11,300 program participants.

3.6.1.1 Program Description

The National Fuel Gas LIRA program is a blended tiered rate discount program. The calculation of LIRA's affordability benefits is tied to a structure of rate discounts, ranging from 10% to 60% off of bills at standard residential rates. In turn, however, the structure of LIRA discounts is tied to a determination of what discounts are necessary to achieve pre-determined levels of affordability defined by home energy burdens.

The LIRA program calculates its rate discount by beginning with an average bill distinguished by household size. These average bills are recalculated quarterly using actual consumption data for existing program participants. From these bills, the company subtracts the customer's expected percentage of income payment along with the assistance a program participant is expected to receive from the federal fuel assistance program. The resulting net bill (average bill minus percentage of income household

payment minus federal fuel assistance benefit) is then converted into a percentage discount for the customer. If the average bill is, for example, $800 and the net bill is $400, the customer is provided a 50% discount through the LIRA program.

The National Fuel Gas LIRA program also offers program participants arrearage forgiveness. Preprogram arrears can be retired, in exchange for complete and timely payment of bills for current usage, over a 24 month period of time.

3.6.1.2 Relationship to Utility Rate Structure

The LIRA program is an explicit part of the National Fuel Gas rate structure. Discounts provided are calculated by reference to a percentage off the bills that would have been rendered to program participants at standard residential rates. To the extent that bills increase to individual customers during their program participation, whether because of changes in usage, price or weather, the dollar amount of the discount increases as well (even though the percentage discount will remain constant).

3.6.1.3 Program Funding

The revenue shortfall experienced by the company as a result of the discount is tracked by National Fuel Gas and collected from residential customers through a reconcilable rate rider approved by Pennsylvania utility regulators. Reconciliation between actual program expenditures and program revenues generated by the rate rider is performed on an annual basis.

3.6.1.4 Program Background

The National Fuel Gas LIRA program has expanded from a 1,000 customer pilot program in 1991 to a program serving more than 11,000 low-income customers in 2007. The program arose out of the Pennsylvania state regulatory commission's investigation into the control of uncollectible accounts. Shortly after the Pennsylvania commission had approved pilot low-income rates for Columbia Gas Company and Equitable Gas Company, the commission began a further investigation into the control of uncollectible accounts in general. As a result of that investigation, the commission recommended that low-income programs be adopted by other utilities throughout the state. According to the Pennsylvania commission, low-income rate affordability programs were a necessary tool for utilities to use in combating the problem of nonpayment. Through its investigation into the control of uncollectibles, the Pennsylvania commission concluded that:

> As a result of our investigation, the Commission believes that an appropriately designed and well implemented CAP, as an integrated part of a company's rate structure, is in the public interest. To date, few utilities have implemented CAPs. The purpose of this Policy Statement is to encourage expanded use of CAPs and to provide guidelines to be followed by utilities who voluntarily implement CAPs. These guidelines prescribe a model CAP which is designed to be a more cost effective

approach for dealing with issues of customer inability to pay than are traditional collection methods.

While the implementation of CAPs was left to the voluntary decision of the state's energy utilities, the PUC made clear that it believed "alternative programs must be supported as clearly being in the public interest." The National Fuel Gas LIRA program was one of the CAP alternatives approved by the Pennsylvania regulators.

3.6.2 Application of Best Practices Criteria

The National Fuel Gas Distribution Corporation's (NFGDC) Low-Income Rate Assistance (LIRA) program is an excellent example of a utility-specific tiered rate discount. The program is rated "exceptional" in six of the 20 best-in-class criteria.

3.6.2.1 Criterion #1: Is the program reasonably open to all households in need.

The National Fuel Gas LIRA program is reasonably open to all households in need. Program eligibility is set at 150% of the Federal Poverty Level. The program eligibility is supported by an empirical needs assessment that is periodically updated by the company and submitted to the Pennsylvania utility regulatory commission. The program imposes one non-income-based program eligibility requirement, that customers be payment-troubled (i.e., have an arrears at the time of application or have at least one existing, canceled or defaulted payment arrangement). Program enrollment is open year-round. No ceiling on program participation is imposed.

The company, however, creates unnecessary barriers that impede the ease of entry into its LIRA program. In particular, verification and application requirements are more onerous than most other programs. NFG requires that all adults in a household become "customers" in order for a household to enter its program. In addition, NFG imposes documentation requirements (e.g., a copy of the household's deed, mortgage or lease) to enter the program. NFG further requires that all LIRA program participants execute a written "LIRA Service Agreement" in order to participate in the program.

3.6.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The National Fuel Gas LIRA program recognizes the multiple facets of energy affordability "need." While the LIRA program operates as a tiered discount program, its tiered discounts are explicitly tied to reducing bills to an affordable percentage of income. Bill affordability is defined to be 6.5% of income for households at 0 – 50% of Poverty, 8.0% for households with income at 51 – 100% of Poverty, and 9.0% for households with income at 101 – 150% of Federal Poverty Level. In contrast, in 2006, the electricity burden for Pennsylvania households with the statewide average income was 2.0%; the natural gas burden for households at the statewide average income was 1.5%.

Irrespective of a household's home energy burden, however, LIRA guarantees a minimum discount of 10%.

National Fuel Gas also incorporates an arrearage forgiveness program for households with preprogram arrears. The LIRA program provides for a forgiveness of preprogram arrears over 24 months. For each month of a full and timely payment, LIRA provides for a forgiveness of $1/24^{th}$ of the preprogram arrears. In any month in which the customer fails to make a full and timely payment, that customer forfeits the forgiveness for that month. If at the end of the 24 months, however, a LIRA participant has a sum of forfeited arrears credits, the customer is given an additional 12 months over which he or she may earn the forgiveness of those forfeited credits through full and timely payments. Only at the end of this additional period does the customer lose the ability to earn forgiveness altogether.

As with other Pennsylvania utilities, National Fuel Gas operates a Low-Income Usage Reduction Program (LIURP) in conjunction with its rate affordability program. While high use LIRA customers are referred to the usage-reduction program, they are provided no particular priority of treatment within that program.

3.6.2.3 Criterion #3: Does the program efficiently use program funding?

The LIRA program is particularly adept at making an efficient determination of affordability benefits within the context of a tiered rate discount program. Unlike most tiered discount programs, which have from three to six tiers (e.g., New Hampshire (6 tiers), Indiana (3 tiers), Maryland (4 tiers)), the National Fuel Gas LIRA program distinguishes its discount tiers by income level and household size. Separate discounts are calculated for each "cell" in an affordability matrix determined by household income and household size. LIRA uses this expanded system of tiers so that it can recognize that household natural gas consumption (and thus household natural gas bills) varies by household size. Given the different levels of income (which vary in increments of $1,000) and household size, National Fuel Gas offers discounts of between 10% and 60% on current bills. Because the company takes into account a detailed disaggregation of customer income, along with disaggregated consumption by household size, the LIRA program provides far less under- and over-payments than do other tiered rate discount programs.

The National Fuel Gas calculation of expected customer payments incorporates not only minimum monthly customer payments ($12 per month), but also minimum discount percentages (10%).

The National Fuel Gas LIRA program provides for an efficient use of program funds, also, by requiring program participants to enter into a levelized monthly Budget Billing plan. Through this levelized billing, LIRA not only promotes the affordability of annual home energy bills, but maintains the affordability of individual monthly bills as well.

3.6.2.4 Criterion #4: Does the program provide for continuous improvement?

National Fuel Gas complies with state-imposed standardized monthly data reporting regarding program costs, operations, and bill payment outcomes. The company engages in a program outcome evaluation by an independent third party evaluator on a prescribed time interval. The company files a new universal service plan with Pennsylvania regulators on a triennial basis, which is subject to review through a public hearing process.

3.6.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The National Fuel Gas LIRA program provides for reasonable cost budgeting certainty and timely cost recovery. The company recovers its costs through a rate rider imposed on residential customers. Actual program expenditures are reconciled against revenues generated by the rate rider on an annual basis. The company takes limited account of cost offsets for the incremental additions to program participation rates gained since its last base rate case. These cost offsets include primarily savings in reduced bad debt and reduced working capital expenses.

3.7 Program #7: The Electricity Assistance Program (EAP) (New Hampshire)

The Electricity Assistance Program (EAP) adopted by the New Hampshire state utility regulatory commission is an excellent example of a "tiered rate discount" program that ties tariffed discounts for low-income customers to a determination of affordable home electricity bills.

3.7.1 An Outline of the Program

The New Hampshire tiered rate discount is a uniform statewide program that provides electricity affordability assistance to participants in the federal Low-Income Home Energy Assistance Program (LIHEAP in New Hampshire. New Hampshire operates a single uniform statewide program extending to each regulated electricity utility. By design, the program operates to provide substantial rate discounts to 30,000 low-income customers each year.

3.7.1.1 Program Description

The New Hampshire EAP provides a tiered discount with tiers based on the ratio of household income to the Federal Poverty Level. The program is based on six tiers. The lowest tier is for households with income at or below 75% of Poverty, while the highest tier is for households between 175% and 185% of Poverty Level. Using the Federal Poverty Level, New Hampshire stakeholders agreed, allows the benefits to be better targeted to those with the most need as the Poverty Level takes into account not only income but also the size of the household. Household payments toward their electricity

bills are expected to range between 4% and 4.5% of gross household income. In contrast, in 2006, the electricity burden for New Hampshire households with the statewide average income was 1.7%; the natural gas burden for households at the statewide average income was 0.9%. Discounts range from 5% to 70% off of the total electricity bill. Average benefits under the New Hampshire EAP reach roughly $400 per year.

The New Hampshire tiered discount program does not make a distinction for electricity heat usage. The program assumes that most households eligible for program benefits will be eligible for LIHEAP benefits for their primary source of heating.

3.7.1.2 Relationship to Utility Rate Structure

The New Hampshire EAP is built right into each participating utility's rate structure. Percentage discounts are applied to the entire bill for electricity.[110] The percentage discounts are gradually reduced with the largest percentage discount applicable to the bills of customers in the lowest income group and the lowest percentage discount applied to the bills of customers in the highest income group.

The New Hampshire EAP, however, differs from the National Fuel Gas and Indiana tiered rate discounts. Both the NFGDC and Indiana programs are funded internally by utility ratepayer funds. Those three utilities (NFGDC, CGCU, Vectren) track the lost revenue attributable to their respective tiered discounts and recoup those revenues through a rider imposed on their own ratepayers. In contrast, New Hampshire utilities access the state's System Benefits Charge as an outside source of revenue to compensate them for their lost revenue. Unlike Indiana and NFGDC, the New Hampshire utilities need not be self-supporting. Indeed, some electricity utilities are net donors (with their ratepayers contributing more in SBC funds than the utility's low-income customers use in tiered discounts) while other electricity utilities are net recipients.

3.7.1.3 Program Funding

Program funding for the New Hampshire EAP is provided by a statutorily-created System Benefits Charge. The SBC was created as part of New Hampshire's 1996 approval of an SBC of 3.0 mils ($0.003) per kWh, with 1.2 mils being devoted to low-income assistance.[111] The SBC was extended by the legislature in 2005 and is currently scheduled to expire in 2008. The low-income funding was retained at a level basis in the 2005 program extension. The SBC generates roughly $13 million each year to support the EAP.

3.7.1.4 Program Background

The New Hampshire System Benefits Charge (SBC) was adopted as part of that state's approval of legislation approving a move to retail choice in the electricity power industry.

[110] An exception to this principle is made for certain state-imposed taxes.
[111] The remainder of the SBC is devoted to the support of energy efficiency programs, though not necessarily low-income efficiency programs.

The SBC was designed to support what many stakeholders considered to be public purposes that would likely not be well-served by a competitive electricity marketplace. Since the enactment of the retail choice statute a competitive retail market for residential customers has not developed in New Hampshire.

3.7.2 Application of Best Practices Criteria

The New Hampshire Electricity Assistance Program (EAP) is one of the nation's best examples of a tiered rate discount program. Developed by a working group of regulatory staff, energy assistance staff, and representatives of poverty and electricity utility stakeholders, the program was explicitly designed to meet the objectives of a percentage of income-based affordability approach while retaining the administrative efficiencies of a tariffed rate discount. The New Hampshire EAP is rated "exceptional" in seven of the 20 best-in-class criteria.

3.7.2.1 Criterion #1: Is the program reasonably open to all households in need.

The New Hampshire EAP is reasonably open to all households in need. The EAP defines eligibility as those households with income at or below 175% of the Federal Poverty Level. Customers who enroll in the federal fuel assistance program are automatically enrolled in the EAP. The program has limitations, however, created by its funding ceiling. As a result, it cannot commit to serve all program applicants. Instead, if the program projects that its committed budget will exceed its stream of revenue through the state's System Benefits Charge, the program will place program applicants on a waiting list. In addition, since program enrollment is tied to enrollment in the federal fuel assistance program, which is primarily a heating assistance program, program enrollment is effectively limited by the enrollment period available for fuel assistance participants.

Despite the challenges facing New Hampshire's EAP in program enrollment, the EAP is well-served by its recertification processes. The EAP generally requires annual recertification by program participants. This recertification can occur by mail. In addition, biannual recertification is allowed for certain classes of customers whose income is not expected to vary by year. Included in this biannual recertification are the aged and disabled.

The New Hampshire EAP is not supported by a periodic needs assessment. Given its intrinsic ties to the federal fuel assistance program, the program operates by reference to past experience with fuel assistance participation. The program is, however, overseen by a multi-party workgroup consisting of representatives of various stakeholders. This workgroup commissions issue-specific empirical studies in support of discussions of specific program modification proposals on an as-needed basis.

3.7.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The New Hampshire EAP is not designed as a comprehensive electricity bill affordability program. While the EAP is structured to deliver rate affordability assistance directed toward bills for current usage, the EAP does not have an arrearage forgiveness component. This lack of arrearage forgiveness is driven not by a lack of recognized need for such assistance, but rather by program funding limitations imposed by the New Hampshire legislation authorizing the program. Neither does the program incorporate a crisis assistance component.

While New Hampshire utilities have implemented energy efficiency programs directed toward residential customers in general, there are no specific low-income efficiency programs that are integrated with the EAP. High use EAP customers are referred to the federal weatherization assistance program (WAP) and to these utility programs, but are given no priority for treatment. No formal integration exists between the low-income rate affordability and residential usage reduction programs.

3.7.2.3 Criterion #3: Does the program efficiently use program funding?

The New Hampshire EAP was developed so that program discounts would reduce low-income electricity burdens to an affordable percentage of income. With discount tiers targeted based on the ratio of household income to the Federal Poverty Level, the EAP discounts are designed to reduce non-heating electricity bills to between 4.0% and 4.5% of household income.

A six-tier structure allows for reasonable targeting of discounts and a minimization of the overpayment or underpayment of customers whose bills or income diverge below or above the averages used in determining appropriate discount levels. An empirical analysis of program participants found minimum divergence from averages within the multiple rate discount tiers.

There is no minimum payment required in the New Hampshire EAP. An empirical analysis of program participant bills found that the proposed discounts would not result in bills less than the fixed monthly customer charge. Establishing a minimum payment was thus considered to add administrative complexity without adding program efficiencies. There are no maximum benefit amounts. Conversely, however, no program participant receives less than a 5% discount.

3.7.2.4 Criterion #4: Does the program provide for continuous improvement?

The New Hampshire EAP provides for a periodic program evaluation. In 2007, the program adopted required standardized monthly data reporting for participating utilities, along with a prescribed program evaluation. In addition, the program is overseen by a multi-party working group that reviews program operations and, annually, recommends

program modifications (if any) to the New Hampshire utility regulatory commission for its consideration. As with other New Hampshire government programs, the EAP also is subjected to a periodic sunset review.

3.7.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The greatest weakness in the New Hampshire EAP involves the limitations imposed by statutorily imposed budget constraints. The EAP is funded through a statewide System Benefits Charge of 3.0 mils per kWh, of which 1.2 mils is directed toward low-income rate affordability assistance. The SBC has not been increased since the program's inception. The SBC is not indexed to fuel prices or to program participation. Indeed, a statutorily-mandated increase in program eligibility levels resulted in substantial decreases in per-participant benefits as the higher participation levels were met with a fixed program budget.[112]

Conversely, the fixed SBC charge of 1.2 mils per kWh provides a stable annual funding base for EAP program operation. Program administrators need not address the inefficiency of not knowing whether funding will exist in any given year, or what that level of funding might be.

The funding of New Hampshire's EAP is assisted by the requirement that program funding be allocated to all retail customers. In this fashion, the burden of supporting the low-income program does not become too great for any given customer class.

3.8 Program #8: The Maryland Electricity Universal Service Program (EUSP)

Maryland's Electricity Universal Service Program (EUSP) is a creature of statute. Mandated by the statute directing the state to move to retail choice, the EUSP was statutorily established to deliver bill payment assistance, low-income weatherization, and arrearage retirement to low-income customers. The statute generally provides that the Maryland state utility regulatory commission: (1) shall order a universal service program to be made available on a statewide basis to benefit low-income customers; (2) shall establish a universal service program; and (3) shall have oversight responsibility for the universal service program.

In contrast, the state Department of Human Resources, which is the state agency that administers the federal Low-Income Home Energy Assistance Program (LIHEAP) (also known as the Maryland Energy Assistance Program—MEAP), was statutorily charged with the responsibility for administering the EUSP along with disbursing EUSP funds (with oversight by the commission).

[112] The primary benefit reduction was the elimination of heating benefits. The EAP determined that program participants would need to rely on the federal fuel assistance program for heating benefits with EAP benefits limited to non-heating electricity bills.

3.8.1 An Outline of the Program

The Maryland EUSP consists of both a rate discount for bills for current usage and an arrearage forgiveness program. The EUSP is available to electricity customers who have income at or below 175% of the Federal Poverty Level. In Fiscal Year 2007, EUSP provided electricity affordability grants to more than 93,000 households.

3.8.1.1 Program Description

Bill payment assistance is the EUSP program component designed to make monthly electricity bills more affordable. While benefits are designed to make bills more affordable, EUSP program administrators emphasize that they design their benefits to ensure that the program will never exhaust its funding. This limitation is to ensure that all applicants to EUSP will receive a benefit. Applications are taken on a year-round basis.

EUSP benefits are distributed as annual benefits representing a percentage discount applied to an average electricity bill. Benefit amounts reflect a tiered rate discount structure. The program has adopted four tiers for households below 175% of the Federal Poverty Level. The lowest tier is for households at 0 – 75% of Poverty, while the highest tier is for households at 150 – 175% of Poverty Level. An average bill is calculated by applying weighted electricity prices to average statewide consumption for EUSP participants from the previous 12 month program year. Discounts range from 75% for the lowest income participants to 30% for the highest income customers.[113]

In general, in 2006, the electricity burden for Maryland households with the statewide average income was 1.9%; the natural gas burden for households at the statewide average income was 0.8%.

The arrearage retirement provision of EUSP is a key benefit provided through the program. This program component provides a one-time opportunity to eliminate past-due bills. Program administrators have recommended that customers have a minimum arrearage of $300 in order to receive arrearage retirement benefits. The minimum arrearage will both help spread limited arrearage retirement funds further and prevent customers from foreclosing future assistance when their need is perhaps greater. EUSP administrators report that they expect that privately available funds can meet the need for customers with arrearages less than $300. Arrearage retirement credits will be provided to customers up to a maximum of $2,000. Arrearage retirement benefits can be provided to customers currently taking service and in arrears or to customers who are currently "off-service" and who seek to re-establish service. Off-service is defined as service that has been terminated ***and*** the customer has received a final bill.

