

The Legality of Conditioning Utility Service on Payment of a New Roommate's Old Debt

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This article evaluates the lawfulness of a public utility company refusing, or discontinuing, service to a customer because a third person, who owes the utility money from an account at a previous residence, lives with the customer. The article considers a customer who has existing utility service and is current on her bills. She allows a roommate to move in, who, it turns out, is delinquent on her utility bill from her former residence. The customer had no connection with the roommate at the time the previous bill was incurred. Nor did the customer ever agree to pay the utility the money owed by her roommate from the prior address. Upon learning that the delinquent bill payer resides with the customer, the utility threatens to terminate the customer's service unless the roommate's old bill is paid (or the roommate moves out).

The issue is governed not only by principles of public utility law, but by basic contract law as well. It does not matter whether the utility in question is an electric, natural gas, water/sewer or telephone utility. The principles are the same in each situation. The discussion is divided into four parts. Part one evaluates a utility's threat to disconnect service using basic contract law principles.¹ Part two examines the law of implied contracts. Part three examines how the utility action in question can be assessed using-utility regulatory principles. Finally, Part four explores the applicability of fair debt collection law.

¹This article speaks of disconnection of service. Each principle discussed herein, however, applies with equal force to the denial of an application for new service. *See generally*, Davis v. Weir, 497 F.2d 139 (5th Cir. 1974) (Clearinghouse No. 5,162); Re Tampa Elec. Co., 49 Pub. Util. Rep. 4th (PUR) 547 (Fla. Pub. Serv. Comm'n 1982).

This article concludes that a utility acts unlawfully when it seeks to disconnect service to a current customer for nonpayment of a roommate's bill, when the unpaid bill at issue was incurred at a prior residence with which the customer had no connection.

I. Basic Contract Law

The provision of utility service is a relationship governed by the law of contract.² The contract relationship is governed by the Uniform Commercial Code,³ and the unlawful disconnection or denial of service gives rise to an action for breach of contract.⁴

A utility company may not hold a customer liable for an unrelated third party's debt when the customer was neither a party to the third person's contract with the utility nor a party contracting independently with the utility to pay the third person's debt.⁵ In order to be held liable for a third person's debt, a customer must enter into a valid and binding contract with the utility company for payment of such debt. Otherwise, even if an agreement is made to pay the debt, it constitutes nothing more than an unenforceable gratuitous promise.⁶ A binding contract requires mutual assent on all essential terms of the contract.⁷ In addition, the contract must be supported by consideration.⁸ Without any one of these elements, the contract is void.⁹

Contract principles have been applied frequently by public utility commissions considering this type of condition on service. The Florida Public Service Commission, for example, has embraced the rule that a customer may not be held responsible for a

²Williams v. City of Mount Dora, 452 So.2d 1143 (Fla. App. 5th Dist. 1984); *see generally*, 64 AM. JUR. 2D. *Public Utilities* §28 (1972).

³*See*, Gary Spivey, *Electricity, Gas or Water Furnished by Public Utilities as "Goods" within the Provisions of UCC Art. 2 on Sales*, 48 A.L.R.3D 1060 (1973).

⁴*See*, 64 AM. JUR. 2D *Public Utilities* §28 (1972); *see e.g.*, DeLong v. Osage Valley Elec. Co-op Ass'n, 716 S.W.2d 320 (Mo. App. 1986).

⁵Smith v. Tri-County Electric Membership Corporation, 689 S.W.2d 181 (Tenn. App. 1985); ~~Re~~-Tampa Electric Co., 49 P.U.R. 4th Pub. Util. Rep. 4th (PUR) 547. (Fla. Pub. Svc. Serv. Comm'n 1982).

⁶17 AM. JUR. 2D *Contracts* §2 (1964)

⁷*Id.* at §18.

⁸*Id.* at §86.

