

**UNDERSTANDING WHY CUSTOMERS DON'T PAY:
THE NEED FOR FLEXIBLE COLLECTION PRACTICES
(REVISED)**

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The first step of analysis in seeking to respond to problems involving utility customer nonpayment is to determine precisely *why* households might not pay their bills. By understanding the full range of reasons why households may not pay, utilities and their regulators can adopt a flexible approach to bill collection, involving a full range of techniques addressing specific problems. This flexibility will help maximize the receipt of revenue while minimizing collection expenses.

A failure to inquire into why customers do not pay has ramifications on the *need* for collection efforts as well as on the *effectiveness* of collection efforts. On the one hand, a failure to understand why people do not pay their bills may result in inappropriately severe collection techniques being imposed on nonpaying households. The involuntary disconnection of service, for example, is particularly inappropriate for households who are facing short-term payment difficulties. Temporarily losing employment, incurring extraordinary medical bills, or experiencing unusually high heating bills are all types of nonpermanent situations which might cause a household to face payment problems for some short period of time. These circumstances do not warrant the disconnection of service. Nor would the disconnection of service in these circumstances serve any collection purpose or protect the utility against the future loss of revenue.

On the other hand, failing to inquire into why households do not pay their bills on time may well result in collection techniques being pursued that have no hope for success. Deferred payment agreements, for example, are a particularly inappropriate mechanism through which to seek full payment of arrears for households that are chronically poor. If a household could not pay the full current bill in the past because of a lack of money, it lacks good sense to call upon that household to enter into a deferred payment plan in which a promise is made to pay the full current bill *plus* some increment to retire the arrears in the future.

The imposition of a late payment charge is one collection technique the validity of which is particularly susceptible to an evaluation in terms of why people do not pay their bills. Late payment fees are often justified as a means to accelerate payments.¹¹ It might well be a rational collection strategy, in other words, to impose a late payment fee on a customer that does not make timely payments because she seeks to capture the time value of money while letting arrears develop.¹² In contrast, however, if a customer does not pay because she cannot afford to pay, to seek to accelerate

¹¹ Late fees can also be justified as a cost-based charge designed to compensate the utility for the expenses associated with late payment. This justification, however, most often fails on close analysis. *See generally*, National Consumer Law Center, *Determining the Cost-Effectiveness of Utility Credit and Collection Practices*, at 67 - 90 (July 1990).

¹² However, several studies indicate that the imposition of a late charge is not effective in accelerating customer payments. *See generally*, Warren Samuels, "Commentary: Utility Late Payment Charges," 19 *Wayne Law Review* 1151 (July 1973). Samuels notes in particular that late fees have *no* impact on accelerating payments for utilities that have due date 30 days or more from the date on which the bill is rendered. *Id.*, at 1159.

payments by *increasing* the bill through imposition of a late charge is not only bound to fail as a collection device, but is bound to *exacerbate* rather than to alleviate the payment problems the household is experiencing.¹³¹ As one Michigan State study concluded:

"Payment performance tends, moreover, to accord with socio-economic class, with better performance in middle-income and more affluent areas than in low-income areas* * *. * * *Late payment is generally but by no means exclusively concentrated among inner-city and other poor neighborhoods, and among the elderly on fixed incomes. It has been statistically confirmed that the late charge is not effective for those whose problem is not

¹³¹ The impact of a proposed late fee was recently examined in a rate case involving Columbia Gas of Pennsylvania. *See, Pennsylvania Public Utility Commission v. Columbia Gas Company of Pennsylvania*, Docket No. R-891468 (Decision and Order, Sept. 19, 1990). The Direct Testimony on behalf of the Office of Consumer Advocate found:

"For the 3,907 customers in our sample, this late payment charge would, in many cases, add up to more than \$200 per year to the cost of the arrears subject to the payment plan.* * *It is not the dollar amount, however, which is so important, as it is the strain that the added late payment charge will add to the Budget Plus plan. A household making \$5 "Plus" payments, who faces a \$40 annual late payment charge, would face the equivalent of eight additional payments each year. Remember, that these equivalent additional payments are above and beyond the level of payment which has already been determined to be the limit of the participating customer's ability to pay.

"The fallacy in any belief that a late payment charge will accomplish any constructive task is seen with a sub-sample of the 3,907 Budget Plus plans studied. A late payment charge would *add* a monthly cost of \$5 or more to 751 households who are charged the minimum \$5 "Plus" amount because they already have an acknowledged *negative ability to pay*."

Direct Testimony and Exhibits of Roger D. Colton, Docket No. R-891468 (filed April 14, 1990).

lack of incentive to pay but unemployment and poverty."¹⁴

In this instance, therefore, both the efficacy and the legitimacy of the collection technique (i.e., imposing a late payment fee) depends upon a proper determination of *why* the household did not pay in the first place.¹⁵ Without looking at the reasons for nonpayment, a late fee qua collection device not only is ineffective, but is actually counterproductive as well.

Given the thesis that the rationality of particular utility collection mechanisms depends upon the reason for nonpayment in the first instance, it is surprising that so little information is available regarding the reasons for customer nonpayment. The purpose of this evaluation is to help remedy that lack. This evaluation will review the existing literature on why customers do not pay. It will review empirical research that has been undertaken in Pennsylvania, Wisconsin, Washington State and Quebec.

I. THE PENNSYLVANIA STUDY.

¹⁴ Warren Samuels, "Commentary: Utility Late Payment Charges," 19 *Wayne Law Review* 1151, 1159 - 1160 (July 1973).

¹⁵ *See also*, the Wisconsin Public Service Corporation study which concluded "Finally, we come to the Group 5 people who have the money to pay but don't. This problem might be handled by a finance charge on the unpaid balance. However, a blanket finance charge might increase the financial burdens of Groups 1, 2 and 3. Some sort of limitation might need to be designed into the finance charge." Michael Kiefer & Ronald Grosse, "Why Utility Customers Don't Pay Their Bills," *Public Utilities Fortnightly*, at 44 (June 21, 1984). The classification of the five groups is discussed *infra*, page 12.