3.8.1.2 Relationship to Utility Rate Structure

[113] Discounts are provided only for non-heating electricity. Heating bills are presumed to be offset by receipt of federal fuel assistance benefits.

Unlike the tiered rate discounts implemented in New Hampshire and in the National Fuel Gas service territory in Pennsylvania, the Maryland EUSP's tiered rate discount is not a part of any utility's rate structure. Instead, EUSP is administered by a third party agency. The EUSP benefits are distributed to utility customers as a single annual lump-sum payment. The payment is designed to subsidize a program participant's annual electricity bill so as to reduce that bill to an affordable amount. The EUSP benefit, however, is an external benefit, paid as a direct vendor payment to the program participant's electricity company. It is not part of the rate structure of the company. It is simply viewed as an additional payment on the customer's account, albeit a payment from non-customer funds.

3.8.1.3 Program Funding

The Maryland EUSP is supported by a cost recovery mechanism that is uniform statewide. The statute provided not only a fixed program budget for the first three years of the EUSP, but that a fixed contribution toward that budget be obtained from each customer class. The residential charge was set at a uniform, statewide monthly fee, of $4.97 to $5.00 annually ($0.41 to $0.42 monthly). A multi-step charge was established for commercial and industrial customers. The commission explained, however, that it sought:

> . . .a funding methodology that results in sets of uniform Statewide fees for commercial and industrial customers that apply irrespective of the service territory in which the customers are located. The use of Statewide fees should not preclude the differentiation of charges by customer size or electricity usage, as long as the methodology proposed includes an appropriate cap. . .The commission's primary interest in a proposal of this type is (i) to have flat fees that do not vary each month, thereby avoiding customer confusion, and (ii) to ensure that similarly-situated customer that happen to be located in different service territories pay the same charge, thereby avoiding any questions of competitive advantage.[114]

The statute prohibited collecting the universal service charges on a per kilowatt hour basis. In adopting a fixed monthly fee, the commission agreed with the argument by the commercial and industrial representatives that the universal service charge "is similar to a utility 'customer charge,' which is traditionally designed and intended to recover a cost that bears no relationship to a customer's consumption." The Maryland commission now considers a proposed EUSP budget each year and annually sets the appropriate fixed monthly fees to generate the necessary funds.

3.8.1.4 Program Background

The Maryland Electricity Universal Service Program (EUSP) was statutorily created as part of that state's move to retail choice in the electricity industry. The concern by state legislators was not simply that electricity bills were unaffordable to low-income

[114] Order 75401, at 5.

customers, but also that the move to retail choice would create a market structure under which low-income customers would not be actively solicited by competitive electricity service providers.[115]

Ultimately, a competitive electricity industry did not develop for residential customers, with customers choosing not to abandon their electricity distribution utilities, and suppliers choosing not to market to residential customers. Today, in 2007, as price caps continue to be removed from market-based prices offered to residential customers, Maryland consumers are experiencing substantial spikes (60% or more) in their electricity prices. In these circumstances, EUSP has become both more important and more stressed, as the need for affordability assistance grows but the burden of meeting that need outstrips the ability to meet that burden.

3.8.2 Application of Best Practices Criteria

The Maryland Electricity Universal Service Program (EUSP) is one of the nation's best examples of an SBC-funded external benefit rate affordability program. Adopted as part of the legislation directing Maryland to move to a retail choice electricity environment, the EUSP has been implemented to pursue affordability targets within strict budget constraints. The Maryland EUSP is rated "exceptional" in nine of the 20 best-in-class criteria.

3.8.2.1 Criterion #1: Is the program reasonably open to all households in need.

The Maryland EUSP is reasonably open to all households in need. Program eligibility is set at 175% of the Federal Poverty Level. Program enrollment is open year-round. There is no ceiling on program enrollment.[116]

The population to be served by EUSP is supported by extensive empirical analysis. An annual needs assessment is filed with the program operating plan each year. In addition, the program completes an annual report examining the extent to which the EUSP met the expected need within six months after the close of each fiscal year.

EUSP provides reasonable ease of entry into the program. No non-income eligibility criteria are imposed through the EUSP. Unlike the corresponding federal fuel assistance program, however, the EUSP *does* require that the program applicant be limited to the named utility customer (the federal fuel assistance program requires the applicant to be part of the household, but the applicant need not be the named customer). EUSP entry occurs primarily, though not exclusively, through the federal fuel assistance program.

[115] As it turns out, *no* residential customers are being actively solicited by competitive suppliers in Maryland.

[116] In theory, the fixed nature of the EUSP budget would create a ceiling on program participation. The program administrator, however, reports that it consciously sets benefits at a level to ensure that its budget authorization will not be exhausted, so as to ensure that all applicants, at whatever point in the program year, will be assured of receiving program benefits.

The two programs use a unified program application. Ease of entry into EUSP through the federal fuel assistance program is impeded somewhat by the fact that the two programs are on different fiscal years.[117]

The EUSP has adopted some, but nonetheless limited, mechanisms to facilitate the required annual recertification. While new applications must be submitted in person, annual recertification applications may be submitted by mail. Unlike other programs, the EUSP does not provide for less than annual recertification, for automatic certification under prescribed circumstances, or for less stringent income verification under prescribed circumstances.

3.8.2.2 Criterion #2: Does the program recognize the multiple facets of energy affordability "need."

The EUSP operates primarily as a bill affordability program for current usage. Bill discounts range from 30% (for households at 150 – 175% of Federal Poverty Level) to 75% (for households with income less than 75% of Poverty). The EUSP has four discount tiers.

The program operates a limited arrearage forgiveness program. By law, however, the budget to be allocated toward preprogram forgiveness is quite limited. As a result, the program administrator has imposed a minimum arrears requirement of $300 before a program participant may access arrearage credits. Once accessed, arrearage credits can be obtained up to a maximum of $2,000. Arrearage retirement credits can be accessed only once.[118]

The EUSP recognizes the role that energy efficiency plays in helping to resolve low-income affordability problems. The statutory budget, however, substantially limits the use of EUSP funding for "weatherization" purposes. Moreover, the state utility regulatory commission has held that the statutory reference to "weatherization" as an allowed use disallows the use of EUSP funds for usage reduction investments not involving traditional building shell improvements. The regulatory commission held, for example, that "the commission does not view appliance replacement as within the scope of a weatherization program."

Even though traditional weatherization measures are often not applicable to an electricity affordability program, the inability to address the efficiency needs of electricity program participants is largely budget driven. Maryland's regulatory commission held that it "recognizes that there are other measures that also may reduce energy consumption but do not fall within the parameters of weatherization. Energy conservation. . .may come

[117] As a state program, EUSP is on the state fiscal year (July through June). The federal fuel assistance program is on the federal fiscal year (October through September). A household applying for EUSP in July, August or September, in other words, may *not* also receive federal energy assistance benefits until October, the beginning of the new federal fiscal year.

[118] A proposal has been advanced by the program administrator to change this one-time only requirement to a limitation of once every seven years.

within the scope of 'universal service program,' as defined and may be desirable. However, [the statute] speaks to low-income weatherization and not the broader category of energy conservation. The commission notes that the USP has finite resources. . .With the limited amount of money that can be directed toward weatherization at this time, it is appropriate that the measures undertaken meet the narrower parameters defined above."

3.8.2.3 Criterion #3: Does the program efficiently use program funding?

The Maryland EUSP incorporates multiple program components that result in the efficient use of program funding. The EUSP program design does an exceptional job of matching program benefits to individual needs. While the EUSP is a type of a tiered rate discount, the program delivers its benefits as a single lump sum payment based on an individual calculation of customer needs. Discounts vary based not only on the ratio of household income to Federal Poverty Level, but also on the location of the customer within the state (as measured by the electricity distribution utility), and by the actual electricity consumption of the household.

The EUSP is well-integrated with both the federal fuel assistance program and the billing processes of the state's regulated utilities. EUSP provides bill affordability assistance only for non-heating electricity. Given the program's integration with the federal fuel assistance program, as with the New Hampshire EAP, the Maryland EUSP provides that the heating component of any electricity affordability benefit should be paid by the federal program. Federal fuel assistance benefits increase rate discounts by 15% (from 75% to 90% for households with income below 75% of the Federal Poverty Level) for electricity heating customers.

Integration with utility billing processes helps protect program participants against seasonal bill volatility. Maryland's EUSP requires program participants to enroll in the levelized monthly budget billing programs of their respective electricity companies.

3.8.2.4 Criterion #4: Does the program provide for continuous improvement?

The EUSP does a reasonable job of program assessment and continuous improvement. On the one hand, while a comprehensive outcome evaluation was recently completed of the EUSP, neither the program's authorizing statute nor implementing regulations require periodic outcome evaluations. On the other hand, the EUSP program administrator files an annual report in December of each year (after the June close of the prior fiscal year) which outlines the immediately preceding year's program operations. That annual report further assesses the extent to which the needs identified in the annual program operations plan were satisfied. The annual report does *not*, however, comprehensively review program outcomes, including outcomes involving bill burdens or payment patterns and practices.

To this extent, while the EUSP engages in limited standardized data reporting from the program operations side, it falls short in gathering regular, periodic standardized data from participating utilities on the payment practices of program participants.

3.8.2.5 Criterion #5: Does the program provide for reasonable cost recovery?

The EUSP provides for reasonable program budgeting and program cost recovery. EUSP program costs are collected as a fixed customer charge on all customer classes. While the EUSP statute mandates that program costs be collected from all customers, the statute prohibits that such cost recovery be accomplished on a volumetric basis. The EUSP program administrator submits a proposed annual budget to the Maryland utility regulatory commission each year. Based on that budget submission, the utility regulatory commission establishes the fixed customer charge needed to generate the program budget.

The Maryland EUSP suffers from the lack of any indexing of the program budget to increases in energy prices or program participation. Indeed, increasing prices often drive increasing participation. Unlike programs with reconcilable rate riders through which to collect programs costs, Maryland's EUSP does not have the flexibility to increase its budget to reflect increasing electricity prices without legislative approval.

Given the expiration of price caps on electricity prices in Maryland in recent years, and the corresponding spike in electricity prices –electricity prices have increased by 70% or more in some electricity service territories—the failure to adjust the program budget to reflect these changes in the underlying environment has resulted in decreased benefits and increasing hardships on Maryland's low-income customers.

3.9 Program #9: The Electricité de France (EDF) "Social Tariff" (France)

Electricité de France (EDF) serves nearly 28 million customers in that country. According to the company, as a "responsible industrialist," it seeks to "reconcile its management constraints and therefore its constraints related to the strict collection of its accounts receivable with its public service obligations." EDF actions are taken within the context of a legally recognized "right to electricity."

French law first articulated a "right to electricity" in 1998 as the country adopted statutes providing for the "modernization and development" of the electricity power industry. In October 2005, EDF signed an agreement that specified certain actions the company would take to promote this right to electricity for "customers with precarious situations." The "right to electricity" is defined to mean "guaranteeing temporary maintenance of the supply of electricity for people faced with precarious situations and contributing to the Housing Solidarity Fund."

3.9.1 An Outline of the Program

The EDF low-income electricity affordability program consists of four distinct components:

3.9.1.1 Case Management

EDF seeks to prevent electricity debt through a network of what it calls "solidarity correspondents," "solidarity representatives" and "social mediators." This network of specially-trained company staff provides case management services to customers having difficulty paying their bills. These staffpersons, located in each Department in France,[119] are charged with maintaining contact with public and private stakeholders, including not merely those who can provide utility assistance but those who can provide health, housing, employment and other types of social assistance. While the primary role of the company staff is to "help [payment-troubled customers] bring their energy bill under control and, together with them, find a method of payment adapted to their situation," that process is tied to helping the customer address his or her underlying financial problems in the meantime.

3.9.1.2 Energy Maintenance Service

EDF provides a system of "minimum electricity supply" in an effort to minimize the number of service disconnections for nonpayment. Known as the Energy Maintenance Service, this system helped reduce the number of nonpayment disconnections from 670,000 in 1993 to fewer than 190,000 in 2004. In 2004, more than 200,000 households benefited from EDF's Energy Maintenance Service.

The Energy Maintenance Service provides a minimum supply of electricity to a customer facing nonpayment disconnections during the time it takes for a government public assistance official to review the customer's file to determine eligibility for public assistance. The Energy Maintenance Service guarantees power of 3,000 watts. The purpose is to allow the household to provide basic lighting, along with the use of a refrigerator, television and one or two appliances.

Through the Energy Maintenance Service program, EDF installs a mini-switch without charge in the home. This switch automatically limits the power consumed in the home. If the electricity consumption exceeds 3,000 watts, the power is interrupted for 15 seconds. Before the switch can remain on, the customer must determine how to reduce consumption.

When the Energy Maintenance Service is begun, the customer must agree, in writing, to submit an application to the appropriate public assistance agency within fifteen days to determine his or her eligibility for such assistance.

The company cannot, of course, always make personal contact with a household prior to the disconnection of service for nonpayment. In such situations, the company installs a switch allowing for 1,000 watts of power to be consumed at any given time. According to EDF, this Minimum Service allows for the customer to operate lighting and auxiliary

[119] A "Department" is the French equivalent to a "state" in the United States or a "province" in Canada. Since 1790, France has been divided into 95 metropolitan *départements*.

back-up heating. A customer using this lesser Energy Maintenance Service then is provided five days to contact the company to arrange for bill payment (or to move his or her service to the 3,000 watt service).

3.9.1.3 Solidarity Funds

EDF is a primary contributor to the country's Solidarity Funds, the French equivalent to local fuel funds. According to the company, when a customer's precarious utility bill payment situation is presented to a social services agency, the customer is "likely to benefit from financial assistance equivalent to total or partial payment of their electricity bill."

The funds are operated by local commissions that operate under the authority of the local council which runs each of the 95 French départements. These local commissions include representatives of various public assistance agencies, businesses, and community-based organizations, who seek to resolve not only the specific electricity bill payment problem, but seek also to address the underlying economic situation of the household.

EDF is one of the primary funders of the Solidarity Funds. According to the company, in 2004, EDF provided 27% of the total funding of the Solidarity Funds, more than any other single contributor. The EDF contribution in 2004 reached 17 million Euros. Through this EDF contribution, Energy Solidarity Funds provided financial assistance to 245,000 families with financial problems.

3.9.1.4 Rate for Absolute Essentials

Established by legislation approved in February 2000, the Rate for Absolute Essentials was implemented by EDF effective January 1, 2005. The Rate for Absolute Essentials is expected eventually to be applied to 1.2 million households in France.

Eligibility for the Rate is determined through the country's health insurance organizations. Once such an organization determines that the family income is less than or equal to 400 Euros per month,[120] the health insurance organization provides the appropriate electricity distribution utility (of which EDF is one) with the family's contact information. EDF provides an application to the family who must complete it and return it to the company. Once a complete application is returned, the family "automatically benefits from this special rate."

The Rate for Absolute Essentials provides an annual reduction of 30%, 40% or 50% (depending on family composition) off of the first 100 kWh of monthly consumption. The program provides annual benefits of roughly 70 Euros.

Households may participate in the Rate for Absolute Essentials for one year, with an annual confirmation of entitlement being required each subsequent year.

[120] This income level is considered to be an "intermediate level between income ceilings providing entitlement to financial aid and those providing entitlement to universal health coverage."

3.9.2 Application of Best Practices Criteria

The low-income rate initiatives offered by EDF in France differ in kind, and not merely degree, from the universal service rate affordability programs offered in the eight United States jurisdictions assessed in this report. Because of these major differences in program objectives, design and implementation, the Best Practices Criteria have not been applied to the EDF program. To do so would seek to compare fundamentally noncomparable programs. For this reason, and to this extent, the EDF program is not considered to be a best-in-class program as such programs are defined and assessed throughout this analysis.

Part 4. Lessons Learned from Best Practices

The discussion above examines selected low-income affordability programs currently in operation around the United States as determined by the author to be best in class. Eight United States programs have been reviewed, in addition to the low-income initiatives of Electricité de France (EDF) in France.

The analysis focuses exclusively on rate affordability programs. Initiatives involving usage reduction programs, as well as credit and collection practices directed primarily at low-income households,[121] are set aside not because they are unimportant, but rather simply because they are beyond the scope of this review.

The discussion examined nine programs:

- New Jersey's Universal Service Fund (USF);
- The Columbia Gas Customer Assistance Program (CAP) (Pennsylvania);
- The Equitable Gas Company Customer Assistance Program (CAP) (Pennsylvania);
- The Ohio Percentage of Income Payment Plan (PIPP);
- The Citizens Gas & Coke Utility/Vectren Energy Delivery Universal Service Program (USP) (Indiana);
- The National Fuel Gas Distribution Corporation Low-Income Rate Assistance (LIRA) program (Pennsylvania);
- The Electricity Assistance Program (EAP) (New Hampshire);
- The Electricity Universal Service Program (EUSP) (Maryland); and
- The "social tariff" of EDF (France).

4.1 Fundamentals of a Best Practice Rate Affordability Program.

Low-income rate affordability programs are legitimate utility operations. While directed at low-income customers, the best-in-class programs are designed to pursue utility-oriented objectives. Programs directed toward improving collections, reducing arrears, and addressing inability-to-pay in a more cost-effective and cost-efficient manner than traditional collection activity tend to be best-in-class. There is no single "right" way to

[121] Such practices might include deferred payment plans, the waiver of late fees or other designated charges, or the use of alternatives to the disconnection of service (e.g., service limiter adapters).

implement such a program. There are, however, program attributes that make some programs more effective, more cost-effective, and more cost-efficient than others. Those program attributes are discussed in more detail below.

4.1.1 The Values Underlying an Affordability Program

A best-in-class low-income rate affordability program is directed toward addressing the inability-to-pay problems of income eligible households. Inability-to-pay, however, goes beyond the mere existence of payment troubles. The unaffordability of home energy does not always manifest itself through an unpaid bill. The paid-but-unaffordable bill is a real phenomenon.

When home energy burdens –energy burdens are the home energy bill as a percentage of household income-- reach a certain point, the household will *either* not regularly be able to pay the bill on a full and timely basis *or* not regularly be able to pay the bill without substantial household hardship. Best-in-class programs address the affordability of annual home energy bills relative to annual household income.

Nearly all utilities offering best-in-class rate affordability programs explicitly take home energy burdens into account. Programs such as the New Jersey Universal Service Fund (USF), the Columbia Gas Customer Assistance Program (CAP), and the Equitable Gas CAP, tie their affordable rates to an individually-calculated affordable home energy burden. Even programs such as the tiered discounts offered by the New Hampshire Electricity Assistance Program (EAP), the Citizens Gas/Vectren Universal Service Program (USP), and the National Fuel Gas Low-Income Rate Assistance (LIRA) program base the level of their discount on a calculation of what percentage of income burden will be borne by low-income ratepayers as a result.

Lesson #1:

A best-in-class rate affordability program should recognize the essential role played by home energy burdens in defining home energy affordability.

Paying the bill for current usage can not be the exclusive focus of home energy affordability. Low-income home energy affordability consists of more than helping a customer to be able to pay their bill for current usage. Addressing the *future* affordability of bills for current usage does not provide comprehensive assistance to a household if that household has incurred substantial pre-existing arrears because of a *past* inability-to-pay. The affordability of home energy consists of the *total* asked-to-pay amount, not simply the bill for current usage. If a customer cannot afford to pay a total home energy bill, it makes no difference to the customer whether the bill's unaffordability is caused by the charges for current usage or by the charges for pre-existing arrears.

