

Data Collection and Transparency

The fight for policies and programs that ensure affordable access to water and sewer service begins with access to critical data held by utilities.

Data can provide advocates with important information about topics such as:

- water affordability burdens;
- which communities and neighborhoods are most impacted by unaffordable water bills and utilities' credit and collection policies;
- whether there are disproportionate impacts of water bill burdens and collection practices by race;
- where outreach efforts for available affordability and assistance programs should be aimed; and
- whether new or existing policies and programs are effective at ensuring affordable access to water and sewer services for low-income households.

Efforts to obtain this type of information have been, to put it mildly, an uphill battle. Today most water utilities are not required to collect or report data related to rate increases, customer bills, or credit and collections practices. Consequently, decision makers and advocates can face great challenges in assessing the full impact of water utility practices on financially struggling households and communities.

This module begins by discussing the critical importance of data collection and reporting in advancing water affordability goals. Obtaining more granular geographic data, such as by zip code or census tract, is especially important to allow regulators and advocates to understand and address racial and other inequities related to water affordability and access. Then, the module discusses strategies to enhance transparency and improve access to important data on water affordability. These approaches include creation of statewide reporting requirements and other mechanisms that advocates can use to get individual utilities to release data.

SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Increasing transparency of utility policies and practices by requiring enhanced reporting of utility data, ideally at the zip code or census tract level.
 - Obtaining utility data through public records requests, rate-setting proceedings, or litigation.
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THE CURRENT LACK OF DATA ON WATER AFFORDABILITY LEAVES DECISION MAKERS AND ADVOCATES IN THE DARK

Most water and wastewater utilities in the United States are not required to collect or report data related to water affordability, such as information on rate increases, customer bills, or credit and collections practices. As a result, the baseline information necessary to assess the full extent and impact of unaffordable water bills is often unavailable to regulators, advocates, and the public.

The data gap is especially significant for the majority of water systems that are not regulated by state utility commissions, a group that includes nearly all publicly owned water systems. For many of these systems, even the current rates for water service may be hard to come by, and very rarely are water rates compiled statewide.¹

At the national level, no agency tracks water affordability data in the United States. By contrast, for the energy sector, the U.S. Energy Information Administration compiles a detailed national-level data set, the Residential Energy Consumption Survey (RECS), which includes assessments of energy affordability and energy insecurity.² Past editions of this survey have revealed stark disparities in energy affordability by race and income.³ As business journalist Charles Fishman argued in a 2016 op-ed piece for the *New York Times*, the RECS could provide one potential model for creating transparency in the water sector.⁴

The lack of reliable data on water affordability means that lawmakers, regulators, and water utilities are often in the dark concerning the impacts of their decisions on financially struggling households and communities. For example, in a December 2020 report detailing the looming water affordability crisis in Massachusetts, the state's Advisory Committee to the U.S. Commission on Civil Rights identified enhanced data reporting as a critical change needed to allow decision makers to address inequities related to water affordability.⁵ The report noted that, despite the existence of a recent study finding significant racial disparities in water shutoffs in Boston, local governing bodies did not collect data on shutoffs, liens, or payment plans. "Without adequate data," the report concluded, "policy makers can't document and remedy any suspected bias in the implementation of water plans."⁶

For advocates, too, the lack of reliable data can impede efforts to convince decision makers of the urgency of water affordability challenges and build pressure for change. This point was highlighted in the NAACP Legal Defense Fund's 2019 report on the disproportionate impact of rising water bills on Black communities, *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities*.⁷ This report stressed the need for enhanced water utility data reporting across the United States and emphasized the importance of gathering data when advocating for change, a critical finding among its policy and research recommendations.⁸

Once advocates gain access to data through new regulatory or statutory requirements, the results can be eye-opening. For example, according to the Pacific Institute, a review of utility data reported to the state of California found that "196,800 single-family households lost access to drinking water at least once in 2018 because of service disconnections. Assuming that these households have the average number of residents, this means nearly 583,000 Californians lose access to drinking water for a period of time each year."⁹

MORE GRANULAR GEOGRAPHIC DATA ON UTILITY PRACTICES ARE CRITICALLY IMPORTANT TO ASSESS AND REMEDY RACIAL INEQUITIES

In Lawrence Berkeley National Laboratory's recently published *Advancing Equity in Utility Regulation*, contributing authors stressed the importance of obtaining zip code-level data, at a minimum, when working toward more equitable practices in electric and gas utility regulation.¹⁰ (The narrower the geographic area, the more accurately one can analyze disparate impacts of credit and collections behavior.¹¹) The same rationale applies when working to change utility practices in the water sector.

