

SYSTEM BENEFITS CHARGES:

WHY ALL CUSTOMER CLASSES SHOULD PAY

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When state legislatures and public utility commissions adopt programs to redress the unaffordability of home energy,¹ the question of which other customers may legitimately be called upon to pay for such programs presents itself. The analysis below considers the reasons why *all* customer classes should bear some responsibility for a share of any charge that is imposed in support of affordability programs. These charges may appear in the form of a system benefit charge imposed on all customer classes by regulators or legislators. The charges may alternatively be imposed by the allocation of the costs of such programs over the rates of all customer classes.

The discussion below separately considers three rationales for spreading the costs of affordability programs over all customer classes:

- The need for all customer classes to pay the public compensation provided by utilities for the grant of certain public perquisites.
- The need for all customer classes to pay for “public goods” from which they derive benefits.
- The need for all customer classes to contribute to the resolution of inability-to-pay problems to which they, themselves, contribute.

Each rationale will be examined in more detail below.

1 Affordability programs may take the form of rate assistance programs and/or energy efficiency programs. In Pennsylvania, for example, the state public utility commission has directed the adoption of Customer Assistance Programs (CAP) to provide rate assistance. The Pennsylvania PUC directed the adoption of the Low-Income Usage Reduction Program (LIURP) to provide energy efficiency assistance.

PAYMENT FOR PUBLIC PERQUISITES

The offer of programs in support of universal service for all customers is an explicit *quid pro quo* that was exacted in exchange for substantial --and continuing-- public perquisites provided to the public utility industry.² So long as all customer classes enjoy the fruits of that exchange, they should also contribute to paying for the obligations that were bargained for as part of the exchange. {PRIVATE }

Public utilities have been granted two sets of public perquisites in their capacity as public utilities:

- The right to exercise eminent domain;³ and
- The right to use the public's streets, alleys and public ways as transportation corridors.⁴

In accepting these public perquisites, public utilities have dedicated the property supported by these perquisites to a public use. The "bargain" that has been made in consideration of these two public perquisites is both explicit and continuing.⁵

In accepting and exercising the power of eminent domain, and the right to use public streets and ways, an explicit exchange has occurred. The utilities have received the two perquisites and, as compensation for those benefits, have agreed to "pay" the local governments providing the perquisites through the support of universal service. The Practicing Law

2 The law of each state may differ somewhat from other states. Accordingly, the law of each jurisdiction would need to be separately considered.

3 See generally, "Progress of Regulation, Trends and Topics, Electric Utilities and Eminent Domain Laws," 106 *Pub. Util. Fort.* 49-51 (July 28, 1980).

4 McQuillan, *The Law of Municipal Corporations*, 34.01 (3d ed. 1986). ("One thing should be kept constantly in mind, and that is that the rules of law governing franchises to use the streets do not depend, except to a very limited extent, on whether the grantee of the franchise is a gas company, or a water company, or an electric light company, or a telegraph or telephone company, or a street railway company, or any other public service company.")

5 In addition to these two public perquisites, electric utilities have frequently been granted an exemption from local zoning ordinances. Annotation, *Applicability of Zoning Regulations to Projects of Nongovernmental Public Utility as Affected by Utility's Having Power of Eminent Domain*, 87 *A.L.R.3d* 1265 (1978) ("It has been held, especially where a utility is of statewide or national scope in its service, that if granted the power of eminent domain, the utility would be immune from local zoning regulations in exercising its reasonable discretion in choosing utility routes and location, it being reasoned that local control would cripple the function of state regulation, hamper the utility in serving the general welfare for the benefit of a local few, and weaken eminent domain.")

