

Food or Warmth?

In 1980, North Carolinians Should Not Have To Choose.

By Patric Mullen

Last May, President Carter wrote the 50 governors urging them to prevent "precipitous termination of heating or utility service which could result in critical health and safety problems ... during the winter months." The President's call for help grew out of a fear of disaster. The Department of Energy estimated that an average low-income household would spend \$1000 to \$1200 on heat and light in 1979, almost twice as much as the year before and five times the 1972 cost. Federal energy chief Charles Duncan admitted that many Americans would have to choose between food and warmth.

In North Carolina, at least 1.4 million people are faced with this choice. About one out of four North Carolinians lives at the edge of poverty. Of these, 192,000 receive Aid to Families with Dependent Children (AFDC), a maximum cash payment of \$2,520 for a family of four; 150,000 ward off poverty as best they can with meager Supplemental Security Income (SSI) benefits; 120,000 elderly live below the pale of decent standards. Thousands more who work for a minimum wage are also considered "poor" by the state Department of Human Resources.

The effects of this crisis, however, would not be measured in numbers or categories but in human terms. Last winter, for example, Blanche Lyons of Raleigh had to send her 3-year old son to live with friends. "I had been out of work for two months," Ms. Lyons explains, "I couldn't pay my \$115 bill. I called down to the (CP&L) office and asked, 'Could I pay part of the money?' I was told that I would have to make full payment. I know the hardship of having my lights turned off."

Tens of thousands had their electricity or gas shut off involuntarily last winter. During the year ending August, 1979, according to Carolina Power and Light (CP&L) testimony before the N.C. Utilities Commission, CP&L "disconnected for non-payment purposes only an average of 3,815 customers per month," 19,237 during the winter months (November-March). Duke Power Company, Virginia Electric and Power Company (Vepco), and CP&L together, according to their spokesmen, shut off some 7,600 North Carolinians for non-payment only *every month*. Still more customers had their gas disconnected involuntarily. These figures include

persons who simply refused to pay their bill for some reason. But also hidden within these statistics are people like Blanche Lyons who couldn't pay.

In recent years the Community Services Administration (CSA) has provided the State of North Carolina approximately \$1 million to respond to residential utility emergencies. This money is rarely available in a timely fashion, and experience has demonstrated that even \$1 million is insufficient to respond to all utility crises. Certain counties, at the discretion of the county commissioners, have voted to supplement the CSA monies with local emergency relief funds; churches and private welfare agencies offer sporadic help for individual cases. None of these efforts, however, has addressed a change in the way utilities do business.

"I had been out of work for two months ... I know the hardship of having my lights turned off."

Blanche Lyons, mother of a 3-year old

By early October, 1979, no action had been taken on the message the President had delivered five months earlier. The Department of Human Resources, the State Office of Economic Opportunity, and the state Energy Office had only briefed one another on the several federal assistance programs then before Congress. The utility companies had not proposed any plan to avoid massive cutoffs. And the Public Staff of the N.C. Utilities Commission had not set forth specific steps designed to lessen the likelihood of shutoffs for nonpayment.

The initiative for the consideration of a change in public policy was taken by clients and attorneys of Legal Services of North Carolina (LSNC). LSNC is charged by the national Legal Services Corporation with providing legal representation for North Carolinians who cannot afford private attorneys. LSNC is a confederation of 17 field programs serving clients throughout the state. Since all of LSNC's clients are poor, they have a high incidence of utility terminations. LSNC attorneys were spending an inordinate amount of time negotiating with the utilities on a case-by-case basis to prevent terminations or to get utilities reconnected. Instead of dealing with the utilities in this piecemeal manner, LSNC attorneys devised a strategy for restructuring the procedures for residential utility termination.

