



National Consumer Law Center



Implementing a Roadmap to Utility Service as a Human Right

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Utility services, including electricity, heat, water, telecommunications, and internet access are essential to health, safety, and daily life. The vital need for uninterrupted utility service was evident before the coronavirus pandemic, but the COVID-19 public health emergency reinforced both the essential nature of utility service and the problem of energy and water insecurity or energy and water poverty.

Faced with these challenges, many states and utilities created temporary solutions to help struggling households during the early days of the crisis. But the underlying problem remains – essential utility service is unaffordable for too many.

Every struggling family knows that falling behind on utility bills comes with the risk of utility disconnection. Instead of ensuring that the most vulnerable in our society have access to essential utility services, state policies permit utility disconnections among medically and economically vulnerable households because of the customer’s inability to afford monthly utility bills. Other policies that impose additional late fees, deposits, liens, and other punitive charges compound the problem by increasing the amount struggling households must pay to access or maintain service.

Reliance on disconnections as a collections tool has the effect of punishing people for being poor, and ignores the longstanding racial and economic discrimination that have created the disparities that fuel poverty and the unaffordability of utility services. Available data indicate that utility service disconnections disproportionately harm people of color. When customers experience sudden loss of income or other financial hardships, they should not be forced to choose between paying a utility bill and affording rent, food, medicine, and other essentials. Attempts at purported free market solutions to the problem of affordable bills, such as introducing retail competitive energy supply markets for sales to individual residential customers, have only exacerbated the affordability problem.

Policy makers must develop alternatives to this punitive approach to utility debt collections, which leads each year to millions of disconnections nationwide, leaving physically and economically vulnerable populations without utility service. Utility service disconnections within our communities are a threat to the health and safety of the disconnected households, as well as public health and safety. State and federal policy makers must develop and fund programs that keep essential utility services affordable, taking into account the customer's ability to pay. Policy makers, utilities, and consumer advocates in all states have an obligation to take action to ensure that utility service is affordable for all, and that all have access to no-cost energy- and water-saving programs, particularly those with extremely limited income.

Obligations of State Policy Makers and Regulators, Publicly Owned Utility Providers, and Cooperative Boards

- Ensuring safe, reliable, and affordable universal utility service must be prioritized.
- State laws, including those that direct the actions of public utility commissions and non-commission-regulated utilities, should explicitly recognize that utility service is essential to public health and safety, and that no customer should be disconnected based on the inability to afford essential utility service.
- The cost of utility service should be based on a customer's income and ability to pay, through the use of equitably funded Percentage of Income Payment Plans (PIPP) for economically disadvantaged customers, which set rates for energy and water rates at an affordable level based on a person's income, and/or tiered discount rates, which provide significant discounts for income-eligible customers relative to their income level.
- Arrearage forgiveness programs for economically disadvantaged customers who make affordable, consistent monthly payments must be universally available in all states, with arrearages forgiven after 12 months of current bill payments, with allowances for occasional late or missed payments within a designated time period.
- Customers must have an opportunity to catch up when they fall behind on monthly utility bills, their participation in PIPP programs, Arrearage Management Programs (AMPs) and payment plans/deferred payment arrangements (DPAs), and should not be automatically terminated due to late payment. Customers who miss payments should be allowed to seek reinstatement under reasonable rules that reflect the customer's ability to pay.
- Disconnections based on inability to pay for low-income households must be eliminated – not just reduced – to ensure access to essential utility service.
- The cost of ensuring all residential customers can remain connected to utility service should be socialized among *all* rate classes, including commercial and industrial rate classes. Universal contribution to utility service cost recovery recognizes the societal benefit that follows universal access to utility service, including protection of public health and safety and reductions in homelessness.
- State regulators should order utilities to collect and analyze data (including disconnections, reconnections, deferred payment arrangement activity, late fees, deposits, and other credit and collections data) by zip code; investigate when disconnections disproportionately impact communities of color or other specific populations; and remedy disproportionate disconnections and other inequitable credit and collections practices.
- More transparency is needed in utility rate filings to allow stakeholders and regulators to track how utility revenues are invested, and to ensure that shareholder profits are not being prioritized over the delivery of safe, reliable, and affordable utility service, and that payments made by customers of publicly owned systems are not being diverted for non-utility purposes.