A late 1985 Pennsylvania State University (Penn State) study looking at payment troubled households in Pennsylvania^{16\} debunked the myth that nonpaying households are characterized by "deadbeats." The Penn State study found that "payment troubled households are experiencing considerable socioeconomic stress when compared to the pattern for the average (general) customer sample."^{17\} The study noted that families encountering payment problems have a higher number of female heads of household, dependents, disabled members, nonmarried heads of households, and unemployed household members while also having lower levels of education, income and home ownership than households that do not experience difficulties. Ultimately, the study concluded: "thus, with regard to their socio-economic and demographic characteristics, the groups that encounter payment problems have higher proportions of the type of customers intended for protection by public policy."^{18\} The data reported in the study are laid out in Table A.

TABLE A

Comparison of Four Survey Groups on Selected Socioeconomic And Demographic Characteristics

^{16\} Hyman, et al., "Optimizing the Public and Private Effects of Utility Service Terminations," *Public Utilities Fortnightly*, at 29 (December 29, 1985).

^{17\} The statewide study examined representative samples of four groups of households involving over 1,800 interviews. The four groups included: (1) general residential utility customers; (2) customers who received a termination notice; (3) households whose service was actually terminated; and (4) households who sought to have a proposed termination mediated by the Public Utility Commission Bureau of Consumer Services. *Id.*, at 30, n. 1.

^{18\} *Id.*, at 30.

Characteristic	General	Notice	Termination	PUC-BCS
Female heads of household	22%	23%	31%	43%
Aged heads of household	24%	5%	8%	5%
Unmarried heads of household	24%	24%	31%	43%
Median per capita income	\$6,403	\$4,500	\$4,035	\$2,282
Home ownership	83%	71%	67%	57%
Unemployment during study year	17%	29%	32%	66%
Major source of income is welfare	2%	3%	8%	17%
Disabled members in household	21%	20%	23%	37%
Average family size	3.0	3.9	3.9	4.2
Education -- lacks high school diploma	21%	18%	31%	26%
N=	559	532	265	271

The Penn State study found that six of ten customers who had utility payment problems indicated that some unusual condition hindered timely payment of their utility bill.¹⁹⁾ Employment related problems (such as being laid off, having reduced working hours, or being unemployed) were most frequently cited as the cause for the receipt of a shutoff notice as well as for the actual termination of service (22% for shutoff notice; 18% for termination

¹⁹⁾ While the Penn State study labelled "lack of money" as an "unusual condition," that assumption was not made for this analysis.

of service).^{\10\} Unusually high medical expenses (resulting from hospitalization or illness) and unusually high bills (resulting from seasonal usage variations) were the second and third most common reasons cited for the termination of service. (19% and 18% percent respectively). The Penn State study concluded: "in view of the lower-income levels and higher number of dependents in the payment-troubled households when compared to the general sample, it is not surprising that these difficulties readily manifest themselves in the form of overdue bills."^{\11\} Moreover, Penn State found that 20 percent of the households with payment troubles

^{\10\} Id., at 32, Table 2.

^{\11\} Id., at 32.

reported that they simply lacked adequate income. The reasons underlying household payment problems are set forth in Table B.

TABLE B
Comparison of Three Study Groups on Circumstances
Surrounding the Overdue Bill

Unusual Condition for Overdue Bill	NOTICE	TERMINATED	PUC-BCS
No income. No money	18%	18%	6%
Illness. Medical	15%	19%	21%
Extra high utility or other large bill	22%	18%	16%
Laid off. Less work	21%	21%	32%
Other	14%	16%	11%
No unusual condition	10%	8%	4%

Finally, the Penn State study found that payment troubled customers "made changes in their spending or lifestyle (or both) to deal with inflation and the high cost of energy." In general, the study found that "payment troubled groups report cutting back more on essentials such as food, clothing and medical care than the general sample, and they also cut back more in other areas such as recreation, vacations, and gasoline for automobiles."^{12\} Indeed, the Penn State study reported that:

"the payment-troubled groups, which may be living near or below the margin of adequacy for necessities, exhibit greater

^{12\} Id., at 32.

propensity to cut these items than the average residential consumer. Furthermore, the more serious the degree of utility payment problems, the higher the rate of reported cutbacks."^{13\}

In sum, the Penn State study concluded that looking at the "microdynamics of behavior and needs of the different utility consumers" suggests that "a uniform response to nonpayment may be inappropriate from both company economic and broader social perspectives. In fact, a monolithic response may be suboptimal from the point of view of utility company profit maximization."^{14\}

A second Penn State study (1988) sought to determine "the importance consumers place on utility services compared to other typical household expenses."^{15\} Consumers were asked to indicate their "level of concern" about nine major household budget items.^{16\} A series of nonutility

^{13\} Id., at 32.

^{14\} Id., at 34. The utility's profit is implicated because, by not automatically seeking to disconnect households who do not pay, "utility companies continued to receive payments, many of which might otherwise have been written off as bad debts had the customers' service been terminated." Id., at 34.

^{15\} Drew Hyman, et al., *Consumer Budget Priorities and Utility Payment Problems in Pennsylvania*, Penn State University (1988). According to this study: "The importance of utility service to consumers can be measured by how consumers rank these services as part of their household budgets. To examine this issue, consumers were asked to indicate their level of concern (that is, if they were concerned a great deal, to some extent, or not at all) about nine major budget items. The level of concern consumers placed on utility costs for heating, electricity, telephone, water and sewer, were then compared to other necessary household budget items, and to other major expenses related to a family's present and future security." Id., at 1.