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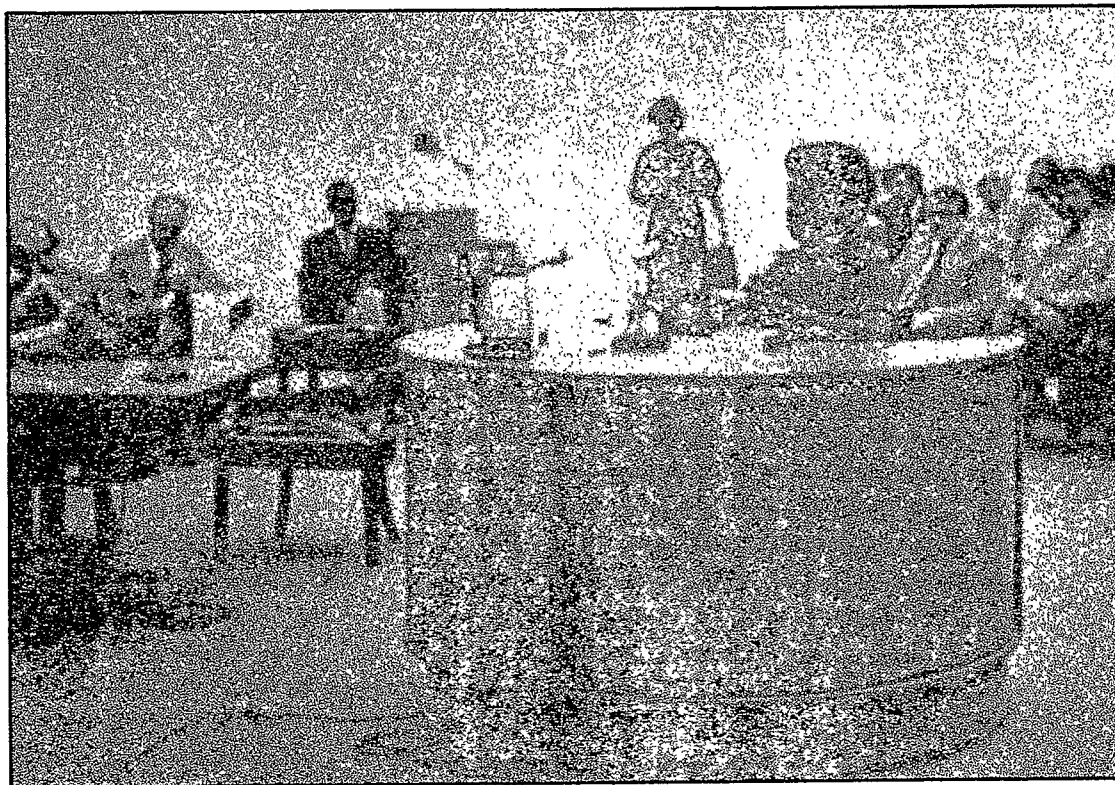


Photo by Jim Abbot

Blanche Lyon testifying before Utilities Commission.

The National Energy Act of 1978 made this debate at the public policy level possible. A section of the Act, the Public Utility Regulatory Policies Act (PURPA), required that each state authority conduct a hearing to consider adoption of certain standards. The heart of the PURPA proposal is:

service...will not be terminated during any period when termination would be especially dangerous to health as determined by the State regulatory authority, and such customer has established, (a) his inability to pay by normal billing procedures, and (b) his ability to pay later in installments.

In November 1978, one of three public witnesses at a Utility Commission hearing attempted to interject the PURPA standards question, but the Utilities Commission did not then deal with PURPA. On July 20, 1979, however, the Commission ordered a public hearing specifically to consider termination procedures under the PURPA standards. The Public Staff planned to argue for adopting the PURPA standards but was limiting its recommendations to the very general language of the federal legislation. LSNC determined that the Public Staff's position would make little difference in the actual number of their clients terminated.

At that point, LSNC attorneys requested permission to intervene in the Commission hearing on behalf of 109 low-income clients. The Commission agreed, making the clients intervenors in the upcoming hearing and permitting LSNC to present witnesses, submit evidence, make motions and examine the utility companies' witnesses.

Based on discussions with their clients and medical experts, LSNC had concluded that any termination of service during the winter months (November 1 through March 31) would be dangerous to health. This determination became the basis for a three-pronged emergency rule proposed to the Utilities Commission: 1) order a moratorium on terminations for people who cannot pay for service during the winter months; 2) provide for referrals by utilities to public and private financial aid; and 3) institute an installment agreement where no more than 10% of net monthly income could be charged to pay off the winter bill.

On October 9, 1979, the three parties to the PURPA hearing—the Public Staff, the utility companies and LSNC—arrived at the Dobbs Building in Raleigh. All brought witnesses which they hoped would convince the Utilities Commission of their position.

Dr. Raymond Wheeler opened LSNC's case. A Charlotte physician widely known as an expert on the health and living conditions of poor people in the

South, Wheeler immediately placed the hearing in the human arena rather than allowing the proceedings to focus on technical and legal arguments.

