

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION BY )  
AVISTA UTILITIES, INTERMOUNTAIN GAS ) CASE NO. GNR-U-02-1  
AND PACIFICORP TO IMPLEMENT A TWO- )  
YEAR PILOT WINTER PROTECTION )  
PROGRAM THAT ESTABLISHES MINIMUM )  
MONTHLY PAYMENTS DURING THE )  
WINTER MORATORIUM, AND A WAIVER OF ) ORDER NO. 29165  
WINTER MORATORIUM RULE 306, IDAPA )  
31.21.01.306. )**

On October 11, 2002, the Commission received a joint Application from Avista Corporation, Intermountain Gas Company and PacifiCorp (Applicants) seeking authorization to implement a two-year pilot “Winter Protection Program” that establishes minimum monthly payments during the winter moratorium period. On October 31, 2002, the Commission issued a Notice of Application and Modified Procedure regarding the proposed program and solicited comments on the Application. Order No. 29145. Citing concerns raised about the timing of this Application, Avista filed a Notice to Withdraw from this case on November 20, 2002. After reviewing the comments and record in this docket, the Commission grants Avista’s Motion to Withdraw, denies the Application, and directs the Applicants to gather specific information this heating season as set out in greater detail below.

**I. THE WINTER MORATORIUM**

In 1978 Congress enacted the Public Utility Regulatory Policies Act (PURPA), which required this Commission to consider whether it was appropriate to adopt certain federal standards concerning the termination of utility service to customers of gas and electric companies. In 1979, the Commission implemented a “winter moratorium program” that prohibited electric and natural gas utilities from disconnecting service to certain residential customers during the winter heating months if those customers failed to make payments for energy services. The program has been amended over time, but the major elements have remained the same.

Under Utility Customer Relations Rule 306 (and its predecessors), the utility service of certain residential customers cannot be terminated during a three-month period from December 1 through February 28 even if customers fail to make payments for energy service. IDAPA

31.21.01.306. Service may not be terminated for residential customers who declare they are unable to pay their electric or natural gas bills and whose households include: (1) children – 18 years of age and younger; (2) elderly – 62 years of age or older; or (3) “infirm persons” – those who would be adversely affected by the termination of service for health or safety reasons. In addition, all customers are encouraged to make reasonable payment plans in the event they were unable to fully pay their monthly utility bills. The moratorium does not excuse customers from paying their utility bills; it merely postpones the disconnection for failure to pay their bills. Customers who participate in the winter moratorium plan and do not make payments during the three-month period usually face large bills on March 1 or disconnection of service when the moratorium is ended.

## **II. THE JOINT APPLICATION**

Since February 2002, the Applicants, Idaho Power Company, Commission Staff, Department of Health and Welfare, and Community Action Agencies held meetings to address payment arrangement issues that culminated in this joint Application. The Application stated that “the purpose of this filing [is] to minimize the impact winter bills have on customers least able to pay the accumulated winter use at the end of the winter moratorium.” Application at 2. According to the Application, the pilot “Winter Protection Program” would allow customers, agencies and utilities to provide assistance for customers to maintain uninterrupted service. *Id.* The pilot program would also aid customers in establishing a pattern of consistent monthly customer payments, allowing participating customers to avoid disconnection and having to pay the entire past-due balance before service is reconnected. *Id.*

The Applicants proposed to change the basic eligibility for participation. Any residential customer who declared that he or she was unable to pay for service and then applied for and met the income eligibility requirements for receiving energy assistance benefits under the Low-Income Home Energy Assistance Program (LIHEAP) would be eligible to participate in the Winter Protection Program. *Id.* at 5. Except as provided elsewhere in the Customer Relations Rules, no gas or electric utility may currently terminate service during the months of December through February to any customer who participates in the Winter Protection Program. With the exception of customers who qualify for a postponement under Rule 308 due to a serious illness or medical emergency, termination of service could occur if customers did not participate in the proposed Winter Protection Program.

