

Energy Poverty in Buffalo's West Side:

PUSH, National Fuel, and the Fight for Equitable Energy Access



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Introduction: an Organizing and Advocacy Success Story

Energy poverty, the condition of households that cannot adequately heat their homes, is a chronic problem resulting from low income, high fuel prices, and poorly insulated, energy inefficient houses. In addition to financial strain, energy poverty causes severe social and health problems for people living in under-heated homes (Boardman 1991; 2013).

Despite its seriousness and pervasiveness, energy poverty has been ignored too often in the US. Those that suffer through energy poverty each year, trapped in bitterly cold homes and facing exorbitant fuel bills, have only rarely organized effectively to demand necessary changes, making the case of People United for Sustainable Housing (PUSH) so significant. Through community organizing, advocacy, and protest, PUSH catalyzed unprecedented shifts in the distribution of energy conservation funding in Western New York, ensuring that a greater share went toward low-income households for weatherization.

Prior to PUSH's advocacy and organizing, a disproportionate amount of state energy conservation funding was directed toward wealthier, outlying suburbs, leaving many in Buffalo's underserved West Side neighborhood with little access to long-term solutions for energy poverty (NFAC 2011). The changes PUSH wrought resulted in more equitable access to publicly regulated, privately funded energy conservation funds. Greater access to this funding opened the door for households across the city to receive low- or no-cost whole home weatherization, improving their energy efficiency, keeping homes warmer for less (Robinson 201; Terreri 2013).

PUSH's strategies and successes stand as examples for other regions suffering from energy injustice, but the work of ending energy poverty is far from over in Buffalo or the nation.



Energy Conservation in the US and New York

Energy conservation regulation in Buffalo and New York State is influenced by policy at virtually all levels of government.

Major federal action on energy conservation began with the passage of the Energy Conservation Act (ECA) in 1976. The Weatherization Assistance Program (WAP), begun that year, was an effort to improve the energy efficiency of low-income homes in the wake of reduced oil supply and rising costs resulting from the oil crisis of the early 1970s. Aside from a one-time boost after the 2008 financial crisis, the program has been consistently underfunded. Experts estimate that only 20 percent of income-eligible households have been reached by WAP (NCLC 2012; Kaiser and Pulsipher 2004).

The other major low-income federal energy conservation program is the Low-Income Home Energy Assistance Program (HEAP). Established in 1981 as part of the Crude Oil Windfall Profits Tax Act, HEAP pays a portion of energy bills for families with low-to-moderate incomes. In New York in 2014-2015, a family of four was eligible for HEAP if it had less than \$4,219 per month in gross income (OTDA). States distribute HEAP

funds provided to them from the federal government, with most monies directed toward heating subsidies. States distribute funds on a first come, first serve basis to eligible consumers until funds run out. The program is quite popular among utilities, especially as the assistance is paid directly to them.

In Buffalo, many households cannot afford to heat their homes until mid-November, when HEAP funds become available. Each year, HEAP funds run out before the need is met.

Many low-income Buffalonians cannot afford to heat their homes until they receive HEAP funds. Distribution of funds does not begin until mid-November, a month with average lows of 34°F in the city. HEAP funds annually run out before the need is met. As a result, HEAP opening day brings hundreds of the city's most vulnerable to stand in the cold, in long lines, for the chance to receive needed assistance.

Since the 1990s, energy conservation has shifted toward local utility-run efficiency programs funded by surcharges to rate-payers. With the rise of these programs, some state utility regulating commissions have instituted Efficiency Resource/Portfolio Standards (EERS/EEPS) to create binding targets for utilities to save energy.

In New York State, the Public Service Commission (hereafter, the "Commission") monitors and regulates utilities, including Western New York's National Fuel Gas, the region's gas utility. In 2008, the Commission established the NYS EEPS with the goal of reducing electricity use by 15 percent by 2015, with comparable outcomes for natural gas. All utilities in the state must comply.

The NYS Energy Research and Development Authority (NYSERDA) is a public benefit corporation that works with the Commission to administer funds and programs that promote energy efficiency and renewable energy sources. NYSERDA's EmPowerNY program distributes ratepayer funds collected by utility companies statewide to contractors and consumers for conservation projects, such as rebates for energy efficient appliances and weatherization.

