**STATE OF IOWA**
**BEFORE THE IOWA DEPARTMENT OF PUBLIC HEALTH**

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|---|---|---|
| In Re. | * | |
| | * | |
| Iowa Department of Human Rights | * | |
| Petition for Rulemaking Regarding | * | Petition for Rulemaking and |
| Prior Authorization of the Disconnection or | * | Related Relief |
| Discontinuance of Home Energy Service | * | |
| Where Disconnection Poses | * | Docket _____ |
| a Health or Safety Threat to | * | |
| Households with Children and Asking | * | |
| For Related Relief | * | |

**PETITION FOR RULEMAKING AND RELATED RELIEF**

**COMES NOW**, the Iowa Department of Human Rights, by and through its undersigned representative, and submits this Petition for Rulemaking and Related Relief, stating in support as follows:

## I. Jurisdiction and Authority.

1. This Petition for Rulemaking and Related Relief is filed pursuant to Section 17A.7, Iowa Code (2005), providing that "an interested person may petition an agency requesting the adoption, amendment, or repeal of a rule." This Petition is further filed pursuant to Title 641 I.A.C. §741.1(1) (2005), which provides that "any person or agency may file a petition for rule making with the Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319–0075."
2. This Petition for Rulemaking and Related Relief is filed pursuant to Section 135.11(14), Iowa Code (2005), providing that the Director of the Iowa Department of Public Health may "establish, publish and enforce rules not inconsistent with law. . .for the enforcement

of the various laws, the administration and supervision of which are imposed upon the department."

3. This Petition for Rulemaking and Related Relief is filed pursuant to Section 135.11(1), Iowa Code (2005), providing that the Director of the Iowa Department of Public Health "exercises general supervision over the public health."

4. The Director of the Department of Public Health has broad authority under the Department's general supervisory powers over the public health.

> Before the Board's regulation may be imposed on behalf of the public, it must appear (1) that the interests of the public require such interference; and (2) that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." (citations omitted).
>
> * * *
>
> The basic issue of reasonableness of a safety or health measure involves analysis of: "such things as the nature of the menace against which it will protect, the availability and effectiveness of other less drastic protective steps, and the loss which appellants will suffer from the imposition of the ordinance."

*Kasparek v. Johnson County Board of Health*, 288 N.W.2d 511, 517 (Iowa 1980) (quoting *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 – 595 (1962)). The fact that the Petition for Rulemaking and Related Relief meets the two-pronged *Kasparek* test is supported by the discussion below.

5. Protection of the public health is of "paramount importance," and the powers of the State Department of Public Health are broad and are to be liberally construed so as to protect the public health.

> It is unquestionably true that the preservation of the public health is of paramount importance to the state at large, as well as to local communities, and that the state, in the exercise of its police powers, may confer upon the state and local boards of health whatever powers are deemed necessary for the preservation of the general health of a community or of the state. It may, per-

> haps, be conceded that, even in the absence of express statutory authority so to do, the authorities of a local community would have inherent or implied power to adopt such rules and regulations as were reasonably necessary for the preservation of the public health of such community; but, whenever the state has expressly conferred such power, it must be exercised as provided in the grant. The policy of the law of this, as well as most of the other states, has been to confer great power upon those boards; and it may be conceded that, so far as the exercise of those powers is concerned, a liberal construction should be given to the rules and regulations adopted by such board.

*State v. Kirby*, 94 N.W. 254 (Iowa 1903).

6. A state department of public health has "sweeping and fluidly defined powers to deal with an unfolding and unpredictable emergency." Warren Kaplan, "Massachusetts Disease Control Law in the 21st Century: Running in Place?", 87 *Massachusetts Law Review* 84, 89 (2002).

7. A state department of public health can consider the implications of certain health and safety risk to particularly vulnerable populations in making a determination of whether a public health emergency, emergent or present, exists. While the state department of public health may clearly invoke its authority to respond to the outbreak of contagious disease, the authority of the department is equally clearly not limited exclusively to such disease-related health issues.[1]

8. In 1988, the Institute of Medicine defined public health as "what we, as a society, do collectively to ensure the conditions in which people can be healthy."[2] Explicitly relying on this definition, local public health officials in Iowa have identified a variety of public health issues through the State Department of Public Health's *Community Health Needs*

[1] Robert Pestronk et al., "Public Health in Court: Who's to Judge?," 32 ***J.L. Med. & Ethics*** 47, 47 – 48 (2004). See also, Lawrence Gostin, "Public Health Law in a New Century: Part I: Law as a Tool to Advance the Community's Health," 283 ***J. Am. Med. Ass'n*** 2837 (2000); "Part II: Public Health Powers and Limits," 283 ***J. Am. Med. Ass'n*** 2979 (2000); "Part III: Public Health Regulations: A Systematic Evaluation," 283 ***J. Am. Med. Ass'n*** 3118 (2000) (hereafter Gostin, JAMA I, II, III).

[2] Institute of Medicine (1988). ***The Future of Public Health***, at 1, National Academies Press: Washington D.C.

*Assessment and Health Improvement Plan*. For example, "injury control," as well as "housing conditions," are explicitly identified as public health issues in the Iowa Department of Public Health's *Community Health Needs Assessment and Health Improvement Plan* planning process.

9. The *2005 Iowa Health Fact Book* states, also, that "the environment plays a role in many public health issues previously discussed. . .In Iowa, public health officials are especially concerned with. . .safe housing. . ."[3] Moreover, the *2005 Iowa Health Fact Book* states that "injuries are the leading cause of death in persons age 1-34 and contribute the most to years of lost life (YLL), particularly for those events of pre-adult age."[4] The close connection between the relief sought in this Petition and housing conditions, as well as the close connection between this Petition and injuries to children, will be described in detail below.

10. The Iowa Department of Public Health's *Strategic Plan* for 2000-2005 reports that the "Guiding Principles" for the Department of Public Health includes "initiating activities" and "responding to emerging issues." The narrative below identifies one such "emerging issue" in the public health arena as the involuntary disconnection of home energy service to households with children. In particular, Goal III of the *Strategic Plan* included "eliminate health disparities," with the "outcome" being defined to include "provide risk reduction and prevention services to ensure improved health status."

11. Not only does the state Department of Public Health have *jurisdictional* authority to act on the public health problem posed by the disconnection of home energy service to households with children, it also has a public policy justification to address the issue as

[3] University of Iowa and Iowa Department of Public Health (July 2005). ***2005 Iowa Health Fact Book***, at 225, University of Iowa College of Public Health: Iowa City (IA).

outlined in the narrative discussion below and verified by the Affidavit of Roger D. Colton attached to this Petition.

## II. Jurisdiction for Related Relief.

12. The related relief requested in this Petition for Rulemaking and Related Relief is filed pursuant to Section 135.11(4), Iowa Code (2005), providing that the Director of the Iowa Department of Public Health may "make investigations and surveys in respect to. . .the effect of. . .living conditions upon the public health."