⁹*Id.* at §1.

third person's bill. In *Re Tampa Electric Company*, the commission ordered the company to delete from its rules a provision that permitted such liability.¹⁰ The commission concluded that:

The company can hold only the customer of record responsible for the customer's bill. The company can protect itself and its other rate payers from nonpayment by requiring an adequate security deposit. If the deposit does not fully satisfy the arrearage, the company can sue the customer. What the company cannot do is force another person, not legally responsible for the debt, to pay the debt in order to obtain or continue receiving electric service.¹¹

The general rule is that utilities may not terminate or deny an application for service to one person based upon charges incurred on another person's account.¹² "[I]t is irrelevant whether the supplier and collecting authority is a municipality or a public utility company, since the results, all other things being equal, are the same in either case."¹³

A. The Doctrine of Consideration

Principles of consideration were applied in a utility context in *Meridian Light and Railway Company v. Steele*.¹⁴ In *Meridian*, Steele entered into a contract with a utility to

¹⁰*Re Tampa Electric Company*, 49 Pub. Util. Rep. 4th (PUR) 547, 591 (Fla. Pub. Serv. Comm'n 1982).

¹¹*Id.*

¹² See generally, Annotation, *Liability of premises or their owner or occupant, for electricity, gas or water charges, irrespective of who is the user* 19 A.L.R.3D 1227 (1968). ("A broadly stated general proposition, recognized in numerous cases within the scope of the present annotation, is that, at least in the absence of an authorized lien, specific statute, or express agreement, no liability ordinarily can be imposed on premises, or their owner or occupant for unpaid utility charges, irrespective of who is the user.") *Id.* at 1231 - 1232. One legal analysis concludes, "without a contract between the utility and the customer it seeks to charge, liability cannot be imposed by the company except in very limited circumstances." *Third Party Liability for Gas, Electric, Water and Telephone Bills*, PULP NEWS (Fall 1989), at 4.

¹³19 A.L.R.3D at 1231.

¹⁴*Meridian Light and Ry. Co. v. Steele*, 83 So. 414, 121 Miss. 114 (1920).

furnish electricity for her home. Later, when Steele moved to a new residence, she entered into a contract with the utility in which she agreed that she would pay the arrearage that she incurred at her former residence, or face termination. The court held that the contract signed by Ms. Steele, "in so far as she may be bound to pay the arrearage on her former residence before installment of lights in her present residence was without consideration and void" ¹⁵

In the case of a roommate's debt, a utility's attempt to procure payment of the third party's debt from the customer is not supported by consideration. Moreover, there is no promise on the part of a customer to pay the debt. Originally, the utility company promised to provide the customer with electric service to her residence. In return, the customer agreed to pay the utility at a certain rate. The utility provided the service and the customer paid the rate for that service in a full and timely fashion. The utility subsequently threatens to disconnect service unless the customer pays the back bills of the roommate. Even if the customer had agreed to pay the additional amount, she would have received no new benefit, nor would the company have suffered any new detriment. ¹⁶ Such a transaction cannot be considered a binding contract. ¹⁷

B. The Doctrine of Duress

In addition to needing consideration to form a contract, there must be consent. One doctrine governing whether consent exists is the doctrine of duress. Even if a customer knowingly enters into a contract with her utility imposing liability for the debt of a third party, that contract provision is voidable because it is contaminated by duress.

The general doctrine of duress today is that any threat which overcomes the free will of a party constitutes duress. ¹⁸ The doctrine of duress makes the customer's consent to be bound by the roommate's prior debt in order to avoid the disconnection of service

¹⁵*Id.* at 415.

¹⁶*See*, 17 AM. JUR. 2D *Contracts* §§85, 96 (1964).

¹⁷*Meridian*, 83 So. at 414.

¹⁸*See e.g.*, *Kaplan v. Kaplan*, 25 Ill. 2d 181, 182 N.E.2d 706, 709 (1962).

irrelevant in that the presence or not of consent is not at issue. Consent is conceded; the argument is that the consent was coerced and thus not a product of free will.

Because of the monopolistic position of utility companies, public utilities are particularly subject to claims of duress when they threaten to breach a contract by disconnecting service.¹⁹ The threat of service termination, combined with the monopolistic character of a utility, raises the specter of duress.

. Remedies for duress are primarily aimed at the cancellation of the unjust gain.²⁰ Coerced payment of an unrelated third party's debt by an innocent customer represents such a gain.

In sum, a public utility may not unilaterally impose an obligation upon a customer without some manifestation of consent. Even if consent is obtained, it must be obtained without duress, and there must also be some exchange of consideration. Without all of these elements of a contract, any effort to disconnect service for nonpayment of the roommate's old debt is invalid and unlawful.