Origins of National Fuel's CIP

As part of a larger request to the Commission to increase natural gas rates and to re-design service charges to customers, National Fuel proposed an energy conservation program called the Conservation Incentive Program (CIP) in 2007. The program was meant to provide funds for energy conservation, funded through a surcharge to customers, based on monthly gas usage. The surcharged averaged around \$20 per customer per year, totaling approximately \$10 million per year for the program (PSC, 2007b; Robinson 2007).

National Fuel presented the program as a way to encourage environmentally conscious behavior and to improve the energy efficiency of housing stock within its service area. Critics alleged that National Fuel proposed the program to ensure approval for higher gas rates from the Commission (NFAC 2011). While the Commission would regulate the program, CIP would be run by National Fuel.

The program has four parts:

- a non-residential business efficiency incentive;
- residential rebates for installation of energy efficient appliances (water heaters, furnaces);
- low-income weatherization funding (called the Low Income Usage Reduction Program, or LIURP); and
- an outreach program to inform customers about the program.

An agreement was reached in 2007: rates were increased on all customers, and the CIP was established as a counterweight to the higher rates. A revenue decoupling mechanism was instituted to remove any disincentive for National Fuel to promote efficiency, which would naturally decrease gas usage. Additionally, a new annual return on equity (ROE) limit was set at 9.1 percent, limiting the profits that National Fuel could legally earn (PSC 2007b).

National Fuel's Conservation Incentive Program is funded by customers, who pay an average of \$20 per year, for a total budget of some \$10 million per year.

Background on Buffalo

Buffalo has faced issues common to other Rust Belt cities as large manufacturers have departed and jobs have shifted to low-wage service sectors (Taylor et al. 2013). While Buffalo's suburbs are faring well, the city has faced population decline, high unemployment and poverty rates, and low educational attainment, with striking racial disparities for each metric. Buffalo-Niagara is the sixth most segregated metropolitan region in the US. Inner ring suburbs, such as Cheektowaga, are slowly becoming more diverse but remain significantly whiter and more prosperous than the city. Outer suburban towns, such as Orchard Park and Clarence, reflect even greater disparities. Blacks and Latinos, disproportionately concentrated in high poverty urban neighborhoods, face far more unemployment than the predominantly white populations in those surrounding suburbs.

	Buffalo city	Cheektowaga	Clarence	Orchard Park Village
Total Population	260,568	75,002	2,799	3,229
Median Age (years)	33.5	42.9	46.9	43.5
White (%)	52.90	87.10	95.10	98.40
Black (%)	39.80	11.30	4.00	2.10
Asian (%)	4.30	1.5	2.2	0
Other Race (%)	6.8	1.8	.5	0
Hispanic or Latino (%)	9.70	2.70	4.40	2.00
Unemployment Rate (%)	13.76	7.86	5.25	2.50
Median Household Income	30,942	48,052	70,417	71,792
Families Below Poverty Line (%)	26.70	7.70	5.00	1.70
Families with Children Below Poverty Line (%)	41.1	14.2	13	3.9

Adapted from 2009-2013 American Community Survey 5-Year Estimates

The city's housing stock is very old; nearly two-thirds of it was built before 1939. As of 2013, the city had an extremely high housing vacancy rate (16.9 percent), and the median value of owner-occupied homes was a mere \$66,600. The majority of city residents are low-income tenants, half of whom spent more than 35 percent of their income on rent (ACS 2013).

Origins and Philosophy of PUSH

PUSH was founded in 2005 to address housing issues in one of Buffalo's most disinvested neighborhoods, the West Side. The neighborhood is largely composed of underserved populations, including Puerto Ricans, African-Americans and refugees. Residents work in low-wage sectors, if they are not excluded from the labor market altogether. The housing stock is aging and dilapidated; there are few healthy amenities like parks and full-service grocery stores. Nearly 70 percent of residential property on the West Side is rental housing (ACS 2013). Absentee landlords own a considerable proportion of this property, worsening patterns of underinvestment.



PUSH's two founders, along with a growing group of neighborhood activists, built a community organization to address the West Side's significant housing needs, working to construct green housing, improve or create community resources, and advocate for public policy changes.