Today, data on utility operations are most often reported for an entire utility service territory—if they are reported at all. While aggregate information can be useful to assess utility-wide trends, it will often hide differences within the utility's service territory. Access to more granular geographic data, such as by zip code or census tract, can help advocates and regulators identify problems and disparities within water and sewer utility service territories and craft policies to specifically address identified inequities. In addition, bill affordability or assistance programs, to the extent that they exist, can be specifically targeted to areas experiencing high rates of disconnections, arrearages, and other disparate impacts.

Granular data is especially critical to identify disparities related to race and ethnicity, since it can be correlated with local demographic data from the U.S. Census. On the rare occasions that advocates have obtained access to geographic information for water utilities, it has often confirmed the existence of deep racial inequities related to the impacts of unaffordable water bills, such as shutoffs, property liens, and accumulating debt.¹²

The *Advancing Equity* authors note that achieving transparency in utility practices requires, at a minimum, obtaining the following monthly data by zip code for residential customers overall and, to the extent available, for known low-income residential customers (such as those participating in an income-qualified water affordability or assistance program).¹³

- Number of customers
- Dollar amount billed
- Number of customers charged a late payment fee
- Dollar value of late fees collected
- Number of customers with a past-due balance, by age of arrearage
 - 60–90 days overdue
 - 90+ days overdue
- Dollar value of arrearages, by age of arrearage
 - 60–90 days overdue
 - 90+ days overdue
- Number of disconnection notices sent
- Number of disconnections for nonpayment
- Number of service restorations after disconnection for nonpayment
- Average duration of disconnection
- Dollar value of security deposits collected
- Number of security deposits collected
- Number of new deferred payment agreements entered into
- Average repayment term of new deferred payment agreements
- Number of successfully completed deferred payment agreements

Other important data points advocates may wish to seek from water, wastewater, and stormwater utilities include information on:

- Rates (for residential and non-residential customers) and water bills at standardized levels of usage (to allow for comparison between systems);
- Average and/or median dollar amount billed to residential accounts and the average and/or median usage per account;
- Other fees and penalties assessed in addition to late fees (such as interest charges, disconnection and reconnection fees);
- Average and/or median amount of arrears (among accounts that are in arrears);
- Policies concerning shutoffs, reconnections, liens, late fees, deferred payment agreements, arrearage management plans, deposits, billing disputes, and other relevant policies (if not set by state statute or regulation) and the means by which customers are informed of these policies;

- Billing practices (for example, frequency of billing, inclusion of charges for any non-water services on water bills);
- Affordability and assistance programs (including program terms and participation rates);
- The use of liens and other debt-collection practices (such as the number of liens on real property placed, sold, or enforced due to non-payment; the number of administrative hearings held for the purpose of water debt collection; the number of third-party debt collection actions taken; and the number of wage garnishment actions taken); and
- For publicly owned systems, transfers of funds to non-utility governmental accounts.

QUESTIONS TO CONSIDER:

When developing a water affordability advocacy plan, the following questions may help you identify available data and opportunities to obtain and improve access to critical data.

- Does your utility publicly report data on disconnections, arrearages, or other affordability-related topics? If so, where can you obtain the data?
- If your utility is publicly owned, are there state “sunshine” laws (also known as Freedom of Information Act or “FOIA” laws) that you can use to obtain data?
- Are there academics or advocacy groups in the area that might be interested in helping to collect and analyze water utility data?
- If data are not otherwise available, is it possible to obtain information by participating in rate cases or other litigated proceedings? Would your state consumer advocate’s office (if one exists) or attorney general’s office help navigate this process?

IMPROVING TRANSPARENCY THROUGH ENHANCED PUBLIC REPORTING REQUIREMENTS

While the movement toward increasing transparency in water utility processes and operations remains an uphill battle, examples of advocates, policymakers, and regulators pushing for increased transparency can be found across the United States. The National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) jointly adopted a resolution in 2019 to advance utility reporting of credit and collections data, including a set of data points similar to those recommended by the *Advancing Equity* authors.¹⁴ NASUCA also independently passed a resolution in 2019 encouraging the “adoption,

maintenance and enhancement of reporting requirements relating to disconnections, arrearages, and credit and collections activities and the publication of such information online in a manner that is easily accessible by the public” as part of broader efforts to reduce water shutoffs and “the harm to individuals and the social costs to the community of households living without essential water service.”¹⁵

“Utilities should be required to engage in mandatory data collection and public reporting on rate increases, arrearages, service disconnections, and water lien sales. Data collection should include geographic and demographic information as available.”

—FROM *WATER/COLOR: A STUDY OF RACE & THE WATER AFFORDABILITY CRISIS IN AMERICA'S CITIES*, THURGOOD MARSHALL INSTITUTE AT THE NAACP LEGAL DEFENSE FUND¹⁶

Some state lawmakers and regulators have also begun to recognize the need for greater transparency by adopting enhanced data-reporting requirements for water utilities. These requirements vary significantly, both in terms of the scope of the data to be reported and the types of utilities subject to reporting obligations (publicly owned versus investor-owned). Some prominent examples—by no means exhaustive—are discussed below.

