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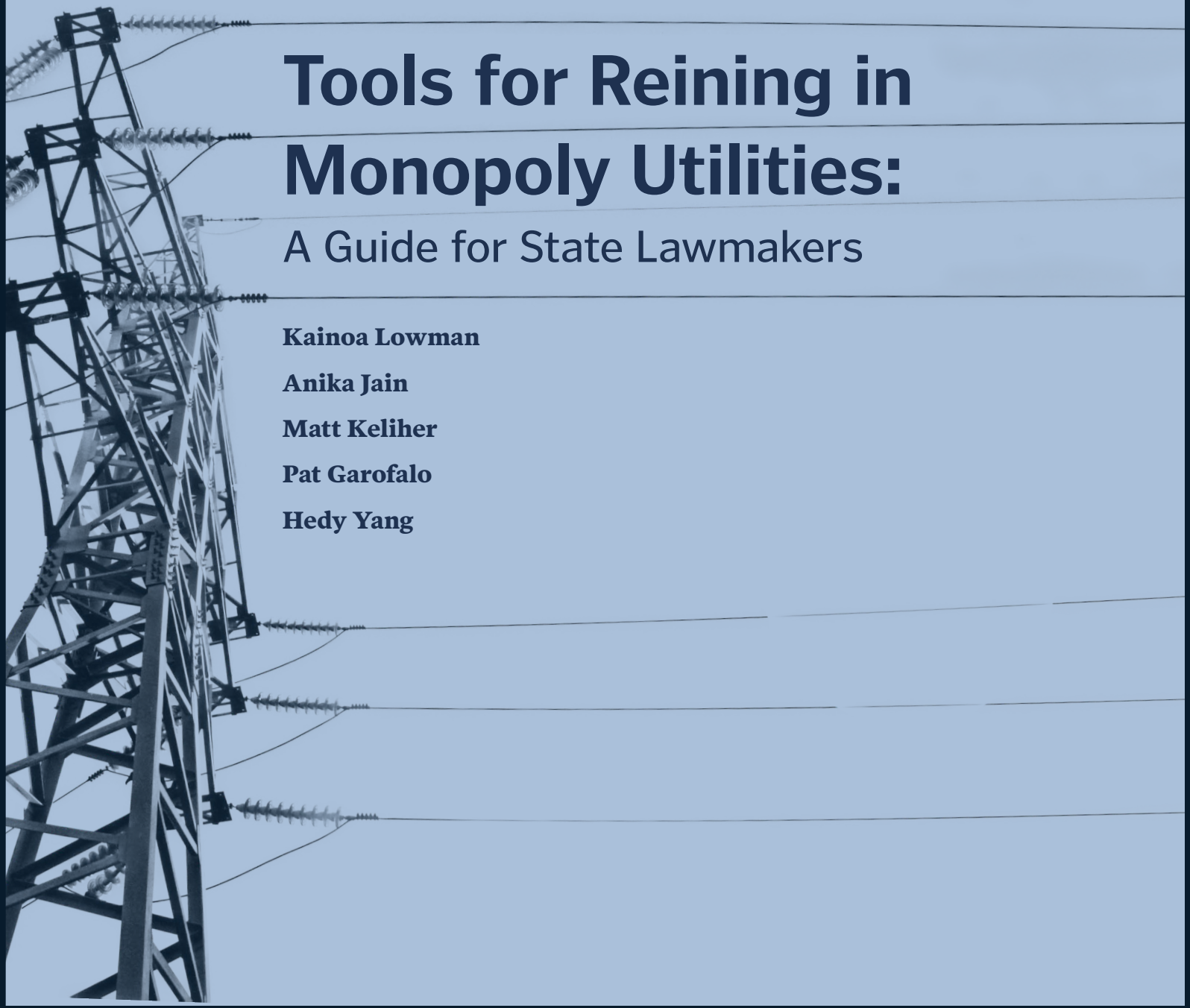

Tools for Reining in Monopoly Utilities:

A Guide for State Lawmakers

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INTRODUCTION

Investor-owned utilities, known as IOUs, are for-profit corporations that provide electricity, natural gas, water services, or other necessities to residents over a defined service territory. They are the largest utility providers in the U.S. For electricity, investor-owned utilities serve three out of every four customers, even though they make up a minority of the existing providers; IOUs serve nearly all natural gas customers.