Early campaigns targeted vacant housing and community development through direct action, aimed largely at state agencies and local governments. An early campaign that sought rehabilitation of vacant homes and buildings on the West Side, as opposed to demolition, culminated in an announcement from Buffalo's mayor who pledged to change his housing platform and commit 500 city-owned lots for rehabilitation.

In addition to campaigning, PUSH embraced direct involvement in "putting the solution into practice" by purchasing vacant properties and repurposing them into community centers, affordable housing, and gardens. PUSH has also worked to weatherize neighborhood houses and to build green infrastructure, which reduces water pollution by diverting stormwater from the sewer systems into plantings. In doing so, PUSH has created numerous jobs for neighborhood residents.

PUSH's National Fuel Campaign

PUSH's members identified high gas bills and energy inefficient housing stock as major impediments to individual and community wellbeing, with many members suffering from chronically cold homes. The assistance provided by HEAP and other programs was inadequate to meet the dire cost of heat in the winter months. Energy inefficiency was seen as a key culprit contributing to high, often unpayable, gas bills. Weatherization could reduce high gas bills, while yielding environmental benefits, if it could be made affordable and accessible.

The Problems with the CIP

- Benefits flowed mostly to wealthier homeowners who could afford to buy new furnaces and hot water heaters and collect CIP refunds;
- The funding mechanism (a fee based on usage) disproportionately hurt low income residents with uninsulated apartments; and
- Much of the money was going toward "education" efforts hard to distinguish from National Fuel advertising.

In early 2010, PUSH began to explore accessing funds for weatherization through National Fuel's CIP. The reporting requirements instituted by the Commission meant that data on the distribution of CIP funds among the different programs were publicly available.

PUSH quickly found that most CIP-funded projects were focused on providing rebates for furnaces and water heaters,

rebates that likely benefitted primarily middle- and high-income suburban homeowners who had both means and motivation to invest in their own homes.

A significant portion of the CIP funds were allocated to “education and outreach” by National Fuel, which PUSH saw mainly as a euphemism for advertising. In addition, PUSH was concerned with how CIP funds were collected. The CIP was funded through a surcharge on customers’ bills, based on monthly usage. This method had a disproportionate impact on those who could afford it least: urban renters had very high gas bills because they lived in old, poorly insulated apartments, and therefore paid more into the CIP program as well.

Motivated by these concerns, PUSH members began by writing a letter to National Fuel CEO David Smith, outlining the group’s position on CIP and seeking an audience with him to discuss CIP funding allocations. A group of about twenty PUSH members, most of whom had their gas turned off, went to deliver the letter to National Fuel in the spring of 2010.



National Fuel did not respond to PUSH’s request for a meeting. Organizers escalated their efforts, coining the slogan “Turn up the heat on National Fuel.” Beginning in September of 2010, PUSH members travelled to suburban Amherst to protest in front of National Fuel’s headquarters, demanding an audience with the company’s CEO.

These efforts and subsequent requests to discuss the group’s proposals to reform the CIP were ignored. PUSH organized several more protests over the course of the month, which grew in size and frequency.

During this time, National Fuel requested a renewal of the existing 2007 rate settlement from the Commission. National Fuel wished to keep gas prices constant and leave the CIP largely unchanged. As a government regulated utility, National Fuel needed to receive approval from the Commission for these measures.

Seeing an opportunity to shift the campaign by bringing in the regulatory agency, PUSH called upon the Commission to deny the request. “It became pretty clear that if you want to affect [National Fuel], you really have to engage the Commission,” recalled Aaron Bartley, PUSH co-founder.

PUSH pressured the Commission to deny the renewal of the rate settlement in order to reform the CIP conservation program. Following their request to the Commission, approximately sixty PUSH members gathered at National Fuel headquarters in Amherst on September 18 to protest and again seek an audience with the company CEO (Sommer 2010). “We wanted more money into weatherization. That’s all we wanted, to talk,” said Brenda Miller, PUSH member and coordinator for the National Fuel Campaign. National Fuel refused to meet with PUSH and obtained a restraining order against the group, citing “escalating illegal, unprofessional and harassing tactics.” These statements