^{16\} These included: (1) income and property taxes, (2) medical and health expenses, (3) winter heating costs, (4) food, (5) monthly electric costs, (6) education expenses, (7) telephone costs, (8) mortgage or rent, and (9) water and sewer costs.

items was included "to put utility items in a larger context." According to the study: "a comparison of the importance of paying utility bills with other necessities of household life indicates the relative importance of utilities in modern society."^{17\}

The study found that among utility expenses, heating is the most important.^{18\} Sixty-three percent of consumers were concerned "a great deal" about their heating expenses. Somewhat fewer households, 59% said they were concerned "a great deal" about monthly electric bills.^{19\}

Among the nine budget items listed, winter heating costs were in the top three items of concern for consumer budgets.^{20\} Monthly electric bills ranked fifth (59% concerned "a great deal"), right behind food expenses (60% concerned "a great deal"). The rankings are set out in Table C.

TABLE C

BUDGET ITEM ^{21\}	GREAT DEAL (%)	SOME EXTENT (%)	NOT AT ALL (%)	TOTAL (%) ^{22\}
Income and				

^{17\} Id., at 2.

^{18\} Id., at 2.

^{19\} Id.

^{20\} The study found that there were only "marginal differences" among the top three items. The top two were income and property taxes and medical and health expenses respectively.

^{21\} Some respondents answered "not applicable" to particular budget items. These respondents are not included in the statistics presented in this Table. The proportion of respondents answering "not applicable" is: taxes (6%); medical (2%); heat (6%); electric (3%); education (27%); mortgage/rent (19%); water/sewer (30%).

^{22\} Some items do not equal 100 percent due to rounding.

property taxes	67	22	11	100
Medical and Health expenses	64	27	11	102
Winter heating costs	63	26	11	100
Food	60	32	8	100
Monthly electric costs	59	34	7	100
Education expenses	56	26	18	100
Telephone costs	49	44	8	101
Mortgage or rent	48	29	24	101
Water and sewer costs	44	38	18	100
N=431				

The examination of relationships between social and demographic characteristics and their levels of concern show that neither age nor income were associated with greater or lesser concern for household budget items.^{123\} "Age differences do not have a statistically significant effect on consumer responses regarding the payment of utility bills."^{124\} "All income groups have comparable levels of concern."^{125\}

In sum, the 1988 Penn State study concluded that: "the degree of

^{123\} Id., at 4.

^{124\} Id.

^{125\} Id.

concern consumers place on public utility services is intermixed with the importance of other household budget items. Heating and monthly electric costs are in the same general range of concern as such necessities as food and health care. Telephone, water and sewer costs elicit less concern* *

* ^{126\}

II. THE WISCONSIN STUDY.

A 1983 study by the Wisconsin Public Service Corporation was designed "to find out why customers pay late, why they miss payments, what percentage is unable to pay, and what percentage could pay but do not."^{127\} The Wisconsin research broke the study population into five basic groups:^{128\}

1. The poor and the helpless who blame themselves for their status (19%).
2. The poor and the helpless who are angry with their life (16%).
3. The poor who are in transition (12%).
4. People whose income should be sufficient to pay their

^{126\} Id., at 5. The study continued to state, however, that telephone, water and sewer costs "still evoke a great deal of concern among nearly half of Pennsylvania's consumers." Id.

^{127\} Michael Kiefer & Ronald Grosse, "Why Utility Customers Don't Pay Their Bills," *Public Utilities Fortnightly*, at 41 (June 21, 1984).

^{128\} Wisconsin Public Service provided the survey firm of Bergo & Matousek with a sample of 1,700 customers in Green Bay who had a history of bill payment problems. Some of these customers had been disconnected. From this sample, 200 door-to-door interviews were completed. The questionnaire took thirty to forty-five minutes to complete and did not identify the utility as the sponsor of the survey.

utility bills, but who are poor money managers (41%).

5. People who can pay their bills but do not (12%).^{129\}

The Wisconsin study found that roughly half (47%) of all customers who had a history of bill payment problems "did not have enough money to pay their bills."^{130\}

Wisconsin Public Service described Group 1 as being "very poor. They seem to be standing still economically."^{131\} According to the utility, these households "spend little on luxuries, have done what they can do to save money, and are still unable to manage on their incomes."^{132\} Looking at their income versus family size and expenses, the utility concluded, "it appears they really do not have enough to live on."^{133\}

These households tend to be "primarily young women." One-third (32%) are high school dropouts and one-half (47%) have spouses who are high school dropouts.^{134\} Eight of ten (79%) have annual income less than \$10,000 and nine of ten (90%) have annual income less than \$15,000.^{135\}

^{129\} Id., at 42.

^{130\} Id.

^{131\} Id.

^{132\} Id.

^{133\} Id.

^{134\} In contrast, the general dropout rate for Green Bay was 15 percent.

^{135\} The mean income for Brown County, in which Green Bay is located, is \$24,000.

Group 2 was described by Wisconsin Public Service as a group that "feels helpless. * * *they are angry and frustrated with their position."¹³⁶ According to the utility, this is the "poorest and least educated" of the nonpayment groups. "This group is down and out and apparently destined to stay down and out."¹³⁷

This group, too, is primarily young and female. While half the Group 2 households have an employed person, only one-quarter (28%) have a full time employed person; none have two people working full time. Sixty-five percent of the Group 2 households are high school dropouts. More than nine of ten (94%) have incomes less than \$10,000.

Group 3 was described by Wisconsin Public Service as being "somewhat of a mixture."¹³⁸ On the one hand, the group includes "some younger, well-educated people* * *who are moving up in the world." On the other hand, the group contains households who appear "either to be rising from hard times or sinking into hard times. This portion is less educated and primarily blue collar."¹³⁹

¹³⁶ Id.

¹³⁷ Id., at 43.

