

IN THIS ISSUE

A reliance on written utility shutoff notices as a stand-alone device to communicate with customers will likely be ineffective.

NOTE TO READERS

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Despite issuing written shutoff notices, utilities should not expect substantial customer contacts in response.

Consumers Energy reported that on the morning of February 1, 2015, John Skelley was found dead at his residence in Hazel Park, Michigan. An aged person, he had frozen to death in his home. According to the Company, on January 19, 2015, Consumers Energy had disconnected natural gas service to the customer of record at the home at which Mr. Skelley resided. The Company asserted that it "did not have any record of Mr. Skelley living at the residence."

Consumers Energy sought to justify its cold weather shutoff by stating that "Consumers Energy is able to direct customers to the appropriate assistance agencies, but the Company must be contacted and made aware that help is needed. It has been confirmed that [the customer of record] did not contact the Company requesting assistance." The Company asserted that it "cannot provide assistance without being notified."

Consumers reported to the Michigan Public Service Commission ("PSC" or "Commission") the efforts it made to comply with the PSC's "Consumer Standards and Billing Practices for Electric and Gas Residential Service." The Company said that it "conducted an investigation regarding the application of the Residential Billing Rules to the facts surrounding the death of Mr. Skelley. . ." The Company's report to the PSC did *not* consider whether those PSC regulations represented the entire universe of actions that a reasonable utility, exercising reasonable

care, would have taken prior to the termination of gas heating service in a cold weather month in Michigan. Neither did the Company's Report provide information on personal contacts with the customer where the Company, by internal Company policy, declined to affirmatively seek information on the presence of vulnerable occupants.

Consumers Energy reported to the PSC that it sent "three separate shutoff notices" to the customer's address. The notices were sent by the U.S. mail addressed to the customer of record. In addition, Consumers Energy said that it placed a "shutoff tag" on the door of the residence.

Consumers Energy stated that it "utilizes a wide variety of methods to advise its customers of energy assistance programs available." That "wide variety of methods" includes "annual news releases," November circulation of a "brochure" that the Company refers to as its "annual Consumers Energy resource guide," posting this brochure on the Company's website, and "widely distributing a bill insert" at a time not revealed. Consumers Energy also stated that "programs and available energy assistance agencies are listed on the door hangers that are left at each residence where a shutoff occurs."

Consumers Energy stated that it provided notice of its Medical Emergency Protection program by posting information about the program on its website; by informing *new* customers of the program; and by including a reference to the program in its "annual energy assistance brochure." (emphasis added).

Consumers Energy stated that it provided notice of "programs specifically tailored to assisting our senior citizens" by maintaining a webpage

dedicated to seniors; by asking *new* customers if *they* are 65 years or older; and by sending periodic bill inserts out to "all customers." (emphasis added).

The discussion below will assess whether the notices previously cited by Consumers Energy represent the actions of a reasonable utility, acting reasonably, in providing information about cold weather protections, in seeking to acquire information about the need to exercise such cold weather protections, and in the provision of cold weather protections. The discussion summarizes a written expert report filed by FSC in a wrongful death action in Michigan state court.

Written Utility Notices Standing Alone would be Ineffective in Informing Delinquent Customers of Cold Weather Rights and Responsibilities.

It is unreasonable in light of current knowledge to rely exclusively on written notices to delinquent customers informing them of an obligation to contact the Company to exercise or trigger certain rights and remedies based on aging or infirm status. This conclusion flows from several lines of reasoning and observation.

Work performed in 2008 for the Iowa Department of Human Rights examined the self-efficacy and self-advocacy regarding home energy emergencies. That research found, based on Iowa BRFSS data,¹ that conditions associated with nonpayment of utility bills also impede the ability of a household facing either the disconnection of service for nonpayment, or a home energy emergency, to advocate on his or her own behalf.

¹ BRFSS is the Behavioral Risk Factor Surveillance System, a periodic survey performed by each state's Department of Health.

Much of the regulatory infrastructure designed to prevent the loss of home energy service is predicated on the assumption that households facing the loss of service, as well as households facing the unaffordability of service, are both willing and able to respond to their home energy situation through advocacy on their own behalf.