Brenda Miller-Herndon at a National Fuel Accountability Event

Brenda Miller-Herndon's Story

Back in 2008, myself and other low income families in my community were facing tough choices due to an energy crisis that affected all of us - low income families couldn't keep their gas on. I knew I wasn't alone. I got tired of being forced to make tough choices. For example, "Should I pay my rent or pay National Fuel Gas?" "Should I buy food for my family or pay National Fuel Gas?" "Should I skip paying on my utility bill and pay National Fuel Gas?" I had my gas turned off with a \$2,000 gas bill. Due to my service being shut off, I had to use hot plates and electric heaters. Sad to say my electric bill then climbed to close to \$1,000 in 3 months. The HEAP program does not open in Buffalo until November 16th or 17th so assistance wasn't available when I needed it. The houses here are over 100 years old and cold in winter. I came to believe the answer to this crisis was weatherization.

After never meeting with National Fuel Gas CEO David Smith at the time, we met with the PSC who got the ball rolling on monies that were being misused by National Fuel Gas Company's Conservation Incentive Program (CIP). Every NFG customer pays into the CIP program but everyone did not receive the assistance they deserved. Glad to say that The PSC held NFG accountable to pay back what they misused. Money in the CIP program was redirected to weatherization programs like PUSH Green and a few other programs that support low income families.

I have seen the opportunity for green jobs in my community and the benefits to families when houses are rehabbed. There is real power when people come together to tell their stories. We showed National Fuel that we were the faces of real people with real problems. And we fought for a real solution.

were followed by a trespassing lawsuit filed by the company against PUSH members for the protests, and a statement from CEO Smith calling the group "extreme," (NFG 2011).

According to Jennifer Mecozzi, a West Side resident and PUSH's board chair at the time, protestors "trampling the grass" in front of National Fuel headquarters became a key part of the grievance against the organization. In an initial court hearing on the trespassing charges, when questioned about alleged property damage, Mecozzi recalled saying, "Did I let them trample your grass a little to let you know you're doing wrong by the community? Yeah, I did."

In March 2013, one of the lawsuits brought by National Fuel against a PUSH organizer was dismissed. The case was ruled as an impermissible Strategic Lawsuit against Public Participation (SLAPP) suit, a case brought to trial by a plaintiff to silence unwanted, but legal, speech by a defendant (National Fuel Gas Distribution Corporation v. PUSH Buffalo).

With the rate case ongoing, PUSH applied to the Commission for status as an active party in the regulatory proceedings. Such status would give PUSH greater access to the proceedings on whether to renew the funding structure for the CIP.

National Fuel vehemently opposed PUSH's potential involvement. In National Fuel's briefs to the Commission, seeking the denial of PUSH's request to be an active party, the company sought to discredit PUSH for "unprofessional" activity, and for being unrepresentative of the utility's service area. The company argued that the group was seeking to distort the conservation program through reform proposals that focused solely on the West Side (NFG 2010).

The Commission granted PUSH access to the proceedings as an interested party, but the outcome was disappointing. In late November 2010, the Commission renewed the rate

settlement and authorized a minor reform of the CIP: \$150,000 would be reallocated from appliance rebates to weatherization as the program entered its fourth year (Robinson 2010).

PUSH remained committed, and in February 2011, PUSH and its ally, VOICE Buffalo, formed the National Fuel Accountability Coalition (“the Coalition”) with twelve other community organizations across the Buffalo-Niagara area. The Coalition proved that the issue of unjust distribution of conservation funds extended well beyond the West Side.

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Through the Coalition, PUSH reiterated calls to reform the CIP in order to increase funding for weatherization of low-income homes to 50 percent of the CIP program budget. NFAC also called for a reduction in the compensation of the utility’s CEO, who had earned \$7 million in total compensation in 2010, and an end to National Fuel’s hydraulic fracking in Western Pennsylvania.

PUSH and its Coalition allies continued to petition the Commission. In response, the Commission announced four public hearings to be held in mid-2011 as an opportunity for the community to discuss its concerns (Robinson 2011).

In preparation, PUSH and its allies compiled a systematic analysis of the CIP with the assistance of the research group Public Accountability Initiative. Key to the Coalition’s report was analysis of the distribution of rebate funds. Up until this point, 35 percent of total CIP funds were going to rebates, 30 percent to low-income weatherization, 15 percent to commercial rebates, and 15 percent to “education and outreach.” PUSH had contested the funding allocations, arguing that the rebate program disproportionately benefited higher-income, suburban residents, leaving the precarious situation of low-income urban residents to deteriorate (NFAC 2011).

