

IN THIS ISSUE**Assistance Available for Public and Assisted Housing Tenants****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:

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UTILITIES BENEFIT FROM LIHEAP FUNDING, BUT SHOULD NOT FOCUS ON LIHEAP TO THE EXCLUSION OF OTHER PUBLIC ASSISTANCE

Little question exists but that low-income households frequently do not have sufficient household resources to consistently pay their utility bills in a full and timely fashion. The issue presented by these households is not one of wasteful consumption; nor is it a matter of household budgeting. Due to severely limited incomes, these households simply do not have sufficient household income to cover their entire range of household expenses.

The burden of nonpayment resulting from this lack of household resources, however, should not fall exclusively upon public utilities, particularly in those instances where public resources are made available to pay utility bills. To the extent that utility bill payment assistance is provided, those funds should be used for the purpose of utility bill payment and not diverted to other purposes. Moreover, utilities should seek to ensure that utility payment assistance programs provide all benefits created by law to the low-income tenants of public and assisted housing.

In a recent report, Fisher, Sheehan & Colton (FSC) told Tacoma Public Utilities (TPU) that that municipal electricity provider should address three specific initiatives to low-income customers living in public and assisted housing units in Pierce County (WA). For purposes of this proposal, FSC said that:

- “Public housing” refers to housing units owned and operated by public housing authorities in the TPU service territory.

- “Assisted housing” refers to housing units subsidized through the federal Section 8 housing program.

PUBLIC AND ASSISTED HOUSING IN PIERCE COUNTY (WASHINGTON)

Two local housing authorities (LHAs) operate within the TPU service territory: (1) the Pierce County Housing Authority; and (2) the Tacoma Housing Authority.

These two LHAs serve a significant low-income population in Pierce County. Pulling data from HUD’s Resident Characteristics Reports (RCR), FSC found that the two housing agencies not only own and operate 1,103 units of public housing, but also administer 4,586 Section 8 tenant-based vouchers and 203 project-based vouchers. The Tacoma LHA is the bigger of the two housing agencies. Data on the specific number of public and assisted housing units that have tenant-paid utilities is not available.

THE INCOME CHARACTERISTICS OF PIERCE COUNTY’S PUBLIC AND ASSISTED HOUSING TENANTS

The public and assisted housing units administered by the two housing authorities in Pierce County serve some of the lowest income households in the county. The *average* income for LHA tenants in Pierce County generally runs between \$11,000 and \$13,000. In absolute dollar terms, public housing tenants of the Pierce County Housing Authority have somewhat higher incomes while tenants with project-based Section 8 vouchers from the Pierce County HA have somewhat lower incomes.

Taking into account the average household size of tenants in the various public and assisted housing programs, however, it becomes clear that in each instance, these tenants live below the federal poverty level (FPL), sometimes substantially so. At best, Pierce County’s Section 8 tenants live with incomes of roughly 70% to 80% of the Federal Poverty Level. At best,

Pierce County’s public housing tenants live with incomes of roughly 90% of the Poverty Level.

According to the FSC report to TPU, however, it is not simply the *average* income that is important. In addition, the distribution and source of income is important as well. In Pierce County as a whole, between 50% and 60% of public housing tenants have annual income less than \$10,000, with only 10% to 15% having income more than \$20,000. Exactly half of all Section 8 tenants (with tenant-based vouchers) have income less than \$10,000 in Pierce County, while more than 60% of Section 8 tenants (with project-based vouchers) do.¹

Perhaps even a better way to appreciate the low-income status of public housing and Section 8 tenants in Pierce County, FSC said, is to view the income of these tenants in comparison to median household incomes for the Seattle-Tacoma metropolitan area.

Local housing authorities routinely report the income of their tenants relative to Area Median Income (AMI). For the 15 month period ending April 30, 2009:

- Nearly three-fourths of public housing and Section 8 tenants (with tenant-based vouchers) had income less than 30% of the Area Median Income, while more than 80% of Section 8 tenants (with project-based vouchers) did.
- An *additional* 15% to 20% of public housing and Section 8 tenants in Pierce County have income above 30% of AMI, but below 50% of the Area Median Income.²

¹ There are, however, substantially fewer project-based Section 8 vouchers in Pierce County (n=203) than there are tenant-based vouchers (n=4,586).

² Area Median Income is that income level at which point exactly half of all households in the metropolitan area have incomes above it and half of all households in the metropolitan area have incomes below it. Median income is differentiated by household size. For example, a two-person household has a lower median income than a four-person household does.

- Virtually no tenants (either public housing or Section 8) have income higher than 80% of the Area Median Income.

The conclusion from this review must be that the public and assisted housing tenants in Pierce County have sufficiently low incomes that they present a risk of nonpayment to Tacoma Public Utilities in the absence of public assistance provided to help pay utility bills. Households that have income as far below Poverty Level as do the tenants of public and assisted housing need outside help to pay their bills.