Currently, Illinois is the only state to require zip code-level reporting of water utility credit and collections data, although the requirements apply only to investor-owned electric, gas, water, and sewer utilities. Legislation enacted in 2021 requires that they publicly report by zip code, both annually and by month, critical credit and collections data including customer disconnections, reconnections, successfully completed and defaulted-on deferred payment arrangements, the number of customers in arrears of 30 days or more, and the dollar value of arrearages, among other data.¹⁷ The information is made available for public review on the Illinois Commerce Commission’s website.¹⁸

Several other states require electric and gas utilities, but not water utilities, to report zip code-level data concerning affordability.¹⁹

California and Wisconsin require publicly owned and investor-owned water utilities to report affordability-related data, but without a zip code-level breakdown. In California, the Water Shutoff Protection Act, effective as of February 2020, requires all water utilities with at least 200 service connections to report annually on the number of households disconnected for nonpayment.²⁰ A proposed

amendment to this act would expand the reporting requirements to include additional information related to service restorations, water debt, and participation rates in water assistance programs and would require reporting by zip code.²¹

Previously, the California Water Board was already collecting some data on shutoffs, alongside other operational information, in its annual survey of water systems in the state. The results are published in an annual report on the Water Board website.²² These reports provided the basis for analysis and reporting by the Pacific Institute on water shutoffs in California.²³

The California Public Utilities Commission has also established enhanced reporting requirements specifically for “Class A” water utilities (investor-owned utilities with more than 10,000 customers), through a series of regulatory orders.²⁴ In 2020, in order to evaluate pandemic impacts on customers and on utilities, the commission ordered Class A water utilities to begin regularly reporting the number of customers requesting bill assistance, the number of customers behind on their bills, the average amount of individual customer water debt and total amount of water debt, and the number of customers making partial payments, among other data.²⁵ In 2021, the commission expanded these reporting requirements to include the number and percentage of customers disconnected for nonpayment and reconnected each month. It further ordered the Class A water utilities to pursue further data reporting refinements through public working sessions.²⁶ In 2022, the Commission required, among other things, detailed data on customers with special payment arrangements to provide insight on whether those arrangements are effective at helping customers manage their debt.²⁷

In Wisconsin, the Public Service Commission recently established a requirement for all of the water, electric, and gas utilities it regulates to report annually on “residential arrears, disconnection notices and disconnections, and for municipal utilities, data on arrears placed on the tax roll.”²⁸ (Unlike most state utility commissions, the Public Service Commission of Wisconsin regulates both investor-owned and municipal utilities, so this reporting rule covers virtually all water providers in the state.) These annual reports, which also cover a wide range of other topics concerning utility operations and finances, are posted on the state’s website.²⁹

During the COVID-19 pandemic, several states adopted temporary requirements for water utilities to report certain affordability-related data. For example:

- Virginia enacted legislation requiring publicly owned utilities (including water, wastewater, electric, and gas) to periodically report, at least through 2022, certain data related to customer arrears, deferred payment agreements, and allocation of federal relief funds to

customer accounts.³⁰ The reporting requirements were adopted in connection with an appropriation of federal COVID-19 relief funds to pay down municipal utility customers' arrears.³¹

- In North Carolina, using authority granted by the COVID-19 state of emergency, the governor issued an executive order requiring all water and wastewater utilities (both publicly and privately owned) to report to the state utility commission early in the COVID-19 pandemic (April through July 2020).³² Even with many systems failing to report, the commission found almost \$53 million in water and sewer arrears as of July 31, 2020, with more than 156,000 accounts eligible for disconnection because of overdue bills.³³
- In Michigan, also using COVID-19 emergency authority, the governor issued an executive order requiring all water utilities to report on the number of residences lacking water service due to a shutoff for nonpayment, as well as the number of residences lacking service for any other reason.³⁴

As the above examples demonstrate, enhanced reporting requirements can be imposed through state legislation (as in Illinois, Virginia, and California), by state agencies through regulation (as in Wisconsin and California), or, under certain circumstances, by executive order (as in North Carolina and Michigan). Advocates should consider which avenue might present the best chance of achieving change.