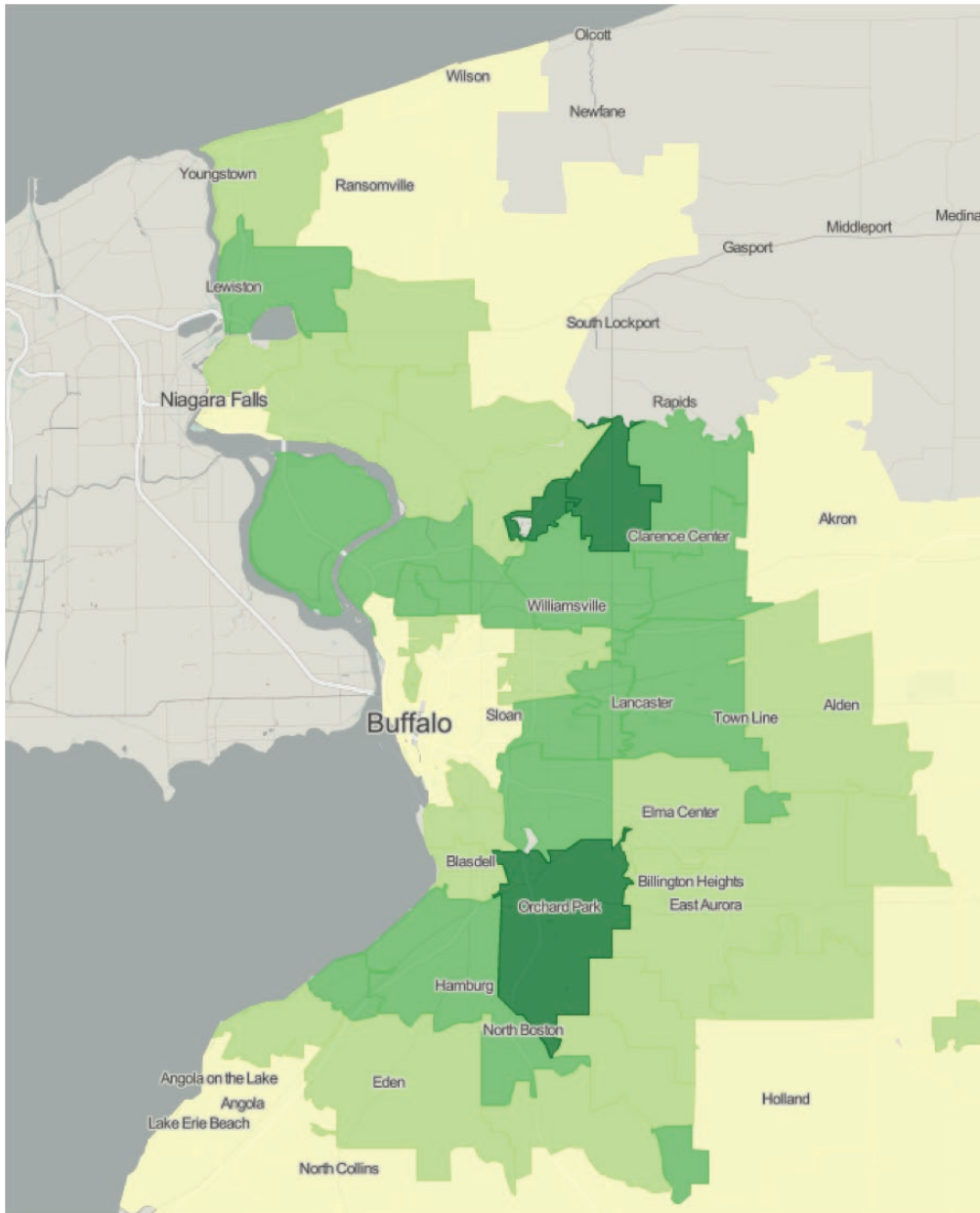
That claim, however, was difficult to prove with the data National Fuel was required to release to the public. The CIP data included neither household income data nor geographic data for recipients of CIP funds. PUSH and the National Fuel Accountability Coalition petitioned the Commission to require the release of zip coded data of CIP projects from National Fuel through the Freedom of Information Act (FOIA). The request was denied.