"Already in North Carolina we have thousands of poor people who are physically weak because of inadequate diets."

Dr. Raymond Wheeler

"Already in North Carolina we have thousands of poor people who are physically weak because of inadequate diets," said Wheeler. "In order to pay their

utility bills these people will have to further reduce the quality and quantity of the food they eat. In turn, this will lead to sickness and absenteeism at work and school. Unfortunately, the only alternative for many is not to pay their utility bills and thus face the possibility of freezing to death in their own homes."

Two LSNC clients testified to the special utility problems elderly people face, confirming Dr. Wheeler's findings.

"My husband is 79 and I'm 76," Cora Harris of Raleigh told the Commission. "I get a VA check for \$75 and my \$57 Social Security and a little check (from SSI) for \$28. I have bad arthritis and high

At the End of the Day ... Cold

by Kay Reibold

There's a little house that borders a tobacco field a few miles outside Fuquay-Varina, N.C. A rusty bucket hangs from the hickory tree which bends near the roof. It's Charlie's basketball hoop.

Smoke floats from the chimney and drifts in the cold night air. The light of the moon on the tin roof is sharp and silver.

In the house, the children of Doritha Covington are dreaming of what it would be like not to be cold. Vivien and Jennifer, Levirnis and Paulette, Charlie and David and Elizabeth all sleep in one room. It's the only way to stay warm.

Moonlight shines through the house. It creeps in the gaping holes around the windows and slips through the wide cracks in the walls. Moonlight steals into each opening and each corner, and with it, the cold. Cold that pushes through the rotting floor boards. Cold that fills the house with chill and dampness and misery.

When morning comes, a metal tub of water sits before the electric oven so the children can bathe. Water is carried in pails from a nearby pond or the landowners' house. There is no well. There is no outhouse.

The family's heat comes from the electric oven and a crumbling fireplace. A single light bulb dangles from the ceiling.

Two years ago, a representative from Carolina Power and Light of Fuquay Varina visited Mrs. Covington and her children to inform her that her electricity was about to be terminated for a past due bill.

"I explained that I would pay as soon as I
Kay Reibold is a supervisor for Wake Opportunities and a free-lance scriptwriter.

could," Mrs. Covington recalls. "I asked that they think about my children. I told them my food would spoil. I have to be able to cook."

Mrs. Covington had not been able to pay her bill for two months. "I asked him if I could pay a little at a time," she remembers. "But he told me, 'No, the full amount has to be paid now.'" If she didn't find the money, CP&L would automatically cut her off.

Mrs. Covington then borrowed the needed amount from the landowners, the people who allow her family to stay in the little house in exchange for work in their tobacco fields.

"I been workin' in tobacco ever since I been married," Mrs. Covington says. She grew up in Gibson, N.C., where her mother did field work and her father worked at the Southern Cotton Oil Mill.

"I like it here because I can raise my own food in the country. I'd rather raise something that belongs to me. I guess I just love to live in the country."

But country life holds little joy for Mrs. Covington and her children in the winter months.

"The cold's like slow torture," she says. "It's just with us all the time and I'm always afraid the children will get sick."

The house is so dilapidated that both the oven and the heat from the small fireplace do little to warm the four rooms. The walls are rotting. Cardboard and fabric patch the windows. There is no glass in the window-frames. There are no rugs on the floor.

Once bills are paid for the phone, insurance, lights, clothing for the children and laundry supplies, there is little money remaining for

blood pressure. He has arthritis. In the winter, we have to be kept very warm. When we get cold, we ache a lot."

