

DecarbNation, March 2024

Decarbonizing the Obligation to Serve

Removing a key barrier to neighborhood-scale
building decarbonization



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Acknowledgements

Thank you to Heather Payne, Professor of Law at Seton Hall University and to Amanda Zerbe, Climate Law Fellow at Stanford University for speaking with me about the legal considerations for reforming the obligation to serve and for their insightful articles, which are cited liberally throughout this report.

Thank you to my BDC colleagues for their review of this report: Nicole Abene, Noah Cordoba, Beckie Menten, Malak Nassereddine, Amy Rider, Ted Tiffany, Tiffany Vu

Report Design by John Masuga, Sr. Brand Designer, BDC



The **Building Decarbonization Coalition (BDC)** unites critical stakeholders on a path to transform the nation's buildings through clean energy, using policy, research, market development and public engagement. The BDC and its members are charting the course to eliminate fossil fuels in buildings to improve people's health, cut climate and air pollution, prioritize high-road jobs, and ensure that our communities are more resilient to the impacts of climate change. www.buildingdecarb.org

DecarbNation is **BDC's** original research initiative that tracks and analyzes national policy in order to accelerate the building decarbonization movement as a whole.

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Executive Summary

In some states, the “obligation to serve” is a mere ten words long: “Every public utility shall furnish adequate, efficient, and reasonable service.” In other states, this obligation is detailed across multiple sections of the public utilities code, with additional caveats and dependencies. What is this obligation and why has it recently garnered so much attention from utilities, regulators, and advocates in the building decarbonization movement? This report situates, defines, and analyzes this obligation across the U.S. and recommends a course of action for how and when to modify this statute in order to enable neighborhood-scale building decarbonization—a managed and coordinated approach to building decarbonization that entails pruning the gas system.¹

In its broadest sense, the obligation to serve is a social contract for nondiscriminatory, universal access to an essential public good. In the case of regulated energy utilities, this means that utilities must offer service to anyone who requests it in their service territory; these utilities make this commitment in exchange for the privileges they enjoy as a monopoly, such as control over a market, access to public property, and rights of way. Without this obligation, the tendency of these companies would be toward profit, not universal service. In this way, the obligation to serve ensures that customers who use relatively little energy, such as residential households, have access equal to those who use a lot of energy (and pay higher bills), such as industrial or manufacturing customers.

Historically, the obligation to serve evolved as natural monopolies negotiated the duties they were beholden to in the interest of public welfare. Flour mills, ports, railroads, and the like all operated under some iteration of this duty. Today, the obligation to serve is most frequently discussed in reference to public utilities and their commitment to providing just, reasonable, and efficient service so as to promote the health, safety, and comfort of the public. This obligation is realized through two distinct channels: the extension of service within a defined geographic area to new customers and buildings and the continuation of service once commenced. The same opportunities and challenges that accompany the decarbonization of new versus existing buildings applies to addressing these prongs—it’s much harder to retrofit a building and it’s more complex to remove a service.

“ **Every public utility shall furnish adequate, efficient, and reasonable service.**”

In many states, the cost of extending new gas and electric service comes at no up-front cost to the new customer. This cost is instead socialized across the customer class, meaning that existing customers pay for the new customer to join the gas or electric network. The gas line extension “allowance” or utility (and therefore ratepayer) funded subsidy has recently become an object of focus for the building decarbonization movement. If state climate laws require the gas system to shrink, why should existing customers continue to pay for the gas system to grow? Regulators in states like California have opted to eliminate these subsidies statewide while utility commissions in other states are addressing them by rate case and by utility. In addressing the conditions by which utilities extend service, regulators are already modifying an aspect of the obligation to serve, but doing so from the angle of cost shifting, which is well within their authority.

The reason many in the building decarbonization movement are citing the obligation to serve as a problem is that, depending on how it is written and interpreted, this commitment to service can prevent neighborhood-scale decarbonization. For example, utilities may be reluctant to remove gas service without clear direction due to fears of legal retaliation from customers; they may also view the statute’s ambiguity as an opportunity to delay the shrinking of the gas system. Regardless of the motivation, by pressing for an interpretation of the obligation to serve as referring to gas service in particular, or by asserting that statutes are ambiguous enough to require clarifying policy, gas utilities can defer investing in projects that would lead to the managed reduction

¹ BDC’s recent whitepaper, *Neighborhood Scale: The Future of Building Decarbonization (2023)*, explores this topic further: <https://buildingdecarb.org/resource/neighborhoodscale>

of the gas system.² Without clarification, the mere presence of the obligation to serve can be construed as a reason to perpetuate the status quo of gas system growth.

In discussions on why the obligation to serve must be addressed, utilities often cite their fear of a potential “holdout” customer who refuses to relinquish their existing gas service. This refusal threatens the cost-effectiveness of a neighborhood-scale decarbonization project by requiring the continued maintenance of an entire segment of the gas system. While abandonment proceedings, an existing pathway for utilities to legally stop serving a customer, offer a pathway for compensating and removing such customers from the gas system, the emerging and preferred method for addressing the potential “holdout” scenario is clarifying legislation. Such policies would decouple a specific fuel or technology from the utility’s obligation to serve and clarify the authority of utility regulatory commissions (known in many states as Public Utilities, or Services, Commissions [PUCs/PSCs]) to define instead the essential service or end-use that the utility is obligated to provide, such as heat. This modification would provide utilities with more flexibility to evolve their services in alignment with climate laws and the public good. This modified, or decarbonized, obligation to serve would help enable widespread electrification while curtailing the gas system and limiting future stranded assets.

While enshrined differently across the U.S., the obligation to serve exists as a statute in nearly every state and has historically provided important consumer protections. The commitments frequently held in common are largely admirable: nondiscriminatory access to service; promotion of the health, safety, and comfort of the public; and just and reasonable service and charges. Maintaining nondiscriminatory access is essential due to the historical and continuing inequality with regard to energy burdens and access to services. Akin to the retreat of insurers from climate vulnerable areas (“bluelining”), and the practice of racially based devaluation of property (“redlining”), it is important to maintain commitments to nondiscriminatory energy access. However, the fact that utilities can renege on their obligation to provide continuous service due to nonpayment demonstrates that this obligation is not ironclad. Advocates seeking to decarbonize the obligation to serve could therefore look for opportunities to increase energy equity and access by addressing this exception in their efforts to modify this statute.

In the building decarbonization movement, calls to decarbonize the obligation to serve seek to maintain

its positive attributes (access, nondiscrimination, safety, etc.) while removing its fossil fuel attributes. In other words, the goal is to remove the statute’s fuel-specificity—the obligation to serve gas specifically—and clarify that an alternative service such as electricity and/or thermal energy may serve as an acceptable substitute for all gas end-uses. While every building needs access to electricity, buildings do not need access to gas to maintain comfort, health, and safety; in fact, the emissions produced by gas contradict this commitment to health and safety.

This primer on the obligation to serve draws together the best legal scholarship and research on this increasingly urgent subject. This obligation has been modified before in the era of utility restructuring and another wave of modification is now needed to align regulatory standards with climate change targets. Because a competitive market and public mandate are intrinsically at odds, regulators, policymakers, and advocates will need to have an active hand in reimagining what services are owed to the public and what costs are acceptable to socialize. By decarbonizing the obligation to serve, we can accelerate a neighborhood-scale transition off the methane gas system. When done right, this newly decarbonized obligation to serve can pave the way to clean energy infrastructure powered by renewable electricity and thermal energy while also protecting consumers’ access to affordable energy.

“ **By decarbonizing the obligation to serve, we can accelerate a neighborhood-scale transition off the methane gas system.**”

² In a set of 2020 comments on California’s “Future of Gas” rulemaking (20-01-007), the “Indicated Shippers” or the “natural gas non-core customer interests” of several gas companies, use comments and research by environmental advocates to argue that the CA Public Utility Commission cannot act on its own authority to interpret the obligation to serve statute (Public Utility Code Sec. 451) to sanction electricity as a substitute for natural gas. They argue that clarifying legislation is needed, which has the effect of slowing down the decarbonization process and limiting regulatory authority. Despite what Sec. 451 actually says, the comment letter states the following as fact: “Under Section 451 of the Public Utilities Code, the gas utilities have an obligation to serve their customers. The Indicated Shippers respectfully disagree on the position that clear authority supports unilateral Commission action to modify this statutory obligation” (2). R.20-01.007 Indicated Shippers Reply Comments on Track 2A Questions 2.1(B)-2.1(K). (Cal. P.U.C., June, 27, 2022), <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=489140638>.

Introduction

Energy regulation establishes the ruleset that informs a multitude of business and financial decisions for energy suppliers, building operators, and everyday Americans paying their utility bills. For utilities, these regulations include a necessary trade-off: in exchange for exclusive control over certain markets or services, utilities will be obligated to provide service to the public. However this “obligation to serve,” (or “duty to serve,” as it is sometimes called), predates regulatory commissions and regulations altogether, demonstrating how deeply ingrained it is in the structure of public-private partnership. Over time, it has evolved from a social principle, to common law, to a statute and regulation. Each iteration of the obligation to serve has reflected that era’s understanding of what is in the public interest and what services are considered essential. Today, “climate change is demonstrating that [a] traditional view of the duty to serve is, in fact, imprudent, and is leading utilities to make imprudent decisions,”³ making it clear that yet another evolution of this longstanding agreement is needed.

The obligation to serve, generally speaking, is a social contract for nondiscriminatory, universal access to an essential public good. This duty applies in varying degrees to health care, phone service, property and automotive insurance, gas and electric service, among other resources deemed necessary for a healthy society. It is necessary because, as regulatory scholar Richard Colton explains, we cannot rely on the market to distribute resources equitably; in fact, “by its nature, a competitive market tends not only to exclude those most in need, but tends to increase prices to those least able to pay.”⁴

The obligation to serve has taken many forms across many industries since its feudal-era origins and continues to evolve today in the context of climate change. This report offers a historical overview of how and why this duty took form—first as an informal agreement, then as common law, and now primarily as statute—and why it’s an important issue for efforts to decarbonize buildings today. While today this obligation,

as defined in statute, is written differently in nearly every state, most iterations share the following components:

- ▶ Commitment to health, safety, and comfort
- ▶ Commitment to nondiscriminatory access
- ▶ Commitment to just and reasonable charges and service.

Similarly, there are several common interventions advocates can consider when looking to modify their own state’s obligation to serve in order to enable or expedite neighborhood-scale building decarbonization.

“ **The duty to serve was in fact designed to do precisely that: to ensure that all customers would have access to the “necessities of life,” rather than just those to whom it might be granted profitably from the utility’s perspective.**”⁵

³ Heather Payne, “Unservice: Reconceptualizing the Utility Duty to Serve in Light of Climate Change,” *University of Richmond Law Review* 56, no. 2 (2022): 606.