Addressing pre-existing arrears can occur in multiple ways. Programs such as the New Jersey USF, the Columbia Gas CAP and the Equitable Gas CAP provide credits toward pre-existing arrears in exchange for full and timely payment of current bills over a period of time. The National Fuel Gas LIRA program provides matching credits for customer payments toward arrears, offering a $15 match for each $5 customer payment in a given month. The Maryland Electricity Universal Service Program (EUSP) provides arrearage credits, but requires a minimum arrears of $300 for customers to be eligible and places a $2,000 cap on arrearage credits. The EUSP further provides an arrearage credit only one time (though proposals have been advanced by the program administrator to modify this to be one-time every seven years).

Lesson #2:

A best-in-class rate affordability program addresses

not simply the affordability of charges for future consumption,

but the charges for pre-existing arrears as well.

4.1.2 The Legitimacy of an Affordability Program

A best-in-class low-income rate affordability program must balance the interests of a utility's low-income customers, the nonparticipating ratepayers of a utility, and utility investors.

A best-in-class low-income rate affordability program takes account of the interests of the utility's low-income customers by ensuring that the program is reasonably open to all customers in need. The scope of eligibility should recognize the breadth of an inability-to-pay problem without imposing artificial eligibility criteria unrelated to the lack of affordability. Ease of entry refers to the actual process of enrolling in the program. Ease of entry, however, further involves not only *becoming* a program participant, but also *remaining* a program participant over time.

In the United States, best-in-class programs tend to define eligibility exclusively in terms of income-eligibility. Eligibility guidelines are defined by reference to income, taking into account household size (a measure known as Federal Poverty Level). While Pennsylvania's utilities –three of which are listed within the list of best-in-class in this discussion—add the requirement that customers be "payment-troubled" to be eligible for their low-income programs, "payment-troubled" is defined broadly. Overall, utilities operating best-in-class rate affordability programs tend to shy away from imposing non-income-based eligibility requirements.

Moreover, to ease program entry, most of the best-in-class utilities provide for year-round enrollment with no ceiling on the number of customers that may enter the program. Programs without year-round enrollment (e.g., the Citizens/Vectren USP) have tied their rate affordability enrollment to the federal fuel assistance program. While this partnership provides for administrative efficiencies, one "price" to be paid for the partnership is to limit enrollment in the utility program to the same enrollment time period of the seasonally-based federal fuel assistance program.

Many utilities have specifically addressed not simply the ease of entry into the program, but the ease of remaining in the program from year to year. Nearly all best-in-class programs provide for mail recertification, limiting the need for personal applications to the initial program entry. Programs such as the New Hampshire EAP, the Columbia Gas and Equitable Gas CAP, and the National Fuel Gas LIRA allow for multi-year certification for households whose income is not likely to vary from year-to-year. Equitable Gas and Columbia Gas, in addition to the New Jersey USF, further provide for an automatic re-enrollment of program participants so long as those participants also receive benefits from other programs with similar income eligibility guidelines.

Indeed, Equitable Gas allows for a self-certification of income-eligibility by program applicants, with ongoing testing of whether this self-certification leads to unreasonable error rates in eligibility determination occurring through random audits of a small percentage of program participants.

Lesson #3:

A best-in-class rate affordability program must be reasonably open

to all households in need, both in terms of the scope of eligibility

and in terms of the ease of entry into (and retention in) the program.

A best-in-class low-income rate affordability program takes account of the interests of the utility's nonparticipating ratepayers by ensuring that program funds are efficiently distributed. An efficient program distributes funding in the amount necessary to accomplish its program objectives, but in an amount no greater than is necessary to accomplish its program objectives.

An affordability program is not simply a mechanism through which to supplement the resources of a low-income household. It is instead designed to redress an excessive home energy burden. As a result, a best-in-class program seeks to avoid underpaying or overpaying assistance to program participants. A program underpays if the assistance to the household is insufficient to reduce the home energy burden to an affordable level. A program overpays if the assistance to the household is more than is necessary to reduce the home energy burden to an affordable level.

The ideal mechanism to use to prevent the underpayment or overpayment of benefits is to individually determine the rate discount needed to reduce a customer's home energy burden to an affordable percentage of income. The New Jersey USF, along with the Columbia Gas and Equitable Gas CAPs, as well as the Ohio Percentage of Income Payment Plan (PIPP), all set natural gas and electricity bills at an affordable percentage of income.

Tiered discount programs, such as those adopted by the New Hampshire EAP, the National Fuel Gas LIRA, and the Citizens Gas/Vectren USP, are less well-targeted, but are nonetheless specifically designed to reduce the bills of program participants to an affordable percentage of income. Each of these programs adopts rate discount tiers, taking into account income and household size, within which, so long as the customer is at the average, the customer will pay the targeted home energy burden. To the extent that the customer diverges from the average, however, there will be some overpayment or underpayment. The number of tiers a program uses minimizes this divergence. While, for example, the Indiana utilities (Citizens Gas, Vectren) operate with three tiers, the New Hampshire EAP operates with six. National Fuel Gas creates a separate tier for each income level in increments of $1,000.[122]

Lesson #4:

A best-in-class rate affordability program targets its rate affordability assistance to eliminate or minimize the underpayment or overpayment of benefits.

A best-in-class low-income rate affordability program takes account of the interests of the utility's investors by ensuring that program costs are recovered in a full and timely fashion. Utility expenditures on a low-income rate affordability program will generally vary based on factors largely outside of the ability of a company to control. In particular, programs that explicitly tie affordability benefits to an affordable percentage of income bear the risks of volatility in bills associated with changes in price or weather. Moreover, total program expenditures will vary based on factors ranging from the number of program participants, to the average income of program participants (as average participant income decreases in a percentage-of-income based programs, average participant program benefits will increase), to the level of bills for current usage based on weather and fuel prices.

[122] A household with an income of $5,000, in other words, is in a different tier than a household with an income of $6,000.

A rate rider is "reconcilable" when the actual expenditures in an historic period are periodically compared to the revenues generated by the rate rider, with over-collections or under-collections rolled over into the calculation of the appropriate level of the rate rider to be charged in the next period.[123] The period of reconciliation may differ from program to program; some programs are reconciled quarterly while most are reconciled annually.[124]

Virtually all best-in-class rate affordability programs allow for program cost recovery through a reconcilable rate rider. All three Pennsylvania rate affordability programs use reconcilable rate riders for program cost recovery. These utilities all operate under a statutory framework which specifically requires "full recovery" of program costs. The Pennsylvania commission rejected proposals to include rate affordability expenditures in base rates, holding that base rate recovery allows only a "reasonable opportunity for cost recovery" rather than the assurance of "full recovery" required by statute. The New Jersey USF, along with the Citizens/Vectren USPs, also adjust their rate riders prospectively, including program over-collections or under-collections from the immediately preceding year as part of their respective budgets.

Lesson #5:

A best-in-class rate affordability program allows a full and timely

recovery of program expenditures, responsive to changes in factors

affecting program expenditures in ways outside the ability of a utility to control.

4.1.3 The Integration of an Affordability Program with a Utility's Full Service Offerings

A best-in-class rate affordability program integrates the affordability provisions of the low-income program with the existing processes and structures of the sponsoring utility to the extent practicable. Best-in-class programs seek to integrate the affordability initiatives into the sponsoring utility's existing rate structure and collection processes.

[123] A reconcilable rate rider need not absolutely be adopted to ensure the full recovery of program costs. Maine utilities, which operate programs not considered to be best-in-class for reasons other than cost recovery, book their over-collections and under-collections in a reserve account. Any reserve surplus would be treated as a deduction from rate base in future rate cases. Net reserve deficiencies, if this situation were to occur, would be treated as a rate base addition in future years.

[124] Some programs adjust their rate riders on a quarterly basis without making those riders reconcilable. Under this approach, any under-collection or over-collection in program costs would result in a prospective adjustment of the rate rider, but the past difference is not rolled forward into the future period.

A best-in-class low-income rate affordability program integrates the affordability benefits into its existing rate structure within the constraints of efficient program spending.[125] An integrated program can involve either a tiered rate discount or an explicit percentage-of-income based program. Integrating the affordability program into the rate structure makes clear that rate assistance is being provided to the low-income customer from the utility. Programs such as the New Jersey USF, as well as the Columbia Gas and Equitable Gas CAPs, provide credits toward bills for current usage that appear on the face of the bill. The tiered rate discount programs of the New Hampshire EAP, the National Fuel Gas LIRA, and the Citizens Gas/Vectren USP also identify the bill reductions as part of the rate structure. These approaches stand in contrast to the Maryland EUSP, which provides the ratepayer funding to a third party administrator who then distributes the money back to low-income customers in the form of an annual benefit payment.

Integrating low-income rate affordability programs into the normal collections process is a second best-in-class practice. By applying normal credit and collection practices to program participants, utilities avoid the need to create special procedures to address nonpayment by program participants. Nonpayment by a low-income program participant is not met with dismissal from the program (with the corresponding need to implement processes to monitor late payments or the cure of missed payments meriting program reinstatement). Nonpayment is addressed by placing the low-income program participant in the same collections process as any other customer, albeit under a separate tariffed rate. Of the best-in-class programs, only Equitable Gas conditions its grant of affordability benefits on full and timely payment of current bills.

Lesson #6:

A best-in-class rate affordability program integrates its

low-income initiative into its existing rate structure

within the constraints of efficient program spending.

4.1.4 The Impact of an Affordability Program on the General Population

Low-income rate affordability programs have positive impacts on the general ratepayer population. Low-income programs have been found to more effectively address nonpayment problems caused by the unaffordability of home energy to limited income households. In this sense, low-income programs should not be viewed as social service

[125] While a rate discount may, for example, be integrated into a company's rate structure, discounts tend to be inefficient mechanisms through which to distribute affordability benefits. Straight discounts tend to overpay some customers while underpaying others.

responses to poverty, but rather as a business response to the need to provide essential life services to customers who are likely to have difficulty paying for those services.

In approving the Columbia Gas CAP, the Pennsylvania state utility regulatory commission found that "an appropriately designed and well-implemented CAP, as an integrated part of a company's rate structure, is in the public interest." After investigation, the commission stated that the CAP approach to addressing low-income payment problems is "a more cost-effective approach for dealing with issues of customer inability to pay than are traditional collection methods." As the state Office of Consumer Advocate noted the issue to be: "The issue in this proceeding is not to devise a social response to the broad inability to pay problems of low-income households. The issue is one of what is the most cost-effective means of collection."

The Pennsylvania programs (Columbia Gas CAP, Equitable Gas CAP, National Fuel Gas LIRA) were seen as a way to respond to low-income unaffordability so as "to address realistically these customers' problems and to stop repeating a wasteful cycle of consecutive, unrealistic payment agreements that cannot be kept, despite the best of intentions, followed by service termination, then restoration, and then more unrealistic agreements. . ."

Adopted at the behest of the respective utilities, the Indiana low-income rate affordability programs were based on a similar finding. According to Niel Ellerbrook, Chairman of the Board and Chief Executive Office of Vectren Utility Holdings, the parent company of Vectren Energy Delivery, the primary driving factor behind his utility's low-income proposal involved "the dramatic rise in natural gas prices and the resulting impact on customers and the economy." According to Ellerbrook, "There is a cost to serve customers who need heat but are unable to pay the full cost of service for any number of reasons, including job loss, cost of medicine, or the number of their dependents. Like other real costs to provide service to our entire customer base, this cost must be recognized and addressed in a constructive manner to assure that people have service." He concluded by noting that "[T]he USF program provides an answer in conjunction with LIHEAP and other available programs, by identifying customers with true need, determining in a consistent and accepted manner how much they can pay for service, and providing them with more affordable bills that better match their ability to pay."

Lesson #7:

A best-in-class rate affordability program represents a

more cost-effective approach for dealing with issues of customer

inability to pay than are traditional collection methods.

4.2 Common Elements of a Best Practice Rate Affordability Program.

An effective low-income rate affordability program is designed to address the multi-levels of need created by the inability of certain customers to pay for their essential home energy service. Not only should a program address the affordability of bills for current usage, but the program should also address past-due arrears. Not only should a program address the annual unaffordability of bills, but the program should also address the seasonal unaffordability of bills. Not only should a program address the payment of current bills, but the program should also address the consumption underlying those current bills.

To perform these multiple tasks requires a partnership between the utility, community-based organizations, government, and the low-income customers themselves.

4.2.1 The Necessary Components of a Rate Affordability Program

A best-in-class low-income rate affordability program has five necessary components to it. A low-income rate affordability program should:

- Reduce bills for current usage to an affordable percentage of income. The program should recognize the essential role played by home energy burdens in defining home energy affordability.

- Retire pre-existing arrears within a reasonable time period, without raising the overall monthly asked-to-pay amount to an unaffordable level.

- Protect against unexpected monthly bill volatility associated with changes in price and/or weather through facilitating or requiring entry into levelized budget billing plans.

- Promote the efficient use of energy, both through investments in usage reduction measures for the housing unit and the preservation of conservation incentives within the affordable rate structure.[126]

- Preserve funding to address crisis situations caused by the fragility of income experienced by poverty-level households.

Lesson #8:

A best-in-class rate affordability program recognizes

[126] Conservation incentives can be preserved through mechanisms such as offering percentage-of-income based benefits through a fixed credit on the bill or imposing bill or benefit caps.

that low-income home energy affordability consists of more than

helping a customer to be able to pay their bill for current usage.

4.2.2 The Roles of the Different Actors

A best-in-class low-income rate affordability program represents a partnership between multiple stakeholders, each of which plays a key, though not exclusive, role in delivering program benefits. The key roles played by the various stakeholders include:

- A ***utility regulatory commission*** recognizes the need for a low-income rate affordability program as a cost-effective mechanism for addressing the inability-to-pay problems by the poor. The commission provides policy oversight of the program, in addition to providing fiscal oversight and control of program cost-recovery. In each of the best-in-class programs discussed herein, the regulatory commission provides this policy and fiscal oversight.

- The ***local distribution utility*** serves as the delivery agent for the low-income rate affordability program. The delivery agent is the institution through which affordability benefits are posted and communicated to the customer. Rather than providing cash benefits directly to a customer, affordability benefits are delivered either through bill reductions, or through direct vendor payments made to the utility. In each of the best-in-class programs discussed herein, benefits are distributed as bill credits, whether calculated by reference to percentage-of-income-based rates (Columbia Gas CAP, Equitable Gas CAP, Ohio PIPP, New Jersey USF), or by reference to tiered discounts (New Hampshire EAP, Maryland EUSP, National Fuel Gas LIRA, Citizens Gas/Vectren USP).

The local distribution utility further plays the primary role in targeting the rate affordability program to payment-troubled low-income customers. This targeting involves recognizing a persistently payment-troubled customer and referring that customer to the appropriate institution to determine whether the customer is income-eligible for the rate affordability program. Only the utility has the capacity to use its existing processes (call center conversations, collection processes) to recognize the persistently payment-troubled customers that would benefit from a low-income rate affordability program.

- The ***state or provincial government***, acting through its legislative body, may act to authorize the implementation of a low-income rate affordability program. While such legislative action should not be necessary so long as the local distribution utility offers the rate affordability program as a mechanism to improve the efficiency and effectiveness of utility operations, rather than

exclusively as a social benefit, enactment of legislation may eliminate any ambiguity in regulatory jurisdiction over affordability programs.

In the event that the legislative body acts, the best-in-class programs find that the legislative action is limited to language either authorizing (you "may" implement an affordability program) or mandating (you "must" implement an affordability program) regulatory agency action. Program design and operational decisions are best ***not*** placed in legislation, but rather left to the implementing agency.

- ***State and federal government agencies*** (other than the utility regulatory commission) serve as the front-line in determining income eligibility for a low-income rate affordability program. While the local distribution utility company is likely the institution who identifies a potential program participant, referrals for the actual determination of income-eligibility are generally made to a government agency.[127] While some utilities retain the task of determining income-eligibility for in-house utility staff, this is unusual. Programs such as the New Hampshire EAP, the Maryland EUSP, the New Jersey USP, and the Citizens Gas/Vectren USP rely on the federal fuel assistance program nearly exclusively to determine income eligibility for individual program applicants.

State agencies can play various roles in administering a low-income rate affordability program. On the one hand, in some of the most successful affordability programs, state agencies are completely divorced from the program. Outside of the utility commission, no state agency in Pennsylvania plays an institutional role in the affordability programs of that state's utilities. In contrast, in some states, the state agency plays the primary role in the program. The Maryland EUSP generates a stream of revenue for the state's Office of Home Energy Programs (OHEP), which then distributes benefits to program participants. The only role for the utility is to receive the payment and post it to the customer's account. In yet other states, the state serves as the financial repository. The utilities in New Hampshire and New Jersey post prescribed bill credits to the accounts of program participants and seek reimbursement from the state. The state holds the funding generated by each state's system benefits charge pending a request for cost reimbursement. Finally, in states such as Indiana, the state plays no role other than serving as the intake agency.

- ***Community-based organizations*** perform critical outreach and intake functions for a low-income rate affordability program. Whether intake is undertaken at the governmental or utility level, the actual field personnel involved with outreach and intake are likely to be those persons who directly interface with low-income customers on a day-to-day basis. The staff of these community-based organizations have both the professional expertise, a well as

[127] These government agencies, of course, frequently operate through contractual relationships with local community-based organizations. The determination of income eligibility for the federal fuel assistance program, for example, is generally made through a contract with a local Community Action Agency.

the connection to the community, to allow them to perform these tasks effectively.

- The ***program participants*** play multiple roles in the success of a low-income rate affordability program. Primarily, a program participant has the obvious role of being responsible for the full and timely payment of monthly bills. Bill reductions can be offered to bring energy burdens into an affordable range, but the ultimate responsibility for bill payment remains with the customer. A program participant who does not pay will be subject to traditional credit and collection processes.

Moreover, even once bills have been reduced to an affordable home energy burden, program participants have ongoing fiscal responsibilities. Program participants must be aware of their own consumption patterns to prevent program benefits from being curtailed for exceeding bill or benefit ceilings.

Finally, program participants must also be responsive to the need to maintain their participation in the affordability program. Notice of the need to recertify income for continuing participation will come from the program; indeed, the program may facilitate such recertification in various ways (e.g., allowing mail recertification rather than in-person recertification). The ultimate responsibility for maintaining program participation, however, remains with the customer.

Lesson #9:

A best-in-class rate affordability program need not be explicitly authorized by the government's legislative body, so long as the local distribution utility offers the program as a mechanism to improve the effectiveness of utility operations, rather than exclusively as a social benefit.

4.2.3 The Funding of a Rate Affordability Program

The funding of a low-income rate affordability program has implications for the program, for the sponsoring utility, and for nonparticipating customers. Funding involves not only the level of dollars devoted to the program budget, but also the structure and timing of program funding.

Best-in-class home energy affordability programs should provide for reasonable certainty in the level and timing of program funding. Program expenditures that are subject to year-to-year uncertainty, in either their existence or their magnitude, impede efficient program operations. Program planning processes are interrupted, staff retention and training is impeded, and even medium-term capital expenditures (often in information technology hardware, software, or programming time) are avoided. Reasonable funding

is accomplished by building the funding mechanisms into the utility rate structure. In contrast, relying on annual government appropriations leads to year-to-year uncertainty as to whether funding will be provided or what that funding level will be.