II. No Implied Contract

While utilities frequently argue that there is an implied obligation to pay, this argument is not grounded in the law. Generally, when there is an express contract between a utility company and one of its customers, such an agreement will not support liability by parties other than the person who has contracted.²¹ Thus, when an applicant for service enters into an express contract for the service, liability for that service cannot be transferred to a person not a party to the express contract.²²

¹⁹See, John Dalzell, *Duress by Economic Pressure*, 20 N.C.L. REV. 237 (1942).

²⁰See, RESTATEMENT (SECOND) OF CONTRACTS §318, cmt. a; *see also*, John P. Dawson, *Economic Duress--An Essay in Perspective*, 45 MICH. L.REV. 253, 283-85 (1947).

²¹See *e.g.*, *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

²²"Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and

The basic doctrine is very clear. One legal encyclopedia states, for example, that : "As a general rule, if an express contract between the parties is established, a contract embracing the identical subject cannot be implied; in such a case, an implied agreement cannot co-exist with the express contract."²³

Moreover, this encyclopedia continues:

There may be a contract implied in law on a point not covered by an express contract, but there is no implied contract on a point fully covered by an express agreement.²⁴

Both of these propositions, that involving implied-in-fact contracts and that involving implied-in-law contracts, will be discussed in more detail below.

A. Implied-in-Fact Contracts.

The courts will not find a contract implied in fact where an express contract exists. Application of implied-in-fact contracts has been denied even when the attempted transfer of liability for a utility bill is based on the argument that the person resided with the person who contracted for service, and used the service or benefited from that service, and thus has an implied-in-fact contract to pay for that service.²⁵ For an implied-in-fact contract to arise, the court must find there was an intention to form a contract even though the intention was never put into words.²⁶ If the utility has entered into an *express* contract with a different person, that finding of intention cannot be made.²⁷ The reason for

who did nothing to assume its obligations." *Gold v. Gibbons*, 3 Cal. Rptr. 117, 118 (1960).

²³ 17A AM. JUR. 2D *Contracts* §14 (1990).

²⁴ 17A AM. JUR. 2D *Contracts* §14 (1990).

²⁵ See e.g., *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

²⁶ See e.g., *Travelers Fire Ins. Co. v. Brock & Co.*, 47 Cal. App. 2d 387, 392, 118 P.2d 25, 27 (1941) ("A contract implied in fact is one not expressed by the parties, but implied from facts and circumstances showing a mutual intention to contract.")

²⁷ The California courts have been unequivocal on this point. "Indeed, there simply cannot exist a valid express contract on the one hand and an implied contract on the other, each embracing the identical subject but requiring different results and treatment." *Tollefson v. Roman Catholic Bishop of San Diego*, 268 Cal. Rptr. 550, 557, 219 Cal. App. 3d 843 (Cal. App. 4th Dist. 1990) (citations omitted); see also, *Wal-Noon Corp. v. Hill*, 45 Cal. App. 3d 605, 613, 119 Cal. Rptr. 646

this rule is "simply that where the parties have freely, fairly and voluntarily bargained for certain benefits in exchange for undertaking certain obligations, it would be inequitable to imply a different liability and to withdraw from one party benefits for which he has bargained and to which he is entitled."²⁸

The principle particularly applies if the party seeking to recognize an implied-in-fact contract has proceeded on the notion that the contract "was a valid, subsisting, enforceable contract."²⁹ The local utility company and the customer (i.e., the person entering into the express contract) have "freely, fairly and voluntarily" entered into a bargain: the utility company agreed to provide service and the customer agreed to pay for it. Through the contract, the utility company obtained the benefits of the sales of its service (and the profit in each unit charge). Having obtained the benefits of the express contract, and having asserted the contract as a "valid, subsisting, enforceable" agreement each time it rendered a bill, the utility company cannot seek later to abandon the express contract and to proceed on an implied contract theory against a third person.³⁰

B. Implied-in-Law Contracts.

For an implied-in-law contract (or recovery in *quantum meruit*) to exist, a utility must show an absence of *both* an express contract *and* an implied-in-fact contract.³¹ In addition, someone must have acted wrongfully towards the utility company and the person to be charged must have been unjustly enriched for an implied-in-fact contract to

(Cal. App. 3d Dist. 1975) ("There cannot be a valid, express contract and an implied contract, each embracing the same subject matter, existing at the same time."). For application of this principle to the collection of telephone debts from a third party, see *N.Y. Tel. Co. v. Teichner*, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

²⁸*Wal-Noon*, 45 Cal. App. 3d at 613.