13. The related relief requested in this Petition for Rulemaking and Related Relief is authorized in part by Section 135.11(4), Iowa Code (2005), which provides that in undertaking "investigations and surveys in respect to. . .the effect of. . .living conditions upon the public health," the Director of the Iowa Department of Public Health "may use the services of the experts connected with the state hygienic laboratory at the state University of Iowa."

14. The related relief requested in this Petition for Rulemaking and Related Relief is authorized in part by Section 135.11(26), providing that the Director of the Iowa Department of Public Health may "establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available."

## III. The Public Health Need for Prior Authorization of Home Energy Shutoffs Households with Children.

15. The disconnection of electricity and/or natural gas service represents a distinct public health threat, particularly to low-income households with children. The impact of such

[4] ***2005 Iowa Health Fact Book***, *supra*, at 133.

service disconnections on the public's health and safety can hardly be debated in light of recent research. Recent Congressionally-funded research undertaken on behalf of the National Energy Assistance Directors Association (NEADA) examined the impact that unaffordable home energy bills have on low-income households with children. According to the 2005 NEADA study (hereafter "NEADA 2005"),[5] 38% of households receiving benefits through the Low-Income Home Energy Assistance Program (LIHEAP) had one or more children aged 18 or younger; 12% of the surveyed LIHEAP population had one or more children age 5 or younger. These households with children tended to be very low-income. More than two-thirds of each population had income at or below 100% of the Federal Poverty Level.

| **LIHEAP Recipient Households with Children by Ratio of Income to Federal Poverty Level** | | |
|---|---|---|
| Federal Poverty Level | With Children =<18 Years Old | With Children =<5 Years Old |
| 0 – 50% Poverty Level | 26% | 25% |
| 51 – 100% Poverty Level | 43% | 46% |
| 101 – 150% Poverty Level | 16% | 18% |
| >150% Poverty Level | 15% | 11% |
| NEADA 2005, at 12 | | |

16. These low-income home energy assistance recipients frequently face the loss of utility service due to their inability to pay. According to the NEADA survey, between 8% and 11% of households with children age 18 or younger faced the loss of electric service in 2003 and 2005. Roughly 1-of-6 low-income households with children under age 18 (16%) had ***either*** natural gas ***or*** electricity (or both) disconnected due to nonpayment in

[5] Apprise, Inc. (September 2005). ***2005 National Energy Assistance Survey: Final Report***, at 9, National Energy Assistance Directors' Association: Washington D.C.

2005. Not surprisingly, this loss of service was most heavily concentrated in the lowest income bracket.

**Electricity or Natural Gas Shutoff for Nonpayment by Presence of Children and by Income Below 50% of Federal Poverty Level (FPL)**

| | Electricity Shutoff for Nonpayment | | | | Natural Gas Shutoff for Nonpayment (2005) /a/ | | Natural Gas *or* Electricity Shutoff (2005) /a/ | |
|---|---|---|---|---|---|---|---|---|
| | Children Under Age 18 | | Income < 50% FPL | | | | | |
| | 2003 | 2005 | 2003 | 2005 | Children Under Age 18 | Income < 50% FPL | Children Under Age 18 | Income < 50% FPL |
| Yes | 11% | 8% | 13% | 12% | 11% | 18% | 16% | 22% |
| No | 88% | 92% | 86% | 88% | 89% | 82% | 4% | 78% |
| No response | 1% | 0% | 1% | 0% | 0% | 0% | 0% | 0% |

NEADA 2005, at 43 – 45.

NOTES:

/a/ 2003 data not available.

17. The loss of access to home heating fuels clearly leads to the corresponding loss of a householder's ability to heat his or her home. According to the 2005 NEADA study, nearly 1-in-7 households (14%) were unable to use the main source of heating for their homes because a utility had disconnected natural gas or electric service.

**Could not Use Main Source of Heating Either Because Could not Afford Fuel Delivery or Because Utility Disconnected Electricity and/or Natural Gas by Presence of Children and by Income Below 50% of Federal Poverty Level (FPL)**

| | Could Not Pay for Fuel Delivery | | | | Utility Disconnected Gas and/or Electricity | | | |
|---|---|---|---|---|---|---|---|---|
| | Children Under Age 18 | | Income < 50% FPL | | Children Under Age 18 | | Income< 50% FPL | |
| | 2003 | 2005 | 2003 | 2005 | 2003 | 2005 | 2003 | 2005 |
| Yes | 11% | 11% | 9% | 18% | 14% | 14% | 15% | 17% |
| No | 89% | 89% | 91% | 82% | 86% | 86% | 85% | 81% |
| No re-sponse | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 1% |

NEADA 2005, at 48 – 49.

18. The loss (and threatened loss) of home heating service has significant health consequences to these low-income households with children. NEADA found that survey respondents reported becoming ill because their home was too cold in the winter heating months. Nearly 1-in-6 of all energy assistance recipients reported that someone in the home became sick because the home was too cold in the past five years. While clearly the lack of health insurance for all household members exacerbated this impact, the fact that a household might have health insurance for all household members did not prevent this adverse health care outcome. In 2005, 14% of energy assistance recipients reported that someone in the household became sick because the house was too cold, even though all members of the household were covered by health insurance.

**Someone In Home Became Sick Because the House was Too Cold within the Past Five Years**

| | Some Became Sick | | Number of Household Members with Health Insurance (2003) | | | Number of Household Members With Health Insurance (2005) | | |
|---|---|---|---|---|---|---|---|---|
| | 2003 | 2005 | All | Some | None | All | Some | None |
| Yes | 16% | 16% | 13% | 24% | 27% | 14% | 21% | 17% |
| No | 83% | 83% | 86% | 76% | 72% | 84% | 79% | 82% |
| No response | 1% | 1% | 1% | 0% | 0% | 1% | 1% | 1% |

NEADA 2005, at 69 – 70.

19. These illnesses were frequently severe enough to require medical treatment. In both 2003 and 2005, 11% of the surveyed energy assistance recipients reported that someone in the home had become ill enough to require going to a doctor or hospital because the home was too cold in the past five years.

| Someone in House Needed to go to the Doctor or Hospital Because the House was Too Cold within the Past Five Years | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Needed Medical Care | | Number of Household Members with Health Insurance (2003) | | | Number of Household Members with Health Insurance (2005) | | |
| | 2003 | 2005 | All | Some | None | All | Some | None |
| Yes | 11% | 11% | 9% | 13% | 18% | 10% | 14% | 9% |
| No | 5% | 4% | 4% | 10% | 9% | 3% | 3% | 7% |
| N/A | 0% | 1% | 0% | 1% | 0% | 1% | 3% | 0% |
| No sick | 84% | 84% | 87% | 76% | 73% | 86% | 79% | 83% |
| NEADA 2005, at 71 – 72. | | | | | | | | |

20. A variety of reasons may contribute to the overall rate of illness, as well as to the rate at which illnesses required medical treatment within the low-income energy assistance recipient population. The first contributing factor to the adverse health outcomes involves the tendency of low-income households to keep their homes at unsafe or unhealthy temperatures with which to begin, given the unaffordability of home energy to the household. Of the households with children under age 18, between 20% and 25% kept their homes at "unsafe or unhealthy temperatures" because they did not have enough money to pay their home heating bills.