The existence of utility-based low-income program funding is universal within the best-in-class programs. The utility-based funding does not depend on the structure of the underlying delivery of benefits. The New Hampshire EAP (tiered discount), New Jersey USF (fixed credit percentage of income program), and Maryland EUSP (tiered discount) all rely on a statewide system benefits charge.[128] In contrast, the Citizens Gas/Vectren USP (tiered discount), Columbia Gas and Equitable Gas CAPs (percentage of income programs), and National Fuel Gas LIRA (tiered discount), all rely on a utility-specific reconcilable rate rider. No best-in-class program relies on state-appropriated funding for its budget.

Lesson #10:

A best-in-class rate affordability program provides for reasonable certainty

in both the level and timing of program funding through utility-based funding.

Just as the certainty of program funding is an attribute of best-in-class low-income rate affordability programs from the program perspective, certainty of cost-recovery is an attribute from the perspective of the sponsoring utility. Certainty of cost-recovery is generally provided through a reconcilable rate rider. The nature and prevalence of reconcilable rate riders is discussed elsewhere in this report within the context of protecting investor-based interests.

Lesson #11:

A best-in-class rate affordability program provides for timely cost recovery

through periodic reconcilable rate riders.

A best-in-class low-income rate affordability program should protect the interests of nonparticipating customers by ensuring that all stakeholders equitably contribute to program funding. In particular, given the nature of the home energy affordability

[128] Cost-recovery also should not be limited to specific utility service territories. It is unreasonable to expect that needs and resources will be equal between service territories. Statewide funding of programs, allowing for a distribution of funds based on need, allow for a greater certainty that funding will be adequate. Indeed, utility service territories with the greatest number of low-income customers, and thus the highest level of need, may be least able to be self-supporting in their offer of rate affordability funding.

problem, all customer classes should contribute to the funding of these programs. The costs for low-income rate affordability programs should be viewed as a cost of operating as a public utility for which all ratepayers must share the costs. As one regulatory staff found, "the problem of the inability of some low income customers to pay their entire home energy bills is caused primarily by societal economic conditions that *are unrelated to any one rate class*. The costs for [low-income rate affordability] programs should be viewed as a cost of operating as a public utility for which all ratepayers must share the costs."

With the exception of Pennsylvania, whose utility commission has chosen to limit cost recovery exclusively to the residential class, low-income rate affordability programs recover their costs from all customer classes. The New Jersey USF, Ohio PIPP, Maryland EUSP, and Citizens/Vectren USPs all impose a system benefits charges (SBC) on all customer classes. In each of these states, the charge varies between classes, but is uniform within the class. In contrast, the New Hampshire EAP is based on a uniform charge across all customer classes.

Lesson #12:

A best-in-class rate affordability program views the costs

for low-income rate affordability programs as a cost of operating as a public utility

for which all ratepayers must share the costs.

Similarly, while the interests of utility investors should be protected through timely cost-recovery, utility investors should not be the sole beneficiaries of cost reductions generated by a low-income rate affordability program on a between-rate-case basis. Instead, cost-recovery should recognize that program expenditures generate cost reductions as well as cost expenditures. To the extent that a home energy affordability program helps reduce payment troubles, a participating utility should realize savings in credit and collection costs and reduced write-offs. To the extent that a home energy affordability program reduces participant arrears, a participating utility will realize reductions in the working capital associated with carrying those arrears. A best-in-class affordability program should account for the benefits generated by the program as well as the expenditures made to support the program.

Some, but not all, best-in-class rate affordability programs account for cost savings in their ratemaking. National Fuel Gas agreed to implement a cost offset for the incremental additions to its LIRA program since its last base rate case.[129] Moreover, both Vectren and Citizens Gas have agreed to make investor-contributions to their rate affordability programs in partial recognition of the cost offsets generated by the program. Other programs, such as the New Hampshire EAP, the New Jersey USF, and the Maryland

[129] In a base rate case, any cost savings that are generated by a low-income rate affordability program are recognized and accounted for through a reduced revenue requirement. The issue here involves the extent to which, if at all, cost savings are accounted for on a between-rate-case basis.

EUSP, have not recognized program cost offsets in their ratemaking treatment of program costs.

Lesson #13:

A best-in-class rate affordability program, in its program cost recovery,

accounts for the benefits generated by the program as well as

the expenditures made to support the program.

Appendix A:
Identification of Best-in-Class Criteria

Program Attribute			Universal Service Fund (NJ)	Columbia Gas CAP (PA)	Equitable Gas CAP (PA)	Percentage of Income Payment Plan (OH)	Universal Service Programs (Citizens Gas and Vectren) (IN)	National Fuel Gas Low Income Rate Assistance (PA)	Electricity Assistance Program (NH)	Electricity Universal Service Program (MD)
1. Reasonably open to all in need										
	a.	Needs assessment prepared as basis for program design.	No	Yes	Yes	No	No	Yes	No	Yes
	b.	Non-income criteria used to establish program eligibility.	No	Payment troubled	Payment troubled	No	No	Payment troubled	No	No
	c.	Rolling year-round program applications accepted.	Yes	Yes	Yes	Yes	No	Yes	No	Yes
	d.	Reasonable definition of "low-income" established as eligibility level.	175% FPL	150% FPL	150% FPL	175% FPL	150% FPL	150% FPL	185% FPL	175% FPL
	e.	Enrollment performed in conjunction with other public benefit programs.	LIHEAP/Food Stamps	No	No	LIHEAP	LIHEAP	No	LIHEAP	LIHEAP
	f.	Multi-year income certification accepted for households with fixed income.	No	Limited	Yes	No	No	Yes	Limited	No
	g.	Ceiling placed on participation numbers.	No	No	No	No	No	No	Yes	No
2. Recognizes and incorporates multi-faceted nature of "need."										
	a.	Bill for current usage tied explicitly to household home energy burden.	Yes	Yes	Yes	Yes	Tiered discount	Tiered discount	Tiered discount	Tiered discount
	b.	Minimum payment required by customer.	No	Past year average or $25	$25/month	No	No	$12/month	No	No
	c.	Programs benefits subject to ceiling.	Yes	Yes	Yes	No	No	Yes	No	Yes
	d.	Risk of increased bills due to weather/prices placed on customer, on program, or shared.	Customer	Program	Program	Program	Shared	Shared	Shared	Customer
	e.	Preprogram arrears forgiven over time.	12 months	6-years	Matching	Matching	No	24-months	No	Limited
	f.	High use program participants automatically referred to usage reduction program.	Referred	Referred	Referred	Referred	Referred	Referred	No	No
	g.	Program includes proactive reminder telephone calling.	PILOT	No	Yes	No	No	No	No	No
	h.	Program offers crisis intervention funding.	No	Fuel fund support	Fuel fund support	No	Fuel fund support	Fuel fund support	No	No
3. Efficiently uses program funds.										
	a.	Uses federal fuel assistance program as intake mechanism.	Yes	No	No	Yes	Yes	No	Yes	Yes
	b.	Service delivered through partnerships with community-based organizations.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	c.	Joint intake/eligibility determination made through federal fuel assistance program/joint application.	Yes	No	No	Yes	Yes	No	Yes	Yes
	d.	Federal fuel assistance dollars explicitly used in setting rate affordability assistance levels.	Yes	No	No	Yes	Yes	Yes	Yes (heating)	Yes (heating)
	e.	Rate affordability assistance combined with mandatory levelized budget billing.	No	No	No	No	Yes	Yes	No	Yes

Program Attribute			Universal Service Fund (NJ)	Columbia Gas CAP (PA)	Equitable Gas CAP (PA)	Percentage of Income Payment Plan (OH)	Universal Service Programs (Citizens Gas and Vectren) (IN)	National Fuel Gas Low Income Rate Assistance (PA)	Electricity Assistance Program (NH)	Electricity Universal Service Program (MD)
	f.	Conservation incentives designed into the rate structure or specific control features.	Yes	Yes	Yes	No	No	Yes	No	Yes
4. Provides mechanism for continuous improvement.										
	a.	Program objectives explicitly articulated in public document.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	b.	Program outcome evaluation performed at regularly designated time intervals.	No	Yes	Yes	No	Yes	Yes	Yes	No
	c.	Regular periodic standardized data reporting institutionalized.	No	Yes	Yes	Yes	Yes	Yes	Yes	No
5. Provides for reasonable cost recovery.										
	a.	Cost recovery spread over all customer classes.	Yes	No	No	Yes	Yes	No	Yes	Yes
	b.	Program cost recovery annually determined/cost recovery annually adjusted.	Yes	Yes	Yes	No	Yes	Yes	No	Yes
	c.	Cost recovery accounts for program cost offsets generated by program.	No	No	Yes	No	Yes	Yes	No	No
	d.	Cost recovery independent of utility service territory limits.	Yes	No	No	No	No	No	Yes	Yes

Appendix B:
Ratings Based on Best-in-Class Criteria

New Jersey Universal Service Fund (USF)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	0	While program evaluation assessed "need," needs assessment is not used to establish program budget or design.
	b.	Scope of eligibility	*	Sets eligibility at 175% of the Federal Poverty Level.
	c.	Ease of program entry	*	Automatic enrollment through state-administered federal fuel assistance program eliminates entry barriers.
	d.	Open enrollment	*	Program commits to serve all in need. Program accepts enrollment year-round. There is no ceiling on participation.
	e.	Ease of recertification	+	Must recertify annually. Can do in-person at local community based organization or by mail.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	*	Seeks to reduce combined gas/electricity home energy burden to 6% of income, split 3% for electricity base-load and 3% for heating (6% for all electric)
	b.	Resolution of pre-program arrears.	*	Programs "Fresh Start" component provides for the forgiveness of arrears after 12-months of timely payments. May "cure" missed payments within 3-months after first 12-month period. Eligible for Fresh Start forgiveness only once.
	c.	Targeted assistance to high usage/high benefit participants.	+	High usage USP participants routinely referred to utility-funded "Smart Comfort" energy efficiency program. Explicit tie between USP and Smart Comfort.
	d.	Allocation of risk of weather/price volatility.	-	"Fixed credit" nature of program benefits places entire risk of increased bills due to weather or prices on program participant.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	*	Program individually determines an affordable home energy bill for each program participant. No under- or over-payment occurs.
	b.	Maximum/minimum payment.	0	No minimum customer payment. Program imposes $1,800 ceiling on benefit payment. Ceiling on benefit not indexed.
	c.	Integrates with other utility payment processes (e.g., budget billing).	-	Program's inability to move to budget billing results in federal fuel assistance creating bill credits in some months and high monthly bills in other months, even though annual energy burden is "affordable."
	d.	Integrates financially with other energy assistance programs.	+	High integration with federal LIHEAP program. LIHEAP benefits subtracted from bill prior to calculating home energy burden. LIHEAP used as automatic intake for USP.
	e.	Conservation incentives designed into the program.	*	Fixed credit nature of benefit allows customers to retain benefits of usage reduction. Fixed credit requires customers to pay for increased consumption. Benefits subject to ceiling.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	+	Program outcome evaluation performed under contract to state utility regulatory commission. Periodicity of evaluation not memorialized in program design or regulations.
	b.	Provides for standardized data reporting.	+	BPU has prescribed limited standardized data reporting by all regulated utilities. Information not compiled and made publicly available.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	*	Universal service costs spread volumetrically over all customer classes.

New Jersey Universal Service Fund (USF)				
Criteria			**Program Rating (see notes)**	**Notes**
	b.	Ensures timely and reasonable certain recovery of program costs.	*	State regulatory commission establishes annual budget, and annual USF charge, to cover program budget. Over/(under) cost recoveries for any given utility rolled over into the immediately subsequent program year.
	c.	Accounts for cost offsets generated by program.	0	Evaluation found inadequate information upon which to form a conclusion one way or the other regarding offsets. State regulatory commission considered efficacy of program cost offsets and postponed consideration for lack of information.
	d.	Cost recovery independent of utility service territory limits.	*	Statewide funding distributed based on need irrespective of source of funding. Natural gas funding supports natural gas need. Electricity funding supports electricity needs.
	Notes:	Four ratings are possible for each program attribute:		
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

Columbia Gas (PA) Customer Assistance Program				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	+	Needs assessment periodically prepared as per regulatory commission directives.
	b.	Scope of eligibility	+	150% of Federal Poverty Level AND payment-troubled (one failed payment agreement, cross-referral, credit scoring).
	c.	Ease of program entry	*	Emphasizes telephonic applications. Must apply for fuel assistance. Specialized dedicated staff trained in universal service program intake. Self-declared payment-troubled customer referred to dedicated universal service staff.
	d.	Open enrollment	*	Program commits to serve all in need. Program accepts enrollment year-round. There is no ceiling on program participation.
	e.	Ease of recertification	*	Annual recertification required. Mail-in recertification allowed. Participants receiving LIHEAP, fuel fund benefits, or benefits from some other Columbia Gas universal service program exempt from annual recertification. Elderly and disabled allowed bi-annual recertification.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	*	Gives four payment options: percent of bill, percent of income, 50% of budget billing, or average of last 12-months. Average of last 12 months is minimum payment.
	b.	Resolution of pre-program arrears.	-	Arrearages forgiven over six (6) years if regular payment is made (along with $5 co-payment toward arrears).
	c.	Targeted assistance to high usage/high benefit participants.	*	Halted conservation education as ineffective. Refers high users to company usage-reduction program. Operates pilot program to address high usage in homes previously treated with usage-reduction measures. To be evaluated 2008.
	d.	Allocation of risk of weather/price volatility.	+	Percentage of income and average prior payment options place risk on the Company. Percentage of bill shares risk between company and customer.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	*	Customer offered lowest payment option of four available, with minimum payment of average of last 12 months of customer payments. Percentage of income payment requirements tiered by ratio of income to Federal Poverty Level.
	b.	Maximum/minimum payment.	+	Program requires minimum customer payment. Program imposes ceiling on benefit level. Neither payment level indexed.
	c.	Integrates with other utility payment processes (e.g., budget billing).	+	Waives security deposits for CAP participants. No mandatory budget billing.
	d.	Integrates financially with other energy assistance programs.	+	Federal fuel assistance funds used to reduce the shortfall between required customer payments and customer bill at standard residential rates.
	e.	Conservation incentives designed into the program.	*	Ceiling on benefits imposed.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	*	Periodic program evaluation prepared pursuant to regulatory commission directive. Program evaluation considers uniform outcome and process questions adopted by regulatory commission. Evaluation prepared by independent third party.
	b.	Provides for standardized data reporting.	*	Regular periodic data is reported to state utility regulatory commission as per commission

Columbia Gas (PA) Customer Assistance Program				
Criteria			**Program Rating (see notes)**	**Notes**
				directive. Uniform data reporting required for all regulated gas and electricity utilities.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	-	Costs of program assigned to residential class only.
	b.	Ensures timely and reasonable certain recovery of program costs.	+	Program costs recovered through a reconcilable universal service rider.
	c.	Accounts for cost offsets generated by program.	-	Cost recovery does not take into account cost savings to the utility generated by the program.
	d.	Cost recovery independent of utility service territory limits.	0	Utility-specific funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

Equitable Gas Company (PA) Customer Assistance Program				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	+	Needs assessment periodically prepared as per regulatory commission directives.
	b.	Scope of eligibility	+	Income eligibility set at 150% of Federal Poverty Level. Must be payment-troubled to enter program.
	c.	Ease of program entry	*	May enter program through company representative or an external community-organization. Company accepts self-certified income. Each year, 10% of participant base randomly audited to determine whether self-certification provided accurate information.
	d.	Open enrollment	*	Program commits to serve all in need. Program accepts enrollment year-round. There is no ceiling on program participation.
	e.	Ease of recertification	*	Program requires recertification once every three years. Recipients of federal fuel assistance automatically re-enrolled. Participants in corresponding electricity program are automatically re-enrolled.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	*	Tiered affordability tied to ratio of income to Federal Poverty Level. Payment percentages set at 7%, 8% and 10% for households with income at 0 - 50%, 51-100% and 101-150% of Federal Poverty Level respectively.
	b.	Resolution of pre-program arrears.	*	Company provides $3 in matching funds for each $1 in customer payment. First $5 of each monthly customer payment is deemed to be toward arrears. Customers may "cure" missed arrearage payments and gain matching credits. Arrears projected to be forgiven over four years on average.
	c.	Targeted assistance to high usage/high benefit participants.	*	High usage customers referred to the Company's Low-Income Usage Reduction Program (LIURP). High-usage referrals given priority for receipt of LIURP services.
	d.	Allocation of risk of weather/price volatility.	*	Customer bills tied to percentage of income. Risk of volatility in price/weather borne by program.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	*	Percentage of income payment requirements tiered by ratio of income to Federal Poverty Level. Affordability set at 7%, 8% and 10% for households with income at 0 - 50%, 51 - 100% and 101 - 150% of Federal Poverty Level respectively.
	b.	Maximum/minimum payment.	+	Program requires minimum customer payment. Program imposes ceiling on benefit level. Neither payment level indexed.
	c.	Integrates with other utility payment processes (e.g., budget billing).	0	Customer must make payment to earn his or her credit toward the bill for current usage. Missed payments must be "made up" to earn future credits.
	d.	Integrates financially with other energy assistance programs.	+	Federal fuel assistance funds used to reduce the shortfall between required customer payments and customer bill at standard residential rates.
	e.	Conservation incentives designed into the program.	*	Ceiling on benefits provided. Discount nature of program provides for sharing of burden of increased usage.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	*	Periodic program evaluation prepared pursuant to regulatory commission directive. Program evaluation considers uniform outcome and process questions adopted by regulatory commission. Evaluation prepared by independent third party.

Equitable Gas Company (PA) Customer Assistance Program				
Criteria			**Program Rating (see notes)**	**Notes**
	b.	Provides for standardized data reporting.	*	Regular periodic data is reported to state utility regulatory commission as per commission directive. Uniform data reporting required for all regulated gas and electricity utilities.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	-	Costs of program assigned to residential class only.
	b.	Ensures timely and reasonable certain recovery of program costs.	+	Program costs recovered through a reconcilable universal service rider.
	c.	Accounts for cost offsets generated by program.	-	Cost recovery does not take into account cost savings to the utility generated by the program.
	d.	Cost recovery independent of utility service territory limits.	0	Utility-specific funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

Ohio Percentage of Income Payment Plan (PIPP)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	0	No periodic empirical needs assessment underlies the Ohio program.
	b.	Scope of eligibility	+	Income eligibility set at 150% of Federal Poverty Level. No non-income-based eligibility requirements.
	c.	Ease of program entry	0	Household applies through local community-based organization. Must apply for all available energy assistance.
	d.	Open enrollment	*	Program commits to serve all in need. Program accepts applications year-round. There is no ceiling on program participation.
	e.	Ease of recertification	+	Each customer must re-certify annually. Federal fuel assistance list first checked to determine whether needed information already exists. If not, application sent to customer which can be returned by mail. PIPP participants reporting zero dollar income must re-certify every 90-days.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	+	Program sets payments at an affordable percentage of income. Program "affordable" payments, however, set home energy burdens at somewhat high levels (5% for electricity; 10% for home heating). If summer electricity bills higher than 5% of income, must pay actual bills. Households with income below 50% of Poverty Level pay 3%, not 5%, for non-heating.
	b.	Resolution of pre-program arrears.	+	Most common arrearage forgiveness provided through "graduate" program. Year 1: PIPP payment required; Year 2: actual bill required to be paid; Year 3 and after: actual bill plus some increment not to exceed $20 paid. Utility forgives amount equal to the additional amount paid.
	c.	Targeted assistance to high usage/high benefit participants.	+	High usage customer referred to, and given priority for, energy usage reduction services.
	d.	Allocation of risk of weather/price volatility.	+	For heating customers, risk of bill volatility placed on program since bill is set at percentage of income. For electricity customers, risk of bill volatility is placed on customer since customer must pay 5% of income or actual bill, whichever is higher, during non-heating season.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	*	Bill affordability benefit individually determined for each customer. No under- or over-payment occurs.
	b.	Maximum/minimum payment.	0	No minimum customer payment. No ceiling on benefit payment. No minimum benefit amount.
	c.	Integrates with other utility payment processes (e.g., budget billing).	0	No institutionalized integration of Ohio PIPP with utility bill payment processes.
	d.	Integrates financially with other energy assistance programs.	*	Benefits provided to program participants by limiting bill to a percentage of income. The distribution of particular benefits from the state or federal programs performed by state agency and is transparent to customer.
	e.	Conservation incentives designed into the program.	0	Referrals of high use customers to usage reduction program, but no structured conservation incentive.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	0	While outcome evaluation of Ohio PIPP has been performed, periodicity of evaluation not set by statute or regulation.