In a few states, data reporting legislation has been introduced to require all publicly and privately owned water, wastewater, electric, and gas utilities to annually submit much of the data identified in the previous section of this module.³⁵

There may also be opportunities to enhance water utility transparency by attaching strings to state or federal infrastructure funds that utilities receive, or by directly offering funds to utilities to facilitate data collection. For example, states administer billions of dollars in federal water infrastructure funding through the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund. Some states also have their own water infrastructure funding programs. States or the federal government could condition utilities' receipt of these infrastructure funds on regular reporting of affordability-related data.³⁶ Similarly, any future state or federal low-income water affordability or assistance program could condition utilities' receipt of funds on such data reporting.³⁷ Federal grants could also be provided to water utilities specifically to support efforts to collect affordability-related data. A bill that passed the House of Representatives in 2021 would have required robust data collection by the U.S. Environmental Protection Agency and provided grants to utilities to upgrade their data management systems to be able to provide the data.³⁸

DATA ARE CRITICAL TO EVALUATE AND IMPROVE UTILITY PROGRAMS

When water utilities run affordability or assistance programs, debt relief programs, efficiency programs, plumbing repair programs, and the like, regular reporting on implementation is important to evaluate progress, identify challenges, and propose solutions.

In Philadelphia, for example, the legislation that created the city's percentage-of-income payment program (PIPP) also included a requirement that the Water Department prepare an annual report on implementation, including key metrics such as the number of applicants enrolled by income level, the number of rejected applicants and the reasons for the rejections, the number of customers with extended payment agreements, and the number of enrolled participants who failed to make their monthly payment.³⁹ These reports have helped to inform policymakers and the public about the Water Department's progress and helped advocates address roadblocks related to implementation. Advocates in Philadelphia also have the benefit of a robust rate-setting process, which allows them to request additional data directly from the utility.

Similarly, the law that created Baltimore's PIPP required the city to collect data on "application and enrollment numbers . . . reasons for denials, and the relative success of different outreach methods," among other things.⁴⁰ A new Office of Customer Advocacy within the city's Department of Public Works is responsible for analyzing the data, identifying problems, and proposing solutions, regarding not only the PIPP but also the utility's billing dispute resolution processes.⁴¹

OBTAINING ESSENTIAL DATA THROUGH PUBLIC RECORDS REQUESTS, THE RATE-SETTING PROCESS, AND LITIGATION

Where data are not publicly reported, advocates have employed a variety of approaches to obtain essential information from water and sewer utilities. The possible avenues by which to obtain utility data vary according to factors such as whether the utility is privately or publicly owned, and whether it is regulated by a state utility commission.

For publicly owned water providers (such as municipal water departments), advocates can leverage states' sunshine laws to secure release of data held by the utility.⁴² (These laws are often referred to as FOIA statutes, in reference to the federal Freedom of Information Act.) For example, Food & Water Watch obtained data from 73 large utilities, in nearly every state, to create a report on the prevalence of water shutoffs nationwide.⁴³ Advocates in Detroit gathered data on water shutoffs and foreclosures based on water debt and used it to create maps and other data visualizations illustrating the impacts of unaffordable water bills and harsh collection practices

in their city.⁴⁴ Advocates in New York obtained data from several of the state’s largest water utilities to illustrate the extent of customer arrears during the COVID-19 pandemic, highlighting the risk of mass shutoffs absent additional state relief.⁴⁵ Advocates in Cleveland obtained data that revealed disparities in impacts of water utility disconnection and collections practices, which they used to file a federal civil rights lawsuit; in turn, that lawsuit is providing opportunities to obtain further information.⁴⁶

In a report detailing how to access troves of data in the possession of municipal and other publicly owned and operated water utilities, Northeastern School of Law faculty Henry Sturm and Martha Davis emphasize the importance of using FOIA statutes to unearth data that might not otherwise see the light of day.⁴⁷ In the report, the authors reflect on an earlier research project, run through the law school’s Program on Human Rights and the Global Economy, that documented the water affordability policies of 12 Massachusetts municipal utilities by obtaining data through the state’s FOIA law.⁴⁸ These efforts, they write, provided “a trove of information regarding municipal water rate calculations, water bill assistance policies, nonpayment processes, relevant city ordinances, and consumer demographic data.”⁴⁹

“Importantly, the tools that we used are available to anyone. You need not be a lawyer or a government insider to request this information from your local government. And once you have the information, you can use it to educate, inform, and motivate community members.”

—FROM *THE HUMAN RIGHT TO WATER: A GUIDE TO USING FREEDOM OF INFORMATION REQUESTS TO UNDERSTAND RISING WATER RATES*,
NORTHEASTERN UNIVERSITY SCHOOL OF LAW⁵⁰

The Northeastern authors advise advocates to do their homework before crafting a FOIA request. The report recommends “a scaffold approach, in which you gradually build up knowledge before making phone calls or sending a FOIA request” and advises starting with online searches of relevant news articles, city ordinances, and departmental regulations.⁵¹ The report provides a sample email to a municipal water department staff as part of the initial investigation and a sample FOIA request that can be used once basic processes and procedures related to water rates, disconnections, debt collection activity, and other areas of interest are better understood.⁵²

In addition, advocates seeking change in water utility debt collection practices can reach out to academic institutions in their area that may have the funding and capacity to help support data collection efforts. Although anyone can file a FOIA request, trained researchers can help navigate the process, identify the most useful data, and crunch the numbers once the data come in.