21. This impact is felt disproportionately at the lowest income levels. Between roughly 30% and 40% of energy assistance recipients with incomes at or below 50% of the Federal Poverty Level reported to NEADA that they kept their homes at "unsafe or unhealthy temperatures" because they could not afford to pay their home heating bills.

| Kept Home at Unsafe or Unhealthy Temperature Due to Inability to Pay Home Heating Bill by Presence of Children Under Age 18 and by Ratio of Income to Federal Poverty Level | | | | |
|---|---|---|---|---|
| | Children Under Age 18 | | Household Income =< 50% FPL | |
| | 2003 | 2005 | 2003 | 2005 |
| Almost all months | 5% | 5% | 3% | 11% |
| Some months | 13% | 11% | 15% | 23% |
| 1 or 2 months | 7% | 5% | 10% | 4% |
| Never | 74% | 76% | 71% | 56% |
| No response | 0% | 4% | 1% | 6% |
| NEADA 2005, at 38 – 39. | | | | |

22. The second contributing factor associated with the adverse health outcomes is that the unaffordability of home energy underlying the disconnection of service prevents households from taking prescription medicines. One-third of all energy assistance households report that they did not fill a prescription, or that they took less than the full dose of a prescription, because they could not afford the prescription medicine given their home energy bills. Half (or somewhat more) of the households reporting no members with health insurance were forced to skip medicines while fully 30% of households with all members having health insurance did.

| Did Not Fill Prescription or Took Less than Full Prescription Because Could Not Afford Given High Home Energy Bills | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Went w/o Medicine | | Number of Household Members with Health Insurance (2003) | | | Number of Household Members With Health Insurance (2005) | | |
| | 2003 | 2005 | All | Some | None | All | Some | None |
| Yes | 33% | 32% | 29% | 33% | 51% | 28% | 37% | 46% |
| No | 67% | 67% | 71% | 67% | 48% | 71% | 61% | 53% |
| No response | 1% | 1% | 0% | 0% | 1% | 1% | 1% | 1% |
| NEADA 2005, at 69 – 70. | | | | | | | | |

23. A third contributing factor associated with the adverse health care outcomes involves the lack of ability to access health care when needed, because of the inability to pay for such health care given home energy bills. More than one-third of energy assistance recipients, and between 45% and 60% of energy assistance recipients with no household members covered by health insurance, reported going without health or dental care at some point within the past five years due to an inability to pay for that care given high energy bills.

| **Someone in House went without Health/Dental Care in the Past Five Years Due to an Inability to Pay for such Care Given High Home Energy Bills** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Went w/o Care | | Number of Household Members with Health Insurance (2003) | | | Number of Household Members With Health Insurance (2005) | | |
| | 2003 | 2005 | All | Some | None | All | Some | None |
| Yes | 36% | 35% | 30% | 48% | 58% | 29% | 52% | 45% |
| No | 64% | 64% | 70% | 51% | 42% | 71% | 48% | 53% |
| N/A | 0% | 1% | 0% | 2% | 0% | 0% | 0% | 2% |
| NEADA 2005, at 64. | | | | | | | | |

24. A fourth contributing factor to the adverse health care outcomes is the lack of nutrition associated with unaffordable home energy bills. The NEADA 2005 survey reported that nearly 1-in-5 energy assistance households were forced to go without food for at least one day because they could not afford food given their high home energy bills. Nearly 1-in-3 households where all household members lacked health insurance were forced to go without food for at least one day in the past five years because they could not afford to pay for the food given their high energy bills.

| Went without Food for at Least One Day in the Past Five Years Due to an Inability to Pay for such Food Given High Home Energy Bills | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Went without Food | | Number of Household Members with Health Insurance (2003) | | | Number of Household Members With Health Insurance (2005) | | |
| | 2003 | 2005 | All | Some | None | All | Some | None |
| Yes | 19% | 20% | 16% | 29% | 31% | 18% | 19% | 30% |
| No | 80% | 80% | 84% | 71% | 69% | 81% | 81% | 70% |
| NEADA 2005, at 64. | | | | | | | | |

25. Karen Ford, Executive Director of the Food Bank of Iowa, cited the association of high heating costs with the "lack of food," as well as with "heat or eat" decisions, as recently as November 27, 2005. "State of plenty, state of hunger: Lack of food carries many consequences," *Des Moines Sunday Register*, at OP-1 (Sunday, November 27, 2005).

26. The opinions expressed by Ms. Ford, and asserted in this Petition for Rulemaking and Related Relief, are supported by considerable public health research. Food insecurity[6] has verified adverse public health outcomes for children. Myers et al. report that "we have shown previously that household food insecurity is associated with adverse health outcomes in children; others have shown an association between a related measure of child hunger and children's health and mental health. Thus, household food insecurity identifies a population of children at high risk."[7] The 2005 report cited multiple studies further documenting the connection.[8] The "housing costs" studied by Myers et al. include, home energy costs.

[6] Food insecurity involves not merely going without food, but also involves depending on low-cost food, not being able to afford balanced meals, and not eating enough.

[7] Alan Myers, et al., "Subsidized Housing and Children's Nutritional Status: Data from a Multisite Surveillance Study," ***Archives of Pediatric & Adolescent Medicine***, 159:551-556 (June 2005).

[8] *See*, J.T. Cook, et al., "Food Insecurity is Associated with Adverse Health Outcomes Among Human Infants and Toddlers," ***Journal of Nutrition***, 134:1432-1438 (2004); L. Weinreb, et al., "Hunger: Its Impact on Children's Health and Mental Health," ***Pediatrics***, 110:e41 (2002).

## IV. The Public Safety Need for Notice of Utility Shutoffs of Vulnerable Populations.

27. In addition to the public ***health*** issues discussed above, the disconnection of home heating service represents a distinct public ***safety*** threat as well. The recent Congressionally-funded research undertaken on behalf of the National Energy Assistance Directors Association (NEADA) reports significant safety-related problems associated with the loss of home heating service. According to NEADA, nearly 30% of energy assistance households with children, and nearly 40% of energy assistance households with income at or below 50% of the Federal Poverty Level, were forced to use their kitchen stove or oven to provide heating due to the household's inability to afford their primary heating fuel.

| **Use of Kitchen Stove or Oven to Provide Heating by Presence of Children Under Age 18 and by Ratio of Income to Federal Poverty Level** | | | | |
|---|---|---|---|---|
| | Children Under Age 18 | | Household Income =< 50% FPL | |
| | 2003 | 2005 | 2003 | 2005 |
| Almost all months | 3% | 3% | 4% | 4% |
| Some months | 22% | 13% | 26% | 15% |
| 1 or 2 months | 13% | 13% | 8% | 19% |
| Never | 63% | 70% | 61% | 62% |
| No response | 05 | 1% | 1% | 1% |
| NEADA 2005, at 38 – 39. | | | | |

28. The loss of ***electric*** service (not merely heating service) poses an immediate threat to the health and safety of Iowa households with children as well. NEADA reports that the home electric service that is being disconnected to low-income households is frequently essential to the operation of some medically-necessary equipment in the home. A full 25% of all energy assistance recipients surveyed, that had children under the age of 18, reported that a member of the household used medical equipment that requires electricity.

