

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION d/b/a AVISTA
UTILITIES,

Respondent.

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(Consolidated)

EXHIBIT SNS-6

Kowalski, K.,

Racial disparities persist in electric service. Is 'willful blindness' to blame?
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MIDWEST NEWS

Racial disparities persist in electric service. Is 'willful blindness' to blame?



by Kathiann M. Kowalski
July 1, 2020



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Black Americans and other minorities are more at risk for disconnections, add-on utility fees, inefficient housing and more.

While it has long been known that Black and other minority customers are more likely to face service disconnections and higher bills due to inefficient housing, Ohio regulators are not taking significant steps to address those disparities — largely because they’re not looking for them.

Utilities say they enforce policies against racial and ethnic discrimination, but few are collecting data that could reveal whether those policies are unintentionally creating or widening disparities for communities of color.

“In my mind that borders on willful blindness” said Roger Colton, an attorney and economist in Belmont, Massachusetts, who has worked on energy and water utility cases.

On average, African Americans pay a disproportionately greater share of their income for energy needs, said economic analyst John Howat at the National Consumer Law Center in Boston. Compared to white households, they also have higher frequencies of disconnections, disconnection notices and households foregoing other necessities to pay for energy.

One of his analyses found that on a nationwide basis, African Americans earning less than 150% of the poverty level were about **twice as likely** to have their electricity shut off as white households with comparable incomes. The impacts were lower in the Midwest than in some other regions, but Black households still had a higher rate of disconnections.

“So the big picture is that the data does identify disparities in home energy security generally by race,” Howat said.

The Energy News Network asked the Public Utilities Commission of Ohio for data on customers whose electricity or natural gas service had been disconnected. If specific names and addresses could not be disclosed, the Energy News Network asked for census tract data on where disconnections occurred. The data could have been helpful for an informal sampling to gauge if areas with higher proportions of African Americans or other minority groups had disproportionate numbers of disconnections.

“Unfortunately, the data is not as granular as you are requesting,” said PUCO spokesperson Matt Schilling. Utilities must file **annual reports** on disconnections for nonpayment. Data in various **reports** provide the total numbers of disconnections each month, notices of disconnections, security deposits, dollar amounts and numbers of customers. But there’s generally no breakdown by race, zip code or even county.

Various utility companies likewise declined to provide either addresses or census tract data for disconnections, even though all companies contacted said their policy is not to discriminate and that any complaints about discriminatory actions or treatment are investigated and followed up with appropriate action.

“With regard to disconnections, we adhere to the disconnection process defined by the Ohio laws and regulations, none of which are defined by race or ethnic group,” said Dayton Power & Light spokesperson Mary Ann Kabel.

The Office of the Ohio Consumers’ Counsel does get aggregate information about complaints from the PUCO. However, a 2011 cutback in funding ended the counsel’s ability to run its own complaint hotline. And the PUCO’s system for cataloguing complaint actions doesn’t include a separate code for allegations of racism. That would make a search through hundreds of individual filings unwieldy at best and possibly not feasible.

“I’m not sitting here saying that our utility companies are consciously turning off minorities more than other customers or white folks,” said Dave Rinebolt, executive director and counsel at Ohio Partners for Affordable Energy. “But until they know whether the impacts are disparate, we can’t really make that determination.”

Systemic problems

Although many low-income customers in Ohio and nationwide are white, disproportionate numbers of people of color are poor. The [Ohio Poverty Report](#) from February 2019 showed poverty rates of nearly 29% and 27%, respectively, for Black and Hispanic Ohioans as of 2017, compared to roughly 11% for white Ohioans. Historic redlining and other housing discrimination, employment discrimination, poor school systems that limit economic opportunity, difficulty getting credit, differential treatment in the justice system that leads to more incarcerations, and other factors also play roles, advocates report.

African Americans and other minorities are also disproportionately represented among those in low-income housing, which tends to be less energy efficient. And they’re less likely to have efficient appliances, said research analyst Ariel Drehobl at the American Council for an Energy-Efficient Economy.

A 2016 [report](#) on which Drehobl was lead author ranked Cincinnati and Cleveland among the top 15 cities with the highest energy burdens for low-income families, out of 48 cities nationwide. The median percentage spent by African American households was two-thirds higher than that of white families overall, while Latino households’ energy burden was about a quarter more than that for white households, Drehobl and her colleagues found.

“High energy burdens are correlated with long-term impacts,” such as more respiratory diseases, increased stress and other effects on health and well-being, Drehobl said. “Some people talk about it in terms of the ‘heat or eat’ dilemma.”

