New Illinois Metric Is a Model for Reducing Utility Disconnections in Under-Resourced Communities

National Consumer Law Center

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As a growing number of states move to enact a new public utility regulatory model known as performance-based ratemaking (PBR), two recent decisions by the Illinois Commerce Commission (ICC) provide consumer advocates with a new and innovative approach to address affordability and help customers who struggle each month to afford, and remain connected to, essential utility service.

> **Performance based ratemaking** (or PBR) is a regulatory model being increasingly examined in states and other jurisdictions to encourage improved reliability and customer service, reduce peak energy load, provide more affordable rates, and increase diverse supplier contracting, to name but a few metrics. PBR provides financial incentives – typically both rewards and penalties – to encourage utilities to achieve designated metrics established by state policymakers and regulatory bodies.

On September 27, 2022, the ICC approved new affordability metrics for Illinois' two major electric utilities, Commonwealth Edison Company (ComEd) and Ameren Illinois Company (Ameren). Affordability metrics are a way to measure utility performance relative to specific goals. In this instance, the approved metrics will financially reward or penalize the companies based on a requirement that the utility reduce disconnections by 10% annually in the 20 zip codes with the highest disconnection rates within their respective service territories. The metric, proposed by the National Consumer Law Center on behalf of its low-income client, Community Organizing and Family Issues, has the potential to reduce electricity disconnections in some of the most economically disadvantaged Illinois communities by 34% or more between 2024-2027.

A Changing Regulatory Landscape

The shift toward PBR comes as public policy makers in a growing number of states[1] seek to provide new incentives or penalties for regulated utilities to increase affordability of rates and access to renewable energy, reduce emissions and peak energy load, improve customer service and achieve other policy goals. In Illinois, the recently passed Climate and Equitable Jobs Act (CEJA)[2] established a new, albeit optional, PBR ratemaking format for the state's two largest electric utilities that alters the regulatory framework for the utilities, with a focus on improving affordability of public utility rates for the state's low-income customers in particular, the achievement of new clean energy goals and reducing historical inequities experienced by low-income and environmental justice communities.

Within the new law, the legislature made clear in several provisions that affordability for low-income customers and, more specifically, a review of existing utility practices impacting affordability, is a critical component to establishing equitable utility service that truly benefits all customers. CEJA's Section 16-108.18(a)(8) highlights the overall mission of the PBR amendments, and provides that:

> The breadth of this framework should revise existing utility regulations to position Illinois electric utilities to effectively and efficiently achieve current and anticipated future energy needs of this State, while ensuring affordability for consumers.[3]

The direction to immediately address prior and existing inequities in the provision of utility service and affordability of rates is further highlighted in other provisions of the PBR amendments, with the legislature noting:

> There is urgency around addressing increasing threats from climate change and assisting communities that have borne disproportionate impacts from climate change, including air pollution, greenhouse gas emissions, and energy burdens. *Addressing this problem requires changes to the business model under which utilities in Illinois have traditionally functioned.*[4]

With even more precision, the PBR section of CEJA requires each electric utility to include at least one affordability metric that is designed to:

> (iv) Achieve affordable customer delivery service costs, *with particular emphasis on keeping the bills of lower-income households*, households in equity investment eligible communities, and households in environmental justice communities *within a manageable portion of their income* and adopting credit and collection policies that *reduce disconnections for these households specifically* and for customers overall to ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code. (Emphasis added.)[5]

Notably, this language specifically invites the utility and Commission to incorporate zip-code-level credit and collections data in formulating that goal and metric.

A New Affordability Metric

In PBR proceedings before the ICC, ComEd proposed an affordability performance metric that would reward or penalize the utility based on its success in reducing the percentage of customers with an arrearage over 90 days approximately 2% year-over-year;[6] Ameren proposed a metric that would measure the amount of proactive outreach or "touchpoints" to customers at risk of disconnection.[7]

While reducing overall bad debt for all customers or measuring the number of customer "touchpoints" may on their face be admirable goals, they reveal little about whether affordability has improved and disconnections have been reduced in environmental justice, environmental equity, and low-income communities. As NCLC witness John Howat testified, a metric focused on the number and percentage of customers with arrearages could worsen rates of disconnections if the company attempted to meet its goals by accelerating disconnections of customers with arrearages that are less than 90 days old as a way to pressure customers to pay their overdue bills.[8] Similarly, he noted that simply measuring the number of communications with customers tells the Commission nothing about whether disconnections diminished or service affordability improved.[9]

Instead of the flawed utility company proposals, NCLC proposed a different metric that better fit the statutory direction outlined in the new law by specifically focusing on significant annual reductions of the number of disconnections in zip codes that have been disproportionately impacted by utility disconnection and other collection policies. NCLC's analysis demonstrated that communities of color and/or communities defined under state law as environmental justice communities or equity investment-eligible communities[10] have borne the brunt of utility disconnection policies. Consistent with the goals of correcting inequities that have existed to date ("adopting credit and collection policies that *reduce disconnections for these households specifically* and for customers overall to ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code…"),[11] the new metric requires utilities to reduce disconnections by 10% annually in the 20 zip codes with the highest disconnection rates each year over the life of the PBR multi-year rate plan. Over four years, the new metric incentivizes the utilities to reduce disconnection by more than 34% in zip codes that have repeatedly faced the hammer of disconnection.