Ohio Percentage of Income Payment Plan (PIPP)				
Criteria			**Program Rating (see notes)**	**Notes**
	b.	Provides for standardized data reporting.	*	State regulatory commission prescribes standardized data reporting that is filed by utilities on annual basis.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	*	Uniform charge per unit of energy imposed on all customer classes.
	b.	Ensures timely and reasonable certain recovery of program costs.	+	Utility cost recovery rider set by state regulatory commission. Adjusted on application of program administrator or utilities.
	c.	Accounts for cost offsets generated by program.	0	No consideration is given to program cost offsets.
	d.	Cost recovery independent of utility service territory limits.	0	Utility-specific funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

National Fuel Gas Distribution Corp. (PA) Low-Income Rate Assistance Program (LIRA)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	+	Empirical needs assessment made a part of universal service plan. Prepared pursuant to regulations of state utility commission.
	b.	Scope of eligibility	+	Program extends to households with income at or below 150% of Federal Poverty Level. Customer must be payment-troubled (must have an arrears at the time of application or at least one current, canceled or defaulted payment arrangement).
	c.	Ease of program entry	-	Requires all residents of household to become "ratepayer" to enter program. Requires program applicant to provide copy of household mortgage, deed or lease to enter program. Must execute written "LIRA Service Agreement."
	d.	Open enrollment	*	Program commits to serving all in need. Program accepts enrollment year-round. There is no ceiling on program participation.
	e.	Ease of recertification	*	Household income must be reverified every two years, unless household situation changes or household reports $0 income or household does not receive federal fuel assistance.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	*	Affordability tied to tiered percentage of income based on ratio of income to Federal Poverty Level. Affordable burdens set at 6.5%, 8.0% and 9.0% of income for households with income at 0 - 50%, 51 - 100% and 01 - 150% of the Federal Poverty Level respectively.
	b.	Resolution of pre-program arrears.	*	Households may earn forgiveness of 1/24th of preprogram arrears for each complete and timely payment. If complete and timely payment NOT made, household forfeits that month of forgiveness. At end of 24 month period, household may earn forgiveness of any forfeited months over 12-month period.
	c.	Targeted assistance to high usage/high benefit participants.	+	High usage customers referred to low-income usage reduction program. No priority given to high-use LIRA customers.
	d.	Allocation of risk of weather/price volatility.	*	The tiered discount shares the risk of changes in bills (either up or down). Company shares risk to the extent of the level of discount granted. Customer shares risk to the extent the undiscounted portion of the bill increases.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	+	Company provides tiered discount based on income and household size. Tiered discount directed toward reducing bills to an affordable percentage of income, tiered by Federal Poverty Level. Discounts ranges from 10% to 60%. Minimum discount of 10% for income eligible household.
	b.	Maximum/minimum payment.	+	Program requires minimum customer payment. Program imposes ceiling on benefit level. Neither payment level indexed. Program provides for minimum benefit level.
	c.	Integrates with other utility payment processes (e.g., budget billing).	+	Program requires participation in equalized monthly Budget Billing Plan.
	d.	Integrates financially with other energy assistance programs.	+	Federal fuel assistance applied to reduce program participant's budget bill, without affecting customer's required percentage of income-based payment.
	e.	Conservation incentives designed into the program.	*	Ceiling imposed on benefits provided. Discount nature of program provides for sharing of increased usage.
4	**Provides mechanism for continuous improvement.**			

National Fuel Gas Distribution Corp. (PA) Low-Income Rate Assistance Program (LIRA)				
Criteria			**Program Rating (see notes)**	**Notes**
	a.	Provides for periodic outcome evaluation relative to objectives.	+	Periodic program evaluation prepared pursuant to regulatory commission directive. Program evaluation considers uniform outcome and process questions adopted by regulatory commission. Evaluation prepared by independent third party.
	b.	Provides for standardized data reporting.	+	Regular periodic data is reported to state utility regulatory commission as per commission directive. Uniform data reporting required for all regulated gas and electricity utilities.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	-	Costs of program assigned to residential class only.
	b.	Ensures timely and reasonable certain recovery of program costs.	+	Program costs recovered through a reconcilable universal service rider.
	c.	Accounts for cost offsets generated by program.	+	Cost recovery takes into account limited cost offsets for incremental additions to number of participants entering program since resolution of last base rate case.
	d.	Cost recovery independent of utility service territory limits.	0	Utility-specific funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

Citizens Gas and Coke Utility/Vectren Energy Delivery (IN) Universal Service Program (USP)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	0	No periodic needs assessment prepared for each company. Each company participates in statewide uniform reporting of credit and collections data for all residential customers and for federal fuel assistance participants.
	b.	Scope of eligibility	*	Customer are automatically enrolled in the utility programs upon enrollment in the federal fuel assistance program. No extra effort is needed to enroll in the utility programs.
	c.	Ease of program entry	+	Utilities work with community-based organizations that enroll customers in federal fuel assistance to promote LIHEAP.
	d.	Open enrollment	+	Enrollment in the universal service program is tied to enrollment in the federal fuel assistance program. While this eases program entry, it limits the time period of enrollment to those months in which the federal program takes applications. Since the federal program is primarily a heating program, enrollment does not occur year-round.
	e.	Ease of recertification	0	Recertification is performed through the federal fuel assistance program. No special recertification regulations are in effect.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	*	Companies provide a tiered discount for three tiers of customers. Each tier is structured so that the discount plus the federal fuel assistance grant will, on average, reduce participant bills to an affordable percentage of income.
	b.	Resolution of pre-program arrears.	0	No special program component directed toward preprogram arrears. Utilities financially support local fuel fund which provides "crisis" grants.
	c.	Targeted assistance to high usage/high benefit participants.	+	Customers with usage at or above 130% of median participant usage referred to each company's usage reduction program.
	d.	Allocation of risk of weather/price volatility.	*	The tiered discount shares the risk of changes in bills (either up or down). Company shares risk to the extent of the level of discount granted. Customer shares risk to the extent the undiscounted portion of the bill increases.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	+	Tiered discount provides some overpayment to low-use customers and some underpayment to high use customers. On average, utility discount plus federal fuel assistance benefit lowers bill to a predetermined affordable percentage of income.
	b.	Maximum/minimum payment.	0	No minimum customer payment. No ceiling on benefit payment.
	c.	Integrates with other utility payment processes (e.g., budget billing).	+	Both companies have announced their intention to require budget billing as a condition of program participation, at least for a period of months that include the winter heating months.
	d.	Integrates financially with other energy assistance programs.	*	Outreach, intake and benefit determination are tied to LIHEAP.
	e.	Conservation incentives designed into the program.	0	Referrals of high use customers to usage reduction program, but no conservation incentive structural incorporated into program.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	+	Annual reporting of monthly data used as basis for periodic evaluation.

Citizens Gas and Coke Utility/Vectren Energy Delivery (IN) Universal Service Program (USP)				
Criteria			**Program Rating (see notes)**	**Notes**
	b.	Provides for standardized data reporting.	+	Two sets of monthly data. Statewide credit and collection data are reported from all six Indiana utilities. In addition, the three utilities with low-income programs report on a set of agreed-upon 36 program metrics.
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	*	All customer classes pay something toward programs.
	b.	Ensures timely and reasonable certain recovery of program costs.	0	Pre-established funding stream on a per unit of energy basis for term of program (current term is four years).
	c.	Accounts for cost offsets generated by program.	+	Without quantifying program offsets, the companies agree to make investor contributions to programs in light of program cost offsets.
	d.	Cost recovery independent of utility service territory limits.	0	Utility-specific funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

New Hampshire Electricity Assistance Program (EAP)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	+	No periodic needs assessment memorialized in regulation or statute. Program overseen by multi-party work group of state agencies, electricity utilities and community organizations who provide empirical data in support of specific inquiries regarding program operation.
	b.	Scope of eligibility	*	Income eligibility set at 175% of Federal Poverty Level. No non-income based eligibility requirements.
	c.	Ease of program entry	*	Customers who enroll in federal fuel assistance program automatically enrolled in electricity affordability program.
	d.	Open enrollment	+	Program enrollment capped by whether committed benefits exceed annual budget. Waiting list maintained. Waiting list participants moved onto main program as budget allows, with priority given to households at lowest Poverty Levels.
	e.	Ease of recertification	+	Annual recertification allowed by mail. Biannual recertification provided for customers with types of income not likely to vary by year (e.g., elderly, disabled).
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	+	Tiered discounts provided so that, at average income and usage level within range of Poverty Level, bills will equal affordable percentage of income.
	b.	Resolution of pre-program arrears.	-	No preprogram arrearage provided.
	c.	Targeted assistance to high usage/high benefit participants.	0	No institutionalized referrals of high usage customers to usage reduction program.
	d.	Allocation of risk of weather/price volatility.	*	The tiered discount shares the risk of changes in bills (either up or down). Company shares risk to the extent of the level of discount granted. Customer shares risk to the extent the undiscounted portion of the bill increases.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	+	Some overpayment to low-usage customers and some underpayment to high-usage customers. With five discount tiers, the over- or under-payment is minimized.
	b.	Maximum/minimum payment.	0	No minimum customer payment. No ceiling on benefit payment. Program provides at least a minimum rate discount to all eligible customers.
	c.	Integrates with other utility payment processes (e.g., budget billing).	0	No systematic program integration with specific utility payment processes.
	d.	Integrates financially with other energy assistance programs.	+	Program is administratively and financially integrated with federal fuel assistance. Federal fuel assistance recipients automatically enrolled in electricity program. Electricity heating benefits are provided through federal program rather than through electricity affordability program.
	e.	Conservation incentives designed into the program.	+	No structural conservation incentives incorporated into program, but discount nature of program provides for a sharing of increased usage.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	*	Periodic program outcome evaluation required by monitoring and evaluation manual adopted by state utility commission. Performed by independent evaluator.
	b.	Provides for standardized data reporting.	*	Program adopted monitoring and evaluation manual that articulates uniform data reporting by participating utilities.

New Hampshire Electricity Assistance Program (EAP)				
Criteria			**Program Rating (see notes)**	**Notes**
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	*	System Benefits Charge collected on uniform volumetric basis from all customer classes.
	b.	Ensures timely and reasonable certain recovery of program costs.	+	Program costs recovered through statutorily established volumetric System Benefits Charge.
	c.	Accounts for cost offsets generated by program.	-	Cost recovery does not take into account cost savings to the utility generated by the program.
	d.	Cost recovery independent of utility service territory limits.	*	Statewide funding distributed based on need irrespective of source of funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

Maryland Electricity Universal Service Program (EUSP)				
Criteria			**Program Rating (see notes)**	**Notes**
1	**Reasonably open to all in need**			
	a.	Empirical needs assessment	*	Annual operational plan filed by program administrator with state regulatory commission contains an empirical needs assessment. Annual program report provided to legislature.
	b.	Scope of eligibility	*	Program eligibility goes up to 175% of the Federal Poverty Level. No non-income eligibility requirements.
	c.	Ease of program entry	0	Program entry attained through application process at local community-based organizations. Mail-in applications limited to repeat participants.
	d.	Open enrollment	*	Program commits to serve all in need. Program accepts enrollment year-round. There is no ceiling on participation.
	e.	Ease of recertification	0	Program participants required to annually recertify income. Program recertification may be done by mail.
2	**Recognizes and incorporates multi-faceted nature of "need."**			
	a.	Affordability of bills for current usage.	+	Bill discounts are tiered based on ratio of income to Federal Poverty Level. Discounts are 30% (150%-175%), 50% (110% - 150%), 60% (75% - 110%), or 75% (-0 - 75%). For households heating with electricity, bill reductions of an additional 15% are provided through the federal fuel assistance program.
	b.	Resolution of pre-program arrears.	-	Program provides limited arrearage forgiveness. Must have minimum of $300 in arrears. Available only once per customer. Preprogram arrears credit can be up to $2,000 per program participant. Arrearage forgiveness may extend to "off-service" customers to help them restore service.
	c.	Targeted assistance to high usage/high benefit participants.	0	High usage participants referred to usage reduction program. Usage reduction only provides "weatherization" services and not appliance or other non-building shell services, thus limiting usefulness of efficiency services for the electricity affordability program.
	d.	Allocation of risk of weather/price volatility.	0	The risk of bill volatility based on weather or price increases is borne by customer. The affordability benefit is paid in one lump sum at the time of the application for assistance.
3	**Efficiently uses program funds.**			
	a.	Matches payments to needs	*	The level of the rate discount plus the federal fuel assistance coordinated to reduce the participant's bill to an affordable percentage of income. Household benefit individually calculated for each program participant.
	b.	Maximum/minimum payment.	0	No minimum customer payment. Program imposes ceiling on benefit payment.
	c.	Integrates with other utility payment processes (e.g., budget billing).	+	Program requires participants to agree to enter into levelized monthly Budget Billing plan.
	d.	Integrates financially with other energy assistance programs.	*	Utility affordability application is identical to application for federal fuel assistance, even though programs are on different fiscal years. Amount of utility affordability benefit takes into account level of federal fuel assistance.
	e.	Conservation incentives designed into the program.	*	Benefits established using average usage of program participants. Consumption over average must be borne by program participant. Fixed payment nature of bill credit imposes burden for increased usage on program participant.
4	**Provides mechanism for continuous improvement.**			
	a.	Provides for periodic outcome evaluation relative to objectives.	0	Program has been subject to empirical outcome evaluation. Periodicity of outcome evaluation not established by regulation or statute.
	b.	Provides for standardized data reporting.	+	Program provides annual report to legislature based on standardized program data reporting. No standardized outcome data reporting is obtained from electricity utilities.

Maryland Electricity Universal Service Program (EUSP)				
Criteria			**Program Rating (see notes)**	**Notes**
5	**Provides for reasonable cost recovery.**			
	a.	Spreads costs over appropriate customer base.	*	Program costs collected from all customer classes on volumetric basis. System Benefits Charge varies by customer class and, for some customer classes, by size of load of customer.
	b.	Ensures timely and reasonable certain recovery of program costs.	*	Annual state regulatory commission proceeding establishes System Benefits Charge to be collected from each customer class.
	c.	Accounts for cost offsets generated by program.	-	Cost recovery does not take into account cost savings to the utility generated by the program.
	d.	Cost recovery independent of utility service territory limits.	*	Statewide funding distributed based on need irrespective of source of funding.
	Notes: Four ratings are possible for each program attribute:			
	*	Exceptional: An identified program attribute makes it stand out above other programs.		
	+	Positive: An identified program attribute enhances program operation and success.		
	0	Neutral: No program attribute enhances or degrades program operation or success.		
	-	Negative: An identified program attribute degrades program operation or success.		

APPENDIX D: LIEN'S PRESENTATION TO THE OEB – SEPTEMBER 22 – 25, 2008

LOW-INCOME ENERGY NETWORK

Consultation on Energy Issues Relating to Low-Income Consumers

(EB-2008-0150)

September 22 – 25, 2008

The Ontario Trillium Foundation / La Fondation Trillium de l'Ontario

What is the Low-Income Energy Network?

- LIEN is a network of anti-poverty, affordable housing and environmental groups.
- LIEN has over 75 member organizations, as well as individual and corporate supporters
- We seek to raise awareness of, and propose solutions to, energy poverty through:
  - outreach to community groups;
  - outreach to the public, e.g. through the media;
  - participating in OEB hearings and legislative processes;
  - working with policy-makers and local utilities to develop workable solutions to energy poverty.

LIEN Mission Statement

- The Low-Income Energy Network:
  - aims to ensure universal access to adequate energy as a basic necessity, while minimizing the impacts on health and on the local and global environment of meeting the essential energy and conservation needs of all Ontarians.
  - promotes programs and policies which tackle the problems of energy poverty and homelessness, reduce Ontario's contribution to smog and climate change, and promote a healthy economy through renewable and energy efficient technologies.

Presentation overview

1. Should the Board implement policies, programs or other measures designed to assist low income energy consumers?
2. Existing energy assistance programs
3. Low-income energy assistance programs in other jurisdictions
4. Rate measures to assist low income energy consumers.
5. Customer Service Issues (Payment Period, Disconnection, Security Deposits and Specific Service Charges) and Arrears Management Programs
6. CDM/DSM Programs for Low-Income Consumers
7. Time of Use Pricing; Sub-metering issues; energy retailers
8. Program Funding Mechanisms

Topic 1: Should the Board implement policies, programs or other measures designed to assist low income energy consumers?

- Energy poverty is a serious, systemic problem that can't be addressed with band-aid solutions
- The Board is responsible for regulating natural gas and electricity utilities
- The Board has a mandate to, and is responsible for setting just and reasonable rates
- Most low-income consumers buy "system gas" or "RPP electricity". For them, the OEB regulates 100% of the prices they pay and the bills they receive, and is in the best position to implement the needed assistance

Topic 1: Should the Board implement policies, programs or other measures designed to assist low income energy consumers?

- The Board has the relevant expertise to implement the policies, programs and other measures.
- Assistance directly from the government is more uncertain and less flexible. Certainty can be provided by the OEB and is needed for planning programs and flexibility is needed to respond to vagaries of weather and economics.
- Given that natural gas and electricity services are universal services, all customers should contribute to the assistance required by low-income consumers. There are many precedents for this.
- Low-income consumers need affordable rates. Win-win alternatives exist between customers and the utilities.

Broader context for conservation; Opportunities to end energy poverty

Environmental, social and economic...

- Ontario's goal to reduce peak electricity demand by 6,300 MW by 2025 (OPA's Integrated Power System Plan or IPSP – includes $10 Billion for conservation)
- Ontario's climate change plan (coal plant phase-out by 2014)
- Ontario's long-term affordable housing strategy
- Ontario's poverty reduction strategy, with firm targets to measure progress

Ontario's energy crisis

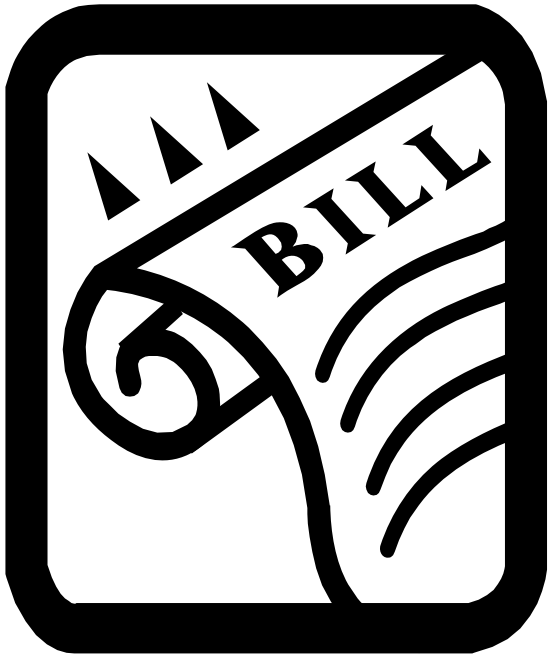
- Need to refurbish, rebuild, replace or conserve 25,000 MW of generating capacity by 2020 (more than 80% of Ontario's current electricity generating capacity).
- OPA's IPSP - $60 billion infrastructure expansion and renewal over a 20-year period.