(NEADA 2005, at 15). A full 6% of all energy assistance recipients surveyed by NEADA reported that the equipment using electricity was used to treat asthma. (NEADA 2005, at 18). Nearly as many (4%) said that someone in the household was taking medication that required refrigeration. (NEADA 2005, at 18).

29. Households that are placed in jeopardy of losing their home heating service, or that actually experience the termination of service, face safety problems associated with a resort to unsafe alternative methods for heating as well. One study of Washington state consumers found that many consumers generate heat by using an alternative fuel source such as a portable heater, the kitchen stove, or a fireplace.[9] Similarly, in North Carolina, of those households losing their primary fuel, nearly one in four (24%) used either portable kerosene heaters or portable electric heaters as their replacement source of heat.[10]

**30.** A move to these auxiliary heating sources opens up the possibility of an associated fire risk for low-income households. While home heating equipment is no longer the *single* most substantial cause of home fires,[11] it remains *one* of the leading factors contributing to fires, as well as to fire-related injuries and deaths. In particular, according to the National Fire Protection Association (NFPA), portable and fixed space heaters present a risk of harm.[12] While portable space heaters are not the major cause of home heating fires, they play a much more substantial role in deaths and injuries. Portable and fixed space heaters (and their related equipment such as fireplaces, chimneys and chimney collectors)

[9] Michael Sheehan, *et al.* (1994). ***An Assessment of Low-Income Energy Needs in Washington State***, at 108, Washington Department of Communities, Trade and Economic Development (CTED): Olympia, WA.

[10] Roger Colton and Roberta Levinson (1991). ***Energy and Poverty in North Carolina***, National Consumer Law Center: Boston.

[11] The term "`homes' refers to one- and two-family dwellings (which includes manufactured homes) and apartments. . ." The share of fires involving heating equipment, NFPA says, "is quite different for the two types of homes." While heating equipment is the second leading cause of fires in one- and two-family dwellings, it was only the seventh highest cause of fires in apartments.

accounted for roughly two of every three (65%) home heating fires in 1998 and three of every four (76%) associated deaths.[13] Each of these devices has a higher death rate per million households using them than do the various types of central heating units or water heaters.

31. Indeed, as of the most recent date for which information is available, portable electric heaters accounted for the highest home heating fire death toll in 10 of the past 14 years.[14] No other cause of home heating fires comes even close to the fatality rate caused by portable heaters and fixed space heaters. In usage-weighted terms, while portable heaters do not cause more fires than central heating units, they are associated with significantly more deaths, and more injuries, than are central units.

**Comparative Risks of Leading Home Heating Devices**
**1994 – 1998 Fire Data and High vs. Low 1997 Usage Estimates**

| Heating Unit Type | Fuel Source | Fires per 10,000 HHs | Civilian Deaths per Million HHs | Civilian Injuries per Million HHs | Direct Property Damage Per HH |
|---|---|---|---|---|---|
| Central Heating Unit | Gas | 0.70 – 0.70 | 0.66 – 0.66 | 3.1 – 3.1 | $0.91 - $0.91 |
| | Liquid | 2.83 – 3.12 | 0.95 – 1.05 | 5.4 – 5.9 | $1.55 - $1.70 |
| | Electric | 1.68 – 3.53 | 0.16 – 0.34 | 2.0 – 4.2 | $0.97 - $2.03 |
| | | | | | |
| Portable Heater | Liquid | 3.66 – 4.57 | 12.31 – 15.39 | 34.9 – 43.6 | $6.84 - $8.55 |
| | Electric | 1.93 – 2.30 | 6.47 – 7.73 | 16.4 – 19.7 | $3.55 - $4.24 |

SOURCE:

John Hall (June 2001). ***U.S. Home Heating Fire Patterns and Trends***, at 65, National Fire Protection Association: Quincy (MA).

32. Moreover, while room gas heaters do not generate the same *fire* deaths as do the portable heaters, because they can cause deaths due to carbon monoxide poisoning from inade-

[12] According to the NFPA, "The causes of fires involving portable or fixed space heaters are dominated by human errors, such as placing them too close to combustibles and lack of maintenance." Id.

quate ventilation, the *overall* risk of room gas heaters is comparable to that of portable kerosene heaters. Portable kerosene heaters have the highest fire death rate relative to the number of households that use them.

33. Low-income households face a particular risk of not only experiencing a home heating fire, but of facing injury and/or death as a result. Poverty, the residential fire rate, and the residential fire death rate, are all significantly associated.

**Fire and Death Rates by Degree of Poverty in U.S. Cities with a Population of More Than 250,000**

| Percent of Persons Below Poverty | Median Residential Fire Rate | Median Residential Fire Death Rate | Number of Cities |
|---|---|---|---|
| 25.1 and over | 179 (80 - 230) | 2.82 (0.55 – 5.22) | 6 |
| 20.1 – 25.0 | 164 (22 – 676) | 2.30 (0.24 – 5.79) | 14 |
| 15.1 – 20.0 | 168 (83 – 389) | 1.27 (0.00 – 2.61) | 17 |
| 10.1 – 15.0 | 147 (79 – 242) | 0.92 (0.09 – 3.37) | 14 |
| 5.1 – 10.0 | 122 (90 – 217) | 0.87 (0.00 – 1.20) | 4 |

SOURCE:

"Burning Issues," at 104, ***NFPA Journal*** (January/February 1996).

34. The Johns Hopkins School of Medicine has documented the fact that public health and safety fire hazards are strongly associated with the termination of service due to nonpayment. In the spring of 2005, Johns Hopkins undertook an analysis of the safety impacts of "power terminations" on households with children.[15] According to Johns Hopkins, over an 18-month period from 2003 - 2004, there were 34 flame injuries admitted to Johns Hopkins Hospital. Of these 34, seven (7) (21%) died. Five (5) of the 34 fires (15%)

[13] Marty Ahrens (June 2001). ***The U.S. Fire Problem Overview Report: Leading Causes and Other Patterns and Trends***, at 55, National Fire Protection Association: Quincy (MA).
[14] ***Home Heating Fire Patterns and Trends***, *supra*, at 13.

were associated with power termination. At least one additional person associated with a power termination died before reaching the hospital.

35. According to Johns Hopkins, three-fifths (60%) of the "power-termination" burn admissions ultimately died. Johns Hopkins reached two significant conclusions based on its data:

- Power termination is associated with a significant subset of fires involving children; and
- If power termination leads to a burn, it has a high probability of being fatal.