In particular, customers in arrears are expected to call the utility and to negotiate a deferred payment plan. Customers facing the disconnection of service are expected to inquire into available sources of public and/or private energy assistance in order to negotiate financial aid to prevent a pending loss of service due to non-payment. Customers who have lost their service are expected to contact the utility and negotiate a reconnection and repayment schedule for the underlying arrears. If personal individual conditions impede the ability of households to perform these tasks, however, the regulatory “protection” structure designed to allow a household response to energy emergencies is ineffective.

The Iowa BRFSS survey included four questions relevant to self-efficacy: (1) during the past 30 days, about how often did you feel hopeless — all of the time, most of the time, some of the time, a little of the time, or none of the time? (2) during the past 30 days, about how often did you feel so depressed that nothing could cheer you up—all of the time, most of the time, some of the time, a little of the time, or none of the time? (3) during the past 30 days, about how often did you feel that everything was an effort—all of the time, most of the time, some of the time, a little of the time, or none of the time? and (4) during the past 30 days, about how often did you feel worthless-- all of the time, most of the time, some of the time, a little of the time, or none of the time?

Compared to the total population, more than twice as many households experiencing a home energy emergency reported at least one of these self-efficacy conditions that impede the ability of the household to advocate on one’s own behalf. While one-in-five Iowa households reported such a condition some, most or all of the time, more than half of households experiencing an energy emergency reported such conditions. Of particular importance was the prevalence of feeling “worthless” or “hopeless.”

A household feeling “worthless” or “hopeless” cannot reasonably be expected to negotiate on their own behalf, particularly when faced with an energy emergency situation. In the best of circumstances, the balance of power in transactions between a customer and a utility lies with the utility. A feeling of “worthlessness” or “hopelessness” on the part of the payment-troubled customer exacerbates that imbalance. Nonetheless, more than three times as many persons experiencing a disconnection, and nearly four times as many persons facing an energy emergency, reported feeling “hopeless” or “worthless” either some, most or all of the time, when compared to the population as a whole. These findings are not offered as a medical professional, but rather from the perspective of the design of utility outreach, utility notices, and utility collection activity.

The Iowa BRFSS documents problems that impede the ability of households to respond to an actual or imminent energy crisis situation. The need to account for the self-efficacy of the resident is a recognized fundamental component of program designs that rely on individual actions to promote public health and safety. One specific model that FSC uses in designing assistance programs, utility notices and utility collection

responses, has found that factors contributing to people taking action include, but are not limited to, whether the individuals: (1) believe taking action would reduce their susceptibility to the condition or its severity; (2) believe the costs of taking action are outweighed by the benefits; and (3) are confident in their ability to successfully perform an action.

The Iowa BRFSS data supports the conclusion that the lack of one or more of these factors is likely to contribute to the emergence of home energy emergencies. A person who feels “hopeless” some, most or all of the time is likely to not believe that actions designed to resolve a utility shutoff or home energy emergency would be effective. A person who feels “worthless” some, most or all of the time is likely to not believe in their ability to successfully take action to resolve or prevent a disconnection or home energy emergency. A person who feels depressed, or that feels everything is an effort, is likely to not believe that the actions needed to resolve or prevent the disconnection or home energy emergency will be sufficiently likely to succeed to be worth the effort.

The customer of record for Consumers Energy presented a classic example of these types of circumstances. For Consumers Energy to rely exclusively on a written notice preceding and warning of an impending disconnection of service for nonpayment, which notice says “call us,” as a means of portraying Consumers Energy as a source of assistance was unreasonable. This is particularly true when the same shutoff notices say, amongst other things: (1) service disconnection “may be done remotely”; (2) that “field employees will no longer accept payments at your home”; and (3) there was a “minimum amount” that he would be required to pay. The message “call us” was also accompanied by

messages telling him that he needed to “get an accounting of your current gas and/or electric charges” and that if he wanted assistance, he would need to review “a comprehensive menu of information” on-line, even though he had no on-line access.

The shutoff notice erroneously told the customer that “agencies may be unable to assist you if you have agreed to a payment arrangement,” information that would not be reasonably calculated to encourage a customer who had previously entered a payment plan (albeit one he had broken) to contact such an agency.