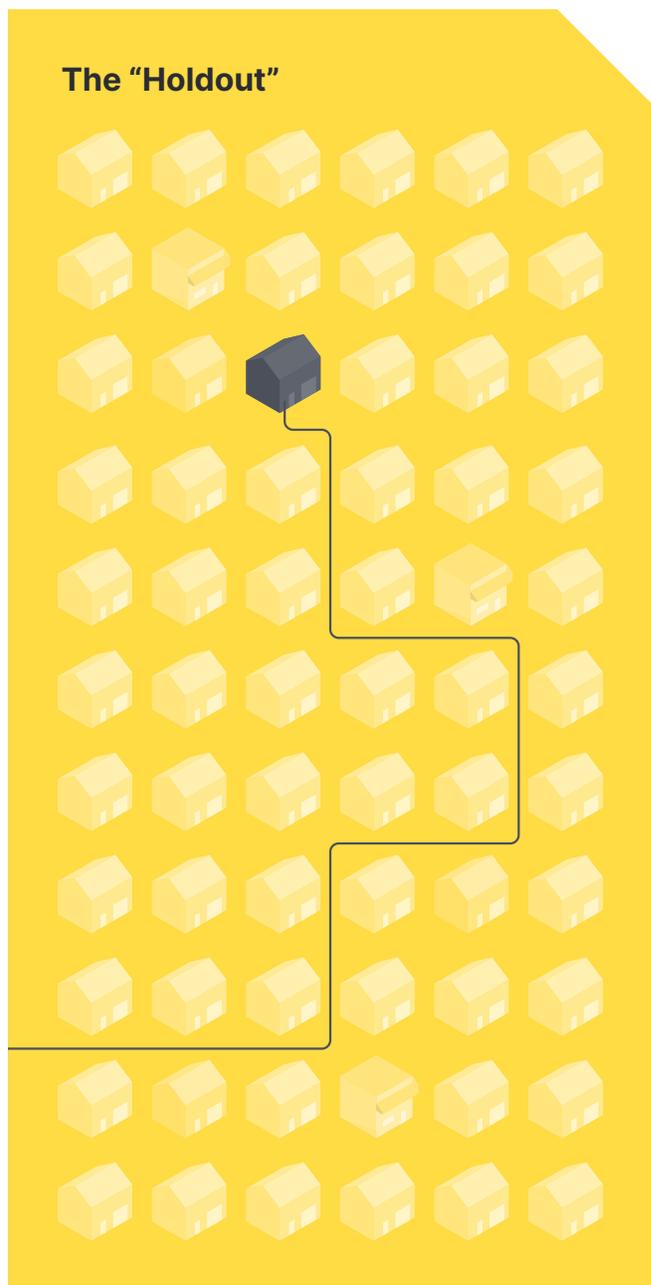
⁴ Roger D. Colton, “The ‘Obligation to Serve’ and a Competitive Electric Industry” (Office of Economic, Electricity and Natural Gas Analysis, U.S. Dept. of Energy, May 1997), 8.

⁵ Payne, “Unservice,” 616.

To mitigate the climate crisis, we need to scale up our approach to building decarbonization and align utility infrastructure investments with emissions reduction targets. Without a planned and managed transition, the gas system is projected to become more and more costly: “today, ratepayers’ gas bills are increasing and will continue to do so in the coming years...[due to] the continuous replacement of old cast iron and unprotected steel pipes that are considered “leak-prone.”⁶ In fact, as PG&E and other utilities have demonstrated, the avoided gas system costs make this transition off of the gas system and onto clean energy infrastructure cost-effective in many situations.⁷ Rather than replacing these emission-producing pipes, a utility may electrify the entire neighborhood or build a thermal energy network. This neighborhood-scale approach to building decarbonization is still a relatively new concept, in part due to the challenges facing a coordinated transition off of the gas system.

One such challenge that has been cited by advocates, utilities, and regulatory commissions is the obligation to serve. The imagined scenario is something like this: in order to improve safety and health and reduce system maintenance costs associated with an aging pipeline network, a utility wants to remove the gas system for a one-hundred-building community so that the community is only served by electricity. Ninety-nine households agree to this conversion but one refuses; if the utility wants to move ahead with neighborhood-scale electrification, they will need to maintain the entire segment of the gas system for the single “holdout,” thus negating much of the potential cost savings of the project. The general consensus in the building decarbonization community is that to avoid this scenario, legislation must be passed to clarify that electricity is an acceptable substitute for gas and/or to remove any fuel specificity in obligation to serve statutes.

This scenario sounds like a significant roadblock to our decarbonization goals. However, some legal scholars contend that utilities and commissions already have all of the authority and direction they need to circumvent this potential issue. Energy law scholar Heather Payne offers a couple options that do not involve legislation: First, to prevent new service connections, a utility can modify its geographical service area through an approval process with the PUC. Second, to remove service from an existing customer, the “holdout,” utilities can engage in abandonment proceedings, an existing pathway by which a utility can legally remove service from a customer and compensate them appropriately.



This image illustrates the “holdout” scenario that utilities fear will occur if the obligation to serve is not modified: that a single customer who refuses a neighborhood-scale transition off of gas will require the maintenance of the gas system just for them.

⁶ Michael J. Walsh, Michael E. Bloomberg, and Building Decarbonization Coalition, “The Future of Gas in New York State,” March 2023, 14, <https://buildingdecarb.org/resource/the-future-of-gas-in-nys>.

⁷ In BDC’s January 2024 webinar, “Neighborhood Scale: The Future of Building Decarbonization,” Rachel Kuykendall from PG&E explains the utility’s cost-based approach to neighborhood-scale electrification: <https://buildingdecarb.org/resource/webinars>

While the process may vary by state, generally PUCs will allow utilities to permanently suspend service “if the utility can show it no longer has a franchise to serve, public demand is minimal, a shortage of supplies exists, operation is at a substantial economic loss, or customers have failed to meet necessary conditions for receiving service.”⁸ However, the compensation for this individual—which may include new equipment and an alternative energy service such as a propane system—would be socialized across existing customers, adding to the problem the utility was trying to avoid by increasing costs.⁹ While abandonment proceedings may continue to be necessary on an ad hoc basis, many advocates agree that attempting to make it a regular facet of neighborhood decarbonization would counteract many of the benefits of this scaled process, such as cost-effectiveness and speed, while also placing a significant administrative burden on regulatory commissions and threatening to exacerbate energy inequity.

Utilities and PUCs may technically have the authority to curtail new and existing gas use, but there are many reasons to clarify ambiguous obligation to serve statutes through legislation, such as expediency, equity, and control. As stated above, existing pathways like abandonment proceedings were not created for widespread use and could increase energy inequity. In addition, without statutory clarity, a legal challenge brought against a utility under the obligation to serve leaves the power for modifying this statute in the hands of the court, not policymakers. A policy based on broad coalition consensus that is debated and revised through the legislative process gives advocates the best chance at creating a decarbonized obligation to serve that addresses the full scope of building decarbonization and guards against unintended consequences of a policy created by judicial opinion. It is therefore preferable that state coalitions pursue legislation that clarifies and decarbonizes the obligation to serve.

This report assumes that most states will want to pursue a legislative path toward clarifying their obligation to serve statute in order to grant clear authority to PUCs in the neighborhood-scale decommissioning of the gas system and implementation of full electrification and/or thermal energy. What follows is an analysis of what the obligation to serve has been, is, and should be, and why it must evolve for neighborhood-scale building decarbonization to succeed.



⁸ Jim Rossi, “The Common Law ‘Duty to Serve’ and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,” *Vanderbilt Law Review* 51, no. 5 (October 1, 1998): 1282.

⁹ Payne, “Unservice,” 650.

History & Context

The obligation to serve reflects each era’s understanding of what services are essential and what private companies owe the public. Today, it is best understood as a mechanism to ensure public access to the essential services provided by regulated monopolies.

Historically, this obligation to serve arose as a presumptive mandate for natural monopolies whose services were essential for public welfare. Legal scholar Jim Rossi, who has written extensively about the history and evolution of the obligation to serve, explains that the enduring 20th-century model of this obligation evolved from “ancient common law that applied to public utilities such as ferries, mills, and railroads.”¹⁰ In fact, some of the earliest iterations of this obligation can be found in the public-private structure of feudal-era flour mills. A mill was essential for the public’s well-being, yet it required financing by wealthy landowners who in turn wanted a guaranteed return on their investment. Rossi explains how this medieval-era obligation, “compelled all inhabitants of the medieval manor to grind all grain at the lord’s mill” and serves as one of the earliest known analogues to the regulatory compact between utilities and the public today.¹¹

This proto-regulatory compact continued to evolve across the centuries, as did legal and popular opinions regarding public entitlements and private enterprise. What these iterations had in common was the understanding that companies with large physical infrastructure that made duplication (and competition) impractical required an additional check on their power. When this infrastructure was deemed essential for

society and depended on access to public resources, the result of this arrangement was typically some type of quid pro quo agreement (first with local governments and later with state regulatory commissions) that balanced the power of the company with the needs of the community. In return for serving the public, these companies wanted a guarantee that their service would be adequately utilized and that their costly infrastructure investments would not be undercut by competition—a type of obligation to take service—if that service was something a consumer deemed essential (like electricity or water).¹²

The obligation to serve begins to take its modern-day regulatory form in the United States through the development of the transcontinental railroad, a sprawling venture prone to corruption and abuse that generated the need for regulatory agencies in America.¹³ This period, 1870-1900, can be considered the first regulatory era in the U.S., followed by a second era—the early 20th century to the present—characterized by judicial intervention to the newly established regulatory commissions.¹⁴ As this arrangement was tested against new configurations of monopoly franchises and new understandings of what were considered “essential” services, the obligation to serve evolved from common law to statutory law. Now, a third era is needed to align regulatory standards with climate laws.

¹⁰ Rossi, “The Common Law ‘Duty to Serve’ and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,” 1242.

¹¹ Ibid.

¹² In the pre-state-regulatory era, the power of emerging monopolies was controlled through competition, legislation, and municipal franchise agreements. The Street Frontage Act in Illinois in the late 19th century is an example of legislation that sought to protect the investments and exclusivity of established utilities while preventing new utilities from undercutting them. The law dictated that for any new gas utility to lay mains in Chicago (and for electric utilities to build poles and string wires), the company first needed to secure permission from every property owner; one dissenting owner could sink the entire segment: “After 1897, all an incumbent firm needed to do to prevent entry was to bribe a property owner to oppose construction of the mains...no new firms entered the industry after 1897” (Troesken, 64). This law therefore helped consolidate the power of the extant companies by creating a version of the “holdout” scenario that utilities now fear—in this case due to a type of “permission to serve” condition. The relationship between private property owners, private utilities, and public services has always been in flux and laws restricting or expanding utility service are not immune to being manipulated for profit. (Troesken, Werner. “The Institutional Antecedents of State Utility Regulation: The Chicago Gas Industry, 1860 to 1913.” In *The Regulated Economy: A Historical Approach to Political Economy*, edited by Claudia Dale Goldin and Gary D. Libecap, 55–80. A National Bureau of Economic Research Project Report. Chicago: University of Chicago Press, 1994. <https://www.nber.org/system/files/chapters/c6572/c6572.pdf>).

¹³ For an overview of the development of regulations in the US and the new mandate demanded by the climate crisis, see BDC’s DecarbNation blog on gas proceedings in the U.S.: <https://buildingdecarb.org/decarbation-issue-2#mandate>

¹⁴ Rossi, “The Common Law ‘Duty to Serve’ and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,” 1248.