36. On a broader scale, the National Fire Protection Association (NFPA) reports data confirming the Johns Hopkins data and conclusions. According to the NFPA, "not being able to afford utilities" is one of the "major factors of increased fire risks" for low-income households. "In poor homes, small portable heaters or space heaters may be used to heat areas much too large for their capacity, and some households supplement heating equipment by turning on their ovens and leaving the door open."[16]

37. Aside from low-income status being associated with an increased incidence of home fires generally, it is associated with deadly fires as well. Several factors contribute to this result, the NFPA has found:

- Not being able to afford smoke detectors. "Three fifths of all home fire deaths occur in the approximately seven percent of homes without detectors."[17] One-third of all homes with detectors that have fires have detectors that are not working.

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[15] Johns Hopkins School of Medicine (April 11, 2005). ***Burn Injuries and Deaths of Children Associated with Power Shut-offs***, at 5, PowerPoint presentation to Maryland Public Service Commission, Baltimore: MD.
[16] "Burning Issues," ***NFPA Journal***, at 104 (January/February 1996).
[17] ***U.S. Fire Problem Overview Report***, *supra*, at 51.

- Not always being able to afford child care and leaving children unattended or unsupervised. Unattended children are those left completely alone with no adult or babysitter to look after them.[18]

- Not being able to afford a telephone. "Without a telephone, the chance of a delay in alarm when reporting a fire to the fire department increases."[19] According to the Federal Communications Commission (FCC), while telephone penetration rates for residential consumers in general exceeds 95%, March 2000 data shows that the penetration rate for households with incomes below $5,000 was only 80.3%. In addition, penetration rates for households relying exclusively on public assistance for income fall to only 45%.[20]

- Living in less fire resistant housing, as well as using less fire resistant furniture and mattresses. "Diminished financial resources prevent many families from investing in fire safety because the resources they do have usually go to other, more immediate necessities."[21]

## V. The Trend in Utility Shutoffs for Nonpayment.

38. The dangers identified in the discussion above have grown substantially in the past five (5) years. Based on data reported by the Iowa Utilities Board (IUB), they are expected to increase sharply in the 2005/2006 winter heating season given projected increases in the price of home heating fuels. Figure 1 (presented in Appendix A below) shows IUB data reporting the number of energy assistance recipients[22] in Iowa that have a past due utility bill by month. The data is for the period January 1999 through September 2005. The data shows the increasing annual winter spike in home utility arrears among Iowa LIHEAP recipients. In March 2005, 29,459 LIHEAP recipients were in arrears to their utility,

[18] ***Burning Issues***, supra, at 104.
[19] ***Burning Issues***, *supra*, at 104.
[20] Among specific low-income households, telephone penetration rates are dramatically low. Of households on public assistance, 35 percent lack telephones. Of households receiving food stamps, 31 percent lack telephones. Of households receiving energy assistance, 21 percent lack telephones. Indeed, of those households completely dependent on public assistance, the penetration rate of telephone service is only 43.5 percent (leaving more than 56 percent with*out* service). Alexander Belinfante (1989). *Telephone Penetration and Household Family Characteristics*, Federal Communications Commission Docket No. CC 87-339. Washington D.C.
[21] Rita Fahy and Alison Norton, "How Being Poor Affects Fire Risk. . ." ***Fire Journal***, at 29:34 (January/February 1989).
[22] Energy assistance recipients include only recipients of the federal Low-Income Home Energy Assistance Program (LIHEAP). In Iowa, LIHEAP is administered by the Iowa Department of Human Rights (DHR).

compared to 25,578 in arrears in March 2004; 24,026 in arrears in March 2003; and 20,640 in arrears in March 2002.

39. The data also shows that the arrears in 2005 did not exhibit the same magnitude ***decrease*** after the end of the winter heating season in April 2005 as has been experienced in prior years. In September 2005, 22,699 LIHEAP recipients were still in arrears to their utility company, compared to 14,894 in September 2004; 14,355 in September 2003; and 13,273 in September 2002.

40. As is clear, the number of low-income households ***beginning*** the 2005/2006 winter heating season with arrears is more than 50% higher than the number going into the 2004/2005 winter heating season.

41. Figure 2 (presented in Appendix B below) shows that these arrears translate into a considerable number of written off (i.e., final uncollectible) accounts. The number of September 2005 uncollectible energy assistance accounts (2,302) was more than twice the number of September 2004 uncollectible energy assistance accounts (1,142) or September 2003 uncollectible energy assistance accounts (1,096). Indeed, the monthly number of energy assistance accounts written off in July (1,061), August (1,882) and September (2,302) were three of the five highest number of uncollectible accounts since January 1999 (joining only September 2003 and September 2004 as previously discussed).[23] The number of accounts written off in this four-month period alone (extending from June 2005 through September 2005) (5,994) exceeded the ***annual*** totals for all six previous years (1999 through 2004). The number of written off accounts is a good indicator of the number of energy assistance customers losing service. An account is not written off as

uncollectible unless it becomes inactive. An inactive account that is not in arrears is not considered to be "uncollectible."

42. All expectations are for this spiraling rate of arrears and lost utility service to dramatically escalate in (or immediately after) the 2005/2006 winter heating season. The U.S. Department of Energy's (DOE) Energy Information Administration (EIA) publishes price and bill projections in its Short Term Energy Outlook (STEO). According to EIA's November 2005 STEO, Midwestern consumers can expect to see a 46% increase in natural gas ***prices*** and a 50% increase in natural gas ***bills*** in the 2005/2006 winter heating season (compared to the 2004/2005 heating season).

Average Consumer Prices and Expenditures for Natural Gas for the Winter (Midwest Region)

| | 99-00 | 00-01 | 01-02 | 02-03 | 03-04 | 04-05 | 05-06 /a/ | Pct Increase (05 - 06) |
|---|---|---|---|---|---|---|---|---|
| **Natural Gas** | | | | | | | | |
| Consumption (mcf) | 88.3 | 99.1 | 78.2 | 92.3 | 85.7 | 85.3 | 87.5 | 3% |
| Price ($/mcf) | $5.74 | $8.77 | $6.26 | $7.61 | $8.76 | $10.01 | $14.60 | 46% |
| Expenditures ($) | $507 | $869 | $490 | $702 | $751 | $855 | $1,278 | 50% |

NOTES:

/a/ Projected

SOURCE: Energy Information Administration/Short-Term Energy Outlook -- November 2005

43. As can be seen, increasing prices have led to significant increases not only in the arrears incurred by low-income Iowa households, but also in the number of low-income households losing service as a result of those arrears. The projected dramatic further fly-up in home energy prices for 2006 will result in a foreseeable fly-up in involuntary service loss

[23] Given the lag time between the point at which an account reaches final status and the point at which that account is written off as uncollectible, it makes sense that accounts having arrears coming out of the winter months do not reach the point of being written off as uncollectible until September of that year.

during the coming year with all of the attendant public health consequences documented above.