The Coalition leveraged the support of local politicians, and together petitioned the Commission to require the zip coded data to be released. They were successful, and the Coalition was now able to substantiate their claims surrounding CIP program allocation. PUSH and the Coalition found that the city of Buffalo received furnace rebates for under 2.5 percent of households, while suburbs outside the city received rebates for as much as 10 percent of households.

Our analysis of the same data found a similar result: an average of 2.4 percent of households received furnace rebates in Buffalo, while the average across the study area was 4.6, and nearly 6 percent for suburbs in the study area.

The majority of LIURP projects (low-income weatherization and similar projects) occurred within the city, with an average of 1.2 percent of homes receiving weatherization. Outside the city, only 0.27 percent of homes used weatherization funding.





-  0-2.5% of households received National Fuel CIP furnace rebates
-  2.5-5.0% of households received rebates
-  5.0-7.5% of households received rebates
-  7.5-10.0% of households received rebates

Although the city received a greater share of LIURP projects than surrounding areas, far fewer households were affected proportionate to the total number. Further, the city received less than half the average furnace rebate projects than the neighboring suburbs.

The difference in funding between the two residential programs bolstered the Coalition’s claims of inequitable treatment under the CIP, a point they emphasized during public hearings. The Coalition showed that the program was effectively transferring funds from residents of inefficient housing in low-income neighborhoods, who paid higher on-bill surcharges, to wealthier residents living in more efficient housing stock and benefiting from the dominant rebate program (NFAC 2011; Tighe 2011).

The Coalition called for transparency, state management of the CIP, greater allocation of funds towards weatherization programs and away from advertising, and a contribution by National Fuel, out of profits and executive compensation, to the CIP.

In July 2011, members of the Commission held their public hearings on the CIP in Buffalo. About three hundred people, mostly residents from low-income neighborhoods, attended. PUSH and the Coalition presented findings from its report, including a map of rebate fund distribution. (Figure 1). Residents from across the city used the proceedings to discuss what they had experienced.



Victory: the Commission Orders Major Changes to CIP

In late October, the Commission announced sweeping changes to the program: CIP would be managed by NYSEERDA; funding for low-income weatherization programs would increase to 50 percent of the CIP budget, representing a reallocation of approximately \$4 million; and a significant portion of the education and outreach budget, criticized by activists as little more than a promotional fund for the utility, would be cut (PSC 2011).

The mandate to increase weatherization funds had a clear effect on CIP allocation: low-income weatherization expenditure (LIURP) exceeded rebate expenditure at the end of the 2011 for the first time and has continued to increase. By the end of 2014, weatherization projects represented more than twice the expenditure on residential rebates (see Figure 3).