¹³⁸ Id., at 43.

¹³⁹ Id.

Most Group 3 customers are women. They are better educated with only 17 percent being high school dropouts. They tend to be employed, with more than seven of ten (71%) having an employed person and nearly four of ten (38%) having at least one full time employed person. The income level is somewhat higher, with only 54% making less than \$10,000 and only 12 percent making less than \$5,000 per year.

Group 4, Wisconsin Public Service concluded, "is the most diverse group in terms of demographics, attitudes, and life-styles."⁴⁰ The one common attribute is that the households making up this group "are poor at managing their money. They appear to be either spending beyond their means or to have bill paying priorities which are not realistic." While education is lower in this group (with 26 percent being high school dropouts), employment is higher, with 75 percent having someone employed and 18 percent having two members employed full time.

The income of Group 4 is higher than any other group except Group 5, the most affluent group. Only 30 percent of Group 4 makes less than \$10,000 per year. According to the utility, for the households in this group,

⁴⁰ Id.

"their income level and family composition is such that they should be able to pay their bills if they manage their income carefully. They appear to be in financial difficulty because they have not learned to budget properly."^{41\}

Wisconsin Public Service reported that for Group 5 , "there is no apparent reason why they should not be paying their utility bills."^{42\} The utility, according to the study, "is low on their list of priority" for this group of households. Possibly these households do not pay their utility bills "because they would rather do other things than write out checks or, perhaps, they prefer to spend their money on other priorities."

This group is well-educated. Only 12 percent of the persons interviewed had less than a high school education. More than nine of ten (92%) have someone employed in these households and 20 percent have two people employed full time. None of these households make less than \$10,000 per year and 72 percent make more than \$20,000 per year. According to the utility, "this group can pay their utility bill when they are threatened with a cutoff.* * *They have discretionary money and generally do not care to worry too much about money."^{43\} The utility concluded that this last group of households "appear to be savvy people who know how to make

^{41\} Id., at 43.

^{42\} Id.

^{43\} Id., at 44.

the system work for them."

In addition to looking at the 1984 article by Wisconsin Public Service Corporation, the detailed study which underlies the article provides much useful information.

"Overall," Wisconsin Public Service concluded in this study, "it appears that about half the sample is quite hopeless, but half can learn to pay their bills with a little coaxing and coaching."⁴⁴ The detailed study provides much useful information about the nonpaying population. It is important to understand the characteristics which distinguish the households Wisconsin Public Service found to be "quite hopeless." Only in this way can efficient and effective collection mechanisms be designed to address both their particular needs and the needs of the company. The "quite hopeless" customers include those households in Groups 1, 2 and 3.

All households in Group 1 had been late in making a utility payment

⁴⁴ *Wisconsin Public Service Corporation: Lifestyle Study: Selected Payment Patterns*, at ii (July 1983). "Those people who cannot pay their bills because of income and family size appear to be doing just about all they can to pay their bills. They are not indulging in luxuries they cannot afford. They're just scraping by." *Id.*

within the prior twelve months.^{\45\} Nearly half (45%) had been late four or more times. The late payments, according to Wisconsin Public Service, were not surprising. Four of ten of those households had an average monthly utility bill in excess of \$100.^{\46\} This is to be added to rent/home mortgage payments^{\47\} of \$200 - \$300 per month.^{\48\}

The combination of home payments and utility bills often makes housing unaffordable.^{\49\} As a result, 24 percent of these households had moved within the past year.^{\50\} An additional 26 percent plan to move in the next year. Wisconsin Public Service reported that "the main reason they are moving is because they can't afford to live where they do."^{\51\}

If this group had to make choices in which bills to pay first, they would pay the bills in the following order:

1. Pay the utility bill first..... 79%

^{\45\} Id., at G-4.

^{\46\} Id., at G-5.

^{\47\} 34% of these households own their homes; 66% rent.

^{\48\} 47% of these households pay \$200 - \$300 per month. An additional 16% pay more than \$300 per month.

^{\49\} Remember, 80 percent of these households have incomes of less than \$10,000 per year.

^{\50\} Id., at G-4.

^{\51\} Id.

2. Pay the telephone bill second..... 74%
3. Pay the gas credit card third..... 68%
4. Pay the charge account last 76%

The reason the utility bill is paid first is because it represents an essential service and is subject to disconnection for nonpayment.^{\52\}

Wisconsin Public Service ultimately concluded with regard to Group 1 that: "there is probably very little that can be done with these people. Most likely, they will continue to pile up unpaid bills and do the best they can."^{\53\}

All households in Group 2 had been late in making a utility payment within the prior twelve months.^{\54\} More than half (54%) had missed four or more payments and roughly four of ten (36%) had missed more than five payments. The utility bills for these households are somewhat lower than Group 1, with only one-third (33%) having an average monthly bill in excess of \$100.^{\55\} Again, this utility bill is to be added to rent or mortgage payments^{\56\} of \$200 - \$300 per month.^{\57\}

^{\52\} Id., at G-7.

^{\53\} Id., at G-7.

^{\54\} Id., at G-13.

^{\55\} Id., at G-13.

^{\56\} Only 13% of Group 2 households own their own homes.

^{\57\} 61% of Group 2 households make rental payments of \$200 - \$300 per month.

Like the households in Group 1, these payments tend to force households into a pattern of mobility. More than one-third of Group 2 households (36%) have lived in their current home for less than six months. In addition, more than four of ten (42%) plan to move in the next year, citing the unaffordability of their current housing as the reason for the move.^{158\}

If Group 2 households had to make choices in which bills to pay first, they would pay bills in the following order:

1. Pay the utility bill first..... 77%
2. Pay the telephone bill second..... 71%
3. Pay the gas credit card third 74%
4. Pay the charge account last 81%

^{158\} Id., at G-12.

