**UTILITIES OVERVIEW**

**Updated May 2010**[[1]](#footnote-1)

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The purpose of this Utilities Overview is to provide guidance and resources for legal services advocates, pro bono attorneys and other advocates in assisting low income utility customers. It discusses common problems facing low income utility customers and potential solutions.

**I. TYPES OF UTILITY COMPANIES**

There are several different types of utility providers all with different regulatory schemes and governing bodies. A general overview of each type is set out below.

**A. Private, Investor-Owned Utility Companies (IOUs)** (e.g., Puget Sound Energy, Northwest Natural Gas, Pacific Power and Light, Avista Utilities, Cascade Natural Gas). IOUs are regulated by state law and the Washington State Utilities and Transportation Commission (UTC). *See*, RCW 80 and WAC 480-90 (gas companies), 480-110 (water companies) and 480-100 (private electric companies) for rules on billings, deposits, terminations and duty to serve. *See also* ,[www.wutc.wa.gov](http://www.wutc.wa.gov).

**B. Public Utility Districts (PUDs)** (e.g. Snohomish, Clark, Grant, Douglas, Chelan, Okanogan Co. PUDs, and others) are locally regulated and not subject to regulation by the UTC. PUDs are municipal corporations authorized by RCW 54 and governed by an elected Board of Commissions. Rules governing service disconnections for nonpayment, the collection of deposits and the imposition of late charges are established by PUD policies or resolution, and Chapter 54 RCW and Chapter 80.28 RCW. PUDs often have Customer Services Policies Manuals.

**C. Municipally Owned Utilities (MOUs)** *(e.g.* City of Tacoma (dba Tacoma Power, Tacoma Water and Tacoma Public Utilities), City of Seattle (dba Seattle City Light and Seattle Public Utilities)). Cities are authorized by RCW 35.92 to own and operate water, electricity, sewer, and gas utilities. Other relevant portions of RCW 35 include RCW 35.21.217 (Deposits), RCW 35.21.290 (Utility Liens), RCW 35.21.300 (Utility Liens and Winter Moratorium) and RCW 35.21.305 (Waiver of Connection Charges) For some first class cities (*See*, RCW 35.01; RCW 35.22), city charters and city codes/ordinances may establish the governance of municipal utilities; however, their charters, ordinances and policies must be consistent with the general laws of the State (Constitution, Art. XI, Sec. 10 and 11). There is some variance in the way Municipal Utilities are governed. For example, Tacoma Public Utilities is governed by a Public Utility Board consisting of 5 members who are appointed to staggered 5-year terms by the City Council, and managed by a Director of Utilities, Power Superintendent, Water Superintendent, Rail Superintendent and Customer Services Manager. Seattle Public Utilities is managed by Director of Public Utilities appointed by the Mayor and confirmed by a majority of the City Council. Seattle City Light is managed by a Superintendent of City Light appointed by the Mayor and confirmed by a majority of the City Council, and subject to reconfirmation every four years.

Rules governing service disconnections for nonpayment, the collection of deposits and the imposition of late charges, which are established by policies, ordinance or regulation, must be consistent with general state laws such as RCW 35.21.290 et seq., and RCW 80.28.010. For ordinances pertaining to Tacoma Public Utilities see Title 12 of the Tacoma Municipal Code. Tacoma Public Utilities rules, policies and procedures on applying for service, deposits, billing, credit and collections and terminations are also found in its Customer Services Policies Manual and Customer Services Procedures Manual. For Ordinances pertaining to Seattle Public Utilities see Title 21 of the Seattle Municipal Code. For Ordinances pertaining to Seattle City Light see Subtitle 3.08 and Title 21 of the Seattle Municipal Code.

**D. Rural Electric Cooperatives (RECs)** (e.g., Inland Power & Light, Lakeview Light and Power, Elmhurst Mutual Power and Light, Peninsula Light, Parkland Light and Power). Rural electric cooperatives are private, independent electric utilities, owned by the members they serve. Rural Electric Cooperatives are creatures of federal law and can be organized either as a Cooperative Association under RCW 23.86 or as a Mutual Corporation under RCW 24.06. Rural Electric Cooperatives are not subject to the jurisdiction of UTC, and the UTC regulations do not directly apply. However, RECs are within the definition of “electrical companies” in RCW 80.04.010, therefore they are subject to the substantive provisions in RCW 80.28 which includes limitations on termination of service. S*ee also,* Roger Colton, Using State Utility Commission Regulations to Control the “Unregulated Utility” 27 Clearinghouse Review No. 5, 443 (Aug 1993); NCLC, Access to Utility Service, §1.5 (4th Ed. 2008).

**II. COMMON PROBLEMS AND POTENTIAL SOLUTIONS**

***A. PROBLEM #1:*** *Utility company is threatening to terminate electricity, gas or water service due to delinquent bill.*

**POTENTIAL SOLUTIONS**

**1. Seek money to pay the bill.**

a. Low Income Home Energy Assistance Program (LIHEAP) LIHEAP is a federally-funded[[2]](#footnote-2) block grant that provides money to help low income households pay for home heating costs and avoid shutoff of utility services during the winter. LIHEAP, originally created by Congress in 1981, is currently codified at 42. U.S.C. §§ 8621-8630. Information on the Federal LIHEAP rules is available at [www.acf.hhs.gov/programs/liheap](http://www.acf.hhs.gov/programs/liheap). In Washington, the LIHEAP program is administered by the Department of Commerce (formerly known as the Department of Community, Trade and Economic Development), which contracts with local service providers primarily Community Action Agencies. The Department of Commerce publishes a state LIHEAP Plan annually which is available at its website [www.liheapwa.org](http://www.liheapwa.org/).

Energy Assistance Program (EAP) grants are available to low income households through Community Action Agencies. Information on where to apply for LIHEAP in each county in Washington is available at [www.liheapwa.org](http://www.liheapwa.org/) or by calling 360-725-2866. In addition, a map showing the location of Community Action Agencies in each County in Washington is available on the Community Action Partnership website [www.wapartnership.org/index.html](http://www.wapartnership.org/index.html).

The LIHEAP Act requires that the highest level of assistance be provided to the lowest income households with the highest energy consumption, taking into account family size. Although the Federal LIHEAP statute provides that households can be eligible for assistance at up to 150% of federal poverty level, Washington has established the threshold for income eligibility at 125% of federal poverty level. The maximum benefit amount is $1000 and the minimum is $25. The actual benefit amount a household will receive depends annual heating costs, household size and income. The amount owed is not a consideration in determining the benefit level. Households are limited to receiving one EAP grant per season (usually October – May). LIHEAP funds are very limited and are usually exhausted before the end of the late winter/early spring heating season.

b. DSHS Emergency Assistance – Low income families with children might be eligible for cash assistance from the Department of Social and Health Services (DSHS) under one of three emergency assistance programs. Additional information and publications discussing these and other DSHS programs is available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). In addition, you can consult the DSHS A – Z Eligibility Manual at [www.dshs.wa.gov/manuals/eaz](http://www.dshs.wa.gov/manuals/eaz).

i. Additional Requirements for Emergent Needs (AREN) (WAC 388-436-0002) AREN is an additional cash benefit available only to persons eligible for Temporary Assistance to Needy Families (TANF), State Family Assistance (SFA), or Refugee Cash Assistance (RCA) programs. Recipients can get a grant to pay their utility bills if they can show that they have a good reason why they do not have enough money to pay their bills. There is no limit to the number of AREN grants a person can receive, but the amount is limited to a total of $750 per twelve-month period.

ii. Consolidated Emergency Assistance Program (CEAP) (WAC 388-436-0015) CEAP is a cash program available to families or pregnant women who face an emergency and do not have the money to meet their basic needs, and families whose TANF cash assistance has been terminated within the last six months by the WorkFirst Sanctions. Assistance under this program is available only once within a twelve month period. Citizenship is not an eligibility factor.

iii. Diversion Cash Assistance (DCA) (WAC 388-432-0005) DCA is an emergency cash benefit available to families that meet the eligibility criteria for TANF or SFA but do not need ongoing monthly cash assistance. Assistance under this program is limited to one 30-day period every 12 months. The maximum amount a person can receive is $1500.

c. Veterans Affairs – More information is available at [www.dva.wa.gov/Vet\_Inn\_Pro.html](http://www.dva.wa.gov/Vet_Inn_Pro.html).

i. Defenders’ Fund Grant (a Veterans Innovations Program (VIP)). Current or former Washington National Guard or Reservists who have served in Operation Enduring Freedom, Iraqi Freedom, or Noble Eagle and who are experiencing financial hardships due to deployment may be eligible for a one-time emergency grant of up to $1,000. <https://www.dva.wa.gov/node/1383/veterans-innovations-program-vip>.