Institute, a national organization charged with documenting the law in various subject areas, has articulated the doctrine within the context of cable television:

Local governments are realizing the unique value of public rights-of-way for which they act as trustee. Public rights-of-way are acquired and paid for through government action, usually the exercise of a jurisdiction's eminent domain powers. Thus, the public rights of way are the most valuable property rights in the hands of government. . . Local governments must receive fair compensation for granting use of the rights-of-way. Otherwise, government is merely subsidizing the businesses of private rights-of-way users. . . Traditional users of the public rights-of-way were deemed to provide public compensation in the form of universal service and regulated rates. . . With traditional users of public rights-of-way, compensation for use of the public rights-of-way was passed onto the end consumer through rate regulation and other public benefits like universal service, rather than being paid directly to the governments, the actual owner of the public rights-of-way.⁶

The Texas courts have recognized this exchange in the natural gas industry. A public utility, Texas statutes say, includes owning or operating or managing a pipeline "if any part of the right of way for said line has been acquired, or is hereafter acquired, by the exercise of the right of eminent domain." The Texas courts have held:

If a corporation, acting within its corporate powers, acquires land for a pipeline to be owned by it for the transport of natural gas, through an exercise of the power of eminent domain (set forth) in (Texas statutes), it thereby submits to the regulatory provisions (of statute) so that its ownership of the pipeline, under regulation, is a "public use" by legislative declaration.

The court concluded:

In the present case, it is undisputed that (the natural gas company) was acting within its corporate powers under a resolution of its board of directors, that the easement across Loesch's land was necessary for the public interest and that it relies upon the power of eminent domain given in article 1436. *In acquiring the easement under authority of that statute, (the natural gas company) submits to regulation by the State of Texas and thereby becomes charged with numerous statutory duties to the public.*⁷

6 Nicholas Miller and Kristen Nven, "What is the Emerging Role of Local Governments in This New World of Telecommunications," in *Cable Television Law 1996: Competition in Video and Telephony*, at 12 - 13 (1996: Practicing Law Institute).

7 *Loesch v. Oasis Pipeline Company*, 665 S.W.2d 595, 598 - 599 (Tx. App. 1984) (emphasis added), *see also*, *Grimes v. Corpus Christi Transmission Company*, 829 S.W.2d 335 Tx.App. 1992).

The principle has been recognized in the electric industry as well.

Others argue that the obligation to provide for universal service is not one imposed upon the industry, but rather an obligation that the utility industry accepted as part of its franchise agreement. This obligation is one that serves as the industry's "payment" for the grant of substantial public benefits provided to it. So long as the utilities enjoy the fruits of that exchange, they must abide by the obligations that were bargained for as part of that exchange.⁸

In sum, the support of public purpose programs in furtherance of home energy affordability (and, by extension, universal service) is a type of public compensation for two different public perquisites granted to public utilities: (1) the grant of the right to exercise the power of eminent domain (which power is otherwise reserved exclusively to government); and (2) the grant of the right to use public streets, alleys and public ways.

This principle then supports the conclusion that all customer classes should help fund public purpose programs. The public perquisites that have been provided to the utility have not simply a discernible value to the utility, but they have a *substantial* value.⁹ That value inures to the benefit of all ratepayers. If a utility could *not* use eminent domain, in other words, or if it could not use the streets and public ways as transportation corridors for its lines or pipelines, the increased costs that would arise as a result would be borne by all ratepayers. By having the utility receive the public perquisites, therefore, all customers of the utility gain substantial financial benefits.

Having received the financial benefits of the bargain, all customers of the utility should thus pay some part of the financial compensation to the public for having provided those benefits. There has been an exchange of consideration. "The public" (through government) provides the right to use public streets and to exercise eminent domain. The utilities "pay" for these grants through a commitment to universal service. With all end users having pocketed their share of the benefits of the bargain, all end users should then also be required to pay their fair share of the responsibility part of the bargain. To allow otherwise would be to grant the benefit while forgiving the costs.

8 Peter Fox-Penner (1997). *Electric Utility Restructuring: A Guide to the Competitive Era*, at 329, Public Utility Reports: Arlington (VA).

9 Indeed, the right to eminent domain is not only *valuable*, but is essential to public utilities. ". . .the specific right of the power of eminent domain has been given to most utilities. This right enables them to condemn private property and, with the payment of just compensation, to take it for 'public use' when necessary to the proper conduct of their business. This right is essential to resolve the complex property acquisitions required for powerline and pipeline right of way." Aspen Institute for Humanistic Studies, *Utility Obligations in Competitive Markets*, at 10, Aspen Institute for Humanistic Studies: Queenstown, MD.

PAYMENT FOR PUBLIC GOODS

One well-accepted tenet of utility ratemaking is that certain expenses incurred by a public utility are for “public goods.” Due to the nature of public goods, all customers receive benefits from public goods and, accordingly, the costs of such goods are spread over all customer classes. Each end user makes a financial contribution to the utility’s delivery of public goods.