As with Group 1, the reason the utility bill is paid first is because it represents an essential service and is subject to disconnection for nonpayment.^{159\}

Wisconsin Public Service ultimately concluded that the Group 2 households "offer() little opportunity for (the company) to work with."^{160\}

All households in Group 3 had been late paying a bill within the past 12 months. More than six of ten (62%) had been late over four times in the past year.^{161\} The utility bills for these households are somewhat higher. Exactly half have average monthly bills in excess of \$100.^{162\} Unlike Groups 1 and 2, Group 3 households tend to own their own homes (46%).^{163\} Nearly nine of ten (88%) pay \$100 - \$300 in house payments each month; roughly half (46%) pay \$200 - \$300 per month.

This group of households is quite stable. Nearly all (88%) have lived at the same address for more than one year.^{164\} While none has moved more than once in the past year, six in ten have moved more than once in the past

^{159\} Id., at G-15.

^{160\} Id., at G-16.

^{161\} Id., at G-21.

^{162\} Id., at G-22.

^{163\} Id., at G-21. "This may reflect that this is a more stable, settled group." Id.

^{164\} Id., at G-21.

five years.

If Group 3 households had to make choices in which bills to pay first, they would pay bills in the following order:^{165\}

1. Pay the utility bill first..... 79%
2. Pay the telephone bill second..... 71%
3. Pay the gas credit card third..... 67%
4. Pay the charge account last 71%

^{165\} Id., at G-24.

Several items need attention in this discussion of the households that Wisconsin Public Service found to be "quite hopeless." First, these households generally try very hard to cut household expenses. Group 1 households, for example, spend less than \$10 per month on recreation. Moreover, 66 percent spend less than \$50 a week on groceries (for an average family size of more than 4).^{166\} More than half (60%) own a car, but half of those own a car that is at least ten years old.^{167\} Similar findings were made for Group 2 and Group 3 households as well.^{168\}

Despite these cost-cutting measures, these households are forced into a mode of constant mobility. As a result, one expense they cannot avoid is the expense of moving: the actual cost of moving; connect fees for telephone and utilities; rental deposits; and the like. Stabilizing the living situation for these households would go a long way toward extending their budgets.

The bill paying priorities should be noted also. For each group, nearly eight of ten households said that, if a choice were forced between which bills to pay, they would pay their utility bill first. This is because, these households said, utility service is essential and is subject to disconnection. (Remember, too, these households did *not* know the survey was being

^{166\} "Most" of these families have 3 or more people. 50% have 4 or more members and 40% have 5 or more people. Most have small children. Id., at G-1.

^{167\} Id., at G-1.

^{168\} See, Id., at pp. G-11 (Group 2) and G-19 - G-20 (Group 3).

sponsored by the local utility company.) These households went on to say that payment of credit card bills would come last. As a result, it should be clear that consumer credit reports involving bills other than utility bills should be rejected as a basis for making utility credit and collection decisions. For example, deposit demands should not be based upon nonpayment of a non-utility bill that households consistently ranked as "last" in their order of priorities.

The futility in deferred payment plans should be recognized. For Group 1 households, for example, while 88 percent of the households said that someone from the utility talked to them, made arrangements to let them pay what they could, and put them on a budget, nevertheless, nearly six in ten (56%) missed 2 - 3 payments and nearly half (45%) missed 4 or more payments.^{169\} Again, similar observations were made for Group 2 and Group 3 households.^{170\}

Finally, the futility (as well as the counterproductiveness) of utility late fees for these households should be noted. In all three groups, eight of ten households have already decided that the utility would be the first bill to be paid with the limited income available. To add a late fee, therefore, would be to add no incentive to pay and, indeed, would simply make the utility bills that

^{169\} Id., at G-4.

^{170\} Id., at G-13 (Group 2) and G-21 - G-22 (Group 3).

much more unaffordable. Moreover, nonpayment, according to the utility, is due to the unaffordability of the bills, not to a lack of incentive. While eight of ten households in Group 1 had incomes less than \$10,000, for example, (and 94% of households in Group 2 had incomes of less than \$10,000), none of the households in the can-pay-but-don't group (Group 5) had incomes that low (with three-quarters [72%] making in excess of \$20,000).

III. THE WASHINGTON STATE STUDY.

A 1989 Washington Natural Gas study was based upon a survey undertaken for the Washington Utility Group.^{171\} The purpose of the study was to "develop() a mutually acceptable understanding of the ability of delinquent utility customers to pay their energy bills. Is it that most can pay these bills on time, but choose not to, or is it that they truly are unable to pay* * *?"^{172\}

The Washington study^{173\} found that roughly half (47%) of all payment

^{171\} This group consists of Washington Natural Gas, Pacific Power and Light, Washington Water Power, Northwest Natural Gas, Cascade, and Puget Power.

^{172\} Mildred Baker, *Utility Collection Customers: Understanding Why They Don't Pay on Time*, at 1 (1989). Baker states that this paper only "represents the interpretations of Washington Natural Gas Company, one of the principal survey sponsors." The broader survey was titled: *Investor Owned Utility Group Credit Customer Survey*, Market Trends Research Corp. (1989).

^{173\} The survey was undertaken during March of 1988. It examined customers who either had received three late payment notices in the past year or had had their service disconnected for nonpayment. The study was designed to be statewide in scope rather than utility specific. Thus, the sample size for any individual utility would be too small for accurate analysis, but

troubled customers experienced some "unusual condition" that prevented the timely payment of their utility bill.^{174\} The most commonly cited condition (13%) was the loss of work, either being laid off or being reduced in hours.^{175\} A second tier of conditions, receiving almost identical shares of citation, included the presence of an illness (7%), the presence of some other major bill (7%), the presence of an unusually high utility bill (6%) and the presence of a conflict between the billing date and the due date (5%).^{176\}

In contrast, one third (33%) of all customers could cite no particular reason for their account being past due while one fourth (22%) of all customers cited having insufficient money in general as the reason.