Most IOUs occupy a monopolistic position in an industry or region due to the nature of the services they provide. Because of the high start-up costs of building the necessary infrastructure to provide a service (grid, plants, power lines, distribution networks, etc.), and the inconvenience to local residents of setting up competing infrastructure, states have granted most utilities areas in which they are either a monopoly or duopoly.

But though they provide public goods and are often treated as public entities, private utilities are still private corporations. They issue stock to shareholders and aim to maximize returns and profits. They engage in extensive lobbying, often to pressure regulatory agencies and state legislatures to allow them to unreasonably hike rates or engage in other predatory practices at the expense of consumers. In recent years, a merger spree among utilities has led to extreme levels of consolidation, increasing both their economic and political power.

In contrast, public utilities do not have the same incentives to extract money from their consumers. Data from the U.S. Energy Information Association shows that public-utility rates are, on average, 13 percent lower than those of IOUs. A joint Economic Liberties-MIT analysis found that for the past 30 years, investor-owned electric utilities have overcharged American consumers by an average of $5 billion per year.

In most states, monopoly utilities are regulated by a public body, often known as a public utility commission, or PUC. But state legislators still have broad discretion to ensure that monopoly utilities are serving their required role: providing necessities to the public at a reasonable cost.

Below are 11 policy ideas for state legislators who want to reduce the power monopoly utilities wield over consumers and their state's political process. This is not an exhaustive list of solutions for the problems created by investor-owned monopoly utilities, but it offers a foundation from which a broader reimagining of the utility industry will be possible.

Prevent Monopoly Utilities From Conducting Political Activities With Ratepayer Money

THE PROBLEM

In most states, monopoly utilities are able to spend ratepayer money on political efforts that potentially harm consumers, including advocacy activities at all levels of government to block consumer and climate policies, adjudicate cases that will allow them to increase rates, and defeat pro-consumer ballot measures. Ratepayer money is also spent on image-building advertising, public relations campaigns, and to fund trade associations and nonprofits that advance the utilities' messaging and legislative goals.

For example, audits and investigations have revealed that customers of FirstEnergy across its service territory funded at least a portion of the utility's bribery scheme in Ohio, along with lobbying, corporate sponsorships, image-building advertisements, and other expenses. FirstEnergy orchestrated an advocacy campaign several years ago that included bribery efforts along with lobbying and advertisements to get a public bailout for the utility company's coal and nuclear power plants. House Bill 6, the law that provided FirstEnergy and a bankrupt subsidiary with over a billion dollars in ratepayer bailouts, ultimately passed in 2019.

FirstEnergy has admitted it paid more than $64 million in bribes to convicted former Ohio House Speaker Larry Householder and indicted Public Utilities Commission of Ohio Chairman Samuel Randazzo to secure the bailouts, as well as other regulatory favors from Randazzo. The legislation is now at the center of multiple state and federal criminal cases.

Most utilities are technically prohibited from passing the costs of lobbying onto ratepayers. However, those rules typically employ a very narrow definition of lobbying. They are rarely if ever enforced, and utilities take advantage of loopholes that allow them to exclude many expenditures, such as those detailed above.

This spending not only forces consumers to subsidize political activities they may not agree with and that harm their own financial situations, but also replaces spending that could occur on necessary upkeep, maintenance, or other pro-consumer measures. For example, in Hawaii, Hawaiian Electric spent nearly twice as much on lobbying in the four years ahead of the deadly blazes that consumed the island of Maui in 2023 as it did on wildfire mitigation.

THE SOLUTION

Colorado, Maine, and Connecticut have enacted laws to regulate utility political activity and eliminate many of the avenues monopoly utilities use to funnel ratepayer money into political activities.