44. The rules recommended in this Petition for Rulemaking and Related Relief will not adversely affect the financial status of Iowa utilities. Research published in the *Electricity Journal*, based on Iowa-specific data, found that:

> A review of the payment patterns of Iowa LIHEAP recipients in central and northwest Iowa, as well as a review of payment outcomes for those same LIHEAP recipients --Iowa's total winter moratorium extends only to LIHEAP recipients-- does not support the conclusion that the existence of a winter utility shutoff moratorium results in a substantive change in payment practices. The review of this Iowa data finds that:
>
> - Iowa's LIHEAP recipients do not experience an increase in the number of weighted "bills behind" they incur during the winter shutoff moratorium period. While average arrears increase during the winter, this increase is a reflection of the fact that winter bills are higher, not of the fact that LIHEAP recipients are a larger number of months behind in their payments.
>
> - Iowa's LIHEAP recipients do not reduce the number of payments made each month resulting in a $0 balance during the shutoff moratorium period.
>
> - Iowa's LIHEAP recipients continue to make payments each month during the winter moratorium period even when such payments do not reduce the account balance to $0. Partial payments continue to be made both toward bills for current usage and toward arrears.
>
> - Iowa's LIHEAP recipients do not reduce the total dollars paid each month relative to the total bills for current usage rendered each month during the shutoff moratorium period.
>
> - Iowa's LIHEAP recipients continue to make winter month payments equal to 90+% of the winter month bills despite the presence of the winter shutoff moratorium.
>
> - Iowa's LIHEAP recipients do not reduce the number of total payments they make relative to the number of bills they receive during the shutoff moratorium period.
>
> Iowa's winter shutoff moratorium is an important health and safety protection for Iowa's low-income customers who frequently find that they face high

> home energy bills that are simply not affordable. The moratorium has been implemented without creating substantive nonpayment problems for Iowa's utilities.[24]

45. The lack of financial impact on Iowa's utilities is further evidenced by the fact that the proposed rules do not propose an absolute "moratorium" on service disconnections to families with children; the rules merely require that a utility seeking to effect a utility service disconnection for nonpayment to a household with children provide a verified certification that such a service disconnection will pose no adverse health and/or safety risk to that household and obtain a health-related finding that the involuntary disconnection of service for nonpayment poses no public health or safety risk to a Iowa household with children.

## V. POTENTIALLY INTERESTED PERSONS.

46. State Senator Jack Hatch, Senate District 33, Polk County, endorses this Petition and requests that he be considered an interested person to be notified of, and allowed participation in, the process of the consideration of this Petition for Rulemaking and Related Relief.

47. Pursuant to Title 641 I.A.C., § 171.1(1)(5), DHR identifies the following as additional persons having a potential interest in this rulemaking petition:

- National Fire Protection Association (NFPA);
- National Consumer Law Center (NCLC);
- Iowa's eighteen (18) community action agencies along with the Iowa Community Action Association;

[24] Roger Colton, "Winter Weather Payments: The Impact of Iowa's Winter Utility Shutoff Moratorium on Utility

- Iowa's local and county Boards of Health;
- Iowa Utility Board (IUB);
- Iowa Civil Rights Commission;
- Iowa Department of Elder Affairs;
- Iowa Commission on the Status of Women;
- Iowa Academy of Family Practice Physicians;
- Iowa's "Healthy Community" coalitions;
- Iowa Nutrition Network;
- Iowa's electric and/or natural gas distribution utilities;
- Iowa Citizens for Community Improvement;
- Iowa Citizens Action Network;
- Children/Family Policy Center;
- Coalition for Family and Children's Services in Iowa;
- Every Child Counts;
- Iowa Coalition for Housing and the Homeless;
- League of Women Voters of Iowa;
- National Association of Social Workers/Iowa Chapter;
- Visiting Nurses Services;
- Iowa Friends of Legal Services;
- Polk County Legal Aide Society; and
- HELP Legal Assistance (Davenport).

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Bill Payments by Low-Income Customers," ***The Electricity Journal***, at 59-67 (November 2003).

**WHEREFORE**, based on all of the information and analysis presented above, the Iowa Department of Human Rights (DHR) respectfully prays for the following relief:

1. DHR prays that the Iowa Department of Public Health adopt the regulations as presented in Appendix C to this Petition for Rulemaking and Related Relief;
2. DHR prays that the Department, pursuant to Title 641, I.A.C. §741.4(1) (2005) schedule a meeting at which one or more representatives of DHR may meet informally with the Department to discuss the substance of this Petition for Rulemaking and Related Relief;
3. DHR prays that the Department, pursuant to Title 641 I.A.C. § 171.2 (2005), provide DHR an opportunity to submit a written brief in support of this Petition for Rulemaking and Related Relief, as well as a responsive brief to comments, if any, filed by other interested persons;
4. DHR prays that, pursuant to Section 135.11(4), Iowa Code (2005), the Director of the Iowa Department of Public Health initiate a public health and safety investigation or survey examining the effect of the involuntary disconnection of natural gas and/or electric service for nonpayment upon the public health and safety of households with children subject to such disconnection, including but not limited to an investigation or survey into the impacts of such disconnection of service on:
    - The public health fire safety risk to children (including the risk of death and/or personal injury) associated with the use of candles, portable space heaters, or other causes of fire associated with the disconnection of home energy service;

- The public health implications of the air quality risk (including but not limited to carbon monoxide poisoning) to children associated with the use of alternative sources of energy associated with the disconnection of service;
- The public health impact of the disconnection of home energy service to households with children on the prevalence of death, disease and/or illness associated with temperatures inside the home (either hot or cold) being maintained at unsafe or unhealthy levels, associated with the disconnection of service;
- The public health impact of the disconnection of home energy service on the ability to maintain medically essential equipment to a member of a household with children, including but not limited to refrigeration for medicines and air filtration for asthma;
- The public health impact of the disconnection of home energy service to households with children on the incidence of disease or illness requiring medical attention or hospital treatment;
- The public health impact of the disconnection of home energy service on the nutrition of children in households subject to such disconnection of service;
- The extent to which poverty represents a compounding factor of the public health risks identified above.

5. DHR prays that, pursuant to Section 135.11(4), Iowa Code (2005), the Director of the Iowa Department of Public Health enlist the participation and assistance of public health experts connected with the state hygienic laboratory at the state University of

Iowa (and/or other public health research institutions) in undertaking the work requested in paragraph 4 of this prayer for relief;

6. DHR prays that the Department, pursuant to Section 135.11(26) of the Iowa Code, establish an ad hoc public health advisory committee to the director, which committee would consist of public health and safety experts, along with public health and safety risk assessment experts, and/or other experts in public health research and risk assessment, which committee would be charged with assessing the short- and long-term public health and safety risks of the disconnection of home energy service to households with children.
7. DHR prays that the Director of the Iowa Department of Public Health provide notice, at a minimum, to the "potentially interested persons" listed in this Petition, and hold public hearings at which those persons, along with other public health and safety professionals, be solicited to provide comments on the proposed rules and related relief;
8. DHR prays that the Department, pursuant to Section 135.11(1) of the Iowa Code grant such other and further relief as may seem just in the premises.