TABLE D
UNUSUAL CONDITION THAT PREVENT
UTILITY BILL PAYMENT

NONE	33%
NO MONEY	22%

(. . .continued)

the results, taken as a whole, would be projectible on a statewide basis. Baker, at 2. The surveyed customers had no notion that the survey was being sponsored by the consortium of utilities. Baker, at 3.

^{174\} The response of "no money" has been deemed for purposes of this paper *not* to be an "unusual condition."

^{175\} Baker, at 6.

^{176\} Id., at 6. Being out of town (3%), having "family demands," (2%) and other reasons (4%) were also cited.

LAI D OFF/LESS WORK	13%
ILLNESS	7%
OTHER BIG BILL	7%
HIGH UTILITY BILL	6%
CONFLICTING DATES	5%
OUT OF TOWN	3%
FAMILY DEMANDS	2%
OTHER	4%
REFUSED/NONE	4%

While aware of "support services" to help people pay their utility bills,¹⁷⁷ very few delinquent customers had taken advantage of such services. Eight of ten did not participate in Budget Billing (81%) or financial assistance (82%) while nine of ten (93%) did not participate in any type of credit counseling.¹⁷⁸

Like the households in Wisconsin, payment of utility bills was high on the list of bill payment priorities. Most households (82%) said they would pay their rent or mortgage payment first with 13 percent saying they would pay their heating bill first. Nearly six of ten persons (56%) said they would pay their heating bill as the second bill while only 21 percent said they would pay it as the third bill.¹⁷⁹ An additional 10 percent said they would pay their

¹⁷⁷ Nearly six of ten (57%) said they were aware of such services while four of ten (39%) said they were not).

¹⁷⁸ Id., at 9.

¹⁷⁹ Id., at 10.

heating bill as the fourth bill. In general, most customers said they would pay their utility bills after their rent or house payment but before medical bills and car payments.

The Washington survey made particular efforts to develop demographic (age and income) profiles of their "collection customers." The Washington study found that roughly 30 percent of all customers surveyed had incomes below the poverty level.^{180\} No effort was made, however, to determine the portion of customers who were below the more common definition of "poor," 150 percent of the Poverty Level.

^{180\} The Poverty Level is defined by the State of Washington consistent with the Federal Poverty Level.

The Washington utilities sought, also, to identify "commonalities between various delinquent account customers." Six "mutually exclusive groups" were identified as set forth in Table E.^{181\}

TABLE E
PROFILE OF NONPAYMENT CLUSTERS/GROUPS

POOR MANAGERS	39%
TEMPORARY DOWNERS	16%
WON'T PAYS	8%
NEW POOR	22%
SURVIVORS	9%
CHRONIC POOR	6%

The largest group of nonpayers, the Washington utilities found, were poor money managers (39%). This group of customers had "no apparent reason for nonpayment of their bill. They just seem to be poor money managers who wait to pay until absolutely necessary."^{182\} This group is typically a college graduate, with income above the poverty level, owning significant numbers of home appliances,^{183\} and participating in medical

^{181\} Id., at 10.

^{182\} Id., at 19.

^{183\} These include washers and dryers, microwaves, VCR's and home computers.

insurance programs.

The next largest group involves the "new poor." This group has had "a recent life-style change --such as unemployment or divorce."^{184\} The persons in this group are "struggling with incomes temporarily below the poverty level.* **They have little or no money to meet their obligations."^{185\} Nearly half of these households have no medical insurance. They tend not to have appliances such as VCR's or microwaves and a "large percentage" have no telephone. Washington Natural Gas reported that for these customers, "household incomes are below the poverty level and significant unemployment is seen."^{186\}

The third group found by the Washington utilities is the group of "temporary downers."^{187\} While this group has experienced a "temporary setback," such as unemployment or disability, they see things "getting better in the future."^{188\} Household income is above poverty level, although a significant percent have experienced unemployment in the last year. These households own a variety of appliances, including home computers, VCR's, microwaves and washer/dryers. They have college education and carry

^{184\} Id., at 20.

^{185\} Id.

^{186\} Id., at 20.

^{187\} Id., at 21.

medical insurance.

The fourth group is the group of "survivors."¹⁸⁹ This group tends to be older households who "are barely making ends meet." According to Washington Natural Gas, "retired or on disability, they are just trying to survive."¹⁹⁰ These households generally have incomes "right at the poverty level." They receive their income primarily through Social Security and/or disability. They own few appliances other than washer/dryers and most do not have telephones. These households, the utility reports, "have trouble paying their bills because of significant medical expenses* * *they are not spenders."¹⁹¹

The fifth group is the "won't pays."¹⁹² Members of this group, even though they have the means to pay, do not pay. The households in this group live "comfortably, but are not lavish spenders." They tend to be "the older, cynical portion of the population."¹⁹³ Most of these households report

(. . continued)

¹⁸⁸ Id., at 21.

¹⁸⁹ Id., at 22.

¹⁹⁰ Id.

¹⁹¹ Id.

¹⁹² Id., at 23.

¹⁹³ Id., at 23.

incomes above the poverty level. A significant portion carry no medical insurance and most own appliances such as washer/dryers and microwaves.

The final group includes the "chronic poor."¹⁹⁴ According to the utility: "this group represents the truly poor segment of the population. They are always below the poverty level and are resigned to that position. These are larger families with chronic unemployment and no money. They don't pay because they can't."

Washington Natural Gas summarized by categorizing the six groups into two broader populations: (1) those who "can pay"; and (2) those who "can't pay." Most payment-troubled customers (64%) can pay, according to the utility. These include the poor money managers (39%), the temporary downers (16%) and the won't pays (8%). A significant minority of payment-troubled households (36%), however, simply "do not have the means to pay."¹⁹⁵ These include the new poor (22%), the survivors (9%) and the chronic poor (6%).