ii. Individual Grant Program (a VIP). The Competitive Grant Program goes beyond the initial emergency assistance provided through the Defender’s Fund, and focuses on activities that will help veterans and their families obtain sustainable family-wage employment. Applicants must have served in Operation Noble Eagle; Operation Iraqi Freedom and/or Operation Enduring Freedom or awarded a Global War on Terrorism Expeditionary or Service Medal. The maximum grant amount is $3500.

iii. Veterans’ Assistance Programs (RCW 73.08.010) RCW 73.08.010 requires each Washington county to establish a Veterans’ Assistance Program to assist indigent veterans, their families, and families of deceased indigent veterans. [www.dva.wa.gov/countybenefits.html](http://www.dva.wa.gov/countybenefits.html)

d. Private Charitable Organizations

i. Salvation Army – Individuals in danger of having their power disconnected are eligible for financial assistance. Centers in Washington may be found at [www.salvationarmynw.org](http://www.salvationarmynw.org).

ii. FISH Food Banks – An agency serving Pierce County. Visit [www.fishfoodbanks.org](http://www.fishfoodbanks.org) for locations.

iii. St. Vincent de Paul – Provides emergency financial assistance. A list of local councils is available at [www.svdusa.org](http://www.svdusa.org).

iv. Churches and Other Faith-Based Organizations Myriad local churches, synagogues, mosques and other faith-based organizations provide emergency assistance including for utility bills.

v. Many utilities ask their customers to donate funds that the utility then provides to low income customers on a one-time per year emergency basis (Seattle City Light, Tacoma Public Utilities, Puget Sound Energy, Snohomish County PUD, and others).

vi. Reduced rates for low-income customers might also be available through the utility (e.g. Seattle, Edmonds), however, many utilities limit eligibility for the reduced rate to low income seniors and low income handicapped customers. e.g. Tacoma Public Utilities.

e. Family and Friends -- Family and friends are often an excellent source of emergency funds

*[Practice tip: Utility company customer service staff might assist the low income customer in obtaining financial assistance, and might be able to provide donated funds that the utility company administers to pay for the initial outstanding bill while other assistance is sought.]*

**2. Postpone the shutoff.**

For customers of IOUs, PUDs, municipal utilities and RECs, a threatened shutoff can be postponed for the following reasons:

1. If the consumer has a medical emergency (e.g., for IOU customers see WAC 480-90-128(5); WAC 480-100-128(5));
2. Shutoff may be postponed during an extreme heat emergency. RCW 80.28.010(8).

b. Immediately appeal the amount claimed due on the bill (however there usually are short time-frames for an appeal and there must be a procedural or substantive basis for the appeal such as failure to provide reasonable notice, meter is faulty or was misread);

c. Between November 15 and March 15, electricity and gas for space heating cannot be terminated if the customer meets the requirements for the winter low-income payment program and enters into an agreement to pay certain minimum amounts. RCW 80.28.010(4) is applicable to all electric and gas utilities; for cities see RCW 35.21.300(2), and IOUs are also subject to WAC 480-90-143; WAC 480-100-143, and for PUDs see RCW 54.16.285;

d. Show that the utility failed to comply with the reasonable notice requirement before the termination. *Memphis Light, Gas and Water Div. v. Craft*, 436 U.S.1, 20, 98 S.Ct. 1554 (1978). (also for IOUs see WAC 480- 90-128(6); WAC 480-100-128(6), for MOUs see RCW 53.21.217(5), and for all utilities RCW 80.28.010(2) requires service must be reasonable which implies reasonable notice of termination must be provided, and also larger electric utilities are subject to PURPA see 16 USC §2625)[[3]](#footnote-3)

e. Electric and gas space heat customers of **all** utilities are also entitled to make payments on the equal-payment plan which allows the customer to make equal monthly payments throughout the year. RCW 80.28.010(7). However, this plan may be refused if an IOU customer is more than two months behind on the gas or electric bill payment (WAC 480-90-138(2) and WAC100-138(2)). In addition, for RECs and unregulated municipal utilities, refer to Roger D. Colton’s article *Using State Utility Commission Regulations to Control the “Unregulated” Activity* 27 Clearinghouse Review No. 5, 443 (Aug 1993). Colton asserts that the regulations set out above could be used as evidence of a trade usage under UCC 1-205(2), and, therefore, be inferred as part of the consumer’s utility contract where the contract is silent on that issue.

**3. Restructure Payments**

a. Repayment Agreements / Winter Moratorium [IOU] [PUD] [MOU] [REC]

From November 15 until March 15, a low-income person who has electric or gas space heating can avert a shutoff so long as that person (1) agrees to a payment plan designed to pay both the past due bill by the following October 15 and for continued utility service and (2) honors the payment plan. Monthly payments cannot exceed 7% of the customer’s monthly Income plus 1/12 of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay more, but will not be in default as long as the payment is at least this amount. ([[4]](#footnote-4)) An IOU violates WAC 480-100-143 if it terminates a low income customer who is eligible for participation in a winter moratorium program without having given the customer a copy of the moratorium program plan (*Rose Monroe v. Puget Sound Power and Light*, Doc. No. U-85-70, Order Affirming Order 1986).

Clients considering this remedy should be advised that, although it might substantially lower bills during the winter, it is also likely to substantially increase bills from March 15 to October 15 if only the minimum required payments are made during the winter months.

b. Budget Billing. [IOU][PUD][MOU][REC]The legislation that created the moratorium program requires the same utilities to offer low-income customers the option of “budget billing” or an “equal payment plan.” In such a billing arrangement, the annual bill is divided into twelve equal monthly payments. The utility cannot limit availability of the plan to certain months of the year, cannot refuse a budget payment plan to a customer because of the length of time the customer has lived in a certain place, and cannot refuse a budget plan to a customer because the customer is a tenant rather than a property owner.[[5]](#footnote-5)

c. Other payment arrangements A utility might be willing to negotiate other types of payment arrangements. Utilities do not like to terminate service because it is expensive for a utility to disconnect a customer’s service, and the utility loses revenue from that customer as long as the customer receives no service. Furthermore, evidence shows that utilities who help low-income customers with their bills save utilities and other ratepayers money.[[6]](#footnote-6)

d. Local programs. Clark County PUD’s Guarantee of Service Program (GOSP) assures continued utility service to low-income residents who make monthly payments equal to 9% of their income to the utility company. Program is available to customers of Clark County Public Utilities (PUD) and Northwest Natural Gas. The difference between what the customer uses and what the customer pays is covered by LIHEAP, DSHS funds, and a local energy fund. More information is available at the Clark County PUD website: [https://www.clarkpublicutilities.com/Account/ Assistance Programs/GuaraneeOfServicePlan/index,html](https://www.clarkpublicutilities.com/Account/%20%20%09Assistance%20Programs/GuaraneeOfServicePlan/index,html).

**4. Terminate and Reconnect Option for IOU Customers**

a. Prior Obligation Rule**.** UTC regulations applicable to electric and gas customers of IOUs provide that service may not be permanently denied as the result of a past-due bill.[[7]](#footnote-7) Therefore, the customer may find it most economical to allow the service to be disconnected and not pay the past due bill, but instead request reconnection, which must be provided so long as the customer pays the required deposit and connection fees.[[8]](#footnote-8) If the customer is billed monthly, the deposit cannot exceed two months’ estimated bills; if billed bimonthly, the deposit cannot exceed three months’ estimated bills. However, disconnection is allowed if the customer has failed to honor the terms of the winter moratorium payment program, and certain other limitations including if the customer is known by the utility to have stolen electricity.[[9]](#footnote-9)

***B. PROBLEM #2:*** *Client’s electricity/gas/water is being terminated at the landlord’s direction or because the landlord has failed to pay the utility bill.*

**POTENTIAL SOLUTIONS**:

**1. Right to Notice of Threatened Termination.**

a. Right to Notice from IOU.When the service address is different from the billing address, an electric, private water or gas utility must determine if the customer of record and the service user are the same party. If not, the utility must provide notice to the service user prior to disconnecting service.[[10]](#footnote-10) Private water companies must undertake reasonable efforts to inform occupants of the service address of an impending disconnection whenever either (a) service is provided through a master meter or (b) the utility has reasonable grounds to believe service is to someone other than the customer of record.[[11]](#footnote-11) Additionally, customers of these types of utilities can postpone the disconnection if it would cause a medical emergency.[[12]](#footnote-12)

b. Right to Notice from PUD or MOU.Customer should have notice rights conferred by the PUD’s resolution or policy, or by the MOU’s written policies, regulation or ordinance. If no notice is given, the failure by a public utility to give notice to the tenant prior to terminating service when the landlord fails to pay the bill violates both the due process and equal protection clauses.[[13]](#footnote-13) In addition, a failure to provide reasonable notice may violate PURPA, 16 USC §2601 et seq. *See* Section V,C,1 below.