Even with state FOIA laws, successfully obtaining the ideal data set may prove challenging. Some utilities may claim that certain data do not exist in a reportable form.⁵³ But plenty of useful information should be available, as shown by the Northeastern School of Law investigation.

State FOIA laws do not apply to privately owned water providers. Of course, advocates can always request the data they want, but a response may be unlikely. When Food & Water Watch requested shutoff data from 11 privately owned water companies as part of a national study on shutoffs, only one company responded.⁵⁴

However, privately owned utilities are typically regulated by state utility commissions, and this makes it possible to obtain data through formal legal proceedings. When a commission-regulated utility requests a rate increase or the commission engages in a rulemaking related to consumer protection requirements, the commission will open a formal proceeding (sometimes referred to as a case or docket). Organizations that formally intervene in the proceeding can file extensive data requests, which the utility is obligated to respond to, assuming the requests are relevant to issues in the case. Data obtained during this so-called discovery process can help reveal inequitable policies, rates, and impacts of credit and collection policies. A sample set of data requests from a utility commission rate case can be found under “Key Resources” at the end of this module.

Utility commission proceedings can also present an opportunity to secure commitments to data reporting from the utility through a negotiated settlement agreement. For example, advocates in Illinois were able to use settlement negotiations to secure commitments by large investor-owned water and energy utilities to begin publicly reporting monthly credit and collections data, by zip code for the energy utilities and by “water regions” for the water utilities. These data points formed the basis for the previously referenced Illinois zip code-level data collection statute passed in 2021.⁵⁵

Participating fully in state utility commission proceedings takes time, resources, and often legal representation, which may be beyond the reach of many community-based groups. One possibility might be to see if the state’s attorney general or consumer advocate (or an experienced advocacy organization) would assist in obtaining the data if they are already participating in the proceedings, as is often the case. (Considerations related to participating

When investor-owned water utilities request a rate increase, advocates can obtain data through formal state utility commission proceedings.

in utility commission cases are discussed further in the Accountability and Participation in Decision Making module.)

Even for some utilities that are not regulated by a utility commission—such as Philadelphia’s municipal water and sewer utility—there may be a formal rate-setting process that offers similar opportunities to extract information through data requests and settlement agreements. This is currently very rare, however. Where this option is not available, advocates may want to consider trying to change local decision-making processes as a path to compelling the utility to provide key data. (See the Accountability and Participation in Decision Making module for a discussion of Philadelphia’s rate-setting process and other models.)

Finally, lawsuits in state or federal court provide another avenue of extracting information from utilities through data requests and settlements, similar to a utility commission

proceeding. Bringing a lawsuit is generally even more expensive and time-consuming than participating in utility commission proceedings, however.

WHAT TO DO WITH THE INFORMATION ONCE IT’S RECEIVED

Once advocates successfully gather data needed to inform their advocacy, there are many avenues for pursuing change in water utility practices. As noted above, there should be continued outreach to academic institutions and nongovernmental organizations with the funding and capacity to investigate and document inequitable water utility practices. Engagement with local media, too, is critical to publicize the disparities that are uncovered in data investigations. Advocates should consider whether litigation or the threat of litigation is the necessary next step in pursuing change in discriminatory and punitive water policies.

KEY RESOURCES:

Henry Sturm and Martha Davis, *The Human Right to Water: A Guide to Using Freedom of Information Laws to Understand Rising Water Rates*, Northeastern University School of Law, 2019, <https://law.northeastern.edu/wp-content/uploads/2021/04/phrge-foi-water-guide.pdf>.

This report includes a sample Freedom of Information request to a publicly owned water utility, seeking data and other information on water shutoffs, reconnections, liens, payment plans, assistance programs, fees, dispute resolution processes, and related matters. It also includes tips on navigating the Freedom of Information request process.

Sample data requests to be sent to utility in order to obtain zip code-level data on disconnections, arrears, and other credit and collections activity concerning residential customers, <https://www.nrdc.org/resources/sample-data-request-state-utility-commission-proceeding>.

These sample data requests were used by consumer advocates in an energy utility rate case before a state utility commission. They can be readily adapted for use in a water utility rate case, or for Freedom of Information requests made to a publicly-owned water utility that is not regulated by a state utility commission.

