

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Resolution 2022-02

Resolution on Advancing Equity & Affordability in Utility Regulation

WHEREAS access to utility service, including electricity, heat, water, and wastewater service is essential to individual and public health, safety and engagement in public life;

WHEREAS a loss of utility services can prove dangerous and potentially life-threatening;

WHEREAS many utility customers have chronic difficulties paying their utility bills in full, which can result in a disconnection of service by the utility for nonpayment, and in some instances a loss of housing;

WHEREAS the COVID-19 pandemic highlighted the need to ensure that there is affordable, reliable, and equitable access to utility service for all customers to meet basic needs as well as to enable education, commerce, and improved health outcomes;

WHEREAS the National Association of State Utility Consumer Advocates (“NASUCA”) and National Association of Regulatory Utility Commissioners (“NARUC”) recognized the value of evidence-based policy with the joint passage of the “Data Collection Resolution” in 2019;¹

WHEREAS historic public and private policies, including redlining, blockbusting and contract sales, denial of credit and mortgages, land grabs, and other purposeful disinvestments have denied generations of African American, Indigenous, Latiné, and other populations that have been historically discriminated against opportunities for generational wealth resulting in concentrated poverty;²

WHEREAS communities with a majority of African American, Indigenous, Latiné, and other populations that have been historically discriminated against, along with low-income ratepayers, renters, people with disabilities, and seniors are generally more likely to experience

¹ National Association of State Utility Consumer Advocates, “Resolution on Best Practices in Data Collection and Reporting for Utility Services Delinquencies in Payments and Disconnections of Service” (2019). Available at <https://nasuca.org/wp-content/uploads/2018/11/2019-07-NASUCA-Data-Collection-Resolution-Joint-with-NARUC-Final.pdf>

² See Lawrence Berkeley National Laboratory, “Future Electric Utility Regulation Report No. 12: Advancing Equity in Utility Regulation,” at 23 (Nov. 2021) (hereafter, “Berkeley Report”). Available https://eta-publications.lbl.gov/sites/default/files/feur_12_-_advancing_equity_in_utility_regulation.pdf. See also How High Are Household Energy Burdens? American Council for an Energy-Efficient Economy (hereafter “ACEEE”) at 3 (Sept. 10, 2020). Available at <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>.

disproportionately high or severe energy burdens,³ high rates of disconnection,⁴ and negative health effects resulting from living in close proximity to energy generation sites;⁵

WHEREAS studies have found that African American residents are more than twice as likely to live in poverty as non-African American residents, and more likely to spend a significantly higher portion of their household income on electricity and heating than non-African American residents, except when African American residents are part of higher income groups;⁶

WHEREAS some utilities have disconnection policies that rely on a customer “risk-ranking” systems that treat customers deemed “high-risk” differently than customers deemed “low-risk,” with lower arrearage disconnection trigger amounts and accelerated disconnection timelines;⁷

WHEREAS energy equity means the fair and just treatment of all ratepayers and advancement of an energy system “where the economic, health, and social benefits ... extend to all levels of society, regardless of ability, race, or socioeconomic status;” at a minimum, energy equity requires procedural equity and distributive equity, principally meaning providing reasonable access to the distribution of affordable energy to all levels of society;⁸

³ See ACEEE, FN 2, at ii. ACEEE defines a “high energy burden” as more than six percent of household income spent on home energy bills, and a “severe energy burden” as more than ten percent of household income spent on home energy bills. Further, households with high and severe utility bill burdens often postpone other important purchases, even in some cases going without food, or foregoing medical or dental care to pay utility bills or suffer illness in an effort to lower those bills by reducing their usage of heating and cooling energy to what may be unhealthy levels. See NASUCA Data Collection Resolution, FN 1, at 2; See also Berkeley Report, FN 2, at 24.

⁴ See Berkeley Report, FN 2, at 20-26.

⁵ See ACEEE, FN 2, at 3.