The Applicants proposed that participants in the Winter Protection Program must make a minimum payment to remain in the program. *Id.* Currently, eligible residential customers are not required to make any monthly payment to avoid disconnection. Eligible low-income customers would have to make a minimum monthly payment equal to one-half (½) the average monthly bill during the three winter months of the plan as computed under the Level Pay Plan in Commission Rule 313.06. *Id.* Level pay plans are based on any existing arrearage plus the anticipated monthly bills for the next 12 months. In other words, large heating bills from the winter months are “levelized” over an entire year with the intended result of making the monthly bills more affordable.

The Applicants proposed that customers who participate in the Winter Protection Program may avoid termination of service by making up a missed monthly payment. *Id.* To be eligible to participate in the Winter Protection Program in the following year, customers must be current on prior winter payments. *Id.* Customers may use any source of funds/grants to satisfy the payment requirements of the Winter Protection Program and are required to apply for LIHEAP assistance. *Id.* The Applicants also encouraged affected customers to seek assistance from other programs such as Project Share. *Id.*

To facilitate implementation of the pilot program, the Applicants specifically requested that:

- 1) They be exempted from the provisions of Rule 306.01-.06 during the two-year pilot program;
- 2) Winter Protection Program eligibility be defined as “any residential customer who declares that he or she is unable to pay for utility service during the specific months of December, January and February and whose household qualifies for energy assistance (LIHEAP) from a local Community Action Agency”; and
- 3) The three-month winter moratorium from December 1 through February 28 be replaced with a minimal monthly payment plan equal to one-half (1/2) of the Level Pay Plan amount. The Level Payment Plan amount will be calculated according to Utility Customer Relations Rule 313.06.

The Applicants requested that this case be processed under Modified Procedure, i.e., by written submission rather than by hearing. IDAPA 31.01.01.201-204. Given their desire to implement the pilot program prior to this winter’s heating season, the Applicants requested this Application become effective December 1, 2002 through November 30, 2004.

### III. COMMENTS

In the Notice of Application and Modified Procedure issued on October 31, 2002, the Commission sought public input on the Application filed in this case. Order No. 29145. The Commission established a 21-day comment period, which ended on November 21, 2002.

#### A. Public Comment

As a result of media coverage and the Applicants' efforts to publicize the Application, the Commission received 142 public comments as of November 25, 2002. The following table depicts the number of comments in favor or opposed to the Application:

UTILITY	IN FAVOR	OPPOSED	OTHER
Intermountain Gas	46	55	14
PacifiCorp	0	2	0
Avista Corporation	0	16	1

Intermountain Gas accounted for 81% of the total comments received. Of their 115 comments, 40% were in favor of the proposal and 48% opposed it. The other 12% did not indicate whether they supported or opposed the proposal but offered comments on the proposed plan. Seventeen Avista customers commented and were nearly unanimous in their opposition to the proposed pilot program. Only two PacifiCorp customers filed comments and both opposed the Application. Although not a participating utility in the proposed pilot program, six Idaho Power customers commented as well (one in favor, four opposed and one did not indicate a position).

#### B. Commission Staff Comments

1. **Moratorium Eligibility.** Staff's Comments explained that historically Intermountain Gas has coded customers who indicated they had children or elderly in the home as moratorium participants at the time they signed up for service. Staff Comments at 3. The coding was not generally updated to reflect changes in resident composition. Consequently, Staff's comments referred to these customers as "moratorium eligible." Staff believes the cumulative effect of this Intermountain practice over the years was that many more customers were treated as moratorium eligible than should have been. Whereas Intermountain Gas stated that fifty-one percent (51%) of the Company's residential customers were moratorium eligible, Staff noted that no other Idaho energy utility had a moratorium eligibility rate above 3%. *Id.* at 3-4.