ENDNOTES

- 1 There are some exceptions where water and sewer rates are collected for nearly all utilities in a state. For a list of free resources compiling rates, see the Background module, box titled “Comparing Water Rates: Resources and Cautionary Notes.”
- 2 U.S. Energy Information Administration, “Residential Energy Consumption Survey,” accessed May 6, 2022, <https://www.eia.gov/consumption/residential/>.
- 3 Chip Berry, Carolyn Hronis, and Maggie Woodward, “One in Three U.S. Households Faces A Challenge in Meeting Energy Needs,” U.S. Energy Information Administration, September 19, 2018, <https://www.eia.gov/todayinenergy/detail.php?id=37072>. For a recent example of how RECS data can be used to assess disparities by race and income, see Chandra Farley et al., *Advancing Equity in Utility Regulation: Future Electric Utility Regulation Report No. 12*, U.S. Department of Energy, November 2021, 20-26, https://eta-publications.lbl.gov/sites/default/files/feur_12_-_advancing_equity_in_utility_regulation.pdf.
- 4 Charles Fishman, “Water Is Broken. Data Can Fix It,” *New York Times*, March 17, 2016, <https://www.nytimes.com/2016/03/17/opinion/the-water-data-drought.html>. Notably, however, energy affordability advocates have identified several important aspects of the RECS that should be improved; water affordability advocates should be mindful of those when considering RECS as a model. See Chandra Farley et al., *Advancing Equity in Utility Regulation*.
- 5 Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, *Turning Off the Tap: Massachusetts’ Looming Water Affordability Crisis*, December 2020, 13, <https://www.usccr.gov/files/2021-01-27-MA-SAC-Water-Affordability-Report.pdf>.
- 6 Ibid at 2.
- 7 Coty Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense Fund, April 2019, https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.
- 8 The report notes: “For example, in 2014, when its water shutoff crisis began, Detroit officials revealed that they did not collect any data on the number of people living without tap water, or on the age, disability, chronic illness, race, or income level of the affected population. Similarly, in 2017, the Baltimore Department of Public Works stated that the city does not retain information on the total amount of payments received from residential customers, the average arrears for all residential accounts, the average bill for all residential accounts in arrears, or the number of accounts receiving a notice of disconnection for nonpayment.” Montag, *Water/Color*, 71.
- 9 Laura Feinstein, Morgan Shimabuku, and Greg Pierce, “When Utilities Shut Off Water for the Poor, We Are All at Risk,” Pacific Institute blog, April 20, 2020, <https://pacinst.org/when-california-utilities-shut-off-water-for-the-poor-we-are-all-at-risk>.
- 10 Chandra Farley et al., *Advancing Equity in Utility Regulation*.
- 11 Depending on local geographic boundaries and demographics, obtaining a meaningful picture of how water utility practices are impacting different groups by race, income, and other demographic factors may require reporting certain data by census block or nine-digit zip code.
- 12 Maria Zamudio and Will Craft, “So Close, Yet So Costly: In Cities on the Great Lakes, Water Pipes Are Crumbling and Poor People Are Paying the Price,” *APM Reports*, February 7, 2019, <https://www.apmreports.org/story/2019/02/07/great-lakes-water-shutoffs>; Montag, *Water/Color*; Kimberly Foltz-Diaz, Patrick Kelleher-Calnan, and Suren Moodliar, *The Color of Water: A Report on the Human Right to Water in the City of Boston*, Massachusetts Global Action, accessed May 13, 2022, http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf. Federal civil rights lawsuits based on data obtained from utilities in specific cities have also alleged racial disparities in water shutoffs and liens. ACLU Michigan, “Civil Rights Coalition Files Class Action Lawsuit Challenging Detroit Water Shutoff Policy,” press release, July 9, 2020, <https://www.aclumich.org/en/press-releases/civil-rights-coalition-files-class-action-lawsuit-challenging-detroit-water-shutoff>; NAACP