Among other things, the laws restrict utilities from using ratepayer money to pay dues to trade associations that lobby lawmakers, for PR efforts aimed at influencing laws or elections, or on lawyers or consultants who argue for rate increases. The laws also require significantly more public disclosure regarding how utilities spend customer money.

States should also require utilities to publicly disclose their rate case expenses — both internal and third-party — so consumers understand the resources utilities are expending fighting for higher rates, and so PUCs can excise them from rates or limit them if they do not serve customer interests.

Eliminate Excessive Utility Rates of Return

THE PROBLEM

When state regulators determine how much utilities can charge customers, their responsibility is to approve "just and reasonable" rates. According to a long-standing, court-validated standard, a just and reasonable rate is what is needed for utilities to cover their cost of capital (COC) — that is, to provide an investor return sufficient to attract equity financing in capital markets. For example, if an investor is willing to buy utility stock that will yield a 7 percent return, a just and reasonable rate should allow utilities to cover their operating and fixed costs, plus a rate of return (ROR) of 7 percent.

An ROR above COC is not "just and reasonable." It is an excessive money transfer from consumers' pockets to investors. But utilities have captured the regulatory system and pushed ROR far beyond COC. By one measure, the ratio of returns to capital costs has exceeded 1.0 for 30 years, and reached 2.0 over the last 15 years. That means regulators have been approving rates that have massively enriched utility shareholders at the expense of ratepayers.

Changing this system to ensure monopoly utilities limit rates of return to their cost of capital could immediately reduce rates by 10 percent or more.

THE SOLUTION

State legislators should codify in law the long-standing regulatory standard that the rate of return for monopoly utilities be equal to the market-based cost of capital. This standard has a long history, dating back to a concurring opinion penned by Supreme Court Justice Brandeis in 1922 and formally adopted by the full Court in the 1944 Hope Natural Gas decision.

In addition to allowing for the reduction of rates, such a change would enable regulators to prioritize other needs, rewarding utilities for investing smartly, as opposed to for simply investing, period. Other countries, such as the UK, Australia, and Canada, keep rates of return equal to the cost of capital and experience better outcomes. For more see, "Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities From Overcharging the Public," as well as New York Senate Bill S6557A (2023-2024).

Help Customers and Consumer Advocates Participate in Rate Cases

THE PROBLEM

Monopoly utilities have significant resources to spend on adjudicating rate cases, the procedures through which utilities request rate increases from regulators, giving them an advantage over customers or consumer advocates who want to participate in the process. In 2023, utilities' rate increase requests hit a record high for a third consecutive year. Those rate increase requests totaled $18.3 billion.

THE SOLUTION

Ten states — California, Idaho, Indiana, Illinois, Maine, Michigan, Minnesota, Oregon, Washington, and Wisconsin — have programs to compensate smaller customers and consumer advocates for the costs incurred by participating in rate cases. Another seven states — Alaska, Colorado, Hawaii, Kansas, New Hampshire, Tennessee, and West Virginia — have authorized programs that have never been used, are extremely limited, or that have gone dormant.

States without intervenor compensation programs should consider creating them, ensuring that compensation is based on the actual costs incurred to participate in a rate case. Compensation programs should also ensure that attorneys are paid both for winning payouts for plaintiffs, as well as for winning future rate reductions or other benefits for residents, such as better environmental or consumer protections.

Block Large Monopoly Utility Mergers

THE PROBLEM

Over the last 30 years, electricity markets have been structured to incentivize concentration and consolidation. From 1995 to 2012, the number of investor-owned utilities fell by more than half due to merger activity, while electricity use increased by 20 percent. While investor-owned utilities constitute only 6 percent of the total number of utilities in the U.S., they serve more than 70 percent of customers.