When a tenant resides in a “multiple residential rental unit” and the electric and/or water service billing account is not in the tenant’s name and is not timely paid, the MOU is obligated to make a “good faith reasonable effort” to provide written notice to the service address of a pending disconnection of this utility service at least seven calendar days prior to disconnection. RCW 35.21.217(5) (eff. August 10, 2010) (ESB 6261 enacted in response to due process and equal protection concerns). Such notice to tenant is also required when the MOU has been notified that a tenant resides at the service address. The stated purpose of this notice is to allow the tenant time to resolve the problem with the landlord or to arrange continued service with the MOU (RCW 35.21.217(5)(a)). In these circumstances a tenant can request, and the MOU is obligated to place the delinquent utility account in the tenant’s name, on the same terms and conditions applicable to other customers, without the tenant having to pay the amount owed by the landlord or a prior tenant. Also, if a landlord who is obligated to pay electric and/or water service fails to pay for such service, a tenant who requests that the MOU place the services in his/her name may deduct from rent due all reasonable charges he/she pays to the MOU for these services. In these situations the Landlord is prohibited from threatening or taking reprisals against tenant. (RCW 35.21.217(5)(a)). (eff. August 10, 2010).

Sources of law that establish a constitutionally protected “property interest” include state statutes, state common law, PUD resolutions, municipal ordinances, and an express or implied contract.[[14]](#footnote-14) Constitutional arguments are comprehensively reviewed in an article by Ty Duhamel, *Rights of the Nonbilled Utility User*, Clearinghouse Rev. July 1985, 249.

The Grant County Superior Court has ruled in a class action that the PUD enabling statute at RCW 54.16.040 creates a protectable “property interest” that required the PUD to notify tenants of impending termination due to their landlord’s failure to pay the bill. *Longest v. Grant County PUD*,

Other courts have concluded that notice to tenants is required in order to enable tenants to exercise rights under state landlord-tenant laws to apply for an injunction against the landlord to prevent the termination of water service.[[15]](#footnote-15)

c. Right to Notice from REC Where RECs are held to be instrumentalities of the federal government, it can be argued that actions by RECs involve state action.[[16]](#footnote-16) If so, failure to provide proper written notice to the tenant would be a violation of due process and equal protection in the same way it would be for a municipal utility or a PUD. In addition, failure to give notice may be an unfair business practice under Washington’s UDAP statute.[[17]](#footnote-17) Because RECs are subject to RCW 80.28.010 which provides that an agreement between the utility and customer does not waive the protections of Chapter 80.28 RCW, this statute’s requirement that service must be “just and reasonable” implies reasonable notice to the customer/property owner **and** any tenant before termination of electric or water service can occur.

d.. PURPA also requires that larger electric utilities provide reasonable notice of proposed termination of service. *See* Section V,C,1 below.

**2. Claims against the landlord**

a. Generally**.** Landlords have an affirmative non-waivable obligation to maintain residential rental property in a condition that is fit for human habitation. R.C.W. 59.18.060 and *Foisy v. Wyman*, 83 Wn.2d 22, 515 P.2d 160 (1973). If a tenancy is covered the Residential Landlord-Tenant Act (RLTA), the intentional termination of a tenant’s utilities is prohibited by RCW 59.18.300 unless it is for a reasonable time for the purpose of making repairs. Intentional utility terminations can be a breach of the tenant’s right to quiet enjoyment or a constructive eviction.[[18]](#footnote-18) Utility terminations may also be prohibited by local ordinance.[[19]](#footnote-19)

b. Notice to Landlord. It is advisable to give written notice to the landlord demanding the immediate restoration of utility services and advising of the possibility of a statutory penalty and attorney fees in addition to actual damages. Landlords usually restore utilities when advised of the penalty under RCW 59.18.300. Under RCW 59.18.070, landlords have 24 hours to commence remedial action with respect to a deprivation of hot or cold water, heat, or electricity. Written notice can also trigger repair and deduct remedies under RCW 59.18.100.

c. Sue for Injunctive Relief and/or Damages. A tenant covered by the RLTA can sue for actual damages plus up to a $100 per day penalty for each day or part of a day that the tenant is deprived of service.[[20]](#footnote-20) Relief requested should include injunctive relief to order the immediate restoration of service pending a final decision at trial. A bond may be required if temporary relief is granted. The prevailing party may also recover attorney’s fees and costs.

**3. Code Enforcement and Relocation Assistance**

The tenant can also make a complaint to local housing and building code enforcement authorities and request an inspection. Under RCW 59.18.085 landlords are required to pay relocation assistance to displaced tenants if a municipality issues a notice of condemnation and/or declares the premises unlawful to occupy due to conditions that violate the housing or fire codes. Relocation assistance is the greater of $2000 per dwelling unit or three times the monthly rent Municipalities are authorized by the statute to advance the relocation assistance to tenants and to seek reimbursement from the landlord. Municipalities can assess a $50 per day per tenant penalty against a landlord who does not reimburse the Municipality within 60 days, can charge interest, and if court action is required can recover attorney fees and costs.

**4. Other Options**

a. Seek help from Utility Company. Sometimes the utility company is able to restore service, particularly if the shut-off is the result of the landlord tampering with the meter or the utility company’s equipment.

b. Seek Help from Police.If utility terminations are prohibited by local ordinance, the police department may be able to assist a tenant in getting service restored.[[21]](#footnote-21) The landlord may be subject to a fine or imprisonment.

**5. Tenant’s Right to Initiate Service In Own Name Without Paying Third Party Bill of Landlord or Previous Tenant**

Under *O’Neal v. City of Seattle*, 66 F.3d 1064 (9th Cir. 1995), an MOU must provide water service to new tenants of rental property and cannot hold them responsible for the water service debts of a former tenant. *O'Neal v. Seattle*, 66 F. 3d 1064 (9th Cir.,1995).  Instead, the MOU should pursue payment from the prior tenant and the landlord.   In *O’Neal*, the City of Seattle’s policy of refusing to provide water service to new tenants when there is a balance due for prior water service to the premises violates the new tenant’s right to equal protection.

**6. Tenants’ Rights In Multi-Unit, Single-Metered Buildings If Termination Is Threatened – Municipal Utilities.**

Generally this remains a complicated and unresolved issue.

a. Seattle Tenants receive notice and are entitled to continued service so long as they are either proceeding through negotiations or legal action to get the landlord to pay. *Blue v. City of Seattle.*

b. Tacoma Upon request, a group of tenants can enter into an agreement to maintain service without paying the unpaid bill that was in the name of the landlord. Tenants must arrange among themselves how to collect each tenant’s share of payment as it becomes due.

c. Vancouver Tenants receive notice and are given the opportunity to sign up for future service if a majority of the tenants sign up. Tenants figure out among themselves who pays what.

d. Yakima Tenants receive notice, but city requires one tenant to step forward and put the bill for future service in tenant’s own name (presumably the lucky tenant collects a pro-rata share from other tenants).

**7. Tenant’s Right To Pay The Landlord’s Bill and Deduct From Rent**

Landlords are required under RCW 59.18.060 to maintain all electrical, plumbing, heating, and other facilities and appliances supplied by the landlord in reasonably good working order and to provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant. If the landlord fails to carry out any of the duties under RCW 59.18.060, the tenant is entitled to exercise the repair and deduct remedy under RCW 59.18.100. This remedy must be exercised carefully. The tenant must be current in rent and proper notice with an estimate of the bill must be provided to the landlord. If the amount of the bill exceeds one month’s rent, and the lack of utilities is a condition that “substantially endangers or impairs the health and safety of the tenant” then the rent escrow provisions under RCW 59.18.115 could apply. *See*, *Tenant Repair Remedies* available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

***C. PROBLEM #3:*** *Utility Services Have Already Been Disconnected*

*and the Client Cannot Pay Delinquent Bill.*

**POTENTIAL SOLUTIONS:**

**1. [IOU]** Customers of IOUs are entitled to have service restored without paying the overdue bill if they pay deposit and connection fees. *See,* Problem #1, Solution 4. However, if the client has failed to honor the terms of a winter moratorium payment program or have stolen electricity, then they are not entitled to be re-connected.

**2. [PUD][MOU]** For other utilities, similar protection is generally not available, but check local regulations and ordinances. Medical emergencies, violation of notice requirements, and the moratorium statutes may still require reconnection under some circumstances. *See*, Solutions to Problem #1.

**3. Telephone service.** Customers are entitled to reconnect service by making arrangements to pay a bill over a six-month period once every five years. WAC 480-120-174(1). A customer may also postpone interruption of telephone service if that customer can show there is a legitimate endangerment to a resident’s physical health. WAC 480-120-172(6).