Legal Defense Fund, “LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs,” press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>. These racial disparities in water shutoffs are consistent with other findings regarding utility shutoffs more generally, for which nationwide data are available. Lillian Holmes et al., “Water and the COVID-19 Pandemic: Equity Dimensions of Utility Disconnections in the U.S.,” Pacific Institute, 2020, https://pacinst.org/wp-content/uploads/2020/07/Water-and-COVID-19_Equity-Dimensions-of-Utility-Disconnections-in-US_Pacific-Institute.pdf; Marcus Franklin and Caroline Kurtz, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as If Human Rights Matter*, NAACP Environmental and Climate Justice Program, March 2017, <https://naacp.org/resources/lights-out-cold>.
- 13 Chandra Farley et al., *Advancing Equity in Utility Regulation*, 27-28.
- 14 National Association of State Utility Consumer Advocates (hereinafter NASUCA), Resolution 2019-07, “Resolution on Best Practices in Data Collection and Reporting for Utility Services Delinquencies in Payments and Disconnections of Service,” 2019, <https://nasuca.org/wp-content/uploads/2018/11/2019-07-NASUCA-Data-Collection-Resolution-Joint-with-NARUC-Final.pdf>; National Association of Regulatory Utility Commissioners, “Resolution on Best Practices in Data Collection and Reporting for Utility Services Delinquencies in Payments and Disconnections of Service,” 2019, <https://pubs.naruc.org/pub/5B694F5B-D52A-A964-2EF3-8C734C18FC89>.
- 15 NASUCA, Resolution 2019-06, “Encouraging State Legislatures and State Public Utility Commissions to Institute Programs to Reduce the Incidence of Disconnection of Residential Water Service Based on Nonpayment and to Collect Uniform Data on Such Disconnections,” 2019, <https://www.nasuca.org/2019-06-nasuca-water-affordability-resolution/>. Similarly, in a 2018 resolution, NASUCA called for policymakers to require gas and electric utilities to report, in a publicly available format, specific data related to disconnection and other credit and collections data points. NASUCA, Resolution 2018-04, “Urging States to Direct Natural Gas and Electric Utilities to Collect and Post on the Public Utility Commission Website Uniform Time Series Statistical Data on Residential Billings, Collections, Arrearages and Disconnections for Nonpayment,” 2018, <https://nasuca.org/wp-content/uploads/2018/01/2018-04-NASUCA-Data-Collection-Resolution-Final-11-11-2018.pdf>.
- 16 Coty Montag, *Water/Color*.
- 17 220 Ill. Comp. Stat. 5/8-201.10, <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=022000050K8-201.10>.
- 18 Illinois Commerce Commission Chief Clerk’s Office, “Filings,” accessed May 18, 2022, <https://www.icc.illinois.gov/home/chief-clerk-office/filings/list?s=637765920000000000&dts=365&ft=2&dt=240&ddt=10128> (search results for compliance reports under 220 Ill. Comp. Stat. 5/8-201.10).
- 19 Wash. UTC Order 06 (July 2, 2021) in Docket U-200281, In the Matter of Response to the COVID-19 Pandemic, <https://www.utc.wa.gov/casedocket/2020/200281/orders> (directing investor-owned energy utilities to report data on the number and amount of customer arrearages at the zip code and census tract level); Or. Admin. R. 860-021-0408, <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=246811> (requiring energy utilities to report service disconnection data aggregated at the zip code level on a quarterly basis, “unless a different unit is pre-approved by the Commission’s Consumer Services Section”). The Washington reporting rules are in effect until 30 days after the commission issues a final order in a separate docket concerning long-term changes to the commission’s customer protection rules. The forthcoming final order may establish permanent reporting requirements. See UTC Case Docket Details, Docket No. 210800, <https://www.utc.wa.gov/casedocket/2021/210800>. The Oregon rules are permanent.
- 20 Cal. Health & Safety Code § 116918 (West), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=116918.

