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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RESIDENTS' CENTRAL COUNCIL, et al.	:	CIVIL ACTION NO. C73-742
Plaintiffs	:	JUDGE KRUPANSKY
-vs-	:	
CUYAHOGA METROPOLITAN HOUSING	:	
AUTHORITY, et al.	:	<u>ORDER</u>
Defendants	:	

Without admitting that there have been any actions violative of the Fourteenth Amendment to the United States Constitution or 42 U.S.C. §1402(1) and the regulations issued thereunder and without admitting that there have been any unlawful or improper actions, the parties consent and it is hereby ordered that:

1. This court is properly seized of jurisdiction over the parties and subject matter of this case under 28 U.S.C. §1343 (3) and (4) under the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

2. This action was properly filed as a class action under Rule 23 of the Federal Rules of Civil Procedure. All the necessary elements of Rule 23 (a) and (b) are present. This is a class pursuant to Rule 23 (b) (2) and is composed of all CMHA tenants who are covered by the Brooke Amendment and who must pay for their utilities, either in whole or in part, in addition to their rent. Notice of the proposed settlement has been given to the members of the class through their counsel and their authorized tenant representatives as directed by the Court.

3. Defendants shall increase the energy and dollar allowances for gas and electricity to an amount not less than the HUD recommendations contained in HUD's 1974 utility review of CMHA. Said increase shall be made effective July 1, 1975. The HUD utility review is attached hereto as Exhibit A. CMHA may re-evaluate these allowances after January 1, 1976 in

the event that HUD alters its utility policy or does not fund, effective January 1, 1976, the allowances recommended in Exhibit A. Plaintiff Residents' Central Council and Counsel for Plaintiffs herein shall be entitled to advance notice of any proposed changes in the allowances.

4. The Defendants shall reduce the rate of surcharge assessed against CMHA tenants for excess consumption of electricity from 3.0 cents to 2.6 cents per KWH. Said reduction shall be effective July 1, 1975. CMHA may re-evaluate its rate of surcharge for gas and electricity pursuant to paragraph 5 of this Order after January 1, 1976.

5. For such period of time as it is a HUD requirement, the rate of surcharge utilized by CMHA shall not exceed the sum of (a) the incremental or marginal costs incurred by CMHA for the purchase, at bulk rates, of electricity and/or gas consumed by tenants in excess of their consumption allowances; and (b) reasonably related administrative costs.

Plaintiff Residents' Central Council and Counsel for Plaintiffs herein shall have the right to advance notice of any proposed increases in the rates of surcharge and shall be afforded the privilege of examining all underlying cost data prepared and/or utilized for this purpose by CMHA.

6. Defendants shall bi-annually adjust the dollar allowances for gas and electricity accorded tenants who purchase utilities directly from the utility company to reflect any future changes in the utility rates charged to said tenants.

7. Nothing in this Order is intended to constitute any acknowledgment by either party that the present rates of surcharge or allowances are unreasonable or that the rates of surcharge and allowances provided hereunder are required of CMHA by law or regulation.

8. All damages or other monetary claims of Plaintiffs or Plaintiffs' class based on the alleged unreasonableness or unlawfulness of the allowances or the rates for utility surcharges in effect prior to July 1, 1975 are dismissed with prejudice.

9. All costs shall be assessed against Defendant CMHA.

Peter M. Inkin  
COUNSEL FOR PLAINTIFFS

/s/ ROBERT B. KRUPANSKY  
UNITED STATES DISTRICT JUDGE

Martin K. Kelly  
COUNSEL FOR DEFENDANTS

5-5-75  
DATE

This utilities review is based, primarily, on an in-depth study of electric and gas costs and consumption utilizing the actual consumption figures covering a 1-year period from March 31, 1973 to March 31, 1974. Although the actual consumption figures from individual projects were utilized to determine the allowances, they were grouped together by utility combination to provide a more representative sample. In cases where there was not sufficient consumption figures available to determine the allowance for a particular combination, some judgment had to be exercised to arrive at a reasonable allowance.

Although the Authority was instructed to, and checked for, the use of various electrical appliances in the survey, the only appliances that were factored out of the actual electrical consumption figures were the consumption for air conditioners and food freezers. The gas consumption allowances are based on actual consumption figures with no appliances excluded.

In the case of homeownership, leased, and any other units where the utility companies bill the tenants directly, the dollar allowances included in this report were derived from actual consumption of other CHHA projects having the same utility combinations. The actual consumption or cost could not be obtained from the utility companies supplying the electric and gas. It is recommended that the CHHA establish a program of reading the meters (electric, gas and water) of each of these direct billed units at least annually so this data can be used as a base to ascertain the reasonableness of the utility allowances. Adjustments should then be made accordingly.