IV. HYDRO-QUEBEC.

¹⁹⁴ Id., at 24.

¹⁹⁵ Id., at 25.

In 1986, Hydro-Quebec conducted a study^{\96\} of the "lifestyle and payment habits" of its residential customers.^{\97\} The purpose of the Hydro-Quebec study, it said, was to "circumscribe the characteristics of HQ's residential customers with regard to their lifestyles and their payment habits in order to establish a strategy of efficient account management."^{\98\}

According to the study, Hydro-Quebec customers carried nearly twice the arrears owed to the local natural gas company (\$254 vs. \$136) and nearly three times the amounts owed to Bell Canada (\$254 vs. \$81).^{\99\} The difference in arrears, Hydro-Quebec found, was directly related to the reasons for nonpayment. While roughly one-half of the delinquent Bell Canada payers (48%) stated that they simply forgot to pay their bills, nearly half (46%) of the delinquent Hydro-Quebec customers explained their arrears by noting the existence of personal financial problems and thus an inability to pay.^{\100\} The reasons found for nonpayment are set out in Table F.

**TABLE F
REASONS FOR NONPAYMENT
OF VARIOUS HOME UTILITY BILLS**

^{\96\} See, *Customer Account Management Summary Report: Study of Residential Customers' Lifestyles and Payment Habits* (January 1987). Translated from French for the National Consumer Law Center by Jill Singer.

^{\97\} The survey was conducted by the survey firm of Jolicoeur and Associates, Professional Survey Company, in October -November 1986. It consisted of two phases. The first phase involved a telephone survey of 1435 residential customers. The second phase involved household interviews with 102 customers who had received a final notice or who had experienced an interruption of service.

^{\98\} Id., at 5.

^{\99\} Id., at 3.

^{\100\} Id., at 4.

REASONS	GAS	OIL	TELEPHONE	ELECTRICITY
FINANCIAL PROBLEMS	34%	9%	17%	46%
NEGLECT	38%	29%	48%	27%
DELAY	17%	34%	25%	18%
OTHER REASONS	11%	28%	10%	9%
AMOUNT OWED (last notice)	\$136.30	\$160.12	\$ 81.19	\$254.05

In general, households who don't receive notices from Hydro-Quebec^{\101\} "distinguish themselves" from the other households in a number of ways in terms of "financial structure", including: available savings, few dependents, stability of employment, household makeup^{\102\} and higher household revenues.

Moreover, Hydro-Quebec found, certain characteristic traits can be found based on the type of notice received. Households receiving first notices have different characteristics from households who receive a final notice or interruption notice (who are relatively similar). This latter group is composed of many people --of children and financial dependents-- or of people living alone. Generally, Hydro-Quebec continued, "the family income of these groups is much less than the income of households who have never

^{\101\} Hydro-Quebec sends three types of notices sequentially: missed payment notices, final notices, and interruption notices.

^{\102\} They have a smaller household size, with few or no children.

received a notice or who have only received a first notice."^{\103\} Four of ten (40%) final notices are sent to households in the 30 - 40 year old age group.

The receipt of either unemployment insurance or social security increases the probability of being sent an interruption notice.^{\104\}

In contrast, missed payment notices are sent out more to people with higher than average education.^{\105\} The characteristics of households receiving the various notices are set out in Table G.

TABLE G
DISTINCTIVE CHARACTERISTICS OF HOUSEHOLDS RECEIVING
VARIOUS COLLECTION NOTICES: HYDRO-QUEBEC

	NO NOTICE	MISSED PAYMENT	FINAL NOTICE	INTERRUPTION NOTICE
AGE:				
Less than 40	36	49	56	52
40 and older	64	51	44	48
EDUCATION				
Less than 11 years	45	32	36	46
High school	24	31	24	26
Post high school	31	37	40	28
NO OF PEOPLE IN HOUSEHOLD				
1 person	16	7	11	12
2 - 3 person	52	56	40	35
4 and over	32	37	49	53
PRESENCE OF CHILDREN				

^{\103\} Id., at 6.

^{\104\} Id., at 7.

^{\105\} Id., at 7.

No children	58	46	37	34
Children	32	54	63	66
OCCUPATION OF HOUSEHOLD AND SPOUSES				
Two spouses active	35	49	43	41
One active spouse	43	40	49	49
No active spouse	22	11	8	10
HOUSEHOLD INCOME				
Less than \$30,000	62	56	64	74
\$30,000 and more	38	44	36	26
SAVINGS AVAILABLE				
Less than \$1,000	41	57	65	74
\$1,000 and more	59	43	35	26

Hydro-Quebec found five distinct groups of households among its payment-troubled population. These included:^{106\}

**TABLE H
BREAKDOWN OF HOUSEHOLDS WITH
BILL PAYING PROBLEMS**

GROUPS		PERCENT OF HOUSEHOLDS	NUMBER OF HOUSEHOLDS
1	Easy financial situation	34.7%	52,700
2	Improving financial situation and future bills will be paid	21.1%	32,000
3	Improving financial situation but insufficient income to pay future bills	20.4%	31,000
4	Deteriorating financial situation but future bills will be paid	11.0%	16,700
5	Very difficult situation, now getting worst, and future bills will not be paid	12.9%	19,600

Household income decreases with the household's index of financial difficulty, Hydro-Quebec reported. Thus, households who consider their

^{106\} Id., at 9.

financial situation to be easy have an average annual income of nearly \$38,000 while those whose future appears difficult (Group 5) have an average annual income of \$13,000. More than that, the *per capita* income of the households perceiving a difficult future is only \$3,000 as compared to a *per capita* income of more than \$15,000 for those whose situation is perceived to be easier.^{\107\}

In sum, Hydro-Quebec concluded:

the frequency of nonpayment of bills can be explained more strictly by financial situation: personal income of less than \$10,000, unemployment insurance, social security and food assistance as sources of annual incomes, small amount of savings, people living alone, separated, or widowed, without a partner and with a small household income.^{\108\}

The nonpaying population, Hydro-Quebec found, includes those people "who don't foresee an improvement in their situation and who tend to use their income for handling debt."^{\109\}

^{\107\} Id., at 10.