²⁹*Id.*

³⁰"Until an express contract is avoided, an implied contract, essential to an action on a common count cannot arise, and it necessarily follows that until an express contract is avoided, an action on an implied contract cannot be maintained. . . A party cannot retain substantial benefits under an express contract and recover under the theory of an implied contract." *Lloyd v. Williams*, 227 Cal. App. 2d 646, 649, 38 Cal. Rptr. 849 (1964) (citations omitted).

³¹*See*, note 25 and accompanying text. For purposes of this discussion, seeking recovery under an implied-in-law contract is deemed to be identical to seeking recovery in *quantum meruit*.

arise.³² The "wrongful" behavior must involve some behavior such as deceit, oppression or extortion.³³

There are three "familiar, essential elements of recovery under *quantum meruit*."³⁴ All three elements must be met.³⁵ First, there must be valuable services rendered to the person sought to be charged. Second, the services must have been accepted by the person sought to be charged, used and enjoyed by that person. Finally, and most importantly for purposes here, the acceptance must have been under such circumstances as "would reasonably inform the person sought to be charged that plaintiff, in performing such services, was expecting to be paid *by the person sought to be charged*."³⁶ In short, an implied-in-law contract is not a "contract" at all, but rather an equitable doctrine that involves a legal fiction created so that a person who benefits from the use of a particular service is not unjustly enriched by such use.³⁷

The key term in this test is "unjust" enrichment. As the courts have made clear, "to recover on this theory, *it is not enough to show that goods or services were furnished to another . . .*"³⁸ Rather, "it must also be shown . . . that the person to whom the goods or services were furnished received a substantial benefit therefrom and that it would be unconscionable to permit him to retain the benefit without paying for its reasonable value."³⁹

As a matter of law, where an express contract exists, an implied-in-law contract cannot be found.⁴⁰ More particularly, if an express contract exists under which one person is the party responsible for paying for services, an implied-in-law contract will not

³² N.Y. Tel. Co. v. Teichner, 69 Misc. 2d 135, 137, 329 N.Y.S.2d 689, 692 (N.Y.D.C. 1972).

³³ See, Roger D. Colton, *Heightening the Burden of Proof in Utility Shutoff Cases Involving Allegations of Fraud*, 33 HOW. L.J. 137 (1990).

³⁴ Fontaine v. Home Box Office, 654 F. Supp. 298, 303 (C.D. Cal. 1986) (construing California law).

³⁵ *Id.*

³⁶ *Id.* at 303 (emphasis added).

³⁷ *Id.*

³⁸ Harold A. Newman Co. v. Nero, 31 Cal. App. 3d 490, 107 Cal. Rptr. 464, 468 (5th Dist. 1973). (emphasis added)

³⁹ *Id.*

⁴⁰ Wal-Noon Corp. v. Hill, 45 Cal. App. 3d 605, 613, 119 Cal. Rptr. 646 (Cal. App. 3d Dist. 1975).

serve to transfer liability to a third party. An implied-in-law contract will not substitute one promisor or debtor for another.⁴¹ If there is an express contract for one person to pay the utility bill, the last of the three essential elements for recovery in *quantum meruit* is not met: that the utility provided the service "expecting to be paid *by the person sought to be charged*."⁴²

Moreover, courts have articulated a number of factors to consider regarding whether it would be "unconscionable to permit [one] to retain the benefit without paying for its reasonable value."⁴³ For example, in the instance of the rendition of *services*, a third person is less likely to be charged in *quantum meruit* since the person sought to be charged does not have the opportunity to choose to return the services as an alternative to payment.⁴⁴ Second, it would be inequitable to impute the charges to a third party since the third party did not control the usage nor have any power to restrict or interrupt the rendition of the service.⁴⁵

A related and persuasive line of reasoning was followed in the Michigan case of *Cascaden v. Magryta*.⁴⁶ In that case, certain contractors made repairs to a fire-damaged home at the request of the insurance company adjusters. When the insurance company subsequently denied payment for the work, the contractors sought recovery from the owner of the property based on theories of both implied-in-fact contract and implied-in-law contract. The court denied recovery under an implied-in-fact contract theory, noting:

⁴¹See e.g., *Moll v. Wayne County*, 332 Mich. 274, 50 N.W.2d 881 (1952); *City of Detroit v. City of Highland Park*, 326 Mich. 78, 39 N.W.2d 325 (1949).