***D. PROBLEM #4:*** *Client Cannot Pay the Deposit Being Demanded by Utility Company.*

**POTENTIAL SOLUTIONS:**

**1. Winter Moratorium Agreement Includes Deposit Amount**

**[IOU] [PUD] [MOU] [REC]**

The moratorium statutes that preclude terminating electric or gas service for space heating and allows customer to enter into a payment plan (RCW 80.28.010) also covers deposits to some extent. (*See,* Problem #1, Solution 3a)

**2. Structured Payments of Deposits [IOU]**

Customers of IOUs may be required to pay “two-twelfths of the estimated annual billings for utilities billing monthly; or three-twelfths of estimated annual billings for utilities billing bi-monthly.”[[22]](#footnote-22) The customer can pay fifty percent of the deposit prior to service and the remaining balance in equal amounts over the next two months. However, the customer may be able to satisfy credit requirements without payment of any deposit. If the customer indicates he cannot pay the deposit, he may prepay service initiation fees and reasonably estimated regular service charges or budget billings at periods corresponding to the utility’s regular billing periods for the length of time during which a deposit would ordinarily be required.[[23]](#footnote-23)

PUD, REC and MOU customers may have similar protections by policy, local regulation or ordinance. In addition all utilities are required to offer budget billing which will make electric utility bills substantially the same amount throughout the year (RCW 80.28.010(7)).

**3. Deposit Amount Must Be Reasonable**

RCW 80.28.010 mandates a duty to serve on all utilities, and service must be “just and reasonable’. Therefore, the requirement that service must be reasonable implies that the deposit amount must also be reasonable. Many utilities allow the deposit amount to be paid over a period of time.

**4. Telephone Service Deposits**

A local exchange company may only require a customer to pay a deposit for *basic service* if (a) the customer has received two or more delinquency notices during the last twelve month period; (b) the customer has had basic service disconnected by any telecommunications company; (c) the customer has an unpaid, overdue basic service balance owing to any telecommunications company; or (d) the applicant’s service is being restored following a discontinuation for nonpayment or acquiring service through deceptive means.[[24]](#footnote-24) A company may require a deposit for services above basic service of up to two months’ customary use for a similar applicant.[[25]](#footnote-25)

When a telephone company requires a deposit, it must allow the customer to pay no more than fifty percent before installation with the remaining amount payable in equal amounts over the next two months.[[26]](#footnote-26) Furthermore, a customer may provide a guarantor with current service and a satisfactory payment history in lieu of a deposit.[[27]](#footnote-27)

The Washington Telephone Assistance Program waives the deposit requirement on local exchange service for certain low-income individuals.[[28]](#footnote-28)

***E. PROBLEM #5:*** *Client Is Refused Service or Threatened With Termination Due to Delinquent Bill from Different Address.*

**POTENTIAL SOLUTIONS:**

**1. Prior Obligation Rule Applies [IOU]**

Electric and gas customers of IOUs will be entitled to service regardless of prior obligations as long as a deposit has been paid. (*See*, Problem #1, Solution 4, above, but there are certain limitations). Watch out for the following: the company discovers an unpaid balance from a previous address and adds it to the customer’s current bill. It then applies the customer’s current payments to the *previous* balance rather than to the unpaid current bill.

For example, the customer may have a $200 past due bill from a prior address and a $100 bill from a current address. The customer sends the company $100. The company deducts the $100 from the past due bill, leaving a $100 balance on the past due bill and a $100 current unpaid bill.

This accounting practice, if the customer is threatened with termination, does just what the prior obligation rule forbids: it terminates the customer’s current service because of a past due bill at a prior address.

**2. MOUs or PUDs Refusing or Disconnecting Water or Electric Service Due to Bill from Other Premises Exceeds Lien Authority and Violates State Constitution**

Customers may have protection under regulations or policies issued by the utilities. However, MOUs and PUDs often threaten to deny or terminate service at a new address if the parties cannot agree on a plan to pay off a past due bill at an old address. Some city utilities, because of lien statutes,[[29]](#footnote-29) take the position that their rights attach to the premises supplied and, therefore, dun the owner/landlord of the premises instead of pestering someone who has moved away.

A MOU’s ordinances must be consistent with the state’s general laws (State Constitution Article XI, Section 10 and 11). Therefore, since the utility lien statute, RCW 35.21.290 limits the MOU’s lien to the premises served, a MOU is exceeding state Constitution granted authority if it attempts to terminate electric or water service based on an unpaid bill at another premise. An exception to this limitation is when the customer fails to comply with the winter moratorium agreement (RCW 80.28.010(5)(c)).

PUDs appear to have implied authority to have a utility lien right to terminate electric service for unpaid electric bill. *Hite v. PUD No. 2*, 112 Wash. 2d 456. However, it is not likely that a PUD’s implied right to terminate service for non-payment would be extended to a premises other than the premises served unless the customer violated the winter moratorium plan (RCW 54.16.285(1)(f)).

***F. PROBLEM #6****:* *Client Is Refused Service or Threatened With Termination Due to Roommates Bill from Different Address*

**POTENTIAL SOLUTIONS:**

**1. Prior Obligation Rule Applies [IOU]**

Customers of IOU’s are entitled to service regardless of the existence of a prior obligation belonging to someone else as long as a deposit is paid.[[30]](#footnote-30) The exception is when the utility determines, based on objective evidence, that a fraudulent act is being committed.

While the UTC’s regulatory jurisdiction explicitly extends only to IOUs and private water companies, it may be possible to hold other types of utilities to the universal standards set out by the UTC. For example, a MOU may be held to the prior obligation rule by arguing for inclusion of a UCC “usage of trade” contract term. Similarly, the UTC’s regulations may be used to demonstrate the standard of care applicable to tort cases brought against a utility.[[31]](#footnote-31) Also, except for a customer’s non-compliance with a winter moratorium agreement, a MOU’s lien (e.g. right to terminate) is limited to the premises served (*See*, Problem #5, Solution 2).

**2. Denying Service Could Violate Equal Protection Clause**

The 9th circuit ruled in *O’Neal v. Seattle,* 66 F.3d 1064 (9th Cir. 1995) that the 14th amendment guarantee of equal protection is violated when a public utility denies service based on the debt of a prior occupant of the premises.[[32]](#footnote-32) While not dealing directly with roommate debt, a similar “lack of rational basis” analysis may apply to third party debt generally, including customers whose roommates’ have prior debts. Public utilities may have some sort of informal grievance process that you can find in a customer service manual or ordinance.

**3. Termination May Be Prohibited by Contract or Tort**

Possible contract theories include breach of contract (utility bargained to provide service), failure of consideration (customer is promised no additional benefit by incurring third party debt responsibility), duress (utility companies are monopolies and termination threatens a vital element of health and security).[[33]](#footnote-33)

***H. PROBLEM #7****:* *Client’s Energy Bills Are Always High.*

**POTENTIAL SOLUTIONS:**

**1. Weatherization**

“Weatherization” refers to measures taken to improve the thermal efficiency of a home.[[34]](#footnote-34)

The Department of Commerce (formerly known as the Department of Community, Trade and Economic Development) operates the state’s low-income residential weatherization program.[[35]](#footnote-35) The Department of Commerce funds local agencies to provide weatherization services to low-income households. Visit Department of Commerce’s listing of weatherization agencies by county at: <http://www.cted.wa.gov/portal>

Housing authorities, utility companies, and counties sometimes provide their own weatherization services. Contact them directly, or search for local weatherization providers at the LIHEAP clearinghouse website: <http://www.liheapwa.org/Info/WhereToApply.htm>.

**2. LIHEAP**

Low Income Home Energy Assistance Program (LIHEAP) is a federal program administered by the Department of Energy that provides bill payment assistance, energy crisis assistance, and weatherization services. LIHEAP benefits will be paid directly to the utility provider on a customer’s behalf and can be applied for once per season. In Washington, the LIHEAP program is administered by Department of Commerce, which contracts with local service providers such as community action agencies.

LIHEAP funds are quite limited, though they vary from year to year based on discretionary federal appropriations. Typically when the allotted funds for the season are spent, the program shuts down. In that case, try to obtain a rate discount (*See,* Solution 3 below).

There are a few ways to find out about where to apply. Try the LIHEAP Washington website, which has a LIHEAP assistance locator: [www.liheapwa.org/Info/WhereToApply.htm](http://www.liheapwa.org/Info/WhereToApply.htm). You may also call the National Energy Assistance Referral (NEAR) hotline at 1-866-674-6327 for toll-free information on where to apply for LIHEAP, or email:

[energy assistance@ncat.org](mailto:energy%20assistance@ncat.org).

