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Propane Affordability a Problem, but Responses Are Available

NOTE TO READERS

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While the Propane Industry, as an Un-regulated Industry, Poses Unique Affordability Problems, Customer Initiatives are Available.

One area of ongoing concern for advocates and service providers in the low-income energy field involves the difficulties in generating price support and consumer protections for users of bulk fuels. Bulk fuels include fuels such as propane, fuel oil, liquefied natural gas (LNG), and the like. Vendors of bulk fuels are not subject to comprehensive regulation by any state oversight body.

Moreover, given the multiplicity of bulk fuel vendors, it is difficult to negotiate "voluntary" agreements that are sufficiently wide-spread to reach a majority of low-income users.

Despite these difficulties, there are specific strategies that can be pursued to ensure that the issue of affordable home energy is not limited simply to regulated utilities. A recent report that FSC prepared for the Community Action Partnership Association of Idaho (CAPAI) addressed initiatives directed toward users of propane gas.

The Propane Education and Research Council (PERC)

Providing assistance to low-income customers in Idaho using propane (LPG) is of particular importance to that state. Overall, without accounting for Poverty Level, the state has more than 30,000 households who use propane as their primary heating fuel. More than twice as many households use propane as use fuel oil and/or kerosene for their primary heating source.

In 1996, Congress authorized establishment of the Propane Education and Research Council.¹ The purpose of PERC was to provide for programs for propane research and development, safety and training, and consumer education. In Fiscal Year 2009, PERC had an annual budget of \$46.501 million, of which \$9.210 million was provided in grants to the states. In 2010, the PERC budget was \$38.328 million, of which \$7.666 million was provided in grants to the states.

PERC is funded through an assessment on each gallon of odorized propane gas. This assessment is not to be passed on to consumers. In 2010, the assessment was 0.4 cents (\$0.004) per gallon. According to the federal General Accounting Office (GAO), “by operation of the law” and the rules adopted by PERC, 20 percent of the assessment collections is rebated to state propane councils or similar entities. This is accomplished by channeling 20% of the PERC assessment collected in a state back to the state council, if the state has a propane council (or similar entity).

Policy Basis

In 2003, the GAO found that it was appropriate to use PERC funding to address the unaffordability of propane prices to low-income households.² GAO reported that “more than 35 percent of the households using propane to heat their homes are eligible for low-income government financial assistance in meeting energy needs.”

According to the GAO:

Propane prices can be as volatile and as unpredictable as the weather that drives residential consumers’ demand for propane.

¹ Propane Education and Research Act of 1996, October 11, 1996 (15 U.S.C. 6401).

² General Accounting Office (2003). *Causes of Price Volatility, Potential Consumer Options, and Opportunities to Improve Consumer Information and Federal Oversight*, GAO report #GAO-03-762, Government Printing Office: Washington D.C.

While prices can move sharply up and down, it is the drastic price spikes upward that grab the attention of consumers, particularly those low-income consumers who represent a significant portion of residential propane users and are the most vulnerable to price increases. Compounding this problem is the fact that prices typically spike when more propane is needed to combat cold weather.

GAO continued:

While price stabilization options exist to cope with price fluctuations, many consumers may not have opportunities to participate in these programs. This presents a challenge to government programs designed to inform consumers and those that assist low-income consumers with energy needs. Efforts that increase propane market information and make price stabilization options more available to consumers, particularly low-income households, may help mitigate the impact of sudden price spikes to some degree.

Recommendations

According to FSC, CAPAI should develop a proposal to submit to the Rocky Mountain Propane Association, for submittal to PERC, regarding the development and dissemination of information to low-income propane customers regarding energy efficiency. This information and education should include, in addition to energy efficiency education, education with respect to the following:

- The use of price stability programs such as those identified in the 2003 GAO report on price volatility (e.g., off-season purchases; budget-billing);
- Weatherization problems uniquely (or disproportionately) experienced by propane users; and

- Consumer protection problems uniquely (or disproportionately) experienced by propane users.

Through this propane energy efficiency education program, CAPAI could reach a population of customers that historically has been difficult to reach with weatherization services. While, unquestionably, natural gas and electricity are the primary heating fuels in Idaho, propane is the third most-common heating fuel in the state.

Bulk Fuel Consumer Protections to Improve Affordability

"Fuel assistance" for low-income users of bulk fuels need not necessarily take the form of financial assistance. At least two states have adopted proposals that certain winter practices by vendors who sell bulk fuels to residential customers be prohibited pursuant to state consumer protection statutes. Administrative regulations adopted in both Vermont and Maine prohibit the denial of service during cold weather months, during which months such denial may pose a threat to the health, safety and life of the customer.