-$10 billion for conservation,
-$46 billion for new generation
-$4 billion on transmission

Rising energy prices

- Real cost-to-customer increases of OPA's 20-year IPSP expected to be 15% to 20%
- Natural gas prices and oil prices also on the rise

Rising energy prices and low-income consumers

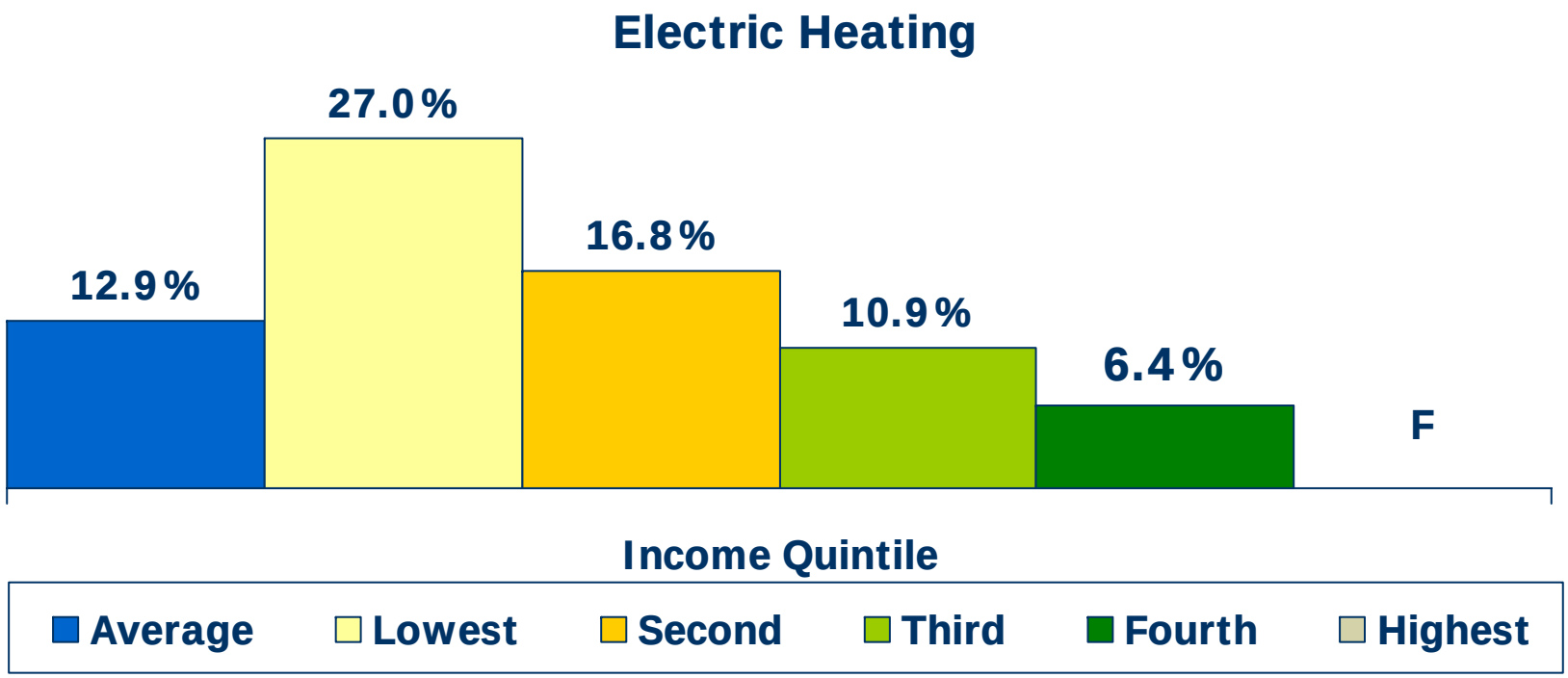


- Low-income households are particularly vulnerable to increases in shelter and utility costs - put housing in jeopardy.
- High energy costs are the second most significant reason for economic evictions in Ontario, right after unaffordable rents.
- Heating, eating or paying the rent will be choice faced by many.
- Reductions in energy use may be at the expense of health, socially acceptable standards of living.

Vulnerability to rising electricity prices

- The lowest household income quintile in Ontario has a far greater proportion of households that:
  - have electric heating as their principal heating equipment (27.0% compared to 12.9% for the average income household)
  - use electricity as principal heating fuel (30.8% compared to 16.7% for the average income household)
  - use electricity as principal heating fuel for hot water (39.3% compared to 26.4% for the average income household and 15.1% for the highest quintile).

Principal Heating Equipment



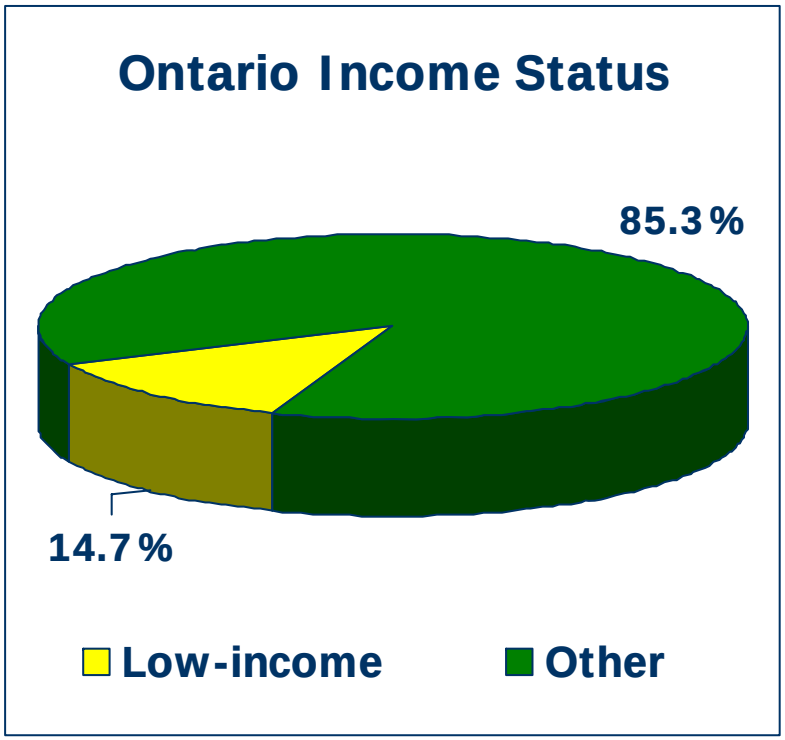
Source: Survey of Household Spending 2006, Statistics Canada

Energy use and the environment

- Electricity generating stations are big polluters.
  - 20% of greenhouse gases
  - 15% to 23% of smog-causing pollutants
  - Radioactive wastes we don't know how to deal with
  - 33% of electricity used by residential sector
- Home heating (electricity, natural gas and oil) responsible for 15% of greenhouse gas emissions in Ontario.
- Higher energy costs may spur conservation, BUT higher prices will increase the energy burden on low-income people who face barriers to accessing energy conservation/efficiency measures

Poverty

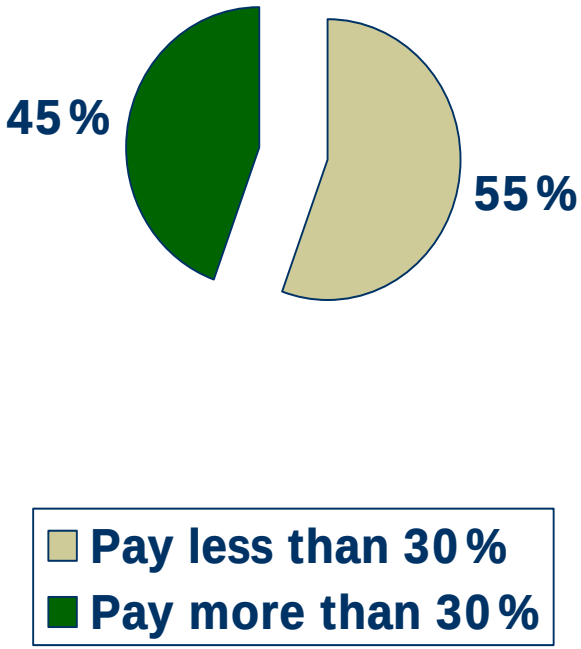
- 14.7% of Ontario's population (1,749,965 persons) are living at or below the "poverty line".
  - The majority of these persons live in tenant households, and in the private rental market



Source: Statistics Canada, 2006 Census of Population

Housing affordability and tenants

- 45% of Ontario's tenant households pay 30% or more of their household income on shelter costs (including utilities)
- 20% pay 50% and over of their household income on shelter costs - and are at risk of homelessness
- Impact of rising energy costs....



Low-income energy burden

- Low-income energy consumers face a disproportionate energy burden
- Energy burden refers to the amount of household income spent on energy
  - some experts say 6% is an affordable burden
  - U.K. fuel-poor household defined as spending more than 10%

Understanding Home Energy Burdens

Home energy burden =

Home energy bill / Household income

- Total shelter burdens affordable at 30% of income.
- Utility costs should be no more than 20% of shelter costs.
- Utility costs affordable at 6% of income

(20% x 30% = 6%).

Low-income energy burden

November 1, 2007 RPP - electricity bills for an average residential customer ranged from $92 to $140 per month.

- For a single mother with two children on social assistance, this represented 16% to 24% of her maximum shelter allowance of $595.
- For a single person working 35 hours a week at minimum wage ($8.00) this represented 8% to 12% of this worker's total monthly pre-tax income of $1213.33.

- The typical low-income family in Ontario has only a $200 "cushion" to buffer income interruptions or deal with unexpected expenditures.

Where do low-income consumers live?

759,590 LICO households (2001 Census)

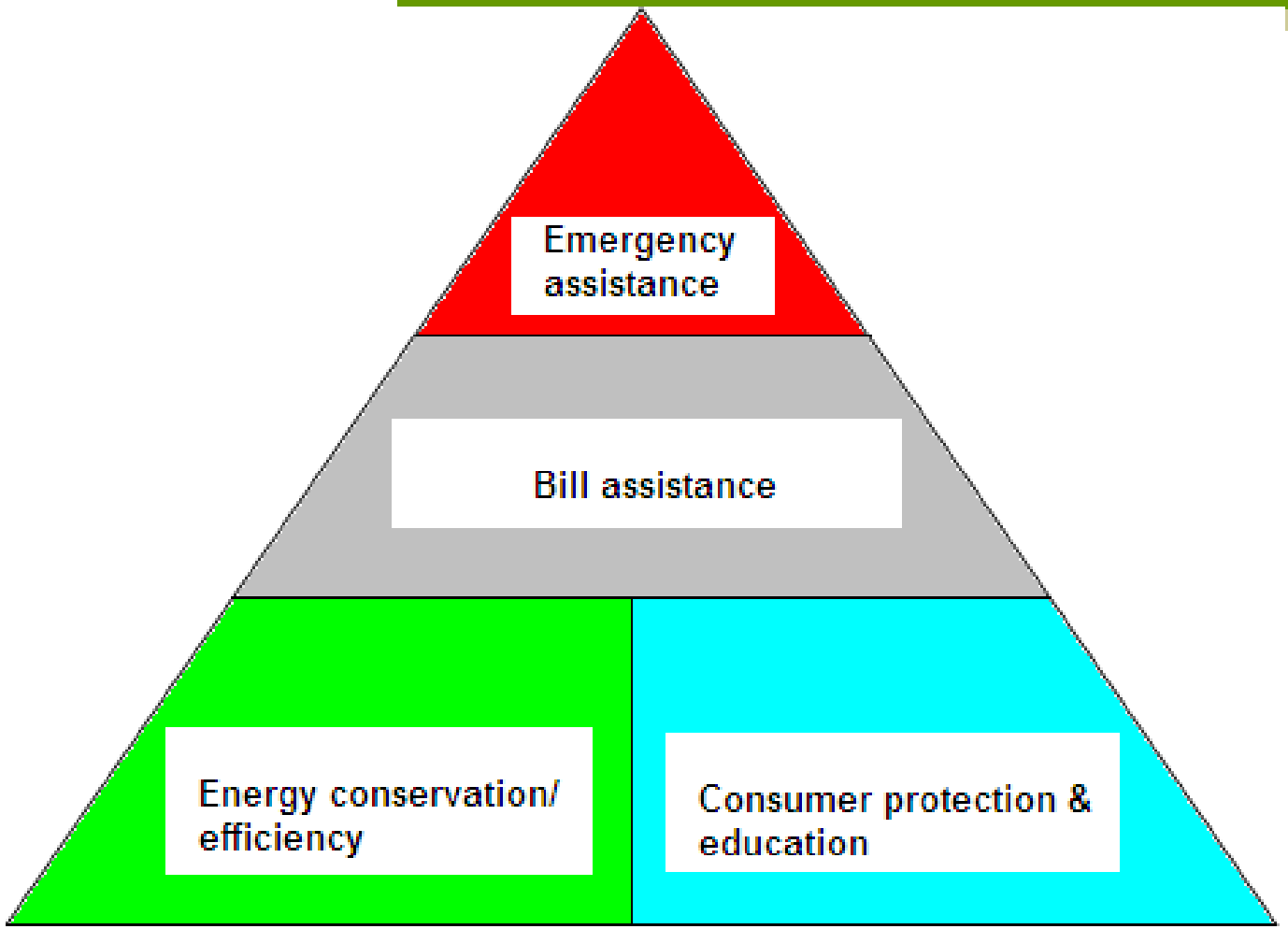
- 490,485 are tenant households (65%)
  - Live in social housing or private rental sector – most in multi-residential buildings
- 269,095 are homeowners (35%)
  - 39% are senior-led

SIMPLE SOLUTION

1. Affordable energy

2. Energy conservation

LIEN's approach to low-income energy conservation & assistance



What is needed

- A permanent low-income energy rate assistance program
- LIEN's proposal for an ***Ontario Home Energy Affordability Program*** has five major components: rate affordability, arrears management, crisis intervention, conservation and demand management, and consumer protections. It advocates that Ontario's low-income consumers should not be paying more than 6% of their total household income on energy.

Benefits of low-income energy efficiency program

- Lower energy bills for those least able to afford higher energy prices, as energy use drops by between 15% to 55%, depending on home and extent of measures
- Reduce poverty
- Reduce risk of homelessness
- Improve comfort/quality of life
- Reduce pollution, avoid building new expensive electricity generating plants

Benefits of low-income energy efficiency program

- Reduce demand for emergency assistance (public & charitable funds)
- Reduce costs to utilities associated with late payment or non-payment of bills (e.g. collection, disconnection, reconnection)
- Reduce costs to utilities associated with emergency calls
- Reduce need for public expenditures such as health, fire, building inspections, homeless shelters, and housing programs

Rising energy prices and low-income consumers

- Heating, eating or paying the rent will be a choice faced by many.

Ability to pay; just and reasonable rates

- Under the OEBA, the Board must approve or fix "just and reasonable rates"

- The Divisional Court has decided that the Board has jurisdiction to take ability to pay into account in setting rates

- The Board cannot deny this jurisdiction and refer the matter to be dealt with by Government

- The Board does not have an unfettered discretion - it must still produce just and reasonable rates

Ability to pay; just and reasonable rates

The Board must be guided by:

➔the public interest

➔ the protection of the interests of consumers with respect to prices and the reliability and quality of service

Unaffordable rates face low-income consumers with:

➔a choice between energy use against other essentials for normal living - a choice between "heating and eating"

➔disconnection of service

If rates are unaffordable, the goals of the public interest and protection of consumers are not served.

Topic 2: Existing energy assistance programs

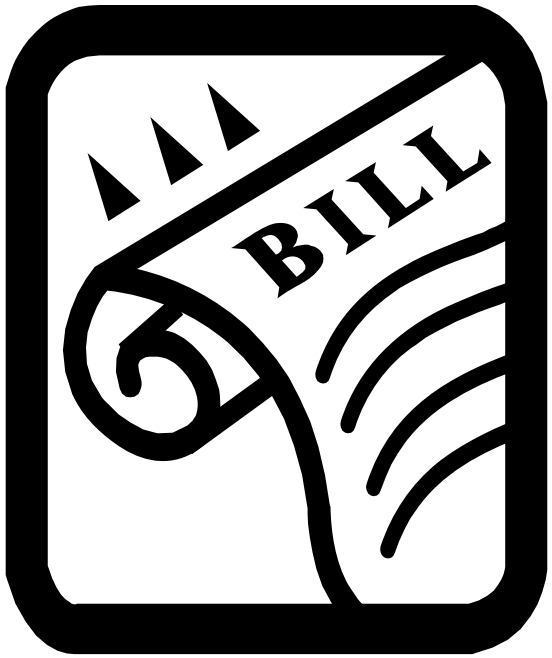
GAPS

- Patchwork of programs
- Differing eligibility criteria, application processes, and assistance levels
- Not available in all communities
- Don't provide enough money to solve the problem
- May be a grant or loan
- One-time funding only
- Funds tend to run out before the heating season is over
- Lack of awareness of existence of programs; lack of information
- Social stigma

Therefore, ill-suited to address permanent and widespread conditions of rising energy prices and income shortfalls

Topic 2: Existing energy assistance programs *continued…*

Rate assistance / emergency energy assistance



Emergency Energy Fund

- Provincial government announced "one-time" $2 million Emergency Energy Fund on March 29, 2004; renewed the fund in 2005 Ontario Budget, and annualized it; EEF doubled to $4.2 million in April 2006 (one-time)
  - *fund assists low-income households to pay energy arrears, security deposits and reconnection fees*

Topic 2: Existing energy assistance programs *continued…*

Rate assistance / emergency energy assistance

- **Shelter allowance**: Social assistance recipients who pay for heating costs directly can receive assistance for fuel costs as part of shelter allowance, up to a set maximum based on family size

- **Community Start-up and Maintenance Benefit (CSUMB)** pays for utility arrears, reconnections; maximum benefit can be accessed only once in 24-month period

Helping low-income consumers

Rate assistance / emergency energy assistance

- **Discretionary benefits** are available to assist OW/ODSP recipients with cost of utility arrears, deposits and reconnection fees
- **Share the Warmth, Winter Warmth** (Toronto Hydro & Enbridge Gas) and other charitable groups provide financial assistance to pay utility bills

Snapshot - low-income conservation programs

Enbridge Gas Distribution Inc.	$	4,558,250
Union Gas	$	4,303,000
LDCs' low-income CDM	$	4,293,120
LDCs' social housing CDM	$	4,554,216
OPA's Social Housing Program - Phase One	$	9,250,000
OPA's Energy Efficiency Assistance for Houses pilot	$	2,900,000
OPA's Canada-Ontario AHP Energy Efficiency Program	$	3,700,000
Total	$	33,558,586
OPA's Multifamily Buildings Program (6 units +)		RFP issued
OPA's Energy Efficiency Assistance for Houses program – expansion province-wide (5 units and under)		RFP issued

Utilities with Low Income and Social Housing Programs Implemented in 2005 (as reported by LDCs)

Low Income Measures

1. Aurora Hydro Connections Limited
2. Bluewater Power Distribution Corporation
3. Brantford Power Inc.
4. Centre Wellington Hydro Ltd.
5. Collus Power Corp.
6. EnWin Powerlines Ltd.
7. Guelph Hydro Electric Systems Inc.
8. Haldimand County Hydro Inc.
9. Hydro One Networks Inc.
10. Kitchener-Wilmot Hydro Inc.
11. Niagara Falls Hydro Inc.
12. Parry Sound Power Corporation
13. Peninsula West Utilities Limited
14. Port Colborne Hydro Inc.
15. St. Catharines Hydro Utility Services Inc.
16. Tillsonburg Hydro Inc.
17. Waterloo North Hydro Inc.
18. Wellington Electric Distribution Company Inc.
19. Whitby Hydro Electric Corporation

Social Housing Measures

1. Barrie Hydro Distribution Inc.
2. Enersource Hydro Mississauga Inc
3. Erie Thames Powerlines Corporation
4. Fort Frances Power Corporation
5. Hamilton Hydro Inc.
6. Hydro Ottawa Limited
7. London Hydro Inc.
8. Newmarket Hydro Limited
9. Oshawa PUC Networks Inc.
10. Powerstream Inc.
11. Toronto Hydro-Electric System Limited
12. Hydro One Networks Inc.
13. Kitchener-Wilmot Hydro Inc.