Ultimately, both utilities abandoned their original affordability proposals by the end of the PBR litigation, and agreed to adopt an affordability metric focused on reducing disconnections within the top 20 zip codes, as NCLC had proposed. In addition, they each agreed not to achieve this metric by simply allowing arrearages in the top 20 zip codes to grow as a result of the reduction in disconnections, narrowly focusing its efforts on reducing disconnections in a select-few zip codes, or strategically timing disconnections for maximum company benefit. Instead, they committed to actively take other measures, such as improved outreach to customers whose arrearage levels indicate that they are struggling to afford essential utility service, in order to connect those customers with financial assistance, and to actively explore and adopt other measures that will improve long-term affordability of monthly electric bills for these customers.[12]

Ensuring the baseline for measuring metric performance is appropriate is critical to ensuring ratepayer value. Both the utilities and NCLC, on behalf of COFI, agreed to set a metric baseline of calendar year 2019 for purposes of comparing future disconnection rates – the most recent year not impacted by COVID-related disconnection moratoriums and other revised credit and collection agreements. The Commission, as noted, adopted the metric and affordability principles in its final orders in the cases.[13] Notably, how successful the utilities are at keeping these commitments will be transparent throughout the length of any PBR framework, as Illinois requires its regulated electric, gas, and water utilities to report monthly disconnection and other credit and collections metrics *by zip code*, thereby allowing Stakeholders and the Commission to monitor the utilities' performance.[14]

Importantly, the approved affordability metric requires the measurement of outcomes, not mere actions or investments. That goal is consistent with the Illinois statute that provides that the Commission "shall approve performance metrics that are reasonably within control of the utility to achieve," and that the metrics "should measure outcomes and actual, rather than projected, results where possible."[15] In addition, the metric emphasizes and focuses on addressing the racial inequities in utility disconnection rates that have significantly and particularly impacted non-white communities, fueled by policies that include accelerating the timing of disconnections for customers deemed to be "high-risk" for non-payment of monthly bills.[16]

Conclusion

Measuring and reducing the rate of disconnections in communities hardest hit by utility disconnection policies is an important goal and outcome in the ongoing effort to improve uninterrupted access to essential utility service and affordability of utility rates for customers who struggle financially each month. Advocates for low-income consumers in states across the country can look to the Illinois result as a model for establishing a meaningful affordability metric in any PBR litigation framework that might arise in the ongoing battle to ensure that monopoly utilities treat *all customers,* regardless of income, with dignity and equity.

For more information, contact National Consumer Law Center Staff Attorney Karen Lusson (klusson@nclc.org) *or NCLC Senior Energy Analyst John Howat* (jhowat@nclc.org)*.*

Endnotes

[1] States that have either adopted or are investigating the establishment of PBR include Hawaii, New York, Rhode Island, Michigan and Minnesota. *See Next Generation Performance Based Regulation. Volume 3, Innovative Examples From Around the World, D. Littell, C. Kadoch, R. Bharvirkar, M. Dupuy, B. Hausauer, C. Linvill, J. Migden-Ostrander, J. Rosenow, W. Xuan, O. Zinaman, J. Logan,* Regulatory Assistance Project, May 30, 2018.

[2] The Climate and Equitable Jobs Act, a 958-page bill signed into law in September of 2021, incorporates new provisions that require utility investments in "Equity investment eligible communities" in an effort to reverse inequities that have persisted in utility investments and practices. Eligible communities are comprised of those geographic areas throughout Illinois that would most benefit from equitable investments designed to combat discrimination and foster sustainable economic growth. They include communities where residents have historically been subject to disproportionate burdens of pollution, including pollution from the energy sector. CEJA also includes several provisions designed to increase energy-related job opportunities for "equity focused populations" which include (i) low-income persons; (ii) persons residing in equity investment eligible communities; (iii) persons who identify as black, indigenous, and people of color; (iv) formerly convicted persons; (v) persons who are or were in the child welfare system; (vi) energy workers; (vii) dependents of displaced energy workers; (viii) women; (ix) LGBTQ+, transgender, or gender nonconforming persons; (x) persons with disabilities; and (xi) members of any of these groups who are also youth.

[3] 220 ILCS 5/16-108.18(a)(8). The new PBR provision specifically requires the Commission "to approve metrics designed to achieve incremental improvements over baseline performance values and targets, over a performance period of up to 10 years, and no less than 4 years" for a utility choosing to file a multi-year PBR plan. 220 ILCS 5/16-108.18(e)(2).