Definitions

The obligation to serve can be understood in turn as: a social contract; public compensation; a public utility mandate; a foundational regulatory principle; a standard that has been modified due to utility restructuring; and a statute that is under pressure to evolve in the context of climate change.

There are broad and industry-specific definitions of the obligation to serve, as well as new frameworks that developed due to utility restructuring and climate change.

- **As a social contract.** The broadest interpretation of the social obligation to serve is said to exist when: “1. the services affected are essential to individual persons; 2. providing universal service offers tangible benefits to all parts of society; and 3. a failure to provide universal service results in dysfunctions in critical elements of society, including social, economic, and political institutions.”¹⁵
- **As public compensation.** The obligation to serve arises from the unchallenged access granted to monopolies to execute their business and “is a type of public compensation.”¹⁶ With regard to energy utilities, “The obligation to serve flows from...the grant of the right to exercise the power of eminent domain” and “the grant of the right to use public streets, alleys and public ways.”¹⁷
- **As a limit on where and who public utilities serve.** “The duty to render adequate service has two aspects; it delimits the areas of the community to which, and the particular individuals to whom, service must be rendered, and it establishes standards of adequacy of service.”¹⁸

- **As a guarantee for customer access.** “A bedrock principle of state utility regulation is the duty to serve, which demands that utilities provide nondiscriminatory service to all those within their geographic territory for the specific service for which they have been granted a monopoly.”¹⁹

The obligation to serve most recently underwent a major reinterpretation during the era of utility restructuring or “deregulation.” Before this period of change in the late 20th century, “the privately-owned electric utility was regulated as a natural monopoly.” As a “vertically-integrated utility,” this monopoly provided “generation, transmission, and distribution services under the rubric of a single firm serving a geographic service territory.”²⁰ Due to this exclusive access and market domination, the utility agreed to regulations and certain responsibilities, such as the obligation to serve.²¹ However, toward the end of the 20th century, some states began a process of decoupling these services. Utilities that were restructured are no longer vertically integrated and may control one or more aspects of transmission, distribution, and generation.

The general impetus for utility restructuring was the belief that introducing competition into—or “de-monopolizing”—the energy market would aid consumers by yielding better prices. Whether or not this was or can be achieved when generation is split from transmission and distribution has been a hotly debated topic upon which many have written. For the purposes of the obligation to serve, the introduction of competition to the regulated energy market produced uncertainties around the extent of this obligation. There is an inherent tension present between “universal service and retail competition” in an era of competitive yet regulated utilities: “With the advent of competitive restructuring, conventional wisdom assumes that markets will largely

¹⁵ Colton, “The ‘Obligation to Serve’ and a Competitive Electric Industry,” 27.

¹⁶ Colton, 56.

¹⁷ Colton, 72.

¹⁸ “The Duty of a Public Utility to Render Adequate Service: Its Scope and Enforcement,” *Columbia Law Review* 62, no. 2 (1962): 313, <https://doi.org/10.2307/1120016>.

¹⁹ Payne, “Unservice,” 603.

²⁰ Jim Rossi, “Universal Service in Competitive Retail Electric Power Markets: Whither the Duty to Serve?,” *Energy Law Journal* 21 (January 1, 2000): 3.

²¹ *Ibid.*

displace price regulation, but little discussion focuses on the implications of deregulation for service obligations in the electric power industry....Can vigorous retail competition of the type public utility deregulation envisions coexist with extraordinary obligations to serve customers? If so, at what cost? Who will bear these costs?"²² Furthermore, "the obligation to serve in a restructured electric industry cannot be defined by reference to the industry as a whole. Instead, the extent to which an obligation to serve attaches, as well as the definition of what precisely that obligation entails, will depend upon which part of the industry—distribution or generation—is being discussed."²³ Whereas this era of deregulation and the discussion of the obligation to serve was centered on electric utilities, this era of decarbonization focuses the extent of the obligation as it pertains to gas and dual-fuel utilities.

“ **Can vigorous retail competition of the type public utility deregulation envisions coexist with extraordinary obligations to serve customers? If so, at what cost? Who will bear these costs?**”



²² Rossi, "Universal Service in Competitive Retail Electric Power Markets," 27,28.

²³ Colton, "The 'Obligation to Serve' and a Competitive Electric Industry," 11.

Principles

While enshrined differently in every state, common aspects of the obligation to serve in the US include commitments to nondiscriminatory access to service; promotion of the health, safety, and comfort of the public; and just and reasonable service and charges.

While there is variance across states in terms of how the obligation to serve is enshrined, there are some aspects held in common. However, much to the frustration of those in the decarbonization movement, these statutes often leave enough ambiguity to cast doubt onto the specific authorities and abilities of utilities and regulators alike: “for as significant as energy law scholars view the duty to serve in monopoly utility regulation, the duty is rarely expressed clearly in the state law which governs the obligations of public utilities.”²⁴ What follows is a discussion of the key provisions, their history, and the room for interpretation within them.

Nondiscriminatory Access

To ensure that utilities do not only serve customers when it is profitable to do so, service must be nondiscriminatory. This is because, “as monopolies, utilities could use their power to maximize profit rather than promote the general welfare, while regulatory commissions (and courts) ensured that they did not only serve profitable customers.”²⁵ A utility compensates for extending service to “non-profitable” customers by socializing the cost of this connection. The result of nondiscrimination is a commitment to “universal service,” a concept central to the compact between the public and regulated monopolies though not a phrase found in the statutory language of the obligation to serve.

This commitment does not mean that universal service will be achieved, or that service will not be revoked from customers who cannot pay for service, however “it does seek to ensure that all customers (and potential customers) have the opportunity to take service.”²⁶

Nondiscriminatory access also helps protect communities that have been systematically disinvested in due to the pejorative practice of redlining, through which communities of color were denied access to capital (such as home loans) or the protection of property (such as insurance) due to racist devaluation by lenders. Redlining, at its height in the mid-20th century, caused a negative feedback loop of disinvestment, the effects of which continue to this day. While the Fair Housing Act (1968) was intended in part to mitigate the effects of this discriminatory practice by creating an insurer of “last resort” (coverage known as the FAIR plan), the competitive structure of the insurance industry was such that insurers continued to deny coverage to redlined communities in voluntary markets (i.e., lacking an obligation to serve), or made premiums so unaffordable that it equated to outright denial of service. The FAIR plan coverage available was often lower quality and more expensive than its equal on the voluntary market. One analysis explains: “FAIR, the court found, allowed insurance companies to “dump” their [redlined] area policies. This resulted in two separate insurance markets: a “normal” market, served by private insurers, and a market consisting of the urban inner core, served by FAIR.”²⁷

The Greenlining Institute’s recent report on “bluelining” explores how this same denial of coverage is playing out today due to “uninsurable risks” such as homes situated in fire and flood prone areas.²⁸ While the federal government provides a backstop for some of these areas, the bifurcation of insurable and uninsurable homes creates two classes of consumers, within which there is yet another divide based on who is able to “flee” the vulnerable area and build elsewhere and who cannot afford to.

²⁴ Payne, “Unservice,” 611.

²⁵ Payne, 613.

²⁶ Colton, “The ‘Obligation to Serve’ and a Competitive Electric Industry,” 80.

²⁷ John Hugh Gilmore, “Insurance Redlining & the Fair Housing Act: The Lost Opportunity of Mackey v. Nationwide Insurance Companies,” 34 Cath. U.L.Rev. 563, 579 (1985), qtd. In Colton (1997)

²⁸ Brooklyn Montgomery and Monica Palmeira, “Bluelining: Climate Financial Discrimination on the Horizon” (Greenlining Institute, August 31, 2023), <https://greenlining.org/publications/bluelining-climate-financial-discrimination-on-the-horizon/>.

This cycle of withdrawing coverage and fleeing capital spirals in a negative feedback loop that reinforces racial inequality: “Disinvestment and building abandonment in redlined areas is accelerated by skyrocketing maintenance and operating costs. Families with the means to do so flee redlined areas, leaving behind the higher insurance costs and the stigma of the residual market. Hard-pressed owners who have foregone property insurance coverage lack the capacity to rebuild after a fire. White flight, which accompanies disinvestment, almost invariably leads to accelerated racial and economic segregation.”²⁹

The overlap of redlined and bluelined areas is not coincidental. Greenlining explains: “over the years, while communities designated by federal agencies as ‘best’ and ‘desirable’ were endowed with sewers, levees, trees, and other infrastructure that today wards off significant climate-related impacts, many redlined communities were denied the investment necessary to build protective infrastructure against the exacerbated climate conditions they experience today.”³⁰ The market, in and of itself, cannot mitigate this inequality; in fact, as this history of redlining and bluelining demonstrates, leaving the distribution of resources to be determined by the market exacerbates discrimination.

The commitment to nondiscriminatory service and its shortcomings in the insurance industry are relevant to the discussion of the obligation to serve because it demonstrates issues integral to the broader picture of equitable energy access. It also demonstrates the risks of an unmanaged energy transition, which may create a negative feedback loop of higher costs for fewer customers with less access to capital—a fate we must avoid for the gas system.³¹ What type of obligation remains to serve these remaining customers and what rates are considered “just and reasonable” as gas system costs skyrocket? If it is already a utility practice to cease service due to lack of payment, how will utilities respond to the forecasted tsunami of unpayable bills when gas system costs surge? Access to service and services is an equity issue that is larger than the scope of the obligation to serve: “there are strong fairness or distributional arguments supporting a duty to serve; many of these overlap with the goals of the civil rights movement, without which many customers would not have had equal access to quality utility service.”³² While decarbonizing the obligation to serve will help us meet some equity goals, such as healthier indoor and outdoor air in environmental justice communities and a pathway toward a managed transition that stabilizes energy costs, more action is needed to address and redress a long and continued history of uneven access to energy.

“ Over the years, while communities designated by federal agencies as ‘best’ and ‘desirable’ were endowed with sewers, levees, trees, and other infrastructure that today wards off significant climate-related impacts, many redlined communities were denied the investment necessary to build protective infrastructure against the exacerbated climate conditions they experience today.”

²⁹ David Badain, “Insurance Redlining and the Future of the Urban Core,” 16 *Columbia J.L. & Soc. Probs.* 1, 35 (1980) qtd. in Colton, pg. 9.

³⁰ Montgomery and Palmeira, “Bluelining,” 9.

³¹ This negative feedback loop is the consequence of an unmanaged transition, as BDC discusses in its 2022 *Future of Gas in New York State* whitepaper: “Left unmanaged, declining gas consumption and gas ratepayers will concentrate growing system costs among a dwindling pool of gas ratepayers. More ratepayers will avoid paying for increasingly expensive gas, creating a self-reinforcing negative feedback loop for gas utilities, and placing a crushing financial burden on those left on the network, especially low-income New Yorkers.” (2).

³² Rossi, “Universal Service in Competitive Retail Electric Power Markets,” 5.