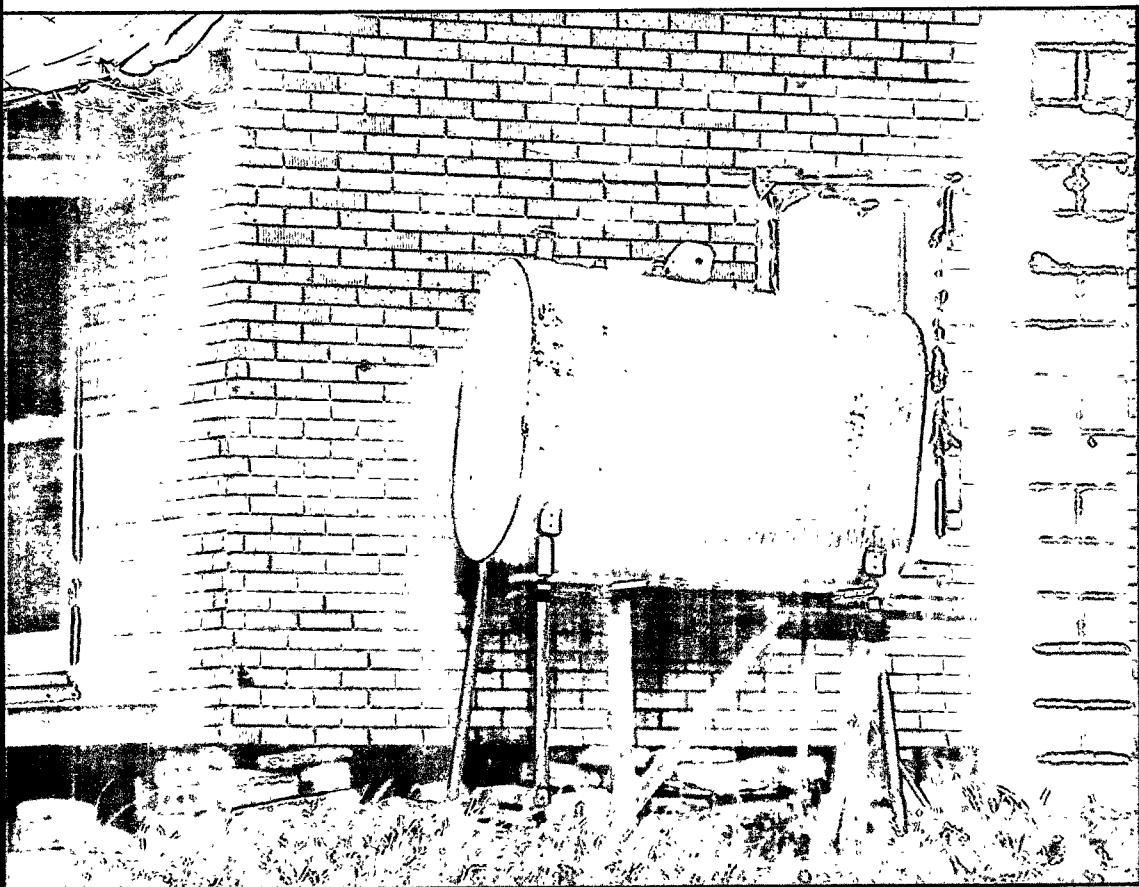
Daisey Brown, another client over 70, explained why the elderly are particularly vulnerable. "If I don't keep warm, I gets stiffer." Then Ms. Brown looked at the commissioners in the eye. "I don't think there should be any shut off in cold weather because I know how I suffer."

The gas bill alone in the Harris and Brown homes will average \$50 a month this winter. Without adequate heat, the elderly are susceptible to complications in existing medical problems as well as exposure to hypothermia, a condition where the body

temperature drops to 95 degrees or less. W. Moulton Avery, Director of the Carolina Wilderness Institute, explained to the Commission that 25,000 Americans die every year from hypothermia.

"If I don't keep warm, I gets stiffer."
Daisey Brown, age 71

Kay Reibold, who has administered Wake County Opportunity's energy emergency assistance for the past several years, followed Ms. Brown to the witness table.



firewood or any materials to patch the house.

Mrs. Covington receives a monthly AFDC check of \$277.00. She also receives food stamps. To Mrs. Covington and her children, like so many other low-income families struggling to meet basic needs during winter months, electricity and fuel are of critical concern.

On Sunday morning each of the children stands in the bright December sunlight, huddled in coats. They look out across the dirt yard. The sunlight is warm. But Mrs. Covington sighs to herself as she watches smoke curl from the chimney. It won't be long before the day will end and bring with it the cold.

"Last year, we responded to 469 utility crises in Wake County," Ms. Reibold said. "I personally know of 50 elderly persons or mothers with young children who did not have heat in their homes last winter."

"We had \$25,000 available to us last winter for emergencies," Ms. Reibold continued. "There was no way we could respond to all of them. Without new energy assistance from Congress, hundreds of Wake

protected customers from unwarranted service terminations. They argued that the needs of the sick, the elderly and the handicapped were already considered. None felt a compelling need to adopt the PURPA standards, arguing that they were not consistent with North Carolina law and would be too expensive.