As of the 2002-2003 heating season, Intermountain Gas has stated it will follow the same practice as other Idaho energy utilities and require customers who are unable to pay their bills to declare eligibility for the moratorium by notifying the Company if elderly, children, or infirm persons reside in the household from December through February. *Id.* at 4. Customers only need to declare eligibility if they are subject to disconnection during that time frame. With this coding change, Staff estimated that approximately 6,000 Intermountain Gas customers will be moratorium eligible this heating season, as compared to the 105,494 customers who were coded as moratorium eligible during the last heating season. *Id.*

2. **Use of LIHEAP Funds.** Of Intermountain Gas' 105,494 moratorium eligible customers, Staff indicated that 2,692 received LIHEAP benefits and 463 received financial assistance from Project Share during the 2001-2002 heating season. *Id.* Although only 2.6% of last year's heating season moratorium eligible customers would be eligible for the proposed pilot program, Staff noted that the 1,282 LIHEAP customers who were not coded as moratorium eligible would qualify to participate in the pilot program. *Id.* Although these potential participants may be low-income customers who do not have children, elderly or infirm customers in their households, Staff stated it was also possible that Intermountain Gas' records do not accurately reflect the status of these customers' households. *Id.*

In contrast to Intermountain Gas' experience, less than 1% of PacifiCorp's residential customers declared eligibility for the moratorium. Thirty-three (33) moratorium eligible customers received either LIHEAP benefits or financial assistance from Project Share during the 2001-2002 heating season. *Id.* A much larger number of customers (1,117) received LIHEAP benefits but did *not* declare moratorium eligibility. *Id.* Staff thought it possible that these customers were low-income but did not have elderly, children or infirm in their households. Alternatively, because PacifiCorp requires customers to declare eligibility for the moratorium each year, it may be that these customers would have been eligible for the moratorium but simply did not declare eligibility. Even though less than 1% of PacifiCorp's residential customers were moratorium eligible during the 2001-2002 heating season, 3% of the Company's residential customers received LIHEAP benefits. *Id.* at 5. In other words, more customers would be eligible for the proposed Winter Protection Program than declared eligibility for the existing moratorium.

**3. Payment History and Disconnection.** To put the moratorium eligible payment performance in perspective, Staff looked at the residential customers' payment performance as a whole. Eleven percent (11%) of Intermountain Gas' residential customers and 25% of PacifiCorp's residential customers had a past due balance as of March 1, 2002. *Id.* at 6. A relatively small number of customers were disconnected during the heating season until March 2002. In March, Intermountain Gas disconnected 2,539 residential customers and PacifiCorp disconnected 98. *Id.* Of the 2,539 disconnected by Intermountain Gas, 2,062 (81%) were moratorium eligible customers. *Id.* Of the 98 customers disconnected by PacifiCorp, only 6 (6%) were moratorium eligible customers. *Id.* The gross residential write-off ratio (total residential revenue divided by total residential write-offs) for 2001 was 1.8% for Intermountain Gas and 1.2% for PacifiCorp. *Id.*

Staff also identified the payment performance of moratorium eligible customers separately from other residential customers. Of Intermountain Gas' 105,494 moratorium eligible customers, 7,518 (7%) made no payment during December, January or February of the 2001-2002 heating season. *Id.* at 5. Of PacifiCorp's 409 moratorium eligible customers, 101 (25%) made no payment during the heating season. *Id.*

During March, April and May 2002, 5,040 (5%) of Intermountain Gas' moratorium eligible customers were disconnected for non-payment. *Id.* at 5. The cumulative amount owed Intermountain at the time of disconnection for those three months was approximately \$974,000. Staff further stated that 48% of these Intermountain customers were reconnected within 10 days of disconnection, presumably after paying their balance in full or making suitable payment arrangements. *Id.* Of the 2,616 customers who remained disconnected, 2,182 customers that collectively owed approximately \$414,000 still had not paid or re-established service 90 days after disconnection. This amount represented 25% of total write-offs for residential customers during this time period. *Id.* Although Intermountain Gas does not have precise figures, it estimates that 70% of customers whose accounts are written off after the heating season ends did not come back on service within the year under the same name and social security number. *Id.* at 6.

From March through May 2002, 6% of PacifiCorp's moratorium eligible customers were disconnected for non-payment. This represented 24 customers that owed \$12,552. *Id.* Sixty-three percent (63%) were reconnected within 10 days. Due to a disparity in data provided by PacifiCorp,

Staff could not determine how many customers remained without service 90 days after disconnection.