Helping low-income consumers

Energy conservation programs

- OEB encouraged LDCs to undertake low-income CDM, not mandatory
  - LIEN produced template for program for low-income homeowners and tenants who pay for utilities (electricity, gas) directly
  - Brantford Power piloted “Conserving Homes” program based on LIEN template

Helping low-income consumers

Energy conservation programs

- October 6, 2005 Minister's directive gives OPA/Conservation Bureau responsibility for low-income and social housing CDM - target of 100 MW reduction in electricity consumption and demand, or amount used by 33,000 homes
- OPA responsible for next phase of CDM programs through LDCs - $400 million over three years, beginning October 1, 2007

Helping low-income consumers

Energy conservation programs

- Social Housing Services Corporation (SHSC)
  - very motivated to reduce energy costs/consumption
  - Energy Management Program pilot and financing of retrofits
  - results from first phase audit of 5,000 units - $17.5 million needed for retrofits
- Discretionary benefits available for OW/ODSP recipients (homeowners or renters) to pay for pre-approved low-cost energy conservation measures
  - payment issued only once to benefit unit, may not exceed $50
  - for caulking, weatherstripping, insulating pipes, low-flow showerheads, CFLs, etc.

Helping low-income consumers

Energy conservation programs

- Federal government's 5-year, $500 million EnerGuide for Low-Income Households (EGLIH) program to assist 130,000 low-income households
  - some provinces (Saskatchewan, Newfoundland & Labrador) topped up EGLIH funding, piggy-backing additional energy conservation measures to achieve further energy reductions

- EGLIH cancelled by federal Conservative government in Spring 2006, along with EnerGuide program

Helping low-income consumers

Consumer protection

- Municipalities can pass Vital Services by-laws under Part XIII of the *Residential Tenancies Act*, but only a handful have
- these by-laws permit municipalities to step in to restore utility service in cases where tenants pay for the utility in their rent and the landlord has defaulted on payments
- a private member's bill has been introduced that provides for the provincial government to step in when there is no municipal vital services by-law in place

Topic 3: Low-income energy assistance programs in other jurisdictions

Low-income assistance can take many forms:

- Objectives of the program
  - Usage reduction
  - Rate Affordability

- Structure of the program
  - Rate affordability:
    - Percentage of income program (PIP)
    - Percentage of bill program (POB)
    - Discount (tiered, across-the-board)
  - Usage reduction:
    - Whole house
    - Base-load
    - Heating
    - Refrigerator replacement

Objectives of Low-Income Program

- Public health and safety
- Provide essential goods
- Efficient utility operations
- Provide least-cost service
- Prevent home energy insecurity
- Compensate for reverse subsidies

Forms of energy assistance programs in other jurisdictions: Ratepayer-funded programs

- **Fixed credit program**: New Jersey
  - Uniform statewide program
  - Gas and electric
  - Percentage of income based
  - Credits, not payments, “fixed”
  - Mandated by statute
- **Percentage of income program**: Ohio
  - Uniform statewide program
  - Made mandatory by Commission order.
  - Payments “fixed” as no greater than percentage of income.
  - Adopted under Commission inherent authority without statute.

Forms of energy assistance programs in other jurisdictions: Ratepayer-funded programs

- **Tiered discount program**: Indiana
  - Discounts vary based on income/resulting bill burden.
  - Adopted under Commission jurisdiction without statute.
  - Adopted by two natural gas utilities/not uniform statewide.
  - Participation based on LIHEAP enrollment
- **Straight discount program**: California
  - Mandated by statute.
  - Across-the-board 20% discount, not varying based on income (or bill burden)
  - Uniform statewide program (though outreach may differ by company)

Forms of energy assistance programs in other jurisdictions: Ratepayer-funded programs

- **Mixed program design**: Pennsylvania
  - Recommended: percentage of income or percentage of bill
  - If not PIP or POB, utility must show that it is at least as effective as PIP/POB
  - Adopted under Commission jurisdiction without statute.
  - Individual program designs, though within regulatory "guidelines" established by Commission.
  - Gas and electric utilities
  - Different utilities do different designs:
    - PECO: tiered rate discount
    - Multiple: Percentage of Income
    - Multiple: Percentage of Bill
    - Columbia Gas: Percentage of income (minimum average past payment).

U.S. experience: Impact on payments

- Payment are not “perfect” but are vastly improved.
- Payments measured in two ways:
  - Number of payments
  - “Payment coverage ratio” (payment / bill = coverage ratio)
- Experience shows:
  - Payments of payment-troubled customers are 10+ per year.
  - Payment coverage ratios are roughly 80 - 85% in Pennsylvania.
  - Payment coverage ratios are 90%+ in NJ.
  - As bill burdens increase, payment coverage ratios decrease.

U.S. experience: Impact on arrears

- Arrears are not eliminated, but are vastly reduced.
- Most difficult to change payment patterns of customers with historically high arrears.
- Payment patterns improve over time.
- Impact on arrears measured in three ways:
  - Number of accounts with arrears decrease.
  - Dollar levels of arrears decrease.
  - Seasonality of arrears leveled.
- Biggest impact on arrears are with those accounts having the highest arrears.

U.S. experience: Impact on collection activities

- The incidence of service terminations for nonpayment are dramatically reduced (70% or more).
- The intensity of collection contacts decrease:
  - While in past, collections may have progressed to point of a posted disconnect notice, under program, collections occur with mailed “reminder.”
- Should not expect elimination (or even a reduction) in level of TOTAL collections activity.
  - By reducing collections toward low-income, utility can redirect collections toward other more productive accounts.
  - So, total collections remain the same, but are simply not attributable to low-income.

U.S. experience: Impact on revenues

- The financial impact on utility is not measured by amount of BILLINGS but rather on amount of RECEIPTS and at less cost of collection.
- **Indiana**: while program participants were BILLED 90% of what non-participants were billed, they PAID 111% of what non-participants paid.
- **Indiana**: both collection activity and low-income discounts reduced arrears. Low-income discounts reduced arrears more on a dollar-spent basis than did collection activity.
- Two conclusions: (1) low-income program can be revenue neutral (by increasing receipts even though reduced bills); and (2) low-income program can be more cost-effective in increasing receipts than the available collection alternative.

U.S. experience: Cost reductions

- There are cost offsets due to low-income program:
  - Bad debt decreases because payment responsibility for portion of bill is transferred to higher income households.
  - Bad debt decreases because low-income customers with more affordable bills pay better.
- Working capital decreases as arrears decrease.
- Customer service and collection expenses generally do NOT decrease, as customer service and collection activity simply transferred to other customers.
- Impacts on reduced expenses picked up in base rate cases.
  - Important to quantify only if there is a reconcilable rate rider to compensate utilities for program costs.

U.S. Experience: Usage Impacts

- No systematic usage increase has been found to occur as a result of a low-income affordability program.
- While no INCREASE usage occurs, programs tend to attract the highest use customers with which to begin (customers with low energy burdens choose not to participate).
- Two easy program mechanisms can be used to control usage:
  - An explicit connection between affordability program and usage reduction program, with high use participants referred to usage reduction.
  - A “fixed credit” program, which imposes cost responsibility for increased usage on customer, but allows customer to keep benefits of reduced usage.

Forms of Energy Efficiency Programs in other jurisdictions

- California – Low Income Energy Efficiency programs offered by electric and gas utilities
- Includes free weatherization, furnace repair or replacement
- Age, income, size of household and also disability form entitlement criteria

Energy efficiency – other jurisdictions, cont'd

- Connecticut – legislation requires delivery of low income residential programs
- Electrical programs delivered through community agencies; gas programs through a state Housing and Investment Fund for energy conservation loans and heating equipment upgrades

Energy efficiency – other jurisdictions, cont'd

- Illinois program since 1981
- 10 per cent of the benefits charge collected for the low-income energy assistance fund is provided for the low income weatherization assistance program
- Delivered through community agencies with priority to seniors and those with disabilities

Energy efficiency – other jurisdictions, cont'd

- Maryland - Columbia Gas Low Income Weatherization Program with Maryland Office of Weatherization
- Energy audits followed by weatherization; eligibility based on income and high gas usage

Energy Efficiency in other jurisdictions

- Massachusetts, Minnesota, Montana, New Jersey, New York and Oregon all also deliver low income energy efficiency programs

Topic 4: Rate-related measures and issues

- Not all low-income issues involve the design and implementation of a low-income “program.”
- Many low-income issues involve the basic, historic process of setting cost-based rates.
- Due to the attributes of low-income customers, several issues arise with respect to basic rates and charges that relate to the imposition of undue burdens based on inattention to cost-causation.

Topic 4: Rate-related measures and issues: cost causality

- Cost causality means that the customer causing the costs should bear the costs. Conversely, if a customer does *not* cause the costs, he/she should not pay them.
- "Causation" is measured by a "but for" test: would the costs have been incurred but for the actions of the customer?
- Non-cost-based fees should be strictly scrutinized:
  - General customer service expenses should not be passed through in fees that disproportionately fall on low-income customers.
    - At the least, low-income should be exempt from such fees.
    - Disconnect/reconnect fees, collection fees, connection fees.

Topic 4: Rate-related measures and issues: basic rate structure

- Cost causality applies to the basic rate structure also, not just to fees.
- Inverted rate structure appropriate in an increasing cost environment.
- Cost-causation, however, means that:
  - appropriately sizing the first block is as important as getting the rate differential between blocks correct.
  - Seasonal rate differentials applied to the first block are rarely justified on a cost-causation basis.
  - Lost rate recovery/lost fixed cost recovery is rarely justified from the first block on a cost-causation basis.
  - Rate recovery of expensive peaking fuels/purchased power costs can rarely be justified from the first block on a cost-causation basis.

Topic 4: Rate-related measures and issues: the use of “price signals”

- Many economists argue that the rate structure should be used to send “price signals” to customers.
- The notion of “price signals” should not substitute for a rigorous analysis of the cost-causation relationship between charges and costs.
  - A non-cost-based charge cannot be justified on the basis of sending a “price signal.”
- “Price signals” should be supported by data regarding:
  - The need for the price signal
  - The effectiveness of the price signal
- Consumer “price signals” are rarely effective for low-income customers.
  - Cannot control usage by “choice” without substantial investment.
  - Cannot afford to pay bills in the first instance.

Topic 4: Rate-related measures and issues: reciprocity of burdens and benefits

- The basics of cost-causation counsel that if a customer causes the cost to be incurred, that customer should pay the cost.
- There should be, however, a reciprocity in costs and benefits. The converse should be: if a customer causes a benefit to be incurred, that customer should reap that benefit.
- The reciprocal nature of the issue of “cost-causation” is frequently ignored. For example:
  - If low-income customers disproportionately contribute cash deposits, those customers should be allocated the benefit of the rate of return avoided by that customer-contributed capital.
  - If low-income customers disproportionately pay non-cost-based late fees, those customers should be allocated the revenue from those fees.
  - If low-income weatherization helps reduce bad debt and/or working capital, those avoided expenses should be captured and allocated back to additional weatherization.

Topic 4: Rate-related measures and issues: principles to be pursued

- The principle of cost-causation should be applied to miscellaneous customer service fees and charges as well as to basic rates.
- Cost-causation is measured by a “but for” test.
- Cost-causation may manifest themselves in non-price ways (e.g., size of initial consumption block).
- A rate based on “price signals” must be rigorously supported by evidence as to need and effectiveness.
- There should be reciprocity in “cost-causation.”
  - Benefits as well as burdens should be allocated back to the customers who “cause” them.

Rate affordability assistance: how does this issue of “cost-based rates” fit in?

- “Cost-based” is not a strict test. The term “costs” has many aspects to it:
  - Fully-embedded vs. marginal
  - Original cost vs. replacement cost
  - Long-run marginal cost vs. short-run marginal cost
  - Fixed costs vs. variable costs
- Cost subsidies have been used to promote social goals in the past:
  - Rural electrification promoted by rate averaging
  - Basic telephone service promoted by subsidies
  - Economic development promoted by fixed cost contribution theory
  - Carbon reduction promoted by “conservation incentive” rates.

Rate affordability assistance: how does this issue of “cost-based rates” fit in?

- Non-cost based rates approved when they are a BURDEN to low-income:
  - 1.5% per month late fees are not cost-based.
  - Deposits are not cost-based.
- Subsidy need not be cost-based if it is a PAYMENT (akin to rents).
  - Support of universal service a payment for grant of right of eminent domain.
  - Support of universal service a payment for grant of right to use public rights-of-way (e.g., streets, alleys)

Topic 5: Customer Service Issues and Arrears Management Programs

- Payment period
- Disconnection
- Security deposits
- Arrears management programs

Topic 5: Customer Service Issues and Arrears Management Programs

LIEN supports terms and conditions for utility service (e.g. consumer security deposit requirements, payment time-lines and plans, disconnection and reconnection policies, termination moratoria) that are in the best interests of low-income consumers, and:

- will not add to the service costs and penalize low-income consumers who are experiencing payment difficulties,
- will assist low-income consumers in accessing and maintaining essential utility service.

Payment options

- Low-income customers should be provided equal access to payment options meeting their needs.
- Payment periods:
  - Customers on fixed incomes may need to be able to specify the date on which they make payments (e.g., Entergy “pick-a-date” program) to ensure that payments are not due before income is received.
  - Customers using external payment centers should not be penalized for any lag in transfer and posting of payments.

Equal billing

- All distributors should offer equal billing plans to low-income consumers.
- In addition, equal billing should be available to low-income consumers who have enrolled with an electricity retailer. Community legal clinic clients have fallen into default on their electricity bills when they have switched to retailer supply because their equal billing option disappears.
- Credit history should not be a barrier to low-consumers enrolling in an equal billing plan since such plans will assist in reducing payment defaults.

Late payment fees

- Late payment charges that disproportionately and adversely affect low-income customers can be a barrier to accessing electricity service as they add to service costs and increase the risk of disconnection if low-income households are not able to make full bill payments.
  - Late payment charges cannot be justified as a “cost-based” fee.
  - Late payment charges cannot be justified as an “incentive” to pay, particularly for low-income customers.
  - Late payment charges cannot be justified as either “cost-based” or as an “incentive” for customers current on deferred payment plans.
- There should be a mandatory exemption or waiver of late payment charges for low-income consumers. A late payment fee waiver is also a component of the basic consumer protections in the LIEN proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households*

Disconnection

- An over-riding goal of LIEN's comprehensive strategy to address energy poverty is to pro-actively prevent service disconnections for low-income consumers who cannot afford to pay for their utility bills and other basic necessities.

- The establishment of a low-income rate affordability program will be a major step towards avoiding electricity disconnections for arrears.

Disconnection

- Crucial that LDCs' disconnection policies and procedures maximize the opportunities for low-income consumers facing service termination due to arrears to access emergency energy funds that they may be eligible to receive to prevent disconnection and/or restore service.

- This should be done in consultation and co-ordination with the relevant provincial ministries, municipal service managers, social service agencies and/or delivery agents.

Disconnection moratoria

- No service termination for low-income households in the heating and cooling seasons. OEB should protect against weather-induced death and illness.
- Other disconnection moratorium conditions should take into account age and medical conditions (households where infants and/or persons over 65 years of age reside, medically fragile)

Disconnection

- While the over-riding policy is to prevent the disconnection of service, the “threat” of disconnection can be as harmful as actual disconnection.
- Consumer protections are needed with respect to the use of disconnect notices:
  - Utilities should not threaten to disconnect in instances they do not intend to disconnect.
  - Utilities should not “over-notice” the potential of disconnections, as over-noticing leads to customers ignoring “legitimate” notices.
  - Utilities should not threaten a disconnection under circumstances where disconnection is not permitted (e.g., current on payment plan, protected by medical conditions, protected by severe weather moratorium).

Security deposits

There should be a mandatory exemption for low-income households from security deposit requirements which can adversely impact, or even exclude, these households from accessing energy.

- Other options – alternatives to cash security deposit, i.e. letter of guarantee/letter of credit
- OEB has set guidelines for collection of deposits, including payment by instalments

Arrears management programs

- LIEN's proposal for a ratepayer-funded *Ontario Home Energy Affordability Program for Low-Income Households* also includes an arrearage management program comprised of the following components:

- Arrears are to be retired over a two-year period;
- Customers are to make co-payments toward their arrears;
- Co-payments are to be set equal to an affordable percentage of income (1% per year);
- No pre-condition is established for the grant of arrearage management credits; and
- The appropriate response to non-payment is to place the program participant in the same collection process as any other residential customer.

Topic 6: CDM/DSM Programs for Low-Income Consumers

What is needed:

- Permanent, adequately-funded energy conservation programs for low-income consumers, with targets for the number of homes to be retrofitted annually.
- Such programs should be available at no cost to eligible participants and be equitably accessible province-wide.

Energy conservation and low-income consumers

Conservation is a cheap, fast, clean solution to energy crunch and climate change crisis

More efficient use of energy:

- reduces pollution major respiratory health improvements especially for youngest and oldest
- avoids cost of new generating plants
- reduces energy bills and lessens effect of rising prices
- makes housing more affordable & comfortable

BUT, it won't happen in low-income residential sector without financial investment **...**

CDM / DSM measures

- To achieve deep reductions in energy use, fuel-neutral programs should have a wide suite of measures (draftproofing, insulation, heating equipment upgrades) and be tailored to distinct low-income consumer groups: homeowners, tenants in private rental housing, and tenants in social housing.

Why is tenant involvement important?

- Deep reductions in energy use through energy efficiency will not be fully realized if there isn't a concurrent energy conservation education program to help shift tenants behaviour
- The best way to deliver an energy conservation program to low income tenants is by having low tenants design and deliver the energy conservation program

Why is tenant involvement important?