The only messages provided in bold and/or capitalized letters in this notice were the message “intent to shutoff”; the message “your energy will be shut off on or after January 6, 2015” (emphasis added) (not “may,” or “might” or “could”, but “will be”); and the message “pay now.” Only after all that did Consumers Energy say “we may be able to help.” (emphasis added).

This statement that “we may be able to help,” however, was also incorporated with a message in which the Company told the customer that as part of allowing the Company “to collect any amounts owed, we (meaning Consumers Energy and all of its related corporate entities, agents, servicers, debt collectors, independent contractors and assigns) may contact you by telephone (including use of a dialer, automatic telephone dialing system, and/or interactive voice recognition system).” In light of these messages, it is unreasonable to expect the customer to focus on the words “we may be able to help” rather than on the power of collection arrayed against him.

The Reliance of Consumers Energy on Written Notices to Generate Information from the Nonpaying Customer Regarding the Presence of Aged or Infirm Occupants Failed to Account for Commonly Understood Reasons Why People do not Participate in Assistance and Protection Programs.

Consumers Energy knew or should have known that its reliance on its limited notices seeking customer participation in notifying the Company of aged and/or infirm households for purposes of “enrolling” in a cold weather shutoff protection program would be ineffective for a substantial portion of the population.

Work performed on nonparticipation in the federal low-income fuel assistance program, as well as in other utility-sponsored energy assistance programs, demonstrates that simply providing notice to customers will be ineffective in generating responses for a variety of reasons. People who do not respond to such notices fail to respond for a wide range of known and legitimate reasons.

One primary reason for a failure to respond is that the notice is insufficient to provide what is known as “effective knowledge.” The concept of “effective knowledge” was first advanced in a study of LIHEAP nonparticipation in Pennsylvania in 1988. According to that study, “while most consumers indicate awareness of energy assistance, in general, their knowledge is not sufficient to allow them to act. Almost half of those who say they ‘know about’ energy assistance cannot name a single program.” The study found that fifty-four percent of the respondents were either aware of energy assistance but could not name a specific program, or were unaware of any programs. The Penn State study found that “most consumers do not have effective knowledge about those pro-

grams which exist.” It then concluded that “people who are unaware of programs or cannot name an agency which they can contact for assistance most likely do not have effective access to help when they need it.”

“Effective knowledge” involves not only conveying information, but communicating to consumers how to use that information as well. Customers must know how to act upon the information they are given. Consumers Energy makes no effort to provide such effective knowledge through its written notices.

There are commonly recognized patterns of reasons cited for failing to respond to a simple request for customers to engage in activity which, in form and substance, constitutes an enrollment in cold weather shutoff protection programs for the elderly or infirm. Most non-responses result from a breakdown in communication or inadequate communication. Some customers do not understand the application process, while other customers feel they need help in applying but do not know how or where to access such help. Some customers believe that there are “eligibility” requirements that they do not meet, or that they have characteristics (e.g., car ownership or homeownership) that would make them ineligible. Some customers simply do not understand the request or the significance of the request.

One lack of communication occurs when notices are provided to consumers outside the context of the customers' need to provide a response. Consumers Energy, for example, relies on annual notices to customers asking that they inform the Company of the presence of aging or infirm occupants of the housing unit provided with natural gas service. Such requests, occurring outside of the context of an immediate need to gain shutoff protections, are seen by customers as being inapplica-

ble to their circumstances. Consumers Energy, accordingly, should not be surprised by the ineffectiveness of such requests in generating information. Each of these reasons involves *information* failures, either mis-information or the lack of information.

No reasonable reason exists for a utility to fail to understand the common reasons underlying why customers might not respond to notices and enroll in customer protections designed to provide cold weather protections to designated vulnerable populations. Substantial research exists on topics such as participation rates, “take-up” rates, enrollment rates, and non-participation. Substantial research has existed for years on the reasons for non-participation in public assistance programs (e.g., Earned Income Tax Credit, Food Stamps, Children’s Health Insurance Program). Any reasonable utility would have informed itself of the effectiveness (or ineffectiveness) of its notices in soliciting information about vulnerable customers needing (and being entitled to) cold weather protections and how to respond to that ineffectiveness prior to terminating essential gas heating service during cold weather months.