The statute also provides that the total for all metrics shall be equal to 40 return on equity ("ROE") basis points, although the Commission "may adjust the basis points upward or downward by up to 20 basis points for any given Multi-Year Rate Plan, as appropriate." 220 ILCS 5/16-108.18(e)(2)(B). In addition, the statute provides that the Commission "shall approve performance metrics that are reasonably within control of the utility to achieve," and that the metrics "should measure outcomes and actual, rather than projected, results where possible." 220 ILCS 5/16-108.18(e)(2)(D). The statute further provides that "(p)erformance metrics shall include one year of tracking data collected in a consistent manner, verifiable by an independent evaluator in order to establish a baseline and measure outcomes and actual results against projections where possible." 220 ILCS 5/16-108.18(e)(2)(E).

[4] 220 ILCS 5/16-108.18(a)(2) (Emphasis added).

[5] 220 ILCS 5/16-108.18(e)(2)(A)(iv) (Emphasis added).

[6] ICC Docket No. 22-0067, ComEd Ex. 3.0 (CORR.) at 7.

[7] ICC Docket No. 22-0063, Ameren Ex. 2.0 at 20. Under this metric Company stated it would help customers achieve more affordable delivery service costs by proactively communicating with customers and equipping them with tools and programs that may aid them in managing their monthly electric delivery service bill and avoiding the disconnection process. *Id.*

[8] ICC Docket No. 22-0067, COFI Ex. 1.0 (2nd CORR) at 24-32.

[9] ICC Docket No. 22-0063, COFI Ex. 1.0 (CORR) at 23-28.

[10] The Illinois Power Agency and Elevate Energy (Elevate), implementer of Illinois' Solar for All program, have identified environmental justice communities in Illinois based on a methodological framework established in the Long-Term Renewable Resources Procurement Plan. These communities were designated as such through a calculation utilizing the U.S. EPA tool EJ Screen and a demonstrated higher risk of exposure to pollution based on environmental and socioeconomic factors. Specific questions can be directed to info@Illinoissfa.com. In addition to communities which were identified as environmental justice communities using the framework in the Long-Term Renewable Resources Procurement Plan, groups or individuals may also submit a proposal to request that their community be designated as an environmental justice community. *See Environmental Justice Communities.* "Equity investment eligible community" means the geographic areas throughout Illinois which would most benefit from equitable investments by the State designed to combat discrimination. Specifically, the equity investment eligible communities shall be defined as the following areas: (1) R3 Areas as established pursuant to Section 10-40 of the Cannabis Regulation and Tax Act, where residents have been historically excluded from economic opportunities, including opportunities in the energy sector; and (2) Environmental justice communities, as defined by the Illinois Power Agency pursuant to the Illinois Power Agency Act , where residents have historically been subject to disproportionate burdens of pollution, including pollution from the energy sector.

[11] 220 ILCS 5/16-108.18(e)(2)(A)(iv) (Emphasis added).

[12] ICC Docket No. 22-0067, ComEd Ex. 22.01, p. 1 of 5; COFI Cross Ex. 1 at 1; ICC Docket No. 22-0063, Ameren/COFI Joint Brief on Exceptions to the Proposed Order, filed September 6, 2022.

[13] ICC Docket No. 22-0063, Order of September 27 2022; ICC Docket No. 22-0067, Order of September 27, 2022.

[14] *See* Section 8-201.10 of the Illinois Public Utilities Act, 220 ILCS 5/8-201.10. The ICC's Credit and Collections Dashboard, which details the monthly, zip code-level data can be found at this link.

[15] 220 ILCS 5/16-108.18(e)(2)(D).

[16] Both Ameren and ComEd employ a "risk-ranking" methodology that accelerates the timing of residential disconnections based on the services of a third-party vendor, Total Solution Inc., that utilizes an algorithm to create a risk-ranking for every one of its residential customers on a monthly basis. The Company provides the contractor with information about each customer, including whether they've paid late, had to supply a security deposit, received a disconnection notice, were disconnected, when they last made a payment and how long they have resided at their address, among other factors. TSI then applies an opaque algorithm to the information to provide a numerical risk-ranking for each customer. The company then accelerates disconnection for customers deemed high-risk, while other customers deemed low-risk are given more time to pay and the benefit of the doubt that payment will be coming. Thus, ComEd and Ameren residential customers currently proceed through the Company's disconnect practice on two separate tracks: one for customers whose credit scoring, based on TSI's less-than-transparent algorithm, are deemed low risk for non-payment (most likely to pay) and a significantly quicker path toward disconnection for those customers whose credit ranking is considered higher-risk (least likely to pay). *See* ICC Docket No. 22-0063, COFI Ex. 1.0 (CORR) at 17-22; ICC Docket No. 22-0067, COFI Ex. 1.0 (2d CORR) at 18-24.