In order to expedite the completion of this utility review of the allowances for tenant utilized electric and gas, no detailed review was made of electric, gas, and water for project use. During the course of the review it was recommended that CHHA contract the services of a consulting engineering firm to make a detailed study, including cost estimates of the condition of all underground utilities, types of boilers and electrical distribution in view of an overall utility efficiency and conservation program.

In those cases where the tenants pay the water and sewer costs, as in the case of the homeownership units, the CHHA should add an amount to the dollar allowances included in this report sufficient to cover the cost of average water and sewer usage as determined by the supplying utility company.

Specific findings and recommendations are as follows:

Finding: Administrative Order No. 27 and others call for 219 kWh/per quarter for project furnished self-defrost refrigerators. CEI handbook 574-15M, Average Energy Use of Electrical Appliances in the Home indicates that 300 kWh/per quarter is more realistic.

EXHIBIT A

Recommendation: The allowance for project furnished self-defrost refrigerators should be increased to 300 KWH/per quarter.

Finding: Several Administrative Orders do not show allowances for ER sizes in the project: Example is No. 27 Lakeview, no 5 BR allowance is given and project has 2 - 5 BR units.

Recommendation: Administrative Orders should reflect all BR sizes in the project.

Finding: The LHA has several projects that have not yet had the streets dedicated. This requires the LHA to pay for the utility consumed by street lighting as well as maintenance.

Recommendation: Street dedication should be expedited insofar as reasonable.

Finding: Several dwelling units included in the review had unreasonably high or low consumption when compared to other similar units in the same project. Also, the LHA does not have a check-meter calibration or maintenance program. This indicates a possibility that some meters may be inaccurate.

Recommendations: The LHA should develop a calibration and maintenance procedure for check meters. The first meters to be calibrated should be those where unreasonable consumption is being experienced.

Finding: Project managers interviewed were not fully aware of the provisions of Part II, Section 9 of the LHA Guide, Controlling Utility Consumption and Cost. This handbook provides significant guidance to proper record keeping and handling of utility operations at the project level.

Recommendations: Managers should be made aware of provisions of this handbook.

Finding: The LHA surcharges for excess consumption in some elderly high-rise buildings. This creates potential resident unrest in that not all residents are treated the same.

Conclusion: The LHA should study the income obtained from checkmetering high-rise buildings to determine if it is worth while to continue the practice.

Finding: Data supplied by CMHA differentiated between gas consumption in some estates but this procedure was not followed throughout the Authority.

Recommendation: The year's consumption study per earlier recommendation should be reviewed to determine if there is a significant difference in those estates as well as those that already have the "Inside or Outside" differentiation.

Finding: It is possible that other combinations of utilities exist in CMHA under the leased or homeownership program which were not covered by this study.

Recommendation: If additional combinations are realized, CMLA should provide data to this office so that appropriate allowances can be established.

Finding: Electric consumption at Miles-Elmarge, OH 3-41, is considerably higher than consumption at other estates with the same combination of electric consuming equipment (factoring out air-conditioning).

Recommendation: The IFA should investigate this matter and make appropriate adjustments as required to assure that the utility being charged for is being consumed.

Finding: Utility consumption and dollar allowances are typically low. This has resulted in excessive charges to the residents.

Recommendation: Consumption and dollar allowances for gas and electric should be changed to those as found in the following table of allowances:

[The table content is extremely faint and illegible due to low contrast and noise in the scan. It appears to be a table with multiple columns and rows, likely detailing utility allowances for different categories of residents or estates.]

CONSUMPTION ALLOWANCES \*

I. Electric

A. Combination - Lighting and Refrigeration

Bedroom Size	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	TOTAL
0	325	550	618	496	1989
1	474	506	495	500	1975
2	720	790	720	735	2965
3	1035	1110	1120	990	4255
4	1610	1480	1540	1480	6110
5	1920	1730	1770	1750	7170
6	No. 6 - BR's in this combination				

B. Combination - Lighting, Refrigeration and Cooking

Bedroom Size	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	TOTAL
0	535	525	490	510	2060
1	660	630	560	610	2460
2	No. 2 - BR's or larger in this combination				

C. Combination - Lighting, Refrigeration, Forced Warm Air Fan

Bedroom Size	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	TOTAL
0, 1	590	505	565	550	2210
2	1277	1067	1087	1120	4551
3	1357	1189	1320	1200	5066
4	1690	1460	1475	1448	6073
5	No. 5 BR's in this combination				
6	2602	2412	2465	2331	9810

If frost-free refrigerators are included, add 300 KWH per quarter to consumption values shown.

\* Based on actual consumption of residents living in estates where the respective combinations exist. 75% of the residents were protected from excess consumption for the period studied.