Just and Reasonable Rates and Service

Nearly every state's obligation to serve statute includes a commitment to being "just and reasonable" (or in some cases, "efficient and reasonable") in the statute itself or in a nearby utility code. The scope of this commitment includes charges as well as the quality of the utility service overall. Delaware extends this threshold to include "standards, classifications, regulations, practices, measurements, or services"—all must be just and reasonable and are under the discretion of the Commission to fix (DEL. CODE ANN. tit. 26, § 209). California, in addition to mandating just and reasonable charges, further specifies that unjust and unreasonable charges are unlawful (CAL. PUB. UTIL. CODE § 451). In Mississippi, "just and reasonable" is presented as a limit: "No rate made, deposit or service charge demanded or received by any public utility shall exceed that which is just and reasonable" (MISS. CODE ANN. § 77-3-33; emphasis added).

While the phrase "just and reasonable" may appear fairly ambiguous, in the area of utility law and regulation, this phrase is a yardstick against which utility investments are measured. The closely linked concept of prudence "allows regulators to deny recovery of capital spent" if an expenditure is considered to be imprudent.³³ Prudent investments are made "at a reasonable cost and with reasonable care"³⁴ and it is up to the utility to prove that "the [proposed] rate appropriately balances customer interests against investor interests."³⁵

However, as energy law scholars in recent years have argued, what is considered a prudent investment and a reasonable cost must be reconsidered within the context of climate change.³⁶ For example, were the social costs of carbon part of the utility's ratemaking formula, the metric for "just and reasonable" charges would drastically change. Heather Payne has gone so far as to argue that ratemaking cases, during which utilities justify expenditures and prove that investments are prudent, give the appearance of regulatory oversight with results that enforce, rather than challenge, the status quo of the utility's expected return on investment. She explains that the "incumbent utilities [are] increasing their revenues and profits based on the traditional monopoly model,

despite the emergence of performance-based regulatory models that incent deployment of private capital versus rate-based assets" and that "rate-based capital deployed by regulated utilities has doubled in the last decade."³⁷

What constitutes a just and reasonable charge is established during ratemaking proceedings in which the PUC has the authority to approve or deny investments in infrastructure. It is only in recent years that certain commissions have evolved from the procedural approval of utility investments to challenging the prudence of investments that contradict the state's climate goals. In December 2023, the Massachusetts Dept. of Public Utilities (DPU) issued a decision in their "Future of Gas" proceeding that essentially committed utilities to electricity-first investments.³⁸ Their reasoning for doing so distinguishes between the yardstick for new and existing investments. With regard to existing gas infrastructure, they will continue to honor the "regulatory compact" such that gas companies can recover their investment, with the exception of "some demonstration of imprudence." However with regard to new gas system investments, a different definition of prudence will serve to measure whether such investments are in the public interest, "given the now-codified commitment toward achieving Commonwealth's target of achieving net-zero GHG emissions by 2050 and the urgent need to address climate change."³⁹ The DPU cites its "existing statutory authority" as justification for modifying the standards by which it judges the merit of investments in the fossil fuel system moving forward.⁴⁰ Modifying the standards by which utility investments are judged in accordance with the state's climate laws puts pressure on the "just and reasonable" rates and services articulated in the obligation to serve and makes formerly prudent investments appear imprudent or even risky.

Health, Safety, and Comfort

An explicit aspect of the obligation to serve in at least nine states regards the health, safety, and comfort of the public (AZ, AR, CA, CO, ID, IL, ND, TX, UT). This commitment is frequently worded as following: "A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of

³³ Payne, "Unservice," 623.

³⁴ Payne, 622.

³⁵ Justin Gundlach and Elizabeth Stein, "Harmonizing States' Energy Utility Regulation Frameworks and Climate Laws," *Energy Law Journal* 41, no. 211 (2020): 216.

³⁶ See Gundlach and Stein (2020) and Heather Payne, "The Natural Gas Paradox: Shutting Down a System Designed to Operate Forever," *Maryland Law Review* 80, no. 3 (2021). for discussions of the misalignment between climate goals and utility investments.

³⁷ Heather Payne, "Game Over: Regulatory Capture, Negotiation, and Utility Rate Cases in an Age of Disruption," July 6, 2017, 76, <https://papers.ssrn.com/abstract=3025917>.

³⁸ Commonwealth of Massachusetts, Dept. of Public Utilities, January 6, 2024. D.P.U. 20-80-B, "Order on Regulatory Principles and Framework": <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18297602>

³⁹ Massachusetts DPU 20-80-B Order December, 6, 2023. Pg 14. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18297602>

⁴⁰ Massachusetts DPU 20-80-B Order December, 6, 2023. Pg 14. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18297602>

its patrons, employees, and public” (e.g. 220 ILL. COMP. STAT. 5/8-101). Texas specifies this commitment with regard to outages in particular, stating that “the primary duty of a public utility... is to maintain continuous and adequate service at all times to protect the safety and health of the public against the danger inherent in the interruption of service (TEX. UTIL. CODE ANN. § 186.002). As evidenced by the 2021 storms and fatal effects of energy outages in Texas, a lack of service is a clear danger to the public’s health and safety. However, as evidence continues to mount regarding the immediate and long term threats to health and safety caused by fossil fuel emissions, this aspect of the obligation to serve will likely come under greater scrutiny, as some aspects of health and safety may be preserved while other aspects are made vulnerable due to the continuation of the gas system.



The Two Prongs

The obligation to serve is, in fact, two obligations: the obligation to extend service and the obligation to continue it. Statutes tend to focus more on the extension prong,⁴¹ even as the continuation prong is the more complex aspect as it pertains to existing buildings.

The obligation to serve is a commitment to just, reasonable, and efficient service so as to promote the health, safety, and comfort of the public and is realized through two distinct channels: the extension of service within a defined geographic area and the maintenance of reliable service once commenced. These duties are tended to in slightly different ways, as extension applies to new customers and often new construction while continuation applies to existing customers and buildings.

Both the extension and continuation prongs have been considered integral to the obligation to serve since its inception and throughout its evolution: “For hundreds of years, public utilities have assumed obligations to extend service to customers within their service territories and to continue providing service once service has commenced.”⁴² As this obligation evolved from principle to common law to statute and regulation, it has meant that utilities must serve any customer in their designated territory, “sometimes even when the cost of providing service to a customer is in excess of the anticipated revenue from that customer.”⁴³ This last condition—also known as an “extraordinary” service obligation—is enabled by the socialization of costs across a customer class. Within the extension prong, this subsidization frequently takes the form of a line extension allowance (LEA) for new customers.

The Extension Prong: Expanding Infrastructure

The extension prong of the obligation to serve commits a public utility to connecting a new customer within their service territory to the distribution network and applies to electric lines as well as gas pipes. This “duty requires public utilities to build facilities at least to a property line and to provide adequate pressure or power to transport service to the customer, even if the customer could not pay for the cost of extending service”⁴⁴ There are, however, exceptions to this obligation, and it has been argued that “an isolated individual cannot compel an uneconomical addition to an area with a very low demand for service.”⁴⁵ And yet, when it comes to neighborhood decarbonization, this situation in reverse is cited as a barrier: a single individual may compel the utility not to remove, and then transition, service from one energy source to another, even when uneconomical for the utility. This complexity arises in part due to the continuation prong of the obligation to serve, to be discussed in the following section.

What qualifies as uneconomical and the minimum projected demand has been addressed in courts to varying degrees across states. Depending on the state, there may be stipulations regarding how the line extension for new service is paid for and how many feet of line the utility will pay for as opposed to the customer or developer. For example, in New York this condition is referred to as the “100-foot rule” because that is how much of the line extension the utility, via the existing ratepayers, will subsidize for the new customer.

⁴¹ Payne, “Unservice,” 611.

⁴² Rossi, “The Common Law ‘Duty to Serve’ and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,” 1236.

⁴³ Ibid.

⁴⁴ Rossi, 1252.

⁴⁵ Rossi, 1255.

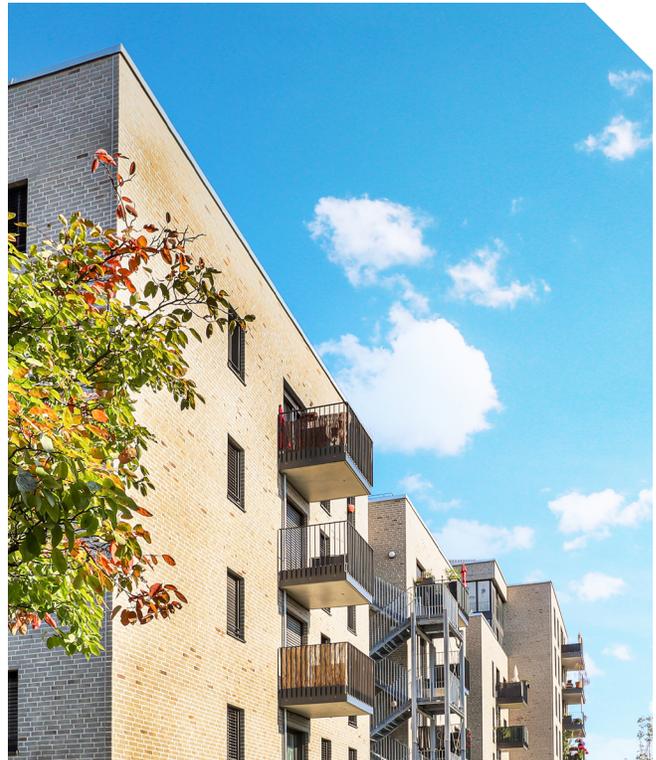
Line Extension Allowances

In many states, the cost of extending new gas (and electric) service comes at no up-front cost to the new customer. This cost is instead socialized across the customer class—meaning existing customers pay for the new customer to join the gas or electric network. The gas line extension “allowance” or utility (and therefore ratepayer) funded subsidy has recently become an object of focus for the building decarbonization movement. If state climate laws require the gas system to shrink, why should existing customers continue to pay for the gas system to grow? A 2021 report from RMI explains the logic behind why so many utilities have received regulatory approval for this subsidization.⁴⁶ The assumption that the gas system is a public good, coupled with the argument that “new customers’ bill payments will eventually cover and then exceed the cost of the line extension that brings them onto the system,” has justified charging existing customers for the cost of adding new ones.⁴⁷ However in an era where the unchecked expansion of the gas system is viewed by a growing coalition as a public risk, the reasonableness of this subsidization and ratepayer burden is being reconsidered.⁴⁸

Eliminating or reducing gas LEAs chips away at the extension prong of the obligation to serve. Energy law scholar Amanda Zerbe notes that PUCs may feel empowered to address this aspect of obligation to serve, though not the entire extension prong, because it is a matter of cost shifting rather than outright curtailing of the gas system and thus well within the traditional bounds of their authority.⁴⁹ Despite this clear authority to cost shift, however, only two states—California and Colorado—have eliminated ratepayer subsidies of new gas lines statewide. California is the first state to also eliminate this subsidy for mixed-fuel new construction, meaning that only buildings that are built without gas lines altogether will receive subsidies for electric line extensions.⁵⁰

While statewide action is still rare, several states have reduced subsidies or eliminated them for specific utilities, primarily through rate cases. In Oregon, Avista agreed to phase out LEAs in a 2023 rate case, while Northwest Natural agreed to reduce its subsidy over

the next few years. In Washington state, the Washington Utilities and Transportation Commission reduced line extension allowances by nearly 50 percent in 2021 and Avista and Puget Sound Energy are required to phase out their gas line extension subsidies by 2025.⁵¹ In Minnesota, Xcel Energy, MERC and Centerpoint will reduce their subsidies; in the case of Xcel, they can only subsidize eighty feet of new gas line as opposed to one hundred feet. In New York, the NY HEAT Act⁵² includes the elimination of the 100-foot rule, which “is a meaningful incentive: from 2017 to 2021 it shifted just over \$1 billion of costs off of roughly 170,000 new ratepayers—an average of about \$5,880 for each new ratepayer.”⁵³ Governor Hochul recently agreed that eliminating this subsidy was essential for reducing ratepayers’ bills and included this in her 2024 State of the State speech and Executive Budget; advocates estimate it could save ratepayers over \$200 million annually.