⁴²*Fontaine v. Home Box Office*, 654 F. Supp. 298, 303 (C.D. Cal. 1986)..

⁴³See *infra* note [] and accompanying text.

⁴⁴*Wal-Noon*, 45 Cal. App. 3d at 613 (distinguishing the payment of money or the delivery of goods).

⁴⁵See, *Griffith Co. v. Hofues*, 201 Cal. App. 2d 502, 19 Cal. Rptr. 900, 904 (5th Dist. 1962) (finding that defendant had not requested the services, and, at the time services were being rendered, defendant was in no position to stop it); *accord*, *City of Detroit*, 39 N.W.2d at 334 (finding that in denying recovery under implied-in-law contract, or *quantum meruit*, the courts must consider the fact that "it would be impractical if not impossible for defendant to refuse to accept the services. . . .")

⁴⁶*Cascaden v. Magryta*, 247 Mich. 267, 225 N.W. 511 (1929).

[T]he work was not done and the materials not furnished under circumstances authorizing plaintiffs to entertain an expectation of payment from defendants. The plaintiffs expected the insurance company to make payment out of the insurance, and only after denial of liability by the adjuster did they seek to fasten liability upon defendants, under an implied contract.⁴⁷

The court denied recovery under an implied-in-law contract, stating: "the defendants could not, while the insurance company was exercising the option right to repair, do otherwise than to submit. Out of such submission, no implied contract to pay plaintiffs could arise."⁴⁸

In sum, if the current customer has not contracted for the service or has not been unjustly enriched by receiving the service, the transfer of arrears to the person's account is not permitted. More generally, the fact that there is an express contract for the utility to provide service, and for the contracting party to pay for the service provided, prevents the imposition of third party liability in all but the most limited of circumstances. When an express contract exists, a third person not a party to that contract cannot be held liable for payment of arrears under either an implied-in-fact contract theory or an implied-in-law contract theory.

III. Disconnection for Collateral Matter.

Any threat to disconnect service for nonpayment of another's bill must be analyzed in light of basic utility regulatory law in addition to contract law. One regulatory principle is that a customer must pay for service that she has taken.

⁴⁷*Id.* at 512.

⁴⁸*Id.*

Conversely, however, if a customer requests service and pays for it, the utility may not deny it.⁴⁹

In addition to paying for the service they take, utility customers have a duty to comply with the reasonable regulations of the utility.⁵⁰ For a disconnection to be predicated upon a violation of a utility regulation, however, the regulation must be found to be reasonable. Among those regulations universally held *not* to be reasonable include disconnecting service for a collateral matter,⁵¹ disconnecting service for nonpayment of a third party's debt;⁵² and disconnecting service for nonpayment of an unrelated service.⁵³

The utility practice examined in this article seeks to accomplish one of two ends: either (1) to obtain payment from the customer for a debt with which the customer has no connection; or (2) to force the customer to refuse to live with a person who has a pre-existing debt. Both goals run afoul of the rule on collateral matters.

It has been well established that a utility has no legally enforceable interest in obtaining payment for the debt of a third party. In *Koger v. Guarino*, for example, a federal district court held that a utility "has no legitimate interest in collecting delinquent water bills from those who have no responsibility therefor."⁵⁴ According to the *Koger* court, "a collection scheme that divorces itself entirely from the reality of legal accountability for the debt involved is devoid of logical relation to the collection of unpaid water bills from the defaulting debtor."⁵⁵ The first of the two possible grounds for

⁴⁹See e.g., *Denver Welfare Rights Org. v. Pub. Util. Comm'n*, 190 Colo. 329, 547 P.2d 239 (1976) (Clearinghouse No. 12,655); *Josephson v. Mountain Bell Tel. and Tel. Co.*, 576 P.2d 850 (Utah 1978); *Miller v. Roswell Gas and Elec. Co.*, 166 P. 1177 (N.M. 1917); *Komisarek v. New England Tel. and Tel. Co.*, 282 A.2d 671 (N.H. 1971).