The “public goods” doctrine is applied in a variety of settings as a justification to spread designated utility costs over all customer classes. Fire hydrants and street lights, for example, have been found to be public goods. Subway service has been found to be a public good. The basic telecommunications network has been found to be a “public good” as a justification for spreading network costs over all customer classes. “Economic development” has been found to be a public good, the costs of which are to be paid by all customer classes.

In economic theory, public goods are those products and services that are valuable to society but which are undersupplied when society relies on private markets to provide them. Even though deemed to be needed, public goods will not be made sufficiently available through private markets. Classic examples of public goods include street lights, city roads, and police protection.

The undersupply of public goods occurs because individuals cannot be prevented from using these items whether or not they pay for them. Furthermore, the use of such goods by one person does not diminish the ability of others to use that product. Under such circumstances, everyone has a powerful incentive to be a free-rider—to consume but not to pay—and there can be little effective opposition to their doing so.¹⁰ One commentator defined a “public good” as:

one which is available for consumption to anyone regardless of whether or not one is able to pay for it. Once it is produced, it is not subject to the exclusion property.¹¹ Moreover, the additional cost of providing another unit is at least negligible¹²

10 Jay Mandle and Jon Mandle, “Elections as a Public Good,” 42 *Challenge* 50 (Sept.-Oct. 1999).

11 The “exclusion property” refers to the ability to withhold goods or services from those who are unwilling or unable to pay for them.”

12 Zigmund Karsten, “Health Care: Private Good vs. Public Good,” 54 *The American Journal of Economics and Sociology*, 129 (April 1995).

A product can represent a “public good” even though the direct service is provided to an individual. For example, businesses do not go to school, individuals do. Businesses do not go to doctors, individuals do. Businesses do not place their children in day care, individuals do. Despite this, in each of these instances, the direct benefits to business from the affordable provision of these “public goods” have been documented. Affordable health care and child care are all akin to affordable home energy in their nature as public goods which provide direct and substantial benefits to business as well as individuals. Accordingly, business, as well as individuals, should be responsible for helping to pay for these public goods.

Health care: Affordable health care –to be distinguished from health insurance— is considered to be a public good under these definitions. The reasoning cites the widespread public benefits that will arise from a healthy workforce.

Health care is an important analogy to affordable energy because of the direct benefits it has been found to provide to business. It is recognized that, while it is obviously individuals who see doctors, affordable health care does not simply insure to the benefit of the individuals receiving health care. For example, business benefits as well. “The . . .improvement in the stock of human capital, similar to that derived from universal education, would increase the productivity and competitiveness of labor, resulting in an upward shift in society’s production function.”¹³

One study of Canada’s national health insurance (NHI) found, for example, that benefits arise to business in particular. The study documented “increases in labor productivity, which followed increased job mobility or improvements in the health of the labor force.”¹⁴

Child care: Investment in child care has been found to yield direct benefits to business. On a macro basis, as the Committee for Economic Development¹⁵ has reported, “business and the economy as a whole gain a more productive work force when

13 *Karsten, supra.*

14 Jonathan Gruber and Maria Hanratty, *The Labor Market Effects of Introducing National Health Insurance: Evidence from Canada*, Working Paper No. 4589, Cambridge, MA: National Bureau of Economic Research, December 1993.

15 CED is a national business-academic partnership. One objective of CED is “to unite business judgment and experience with scholarship in analyzing the issues and development recommendations to resolve the economic problems that constantly arise in a dynamic and democratic society.” *Objectives of the Committee for Economic Development*. The Research and Policy Committee of the CED is directed under the organization’s bylaws to “initiate studies into the principles of business policy and of public policy which will foster the full contribution by industry and commerce to the attainment and maintenance” of the objectives of the organization.

employees feel confident that their children are secure and learning.”¹⁶ This is not merely a statement of policy, it is a conclusion based on considerable empirical research:

Those companies that have taken steps to address the child care needs of their work force report that they have improved their ability to attract and retain high-quality personnel, thereby enhancing their current work force and their competitiveness.¹⁷

The Committee goes on to quantify the beneficial impacts to business:

Many businesses also find that helping parents meet their child care needs can potentially reduce absenteeism and employee turnover. The 1990 *National Child Care Survey* (NCCS) found that 15 percent of the mothers in its sample who worked outside the home reported losing some time from work (including arriving late, leaving early, or having to take a full day off) during the previous month because of a failure in their regular child care arrangement. Studies have found that employee turnover produces disruption and inefficiency in the work environment and that the cost of replacing employees is high. For example, Merck & Co., Inc. found that it costs about 1.5 times annual salary to replace a manager and about 75 percent of salary to replace a clerical or technical employee. It also found that it may take considerable time to fill a vacant position and an average of 12.5 months for a new employee to become adjusted to the job.¹⁸

Home energy: While the impacts of affordable home energy on business have not been directly studied as have the impacts of affordable health care and child care, these impacts can be ascertained with merely a few small steps in reasoning from what *is* known about the impacts of unaffordable home energy.

- Unaffordable home energy bills lead to the frequent mobility of households.¹⁹
- Unaffordable home energy leads to more frequent childhood illnesses.²⁰

16 Research and Policy Committee (1993). *Why Child Care Matters: Preparing Young Children for a More Productive America, A Statement by the Research and Policy Committee of the Committee for Economic Development*, at 1, Committee for Economic Development: New York.

17 *Why Child Care Matters, supra.*, at 3.

18 *Id.*

19 Roger Colton. “A Road Oft Taken: Unaffordable Home Energy Bills, Forced Mobility, and Childhood Education in Missouri,” 2 *Journal of Children and Poverty* 23 (1996).

20 Diego Ribadeneira, “BCH Study Illustrates Poor’s Painful Choices,” *The Boston Globe*, at 1 (September 8,

- The inability to stay warm due to unaffordable home energy bills leads to increased illnesses, including pneumonia, influenza, and other infectious diseases.²¹

The problems arising from unaffordable home energy bills have been documented in multiple states. In Minnesota, for example, a 1998 study of low-income households considered low-income wage-earning households as one specific sub-population in its study of unaffordable home energy bills.²² The *Minnesota Energy Gap* study found that:

- Over 40% of low-income wage-earning households do not seek needed dental care in order to pay a home energy bill; nearly one-third went without medical care (not seeking a doctor, not taking prescriptions in prescribed doses).
- Nearly 20% of low-income wage-earning Minnesota households went without food for at least one day in the past month in order to pay a home energy bill.
- Nearly 14% had their heat shut off (or ran out of fuel),

The Iowa Department of Human Rights found nearly identical results. According to a study performed by DHR, recipients of federal LIHEAP program exhibited the following characteristics in the 1999/2000 winter heating season, as a result of unaffordable home energy bills:

- Over 12 percent of Iowa LIHEAP recipients went without food to pay their home heating bill. Projected to the total participating LIHEAP population, that meant that about 7,600 low-income households (representing 20,000 Iowa citizens) went without food at times as a result of unaffordable home heating bills.
- More than one-in-five went without medical care to pay for heating bills. This may mean not seeking medical assistance when it was needed, not filling prescriptions for medicine when a doctor has prescribed it, and/or not taking prescription medicines in the dosage ordered by the doctor;

1992).

21 Select Committee on Aging, House of Representatives, *Deadly Cold: Health Hazards Due to Cold Weather*, at 2 (1984).

22 Energy Cents Coalition (January 1998). *Minnesota's Energy Gap: Unaffordable Energy and Low Income Minnesotans*, Energy Cents Coalition: Minneapolis (MN).

- Almost 30 percent reported that they did not pay other bills, but did not elaborate as to which bills were not paid.²³

As can be seen, the same business benefits arising from affordable health care and child care arise from affordable home energy as well. Increased productivity, decreased absenteeism, decreased staff turnover, decreased staff training, decreased costs of replacing employees, and decreased “disruption and inefficiency in the work environment.”

The Committee for Economic Development stated with respect to business financial investment in universal education that:

a firm and enduring commitment to excellence in education on the part of America’s business community is not merely a matter of philanthropy; it is enlightened self-interest. As employers, taxpayers, and responsible community members, business can regard an investment in education as one that will yield a handsome return.²⁴

Precisely the same can be said about an investment in affordable home energy. It “is not merely a matter of philanthropy, it is enlightened self-interest.” In sum, affordable energy is a public good from which all customer classes derive benefits. As a result, all customer classes should bear some part of the responsibility of paying for providing that public good.