^{\108\} Id., at 17.

^{\109\} Id., at 17.

Customers who received a final notice or an interruption notice name rent as the highest priority bill to pay. Besides the rent, Hydro-Quebec found, "those bills related to heat, like electricity and gas, are a priority (rank 1 and 2) for 48% and 57% of users, respectively."¹¹⁰ To the extent that these households will delay paying their electric bill to pay their rent, Hydro-Quebec found, they will delay paying their telephone bill to pay for electricity.¹¹¹

TABLE I
COST OF SERVICES AND PAYMENT PRIORITY
(population have received final or interruption notice)

	AVERAGE MONTHLY EXPENDITURE	PRIORITY						RECEIPT OF NOTICE
		1	2	3	4	5	6+	
Rent or mortgage	\$354	88	5	0	5	1	0	4%
Natural gas	\$42	11	46	20	23	0	0	38%
Electricity	\$74	14	34	42	5	4	1	55%
Telephone	\$32	1	32	33	20	10	4	40%
Heating oil	\$136	0	32	29	12	21	6	10%
Equipment rental	\$24	0	27	6	27	25	14	0%
Insurance	\$50	3	15	13	30	35	4	0%
Taxes	\$56	3	13	10	35	35	5	10%
Services (cable TV)	\$19	0	0	15	33	30	21	12%

Hydro-Quebec found that roughly half of the nonpayment households would defer payment of their electric bill to pay other bills, primarily rent. In contrast, the utility continued, only 33 percent of the households would defer

¹¹⁰ Id., at 18.

¹¹¹ Id., at 19.

other payments in order to pay their electric bill.^{\112\} The utility found, however:

* * *in a difficult financial situation, the amount demanded by HQ when notices are sent is so high compared to other services that it becomes a substantial resource for rent payment. In contrast, in order to obtain an amount sufficient to pay the HQ bill, it is almost useless to defer payment of some other services, unless they are all deferred. Deferring other bills in order to pay HQ is thus a strategy with very minimal payment possibilities.^{\113\}

In sum, Hydro-Quebec found much the same results as the other utilities. Households receiving electric shutoff notices tend to be overwhelmingly poor. They more likely miss electric payments because of financial difficulties than for other reasons. They place a higher priority on paying their utility bills (except for telephones) than on paying other bills excepting rent.

V. DISCUSSION.

These empirical reports are significant in several regards. For example, on the one hand, the Washington report identifies (as discussed

^{\112\} Id., at 20.

^{\113\} Id., at 20. (emphasis deleted).

above) payment-troubled households by reason for nonpayment. Just as importantly, however, based on the Washington report, it is possible to work backwards as well: to characterize households with certain characteristics as particular types of nonpayers. For example, if a household at 90 percent of poverty does not pay, it is possible to conclude from this report that this household is not likely a poor money manager (household incomes above poverty level),^{\114\} a temporary downer (income above poverty level),^{\115\} or a won't pay (most incomes above poverty level).^{\116\} (It is unfortunate, however, that the Washington study categorized only households at or below 100% of the Poverty Level as "poor." It would be useful to know how many households in the "poor money managers" category would have been recategorized as "chronic poor" if the more typical definition of "poor" [150% of the Poverty Level] used for public benefits purposes would have instead been used.)

Other significant policy conclusions can be reached for that portion of the populations (in all three reports: Wisconsin, Washington, Pennsylvania) that these utilities found "do not have the means to pay."

- o First, to impose late charges on these households makes

^{\114\} Id., at 19).

^{\115\} Id., at 21.

^{\116\} Id., at 23.

little sense. If these households do not pay their bills because they cannot afford to pay their utility bills, to respond by *increasing* their bills through late charges makes little sense.

- o Second, deferred payment plans are not likely to succeed in retiring accrued arrears. Again, if these households have not paid their bills in the past because they cannot afford them, to expect the households to pay their current bills in the future *plus* some additional increment to retire arrears is unreasonable.
- o Finally, credit counseling and budget billing is not the answer to the payment problems of these households. If credit counseling or budget billing would have resolved the payment problems of these households, the households would already have been placed into the "poor money managers" group and categorized as a "can pay" household. By instead placing these households into the "can't pay" category, (defined as households that "do not have the means to pay"), the utilities have acknowledged the inapplicability of credit counseling and budget billing as a solution.

One observation can be made about the "can pay" population as well.

This involves the use of late payment charges. Of the 64 percent of the payment-troubled population that "can pay," late payment charges are inapplicable, unnecessary and likely counterproductive in 55 percent of the cases. A late charge will not make a poor money manager (39%) a better money manager nor will a late charge give the temporary downer (16%) a job or eliminate her temporary disability. The only population to which the late payment charge is applicable as an effective collection tool is the "won't pay" (8%).

Finally, these reports demonstrate the lack of any basis to demand deposits from low-income households who have poor credit histories with non-utility vendors. In both Wisconsin and Washington, the utilities found that consumer utility bill payment came before any and all other credit payments. Ironically, therefore, to base the demand for a utility deposit based on a bad non-utility credit report may well penalize a poor person who paid the utility bill on time to the detriment of other outstanding consumer credit. In any event, however, these studies demonstrate that bad credit reports regarding payments consumers said they would pay "last" provides no basis to demand a deposit for payments that consumers said they would pay "first."

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