- The competitive supply of retail electric or gas service to residential customers on an individual basis should be prohibited, especially to low-income households.
- Utilities should be prohibited from imposing liens on non-vacant residential property as a debt collection tool.
- States should promote input by the most vulnerable consumers/ratepayers by funding participation by community organizations and consumer advocates in utility-related proceedings at public service commissions and municipal rate-setting proceedings through the creation of an intervenor funding mechanism.
- The adoption across the country of infrastructure trackers, formula rates, and other utility-favored regulatory models often shift financial risk to ratepayers. If an investor-owned utility's exposure to risk is reduced, then the level of profit it can collect must be reduced to reflect that lowered risk.
- Utility rates should be set in a manner that minimizes reliance on fixed monthly charges, which are regressive, punish low-users of energy and water, and minimize the ability of energy and water efficiency measures to reduce customers' monthly costs.
- New ethics laws should be enacted in all states to ensure that utilities do not offer jobs, appointments, or other favors to public policy makers, in an effort to secure enactment of utility-sponsored legislation and policies.
- Prepaid utility service, which requires customers to maintain a minimum balance in order to retain continuous utility service and is often marketed to financially struggling customers as a means to avoid expensive deposit requirements, constitutes second-class service and should not be approved by regulators.

Obligations of Federal Policy Makers

- A federally funded low-income water and sewer assistance program (similar in operation to the Low Income Home Energy Assistance Program) should be established by the U.S. Congress and adequately funded, as one part of a comprehensive federal approach to ensuring safe, affordable water and sanitation for all.
- The federal Lifeline program – the only existing federal program designed to help low-income consumers afford essential communications services – should be immediately expanded to provide a permanent, robust broadband benefit for low-income households.
- Wholesale market rates should be just and reasonable, and should not subsidize existing fossil fuel generation or erect barriers to renewable energy technologies.
- Federal policy makers should increase funding for low-income weatherization programs, which provide comprehensive weatherization to customers and lower energy bills to those most in need.

Obligations of Utilities to Ensure Customer Access to Essential Utility Service

- Public utilities must do their part to comply with the regulatory compact that provides them with monopoly franchises in exchange for serving *all customers* within that service territory. Municipal and rural cooperative utility service providers likewise have an obligation to equitably provide essential utility service to all within their service territories. Policies that lead to disconnection for customers who cannot afford to pay are inconsistent with that regulatory bargain and commitment to serve.

- Utility disconnection rates, payment plan/deferred payment arrangement activity, and other billing and collection data points, tracked by zip code, should be publicly filed regularly (monthly) with regulatory commissions so that stakeholders and regulators can monitor how consumers are faring under a utility's consumer protection policies.
- Late payment and reconnection fees, deposits, and similar punitive charges, which often far exceed the utility's cost of short-term borrowing, disproportionately penalize low-income households while providing a source of unwarranted profit for utilities, should be eliminated for qualified low-income customers, and in no case should exceed the true financial cost of service.
- Deposits to start service or re-establish service for residential customers should be eliminated.
- Utility-administered, ratepayer-funded energy and water efficiency programs must prioritize low-income households, increase funding for whole-building weatherization, and be free of up-front payment requirements and financing repayments for qualifying customers.
- To the greatest extent practicable, utility-collected/ratepayer-funded weatherization funding, including health and safety funding, should be braided with existing state and federally funded weatherization programs to ensure comprehensive treatment, and coordination and efficiency of delivery.
- Utilities should limit fixed monthly charges for energy and water service to only those costs directly related to connecting a customer to the utility network. Higher fixed fees harm lower usage customers, who are disproportionately lower income and persons of color, and reduce incentives to adopt energy and water efficiency measures.
- Utility incentive compensation packages that are tied to utility parent company financial metrics should be eliminated and replaced with metrics that focus solely on improved safety, reliability environmental stewardship and affordability in the delivery of utility service.
- The cost of utility charitable contributions must be, at a minimum, matched by utility shareholders.

Obligations of Consumer Advocates

- State consumer advocates should create coalitions with community organizations working for policy change as partners in utility proceedings so the voices of those most impacted by utility credit and collection policies can be regularly heard.
- Consumer advocates should include, within their assessment of the justness and reasonableness of utility rates, an examination of how rate proposals impact low-income customers.
- Consumer advocates should embrace the potential for energy- and water-efficiency programs to lower customer bills, and advocate for program offerings and performance metrics to ensure that low-income customers directly benefit from on-premise efficiency improvements.
- Consumer advocates should monitor and assess utilities' credit and collections policies to ensure that customers are not being disconnected for inability to pay, and that those policies are not disproportionately impacting communities of color.

Additional Resource

[Essential Utility Services During the COVID-19 Pandemic and Beyond: A Roadmap to Utility Service as a Human Right](#), March 2021