**3. Low Income Rate Discounts**

Many utility providers of all types offer rate discounts for customers who are low-income elderly, or low income disabled, and a few utilities offer a low income rate or discount to all customers who meet certain low income criteria. For example, Clark County PUD (dba Clark Public Utilities) has a Guarantee of Service Plan wherein a qualifying electricity customer pays a maximum monthly amount based on income rather than usage. Seattle City Light offers a substantial rate discount to qualifying low income customers (Seattle Municipal Code §21.49.040).

See the LIHEAP Clearinghouse website for a listing of available discounts at: [www.liheap.ncat.org/profiles/WA.htm](http://www.liheap.ncat.org/profiles/WA.htm).

***H. PROBLEM #8****:* *Federally-Subsidized Tenant Has Inadequate Utility*  *Allowance.*

**POTENTIAL SOLUTIONS:**

**1. Background**

Public or subsidized housing tenants are to pay no more than 30% in “rent” to the public housing authority (PHA).[[36]](#footnote-36) “Rent” is construed by federal regulations to include reasonable costs of utilities.

Pursuant to these regulations, tenants generally receive a “utility allowance” that is deducted from the 30% payment due to the PHA.[[37]](#footnote-37) This allowance is based not on the actual cost paid to the utility provider, but instead on the PHA’s discretionary estimate of what an “energy conservative household of modest means” would reasonably or typically use “consistent with the requirements of a safe, sanitary, and healthful living environment.”

The allowance set by the PHA may or may not be adequate to cover the actual cost due by the tenant directly to the utility provider. PHA’s may have incentives to cut costs by unreasonably lowering this allowance, leaving tenants with a burden in excess of that contemplated by the 30% limit on rent. Moreover, because a tenant can sometimes be evicted for failure to pay utility bills, an adequate utility allowance is vital.[[38]](#footnote-38)

**2. Ensure Utility Allowance Has Kept Pace With Utility Rate Increases.**

Check records kept by the PHA to ensure that the client’s allowance has kept the pace with utility rate increases. PHA’s are required to keep records that document the basis of allowance determinations and to make these records available for inspection by residents.[[39]](#footnote-39) The client may be entitled to a refund due to an improperly established allowance.

Review the following regulations that set standards for the establishment of proper utility allowances: 24 C.F.R. § 982.517 *et. seq.* (Section 8); 24 C.F.R. § 965.501 *et. seq.* (publicly owned housing).

**3. Class Action Litigation to Recover Utility Overcharges**

Public and subsidized housing tenants may bring a class action suit against a housing authority under 42 U.S.C. § 1983 for utility overcharges by the housing authority. *Wright v. Roanoke Development & Housing Authority*, 479 U.S. 418 (1987).

**4. LIHEAP or Other Utility Assistance/Discounts**

In Washington State, tenants in public or publicly assisted housing are equally eligible for LIHEAP as non-subsidized tenants or homeowners. *See,* Problem #1, Solution 1 and Problem #7, Solution 2

**I*. PROBLEM #9****:**Utility Bills Are Based On Allocation Among Users*

**POTENTIAL SOLUTIONS:**

**1. Background – Allocations Systems and Residents Utility Billing Service (RUBS)**

Some multi-unit rental buildings may utilize an “allocation” billing system. Allocation is different from “master-metering” (the entire building is metered and billed to landlord who recoups costs through rent, thus individual tenant charges do not vary with usage) and “sub-metering” (each tenant’s unit has its own meter and tenant pays owner based on tracked usage). [[40]](#footnote-40)

What is common to allocation schemes is that tenants are not billed according to their tracked, individual energy usage. Instead, they are billed according to one or more measured factors that attempt to approximate tenant “responsibility” for energy costs, with the goal of realizing gains from individual tenant conservation. [[41]](#footnote-41) For example, an allocation billing system might measure actual thermal output of a heating system in a tenant’s unit rather than raw energy usage.[[42]](#footnote-42)

One method of allocation billing is achieved through a “resident utility billing service” (RUBS). A RUBS is a third party billing agent that allocates energy costs for tenants, collects payment on behalf of the landlord, and deducts a service fee. The landlord then pays the utility provider directly.

Possible benefits of these arrangements include the possibility of increased overall energy conservation and decreased costs. However, these schemes present concerns because they may poorly approximate tenant responsibility for energy costs (e.g. tenants get billed for common areas) while at the same time depriving tenants of the protections of UTC, PUD, or municipal rules that supervise the accurate billing of utility customers.[[43]](#footnote-43) This exposes tenants to unfair charges from both inaccurate allocation and rent-seeking behavior from landlords, as well as unfair debt collection practices.

**2.** **Consumer Protection Act (UDAP) Claim**

While *State v. Schwab,* 103 Wash.2d 542, 693 P.2d 108 (1985) makes Washington State’s Consumer Protection Act inapplicable to residential landlord tenant issues, Consumer Protection Act claims under RCW 19.86 might be possible against third party allocation billers. Allocation or RUBS billing is potentially unfair or deceptive because moving from un-metered or master-metered billing may result in higher utility bills without actually conserving energy or lowering a tenant’s monthly rent (which it theoretically should if the landlord’s overall utility costs are lowered).

**3. Seattle Ordinance**

Seattle City Council passed in 2003 a “Third Party Billing Regulation” ordinance[[44]](#footnote-44) making certain practices related to third-party billing for master-metered or other un-metered utility service deceptive and fraudulent. Landlords must provide tenants with information on billing practices and post recent utility bills. Limits to fees and charges are imposed. The ordinance also makes landlords liable for deceptive practices of third-party billing agents.

The ordinance provides a dispute resolution system.[[45]](#footnote-45) Tenants who believe they are overcharged can file a complaint with the Office of Hearing Examiner or commence a civil action against the landlord for damages.

***J. PROBLEM #10:*** *Mobile Home Park Disconnected Individual Meters Three Years Ago Yet Continued to Bill Park Tenants $15 for Excess Water Per Month in Addition to the City Utility’s Basic Water Rate Fee.*

**POTENTIAL SOLUTIONS:**

**1. Background – Manufactured / Mobile Home Parks.** Rules governing manufactured home utility service billings, connections, and maintenance are found in Washington’s Manufactured / Mobile Home Landlord Tenant Act (M/MHLTA), RCW 59.20 *et seq.*, manufactured home park rental agreements, and municipal codes, ordinances, and administrative rules. The Washington State Office of the Attorney General has helpful information on mobile home issues on its website at [www.atg.wa.gov/MobileHomeLT/Act.aspx](http://www.atg.wa.gov/MobileHomeLT/Act.aspx). The Attorney General’s Office also administers the Manufactured Housing Dispute Resolution Program under RCW 59.30. *See*, [www.atg.wa.gov/MHDR.aspx](http://www.atg.wa.gov/MHDR.aspx). *See also*, *Tenant Rights Under the Manufactured / Mobile Home Landlord-Tenant Act* available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

**2. M/MHLTA** THE M/MHLTA reserves most utility billing questions to the parties’ agreement. The Act has only two requirements: (1) a written rental agreement that includes “A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged,” RCW 59.20.060(1)(i), and (2) that the landlord shall not “Charge to any tenant a utility fee in excess of actual utility costs,” RCW 59.20.070(6); *see also Narrows Real Estate, Inc. v. MHDRP,* 199 Wn.App. 842 (2017). The first is a disclosure requirement; the second ensures parks do not use utilities provided by public entities or regulated private utilities to make a profit for the park.

a.Manufactured Home Park Rental Agreement. The rental agreement language will be key to answering the clients question. The park’s written rental agreement might list: “tenant shall pay $15 excess water per month.” This would disclose the fee. But it’s not what most rental agreements say. Rather, a typical manufactured home rental agreement might read: “tenant shall pay for utilities delivered to the mobile home.”[[46]](#footnote-46) Since meters were disconnected, and since the park can no longer measure water “delivered to the mobile home lot,” the $15 monthly charge is likely improper. The client’s three-year claim is $540.

b. Consumer Protection ActManufactured home park tenants are protected from “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce ….” RCW 19.86.020. The question in this fact example may be, does the rental agreement or failure by the park owner to tell tenants that meters have been disconnected have the capacity to deceive a substantial portion of the public? *See, Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC*, 146 Wash.App. 546, 563, 192 P.3d 378, 386 (Wash.App. Div. 1, 2008); *Holiday Resort Community Ass’n v. Echo Lake Associates,* 134 Wash.App. at 226-27, 135 P.3d 499 (Further factual development required to determine whether one-year rental agreement that automatically converted into month-to-month tenancy has capacity to deceive). Assuming potential treble damages, the client’s claim is $1,620.

c. Class Action This fact example presents issues of law and fact common to all tenants living at the manufactured home park. Potentially, a class action may be the most effective and efficient method of resolving tenant claims while conserving judicial resources. Class actions are an appropriate vehicle to resolve claims involving improper landlord utility charges. *Wright v. Roanoke Development & Housing Authority*, 479 U.S. 418 (1987)(Class action suit against a housing authority under 42 U.S.C. § 1983 for utility overcharges is appropriate). Assuming 100 lots, the monetary claim is $162,000.