THE “UTILITY ALLOWANCES” PAID TO PUBLIC AND ASSISTED HOUSING TENANTS

Public and assisted housing tenants in Pierce County (as elsewhere) receive a specific housing benefit designed to pay their utility bills. Called a “utility allowance,” this HUD-provided benefit to tenants of public and assisted housing differs from the federal fuel assistance program (LIHEAP) in several important respects:

- Unlike LIHEAP’s focus on heating and cooling, a utility allowance is designed to cover the entire home utility bill to the extent that it involves a tenant-paid bill (including all home energy as well as water/sewer and trash collection);
- Unlike LIHEAP’s seasonal nature, a utility allowance is designed to cover the home utility bill on a year-round basis;
- Unlike LIHEAP’s formula approach to calculating benefits, a utility allowance is designed to take actual energy consumption (and expenditures) into account. While the legal test for a utility allowance is whether it is sufficient to pay the entire utility bill of an “energy conservative household of modest means,” a utility allowance is intended to be adjusted so that it covers all con-

sumption outside of the ability of the tenant to control.

THE PROBLEM WITH UTILITY ALLOWANCE DISTRIBUTION

Despite the utility allowance benefits provided to tenants of public and assisted housing, FSC found that these dollars of benefits to pay utility bills are often used for non-utility purposes. The problem arises because of the way in which the utility allowances are distributed.

The crux of the public and assisted housing programs is the provision of a housing subsidy that reduces the shelter costs of such households to 30 percent of the household’s income. The shelter subsidy is paid directly to landlords. The payment of utility allowances is wrapped into this payment of the larger shelter assistance.

Utility allowances are generally “paid” to the tenants of public and assisted housing in the form of a rent credit. If, for example, a tenant has an out-of-pocket rental payment of \$350 and a “utility allowance” of \$150, the utility allowance is provided as a rent credit to reduce the out of pocket rent to \$200 (\$350 rent - \$150 utility allowance = \$200 rent).³ In this fashion, the assumption is simply that the reduction in out-of-pocket rent frees up the \$150 to allow the tenant sufficient funds to make his or her utility bill payment.

As can be seen, however, this process of paying the utility allowance transfers the risk of nonpayment from the landlord to the utility company. The landlord receives the direct payment of cash from the federal government. Direct vendor payments of utility allowances are not generally made. A “direct vendor payment” is a payment of the utility subsidy directly to the utility company.⁴

³ The utility allowance is then paid to the landlord as a cash payment from HUD to make up for the reduced out-of-pocket rent received from the tenant.

⁴ LIHEAP payments, for example, are “directly vendored” to utility companies.

WHY TPU SHOULD BE CONCERNED

This process of distributing utility allowances in the form of rent credits rather than as direct vendor payments to the utility harms the utility in several different ways. To the extent that a tenant chooses to use the money that is “freed up” by the rent credit to purchase other household necessities, the process effectively has transferred money intended to pay TPU bills to the payment of rent instead. As a result, TPU experiences increased costs attributable to lost revenues, working capital expenses, credit and collection expenses, bad debt and the like.

Given the extremely low-incomes as discussed above (significantly below the Federal Poverty Level), the likelihood of this diversion of utility allowances to other purposes is high. This will occur even in those situations where annual utility bills exactly equal annual utility allowances. Given the seasonal nature of TPU utility bills, for example, it is unlikely that a household will pay more than the billed amount for utility service in any given month.⁵

Instead, the household will likely divert the excess allowance to non-utility uses in those months the monthly allowance exceeds the currently monthly bill. Hence, if there is a current bill of \$75, and rent credit attributable to the utility allowance frees up \$100, the household quite reasonably will pay the current bill and use the “extra” \$25 for other household necessities such as food and clothing. This scenario would seem to be the “best case” from the perspective of the utility. The scenario assumes that the household diverts no more of its utility allowance to non-utility uses than the excess of the monthly allowance over the monthly bill.

⁵ Hence, for example, in a month where the current month utility bill is \$75 without arrears, and the utility allowance is \$100, the household is assumed to pay only the \$75 rather than to make a \$100 payment thus creating a bill credit.

The costs of the mismatch between monthly utility allowances and monthly utility bills are two-fold: (1) an absolute revenue loss to the utility that is unlikely ever to be made up; and (2) the costs of carrying the arrears of the public and assisted housing tenants. In addition, of course, the utility will incur whatever costs are associated with the credit and collection activities directed toward the unpaid bill.