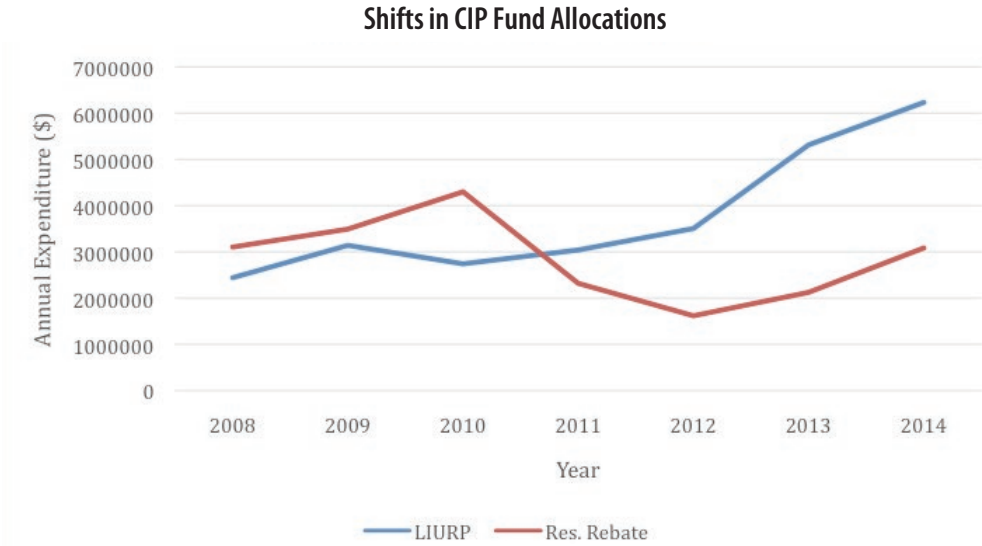


Figure 2: CIP Fund Residential Program Allocation, 2008-2014

The Commission also considered NFAC's statewide demand that half of all energy efficiency funding should go towards programs for low-income households, primarily weatherization. At the time, low-income programs represented 19 percent of the EEPS residential program, while 30 percent of customers were defined as low-income (PSC 2011).

The Commission ultimately increased weatherization funds to 30 percent statewide, rather than the 50 percent sought by the Coalition. Still, the outcome was significant. The Commission's decision led to an increase in NYSEERDA's EmPower budget for low-income weatherization, funded by the state's gas utilities, of \$18.6 million (PSC 2011; Robinson 2011).

A Second Victory: The Over-Earnings Case

In the years after the campaign, PUSH continued to follow the Commission and National Fuel. In 2013 PUSH learned that the Commission had initiated an "over-earnings case" against National Fuel. PUSH quickly became involved, organizing protests and public hearings with community and political allies.

The Commission found that National Fuel had surpassed its 9.1 percent Return on Equity (a measure of profitability), set by the Commission. National Fuel's gas rates had been steady since 2007, making the high profitability a result of declining costs in gas extraction and delivery. It was the belief of PUSH's attorney that the company's hydraulic fracturing in Western Pennsylvania was primarily responsible for the lower costs.

Due to PUSH's advocacy, \$1.75 million was allocated for low-income weatherization, and \$ 0.25 million for emergency furnace replacements.	Shifting methods from direct action to legal tactics, PUSH worked primarily through its lawyer to gain access to the legal proceedings as an active party. At issue for PUSH was how the excess profits reclaimed by the Commission would be returned to the public.
	The Commission sought a prorated refund for all customers, while PUSH sought a portion of the funds to be directed towards low-income weatherization. By the end of 2013, the Commission ruled in favor of reclaiming the utilities' overearnings, a total of \$7.5 million.

Rather than returning all excess profits to customers through a one-time credit, which would have been minimal for most, \$1.75 million was allocated to weatherization for low-income households, and \$250,000 was earmarked for emergency furnace replacement for HEAP program recipients. Most of the remainder was set aside for National Fuel's underfunded pension program and rebates for customers (Terrerri 2013).

PUSH and its Coalition allies' advocacy again proved successful in moving the Public Service Commission to recognize the disparate impact of energy poverty on low-income households and thus the need for targeted resource allocations.

Postscript: New York Bans Fracking, and National Fuel Requests a Raise

Since 2013, PUSH and its allies have continued to monitor National Fuel's activities. PUSH also played an active role in the campaign to ban fracking in New York State, which resulted in a decision first announced in December 2014 and confirmed with findings in June 2015, when the State found that high-volume hydraulic fracturing posed significant adverse impacts to land, air, and water and imposed health risks that could not be adequately mitigated. National Fuel is one of the leaders in the fracking industry in Pennsylvania and advocated vigorously against the fracking ban.

In April 2016, National Fuel announced that it would seek a 7.2 percent increase in its delivery rates, raising the average residential customer's rates by roughly \$69 per year (from \$960 to \$1,029) (Robinson 2016). National Fuel noted that residential bills had dropped steeply from 2008, when they averaged \$1,734. It proposed to use the money to replace pipes, upgrade computers and expand its low-income programs in two ways: (i) make the \$12.50 per month discount in its Residential Assistance Service program available for eight months instead of five; and (ii) offer an annual waiver of reconnection charges for low income customers shut off for failing to pay bills. As PUSH and its allies weigh their response to the rate increase request, they are likely to consider evidence of National Fuel's impressive profits. In 2015, NFG paid out \$130,720,000 in dividends, \$1.55 per share – its largest dividends since at least 2006. (US SEC 2015). Moreover, in 2015 National Fuel paid its CEO, Ron Tanski, over \$4.3 million, and its board of directors over \$2 million. (VURU 2015).

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