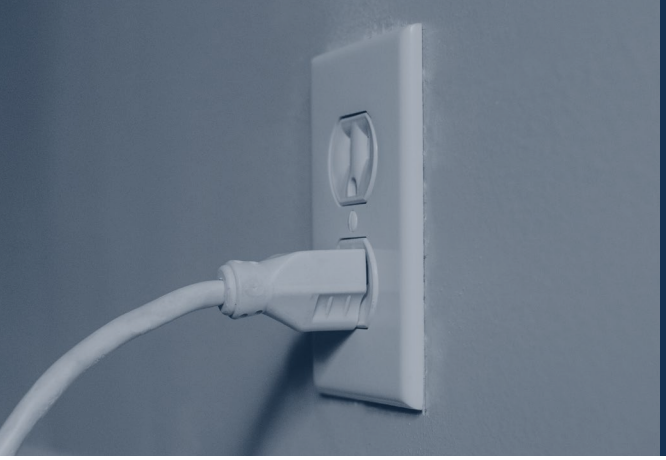
This level of consolidation causes many harms, giving monopoly utilities outsized power to increase rates, enrich shareholders, and diminish regulatory oversight. Additionally, after mergers occur, the utility often files a significant rate increase while shedding jobs. For example, months after Dominion Energy completed the buyout of South Carolina utility SCANA, the utility began to offer voluntary retirement packages to employees and then proposed a 7.75 percent rate increase.

These large utilities become, in some sense, not only too big to fail but too big to manage, enabling them to elude accountability for diminished services and response times.

THE SOLUTION

States should implement a ban on utility mergers over a certain size to prevent excessive consolidation. Specific size thresholds, based on market share, revenue, or customer base, would be defined utilizing a public interest framework as determined by the Office of the Attorney General.

States should also craft merger guidelines ensuring that any mergers falling below those thresholds meet specific public interest measures, akin to the statutes states such as Minnesota have adopted governing hospital mergers.



Prevent Utilities From Monopolizing the Future

THE PROBLEM

To protect and expand their monopolies, utilities sometimes leverage their political power to block disruptive technologies from the market or co-opt them into their business. Both outcomes prevent the technologies from living up to their promise.

For example, microgrids are small independent grids with independent energy sources that can connect or disconnect from the "macro grid." Beyond providing reliability and resilience, microgrids can facilitate cost efficiency and renewable energy integration. However, exclusive franchises to incumbent electric utilities can prevent microgrids from crossing public rights-of-way or serving multiple customers, limiting their impact. Even single-customer microgrids, like other distributed energy resources (DERs), threaten to cut into utility profits — and utilities have pushed for regulators to disincentivize microgrids through fees.

Similarly, many states do not permit third-party solar financing, where providers install provider-owned solar panels on a customer's home and then sell them the energy or lease them the system. This model eliminates often-prohibitive upfront costs, turns a daunting home-improvement project into a service, and boosts adoption. Utilities have opposed third-party financing — including by funding ballot initiatives to ban it. Utilities have also pushed regulators to levy exorbitant fees on solar owners; a California IOU-backed proposal would have made solar unaffordable for 95% of customers, according to one survey.

Another example is electric vehicle charging. IOUs are lobbying state policymakers for permission to own and operate charging facilities, despite an absence of strong economies of scale in this space. But given IOUs' guaranteed rates of return, their entry into the market could chill private sector investment, slowing deployment of this critical technology.

THE SOLUTION

Policymakers should ensure disruptive energy technologies reach market and "quarantine" them from IOUs where possible.

One overarching reform to promote DER adoption is banning utilities from levying anti-competitive fees on DER owners. California state senators proposed one such bill in 2020. States can go further and affirmatively incentivize DER adoption, joining states such as Hawaii.

State and local officials interested in promoting microgrids should first clarify how microgrids are governed by state law, if at all. While exclusive utility franchise rights can prevent microgrids from crossing public ways, this is not always the case. For example, a legal analysis completed at

the request of the City of Boston revealed that Massachusetts state law does not require utility consent for microgrids to cross public ways.