Vermont Fair Trade Regulations for Propane

Regulations adopted by the Vermont Attorney General's Office, pursuant to the state's Unfair and Deceptive Acts and Practices Statute (UDAP), provide a reasonably comprehensive framework of consumer protections for consumers of liquefied petroleum gas ("propane" or "LPG").³ The Attorney General declared it to be an "unfair and deceptive trade act and practice" for a retail distributor of propane to fail to provide specified protections. Amongst those protections are:

- No propane dealer may involuntarily disconnect service without providing notice of not less than 14 days, no more than twenty days, prior to the disconnection. A "disconnection" of

³ Code of Vermont Rules, 06-031 CVR 011.01, et seq. (2008).

service for a propane dealer is defined as "the deliberate refusal to deliver gas or an interruption or disconnection of service to a consumer previously receiving service from the company."

- A consumer in arrears to a propane dealer must be given an opportunity to enter into a reasonable payment agreement. The reasonableness of such an agreement is to consider the amount of the delinquency, the consumer's ability-to-pay, and the reason the account became delinquent.
- No disconnection may occur if the delinquency to the dealer is less than \$30 and less than 60 days past due, so long as the customer uses propane as a primary source of heat.
- If a dealer wishes to disconnect service to a customer using propane gas as the primary source of heat during the heating season, the dealer must, in addition to providing written notice of the disconnection, also provide oral notice. This oral notice may be by telephone, but if telephone contact cannot be accomplished, a personal visit to the residence must be made.
- A propane dealer may not require a customer to make a minimum purchase of more than 100 gallons at a time, or more than the total capacity of the customer's existing tank, whichever is less.⁴
- A propane dealer may not refuse to sell gas if the consumer is ready, willing and able to pay by cash, certified or cashier's check, commercial money order, or their equivalent. In addition, a propane dealer may not refusal to sell gas if a

⁴ If a consumer has a tank larger than 100 gallons, the gas company may require larger minimum purchases in accord with a prescribed schedule, but must offer the customer an opportunity to enter into a reasonable payment plan or reasonable budget billing plan.

governmental or private agency has made an unconditional commitment to pay for the delivery.

Other consumer protections apply to propane dealers in Vermont under the Attorney General regulations.

Maine's Fair Trade Practices Regulations for Fuel Oil

Similar to Vermont's propane regulations, the Maine Attorney General has promulgated fair trade practice regulations governing the sale of residential heating oil.⁵ The Maine regulations apply to the sale of number 2 fuel oil, as well as to the sale of kerosene, used to heat the interior of a person's primary residence. The Maine regulations govern all retail oil dealers.

The Maine Unfair Trade Practices Act Regulations on "Sale of Residential Heating Oil" apply to heating sales from October 15 through April 30 of each year. Under these regulations, dealers must sell fuel within their service areas to anyone who pays cash, even if the customer has not paid for a previous delivery, or is not an established customer. Likewise, fuel must be delivered if a government agency (or a fuel assistance sub-grantee) guarantees payment.

In addition, once a Maine household has become an "established customer" of a particular dealer – defined as having made two cash purchases in a row from the dealer—the customer is entitled to certain consumer protections. One such protection, for example, is that a dealer may not discriminate amongst established customers on providing such services as requests for immediate service or unscheduled deliveries. Nor may a dealer discriminate amongst established consumers as to additional charges for deliveries of less than a minimum delivery requirement. In essence, the regulation provides for equal service for all established customers.

⁵ Code of Maine Rules, 26-239, Ch. 100, §1, et seq. (2008).

Moreover, the Maine regulations provide that a heating oil dealer must sell heating oil to a customer willing to pay cash for the oil, even if the customer is not an established customer and even if the customer has a past-due bill for a previous delivery. As in Vermont, a "cash" payment is defined broadly to include payment by a certified or cashier's check, a commercial money order, or their equivalent. It also includes situations where a government or community action agency has guaranteed to pay on behalf of the person the cost of the fuel oil sale.

The Maine regulations finally require a fuel oil dealer to make scheduled deliveries of 20 gallons or more. Dealers may, under the regulations, however, add a "penalty" of not to exceed \$5 for deliveries of less than 50% of the customer's tank, or 100 gallons, whichever is less. No other "penalty" is permitted under the regulations.⁶

SUMMARY AND RECOMMENDATIONS

CAPAI could and should pursue PERC funding to promote consumer education among low-income users of propane regarding energy efficiency (including water conservation that has energy implications). The objective of such a program would be to ensure that low-income households living in housing units using propane as a primary heating source take all reasonably available opportunities to moderate their usage in order to reduce overall home energy bills and to protect themselves against volatility in the price of this home heating fuel.

In addition, to the extent that low-income energy advocates and/or service providers might wish to extend certain consumer protections to households using bulk fuels for home heating, there is ample precedent for the state to do so through its state Attorney General's office.

Idaho consumer groups, or low-income service providers, should petition the Attorney General's office to adopt regulations, promulgated under the

⁶ Other consumer protections are specified in the Maine regulations.

state's Unfair and Deceptive Acts and Practices (UDAP) statute, to be used not only to provide winter protections, but to provide more fundamental protections as well.

For a complete copy of the FSC report on Idaho low-income energy affordability "needs and resources," readers may send requests to:

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Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.