The costs could be substantial in a city such as Tacoma. Given the 5,892 public and assisted housing tenants identified above for Pierce County, given an average residential bill, an average combined services tenant-paid bill simply for water/sewer and electricity yields total billed revenue to these tenants of more than \$10.2 million.⁶

The Low-Income Housing Tax Credit Program

The significance of utility allowances promulgated by Pierce County’s local housing authorities goes well beyond the public housing (owned by the housing authorities themselves) and assisted (Section 8) housing administered by those housing authorities. In addition, developers constructing (or rehabbing) affordable rental housing funded with federal Low-Income Housing Tax Credits (LIHTC) are required by federal law to provide utility allowances to tenants living in these units.

As with public and assisted housing, the utility allowance is intended to cover the entire utility bill (both energy and water/sewer). The maximum allowed housing expense includes both rent and utilities. LIHTC developers do not promulgate their own utility allowances, however. Instead, they rely on the utility allowances promulgated by the Local Housing Authority in the jurisdiction in which the LIHTC units are located.

⁶ Data provided by TPU indicates that the average residential bill with monthly billing is: \$836.27 for power; \$530.72 for water; \$367.43 for sewer. To the extent that public and assisted housing pay storm-water run-off charges and trash/refuse collection, the revenue at risk is even greater.

Pierce County has seen substantial LIHTC development in the past twenty years. The U.S. Department of Housing and Urban Development (HUD) publishes information on the number of LIHTC units developed in each state. Between 1987 and 2006 (the last year for which data is available), Pierce County has seen the development of 4,087 LIHTC units for low-income tenants.

PROPOSED ACTION STEPS FOR TACOMA PUBLIC UTILITIES

Tacoma Public Utilities should devote as much, if not more, attention to the utility assistance paid to public and assisted housing tenants in Pierce County as it does to the payment of federal LIHEAP benefits. In particular, TPU should undertake the following tasks:

1. Direct Vendor Payment of Utility Allowances

TPU should work with the two local housing authorities in its service territory to identify the Section 8 and public housing tenants in its service territory. For these tenants, TPU should solicit direct vendor payments of utility allowances. Through such direct vendor payment agreements, the local Public Housing Authority (PHA) would pay utility allowances directly to the utility.⁷ As a result of such payment, the utility will capture the full annual utility allowance to be credited against the annual utility bill.

TPU should offer the incentives necessary to gain the participation of public and assisted housing tenants in a direct vendor payment program. Under federal regulations, direct vendor payments of the utility allowance are

⁷Federal regulations provide that: "if the Family and the utility company consent, a PHA or Owner may pay the Utility reimbursement jointly to the Family and the utility company, or directly to the utility company." See, e.g., 24 CFR §236.735; 24 CFR §290.9; 24 CFR §881.501, 24 CFR §891.560 (2009).

allowed *only* if both the utility company and the tenant agree to such payments.

Incentives would be necessary since a refusal to enter into a direct vendor program would retain for the tenant the greatest discretion and control over its entire month-to-month allocation of household resources. Without such participation, in other words, the household retains the discretion to divert its utility allowance to uses such as food and clothing. Even in situations where the annual utility allowance equals the annual bill, a public or assisted housing tenant could divert "excess" utility allowances over monthly bills in low-bill months to other household necessities.

The incentive to be paid by TPU to gain participation in a direct vendoring program should involve a credit paid against the current bill. A payment set equal to \$8 per month would provide a total annual credit of roughly \$100. The payment is not a "discount." It is instead a payment for value received. In this sense, the credit is no different from the bill reduction paid to customers taking service under an interruptible service tariff. Similarly, the credit is akin to credits paid by many electric utilities to customers agreeing to the direct control of load that is likely to be in use at the time of peak demand (e.g., cooling, hot water).

In general, the following reasons support a TPU decision to provide an \$8/month payment as an incentive to gain the participation of assisted and public housing tenants in a direct vendor payment program.

- To the extent that unaffordable bills are charged to public and assisted housing tenants, TPU will likely incur credit and collection costs to collect the excess. To provide a bill credit for direct vendor payments will help TPU avoid those credit and collection expenses.
- Direct vendor payments will provide cash flow and working capital advantages to the utility. Not only will credit and collection

expenses be eliminated, but given that the direct vendor payment can be timed to automatically be paid on the billing “due date,” costs associated with carrying bills past the due date will be eliminated as well.

- The automatic payment of direct vendor utility allowances will eliminate any bad debt or other write-offs associated with the bills covered by those payments.

2. Individualized Relief

TPU should take an active role in helping its low-income customers seek additional utility assistance from the housing authorities. Often overlooked in discussions regarding public housing utility allowances is the provision for "individual relief" provided by HUD regulations.⁸ HUD regulations provide that under the HUD-funded public housing:

Requests for relief . . . from payment of utility supplier billing in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA’s criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances.⁹

Several important observations arise from this regulation:

- It is important to note the disjunctive nature of the availability of relief set forth in the federal regulations. There need not be "special needs" *and* "special factors," but rather only one "or" the other.

⁸ 24 C.F.R. § 965.508 (2009).