**4. Pilot Program Eligibility Criteria.** Staff agreed with the Applicants that the eligibility criteria for the existing moratorium does not provide an objective criteria for distinguishing between those who are truly unable to pay and those who are simply unwilling to pay. *Id.* at 7. Energy utilities have advised Staff that while those declaring moratorium eligibility typically have children in the household, it is unusual for elderly customers to declare moratorium eligibility. “Infirm” customers typically provide medical certificates pursuant to Rule 308 of the Commission’s Utility Customer Relations Rules. Staff indicated that utilities generally do not know whether customers are low-income or have other financial difficulties that make them unable to pay in full. *Id.*

The proposed pilot program uses income criteria for LIHEAP as a proxy for customers who are unable to pay. Staff stated that this is a reasonable, objective criteria to use but that it would automatically exclude a significant number of customers from participation. *Id.* LIHEAP customers would be asked to make monthly payments equal to one-half of their regular level payment amount, which Staff believes is reasonable in theory but still may be beyond the means of customers with large arrearages.

Because failure to make a monthly payment may result in disconnection of service under the pilot program, no “safety net” would exist for customers who have children or elderly in the household. *Id.* Likewise, customers whose income exceeds the Federal Poverty Guidelines upon which LIHEAP eligibility is based would not be protected from disconnection. Staff noted that payment arrangements are available and would probably meet the needs of customers if the utilities were flexible and willing to accept minimal payments in some cases.

**5. Staff Recommendation.** After reviewing the data provided by the Applicants, Staff was not convinced that the proposed pilot program is the best approach. *Id.* Staff believed it would be premature to implement any pilot program during the 2001-2002 heating season because there was insufficient time to educate customers on how the pilot program would work and how they would be affected personally.

Staff was also concerned about the situation of Intermountain Gas with respect to its past practices in determining which customers were moratorium eligible. Staff thought it would be prudent for the Company to change its practices this year rather than introduce a totally new

program. *Id.* Staff recommended that all energy utilities be encouraged to gather information during this heating season to aid in development of other alternatives for the Commission to consider next year. *Id.*

### ***C. Intermountain Gas' Reply Comments***

Intermountain Gas' Reply Comments highlighted the ideas upon which the Commission Staff and Intermountain agree. The Company also mailed notice of the Application with a description of the proposed Winter Protection Program to all of its residential customers on November 8-12, 2002. Reply Comments at 2. If the pilot program is approved, an Intermountain Gas Customer Contact Representative would personally explain the Winter Protection Program to customers who seek moratorium protection. *Id.* The Company also stated that it would continue to provide customers who do not meet the moratorium eligibility criteria with level pay plans, special payment arrangements and counseling on where to seek other assistance. *Id.*

During the comment period, Intermountain contacted agencies and organizations that represent potentially affected customers and offered to further explain the Winter Protection Program in order to address any concerns they might have. The Company stated that these meetings were very productive and typically resulted in statements of support. *Id.*

## **IV. COMMISSION FINDINGS**

In 1987, the Commission articulated four goals for its winter moratorium policy: 1) preserve public health and safety by limiting the circumstances under which service may be terminated during winter months; 2) encourage the development of good payment habits by customers; 3) provide relief from impossible financial obligations; and 4) facilitate collection of problem accounts. General Order No. 177. Although nearly 15 years have passed, we believe that these goals are still relevant today.

For more than two decades, the Commission has encouraged customers to pay their bills while at the same time protecting those households with elderly, children and infirm persons from disconnection of service during the winter. We are aware that the desire to protect those who struggle financially from winter disconnection must be balanced with requiring accountability from customers who are able to pay but use the moratorium as an opportunity to avoid making monthly payments.



The Commission has reviewed the joint Application filed in Case No. GNR-U-02-1. The Commission has also considered Staff's analysis and recommendation in this matter, the extensive public comments, and the Companies' reply comments. Addressing procedural matters, the Commission continues to find that the issues presented are suitable for processing under Modified Procedure, i.e., by written submission rather than by hearing. IDAPA 31.01.01.204. The Commission also grants Avista Corporation's Motion to Withdraw from these proceedings. IDAPA 31.01.01.068. After carefully reviewing the record and the goals of the winter moratorium rule, we find that it is not appropriate to implement the proposed pilot Winter Protection Program at this time.