- 21 Cal. SB 223 (2021), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223. The additional data points are the number of accounts for which water service was restored within 36 hours, 36 hours to 7 days, and more than 7 days after disconnection; the number of accounts in arrears and the median amount of the debt; and the number of customers enrolled in a water affordability program.
- 22 California Water Boards, “Electronic Annual Report (EAR),” State of California, accessed May 18, 2022, https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/ear.html.
- 23 Laura Feinstein, Morgan Shimabuku, and Greg Pierce, “When Utilities Shut Off Water for the Poor.”
- 24 The California Public Utilities Commission regulates nearly 100 privately owned water utilities throughout the state. These are categorized by size, the largest of which are Class A water utilities with more than 10,000 customers. Cal. Pub. Util. Code § 241 (West); California Public Utilities Commission, “Regulated Water Utilities,” December 16, 2020, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/water-division/reports/wd-landing-page/water-utilities--total-connections.pdf>.
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- 26 Cal. PUC Decision 21-07-029 in Rulemaking 17-06-024, *Phase II Decision Continuing Suspension of Disconnections for Nonpayment of Water Utility Bills Accumulated During the Statewide Water Disconnection Moratorium And Improving Access to the Low-Income Water Rate Assistance Programs Statewide*, July 15, 2021, Attachment A, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M394/K023/394023418.PDF>.
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- 28 PSC of Wisconsin, “Supplemental Order on Residential Disconnections—Fifth,” in Docket No. 5-UI-120, December 22, 2021, <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=427780>.
- 29 PSC of Wisconsin, “Annual Reports,” accessed May 13, 2022, <https://apps.psc.wi.gov/ARS/annualReports/default.aspx>. The arrears and disconnection data appear in Schedule W-30.
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- 31 Virginia Department of Housing and Community Development, “Covid-19 Municipal Utility Relief Program,” accessed May 5, 2022, <https://www.dhcd.virginia.gov/utilityrelief>.
- 32 North Carolina Utilities Commission, “Executive Orders No. 124 and 142,” accessed May 19, 2022, <https://www.ncuc.net/execorder124.html>.
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- 34 Michigan Governor Gretchen Whitmer, “Executive Order 2020-28: Restoring Water Service to Occupied Residences During the COVID-19 Pandemic—RESCINDED,” March 28, 2020, <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2020/03/28/executive-order-2020-28>.
- 35 N.J. S.994 (Session 2022–2023), <https://www.njleg.state.nj.us/bill-search/2022/S994/bill-text?f=S1000&n=994>; Mich. SB 345 (2021); <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/htm/2021-SIB-0345.htm>; N.Y. S.5451 (2021) (passed by legislature June 3, 2022; awaiting signature by governor), <https://www.nysenate.gov/legislation/bills/2021/s5451>.
- 36 Such reporting requirements would have an ample connection to the underlying purpose of the funds. When investing in local water infrastructure improvements, the federal government and states have an interest in ensuring that the utility provides affordable access to essential water services to everyone in its service area.
- 37 A proposed amendment to the 2021 Bipartisan Infrastructure Law that was not included in the final enacted law would have created a permanent low-income water assistance program including requirements for utilities receiving funds to report key affordability-related data. Amendment to Rules Committee Print 117-9 (offered by Tlaib of Mich.), https://amendments-rules.house.gov/amendments/TLAIB_035_LIDWAP210628110017323.pdf.
- 38 H.R.3684, 117th Cong. §§ 13304(b)(2), (b)(5) (passed by the House on July 1, 2021), <https://www.congress.gov/bill/117th-congress/house-bill/3684/text/eh?r=1>. Required data collection under the bill would include, at a minimum, data (at the zip code level) concerning arrearages, service disconnections, and other debt collection activities; rate design for residential customers; billing frequency; fees and charges included on the bill; projected rate increases over the next five years; information regarding customer assistance programs; and utilities’ procedures to ensure that households receive notice and an opportunity to dispute charges before service is disconnected for nonpayment.
- 39 Phila. City Code § 19-1605(7). For the latest report, see City of Philadelphia Department of Revenue, *Annual Report to the Mayor on the Tiered Assistance Program (TAP)*, March 31, 2021, <https://www.phila.gov/media/20210412104452/Tiered-Assistance-Program-TAP-2020-annual-report.pdf>.
- 40 Baltimore City Code art. 24 § 2-17.
- 41 Ibid.
- 42 A compendium of state freedom of information laws, with additional background material for advocates, is maintained by the National Freedom of Information Coalition. National Freedom of Information Coalition, “State Freedom of Information Laws,” accessed April 21, 2022, <https://www.nfoic.org/state-freedom-of-information-laws/>. Individual states, and often individual state agencies and local governments, also typically publish information online about how to make a freedom of information request.
- 43 Food & Water Watch, *America’s Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions*, October 2018, https://www.foodandwaterwatch.org/wp-content/uploads/2021/03/rpt_1810_watershutoffs-web2.pdf.
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- 46 In the Cleveland case, on the basis of the plaintiffs' initial allegations that relied on freedom of information data, a judge denied the city's motion to dismiss, allowing the case to proceed to a discovery phase in which the plaintiffs could compel the city to release more information. NAACP Legal Defense Fund, "LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs," press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>; *Pickett v. City of Cleveland*, No.1:19 CV 2911 (N.D. Ohio Sept. 29, 2020), https://www.clevescene.com/media/pdf/09.29.20_oliverdecision_clewaterlawsuit.pdf.
- 47 Henry Sturm and Martha Davis, *The Human Right to Water: A Guide to Using Freedom of Information Laws to Understand Rising Water Rates*, Northeastern University School of Law, 2019, <https://law.northeastern.edu/wp-content/uploads/2021/04/phrge-foi-water-guide.pdf>.
- 48 Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities*, Northeastern University School of Law Program on Human Rights and the Global Economy, July 2019, <http://humanright2water.org/wp-content/uploads/2020/04/1907-A-Drop-in-the-Bucket-.pdf>.
- 49 Sturm and Davis, *The Human Right to Water*, 1.
- 50 Ibid.
- 51 Ibid. at 2.
- 52 Ibid. at 3-11.
- 53 This may be more likely with smaller utilities, but large utilities sometimes also claim they do not have the requested data or simply fail to respond to public records requests despite their obligation to do so under state law. For example, in 2021, advocates in New York requested data on shutoffs and arrears from 10 of the state's largest water utilities, but only 4 responded. Of those responding, one utility claimed it does not track the number of shutoffs it performs. National Center for Law and Economic Justice, "New Data Reveals Thousands of New Yorkers At Risk."
- 54 Food & Water Watch, *America's Secret Water Crisis*, 3.
- 55 See Illinois Commerce Commission (June 18, 2020) in Docket No. 20-0309, In the Matter of Moratorium on Disconnection of Utility Services During the Public Health Emergency Declared on March 9, 2020, Pursuant to Sections 4 and 7 of the Illinois Emergency Management Agency Act, Appendix 1, <https://www.icc.illinois.gov/docket/P2020-0309/documents/300566>.