⁴⁶ Abigail Alter, Sherri Billimoria, and Mike Henchen, “Overextended: It’s Time to Rethink Subsidized Gas Line Extensions” (RMI, 2021), 7, <https://rmi.org/insight/its-time-to-rethink-subsidized-gas-line-extensions/>.

⁴⁷ Ibid.

⁴⁸ For a look at how this argument was made with regard to switching from propane and heating oil to natural gas, see the 2013 report by the National Association of Regulatory Utility Commissioners, “Line Extensions for Natural Gas: Regulatory Considerations,” <https://pubs.naruc.org/pub.cfm?id=B377212B-EFB0-EAB3-E524-88AB6D4332A6>

⁴⁹ Phone conversation with Amanda Zerbe, December 22, 2023.

⁵⁰ California Public Utilities Commission. “CPUC Eliminates Last Remaining Utility Subsidies for New Construction of Buildings Using Natural Gas,” December 14, 2023. <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-eliminates-last-remaining-utility-subsidies-for-new-construction-of-buildings-using-gas-2023>.

⁵¹ See Sightline Institute’s appendix on existing subsidies by gas utilities in their 2023 blog on line extension allowances in Cascadia: <https://www.sightline.org/2023/01/17/its-time-to-stop-subsidizing-new-gas-pipes/#appendix>

⁵² New York State Senate, 2023-2024 Legislative Session, Assembly Bill A4592B: <https://www.nysenate.gov/legislation/bills/2023/A4592/amendment/B>

⁵³ Walsh, Bloomberg, and Building Decarbonization Coalition, “The Future of Gas in New York State,” 14.

This subsidy has not always existed and can be revised at any time by PUCs, though the most common avenue appears to be during a regular ratemaking proceeding. In fact, rate cases are intended, in part, to “minimize the degree of cross-subsidization resulting from the service extension obligation.”⁵⁴ The ability of PUCs to reduce or eliminate this cross-subsidization even further for gas line extensions is currently being tested across the U.S. as a pathway to disincentivizing building homes with gas lines altogether.

The Continuation Prong: Sustaining Existing Infrastructure

The continuation prong of the obligation to serve primarily applies to existing buildings. Generally speaking, once a building is connected to service, the utility is obligated to continue providing service unless the customer requests disconnection. However, compared to the obligation to extend new service, this prong has received much less attention in obligation to serve statutes and court cases.⁵⁵ Perhaps this imbalance is not surprising, given that many of these statutes were written during the period of rapid growth of the gas system in the mid-20th century. However, as gas utilities today reach the boundaries of their service territories, with little room to grow in a saturated market, our attention must turn to the continuation prong of the obligation to serve. This shift in attention is necessary in this “post-expansion” phase of gas utilities, which have primarily shifted their focus from building new pipelines to replacing old ones for an existing customer base. The result of this approach is an increase in gas system costs across a steady, and soon-to-be declining, customer base.⁵⁶

The continuation prong of the obligation to serve therefore demands our renewed attention for three reasons: to account for the changed conditions of this post-expansion phase of the gas industry; to determine the extent to which gas utilities are “obligated” to continue serving gas when an acceptable substitute is available (electricity and/or thermal energy); and to address the equity implications of utility shut-offs for nonpayment. Before addressing the case of substitution

specifically, a broader discussion of service continuation and involuntary disconnection is needed due to the health and equity implications.

A question that often arises when discussing the obligation to serve is: *If a utility is obligated to continue providing service once it has commenced, what gives utilities the authority to shut off a customer’s service due to nonpayment?* Approximately 1% of residential customers experience utility shut-offs for nonpayment each year.⁵⁷ Of these customers, white households are less likely than Black or Hispanic households to be disconnected,⁵⁸ compounding the racial divide that already characterizes energy insecurity. According to a report on energy burdens from ACEEE, “the median energy burden for Black households is 43% higher than for non-Hispanic white households” and “the median energy burden for Hispanic households is 20% higher than that for non-Hispanic white households (3.5% versus 2.9%).”⁵⁹ Pandemic-era measures temporarily reduced the frequency of shut-offs; however, these practices have since resumed.⁶⁰

The criteria governing disconnection, or the ability for a utility to temporarily renege on its obligation to provide continuous service, is primarily determined by state regulators, though the 1978 Public Utility Regulatory Policies Act (PURPA) provides some federal guidelines regarding how utilities notify customers of impending shut-offs and how they should treat vulnerable populations. Many states have implemented weather-

“ **Approximately 1% of residential customers experience utility shut-offs for nonpayment each year.**”

⁵⁴ Rossi, “The Common Law ‘Duty to Serve’ and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring,” 1272.

⁵⁵ Payne, “Unservice,” 611.

⁵⁶ BDC and Groundwork Data’s forthcoming report, “The Future of Gas in Illinois” demonstrates this dynamic.

⁵⁷ Ashley J. Lawson and Claire Mills, “Electric Utility Disconnections” (Congressional Research Service, January 31, 2023), <https://crsreports.congress.gov/product/pdf/R/R47417>. The scope of utility shut-offs is not fully known as a centralized database based on mandatory reporting by utilities does not exist. However, researchers at Indiana University recently compiled data from across the country through records requests and through publicly available data on utility shut-offs to highlight energy insecurity trends across states. Their new dashboard conveys the scope of energy insecurity and the gaps in reporting on how utilities treat the discontinuation of service: <https://utilitydisconnections.org/>.

⁵⁸ Dreihobl, Ariel, Lauren Ross, and Roxana Ayala. “How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burdens across the U.S.” ACEEE, 2020. <https://www.aceee.org/research-report/u2006>, iii.

⁵⁹ Ariel Dreihobl, Lauren Ross, and Roxana Ayala, “How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burdens across the U.S.” (ACEEE, 2020), iii, <https://www.aceee.org/research-report/u2006>.

⁶⁰ Lawson and Mills, “Electric Utility Disconnections.”

based criteria that prevent disconnections during the winter,⁶¹ and it is becoming more common to add caveats for extreme heat, as is the case in Washington's state code, which specifies "limitations on termination of utility service for residential heating and of electric or water utility service during heat-related alerts" (RCW 80.28.010).

Outside of these protective periods, however, many utilities continue to disconnect customers due to nonpayment, even though the costs and risks of these nonpaying customers are already socialized across the customer base: "the service continuation obligation facilitates intra-class cross-subsidization by building into all customers' rates the costs of nonpaying customers," which "allows utilities to spread the cost of nonpayment among all customers." Furthermore, it may even be a more economical practice for utilities to cease the practice of termination for nonpayment altogether and to continue providing service to all customers who are connected to the system: "even in the event of nonpayment, it may be cost-effective for a utility with excess capacity to continue service to a customer and to accommodate the nonpaying customer by working out a partial payment plan, so long as it is reasonably expected that the customer can pay at least the variable cost of service."⁶²

If the costs of nonpaying customers are already built into the fixed rates of a customer class, and it may even benefit utilities and other ratepayers to keep nonpaying customers on the electric or gas system, then why are customers across the U.S. cut off from energy access every day? Clearly, the obligation to serve as written does not prevent the type of inaccessibility that a universal service mandate should. When addressing arguments about how and why to modify the obligation to serve, attention should be paid to the existing loop holes in this obligation that allow for energy burdened households to be cut off from energy access altogether. Modifying this statute might open up new pathways for protecting equitable access to energy and mitigating uneven energy burdens.

While continuous service without conditions is not ensured by the obligation to serve as written, it is less clear whether the obligation to continue service may refer broadly to energy or to fuel-specific services. The next section discusses the possibility of substituting gas service for electric and/or thermal energy services such that utilities are still fulfilling their obligation to provide continuous energy service.



⁶¹ According to the Low Income Home Energy Assistance Program (LIHEAP) Clearinghouse, at least 42 states have weather-based criteria that prevents regulated utilities from terminating service during specific dates or according to specific temperatures (high and/or low). <https://liheapch.acf.hhs.gov/Disconnect/SeasonalDisconnect.htm> (Accessed Dec. 31, 2023).

⁶² Rossi, "The Common Law 'Duty to Serve' and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring," 1272-73.

How to Decarbonize the Obligation to Serve

Advocates and utilities alike have begun to call for modifications of the obligation to serve. A recommended course of action is to maintain the commitment to nondiscriminatory service while removing the obligation to serve gas specifically (where applicable) and confirming the ability to serve electricity, and/or thermal energy, as a substitute for gas.

A handful of states are looking to modify the obligation to serve as it pertains to gas service in the 2024 legislative session. Statutory modification is needed due to the ambiguity of the obligation to serve statute as written and/or due to its inclusion of fuel specificity—an obligation to serve electricity *and* gas, rather than an obligation to serve adequate energy to meet a building's end-uses (space and water heating, cooling, cooking, clothes drying, etc.). Utilities fear embarking on neighborhood-scale decarbonization projects without clear legal authority to disconnect customers from the gas system. For example, Mark Lenssen of Puget Sound Energy cited the obligation to serve as “one of the main obstacles” for implementing neighborhood-scale projects.⁶³ While utilities have the power to engage in abandonment proceedings to address potential holdouts, most utilities prefer clear statutory and regulatory direction that allows them to undertake neighborhood decarbonization without needing to exercise this option in every project. In addition, regulators are reluctant to interpret ambiguous statutes too broadly without clear direction from legislation. Clarifying the extent of the obligation to serve proactively through policy, rather than depending on the decision of the courts following litigation, is the preferable, managed solution for clarifying authority for all parties.

While the details of the proposed changes currently being considered by advocates will not be discussed in

detail here, the most common proposals for modifying this utility obligation are summarized below. Due to the variance in state laws and regulations, there “will likely be fifty slightly different processes and various factors for modifying the duty to serve taken into account, just as the current incarnation of the duty to serve is not uniformly defined-across the states.”⁶⁴ Therefore, modifying this obligation across the U.S. will require accounting for “differences in geography, the specific climate impacts, the situation of specific utilities, and so many more factors.”⁶⁵

“ **As with much of utility law, there will likely be fifty slightly different processes and various factors for modifying the duty to serve**”⁶⁶

⁶³ Kristin George Bagdanov, Claire Halbrook, and Amy Rider, “Neighborhood Scale: The Future of Building Decarbonization” (Building Decarbonization Coalition and Gridworks, November 2023), 26, <https://buildingdecarb.org/resource/neighborhoodscale>.