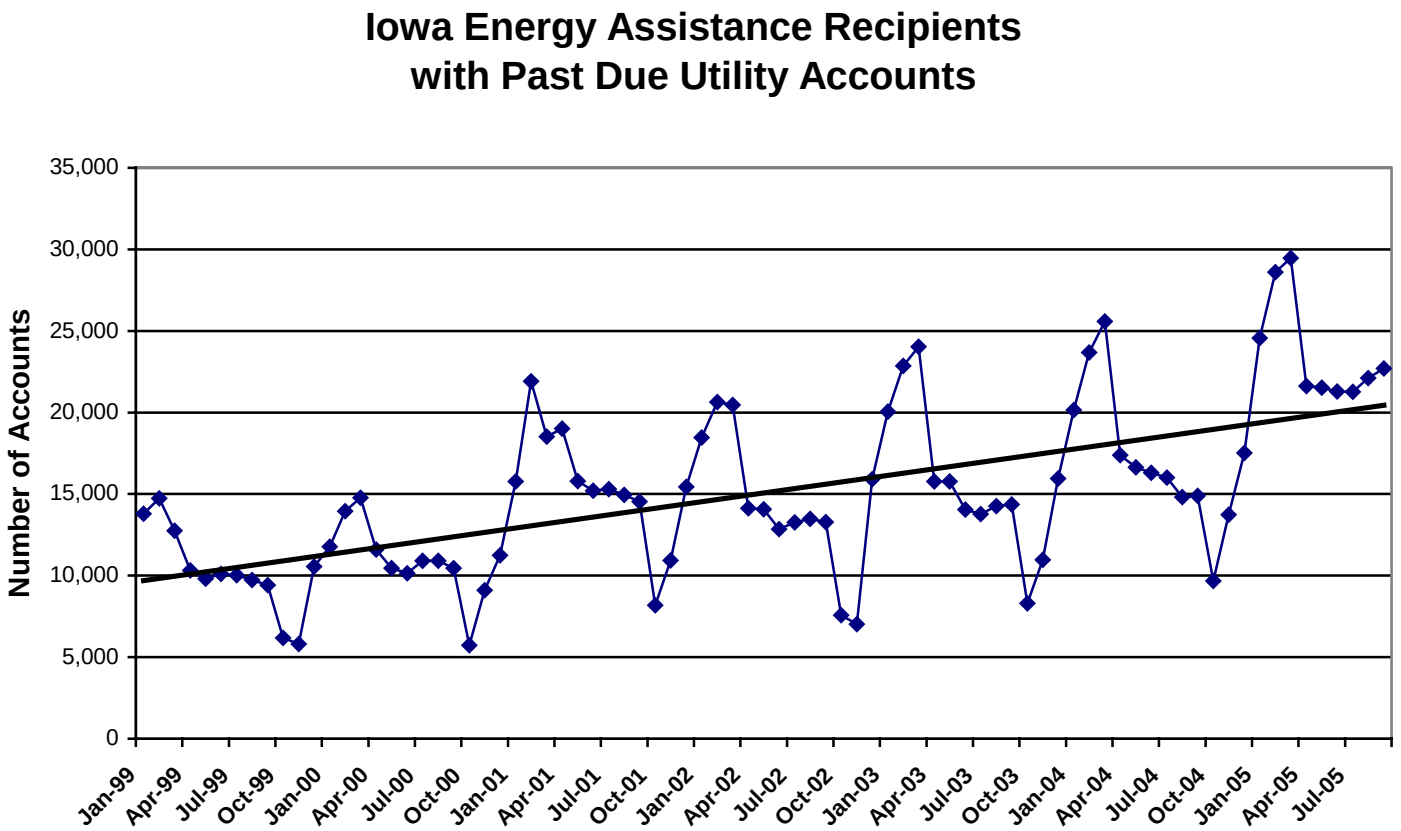
Respectfully submitted,

*/s/ Original signed*

_____

Jerry McKim, Chief
Bureau of Energy Assistance
Iowa Department of Human Rights
Lucas State Office Building
Des Moines, IA 50319
(voice) 515-281-0859

Dated this 5th day of December, 2005


Iowa Energy Assistance Recipients
with Past Due Utility Accounts
Number of Accounts
35,000
30,000
25,000
20,000
15,000
10,000
5,000
0
Jan-99
Apr-99
Jul-99
Oct-99
Jan-00
Apr-00
Jul-00
Oct-00
Jan-01
Apr-01
Jul-01
Oct-01
Jan-02
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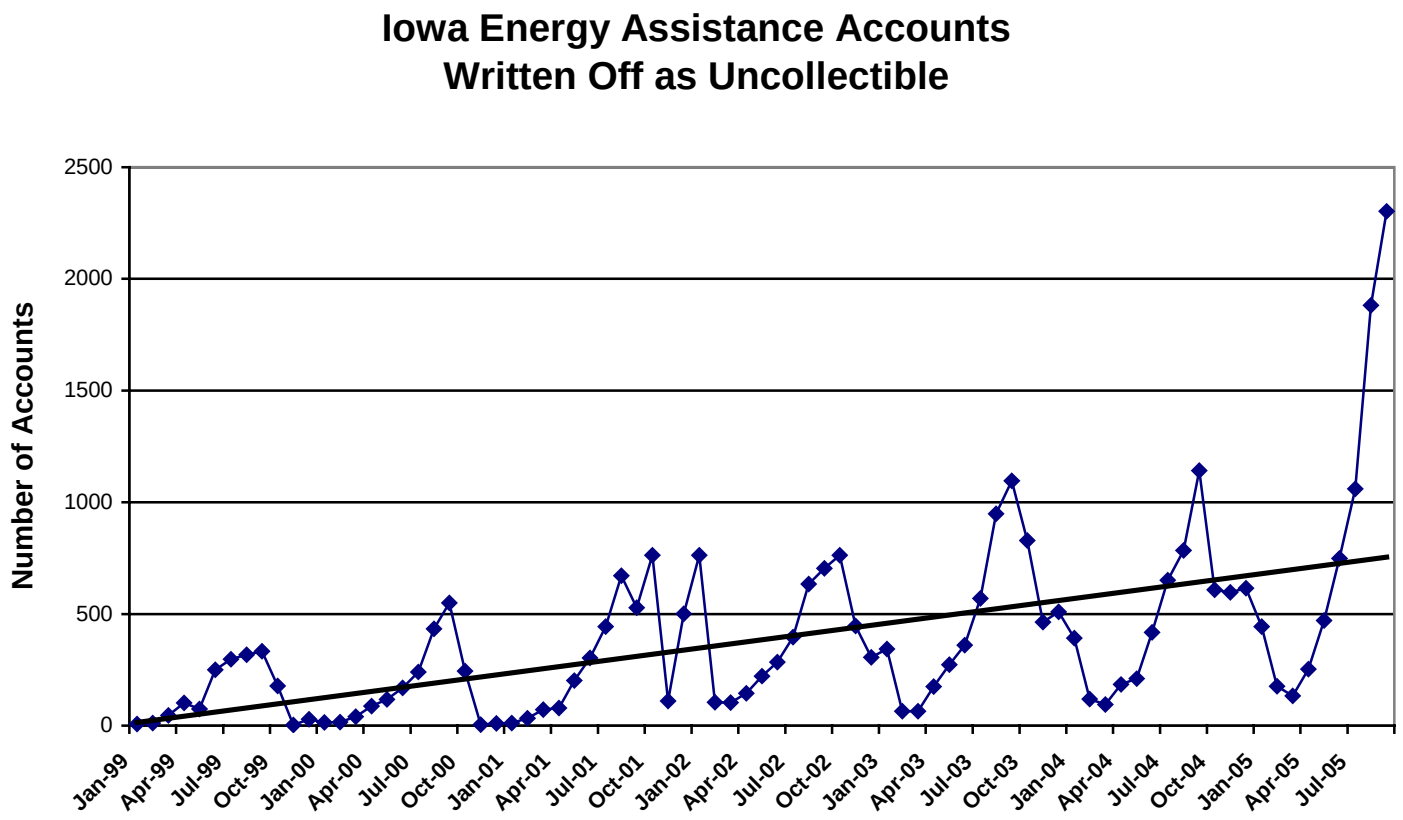
Jul-05