***K. PROBLEM #11:*** *Water Line Freezes and Bursts on Mobile Home Park*  *Tenant’s Lot Near a Park Road and the Park Tells The Tenant To Repair It.*

**POTENTIAL SOLUTIONS:**

**1. M/MHLTA** The M/MHLTA requires that park owners shall maintain and protect all utilities provided to the mobile home, manufactured home, or park model in good working condition. RCW 59.20.130(6). Maintenance responsibility shall be determined at that point where the normal mobile home, manufactured home, or park model utilities "hook-ups" connect to those provided by the landlord or utility company. *Id*. This language means the park owner must maintain domestic water supply lines from the road and under the manufactured home, until the water line connects with the manufactured home’s “hook-ups.” The home’s “hook-up” is generally just below the home, underneath skirting, where the park’s pipe appears above ground and a flexible pipe is used to connect with the home’s “hook-up.”. The park owner must repair the broken domestic water supply pipe that froze and broke on the tenant’s lot near a park road.

**2. Code Violation** The Park must also “[c]omply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park.” RCW 59.20.130(1). Most Washington municipalities have adopted versions of the Uniform Plumbing Code (UPC). The UPC regulates the burial depth of domestic water supply lines. Though manufactured home domestic water supply lines sometimes freeze and break near the home’s water “hook-up” when not protected by heat tape, underground domestic water supply pipes subject to UPC regulation should be buried below the region’s maximum frost depth – often 36” below ground surface. In other words, underground domestic water supply lines near park roads should never freeze.

There is, therefore, a serious problem with the park’s domestic water supply system being buried to close to ground surface. One solution to infrastructure code violation is municipal abatement. *City of Des Moines v. Gray Businesses, LLC*, 130 Wash.App. 600, 605, 124 P.3d 324, 327 (Wash.App. Div. 1, 2005). Loss of water supply or broken pipes is a not just a plumbing issue, it is public health concern. Alternatively, park tenants might sue to enforce the MHLTA, and seek injunctive relief ordering installation of a code-compliant water system.

***L. PROBLEM #12:*** *Client Presents With Concerns About Overcharges for Phone, Gas, Water or Electricity Usage.*

**POTENTIAL SOLUTIONS:**

1. For phone, gas and electric IOUs, and private water companies: first talk to the utility staff as they might test the meter. If this fails to resolve the problem, then file a complaint with the Utilities and Transportation Commission by calling 1-800-562-6150 or visiting http://www.wutc.wa.gov/fileacomplaint.

2. For PUD and municipal water and/or electrics, first talk with the utility’s staff about the suspected problem as they might test the meter. If this fails to resolve the problem then file a request for hearing with the utility (due process applies to state actors).

3 In either case, utilization of these appeals procedures should avert a shutoff. Note: Mechanical or computational errors in meter readings are somewhat rare. In most cases, the bill is high because the premises is not sufficiently weatherized and/or the company’s rates are high, although diversion or improper metering may be the cause. However, there usually is a charge for testing water or electric meters, but there is no charge if the meter is faulty.

4 If the client is the victim of diversion, either try to get the utility company to help or bring an action against the diverter to recover the extra utility charges caused by the diversion. Diversion occurs when someone steals electricity or gas by tapping into another user’s wires or pipes. The client’s bill goes up because the client is paying for both her usage and the diverter’s usage. The utility company may have owned lines that were tampered with, and may not have properly inspected for diversion.

5 If a meter was improperly connected, the client may sometimes sue the landlord for any damages suffered. Usually improper metering occurs when a landlord subdivides one building into several apartments without properly installing a separate meter for each apartment.

***M. PROBLEM #13:*** *Landline Telephone Charges Are Unusually High.*

**POTENTIAL SOLUTIONS:**

**1. Washington Telephone Assistance Program**

Enroll client in Washington Telephone Assistance Program (WTAP) established by RCW 80.36.410 et seq. Any individual receiving benefits from a DSHS program is eligible. A client can enroll by calling the local telephone company toll free and providing them with a DSHS identification number and address. Enrollment should take no more than a few minutes and the benefits should appear on the next monthly bill. WTAP benefits include a discount on connection charges, a waiver of the local exchange service deposit, and a special flat rate discount.

Alternatively, a WTAP eligible client can enroll in the Community Voice Mail (CVM) service. A CVM subscriber is assigned a private telephone number that functions like a home answering machine.

**2. Long Distance Toll Limitation**

Low-income clients may rack up expensive bills when family members make long distance calls either unknowingly or without permission. The FCC requires local telephone companies to provide free long-distance toll limiting to Lifeline customers (in Washington, the WTAP program) if that service is available.[[47]](#footnote-47) This service can either block outgoing long distance calls or limit the number of long distance calls that can be placed from the customer’s phone.

**3.** Local charitable organizations might provide one-time assistance.

**4..**  If the phone is medically necessary, the client might qualify for emergency assistance to pay a bill.

***N. PROBLEM #14:*** *Tenant in Weatherized Unit Receives No-Cause Notice of Eviction or Notice of Rent Increase.*

**POTENTIAL SOLUTIONS:**

**1. Background**

When weatherization has been subsidized by an agency, a client living in a weatherized unit may have additional rights as a tenant. Weatherization programs are intended primarily to benefit renters who require assistance to obtain affordable utilities.[[48]](#footnote-48) An investment in weatherization of a unit should be thought of as a valuable subsidy intended to benefit the renter over a period of years. As such, a weatherization agreement executed between the landlord and the agency may grant the tenant, as a third-party beneficiary, rights against arbitrary eviction and rent increases.

**2. Invoke protections granted by weatherization agreement**

Identify which organization or agency performed the weatherization. Landlords who participate in weatherization programs administered by Department of Commerce (e.g., DOE funded, LIHEAP, Energy Matchmakers Program) cannot increase the rent for any reason for one year after the weatherization work is completed, and cannot terminate a tenancy without cause for a period of three years after the work is completed. These terms are spelled out at WAC 365-180-090 and should be included in the weatherization agreement form signed by the landlord.

**3.** Utility-sponsored programs usually do not contain specific terms for participation which tenants can enforce.

**III. OVERVIEW OF UTILITY AREA**

**A. Suppliers and Regulatory Bodies**

1. Electricity: Bonneville Power Administration (BPA) is a federal power marketing agency that sells the power that is generated at the federally owned Columbia River dams and some other facilities. This federal power is sold on a wholesale basis to the northwest electric utilities including the IOUs (3), PUDs (22), Munis (21), and Coops; the Regional Council provides input to BPA primarily on fish and conservation issues, and the UTC regulates IOUs. Some utilities generate a substantial portion of their electricity needs.

2. Natural gas: IOUs (UTC)

3. Oil: independent dealers (no regulation)

4. Phone: Telcos (22) and toll carriers (UTC)

5. Water/sewer/garbage (UTC or local government)

**B. Benefit Programs – LIHEAP – State Plan, DCD, Local CAPs**

1. EAP – Energy Assistance Program (CAPs)

2. EA – Emergency Assistance (DSHS)

3. Weatherization: Oil overcharge settlements (DCD, CAPs), LIHEAP, BPA, DOE, other (CAPs and utilities)

4. Charitable programs (utilities, others)

**IV. RESOURCES**

**A. Legal Services Advocates in Washington**

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| 6. | Merf Ehman  Columbia Legal Services  101 Yesler Way, Suite 300  Seattle, WA 98104  206-464-5936, Ext. 363  206-382-3386 (Fax)  [Merf.Ehman@ColumbiaLegal.org](mailto:Merf.Ehman@ColumbiaLegal.org) | Landlord shut-offs, Seattle issues |
| 7. | Patrick Pleas  300 Okanogan Ave.  Suite 3A  Wenatchee, WA 98801  509-664-5101, Ext. 24  509-665-6557 (Fax)  [Patrickp@nwjustice.org](mailto:Patrickp@nwjustice.org) |  |
|  |  |  |
| 9. | Sarah Glorian  Northwest Justice Project  218 N. Broadway, Suite 1  Aberdeen, WA 98520  360-533-2282, Ext. 203  360-533-2932 (Fax)  [Sarahg@nwjustice.org](mailto:Sarahg@nwjustice.org) |  |
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**B. National Organizations**

