

IN THIS ISSUE

Regulatory Actions Responding to Home Energy Price Spikes

NOTE TO READERS

ON-LINE DELIVERY

This document presents the bi-monthly electronic newsletter of Fisher, Sheehan & Colton: *FSC's Law and Economics Insights*. Previous issues of the newsletter can be obtained at FSC's World Wide Web site:

<http://www.fsconline.com/new/news.htm>

Fisher, Sheehan & Colton
Public Finance and General Economics
34 Warwick Road, Belmont, MA 02478
(voice) 617-484-0597 *** (fax) 617-484-0594
(e-mail) roger@fsconline.com

**Regulators Encourage Payment Plans,
Extreme Weather Protections to Cushion
Impacts of High Home Energy Prices**

Spiraling fuel prices at various times and in various states have given rise to state utility regulatory commissions finding a resultant public health and safety crisis and ordering the public utilities in their jurisdiction to take emergency action in response. These emergency actions have been taken in the name of assisting consumers who would have difficulty in paying their bills and thus helping such customers preserve their service.

HOME ENERGY AFFORDABILITY GAP

Price spikes in the fuels used to heat and cool residential homes have occurred on numerous occasions over the past twenty years, placing regulators in the position of deciding how to balance the competing interests of the utilities in seeking full compensation for high fuel prices with the interests of consumers in not being overburdened with the high cost of a household necessity. Spikes in home energy bills can occur for one of two reasons: (1) high prices on the one hand, and (2) severe weather (either hot or cold) on the other hand. In addition, these two factors often combine to compound the threat of unaffordable energy bills to utility consumers.

The Home Energy Affordability Gap in the United States experienced a significant increase in 2005. According to the annual analysis released by Fisher, Sheehan & Colton in May 2006, the Affordability Gap for the total country reached \$23.2 *billion* in 2005,¹ an increase of \$5.0 billion since the first Affordability Gap was

¹ The Home Energy Affordability Gap is published using actual prices from the prior year. The 2006 analysis, in other words, presents the Affordability Gap based on 2005 prices.

calculated in 2002. This 27.5% increase from the 2002 Affordability Gap of \$18.2 billion does not take into account natural gas price spikes during the 2005/2006 winter heating season.

Given these dramatic increases in home energy bills, it is perhaps not surprising that some state regulators have responded by changing consumer protections designed to cushion price impacts, particularly on the poor.

Wisconsin

Emergency commission actions taken in response to these spikes in bills are frequently directed toward preserving service in cold weather months. In October 1998, for example, the Wisconsin Public Service Commission adopted emergency rules to extend winter shutoff protections to customers with income at or below 250 percent of the Federal Poverty Level.² Not only did the emergency rules ban the *dis*connection of service during the cold weather months, but they also required the *re*connection of service previously disconnected before the cold

² 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. Since 100 percent of Poverty Level is generally considered to be too low to be a reasonable demarcation of "being poor," other estimates range from 150 to 200 percent of Poverty, or more. 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. A two-person household with an income of \$19,245 is said to be living at 150% of Poverty.

weather months arrived.³

Maryland

In 2001, Maryland utility customers faced a substantial spike in natural gas prices. These high prices, compounded by high consumption caused by cold weather, drove Maryland heating bills to then-historic highs. Citing this cold weather and these high prices, the Maryland Public Service Commission approved a ban on all disconnections for nonpayment (DNPs) for low-income customers. A low-income customer was defined to include customers who in the current or previous years had received federal fuel assistance (LIHEAP)⁴ as well as those customers for whom the utility could not verify fuel assistance participation or not. The PSC action represented the first statewide shutoff moratorium since 1979.⁵

Tennessee

The Tennessee state utility regulatory commission faced similar circumstances in 2005. In the winter of 2005, states were faced with predictions that, due to a fly-up in natural gas prices, home heating bills would be as much as 50% higher than they had been the previous winter. In response to such predictions, the Tennessee Regulatory Authority "approved a budget billing plan under which a natural gas customer who cannot pay his or her monthly bill in total will be enrolled automatically in an equal payment plan.⁶ Based on the customer's historical usage, the company will divide the customer's bill into 12 equal monthly payments, which will be trued up annually. The TRA also reinforced its

³ 122 No. 12 Pub. Util. Fort. 40 (December 8, 1988).

⁴ LIHEAP was described above in the statement of interest of HDC.

⁵ Case No. 8880, Order Issued Feb. 8, 2001, Maryland Public Service Commission, as cited in 139 No. 6 Pub. Util. Fort. 14 (March 15, 2001).

⁶ Normally, a customer is allowed to enter into a leveled budget billing plan only during the warm weather months, in order to pre-pay some portion of the expected heating bills for the forthcoming winter.

moratorium policies on winter service disconnections.”⁷

Michigan

The Michigan Public Service Commission also took emergency action in response to anticipation of higher fuel prices in the winter of 2005/2006. “Reacting to fuel price increases and the effect it will have on utility customers this winter heating season. . .the PSC established emergency billing practices from Nov. 1 through March 31, 2006 for retail customers of all electric and gas utilities subject to its jurisdiction.”⁸ The Commission filed the emergency rules, on its own motion, on October 18, 2005.⁹ Amongst the actions taken by the PSC were:

- A utility may not shut off service, or charge a late fee, for failure to pay an *estimated* bill by the due date unless the customer is subsequently delinquent on a bill using an actual read;
- The required monthly payment on a deferred payment plan may not exceed \$50 plus the sum of the monthly electric and natural gas bills (or either fuel type individually if not a combination company);
- A utility may not shut off service to a residential customer who is 65 years of age or older and advises the utility of that, or whose monthly income does not exceed 200% of the Federal Poverty Level, provided the customer pays an amount equal to 6% of the customer’s estimated annual bill.