Ample Opportunities Existed to Obtain Information from the Customer Prior to the Issuance of a Shutoff Notice.

Given the inherent dangers of cold weather shutoffs, and the Michigan restrictions on the disconnection of home heating in cold weather months, a reasonable utility would not have affirmatively foregone opportunities to inquire whether persons occupied the service address who would qualify that housing unit for the cold weather shutoff protections.

While Consumers Energy told the Michigan PSC that it asked about the presence of aging

persons at the time a customer first applied for service, that inquiry was limited only to the customer of record. When asked about efforts to obtain the date of birth for other occupants, the Company replied that “that’s not something we should be asking about because it’s really a relationship that we have with our customer of record, and that is who is. . . signing up for service with us that customer of record. . .” Moreover, when the customer contacted the Company about his unpaid bill in November 2014, just two months before his heating was terminated for nonpayment in January, the Company did not ask him about whether there were occupants 65 years and older living in his home. According to the Company’s customer service representative, only if someone asks specifically for the payment plan protecting the aged, would the Company’s customer service representatives “go through the eligibility questions.” The Company does not describe the various plans that are available to each customer calling with payment problems. And the Company does not “pick a plan” to recommend to customers who call with payment problems.

The Company, however, did not describe or offer a payment plan to the customer that would have involved asking about the presence of occupants of his home that might be 65 years of age or older. Instead, he was told that he needed to enter into an “installment plan or pay the open balance in full.” An “installment plan” does not extend protections to aging customers and does not involve asking about the presence or not of aging occupants of the housing unit. The customer talked with the Company on November 17, 2014 while the winter shutoff protections for the aging began November 1. Even though the Company was in personal contact with the customer three weeks after the winter shutoff protections for the aged were to begin, since the customer had not been an “active” customer for 60 days or more, the Company did not

make available the option of the special payment plan providing protections for the aged. Accordingly, it did not ask the “eligibility” questions involving an inquiry about the presence or not of occupants of the housing unit that were age 65 or older.²

As Consumers Energy has acknowledged, the payment troubles underlying the account of the customer had been known to the Company for months prior to the disconnection of home heating service during the cold weather month of January. Had reasonable efforts been undertaken to identify the customer as an aged and/or infirm occupant user of the service address, Consumers Energy would have known or should have known his physical and/or mental state; would have known or should have known of the need to make personal contact with residents at the service address prior to the disconnection of home heating service in a cold weather month; would have known or should have known of the need to inform all residents of the service address of the potential lethal consequences of a loss of home heating service in a manner reasonably calculated to communicate that message to residents at the service address; and would have known or should have known of the need to extend restrictions on cold weather disconnections of heat due to the presence of aging occupants of the housing unit.

A utility has substantial opportunity to obtain information about the make-up of a customer’s household outside the context of an impending

² The Company’s natural gas tariffs do not include any reference to, or use of, the term “active customer”; nor does the tariff include any definition of an “active customer.” The tariff does not include any reference to the need to be an “active customer” as part of the criteria for being eligible for winter shutoff protections for the aged.

cold weather shutoff. It is unreasonable for a utility to delay or forego obtaining such information only subsequently to assert that it lacked information that would have entitled the customer to significant regulatory shutoff safeguards.

Summary

While Michigan’s Consumers Energy issued shutoff notices during inherently dangerous cold weather months, it embedded offers to provide assistance within italicized text informing the customer that the Company, and all of its corporate power, would be brought to bear against the customer to collect an unpaid bill. At the same time, the utility was affirmatively foregoing opportunities when it had personal contacts with its customers to make reasonable inquiries to determine whether customers were protected by cold weather shutoff regulations. As a reasonably foreseeable result, an aged person froze to death after his home heating service was disconnected for nonpayment in January. Such a tragedy was avoidable.

For more information regarding utility shutoffs and consumer protections, including how to engage in outreach to hard-to-reach populations, please write:

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