The Massachusetts example highlights a broader problem with microgrid deployment: regulatory uncertainty, as the majority of states still lack any statute explicitly defining and governing microgrids. But neighboring Connecticut has demonstrated how state lawmakers can create an environment favorable to microgrid deployment from scratch. In an effort to boost resilience of critical facilities after hurricanes Irene and Sandy, lawmakers passed a bill to define microgrids under state law and ordered the state's Department of Energy and Environmental Protection to create a grant program to fund microgrids at sites like hospitals, schools, and supermarkets. Follow-up legislation clarified microgrids' exemption from public-utility regulation, and ability to build across public ways.

Third-party solar financing, meanwhile, has been legalized to some extent in 34 states, ranging from Colorado to West Virginia. States including Connecticut have initiated public solar leasing programs that successfully facilitated access to rooftop solar for lower- and middle-income residents.

With regard to EV charging, states have pursued various strategies to restrict utility ownership and promote competition. In 2023, Oklahoma passed into law a bill that prohibits utilities from owning or operating charging stations except through a separate, unregulated entity that does not benefit from ratepayer subsidization; a similar bill has been proposed in South Carolina. A stronger bill introduced in Florida would have flat-out prohibited utilities from using ratepayer money to build or operate charging stations. Meanwhile, a 2021 New York law required utilities to devise alternative rate structures for commercial EV charging, exempting them from traditional demand charges and lightening their utility bills.

Promote Independent Power Distribution

THE PROBLEM

In many states, monopoly utilities control both the creation and distribution of electricity, stifling competition and innovation in the energy sector. This vertical integration allows them to create inefficient energy distribution systems that are expensive to consumers and harmful to the environment.

THE SOLUTION

Independent distribution system operators (IDSOs), under public, cooperative, or nonprofit ownership, are a viable alternative, placing an entity that is not incentivized by profits at the center of the decision-making process, eliminating the conflicts of interest created by for-profit utility ownership.

This independence ensures that decisions regarding interconnection, data, and procurement are made transparently and in the best interest of consumers and the environment, rather than shareholder profits. IDSOs can also foster a competitive marketplace by encouraging innovation in grid management and energy services.

The IDSO framework gained popularity after it was endorsed by former FERC Chair Jon Wellinghoff in 2014. Under an IDSO, existing utilities would still be responsible for electricity generation and owning the distribution system.

Repeal "Right of First Refusal" Laws

THE PROBLEM

Right of first refusal, or ROFR, laws give incumbent electricity utilities the right of first refusal when states are looking to build out new interstate transmission lines, meaning entrenched monopolies receive priority for new construction, the spending on which can then be used to justify price hikes for ratepayers. The federal government, through FERC, repealed its "right of first refusal" rules in 2011 but left states able to implement their own laws.

There are ROFR laws on the books in 11 states: Montana, North Dakota, South Dakota, Minnesota, Nebraska, Michigan, Indiana, Oklahoma, Texas, Mississippi, and Alabama. Several other legislatures considered bills, advocated by the monopoly utilities, to create ROFR laws during the 2024 state legislative session.

The alternative to having an ROFR law is a competitive bidding process for new transmission construction, wherein incumbent utilities have to bid against other companies for construction projects. According to a 2019 study, this competitive bidding lowers construction costs by 20 to 30 percent, potentially saving ratepayers billions of dollars.

Which companies build out transmission lines is now an even more important question than usual, because the Biden administration's Bipartisan Infrastructure Law and Inflation Reduction Act includes $30 billion for bulking out the U.S. power grid, including connecting it to new wind and solar projects.

THE SOLUTION

States with ROFR laws in place should repeal them — as Minnesota legislators have proposed — and state legislators should block any attempts at passing new ROFR laws.

Eliminate Monopoly Utility Junk Fees and Abusive Late Fees

THE PROBLEM

"Junk fees" are mandatory fees that cause consumers to believe they will be charged a lower advertised price for an item or service, only to find out at the time payment is due that the actual price is higher — sometimes significantly higher — as the result of undisclosed fees.

Thirty-seven percent of Americans report facing unexpected or undisclosed fees on their gas and electric utility bills. For example, a recent investigation found that renters in Washington, D.C., were being forced to pay undisclosed utility fees that increased their monthly payments by up to $165.