We are reluctant to approve the proposed pilot program at this time for several reasons. Based on the public comments, it appears that a significant number of customers did not fully understand the Applicants' proposal or were uncomfortable with the quick scheduling necessary to implement the pilot program before the start of the heating season on December 1. Although the Applicants issued press releases and sent mailers to notify customers of the proposal, no opportunity existed for customers to have their questions answered during the 21-day comment period. Of the 142 that filed comments, 30 customers indicated that this proposal should be postponed for at least one year so that more information and input could be gathered. Under these circumstances, the Commission is not willing to alter a 20-year public safety policy without allowing sufficient time to educate the public and respond to customer concerns. Although a wide variety of interested parties and agencies have been meeting since last February to discuss these issues, the actual Application was not filed early enough to adequately inform the general public.

Based upon our review of the public comments, the Commission is also concerned that customers have misunderstood statements made in Intermountain Gas' customer mailer. Although the Company's notice refers to 11,000 accounts that were written off for non-payment during the 2002 fiscal year at a cost of \$1.5 million, the notice did not indicate what portion of these accounts were attributable to customers that sought protection from disconnection under the winter moratorium. Moreover, the notice did not advise customers that the Company's present rates include revenues attributable to all bad debt or uncollectables. The proposed pilot program itself may only address a small portion of the written-off accounts.

Intermountain's customer notice also indicated that the average customer who uses gas for space and water heating would be required to pay one-half of their level pay amount, which would be approximately \$25 each month under the proposed pilot program. Several commentators appeared to interpret this as requiring a uniform \$25 minimum payment of all pilot program participants, which they believed to be a reasonable amount. The Commission is concerned that the

public is not aware that the \$25 amount referred to by Intermountain was an *average* amount. A minimum payment of one-half of the level pay amount could be significantly more than \$25; several commentors indicated their level pay was in the \$80 to \$100 range. In the event the Application is resubmitted in the future, the Commission questions whether using one-half of the level pay amount is appropriate as the standard for a minimum payment.

Although we deny the Application at this time, the Commission agrees with the Applicants (and the one-third of commentors who favored the Application) that operation of the winter moratorium should be re-evaluated. The Commission reviewed the eligibility information submitted by the Applicants in this case but found some of it to be incomplete, confusing or unreliable. To ensure that we have the necessary information to properly evaluate any future changes to the winter moratorium eligibility rules, the Commission directs the Applicants and Idaho Power Company<sup>1</sup> to collect the information listed in the Attachment to this Order.

The Commission also directs Intermountain Gas to change the manner in which it identifies customers eligible to receive winter moratorium protection. To bring its practices into conformity with the other Applicants, Intermountain Gas shall require customers to declare eligibility for winter moratorium protection by notifying the Company each heating season rather than relying on the Company's historic records of eligibility. We anticipate that this change in procedure will result in more accurate customer data for our future review.

While the Commission is not changing its winter moratorium rules at this time, we feel strongly that utilities must encourage customers to make payments throughout the winter at the time each household contacts the utility to declare eligibility for winter moratorium protection. We expect the utilities' customer service representatives to ask what amount the customer can afford to pay and receive the customer's oral commitment to pay a minimum amount. The Commission believes that even customers on a tight budget will attempt to honor this verbal agreement and thus minimize their outstanding balances owed at the end of the moratorium period. While the utilities cannot be expected to make special payment arrangements with low-income customers who do not contact their customer service departments, we expect that the utilities will work with those customers who do.

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<sup>1</sup> Although not an Applicant in this case, Idaho Power Company did participate in the collaborative meetings that led to the filing of this Application. The Commission expects Idaho Power to maintain the customer information listed in the Attachment.