**Figure 1**


Iowa Energy Assistance Accounts
Written Off as Uncollectible
Number of Accounts
2500
2000
1500
1000
500
0
Jan-99
Apr-99
Jul-99
Oct-99
Jan-00
Apr-00
Jul-00
Oct-00
Jan-01
Apr-01
Jul-01
Oct-01
Jan-02
Apr-02
Jul-02
Oct-02
Jan-03
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Jul-03
Oct-03
Jan-04
Apr-04
Jul-04
Oct-04
Jan-05
Apr-05
Jul-05

**Figure 2**

## APPENDIX C

## PROPOSED RULE

Insert as new Section 17.2(135), Title 641, Iowa Administrative Code, as follows:

**17.2(135). General.** The continued provision of home energy service to child-occupied dwellings is a critical element of safe and sanitary housing.

**17.2(1) Definitions**
**17.2(1)(1)** "Child-occupied dwelling" means a dwelling in which a person age 18 years or younger resides for at least three nights a week on a permanent basis.
**17.2(1)(2)** "Department" means the Iowa State Department of Public Health.
**17.2(1)(2)** "Dwelling" is any house or building or portion thereof which is occupied in whole or in part as the home or residence of one or more human beings, either permanently or transiently.
**17.2(1)(3)** "Disconnect home energy service" means the involuntary termination of natural gas or electric service to a dwelling for nonpayment.
**17.2(1)(4)** "Young child" means a child age twelve (12) years or under.

**17.2(2) Finding of no Public Health and Safety Risk.**

**17.2(2)(1)** Any person seeking to disconnect home energy service to a dwelling that the person knows or has reason to know is a child-occupied dwelling shall, prior to the disconnection of service, first obtain a finding from the Department that the disconnection of service will not represent a public health or safety risk to the child or children occupying the dwelling.
**17.2(2)(2)** Any person seeking to disconnect home energy service to a dwelling that the person knows or has reason to know is a child-occupied dwelling shall submit a written request for a finding of no public health or safety risk to the Department and shall send a copy of that request, by first class U.S. mail, postage prepaid, addressed to the service address of the child-occupied dwelling.
**17.2(2)(3)** The request shall include a verified certification that the disconnection of service will pose no public health or safety risk to the child or children that are residents of the dwelling and shall include the supporting documentation serving as the factual basis for that certification. For purposes of this regulation, the disconnection of home energy service to a dwelling where a young child resides is deemed to endanger human health, life, or safety.
**17.2(2)(4)** The Department shall render its decision on whether to issue a finding that the disconnection of home energy service poses no health or safety risk to the child or children that are residents of the dwelling within ten (10) business days of the date of the request. The decision shall be confirmed in writing as soon as possible and mailed, by first

class U.S. mail, postage prepaid, addressed to the service address of the child-occupied dwelling.

**17.2(2)(5)** A permanent adult resident of the child-occupied dwelling, or the customer of record for the child-occupied dwelling if not a permanent resident of the dwelling, may appeal a finding that the disconnection of home energy service poses no health or safety risk to the child or children that are residents of the child-occupied dwelling as a contested case. The procedures for contested cases as set out in Iowa Code chapter 17A and the rules adopted by the Department in 641—Chapter 173 shall be followed in all cases where proper notice has been made to the Department of the intent to formally contest a finding that a disconnection of home energy service to a child-occupied dwelling poses no public health or safety risk.

**17.2(3) Record–keeping requirements.** Beginning on April 1, 2006, any person disconnecting home energy service to a dwelling the person knows or has reason to know is a child-occupied dwelling shall retain all records necessary to demonstrate compliance with this section for a minimum of seven years following completion of the disconnection of home energy service. The records shall include:

**17.2(3)(1)** The address or location of the child-occupied dwelling that was subject to the disconnection of home energy service.

**17.2(3)(2)** Copies of the verified certification that the disconnection of home energy service poses no health or safety risk to the child or children that are residents of the child-occupied dwelling, including all supporting documentation.

**17.2(3)(3)** Copies of the signed and dated authorization by the State Department of Public Health authorizing the disconnection of home energy service to the child-occupied dwelling, including the finding of no public health or safety risk.

**STATE OF IOWA**
**BEFORE THE IOWA STATE DEPARTMENT OF PUBLIC HEALTH**

| | | |
|---|---|---|
| In Re. | * | |
| | * | |
| Iowa Department of Human Rights | * | |
| Petition for Rulemaking Regarding | * | Petition for Rulemaking and |
| Prior Authorization of the Disconnection or | * | Related Relief |
| Discontinuance of Home Energy Service | * | |
| Where Disconnection Poses | * | Docket _____ |
| a Health or Safety Threat to | * | |
| Households with Children and Asking | * | |
| For Related Relief | * | |

## Affidavit of Roger Colton

Commonwealth of Massachusetts *
*
County of Middlesex *

I, Roger D. Colton, being duly sworn on oath state that I am familiar with the contents of the above-attached Petition for Rulemaking and Related Relief filed by the Iowa Department of Human Rights with the Iowa State Department of Public Health; and that the information contained in the Petition for Rulemaking and Related Relief is true and correct to the best of my knowledge and belief as of the date of this Affidavit.

Further affiant sayeth not.

*/s/ Original signed and notarized*

_____
Roger D. Colton

SUBSCRIBED AND SWORN to before me

This 2nd day of December, 2005

_____
NOTARY PUBLIC