Other fees imposed on customers include credit card and debit card fees or even a ban on using those payment methods. A 2022 report from the Edison Electric Institute, the trade association for monopoly electric utilities, found that at least 31 utilities offer fee-free credit and debit card payments and some have been successful in reducing the per-transaction fee with payment networks such as Visa or MasterCard.

It is important to eliminate these fees because many customers may lack access to certain types of accounts or are unable to set up direct payment transfers with the utility. Furthermore, these fees hit low-income customers the hardest. Often, the payment option available to them is a prepaid debit card.

Consumers are also subjected to abusive late fees. For example, in Illinois, the monopoly gas utility Peoples Gas recovered $29 million in late-payment fees in 2021, up from $16 million in 2020, which helped contribute to its $200 million in net income that year. That income helped the parent company, WEC Energy, raise its shareholder dividend.

THE SOLUTION

States should pass legislation to explicitly ban undisclosed, mandatory junk fees in the utility sector, similar to laws that California and Minnesota have adopted for broader consumer prices, as well as bans on abusive late fees. A 2024 Data for Progress poll shows voters strongly support banning utility fees such as late and reconnection fees.

To increase transparency, lawmakers should also require utility providers to offer clear and detailed billing statements so that customers can not only see but also understand every charge reported on their bill. Similar to a recent FCC rule requiring broadband providers to use "nutrition style" labels, utility providers should be required to standardize their billing practices so consumers will no longer struggle to understand what they are being charged.

Encourage Public Power and Municipal-Owned Utilities

THE PROBLEM

One method for increasing competition in regional energy markets is for local and state governments to encourage the public ownership of electrical infrastructure and power supply. This is known as municipalization. The goal is typically to provide more reliable service, lower costs, increase local control over energy decisions, and promote renewable energy sources.

Data from the U.S. Energy Information Association shows that public utility rates are, on average, 13 percent lower than those of IOUs. Over the last three years, IOU residential electricity rates increased 40 percent more than inflation, while publicly owned utilities have increased rates at 34 percent less than inflation. San Diego Gas & Electric's residential rate, for example, increased by 81 percent between 2020 and 2023, while the similarly sized Sacramento Municipal Utility District's average residential rate rose less than inflation.

Municipalization can involve purchasing existing infrastructure from private companies or building new systems. It aims to ensure that the benefits of the power system, such as profits and decision-making authority, remain within the community, potentially improving public accountability and aligning energy policies with local priorities.

Investor-owned utilities have been vehemently opposed to the municipalization of the power grid for a century — understandably so, as public ownership of electrical infrastructure diminishes IOUs' ability to rake in massive profits and deliver substantial dividends for shareholders. However, policymakers should be wary of utility fearmongering, as successful municipalization efforts have produced superior affordability, customer satisfaction, and resilience in more than 2,000 towns and cities across the U.S.

In Minnesota, when a small northern community named Elbow Lake began and ultimately passed a municipalization effort back in 1966, the incumbent power company, Otter Tail Power, fought it all the way to the Supreme Court. In 1972, the Supreme Court ruled in favor of Elbow Lake and decided that Otter Tail Power had violated the Sherman Antitrust Act by using its dominant market power to cut off the small town from the energy grid.

By the beginning of 1974, the state legislature had passed a law restricting future municipalization efforts by making the activity prohibitively expensive, requiring any municipal government to pay the incumbent power company for any future lost revenues caused by municipalization. That law proved effective and no municipal government in the state of Minnesota has attempted to create a publicly owned power supply since.

In Maine, ratepayers, business leaders, conservationists, and others organized a democratic movement to shift the state's power grid from an investor-owned utility (IOU) model to a consumer-owned utility (COU) model. (See below for more information on the benefits of public

power initiatives.) The organizers and advocates placed a ballot initiative on the 2023 November ballot that would have municipalized the ownership of the two largest power providers in the state to one new entity that would be owned by all the residents served by the power company, instead of outside investors. In order to defeat the referendum, Versant and Central Maine Power, the two incumbent utilities facing the threat of municipalization, spent over $40 million to halt the effort, vastly outspending the initiative's advocates.