⁵⁰64 AM. JUR. 2D *Public Utilities* §16 (1972).

⁵¹Annotation, *Right of public utility corporation to refuse its service because of collateral matters not related to that service*, 55 A.L.R. 771 (1928).

⁵²C. C. Marvel, Annotation, *Liability of Premises, or Their Owner or Occupant, for Electricity, Gas, or Water Charges, Irrespective of Who is the User*, 19 A.L.R.3D 1227 (1968).

⁵³Maurice T. Brunner, *Right of Municipality to Refuse Services Provided by it to Resident for Failure of Resident to Pay for Other Unrelated Services*, 60 A.L.R.3D 714 (1974); but see, Annotation, *Right to cut off water supply because of failure to pay sewer service charge*, 26 A.L.R.2D 1359 (1952).

⁵⁴*Koger v. Guarino*, 412 F. Supp. 1375, 1392 (E.D. Pa. 1976) (Clearinghouse No. 18,181).

⁵⁵*Id.*; accord, *Sterling v. City of Maywood*, 579 F.2d 1350 (7th Cir. 1978).

the utility regulation in question, therefore, provides no reasonable basis for disconnecting service.

Neither does the utility have a basis for forcing the customer to refuse to live with a person with a pre-existing debt from a prior address. If the new roommate results in future bills going unpaid, the utility has a remedy at that time. A utility can unquestionably terminate its provision of service for nonpayment of a current bill.⁵⁶

The rule banning the disconnection or denial of service for collateral matters is strictly enforced. Numerous courts, for example, have supported the principle that utility companies may not coerce payment of an old utility bill from a previous residence by refusing or terminating service at a new residence.⁵⁷ This is so because the previous bill was based on a separate contract involving separate premises.

In *Elwell v. Atlanta Gas and Electric Company*,⁵⁸ the court stated:

If in the case at bar, the former claim was a past-due indebtedness and was incurred at some other place of residence and was a wholly separate transaction, it must be collected in the usual way in which debts are collectible, and the defendant cannot force from the plaintiff his present right, under the contract, to the gas service, which is a necessity, so long as the plaintiff will promptly pay current installments and otherwise conform to the reasonable rules governing the supply of gas. The relation of the parties to each other (growing out of their past separate transactions) have no influence upon their rights and obligations in their present transaction.⁵⁹

⁵⁶See e.g., Annotation, *Right to Cut Off Water Supply Because of Nonpayment of Water Bill or Charges for Connection, etc.*, 28 A.L.R. 472 (1924); Annotation, *Right to Cut Off Supply of Electricity or Gas Because of Nonpayment of Service Bill or Charges*, 112 A.L.R. 237 (1938).

⁵⁷Wright v. So. Bell Tel. and Tel. Co., 313 S.E.2d 150, 169 Ga. App. 454 (1984); *Elwell v. Atlanta Gas and Light Co.*, 181 S.E. 599, 51 Ga. App. 919 (1935); *Miller v. Roswell Gas and Elec. Co.*, 166 P. 1177, 22 N.M. 594 (1917); *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd* 224 U.S. 148, 56 L.Ed. 703, 32 S.Ct. 465 (1912).

⁵⁸*Elwell*, 181 S.E. 599.

⁵⁹*Id.* at 601.

Some courts have even held that where the same customer has separate but current contracts for utility service at different locations, the utility company may not terminate service at one location because of a default at another.⁶⁰ Similarly, a utility may not withhold service to a new customer until he or she pays the delinquent bill of a prior customer who formerly lived at the same residence.⁶¹

IV. Consumer Credit Law

The reasonableness of a utility seeking to impose the debt of a roommate on a customer who has no connection with the incursion of that debt should be considered from the perspective of the roommate/debtor, as well as from the perspective of the customer. Any regulation or tariff must, to be enforceable, pass the test of being just and reasonable.⁶² Whether imposed by statute on utilities subject to state public utility commission regulation, or imposed by the common law on otherwise unregulated utilities, the duty to render just and reasonable service precludes the enforcement of unreasonable requirements or regulations.⁶³

Aside from the protections discussed above that extend to the customer of the utility, some protections extend to the debtor/roommate as well. The utility has no legitimate interest in even disclosing the existence of the prior debt to anyone other than the debtor/roommate herself. The customer, in other words, should not even be informed of the prior debt to the utility.