CONTRIBUTION TO PROBLEM BEING SOLVED

The case for business participation in helping to pay the costs of universal service programs, as a public good, is strengthened even further when one recognizes the contribution which business makes to the creation of the “problem” being addressed.

The Basis for Cost-Sharing

One of the major contributing factors to the inability of households to make their home energy bill payments is the lack of a livable wage paid to workers. Table 1, for example, documents what has been found to be a livable wage for Louisiana. Table 1 shows that a family of four (2 adults, 2 children, 3 and 6 years old) need to earn \$28,714 to meet its basic

23 Joyce Mercier, Cletus Mercier and Susan Collins (June 2000). *Iowa’s Cold Winters: LIHEAP Recipient Perspective*, Iowa Department of Human Rights: Des Moines (IA).

24 Research and Policy Committee (1985). *Investing in our Children: Business and the Public Schools, A Statement by the Research and Policy Committee of the Committee for Economic Development*, at 5, Committee for Economic Development: New York.

needs.²⁵ This budget is a subsistence budget, about 33% less than the average family income in the state. For example, this family:

- Does not go out to eat at restaurants;
- Cannot afford a television or other appliances;
- Purchases day care that is 30% cheaper than the state average;
- Spends half of what the average family does on transportation; and
- Has no money to allocate for life insurance, the purchase of a new home, a child's college education, retirement or a vacation.

Table 2 then reports that 87% of the jobs with the most growth in Louisiana pay less than a livable wage; 41% of these jobs pay below half a livable wage. As Table 2 documents, these jobs occur throughout all business sectors.

This is not to say that businesses should pay for rate affordability programs on a direct cost causation basis. It *is* to say, however, that if all workers were paid a livable wage with which to begin, the need for affordability programs funded through a system benefits charge would be mitigated, if not eliminated. All sectors of society contribute to the need and, as a result, all customer classes should contribute to the solution.

Recognizing the subsidies provided to employers paying a poverty wage has been a long-established basis for supporting the federal minimum wage. One analysis of “living wages” reported, for example, that:

. . . employers who pay poverty wages are effectively being subsidized by taxpayers through government assistance programs (e.g., food stamps, Earned Income Tax Credit) which help many low-wage employees survive. . .
.[B]usinesses that pay poverty wages indirectly rely on government assistance programs to make up the difference between these wages and what it costs their employees to live. Without the intervention of government and private charities, paying poverty wages wouldn't be a sustainable business practice.²⁶

The same analysis applies to public utilities. In the absence of cost sharing across all customer classes, what is occurring is that the employers who pay less than a livable wage, in effect, transfer the employee/employment costs of running their business to other ratepayers (in the form of unpaid bills, collection costs, and the like). The transfer is made more likely for public utilities (than for other businesses) because of the essential nature of

25 National Priority Project, *Working Hard, Earning Less, The Story of Job Growth in Louisiana*, at 2 (1999).

26 Karen Kraut, Scott Klinger and Chuck Collins (2000). *Choosing the High Road: Businesses that Pay a Living Wage and Prosper*, at 14, 16, Responsible Wealth: Boston (MA).

utility service and the regulated nature of public utilities which places restrictions on the termination of service due to nonpayment. Requiring all customer classes to help pay for the programs which respond to the inability-to-pay simply recognizes the role which all customers play in creating the problem.

The Extent of the Cost-Sharing

Requiring all customer classes to pay their share of a system benefits charge will not impose substantial financial obligations on industrial or commercial customers. A recent analysis of a system benefits charge in Mississippi, for example, found that industrial customers would be required to pay \$2,700 per year in a “meter charge.” This compares to an average annual industrial natural gas bill of \$281,802. The meters charge would thus be less than one percent of the total average industrial gas bill. A commercial meters charge of \$90/year would be only 1.8% of the average commercial electric bill of \$5,100 in Mississippi.