⁶⁴ Payne, “Unservice,” 661.

⁶⁵ Ibid.

⁶⁶ Ibid.

Recommendations

Depending on the state's obligation to serve statute as written, policies seeking to modify the obligation to serve might:

- ▶ Clarify that the obligation to serve is aligned with the state's emissions reduction commitments in states where there are statutory climate goals.⁶⁷
- ▶ Clarify that the utility's obligation to serve relates to energy services—heat, light, power—and not specifically to natural gas or any other fuel.⁶⁸
- ▶ Clarify that electricity and thermal energy constitute adequate substitutes for gas service.
- ▶ Include provisions that ensure alternative energy services are “just and reasonable” for low-income customers in particular.
- ▶ Eliminate the extension prong of the obligation to serve for gas, but not electricity.
- ▶ Eliminate “all express or implied resummptions of permanence for gas service.”⁶⁹
- ▶ Eliminate the “obligation to restore suspended gas service.”⁷⁰
- ▶ Allow “utilities to offer reasonable compensation in exchange for conversions or consider means to require holdout customers to pay the system-wide cost of maintaining service in communities that are electrifying.”⁷¹

In addition:

- ▶ Legislatures could grant PUCs broad authority to manage the transition from the gas system to decarbonized energy systems and modify the geographical service territories of existing gas utilities.⁷²
- ▶ Legislatures could direct PUCs to study the prevalence of utility shut-offs for nonpayment and how this relates to income and rate affordability in order to design programs for ratepayer bill support based on energy burden.
- ▶ PUCs could order utilities to maintain their obligation to provide continuous service, even in the event of nonpayment. Legislative direction may be needed and this requirement should not contradict a utility's ability to replace gas service with an alternative energy service.
- ▶ PUCs could eliminate “all direct and indirect subsidies for the transmission, distribution, and consumption of fossil fuels,” including LEAs.⁷³
- ▶ PUCs could define what constitutes “just and reasonable costs.” Placing limits on the charges, fees, and profits imposed upon ratepayers during rate cases could protect customers, especially low-income customers, from increasing gas bills and inequitable energy burdens. Legislation directing the study of rates, energy burdens, and income inequality may be necessary to grant regulators the authority to take this step.⁷⁴

There are a few states for which state specific recommendations exist; find recommended reading for California, New York, and Massachusetts in Appendix B.

⁶⁷ Gundlach, Justin, “CPUC Workshop on Long-Term Gas System Proceeding R. 20-01-007: Workshop 2 of Track 2 (Jan. 24, 2022),” <https://www.youtube.com/watch?v=m7-ybGnqIsc>.<https://www.youtube.com/watch?v=m7-ybGnqIscGundlach, Justin>.

⁶⁸ Ted Lamm and Ethan N. Elkind, “Building Toward Decarbonization: Policy Solutions to Accelerate Building Electrification in High-Priority Communities,” Policy Report (Center for Law, Energy, and the Environment), 21, accessed December 20, 2023, <https://www.law.berkeley.edu/research/clee/research/climate/climate-change-and-business-research-initiative/setting-priorities-for-building-decarbonization/>.

⁶⁹ Gundlach, Justin, “CPUC Workshop on Long-Term Gas System Proceeding R. 20-01-007.”

⁷⁰ Ibid.

⁷¹ Lamm and Elkind, “Building Toward Decarbonization: Policy Solutions to Accelerate Building Electrification in High-Priority Communities,” 21.

⁷² Nicholas Wallace, Amanda Zerbe, and Michael Wara, “Removing Legal Barriers to Building Electrification” (Stanford Woods Institute for the Environment, 2020), 3, <https://law.stanford.edu/publications/removing-legal-barriers-to-building-electrification/>.

⁷³ Gundlach and Stein, “Harmonizing States’ Energy Utility Regulation Frameworks and Climate Laws,” 246.

⁷⁴ For example, the Illinois Commerce Commission recently ordered that three local gas distribution companies provide a bill discount rate for low-income customers, which is subsidized by the rest of the rate base. The study that led to this order was the result of the state's climate legislation, Climate and Equitable Jobs Act (CEJA). Illinois Commerce Commission, Bureau of Public Utilities, Low-Income Discount Rate Study Report to the Illinois General Assembly, (December 2022), <https://icc.illinois.gov/downloads/public/icc-reports/low-income-discount-rate-study-report-2022-12-15.pdf>.

Getting Started in Your State

For advocates wanting to address the obligation to serve in their state, take these steps first:

1. Identify the statute mandating the obligation to serve (See Appendix A for the list).
 - a. In addition, speak with PUC staff to ask what provision they view as the obligation to serve, as there may be different interpretations of where the obligation is enshrined.
2. Research the history of PUC interpretation, as they may have interpreted the statute differently in various proceedings.
3. Look at some of the court cases involving the statute (state case law); ideally this would be completed by a lawyer but the DIY version is to use a database such as WestLaw to see where and how the provision has been cited.
4. Based on this information, determine what aspects of the statute need to be clarified or modified to enable neighborhood decarbonization.
5. Talk to utilities, regulatory staff, advocates, community-based organizations, and other relevant stakeholders to agree upon language for revising the statute.
6. Talk to coalitions in other states that have proposed obligation to serve legislation (e.g. CA and NY). Reach out to us at BDC if you need help getting connected.
7. Build support across a broad coalition for your decarbonized obligation to serve legislation and WIN.

Conclusion

The obligation to serve is a social contract meant to ensure nondiscriminatory, universal access to essential services. Historically, what has been deemed essential and what has been defined as universal access have changed due to the advent of new technologies, commitments to equity, legal protections for nondiscrimination, and an ongoing political and ideological struggle between market autonomy and regulatory oversight. Today, we must reconfigure this complex web once again by accounting for the present and future costs of continued methane gas infrastructure. Decarbonizing the obligation to serve is a concrete step toward a neighborhood-scale transition off of the gas system and onto a clean energy system powered by renewable electricity and thermal energy.



The Obligation to Serve in Every State

STATE	CITATION / LINK	TEXT
Alabama	<u>ALA. CODE §37-1-49</u>	37-1-49. Duty of utility to render adequate service and maintain facilities. Every utility shall maintain its plant, facilities and equipment in good operating condition and shall set up and maintain proper reserves for renewals, replacements and reasonable contingencies. Every utility shall render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve.
Alaska	<u>ALASKA STAT. §42.05.291</u>	42.05.291. Standards of service and facilities. (a) Each public utility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.
Arizona	<u>ARIZ. REV. STAT. §40-361(B)</u>	40-361. Charges by public service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or service required to be just and reasonable (b) Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.
Arkansas	<u>ARK. CODE ANN. §23-3-113</u>	23-3-113. Adequate service, facilities, etc., to be provided. (a) Every public utility shall furnish, provide, and maintain such adequate and efficient service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, requirements, and convenience of its patrons, employees, and the public.
California	<u>CAL. PUBLIC UTIL. CODE §451</u>	451. All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

STATE	CITATION / LINK	TEXT
Colorado	<p><u>COLO. REV. STAT. §40-3-101(2)*</u> and <u>40-3.5-101(2-4)</u>.</p>	<p>40-3-101 (2) Reasonable charges - adequate service. (2) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable.</p> <p>40-3.5-101 (2-4). Application - reasonable charges - adequate service. (1) This article shall be applicable within the authorized electric and natural gas service areas of each municipal utility that lie outside the jurisdictional limits of such municipality. Insofar as municipal utilities establish rates, charges, and tariffs and any regulations pertaining thereto in accordance with the provisions of this article, the provisions of section 40-1-104 and articles 4, 6, and 7 of this title shall not apply; except that section 40-4-105 shall apply with respect to the crossing of railroad rights-of-way. Nothing in this article shall be construed as limiting the applicability of article 5 of this title. (2) All charges made, demanded, or received by any municipal utility for any rate, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just, reasonable, and sufficient. (3) Every municipal utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, its employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable. (4) For the purposes of this article, "municipal utility" means a municipal natural gas or electric utility.</p>
Connecticut	<p><u>CONN. GEN. STAT. §16-20(b)</u>.</p>	<p>16-20. Inadequate service or unreasonable rates; petition to authority. Small community water system rates and service. (b) If any public service company or private water company unreasonably fails or refuses to furnish adequate service at reasonable rates to any person within the territorial limits within which the company has, by its charter, authority to furnish the service or, in the case of a nonfranchised, nonchartered private water company, the general territorial limits within which it operates, and if no other specific remedy is provided in this title or in regulations adopted thereunder, the person may bring a written petition to the Public Utilities Regulatory Authority alleging the failure or refusal. The authority shall investigate and, not more than sixty days after receipt of a petition, (1) if appropriate, issue an order prescribing the service to be furnished by the company, the conditions under which and maximum rates or charges at which the service shall be furnished, or (2) order that a hearing be held on the matter or that the matter be set for alternative dispute resolution....</p>

STATE	CITATION / LINK	TEXT
Connecticut (cont.)	<u>CONN. GEN. STAT. §16-20(b).</u>	(cont.) If at any time during such sixty-day period, any party in interest requests a hearing, the authority shall, after notice to all parties and not more than ninety days after receiving the request, hold a hearing and, if appropriate, issue an order prescribing the service to be furnished by the company and the conditions under which and maximum rates or charges at which the service shall be furnished.
Delaware	<u>DEL. CODE ANN. TIT. 26, §209</u>	209 Standards, classifications, regulations, practices, measurements, services, property and equipment of public utility. (a) The Commission may, after hearing, by order in writing: (1) Fix just and reasonable standards, classifications, regulations, practices, measurements or services to be furnished, imposed, observed and followed thereafter by any public utility; (2) Require every public utility to furnish safe and adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so. (b) Nothing contained in this section shall be construed to conflict with the power of the Commission to consider the efficiency sufficiency, consistency and adequacy of the facilities provided and the services rendered by any public utility as a factor in determination.
Florida	<u>FLA. STAT. §366.03</u>	366.03. General duties of public utility. Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.
Georgia	<u>GA. CODE ANN. §46-2-20(c).</u>	46-2-20. Jurisdiction of commission generally; powers and duties of commission generally. (c) The commission may, either by general rules or by special orders in particular cases, require all companies under its supervision to establish and maintain such public services and facilities as may be reasonable and just.