Finally, the Commission encourages that the Applicants, Idaho Power Company, Commission Staff, Department of Health and Welfare, and Community Action Agencies to meet informally next year once the 2002-2003 heating season data becomes available. To help identify customers that abuse the protection offered by the winter moratorium, we encourage the participants to consider methods of verifying customers' financial difficulty that will not overly burden the utilities. Although using an income matrix may help identify low-income customers that would automatically qualify for a pilot program, the Commission does not believe it should be used to exclude customers whose circumstances are sufficiently dire to merit protection under the winter moratorium.

### CONCLUSION OF LAW

The Idaho Public Utilities Commission has jurisdiction over this matter and the Applicants, which are natural gas and/or electric utilities, pursuant to the authority and power granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### ORDER

IT IS HEREBY ORDERED that the joint Application from Avista Utilities, Intermountain Gas Company and PacifiCorp seeking authorization to implement a two-year pilot "Winter Protection Program" that establishes minimum monthly payments during the winter moratorium period is denied.


IT IS FURTHER ORDERED that Avista Corporation's Motion to Withdraw from this proceeding is granted.


IT IS FURTHER ORDERED that Intermountain Gas Company require customers to declare eligibility for winter moratorium protection by notifying the Company each heating season rather than relying on the Company's historic records of eligibility.

IT IS FURTHER ORDERED that utilities intending to seek future modification of the Commission's winter moratorium eligibility rules collect the information identified in the Attachment to this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 29<sup>th</sup>  
day of November 2002.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Barbara Barrows  
Assistant Commission Secretary

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## **MORATORIUM INFORMATION REQUIRED FOR FUTURE COMMISSION REVIEW**

### **Establishing a Baseline**

How many residential customers were served at the end of the calendar year 2002? For PacifiCorp, how many residential customers were served at the end of the fiscal year (March 2003)?

### **Inability to Pay**

How many residential customers declared moratorium eligibility during the months of December 2002 and January and February 2003? List the number of customers who declare during each month separately.

For those customers declaring moratorium eligibility, how many:

Had children (18 or under) in the household?

Had elderly (62 or older) in the household?

Met the income eligibility guidelines for LIHEAP?

For those that meet LIHEAP income eligibility guidelines, how many actually receive LIHEAP benefits?

How many residential customers received LIHEAP benefits but did not declare moratorium eligibility?

### **Participation in Level Pay Plans and Winter Payment Plans**

How many moratorium eligible customers sign up for a regular Level Pay Plan? How many make all monthly payments as agreed during the months of December, January and February? Payments may be from any source, including LIHEAP benefits.

How many moratorium eligible customers sign up for a Winter Payment Plan? How many make all monthly payments as agreed during the months of December, January and February? Payments may be from any source, including LIHEAP benefits.

### **Payment History**

For those moratorium eligible customers who receive LIHEAP benefits, how many make no payment other than the LIHEAP benefit amount during the months of December, January and February?

For those moratorium eligible customers who do not meet the eligibility guidelines for LIHEAP, how many make no payment during the months of December, January and February?

For those moratorium eligible customers who qualify for but do not receive LIHEAP benefits, how many make no payment during the months of December, January and February?

How many moratorium eligible customers had a past due amount owing at the time they declared moratorium eligibility? For these customers, what is the total revenue past due and owed at the time of declaration of eligibility? List the months of December through February separately.

How many moratorium eligible customers had a past due amount owing as of March 1, 2003? For these customers, what is the total revenue past due and owed as of March 1, 2003? How many of these customers received LIHEAP benefits?

How many moratorium eligible customers are disconnected for nonpayment during the months of March through May 2003? For these customers, what is the aggregate amount owing at the time of disconnection for nonpayment? How many of these customers received LIHEAP benefits? List each month separately.

During the months of March through May 2003, how many moratorium eligible customers are disconnected for nonpayment and subsequently reconnected within 10 days of disconnection? For these customers, what is the aggregate amount paid at the time of reconnection? How many of these customers received LIHEAP benefits? List each month separately.

How many moratorium eligible customers were disconnected for nonpayment during the months of March through May 2003 and did not re-establish service and made no payment 90 days after disconnection? Of these customers, what was the total amount owing 90 days after disconnection? How many of these customers received LIHEAP benefits? What percentage of total residential write offs does this represent for the same time period?