Moreover, this increase in natural gas or electric costs would be offset in large part by increases in employee productivity. One professor at Johns Hopkins University considered the extent to which increased minimum wages resulted in increased overall costs to business. She found a variety of offsets, reporting:

Poverty. . . produces ill-prepared workers whose lives are easily disrupted by small catastrophes. If the car breaks down, if the kid gets sick, it suddenly becomes impossible to be a reliable worker. Poverty also generates poor health among workers, making them less reliable still and raising the cost of employing them.²⁷

Losses in productivity, as well as the financial costs of replacing employees, were discussed in more detail above. Paying a small increase in costs through a meters charge to help generate these offsetting benefits is a reasonable investment for a business to make.

SUMMARY AND CONCLUSIONS

States across the country today are imposing public benefits charges in support of programs to promote affordable universal home energy service. One basic design issue posed by such charges is whether, or to what extent, customers other than residential customers should be called upon to bear some portion of those costs.

27 Erica Schoenberger (1999). *The Living Wage in Baltimore: Impacts and Reflections*, John Hopkins University Department of Geography and Environmental Engineering: Baltimore (MD).

The analysis set forth above concludes that it is not only reasonable, but also necessary, for all customer classes to pay a share of the affordability programs. Three lines of reasoning support this conclusion. First, support for universal service is the public payment to be made to compensate the public for its grant to the utility industry of the right to exercise the governmental power of eminent domain, as well as the right to use the public streets and public ways. The financial benefits of the grant of those perquisites have been pocketed by all customer classes. It is only fair, therefore, that all customer classes participate in paying the cost of generating those benefits.

Second, affordable home energy service is a public good in its classic economic sense. As a public good, affordable home energy service generates not only cognizable, but substantial benefits to all customer classes. The fact that the direct users of the affordable home energy are individual residential customers does not detract from the observation that these affordable services result in substantial financial benefits to business customers. Being the beneficiaries of the service, those customers should bear some responsibility for paying for those services.

This responsibility to help pay for generating the benefits of affordable home energy is made more compelling by the fact that the affordability problems arise in the first place, at least in part, by the failure of employers to pay livable wages. Unless all customer classes pay their fair share of the affordable home energy programs, the effect is that business is being allowed to transfer part of the cost of doing business (i.e., livable wages) to the utility in the form of unpaid bills, uncollectible accounts, credit and collection activities, and the like. Having contributed to the creation of the problem, it is fair for all customer classes to contribute to initiatives designed to remedy the problem.

TABLE 1
A LIVABLE WAGE FOR LOUISIANA

Food	\$5,709
Transportation	\$2,975
Housing	5,508
Day Care	\$1,505
Health Care	\$4,216
Clothing / Personal	\$2,135
Telephone	\$766
Taxes	\$5,900
Total	\$28,713
SOURCE: National Priorities Project, <i>Working Hard, Earning Less: The Story of Job Growth in Louisiana</i> (1999).	

**TABLE 2
OCCUPATIONS IN LOUISIANA WITH THE LARGEST GROWTH RATE**

		Occupation	Wage	% of Livable Wage	Annual Growth	Growth Rank
Below Livable Wage	Half Livable Wage	Cooks, short order and fast food	\$11,024	38%	459	16
		Waiters and waitresses	\$11,128	39%	709	8
		Cashiers	\$11,315	39%	1,132	2
		Nursing aides and orderlies	\$11,398	40%	1,023	3
		Jans, clnrs, maids, housekeeping	\$11,586	40%	500	13
		Guards	\$11,856	41%	464	14
		Salespersons, retail	\$12,626	44%	1,227	1
	Receptionists and information clerks	\$14,914	52%	400	18	
	Home health aides	\$15,038	52%	705	9	
	General office clerks	\$15,683	55%	391	19	
	Truck drivers, light and heavy	\$18,720	65%	673	10	
	Maintenance and general utility	\$19,885	69%	532	12	
	Licensed practical nurses	\$22,339	78%	668	11	
	Supervisors, marketing and sales	\$22,693	79%	723	7	
	Clerical supervisors and managers	\$23,837	83%	464	15	
	Food service & lodging managers	\$25,709	90%	359	20	
	Correction officers	\$26,478	92%	418	17	
	Blue collar worker supervisors	\$28,642	100%	782	6	
	Above a Livable Wage		Registered nurses	\$40,331	140%	964
		General managers and top executives	\$40,726	142%	786	5