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| 1. | National Consumer Law Center  Boston Office  7 Winthrop Square,  Boston, MA 02110-1245;  617-542-8010  617-542-8028 (Fax)  [www.consumerlaw.org](http://www.consumerlaw.org/) | Publishes 18-Volume Series of Manuals on Consumer Law Including: *Access to Utility Service,* 4th Ed. 2008.  Also Publishes *Guide to the Rights of Utility Consumers* 2006. |
| 2 | National Consumer Law Center Washington DC Office  1001 Connecticut Ave. NW  Suite 510  Washington, DC, 20036  202-452-6252  202-463-9462 (Fax)  [www.consumerlaw.org](http://www.consumerlaw.org/) |  |
| 3 | U.S. Department of Health and Human Services (HHS);Administration for Children and Family’s Office of Community Services (OCS); Division of Energy Assistance (DEA)  LIHEAP Home Page:  [www.acf.hhs.gov/programs/ocs/liheap](http://www.acf.hhs.gov/programs/ocs/liheap)  LIHEAP Clearinghouse: http/liheap.ncat.org/ | Administers the Low Income Home Energy Assistance Program (LIHEAP) |
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**C. Other organizations**

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| 1. | Washington Utility and Trade Commission (UTC)  P.O. Box 47250  1300 S. Evergreen Park Drive SW  Olympia, WA 98504-7250  360-664-1160  800-562-6150  [www.wutc.wa.gov](http://www.wutc.wa.gov/)  [complaints@wutc.wa.gov](mailto:complaints@wutc.wa.gov)  [info@wutc.wa.gov](mailto:info@wutc.wa.gov) | Consumers can file complaints about IOUs or telecos:  a. on line at UTC website  b. e-mail [consumer@utc.wa.gov](mailto:consumer@utc.wa.gov)  c. Phone Consumer Protection  Help Line at 1-888-333-WUTC  (9882); or  d. Write the UTC at P.O. Box  47250, Olympia, WA 98504.  UTC will investigate and mediate. |
| 2. | Attorney General’s Office  Utilities and Transportation Division  PO Box 40128 Olympia, WA 98504-0128 [www.atg.wa.gov/Divisions/UtilitiesTransportation.aspx](http://www.atg.wa.gov/Divisions/UtilitiesTransportation.aspx) | Provides legal services to the UTC, including rate proceedings and other regulatory actions. |
| 3. | Attorney General's Office Public Counsel Section 800 Fifth Ave. Suite 2000 Seattle, WA. 98104-3188  Tel: (206) 464-6907 Fax: (206) 389-2079 E-Mail: [utility@atg.wa.gov](mailto:utility@atg.wa.gov)  [www.atg.wa.gov/Utilities.aspx](http://www.atg.wa.gov/Utilities.aspx) | Represents the general public interest in utility proceedings before the Washington Utility and Transportation Commission (UTC). |
| 4 | Municipal Research and Services Center of Washington  [www.mrsc.org/index.aspx](http://www.mrsc.org/index.aspx)  [www.mrsc.org/weblist.aspx#u](http://www.mrsc.org/weblist.aspx#u) |  |
| 5 | Energy Project of  Whatcom County Opportunity Council  Chuck Eberdt  1322 N. State St.  Bellingham, WA 98225  360-255-2169  360-671-2753 (fax)  [chuck\_eberdt@oppco.org](mailto:chuck_eberdt@oppco.org) |  |

**V. RESOURCE MATERIALS**

**A. IOUs (Electric, Gas, Telephone and private water companies)**

1. RCW 80, UTC; IOUs; Telco’s

2. WAC – 480 generally. Deposits and termination of service for electrics: WAC 480-90-0-51 and -071; for gas: WAC 480-120-056, -061 and -081.

**B. Publicly-owned Utilities (electric, some water and garbage)**

1. PUDs – RCW 54 and RCW 80.28.

2. Muni’s – portions of RCW 35 and RCW 80.28.

3. Coops – RCW 23.86 and RCW 80.28.

4. Low-income Elderly and Handicapped rates authorized: RCW 74.38.070

**C. Miscellaneous**

1. PURPA (Public Utilities Regularity Policy Act) 16 U.S.C. § 2601 *et seq.* applies to electric utilities that have retail sales of 500 million or more kw – hrs per year. These utilities are listed at the U.S. Dept. of Energy, Office of Electric Delivery and Reliability website. In 2004 Washington electric utilities that satisfied this retail sales volume criteria and are therefore subject to PURPA included Avista, PSE, Inland Power & Light (cooperative), Peninsula Light (cooperative), the cities of Port Angles, Seattle, and Tacoma, and almost all PUDs. PURPA at 16 USC §2625 (f) requires the subject utilities to provide rate schedules to consumers at least once a year, and (g) procedures for termination of electric service, and (l) reasonable notice prior to the proposed termination.

2. Regional Power Act (Pacific Northwest Electric Power Planning and Conservation Act) 16 U.S.C. § 839.

3. Peoples Power Guide – a manual for electric utility activists, published by POWER (Peoples Organization for Washington Energy Resources)

4. Electric Rate Structures: History and Implication for the Poor by NCLC, October 1976 Clearinghouse. Excellent introductory article.

5. “Oil Overcharge Funds: The Potential to Help Balance the Scales for Low-Income Energy Consumers,” June 1986 Clearinghouse

6. “Rights of the Non-billed Utility User,” by Ty Duhamel, July 1985 Clearinghouse – discussion of tenants’ rights when landlord causes utility service termination

7. “HUD Utility Allowance Program Spawns More Disputes with Public Housing Tenants,” November 1985 Clearinghouse

8. “Recent Decisions on Rate Structure Reform,” NCLC, November 1976 Clearinghouse

9. “Utility Disconnections as a Tort: Gaining Compensation for the Harms of Unlawful Utility Shutoffs, November 1988 Clearinghouse

10. “When the Phone Company is Not the Phone Company: Credit Reporting in the Post divesture Era,” June 1990 Clearinghouse

11. “The Unaffordability of Water and Sewer Costs for Low-Income Households: Causation and Approaches to the Problem,” July 1992 Clearinghouse

12. “Statutes of Limitations: Barring the Delinquent Disconnection of Utility Services,” May 1989 Clearinghouse

13. “Energy Assistance Plans: Alternative Distribution Methods for LIHEAP Benefits,” February 1992 Clearinghouse

14. “Deadbeat Landlords: A Tenant’s Right to Utilities When Landlord Files Bankruptcy,” May 1993 Clearinghouse

**VI. GLOSSARY**

**BPA** Bonneville Power Administration, part of the federal Department of Energy, is the marketing agent of the federally generated electricity in the Northwest.

**CAP** Community Action Program (or community action agency) – independent

**(CAA)** community organization that administers LIHEAP; BPA, DOPE and other weatherization programs; and Head Start, etc., for DCD

**DCD** Department of Community Development. The state agency responsible for administering LIHEAP; BPA and DOE weatherization; Head Start; and other programs. Responsible for writing LIHEAP and Community Services Block Grant State Plans.

**EA** Emergency Assistance – available through DSHS to certain needy families for various emergencies, including utility shutoffs or fuel shortages.

**EAP** Energy Assistance Program – Washington State’s portion of LIHEAP that provides energy grants to low-income households regardless of emergent need. Available once a year.

**IOU** Investor-Owned Utility. Puget Sound Power and Light, Pacific Power and Light, Washington Water Power and all the gas companies are IOUs. Other electric companies are not. All IOUs’ rates and customer policies are regulated by the UTC.

**Lifeline** Electric #1: a rate designed to provide a bare minimum of electricity (excluding heat) at an affordable price. Generally the same as the first block of an inverted rate structure.

Electric #2: a discount rate available to low-income senior and handicapped customers or some PUDs and muni’s.

Phone #1: discount rate legislation for low-income households including waiver of the federal (FCC) customer access line charge (now proposed in Washington).

Phone #2: budget measured service.

**LIHEAP** Low-Income Home Energy Assistance Program. Federal benefit program providing EAP, ECIP and weatherization. Administered by DCD. Codified at 42 U.S.C. §§ 8624 *et seq*.

**Moratorium** State legislation prohibiting gas and electric companies (except electric co-ops) from shutting off low-income households between November 15 and March 15 provided the household pays 7 percent of income plus 1/12 of accruing bill.

**Muni** Municipally-owned electric utility. Not subject to UTC regulation. Regulated through city government.

**NPPC** Northwest Power Planning Council (“Regional Council”). Agency created to administer Regional Power Act (including BPA activities) in Oregon, Washington, Idaho and Montana. Composed of two representatives from each of those states.

**PUD** Public Utility District. Electric and/or water utility governed by elected commissioners. Not subject o UTC regulation.

**REC** Rural Electric Cooperative. Electric utility that provides service to its members who must purchase a share or membership, and is governed by an elected board.

**Telco** Local telephone company providing local exchange service. Different from “interexchange carrier” (*i.e.,* long distance company). Regulated by UTC.