STATE	CITATION / LINK	TEXT
Hawaii	<u>Haw. Pub. Util. Comm'n, Gen. Order No. 7, Standards for Electric Utility Service, para. 1.2(a).</u>	<p>1.2 APPLICATION OF RULES The following rules shall apply to any electric utility operating within the State of Hawaii, under the jurisdiction of the Public Utilities Commission of the State of Hawaii. a.) These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities</p>
Idaho	<u>IDAHO CODE §61-302</u>	<p>61-302. Maintenance of adequate service. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.</p>
Illinois	<u>220 ILL. COMP. STAT. 5/8-101</u>	<p>8-101. Duties of public utilities; nondiscrimination. A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all respects adequate, efficient, just, and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. A public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay.</p>
Indiana	<u>IND. CODE §8-1-2-4</u> -	<p>8-1-2-4. Services to public; rates and charges. Sec. 4. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any service rendered or to be rendered either directly or in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. The commission, in order to expedite the determination of rate questions, or to avoid unnecessary and unreasonable expense, or to avoid discrimination in rates between classes of customers, or, whenever in the judgment of the commission public interest so requires, may, for ratemaking and accounting purposes, or either of them, consider a single municipality and/or two (2) or more municipalities and/or the adjacent and/or intervening rural territory as a regional unit where the same utility serves such region, and may within such region prescribe uniform rates for consumers or patrons of the same class. Nothing in this chapter contained shall authorize any public utility during the remainder of the term of any grant or franchise under which it may be acting on May 1, 1913, to charge for any service, in such grant or franchise contracted, exceeding the maximum rate or rates therefor, if any, that may be fixed in such grant or franchise.</p>

STATE	CITATION / LINK	TEXT
Iowa	<p><u>IOWA CODE</u> <u>§476.8</u></p>	<p>476.8 Utility charges and service. 1. Every public utility is required to furnish reasonably adequate service and facilities. "Reasonably adequate service and facilities" for public utilities furnishing gas or electricity includes programs for customers to encourage the use of energy efficiency and renewable energy sources. The charge made by any public utility for any heat, light, gas, energy efficiency and renewable energy programs, water or power produced, transmitted, delivered or furnished, sanitary sewage or storm water collected and treated, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the board shall consider all factors relating to value and shall not be bound by rate base decisions or rulings made prior to the adoption of this chapter</p>
Kansas	<p><u>KAN. STAT. ANN.</u> <u>§66-101(b).</u></p>	<p>66-101b. Electric public utilities; efficient and sufficient service; just and reasonable rates. Every electric public utility governed by this act shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, to require all electric public utilities governed by this act to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.</p>
Kentucky	<p><u>KY. REV. STAT. ANN.</u> <u>§278.030(2).</u></p>	<p>278.030 Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate -- Utilities prohibited from energizing power to electrical service where seal is not present. (2) Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.</p>

STATE	CITATION / LINK	TEXT
Louisiana	<u>LA. STAT. ANN. §45:122</u>	122. Extensions of services and facilities, requirement of. The Louisiana Public Service Commission has authority to require electric public utilities furnishing electricity to make extensions of their services and facilities whenever the revenues to be derived from the proposed extensions will be sufficient to provide a fair return upon the fair value of the facilities used and useful in rendering additional service.
Maine	<u>ME. STAT. TIT. 35-A, § 301(1).</u>	301. Safe facilities; just and reasonable rates 1. Facilities. Every public utility shall furnish safe, reasonable and adequate facilities and service.
Maryland	<u>MD. CODE ANN., PUB. UTIL. § 5-303</u>	5-303. A public service company shall furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, considering the conservation of natural resources and the quality of the environment.
Massachusetts	<u>MASS. GEN. LAWS 164, §92*</u> and <u>220 MASS. CODE REGS. 11.04(9)(a).</u>	<p>Mass. Gen. Laws. Right of user to gas or electricity. Sec. 92. On written petition of any person, having a residence or place of business in a town where a corporation is engaged in the manufacture, transmission or sale of gas or the distribution of electricity, aggrieved by its refusal or neglect to supply him with gas or electricity, the department may, after notice to the corporation to appear at a time and place therein named to show cause why the prayer of such petition should not be granted, issue an order directing and requiring it to supply the petitioner with gas or electricity, upon such terms and conditions as are legal and reasonable; provided, however, that if such corporation is engaged in such town solely in the transmission of gas such order shall not be made where it appears that compliance therewith would result in permanent financial loss to the corporation. Grants of locations in the streets, lanes and highways of such town for the pipes or lines necessary to the supplying of gas or electricity in pursuance of such an order by a corporation solely engaged as aforesaid shall be subject to the provisions of sections eighty-six to ninety-one, inclusive.</p> <p>220 Mass Code Regs. 11.04 (9)(a) Standard Offer Generation Service and Default/Basic Generation Service. (a) Each Distribution Company shall have the obligation to provide Standard Offer Generation Service and Default/Basic Generation Service to Customers within its Service Territory who are not receiving Generation Service from a Competitive Supplier, consistent with the provisions set forth in 220 CMR 11.04(9)(b) and (c).</p>

STATE	CITATION / LINK	TEXT
Michigan	<u>MICH. COMP. LAWS §460.10</u>	10. The purpose of sections 10a through 10bb is to do all of the following: (a) To ensure that all persons in this state are afforded safe, reliable electric power at a competitive rate. (b) To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state. (c) To maintain, foster, and encourage robust, reliable, and economic generation, distribution, and transmission systems to provide this state's electric suppliers and generators an opportunity to access regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this state.
Minnesota	<u>MINN. STAT. §216B.04</u>	216B.04 STANDARD OF SERVICE. Every public utility shall furnish safe, adequate, efficient, and reasonable service; provided that service shall be deemed adequate if made so within 90 days after a person requests service. Upon application by a public utility, and for good cause shown, the commission may extend the period for not to exceed another 90 days.
Mississippi	<u>MISS. CODE ANN. §77-3-33</u>	77-3-33. Rates, classifications and service of utilities. (1) No rate made, deposit or service charge demanded or received by any public utility shall exceed that which is just and reasonable. Such public utility, the rates of which are subject to regulation under the provisions of this article, may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person. Rates prescribed by the commission shall be such as to yield a fair rate of return to the utility furnishing service, upon the reasonable value of the property of the utility used or useful in furnishing service. (2) Such utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service. The commission may, after hearing upon reasonable notice had, upon its own motion or upon complaint, ascertain and fix just and reasonable standards, regulations and practices of service which are to be furnished, imposed, observed and followed by all public utilities. The commission may require the service, rules and regulations of each public utility to be filed with the commission and subjected to its approval or to such changes therein as the commission reasonably may require. Practices required or sanctioned pursuant to the provisions hereof shall supersede other requirements of law.
Missouri	<u>MO. REV. STAT. §393.130</u>	393.130. Safe and adequate service — charges — certain home rule cities, interest accrual, when — 1. Every gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.

STATE	CITATION / LINK	TEXT
Missouri (cont.)	<u>MO. REV. STAT. §393.130</u>	(cont.) All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.
Montana	<u>MONT. CODE ANN. §69-3-201</u>	69-3-201. Utilities To Provide Adequate Service At Reasonable Charges. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.
Nebraska	<u>NEB. REV. STAT. §70-1101</u>	70-1101. Declaration of policy. It is hereby declared to be the policy of the state to provide for dependable electric service at the lowest practical cost to all of the citizens of the state, including the residents of cities and villages.
Nevada	<u>NEV. REV. STAT. §704.040</u>	704.040 Public utilities required to provide reasonably adequate service and facilities; charges for services required to be just and reasonable; unjust and unreasonable charges unlawful; applicability; fair and impartial regulation of telecommunication providers; levy and collection of assessment for deposit in fund to maintain availability of telephone service; regulations concerning independent administrator to certify or recertify eligibility of customers for lifeline service; termination of service to certify or recertify eligibility for lifeline service under certain circumstances. 1. Every public utility shall furnish reasonably adequate service and facilities. Subject to the provisions of subsection 3, the charges made for any service rendered or to be rendered, or for any service in connection therewith or incidental thereto, must be just and reasonable. 2. Every unjust and unreasonable charge for service of a public utility is unlawful.

STATE	CITATION / LINK	TEXT
New Hampshire	<u>N.H. REV. STAT. ANN. §374:1</u>	374:1 Service. – Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.
New Jersey	<u>N.J. STAT. ANN. §48:3-3(a)</u>	48:3-3. Improper service; refusal or withholding of service (a) No public utility shall provide or maintain any service that is unsafe, improper or inadequate, or withhold or refuse any service which reasonably can be demanded or furnished when ordered by the board.
New Mexico	<u>N.M. STAT. ANN. §62-8-2</u>	62-8-2. Service. Every public utility shall furnish adequate, efficient and reasonable service.
New York	<u>N.Y. PUB. SERV. LAW §65(1)</u>	65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference; protection of privacy. 1. Every gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electric corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity or any such service, or in connection therewith, or in excess of that allowed by law or by the order of the commission is prohibited.
North Carolina	<u>N.C. GEN. STAT. §62-131(b)</u>	62-131. Rates must be just and reasonable; service efficient. b) Every public utility shall furnish adequate, efficient and reasonable service.
North Dakota	<u>N.D. CENT. CODE §49-04-01</u>	49-04-01. Public utility to provide adequate service. Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall be in all respects adequate, convenient, just, and reasonable, and without any unjust discrimination or preference

STATE	CITATION / LINK	TEXT
Rhode Island	<u>39 R.I. GEN. LAWS §39-2-1(a).</u>	39-2-1. Reasonable and adequate services — Reasonable and just charges. (a) Every public utility is required to furnish safe, reasonable, and adequate services and facilities. The rate, toll, or charge, or any joint rate made, exacted, demanded, or collected by any public utility for the conveyance or transportation of any persons or property, including sewage, between points within the state; or for any heat, light, water, or power produced, transmitted, distributed, delivered, or furnished; or for any telephone or telegraph message conveyed; or for any service rendered or to be rendered in connection therewith, shall be reasonable and just, and every unjust or unreasonable charge for the service is prohibited and declared unlawful, and no public utility providing heat, light, water, or power produced, transmitted, distributed, delivered, or furnished shall terminate the service or deprive any home or building, or whatsoever, of service if the reason therefor is nonpayment of the service without first notifying the user of the service, or the owner, or owners, of the building as recorded with the utility of the impending service termination by written notice at least ten (10) days prior to the effective date of the proposed termination of service.
South Carolina	<u>S.C. CODE ANN. §58-27-1510</u>	58-27-1510. Service shall be adequate, efficient and reasonable. Every electrical utility shall furnish adequate, efficient and reasonable service.
South Dakota	<u>S.D. CODIFIED LAWS §49-34A-2</u>	49-34A-2. Service required of utilities. Every public utility shall furnish adequate, efficient, and reasonable service.
Tennessee	<u>TENN. CODE. ANN. §65-4-114</u>	65-4-114 – Service requirements. The commission has the power, after hearing, upon notice, by order in writing, to require every public utility, as defined in § 65-4-101, to: (1) Furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so; and (2) Establish, construct, maintain, and operate any reasonable extension of its existing facilities where, in the judgment of the commission, such extension is reasonable and practicable, and will furnish sufficient business to justify the construction, operation, and maintenance of the same, and when the financial condition of the public utility affected reasonably warrants the original expenditure required in making such extension, or to abandon any service when, in the judgment of the commission, the public welfare no longer requires the same.