Presentations on specific procedures, however, varied from company to company. Some advised customers about assistance programs, for example, while others did not. Only two witnesses testified that their companies take severe weather conditions into account before disconnection. William F. Fritsch of Vepco described his company's rule on non-disconnection if the temperature falls below 35 degrees. He did not comment, however, on the question of hardship following disconnection, i.e., from 40 degrees one day to 20 degrees the next. In written comments, Duke Power's Lewis W. Deal said that inclement weather was "considered" in terminations, but he did not explain how.

Collectively, the utilities portrayed themselves as responsible, humane corporate citizens. One utility, in a prepared statement, lashed out at the LSNC proposal as an unconstitutional assault on corporate revenues designed to transfer the state's utilities into welfare agencies. While all were not so strident, all made the case that good corporate citizens had a responsibility to their stockholders and to all their rate

"I personally know of 50 elderly persons or mothers with small children who did not have heat in their homes last winter."

Kay Reibold, Wake County Opportunities

County residents will be forced to rely on the uncertain contributions from churches and the county."

Following LSNC's testimony, lawyers from the utility companies presented their cases. Duke, CP&L, and the gas companies all felt that the existing Commission rules and internal company policies



Photo by Jim Abbott

LSNC attorneys, clients, and supporters plan testimony for Utilities Commission hearing.

payers on an equal basis, rather than a special obligation to those unable to pay.

The PURPA regulations had only required the Utility Commission to hold the hearings. But after listening to the day's testimony, the Commission was clearly moving expeditiously toward some decision. LSNCR requested 10 days to file legal arguments in support of its proposed emergency rule. The Commission gave the utilities a 10-day response period.

Just three weeks later, on November 14, the Utilities Commission issued a 23-page decision unique in the Southeast for its breadth and compassion. "The Commission certainly believes that the regulated utilities have historically endeavored to work with their customers," the findings read. "Nevertheless, a careful consideration of the entire record in the case leads the Commission to conclude that it should expeditiously proceed to revise its present Rule R12-10 concerning disconnection of residential electric and natural gas service."

The Commission had responded to the plight of Blanche Lyons and Cora Harris and Daisey Brown. It had considered the needs of the poor and had made special allowances for the elderly and handicapped. (See box for full ruling.) Apparently persuaded by human as well as legal arguments, the Commission had gone beyond the mandates PURPA placed upon it.

The Utilities covered by the order include the following:

Carolina Power and Light Company
Duke Power Company
Nantahala Power and Light Company
Virginia Electric and Power Company
Crisp Power Company
Laurel Hill Electric Company
New River Light and Power Company
Pinehurst, Inc.
Western Carolina University
Piedmont Natural Gas Company, Inc.
United Cities Gas Company
Pennsylvania and Southern Gas Company
Public Service Company of N.C., Inc.
North Carolina Natural Gas Corporation

The Utilities Commission order places North Carolina in the forefront nationally as far as implementing the full intent of PURPA. It offers significant protection for many North Carolinians whose household utilities are provided by the major gas and electric companies in the state. Even so, the large number who heat with wood, fuel oil, and coal and who receive utility services from electric cooperatives or municipally-owned companies are not protected by this order. Fortunately, President Carter recently signed a \$1.35 billion energy aid package which will provide North Carolina with a \$34.4 million to help pay the utility and heating bills of

SUMMARY OF UTILITY COMMISSION RULING

1. Service cannot be terminated between November 1 and March 31 for households with an elderly (65 or over) or handicapped person without express approval of the Commission if the customer can establish all of the following:
 - (a) That a member of the customer's household is either certifiably handicapped or elderly (65 years of age or older), or both.
 - (b) That the customer is unable to pay for such service in full or in accordance with the subrule's provision for installment agreement.
 - (c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such programs.
2. All residential customers must be personally contacted prior to termination.
3. All residential customers must be given notice of an opportunity to negotiate a reasonable installment agreement designed to bring their account into balance within six months of the agreement.
4. All residential customers must be sent notices on how to obtain assistance in paying utility bills and how to appeal disputes to the Public Staff.
5. Both informal and formal appeal procedures must be established. During the appeal process, service must be continued.

those people in the states who cannot pay.

As a result of federal assistance and the actions of the Utilities Commission, no one in North Carolina has to freeze or suffer from intense cold in their homes this winter. No one should have to choose between heat and food. □