THE SOLUTION

States or cities can take over private monopoly utilities and turn them into publicly owned utilities. The American Public Power Association has a series of steps to guide such a transition.

Adopt Sticks-and-Carrots Performance-Based Utility Regulation

THE PROBLEM

The traditional utility business model is governed by cost-of-service (COS) regulation. Under COS, utility profits are tied to spending: regulator-approved rate hikes allow them to recuperate investment and operating costs, plus an additional margin of return. COS became prominent in the 20th century, when expanding access to electricity was imperative, but today it means utilities have an incentive to undertake expensive projects and increase usage rather than to deliver energy more efficiently, reliably, and cleanly. As a result, utilities often do a poor job containing costs, undertake wasteful projects, and resist green energy deployment.

THE SOLUTION

Performance-based regulation (PBR) can change how utilities make money to better align their incentives with the public interest. There is no single formula for PBR — frameworks vary from state to state — but they typically combine adjustments to the core revenue mechanism along with targeted incentives.

It is important to note that utilities fight hard to co-opt PBR to their advantage, resulting in financial bonuses for behavior regulators should already be enforcing. For this reason, well-designed PBR must not only include incentives but also impose penalties when utilities fail to hit metrics. Connecticut, which became the second to implement a comprehensive PBR framework in 2023, provides an example of such a carrots-and-sticks model.

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Ban Abusive Disconnections

THE PROBLEM

Current state laws are failing to adequately protect consumers from utility disconnections, threatening their access to essential needs such as electricity, water, and heating simply because of their economic status. Disconnections disproportionately impact low-income households, elderly people on fixed incomes, and people of color. A study by the University of Minnesota found that regardless of poverty or housing type, households of color are three times more likely to face utility disconnections.

Disconnecting utilities creates more financial hardship and poses serious health and safety risks. For instance, during extreme weather conditions, a lack of access to electricity or heating can be a serious threat to life. Additionally, no access to water is detrimental to hygiene, sanitation, and overall health.

THE SOLUTION

State lawmakers can protect the health, safety, and welfare of residents by eliminating utility disconnections for at-risk populations and during extreme weather, guaranteeing access to essential utilities as a fundamental human right, and eliminating abusive late fees.

This could be accomplished by replicating what French state-owned utility Électricité de France did in 2022, when it made a commitment to no longer shut off electricity to customers behind on bills. Instead, the utility replaced its disconnection program with a guaranteed minimum power reduction (unless there is a physical or technical impediment to limit the power supply to the home), allowing households behind on their utility bills to receive a "lifeline" amount of electricity (1 kW), sufficient enough to meet basic electricity necessities.

A more robust and equitable approach would be the discontinuation of utility disconnections for nonpayment for low-income, senior, and disabled residential customers. The Los Angeles Department of Water and Power adopted a similar policy in 2022; however, their policy only applied to at-risk customers enrolled in the utility's bill assistance program.

Access to essential utilities during life-threatening events is critical. Lawmakers can help save lives during these events by prohibiting utility disconnections during extreme weather conditions, state-declared emergencies, and public health emergencies, such as the COVID-19 pandemic. Earlier this year, Virginia passed such legislation after a multi-year effort that began when a Virginia municipal utility disconnected water service to nonpaying customers at the height of the COVID-19 pandemic.

Beyond limiting utility disconnections, states can rein in disconnections by mandating utility companies to offer flexible payment plans to consumers facing financial hardship, so that they can properly manage their utility bills and outstanding debt without the constant fear of falling behind, being kicked off the program, and immediately losing access to essential services. States can also better design debt relief programs that either retire balances on a one-time basis or gradually reduce payments if the customer continues to make timely payments.

Lastly, enforcing penalties for unjust disconnections and customer rights violations would help reform the state utilities system to ensure equitable and affordable access for all.

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