## II. Natural Gas

## A. Combination - Cooking and Dwelling Heat

Bedroom Size	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	TOTAL
2 - (O) <sup>1</sup>	68.4	31.2	10.1	38.1	147.8
2 - (I) <sup>2</sup>	38.4	18.4	9.4	22.0	88.2
3 - (O)	80.0	38.0	19.0	55.0	192.0
3 - (I)	54.9	27.6	8.2	29.0	119.7
4 - (O)	81.5	39.6	12.4	47.2	180.7
4 - (I)	59.9	30.9	10.4	35.7	136.9

## B. Combination - Cooking, Dwelling Heat and Domestic Hot Water

Bedroom Size	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	TOTAL
0	36.0	21.0	8.0	28.0	93.0
1	50.9	21.4	10.0	34.6	116.9
2 - M <sup>3,5</sup>	43.5	22.1	14.3	39.1	119.0
2 - (O-W) <sup>4</sup>	66.3	25.6	13.3	44.3	149.5
2 - (I-W)	56.0	29.8	15.3	38.0	139.1
3 - (O-W)	85.0	39.4	19.9	58.5	203.2
3 - (I-W)	52.9	34.5	8.2	36.5	132.1
4	110.0	50.0	27.0	76.0	263.0
5	No 5- BR's in this combination				
6	121.6	63.6	31.9	107.0	324.1

## Notes:

1. O - Outside or end apt.
2. I - Inside apt.
3. M - More modern insulated buildings
4. W - Older more poorly insulated buildings
5. This unit combination could be dropped and the consumption of 2- (I-W) used with little loss to the IMA.



I. Electric:

A. Combination - Lighting and Refrigeration

<u>Bedroom Size</u>	<u>Average Monthly Consumption/(KWH/Mo.)<sup>1</sup></u>	<u>Allowance (\$)<sup>2</sup></u>
0	166	6.50
1	165	6.50
2	247	9.50
3	355	13.00
4	509	17.50
5	598	20.50
6	636	23.00

B. Combination - Lighting, Refrigeration and Cooking

<u>Bedroom Size</u>	<u>Average Monthly Consumption/(KWH/Mo.)</u>	<u>Allowance(\$)</u>
0	172	6.50
1	205	7.50
2	355	13.00
3	495	17.00
4	683	23.00
5	802	26.50
6	926	30.00

1. Actual consumption data was used where available. Where actual consumption data was unavailable, the following methods were used:

- a. Consumption pro-rated between actual consumption of other br- sizes in the same combination.
- b. Where (a) could not be used, actual consumption was added to handbook consumption to arrive at the consumption in the required combination. Ex.: Largest br size in Ltg., Ref, and Ckg. combination is 1. To arrive at the consumption used, actual consumption of the Ltg., Ref. combination was added to handbook consumption of Ckg. to arrive at the total consumption.

2. CEI rates used in all cases. If MWHY supplies electricity to any resident paying their own bill, CEIA should adjust the allowance to conform to MWHY's rate schedule.

POLICE ALLOWANCES FOR OFFICERS (Continued)  
C. Combination: Lighting, Refrigeration, Forced Warm Air Fan

<u>Bedroom Size</u>	<u>Consumption (KWH/Mo.)</u>	<u>Allowance (\$)</u>
0	184	7.00
1	184	7.00
2	379	13.50
3	422	15.00
4	506	17.50
5	662	22.00
6	817	27.00

Where Frost Free Refrigerators are installed, add \$3.50 per month

II. Natural Gas - 1

A. Combination: Cooking, Dwelling Hot Water, DU Heat

<u>Bedroom Size</u>	<u>Consumption (MCF/Mo.)</u>	<u>Allowance (\$/Mo.)</u>
0	7.7	11.00
1	9.7	13.00
2	12.4	16.50
3	16.9	21.50
4	21.9	27.50
5	24.5	30.50
6	27.0	33.50

B. Combination - Cooking, DU Heat

<u>Bedroom Size</u>	<u>Consumption (MCF/Mo.)</u>	<u>Allowance (\$/Mo.)</u>
0	6.3	9.00
1	7.9	11.00
2	12.3	16.00
3	16.0	20.50
4	15.0	23.50 <sup>2</sup>
5	21.0	26.50
6	23.3	29.00

Notes:

1. Outside consumption was used as a basis for all gas dollar allowances. If the LHA can substantiate an appreciable difference between inside and outside heat loss in direct billed estates as Garden Valley, the supporting information should be sent to this office for appropriate action.
2. Cost based on actual consumption showed this amount to be less than 4 - BR. It was increased to present a more logical value.

<u>Bedroom Size</u>	<u>Consumption (MCF/Mo.)</u>	<u>Allowance(\$)</u>
0	7.1	10.00
1	9.0	12.50
2	11.6	15.50
3	15.9	20.50
4	20.6	26.00
5	24.1	30.00
6	25.5	31.50

31.50

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