**UTC** Utilities and Transportation Commission. Three-person commission that

**(WUTC)** regulates IOUs, telco’s, plus private water and garbage companies and some transportation matters. Sets rates and policies. See RCW 80 and WAC 480.

1. This Utilities Overview was updated and revised in 2010 by Stephen Parsons and Mark Bubenik. The two sections on mobile home parks were prepared by Ty Duhamel. An earlier version of this Overview was originally prepared by Elizabeth Thomas in 1986, revised by David Girard in 1988 and by Tom Chin in 1993. Interns Joseph Sant (NJP Tacoma) and Christine Kelley (CLS Seattle) also made significant contributions to this update. [↑](#footnote-ref-1)
2. Department of Health and Human Services [↑](#footnote-ref-2)
3. PURPA, 16 USC §2612 *et seq*. is applicable to electric utilities that have retail sales of 500M kwh/yr or more. The U.S. Dept. of Energy website identified these utilities as having retail sales in excess of 500M kwh/yr: Avista, PSE, cities of Seattle, Tacoma, Richland and Pt. Angles, most PUDs, Inland Power & Light Cooperative and Peninsula Light Cooperative. [↑](#footnote-ref-3)
4. RCW 80.28.010(4) (All electric and gas utilities); RCW 54.16.285(1) (PUDs); RCW 35.21.300(2) (MOUs) [↑](#footnote-ref-4)
5. RCW 80.28.010(7) (IOUs, PUDs, RECs and MOUs); RCW 54.16.285(3) (PUDs); RCW 35.21.300(4) (MOUs) [↑](#footnote-ref-5)
6. *See* Steve Weiss, *Low-Income Bill Payment Assistance Programs Pay for Themselves Through Reduced Utility Costs* NW Energy Coalition, October 1998, <http://nwenergy.org/issues/low-income/articles-editorials/low-income-bill-payment-assistance-programs-pay-for-themselves-through-reduced-utility-costs/> [↑](#footnote-ref-6)
7. WAC 480-90-123(2) (gas companies); WAC 480-100-123(3) (IOUs) [↑](#footnote-ref-7)
8. WAC 480-90-113 (gas companies); WAC 480-100-113 (IOUs) [↑](#footnote-ref-8)
9. WAC 480-100-123(2)(e) [↑](#footnote-ref-9)
10. WAC 480-90-128(6)(i) (gas companies); WAC 480-100-128(6)(i) (IOUs), [↑](#footnote-ref-10)
11. WAC 480-110-365(3)(f) [↑](#footnote-ref-11)
12. WAC 480-90-128(5) (gas companies); WAC 480-100-128(5) (IOUs); WAC 480-110-355(2) [↑](#footnote-ref-12)
13. *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 20, 98 S.Ct. 1554 (1978), and for MOUs see RCW 35.21.217(5). *See also,* Roger Colton and Sara Morrissey, *Tenant’s Rights to Pretermination Notice in Cases of Landlords’ Nonpayment of Utilities*, Clearinghouse Rev. July 1995, 277. RCW 35.21.217(5) appears to be ambiguous in its stating “except as allowed by law” because we are not aware of any existing law or case law that would allow an MOU to require a tenant to make a utilities payment that is owed by a landlord. [↑](#footnote-ref-13)
14. The Uniform Plumbing Code and health code adopted by the municipality should also be reviewed. [↑](#footnote-ref-14)
15. *Dimassimo v. City of Clearwater*, 805 F.2d 1536 (11th Cir. 1986); *Turpen v. City of Corvallis*, 26 F.3d 978 (9th Cir. 1994). [↑](#footnote-ref-15)
16. Colton and Morrissey at 278 and 278, n.5. [↑](#footnote-ref-16)
17. *See* Colton, *Using State Utility Commission Regulations* at 448. [↑](#footnote-ref-17)
18. *Wusthoff v. Schwartz*, 32 Wash. 337, 73 P. 407 (1903) (actions of the landlord that amounted to a constructive eviction included removing the water pipes). [↑](#footnote-ref-18)
19. *See, e.g.,* Seattle Municipal Code § 22.206.180 (2007). [↑](#footnote-ref-19)
20. RCW 59.18.300 [↑](#footnote-ref-20)
21. *See, e.g.*, Seattle Municipal Code § 22.206.180 (2007). [↑](#footnote-ref-21)
22. *See* WAC 480-90-113 (gas), WAC 480-100-113 (electricity). [↑](#footnote-ref-22)
23. WAC 480-90-113(5)(a); WAC 480-100-113(5)(a). [↑](#footnote-ref-23)
24. WAC 480-120(1) [↑](#footnote-ref-24)
25. WAC 480-120-122(3) [↑](#footnote-ref-25)
26. WAC 480-120-122(5) [↑](#footnote-ref-26)
27. WAC 480-120-124 [↑](#footnote-ref-27)
28. RCW 80.36.460 [↑](#footnote-ref-28)
29. RCW 35.21.290 - .300 and Seattle Municipal Code §§ 21.04.250, 21.33.110. [↑](#footnote-ref-29)
30. *See* WAC 480-100-123 (electricity), WAC 480-90-123 (gas), WAC 480-115-345 (water). [↑](#footnote-ref-30)
31. *See* NCLC, *Access to Utility Service*, 3d. Ed. § 1.7 (2005) [↑](#footnote-ref-31)
32. The 9th Circuit’s holding in *O’Neal* is that there is no rational basis for dividing customers into two classifications -- those occupying premises with prior third-party debts and those occupying debt-free premises -- and denying service to the first group. *See also* *Davis v. Weir*, 497 F.2d 139, at 145 (5th Cir. 1974) (finding no rational basis for holding new tenant liable for past tenant’s debt: “The fact that a third-party may be financially responsible for water service provided under a prior contract is an irrational, unreasonable and quite irrelevant basis upon which to distinguish between otherwise eligible applicants for water service.”); *but see* *Ransom v. Marrazzo*, 848 F.2d 398 (3d Cir. 1988) (finding a rational relationship between general goal of collecting debt and refusing service because of another tenant’s debt). [↑](#footnote-ref-32)
33. For discussion of these theories, see Roger Colton, *The Legality of Conditioning Utility Service on Payment of a New Roommate’s Old Debt*, Clearinghouse Review, Sept. 2001. [↑](#footnote-ref-33)
34. According to the Department of Commerce, weatherization of a home can reduce its energy use by 20% to 30%. <http://cted.wa.gov/site/500/default.aspx> (last visited July 20, 2007). [↑](#footnote-ref-34)
35. Funding for the Department of Commerce ’s weatherization program comes from three federal sources: (1) the Department of Health and Human Services Low-Income Energy Assistance Program, (2) the Department of Energy’s Low-Income Weatherization Assistance Program, and (3) the Bonneville Power Administration. The state also provides funding through the “Energy Matchmakers” program at RCW 70.164. [↑](#footnote-ref-35)
36. This requirement comes from the Brooke Amendment to the Housing Act of 1937 at 42 U.S.C. § 1437a. [↑](#footnote-ref-36)
37. For public housing tenants where the utilities are furnished by the PHA without individual metering, no utility allowance will be established. However, surcharges may still be assessed (and challenged) if tenants use their own appliances or optional usage of PHA-supplied equipment. 24 C.F.R. § 965.501(b). [↑](#footnote-ref-37)
38. *Advocating for Higher Utility Allowances in Federally Subsidized Housing: A Practical Guide*, a combined effort Gavin Thornton, previously with the Legal Aid Society of Hawaii and now with Columbia Legal Services and the National Housing Law Project. The Guide is available free of charge to HJN members (password required) at: http://www.nhlp.org/html/pres/casedocs.cfm?id=800064 [↑](#footnote-ref-38)
39. 24 C.F.R. § 965.502 [↑](#footnote-ref-39)
40. *See* NCLC, *Access to Utility Service*, 4th Ed. § 5.5.3 (2008) [↑](#footnote-ref-40)
41. Id. at § 5.5.3.1-5 has an in-depth treatment of the pros and cons of allocation billing systems with respect to the goals of energy conservation and accurate billing. [↑](#footnote-ref-41)
42. Id. at § 5.5.3.3 [↑](#footnote-ref-42)
43. See, e.g. WAC 480-110-255(2)(g), excluding from UTC jurisdiction lessors who resell water to tenants. [↑](#footnote-ref-43)
44. Seattle Municipal Code 7.25*.* [↑](#footnote-ref-44)
45. Seattle Municipal Code 7.25.050 [↑](#footnote-ref-45)
46. This is actual language taken from the rental agreement this fact example is based upon. [↑](#footnote-ref-46)
47. 47 CFR § 54.401(a)(3) [↑](#footnote-ref-47)
48. RCW 70.164.060 expresses this policy and specifies that violations by the landlord offend the consumer protection act at RCW 19.86. [↑](#footnote-ref-48)