⁶⁰Josephson v. Mountain Bell Tel. and Tel. Co., 576 P.2d 850 (Utah 1978); Komisarek v. New England Tel. and Tel. Co., 282 A.2d 671, 111 N.H. 301 (1971).

⁶¹Oliver v. Hyle, 513 P.2d 806 (Ore. 1973) (Clearinghouse No. 7,391); Bettini v. City of Las Cruces, 485 P.2d 967 (N.M. 1971); Moore v. Metro. Util. Co., 477 P.2d 692 (Okla. 1970) (Clearinghouse No. 4,387).

⁶²National Consumer Law Center, *The Regulation of Rural Electric Cooperatives*, at nn. 1 – 6 (“In contrast to legislative and constitutional restraints on public utilities is the common law duty to serve. The fundamental common law “rule” requires a utility to serve on reasonable terms all those who desire the service it renders. . . In short, under the common law, a utility must make its service available to all members of the public to whom its public use and scope of operations extend, who apply for such service, and who comply with its reasonable rules and regulations.”)

⁶³Id., at nn 8 – 11 (“The duty of a public utility “is one implied at common law and need not be expressed by statute, or contract, or in the charter of the public utility.”) (“The duty may well be incorporated into state statutes for regulated utilities.”)

Even though the federal Fair Debt Collection Practices Act is not directly applicable -- a utility collecting its own debt is not a "debt collector" under the statute -- the language, reasoning and legislative history of the Act certainly give insights into whether disclosure of the roommate/debtor's debt is either just or reasonable.⁶⁴ The Act prohibits a debt collector from communicating with any person other than the debtor (with very narrow exceptions not relevant herein, such as the debtor's attorney, the debt collector's attorney, a credit reporting agency) absent the debtor's consent.⁶⁵ Since the Act is not directly applicable, however, the legislative history is most important for gleaning lessons as to the reasonableness of the utility practice at issue here. According to the Senate Report:

[T]his legislation adopts an extremely important protection [I]t prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives or employer. *Such contacts are not legitimate collection practices* and result in serious invasions of privacy. . . .⁶⁶

Roommates are third persons like "friends," "neighbors," or "relatives." Moreover, the particular activities prohibited in the legislation make clear that the legislation contemplates the inclusion of roommates among those whom debt collectors may not contact. For example, in the event a debt collector makes a collect phone call, he violates the Act if he specifies to the operator the collection purpose of the call and the operator in turn conveys the information to a third-party answering the phone. In addition, a debt collector may not use a name or other information on an envelope indicating that its contents pertain to a debt collection.⁶⁷

⁶⁴Fair Debt Collection Practices Act, 15 U.S.C. §1692 (1994).

⁶⁵15 U.S.C. §1692c(b) (1994).

⁶⁶SEN. REP. NO. 95-382, at 4 (1977) (emphasis added).

⁶⁷*See generally*, ROBERT HOBBS, FAIR DEBT COLLECTION §5.6.8 (4th ed. 2000). In addition to being unlawful under federal law, the action would be unlawful under state debt collection practices acts. *Id.* at § 11.2.3.

Contacting third persons such as a consumer's friends, neighbors or relatives, Congress has declared, is not a legitimate collection practice. Even though the Fair Debt Collection Practices Act is not directly applicable to a public utility, a commission or court reviewing the reasonableness of disclosing to a utility customer a roommate's debt, which was incurred at a prior address with which the customer had no connection, should hold to this same privacy principle and disapprove the practice.⁶⁸

A public utility may not threaten to terminate service, or refuse to provide service, to a customer because of the presence of a roommate who has a debt at a separate address with which the customer has no connection. If such a threat arises, the utility customer has several avenues of redress. Basic principles of contract and utility law prohibit this practice. In addition, quite apart from the customer, the roommate with the prior debt has grounds for redress as well. Not only should the customer be free of responsibility for the prior debt, the customer should be free of any *knowledge* of the prior debt without the roommate's express consent.

⁶⁸Even where the utility is not covered by a debt collection practices act, the activity may well be unlawful under a state Unfair and Deceptive Acts and Practices statute. *Id.* at § 11.3.

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