⁶ National Association for the Advancement of Colored People (“NAACP”), “Lights Out in the Cold” (March 2017). Available at <https://naacp.org/resources/lights-out-cold>. The higher percentage of low-income Black residents exacerbates their vulnerability to high energy prices and in turn utility disconnections. This helps explain why increases in energy prices are likely to negatively impact the Black community more significantly than the general population; see also American Association of Blacks in Energy, “Energy, Economics and Environment: Effects on African Americans,” (2004). Available at <https://www.aabe.org/docs/whitepapers/docs/1-State-of-Energy-in-Black-America-Report.pdf>; see also Office of the People’s Counsel, Washington, DC Energy Affordability Study Population Characterization Report, March 2020, available at <https://opc-dc.gov/wp-content/uploads/2022/03/DC-OPC-Energy-Affordability-Study-Population-Characterization-Report-FINAL-12-18-20.pdf>

⁷ See *Commonwealth Edison Co. -- Petition for the Establishment of Performance Metrics Under Section 16-108.18(e) of the Public Utilities Act*, Illinois Commerce Commission Docket No. 22-0067, Direct testimony of John Howat on behalf of Community Organizing and Family Issues, filed April 6, 2022, pp. 18-24; *Ameren Illinois Company -- Petition for the Establishment of Performance Metrics Under Section 16-108.18(e) of the Public Utilities Act*, Illinois Commerce Commission Docket No. 22-0063, Direct testimony of John Howat on behalf of Community Organizing and Family Issues, filed April 27, 2022, pp. 17-22. See also <http://www.totalsolutioninc.com/clients.html> -- Total Solutions, Inc. website, which claims, “Today over 60,000,000 accounts are scored using TSI software each and every month.”

⁸ Pacific Northwest National Laboratory (“PNNL”), “Energy Equity” (last visited Aug. 31, 2022). Available at <https://www.pnnl.gov/projects/energy-equity#:~:text=What%20is%20energy%20equity%3F,energy%20efficient%20housing%20and%20transportation.>

WHEREAS a household’s ability to pay for utility services without hindering their ability to purchase food, health care, housing, and other essential goods and services is often measured by a household’s energy burden;⁹

WHEREAS “affordability” is a broad metric that is measured in some states as a household’s energy burden, and in others is a measure of the reasonableness of a utility’s rates and the state’s competitiveness;

WHEREAS concerns about affordability make more urgent the ongoing need for regulators to engage in thorough, systematic and rigorous review to ensure the prudence of utility investments and expenditures and the justness and reasonableness of utility rates.

WHEREAS some state legislatures have amended their public utility statutes to expand the definition of public interest and recognize the need for equity and affordability in public utility regulation;¹⁰

RESOLVED, that NASUCA encourages state advocates, regulators, and other policymakers to study and implement practices to potentially reduce the incidence of, and minimize negative impacts from, utility services payment delinquencies, disconnections, late fees, reconnection fees, and similar measures that further burden customers struggling with affordability and to consider addressing energy equity and affordability through appropriate actions, including some or all of the following actions:

- support policies that consider energy equity and affordability as basic requirements of utility quality of service, in the definition of public interest, and the provision of reasonable, affordable, safe, and reliable utility service;
- develop an energy affordability index, including a granular analysis of household energy burdens, that provides an up-to-date status of affordability that measures the impact of utility rate increases, rate design proposals and infrastructure and climate projects that have a rate impact;
- require utilities to provide regular reports, by zip code, of credit and collections actions, and standardize key customer data collected by utilities at the zip code level, by customer class, income level (low-income, non-low income), and type of utility service, publicly and regularly reported to state commissions;¹¹

Similarly, in the Berkeley Report, Chandra Farley defined energy equity as “the fair distribution of the benefits and burdens of energy consumption,” and “equity” generally as “just and fair inclusion... Understanding that an equitable society is one in which all can participate, prosper, and reach their full potential.” Berkeley Report, FN 2, at 3. (Internal quotations and citations omitted).

⁹ See, e.g., Kenneth W. Costello, “Tips on Making Utility Assistance to Low-Income Households Most Effective” (September 2021) at 1, available at <https://www.theregreview.org/2021/11/23/costello-utility-assistance-low-income-households-effective/>.

¹⁰ Berkeley Report, at 4.

¹¹ This data should include, but should not be limited to the following information by service classification:

- use zip code data to develop and guide policies that reduce disproportionate outcomes in service reliability, unaffordability, disconnections, and other similar actions that further burden customers struggling with affordability;
- ensure that all materials prepared by state commissions and utilities are translated into languages spoken and read by significant numbers of ratepayers within the applicable service territories;¹²
- support policies that encourage participation of diverse voices in regulatory proceedings;
- encourage training of agency and utility employees to assess and work with customers on sustainable solutions to avoid arrearages and maintain utility services that specifically connect customers with state, federal, and utility-sponsored assistance programs,

number of customers receiving utility service;
number of customers receiving disconnection notices;
number of customers disconnected for nonpayment;
number of customers reconnected because they have paid in full or set up payment arrangements;
number of new deferred payment arrangements;
number of customers taking service at the beginning of each month under existing deferred payment arrangements;
number of customers completing deferred payment arrangements during the month;
number of payment agreements that failed each month;
number of customers renegotiating deferred payment arrangements during the month;
number of customers assessed late payment fees during the month;
number of customers taking service at the beginning of the month under existing medical payment arrangements;
number of customers completing medical payment arrangements during the month;
number of customers enrolling in new medical payment arrangements during the month; number of customers renegotiating medical payment arrangements during the month;
number of customers required to submit new deposits or increased deposits during the month;
number of customers whose deposits were reduced or foregone during the month;
number of customers whose deposits were returned in full during the month;
number of customers with past due amounts (separated by 30-60 days, 61-90 days, 91+ days past due) at the beginning of the month and taking service at the beginning of the month under existing deferred payment arrangements;
dollar volume of past due accounts, for customers with past due amounts (separated by 30-60 days, 61-90 days, 91+ days past due) at the beginning of the month and taking service at the beginning of the month under existing deferred payment arrangements;
number of customers being charged for reconnection fees;
number of customers being charged penalties and/or interest;
average amount of penalties, late payment charges, and/or interest charged to each disconnected customer;
total amount of penalties, interest, late payment charges and reconnection fees charged to customers;
history of customers who have enrolled in more than one payment plan;
number of customers who applied for a payment plan but were denied;
number of customers receiving utility bill forgiveness programs and amounts received;
number of customers receiving federal funds (outside of LIHEAP) and amounts received;
number of customers enrolled in a low-income discount rate; and number of customers enrolled in an arrearage management program;
number of liens attached to properties for past due water arrearages; and
number of wage garnishments for past due accounts.

¹² Each state may define significant numbers of speakers with limited English proficiency in different ways.

including the Low-Income Home Energy Assistance Program (“LIHEAP”) and the Low-Income Household Water Assistance Program (“LIHWAP”);

- identify and share practices to reduce delinquencies and disconnections, with the explicit goal of increasing customers’ capabilities to pay utility bills over time, including promotion of:
 - access to helpful programs and services;
 - rate designs that promote affordability, such as Lifeline rates, reasonably designed discount rate programs, and percentage of income payment plans, where permitted by state law;
 - leveraging utility-sponsored low-income, zero-copay weatherization programs with the existing federal weatherization (“WAP”) program;
 - consumer education that helps connect customers who struggle to afford monthly utility service with assistance, including LIHEAP, LIHWAP, and other state and federal utility assistance programs, as well as critical information about the default utility services price-to-compare and other “buyer-beware” consumer protection guidelines for customers who reside in deregulated energy states;
 - in states with retail energy competition, mandatory disclosure by competitive third-party energy suppliers of the current and historical public utility price-to-compare for utility services and other material terms of their offers, as well as a prohibition on signing low-income customers up for rates that are higher than the utility price-to-compare and prohibition of door-to-door sales where law allows;
 - expanded customer shutoff protections, including seasonal and vulnerable population protections, as well as protections during extreme weather events that occur outside of traditional seasonal moratoria;
 - longer term deferred payment arrangements and arrearage management programs that allow ratepayers to avoid disconnection and proportionally erase debt when timely discounted monthly payments are made over a reasonable period;
 - year-round LIHEAP program application periods that include access to cooling assistance;
 - the elimination of utility disconnection policies that rely on a customer “risk-ranking” system that accelerate disconnections of customers deemed “high-risk” as compared to those deemed “low-risk;”
 - strict regulation of the amount of all utility fees, including customer late fees, reconnection fees, and deposit requirements;
 - periodic and consistent review of policies and programs that help reduce fee assessments and disconnections, utilizing zip code level credit and collections data; and
 - evaluate and promote spending on low-income, zero co-pay utility-sponsored weatherization programs that, at a minimum, are budgeted to reflect the proportion of low-income customers in a utility’s service territory.

BE IT FURTHER RESOLVED, that:

NASUCA authorizes its Executive Committee to develop specific positions and take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking action if possible. In any event the Executive Committee shall notify the membership of any action pursuant to this resolution.

Submitted by the Consumer Protection Committee

Approved: 2022 NASUCA Annual Meeting
November 13, 2022

Abstained

Alabama

South Carolina

Tennessee

Iowa

Pennsylvania Small Business Advocate