- Tenants can identify unforeseen opportunities and challenges in energy saving programs because they know their situation better than any of us.
- Tenant leaders set a good example and teach fellow tenants about saving energy – this results in real behaviour changes
- What motivates tenants to save energy will vary by situation, but we know it's not always about saving money!

Tenant-led energy saving programs exist

- Brahms Energy Savings Team (BEST) and Walpole is Reducing Energy (WiRE) were two successful tenant-led energy conservation programs run in TCHC neighbourhoods (2005, 2007).
- Low Income Tenant Energy Savers (LITES) is engaging tenants living in private high rise buildings in both Ottawa and Toronto
- The City of Toronto supports community-led conservation programs and it is being realized through Live Green Toronto

Important Program Principles

- Free for tenants to participate
- Open to everyone in the building, regardless of income/benefits.
- Tenants help design and deliver the program
- Peer education (tenants teaching tenants)
- Offers tools and materials that enable tenants to start saving energy right away (e.g. power bars, light bulbs, etc.)
- Supportive landlord who will ‘do their part’ (appliance replacement, retrofits, maintenance)

Brahms Energy Savings Team (BEST)

- 342 units and about 850 tenants (350 of whom are children)
- hired and trained six tenants from the buildings as community education and outreach workers (or Animators).
- Animators designed and delivered an energy education program that engages their fellow tenants in their primary language (English, Farsi, Somali, and Tamil) and in culturally appropriate ways.
- 75% of households participated
- 6.6% in energy reduction annually
- won 2006 Green Toronto Award for best community project

Walpole is Reducing Energy (WiRE)

- Downtown east end, 118 units
- 3 animators delivered the program
- WiRE reached 85 households
- 90% found the material easy to understand and use
- 87.5% said they learned new things
- 87.5% felt they saved money as a result of the WiRE Program
- 96.4% also said they were more comfortable

Low Income Tenant Energy Savers (LITES)

- Saving Energy: The 6-Step Guide to Tenant Action
- Regional Workshops – Toronto, Ottawa, Windsor
- 2 Tenant-led Energy Conservation Programs in private high rise buildings
  - 2 apartment buildings in Ottawa (owned by TransGlobe)
  - 2 apartment buildings in Toronto (owned by CAP REIT)

DSM for Low-Income Consumers in Ontario

- Low-income housing is also older and more in need of maintenance than the Ontario average, implying there are significant energy efficiency gains to be made
- Low-income households have fewer appliances than the average home, although these appliances and heating systems in low-income housing are older than the average, and hence less energy efficient

Access and control issues

- Much of the energy burden of low income consumers is “inelastic”
- Examples include heating, water heating, lighting, and basic appliances such as refrigeration
- Low income consumers lack control or access to capital in terms of building envelope, insulation, weatherization, efficient appliances

Characteristics of low-income dwellings

- More likely to be space heating
- More likely rented
- More likely spending relatively more on basic energy needs than higher income quintiles

Household equipment

- 27% of the lowest household income quintile have electric heating as their principal heating equipment (compared to 12.9% for the average income household)
- 62.6% of lowest income households had principal heating equipment over 10 years old (compared to 48.3% in highest income households)
- 39.3% heated hot water with electricity in lowest income quintile, compared to 15.1% in highest quintile
- The age of heating equipment also implies efficiency and cost differences in absolute terms
- Impacts of these differences on lowest income households are disproportionate

Types of low-income energy efficiency programs

- Energy audits
- Weatherization including weather stripping, caulking, attic insulation, storm windows
- Appliance replacement, particularly refrigerators
- Furnace repair or replacement
- Fuel switching (e.g. electrical space heating to natural gas, propane or oil in Vermont)

Societal benefits of low-income DSM

- Participation in energy savings and climate change
- Significant component of residential energy use
- Avoidance of energy cost mobility and improved educational outcomes for youth

Societal benefits of low-income DSM cont'd

- Reduced need for public expenditures on health, fire, housing and homeless shelters
- Reduced emergency calls to utilities
- Reduced utility costs re collection, termination, reconnection
- 17 to 300 percent "benefit adder" cited*

Topic 7: Time of Use Pricing; Sub-metering issues; energy retailers

Energy Retailers:

- Addressing issue of early termination fee for vulnerable low-income households under certain conditions

Who's calling for Smart Meters, sub-Metering?

Ontario government

- have facilitated expansion of Smart Meter initiative to condominiums and multi-residential rental sectors to reduce electricity peak demand

Landlords

- want to transfer in-suite utility costs directly to tenants

Suppliers

- Smart sub-metering providers see business opportunity in multi-residential rental sector

Smart Meters; sub-metering

Smart meters

- Record how much, and at what time of day, electricity is used (unlike current mechanical/analog meters)

Sub-meters

- Installed behind master or bulk meters; measure electricity consumed in-suite in order to individually bill tenants. Electricity sub-meters can also be smart meters.

Smart sub-metering

- Landlord with bulk meter is the customer of the electricity LDC; smart sub-metering provider, acting on behalf of the landlord, issues bills to each tenant household in the building for in-suite consumption; collects payments and remits to landlord

How many tenants; where do they live?

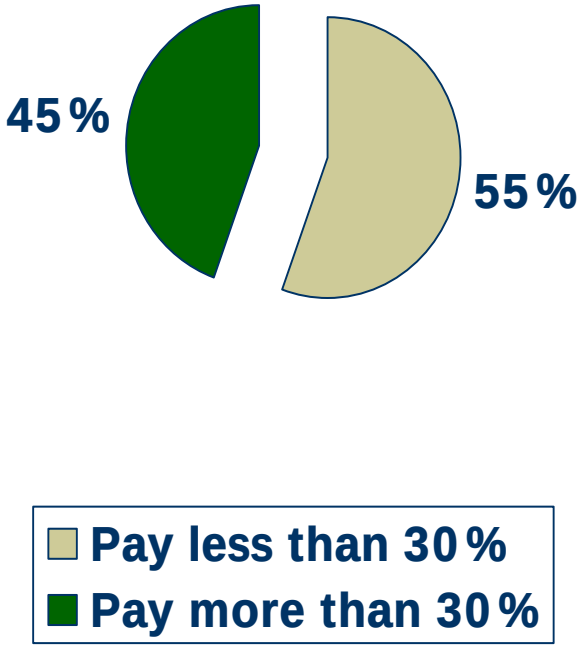
- 28.8% of all Ontario households are renters (1,312,295 tenant households)
  - 40% live in apt. buildings with five or more storeys
  - 29% live in apt. buildings with fewer than five storeys

Housing affordability and tenants

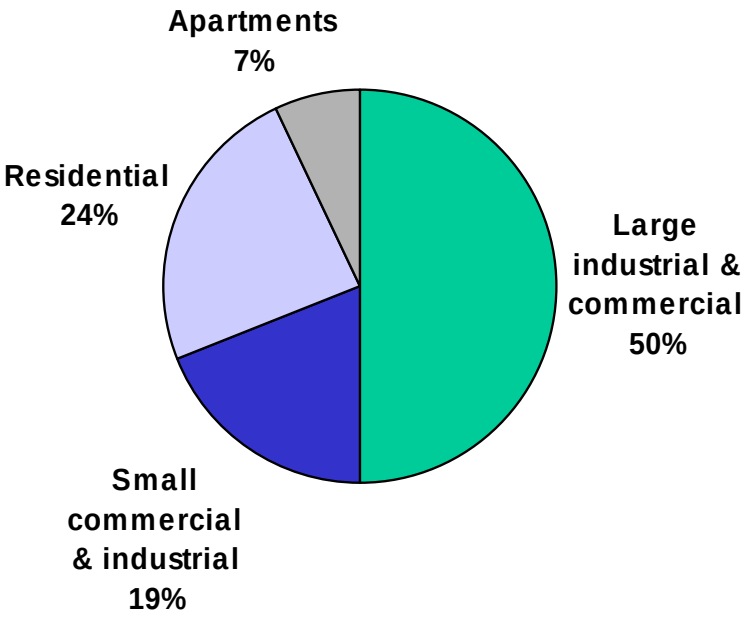
- 36% of Ontario's tenant households are living at or below the "poverty line" (2001 Census)
- The median income of Ontario's renter households is less than half of homeowner households ($33,447 vs. $74,712) – 2006 Census
- Ontario renter households represent 31% of all Ontario households, but comprise 66.4% of Ontario households in core housing need (2001 Census)

Housing affordability and tenants

- 45% of Ontario's tenant households pay 30% or more of their household income on shelter costs (including utilities)
- 20% pay 50% and over of their household income on shelter costs - and are at risk of homelessness
- Impact of smart sub-metering....



What percentage of electricity use in Ontario is from apartments?



- Our best estimate is that bulk-metered apartments, i.e. those that are candidates for sub-metering, comprise only 7% of Ontario's annual electricity consumption

Tenants and electricity use

Currently:

- most tenants in multi-residential private rental sector pay for utilities in their rent
- estimated that 85% to 90% of multi-residential buildings are bulk-metered, and most Ontario apartment buildings are not electrically heated
- most social housing tenants pay for utilities in their rent; only 18% of tenants pay electricity bills directly

Conservation does matter for tenants

- It's their home
- They pay for utilities – either in rent or directly
- They pay when landlords apply for above-guideline rent increases for "extraordinary" increases in utilities costs, or for capital expenditures for energy (or water) conservation work
- They are affected by climate change
- Their early engagement is essential for maximizing energy savings

Conservation does matter for landlords

- Utility prices are rising, increasingly volatile operating cost
- Need to maintain and environmentally retrofit their buildings to protect their assets and to ensure ongoing marketability, minimized vacancy loss
- They are affected by climate change
- Their early engagement is essential for maximizing energy savings

Who will get a Smart Meter?

- Original target was to install 4 million smart meters for all Ontario customers (residential) by 2010 at a cost of $1 billion
- Interim target of 800,000 meters in homes and small businesses by 2007
- “smart metering initiative” now means equipping each household in Ontario with a smart meter over time

Who will get a Smart Meter? cont'd

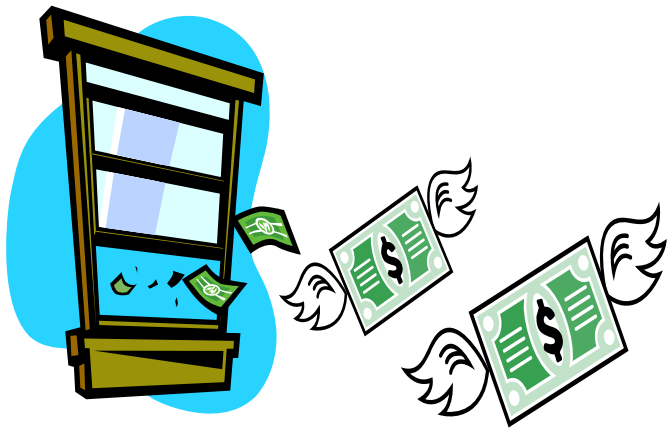
- government had been unclear on whether individual Smart Meters would be installed in each apartment and condo unit in the province
- initiative now includes condos (Bill 21, *Energy Conservation Responsibility Act, 2006)* and rental sector (Bill 109, *Residential Tenancies Act, 2006)* – *voluntary, not mandatory*
- Condo smart metering & smart sub-metering regulations in effect as of December 31, 2007; OEB has issued Smart Sub-metering Code and is licensing smart sub-metering providers

Is Smart Metering the answer, effective conservation?

- intended to encourage consumers to shift electricity use to off-peak hours
- BUT, low-income households have least capacity to shift energy use (families with children, seniors, disabled, unemployed)

If tenants pay directly for in-suite energy use, will they will use less?

- Landlord controls building envelope (windows, insulation), HVAC systems, appliances such as fridges
- Tenants control discretionary energy use in-suite
- Both impact on energy use reduction efforts



If tenants pay directly for in-suite energy use, will they will use less?

- Smart sub-metering energy savings claims vary – 10% to 40%, 15% to 25%, average of 25% to 33% - but, no expert, neutral study undertaken to date with detailed analysis of how smart sub-metering savings are being achieved
- Study should include cost-benefit analysis of sub-metering vs. energy efficiency retrofits vs. energy conservation education and examine:
  - the characteristics of the buildings and individual units where smart sub-meters are installed,
  - who is or is not achieving energy savings and why, and
  - the impact on housing and financial security of the residents

If tenants pay directly for in-suite energy use, will they will use less?

110-unit building in Toronto – smart sub-metered

- **41% of units paid more** (reduced rent + electricity bill), 12% paid same, **47% paid less**

- According to a sub-metering company, in multi-unit buildings:
  - 70% of residents use 50% of electricity (low users)
  - 20% of residents use 25% of electricity (medium users)
  - 10% of residents use 25% of electricity (high users)

Split incentive between landlords and tenants

- landlords want to minimize costs and make a profit; tenant seeks safe, comfortable, affordable home
- tenants don't have authority to invest/retrofit – or financial resources
- Smart sub-metering shifts financial incentive to provide and maintain an energy-efficient building & appliances for tenants – could undermine conservation efforts

Energy efficient fridges

- refrigerator replacement was the 2nd most recommended energy-saving measure in SHSC's Green Light initiative energy audits
- In 1990, refrigerators larger than 16.4 cu.ft. used more than 1000 kWh annually on average – cut in half by 2003

Smart sub-metering & tenants

- Part VIII, sections 137 and 138 of *Residential Tenancies Act, 2006– still to be proclaimed, regulations to be developed*
  - Landlords may install Smart Meters without sitting tenant consent; transfer electricity costs directly to tenants, outside of rent
  - Provisions for rent reductions and energy conservation obligations on landlords to be worked out in regulations

Smart sub-metering & tenants

- Currently, smart sub-metering activity taking place under section 125 of the RTA
- requires **consent** of sitting tenant before landlord can transfer the cost of electricity use to the tenant directly and decrease rent; proceeding without consent, landlord may be subject to a fine of up to $10,000 under RTA section 31(1)
- if sitting tenant does not consent, landlord may rent unit without utilities on turnover

Smart sub-metering & tenants

Lease agreement clause – consent??:

- *"The Tenant also acknowledges that where hydro is currently included in rent the Landlord, in its sole discretion, may at anytime chose to meter the Tenant's rented premises separately and transfer responsibility for payment of hydro directly to the Tenant based on the Tenant's own consumption. In such an event, the Landlord shall reduce the monthly rental in accordance with applicable Rent Control Legislation and the Tenant hereby consents to such transfer or responsibility for payment of hydro."*

- These clauses may not be legal.

Effective conservation & fairness

- Crafting of the regulations under Part VIII of the RTA will be crucial to ensuring that:
  - the energy conservation obligations on landlords will be those most effective in reducing energy consumption/costs for tenants, and in helping to meet province's conservation goals
  - the rent reduction after tenants take on the in-suite utility costs will be calculated fairly

Topic 8: Program Funding Mechanisms

- Ratepayer-funded
- Stability, predictability
- Equitable
- Incorporated in whole cost of system
- Burden of a very expensive system otherwise very inequitably borne by the most vulnerable

Rate Assistance: Funding through rates the most reasonable way to support low-income programs

- Legislative support is not the most appropriate way:
  - Legislative funding is uncertain (makes program planning impossible).
  - Legislative support is inflexible.
    - If prices go up, legislature cannot respond. If weather is severe, legislature cannot respond.
    - If prices go up, weather is severe, rate-based assistance automatically goes up as sales volume goes up (and vice versa).
- Legislature support involves no reciprocity. The public provides all the support, but the utilities keep all the benefits from reduced costs.

Rate Assistance: 4 different ways to collect a “system benefits charge”

- A straight per meters basis (e.g., Illinois)
- A straight volumetric basis founded on a per unit of energy (e.g., Maryland, New Jersey)
- A volumetric basis founded on a percent of revenues (e.g., Maine)
- A mixed volumetric/per meters (allocate between customer classes volumetrically but collect within customer class on a per meter basis) (e.g., Colorado).

Rate Assistance: It is appropriate for ALL customer classes to contribute

- The nearly universal rule is that all customer classes contribute (NH, ME, NJ, MD, OH, IN, MN, UT, CO, AZ, CA)
  - Only Pennsylvania allocates exclusively to residential (that decision is subject to court review).

Rate Assistance: It is appropriate for ALL customer classes to contribute

- From a policy perspective, it is appropriate to charge all customer classes:
  - Universal service is a “public good” that should be paid by all.
  - Universal service yield public benefits that benefit all customer classes (e.g., consider economic development impacts; reduced health care costs; impact of more affordable housing on employee recruitment and retention).
  - Universal service yields direct benefits to all customer classes (e.g., consider wage supplements for low-wage employers).
  - No single customer class “causes” need for universal service. Nonparticipating residential ratepayers no more cause universal service costs than do nonparticipating commercial/industrial ratepayers.

Usage Reduction: Program Funding – precedents in other jurisdictions

- Low income DSM programs offered to eligible participants free of charge
- One model: proportion of rates collected
- Another model: A Universal System Benefits Charge (e.g. Montana)
- May be supplemented by additional sources: federal or state/ provincial governments; grants and donations including in-kind

Usage Reduction: Precedents cont'd

- **Vermont**: statewide provider, Efficiency Vermont is funded by an energy efficiency charge on electric bills while the gas programs are funded by a variety of funding sources
- In **Oregon**, DSM budgets are embedded in rates, including low income programs mandated by the state.

Usage Reduction: Precedents cont'd

- **New York** provides electric efficiency program including for low-income customers under a systems benefits charge.
- **New Jersey** has a Societal Benefits Charge created by legislation which is aimed at improving energy affordability through energy efficiency measures.

Usage Reduction: Precedents cont'd

- **Montana**'s weatherization program is funded by a Univeral System Benefit Charge, also legislated by the state
- **Minnesota** allocates a percentage of state revenues for gas and electric utilities to energy conservation improvement which is required by law and includes low income programs

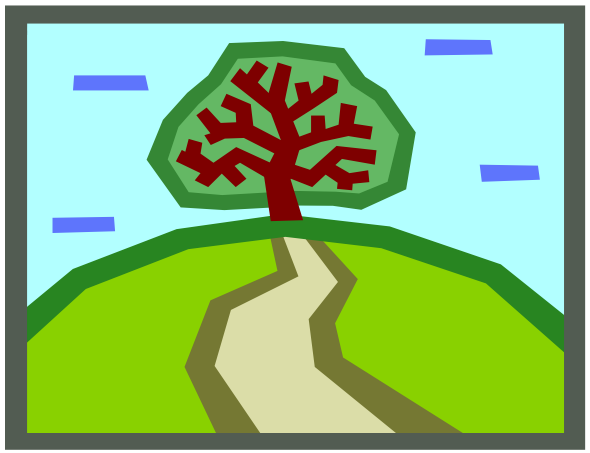
Usage Reduction: Precedents cont'd

- **Maryland**'s Electric Universal Service Program assists low income customers with their electric bills; most of the funding comes from industrial and commercial customers with the remainder from residential customers at 40 cents per month.
- **Illinois** administers a monthly systems benefit charge of .40 on residential gas and electric accounts, and higher amounts on commercial and industrial accounts for a state fund for low income energy efficiency

Usage Reduction: Precedents cont'd

- **Connecticut** administers a system benefits charge for energy efficiency on all electricity sold in the state; a portion is spent on low income energy efficiency
- **California** obtains funding for its low income energy efficiency programs, both gas and electric, from a system benefits charge on customers bills.

Going Forward



- OEB needs to initiate a generic hearing on a low-income rate affordability program
- Province-wide low-income CDM/DSM programs that provide deep reductions in energy use