When utilities shut off utilities for nonpayment, more problems ensue. Tragic deaths have resulted from shut-offs, including cases documented in a 2017 NAACP [report](#). In other cases people must leave their homes, which can separate families from their largest asset, said Colton.

Failure to provide a home with working utilities has even been viewed as child endangerment, causing some parents to lose custody of children, said Jacqui Patterson, senior director for NAACP’s Environmental & Climate Justice Program.

Read more: [How energy issues and civil rights issues intersect](#)

The PUCO and various utilities all voiced commitments to nondiscrimination.

“We know much more must be done for everyone to be treated as full and equal partners in our society,” said Duke Energy spokesperson Lee Freedman. “That’s why we pledge to do more: To engage local organizations and leaders to understand how to be part of long-term solutions. To listen, learn and support each other within our company and communities. And to continue to stand against racism, inequality and discrimination.”

Nonetheless, Colton said, “whether it is intentional or not, there’s a lot of de facto discrimination.” As early as 30 years ago, he argued that statistical tests could be used in court to show that disproportionate impacts of utility practices on minority groups amount to unlawful discrimination.

“Discrimination is discrimination whether it be intentional or de facto,” Colton [wrote](#) in that law review article. A statistical approach similar to the one he advocated is now being advanced in a federal [class action](#) against the City of Cleveland’s water department, filed by the NAACP Legal Defense & Education Fund in December.

Cleveland Public Power “has no records of discrimination on the basis of race and ethnicity,” said spokesperson Shelley Shockley, and different groups run the city’s electric and water utilities. However, she did not say whether the utility had investigated whether there are disparate racial impacts among its customers.

“CPP has clearly defined delinquency policies that are administered to all customers. ... The rates are the same for all residential customers, and currently customers are not charged late fees or interest,” she said.

A looming problem

“The data you don’t have is the problem you can’t see,” said Tony Reames, who heads the Urban Energy Justice Lab at the University of Michigan in Ann Arbor. Short-term payment assistance programs exist, as well as low-income weatherization programs. However, “it’s hard for people to wrap their mind around those two programs working in concert,” he said. Percentage-of-income payment plans, or PIPP arrangements, do exist in some jurisdictions, including Ohio. But programs tend to be very limited, he said.

“As long as we make it about the energy commodity and not about our larger housing problem, the program will never go far enough to stem off this issue,” said Reames. He and colleague Dominic Bednar at the University of Michigan have argued that the government should recognize energy poverty as a separate problem from general poverty, in somewhat the same way that food insecurity is seen as a specific problem. Their analysis was in [Nature Energy](#) in March.

If data did show disparities, utilities or the PUCO could presumably pursue a variety of options, including some steps that might require rulemaking or regulatory approval and others which would not.

For now, many utilities have stopped disconnections and some are waiving late fees during the COVID-19 pandemic. However, unemployment remains high, and full economic recovery is unlikely for at least a year. Yet some utilities want to start disconnections again.

“We’re about to come to this confluence where people are going to lose their utilities and their places of living,” Reames said.

Ohio Consumers’ Counsel Bruce Weston said his office’s mission includes protection of at-risk populations, “in which minorities tend to be over-represented,” and noted its support of a 2018 resolution by the National Association of State Utility Consumer Advocates, recognizing the disparate impact of disconnections on low-income people, particularly communities of color.

“At this time, a particular concern for at-risk communities is the potential for a premature end to the government’s moratorium against utility disconnections during the health emergency,” Weston said. “We are advocating that utility disconnections in Ohio should continue to be suspended for a reasonable time into the future.”

The Public Utilities Commission of Ohio rejected that position in a June 17 order involving Columbia Gas. The PUCO also declined the Ohio Partnership for Affordable Energy’s request for zip code data on disconnections.

“While the Commission is mindful that utility policy and procedures may be applied in a discriminatory manner, the Commission is not aware of and has no reason to believe that Columbia or any other utility under the jurisdiction of the Commission has applied disconnection requirements, policies, or procedures in an unjust and discriminatory manner,” said the PUCO’s order. “If evidence to the contrary is brought to the Commission’s attention, the Commission will address the issue appropriately.”

“How can you say that if you don’t have the data?” Rinebolt said.

This is Part Two of a series on racial disparities and energy issues. Part One looked at systemic problems that contribute to racial disparities. Part Three will explore how clean energy programs can help address racial disparities.