⁹ 24 C.F.R. § 965.508 (2009).

- A PHA does not have the discretion to decide *not* to provide "individual relief" pursuant to these regulations. HUD regulations state that: “The PHA’s criteria for granting such relief, and procedures for requesting such relief, *shall be adopted* at the time the PHA adopts the methods and procedures for determining utility allowances.” (emphasis added).

- The individualized relief extends to relief "from payment of utility supplier billings in excess of the allowance." This “relief” is to be provided by the Housing Authority in the form of additional benefit dollars, not by the utility supplying the service.

In this respect, TPU can play three important roles with regard to individualized relief for recipients of utility allowances.

- First, TPU should direct payment-troubled public and assisted housing tenants in the Company's direct vendor payment programs to the individualized relief provisions. Just as LIHEAP "crisis grants" are a source of home energy benefits for low-income households, so, too, should the individualized relief benefits be a means by which unaffordable home energy bills can be redressed. TPU should, FSC said, allow its staff the flexibility in time needed to determine: (1) whether a household in payment-trouble is a public or assisted housing tenant, and (2) whether the utility allowance provided to that household was inadequate to pay the entire utility bill. TPU would finally need to determine whether the household met the criteria for individual relief as established by the local PHA.

- Second, TPU should play an active role as a primary stakeholder in enforcing the obligation of the two Public Housing Authorities in its service territory to establish reasonable standards under

which to grant individualized relief. Public Housing Authorities have a regulatory obligation to adopt "criteria for granting such relief." Under the federal regulations, the Housing Authorities are to grant "individualized relief" where specified factors give rise to "utility usage not within the control of the resident." TPU would be able to offer unique expertise in assessing the extent to which such usage "not within the control of the tenant" exists.

- Finally, TPU should promote an aggressive definition of both the "special needs" and the "special factors" criteria which are to be applied to determine the availability of individualized relief. The individualized relief provisions, in other words, provide no relief either to a low-income household, or to the utility serving that low-income household, if eligibility for the relief is so narrowly drawn as to make it virtually non-existent. TPU involvement in the criteria-setting process is important.

In sum, low-income households who face unaffordable utility bills notwithstanding their receipt of federal subsidies through utility allowances for public and assisted housing may have an additional source of benefits available to them. Through the "individualized relief" provisions of public housing programs, participating tenants are entitled to "relief from . . . payment of utility supplier billings in excess of the allowances for Tenant-Purchased utilities."

3. Annual Updates of Utility Allowances

TPU should take an active role in ensuring that utility allowances are routinely updated to reflect current utility rates. Under federal regulations, utility allowances for both public and assisted housing units are to be changed under *either* of two alternative circumstances:

- On an annual basis to reflect current utility rates; *or*
- Whenever utility rates have increased by 10% or more since the time of the last change in the utility allowance (retroactive to the date of the rate change).

While TPU need not prepare the underlying basic utility allowance schedules for either the Pierce County Housing Authority of Tacoma Housing Authority, the utility would be uniquely situated to ensure that the dollar allowances are appropriately updated on an annual basis or when rate changes occur.

SUMMARY AND CONCLUSIONS

Tenants of public and assisted housing in Pierce County have some of the lowest incomes in the region. Tenants of both public and assisted housing have incomes that place them below the Federal Poverty Level, sometimes substantially so. As tenants experience such low incomes, they are more likely to experience utility bill payment troubles as well.

These bill payment troubles occur despite the fact that specific federal financial assistance is provided to tenants of public and assisted housing to pay utility bills in their entirety. It makes sense for TPU to convert as many public and assisted housing tenants as possible to direct vendor payment agreements to receive such assistance. Moreover, TPU would be justified in offering incentives for public and assisted housing tenants to enter into agreements through which their respective utility allowances are directly vended to the utility.

Aside from capturing this ongoing utility assistance, HUD's public housing programs provide for "individualized relief" when specified factors give rise to utility bills outside the ability of the tenant to control. The local housing authorities in Pierce County are required to specify both the circumstances under which individualized relief will be granted and the type of relief that will be

provided. Clearly, this individualized relief benefits not only the tenants that receive such relief, but also the utilities whose bills would be paid through such relief. TPU should take specific action steps to ensure that individualized relief is available where appropriate, that it is of appropriate magnitude, and that the procedures for accessing such relief are both reasonably available and actually exercised where appropriate.

Finally, particularly as a five-service municipal utility, TPU has a self-interest in ensuring that the utility allowances promulgated by the local housing authorities in its service territory are reasonably established and appropriately updated. Agreeing to provide a service under which the allowances for each utility service are updated on an annual basis, or when rates change by 10% or more, would not be an unreasonable resource drain on the utility.

For help in assessing the adequacy of the individualized relief provisions in a particular community, or in assessing utility allowances provided by Local Housing Authorities, contact:

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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.