⁷ “Winter Heating Bills,” 3747 PUR Util. Reg. News 6 (December 9, 2005). TRA Docket 05-00281 (Order issued October 17, 2005).

⁸ Michigan Preps for High Winter Heating Costs, 3741 PUR Util. Reg. News 6 (October 21, 2005).

⁹ Re. Emergency Rules Regarding Billing Practices, Case. No. U-14668, Michigan PSC (October 18, 2005).

New Jersey

After the 2004/2005 winter heating season, due to high bills caused by spiraling prices and cold weather, the New Jersey Board of Public Utilities extended its moratorium on winter shutoffs of electric and gas residential customers from March 15 to March 31.¹⁰ Under the New Jersey program, a residential customer who makes “good faith payments” toward the bills may not have service disconnected even if those payments do not cover their entire bill.

The New Jersey BPU had taken previous actions in response to high prices as well. When natural gas prices spiked in 1999, the Board directed one natural gas utility to take emergency steps to mitigate those prices increases. The Board was quite explicit when it held that the utility “shall offer extended payment plans to their customers above and beyond what they may currently be offering. The length of the payment plan offered shall depend on individual customers but should include plans that allow customers to spread out their payments, without interest, over periods of at least six months.”¹¹

Iowa

In Iowa, the Iowa Utilities Board adopted an emergency rule extending the winter moratorium for natural gas and electric service customers.¹²

¹⁰ 3711 PUR Util. Reg. News 10 (March 18, 2005) (adopted by NJ BPU as non-docketed matter, March 11, 2005).

¹¹ Re. NUI Elizabethtown Gas Company, 205 PUR4th 489, 496 (November 1, 2000) (NJ BPU).

¹² In Re. Emergency Extension of Winter Moratorium for Natural Gas and Electric Service Customers, Docket NO. RMU-01-3 (issued March 30, 2001).

Other utility commissions have taken similar actions. The Massachusetts Department of Telecommunications and Energy (DTE) approved a request by the Massachusetts Attorney General in 2003 to extend the moratorium on natural gas shutoffs from March 15 to May 1st. In December 2000, in response to prices that were high and expected to go higher, the New Hampshire Public Utilities Commission adopted an emergency proposal to extend the winter morato-

The Board stated that it proceeded under its emergency rulemaking authority “since the rule provides a benefit to the public and because of imminent peril to the public health, safety and welfare.” The Board issued its notice of emergency rulemaking on March 22, 2001 and issued its final order on March 30, 2001.

The inquiry was opened because this year customers of Iowa’s natural gas investor-owned utilities experienced a winter of unusually high natural gas commodity prices and a November-December period that was unusually cold. This combination of events sent utility purchased gas costs, utility bills, and utility revenues to record highs. These events have affected all natural gas customers, some of whom do not have the financial resources to manage the resulting increase in household expenses. As a result, some customers have been unable to pay their natural gas utility bills in full.

* * *

Even though the high winter bills were the result of a combination of the extreme cold and the high cost of *gas*, customers should not be subject to disconnection from *electric* service while they are attempting to pay those bills. The Board is extending the moratorium an additional 30 days to ensure that they colder than normal temperatures have passed and those customers who are eventually disconnected do not have to face the cold weather without heat.¹³

Massachusetts

The Massachusetts Department of Telecommunications and Energy (DTE) also responded to the high fuel prices of 1999 and 2000. In response to “substantial increases in fuel costs which have driven up the price of electric generation,” the DTE stated that utilities should “expand their budget billing and consumer pay-

riam on residential service terminations.

¹³ Id. (emphasis added).

ment plans during the winter heating season. . .to lessen the effects of rate increases on consumers this winter. . .”¹⁴ The DTE found that this need was driven by “steep and significant increases in the prices of natural gas and fuel oil -- fuels commonly used for generating electricity in New England.”¹⁵

Ohio

Not all such emergency actions address only natural gas utilities, nor do all such emergency actions deal with *cold* weather problems. The Public Utility Commission of Ohio (PUCO), for example, approved an “extended payment option to residential customers who are having difficulty paying August 1995 electric bills due to the effect of extreme August weather conditions.” The PUCO order directed that the company was to allow for customers to “make payments of August bills, without interest, through December 1995.”¹⁶

Summary and Conclusions

In sum, state regulatory actions taken in response to price spikes and extreme temperatures are neither extraordinary nor unreasonable. State regulatory commissions nationwide have frequently been forced to balance the need to protect the public safety and welfare while protecting the financial integrity of their respective public utility companies. The adoption of emergency responses by these state regulatory commissions has been found to protect the interests of both consumers and companies.

For more information on state regulatory responses to high home energy bills, readers may contact FSC directly at:

Roger[at]fsconline.com

¹⁴ Re. Standard Offer Service Fuel Adjustments, 206 PUR 4th 122, 124, 126 (Mass. DTE 2000).

¹⁵ Id., at 124.

¹⁶ Re. Ohio Edison Company, 165 PUR 4th 22 (PUCO 1995).

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.