STATE	CITATION / LINK	TEXT
Texas	<p><u>TEX. UTIL. CODE ANN. §186.002</u> and <u>TEX. UTIL. CODE ANN. §38.001</u></p>	<p>186.002. POLICY. (a) Continuous service by a public utility is essential to the life, health, and safety of the public. A person's wilful interruption of that service is a public calamity that cannot be endured. (b) A public utility is dedicated to public service. The primary duty of a public utility, including its management and employees, is to maintain continuous and adequate service at all times to protect the safety and health of the public against the danger inherent in the interruption of service. (c) Each court and administrative agency of this state shall: (1) recognize the policy stated in this section; and (2) interpret and apply this subchapter in accordance with that policy.</p> <p>38.001. GENERAL STANDARD. An electric utility and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.</p>
Utah	<p><u>UTAH CODE ANN. §54-3-1</u></p>	<p>54-3-1. Charges must be just; service adequate; rules reasonable. All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy..</p>
Vermont	<p><u>VT. STAT. ANN. TIT. 30 §219</u></p>	<p>219. Service. Each company subject to supervision under this chapter shall be required to furnish reasonably adequate service, accommodation, and facilities to the public. The charge made by any such company for any product or service shall be reasonable and without discrimination, except as provided in this chapter.</p>

STATE	CITATION / LINK	TEXT
Virginia	<p><u>VA. CODE ANN.</u> <u>§56-234(A).</u></p>	<p>56-234. Duty to furnish adequate service at reasonable and uniform rates. (A) It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding any other provision of law...</p>
Washington	<p><u>WASH. REV. CODE.</u> <u>§80.28.010</u> and <u>§80.28.110*</u></p>	<p>80.28.010--Duties as to rates, services, and facilities— Limitations on termination of utility service for residential heating and of electric or water utility service during heat-related alerts. (1) All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 must be deemed as prudent and necessary for the operation of a utility. (2) Every gas company, electrical company, wastewater company, and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.</p> <p>80.28.110. Service to be furnished on reasonable notice. Every gas company, electrical company, wastewater company, or water company, engaged in the sale and distribution of gas, electricity or water or the provision of wastewater company services, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity, wastewater company services, and water as demanded, except that a water company may not furnish water contrary to the provisions of water system plans approved under chapter <u>43.20</u> or <u>70A.100</u> RCW and wastewater companies may not provide services contrary to the approved general sewer plan.</p>
West Virginia	<p><u>W. VA. CODE</u> <u>§24-3-1</u></p>	<p>24-3-1. Adequate facilities; safety appliances; reasonable rates; railroad switch connections; discontinuing service. Every public utility subject to this chapter shall establish and maintain adequate and suitable facilities, safety appliances or other suitable devices, and shall perform such service in respect thereto as shall be reasonable, safe and sufficient for the security and convenience of the public, and the safety and comfort of its employees, and in all respects just and fair, and without any unjust discrimination or preference. All charges, tolls and rates shall be just and reasonable, and no change shall be made in any tariffs, rates, joint rates, tolls, schedules or classifications except as herein provided....</p>

STATE	CITATION / LINK	TEXT
Wisconsin	<u>WIS. STAT.</u> <u>§196.03</u>	196.03 Utility charges and service; reasonable and adequate. (1) Subject to s. 196.63, a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.
Wyoming	<u>WYO. STAT. ANN.</u> <u>§37-3-112</u>	37-3-112. Service to be adequate and safe; regulations to be just and reasonable; unjust discrimination or undue preference as to service prohibited. The service and facilities of every public utility shall be adequate and safe and every service regulation shall be just and reasonable. The commission shall have the authority to investigate, consider and determine standards for availability or reliability of service that are objectively established by rule consistent with commonly accepted industry standards. It shall be unlawful for any public utility to make or permit to exist any unjust discrimination or undue preference with respect to its service, facilities or service regulations. This provision shall not be construed as prohibiting a public utility from establishing classifications which distinguish among its various services, facilities or service regulations if the classifications are not unduly discriminatory among the customers in the same class of service.

Note: With the exception of the statutes with asterisks (Colorado, Massachusetts and Washington), these citations have been identified by Heather Payne through original research and first appear in her article [“Unservice: Reconceptualizing the Utility Duty to Serve in Light of Climate Change” \(2022\)](#) in the appendix. I am building upon her work by adding the links and text for these citations for easy access and distribution. The statutes marked by asterisks have been identified by advocates as additional relevant statutes for obligation to serve, demonstrating that there is some ambiguity in even knowing which part of the law to target to fully address the obligation to serve.

Appendix B

Resources

For in-depth, expert analysis on modifying the obligation to serve in California, New York, and Massachusetts, the following policy briefs and articles are recommended.

California: Wallace, Nicholas, Michael Wara, and Amanda Zerbe, "Removing Legal Barriers to Building Electrification." Stanford Woods Institute for the Environment, 2020. <https://law.stanford.edu/publications/removing-legal-barriers-to-building-electrification/>.

This report argues there is enough ambiguity in how California's obligation to serve statute is written that clarifying legislation is needed to remove legal barriers to widespread electrification. "To address the legal uncertainties raised by termination of service," the authors recommend that the "Legislature could grant the California Public Utilities Commission broad authority to (1) manage the transition, (2) trim natural gas service territories, or (3) approve substitution of electricity service for natural gas service. Alternatively (or in addition), the legislature could clarify that the obligation to serve applies to energy end-uses, not the type of energy that facilitates them." (3).

Massachusetts: Gundlach, Justin, Amanda Zerbe, Sarah Barth, and Brooks Weinberger. "The Obligation to Serve in Massachusetts." Institute for Policy Integrity, NYU School of Law, February 2023. <https://policyintegrity.org/publications/detail/the-obligation-to-serve-in-massachusetts>.

This policy brief examines the existing authority of the Massachusetts's Public Utilities Department (DPU) to curtail the expansion of the gas system. They note that with regard to service extensions, the DPU has already accepted electricity as a substitute for gas; which may be helpful for making the case for eliminating gas service for existing customers.

New York: Gundlach, Justin, and Elizabeth Stein. "Harmonizing States' Energy Utility Regulation Frameworks and Climate Laws." *Energy Law Journal* 41, no. 211 (2020): 211–60. <https://policyintegrity.org/publications/detail/harmonizing-states-energy-utility-regulation-frameworks-and-climate-laws>.

This article discusses the disconnect between state climate laws and ongoing support and subsidization of the fossil gas system. The authors suggest modifications

for the obligation to serve in several states, with a focus on New York, where the state's Climate Leadership and Community Protection Act is in clear tension with Section 30 of the New York Public Service Law, which considers gas service to be a public benefit (224). The authors cite California, Colorado, New Jersey, Maine, Connecticut, and Massachusetts as having similarly contradictory statutes (236-7).

Additional Reading

Alter, Abigail, Sherri Billimoria, and Mike Henchen. "Overextended: It's Time to Rethink Subsidized Gas Line Extensions." RMI, 2021. <https://rmi.org/insight/its-time-to-rethink-subsidized-gas-line-extensions/>.

Bilch, Andy, Michael Colvin, and Timothy O'Connor. "Managing the Transition: Proactive Solutions for Stranded Gas Asset Risk in California." Whitepaper. Environmental Defense Fund, 2019. https://www.edf.org/sites/default/files/documents/Managing_the_Transition_new.pdf.

Colton, Roger D. "The 'Obligation to Serve' and a Competitive Electric Industry." Office of Economic, Electricity and Natural Gas Analysis, U.S. Dept. of Energy, May 1997.

Drehobl, Ariel, Lauren Ross, and Roxana Ayala. "How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burdens across the U.S." ACEEE, 2020. <https://www.aceee.org/research-report/u2006>.

Gridworks. "California's Gas System in Transition: Equitable, Affordable, Decarbonized and Smaller." Whitepaper, 2019. https://gridworks.org/wp-content/uploads/2021/01/CA_Gas_Resource_Infrastructure_Plan_Report_FINAL.pdf.

Gundlach, Justin. "CPUC Workshop on Long-Term Gas System Proceeding R. 20-01-007: Workshop 2 of Track 2 (Jan. 24, 2022)." January 25, 2022. <https://www.youtube.com/watch?v=m7-ybGnqIsc>.

Gundlach, Justin, and Elizabeth Stein. "Harmonizing States' Energy Utility Regulation Frameworks and Climate Laws." *Energy Law Journal* 41, no. 211 (2020): 211–60.

Appendix B: Resources

- Gundlach, Justin, Amanda Zerbe, Sarah Barth, and Brooks Weinberger. "The Obligation to Serve in Massachusetts." Institute for Policy Integrity, NYU School of Law, February 2023. <https://policyintegrity.org/publications/detail/the-obligation-to-serve-in-massachusetts>.
- Hanschen, Peter W., and Gordon P. Erspamer. "A Public Utility's Obligation to Serve: Saber or Double-Edged Sword?" *The Electricity Journal* 17, no. 10 (December 1, 2004): 32–49. <https://doi.org/10.1016/j.tej.2004.10.009>.
- Kalscheur, Gregory A., Charles M. Haar, and Daniel W. Fessler. "The Wrong Side of the Tracks: A Revolutionary Rediscovery of the Common Law Tradition of Fairness in the Struggle against Inequality." *Michigan Law Review* 85, no. 5/6 (April 1987): 1124. <https://doi.org/10.2307/1289040>.
- Lamm, Ted, and Ethan N. Elkind. "Building Toward Decarbonization: Policy Solutions to Accelerate Building Electrification in High-Priority Communities." Policy Report. Center for Law, Energy, and the Environment. Accessed December 20, 2023. <https://www.law.berkeley.edu/research/cee/research/climate/climate-change-and-business-research-initiative/setting-priorities-for-building-decarbonization/>.
- Lawson, Ashley J., and Claire Mills. "Electric Utility Disconnections." Congressional Research Service, January 31, 2023. <https://crsreports.congress.gov/product/pdf/R/R47417>.
- Pace, Joe D. "Wheeling and the Obligation to Serve." *Energy Law Journal* 8, no. 2 (1987): 265–302.
- Payne, Heather. "Unservice: Reconceptualizing the Utility Duty to Serve in Light of Climate Change." *University of Richmond Law Review* 56, no. 2 (2022 2021): 603–64.
- Rossi, Jim. "The Common Law 'Duty to Serve' and Protection of Consumers in an Age of Competitive Retail Public Utility Restructuring." *Vanderbilt Law Review* 51, no. 5 (October 1, 1998): 1233.
- . "Universal Service in Competitive Retail Electric Power Markets: Whither the Duty to Serve?" *Energy Law Journal* 21 (January 1, 2000): 27.
- "The Duty of a Public Utility to Render Adequate Service: Its Scope and Enforcement." *Columbia Law Review* 62, no. 2 (1962): 312–31. <https://doi.org/10.2307/1120016>.
- Troesken, Werner. "The Institutional Antecedents of State Utility Regulation: The Chicago Gas Industry, 1860 to 1913." In *The Regulated Economy: A Historical Approach to Political Economy*, edited by Claudia Dale Goldin and Gary D. Libecap, 55–80. A National Bureau of Economic Research Project Report. Chicago: University of Chicago Press, 1994. <https://www.nber.org/system/files/chapters/c6572/c6572.pdf>.
- Wallace, Nicholas, Amanda Zerbe, and Michael Wara. "Removing Legal Barriers to Building Electrification." Stanford Woods Institute for the Environment, 2020. <https://law.stanford.edu/publications/removing-legal-barriers-to-building-electrification/>.



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