Expiring Electricity Shutoff Bans Could Leave Two-Thirds of States With No Binding Protections by July, 88% by August

An Analysis of State and Voluntary Moratoria on Electric Utility Shutoffs

By Greer Ryan
Center for Biological Diversity

The COVID-19 crisis has left tens of millions of individuals and families without work. As unemployment rates reach and exceed those of the Great Depression of the 1930s,[i] they're struggling to pay for basic services like electricity, water and broadband. A recent study showed that in the early months of the pandemic, 22% of households went without basic needs like medicine or food in order to pay their energy bills. Households below the federal poverty line, as well as Black, Brown, Indigenous, and other communities of color, have been disproportionately affected. [ii,iii] This is especially dangerous in the summer months, when access to electricity for safe food storage and cooling during climate-exacerbated heat waves, hurricanes and wildfires is a public-safety issue.

Unfortunately federal recovery packages have offered little assistance for these services thus far. In mid-May the House passed the HEROES Act, which contains strong provisions enacting a nationwide moratorium on electricity shutoffs for a period of four months following the end of the national emergency and some funding to alleviate household bills. The HEROES Act now sits with the Senate pending passage, leaving no federal moratorium in place.

Some states and companies have stepped up to ensure people don't go without power during the crisis, but these commitments are both insufficient and inconsistently implemented. That leaves many states and communities without legally binding protections against electricity disconnections. And as states rush to return to business-as-usual and allow for emergency orders to lapse — despite skyrocketing unemployment — many more will be left without protection.

Key Findings

The analysis identified several major concerns about shutoff protections:

- **Two-thirds of all states will have no binding protections from utility shutoffs by July 1.** In response to the pandemic, 31 states and Washington, D.C. implemented some kind of mandatory moratoria. But over the past month, six states and D.C. have allowed theirs to lapse, leaving only half of states with mandatory protections in place. By July 1, unless they're extended, another eight states' moratoria will expire. By August as few as six mandatory state moratoria — in Alaska, California, Illinois, New York, Pennsylvania and Virginia — could remain.
- **Six states and Washington, D.C. have allowed their moratoria to expire since late May:** Colorado (expired 6/13), Kansas (5/31), Michigan (6/12), Mississippi (5/26), Montana (6/1) and Texas (6/13) did not extend their moratoria, so utilities in those states can once again disconnect customers for nonpayment. This leaves half of all states without mandatory moratoria on electric-utility disconnections.

- **Nineteen more states could expire by August, leaving only 12% of states with mandatory moratoria in place when peak temperatures and climate-exacerbated wildfires and hurricanes are expected to hit:** Eight state orders are set to expire by July 1 if officials do not extend them or their related public-health emergency orders.
- **State moratoria are limited and flawed:** Most orders appear to apply only to regulated utilities and don't cover many rural cooperatives and other public power providers that supply nearly 28% of American power overall.[iv] Only about one-third of policies include provisions to protect low-wealth families, like suspending late fees and charges and reconnecting service for those already disconnected.
- **Some states are requiring utilities to plan to resume disconnections:** Utility Commissions in some states, including Pennsylvania and Vermont, have ordered utilities to report their post-moratoria plans to resume disconnections in anticipation of moratoria expiring.
- **Most utilities' voluntary shutoff moratoria have major shortcomings and unclear durations:** Of the 62 major investor-owned utilities reviewed in April, 29 have not promised to suspend late fees, 56 have not promised to reconnect service for people who already had their electricity shut off, and 48 say nothing about creating payment or assistance plans to facilitate debt forgiveness for their customers. Only four explicitly offer a discount program or fund to help with bill forgiveness. Further, it's unclear how long the majority of these voluntary moratoria have lasted or will last.

The findings underscore two key points: A nationwide moratorium on electricity shutoffs and late fees, as supported by more than 100 members of Congress, is essential to protect all communities in this crisis. Moreover, energy solutions like distributed-solar development and energy-efficiency programs are vital to immediate job generation and long-term recovery.

This analysis is an update to our April and May analyses, which compiled data from governor and state regulatory body orders, to account for extensions, revisions and expirations to state orders so far in June. It builds off the research of the Energy and Policy Institute, which has led the charge on tracking states and utilities that have committed to suspending disconnections. The National Association of Regulatory Utility Commissioners and utility groups have coordinated their own state response tracker as well. In addition to reviewing these trackers, we reviewed state governors' public-health emergency orders and news alerts to understand the likely duration of related orders suspending disconnections.

Expiring State Moratoria Will Leave Millions Without Legal Protection

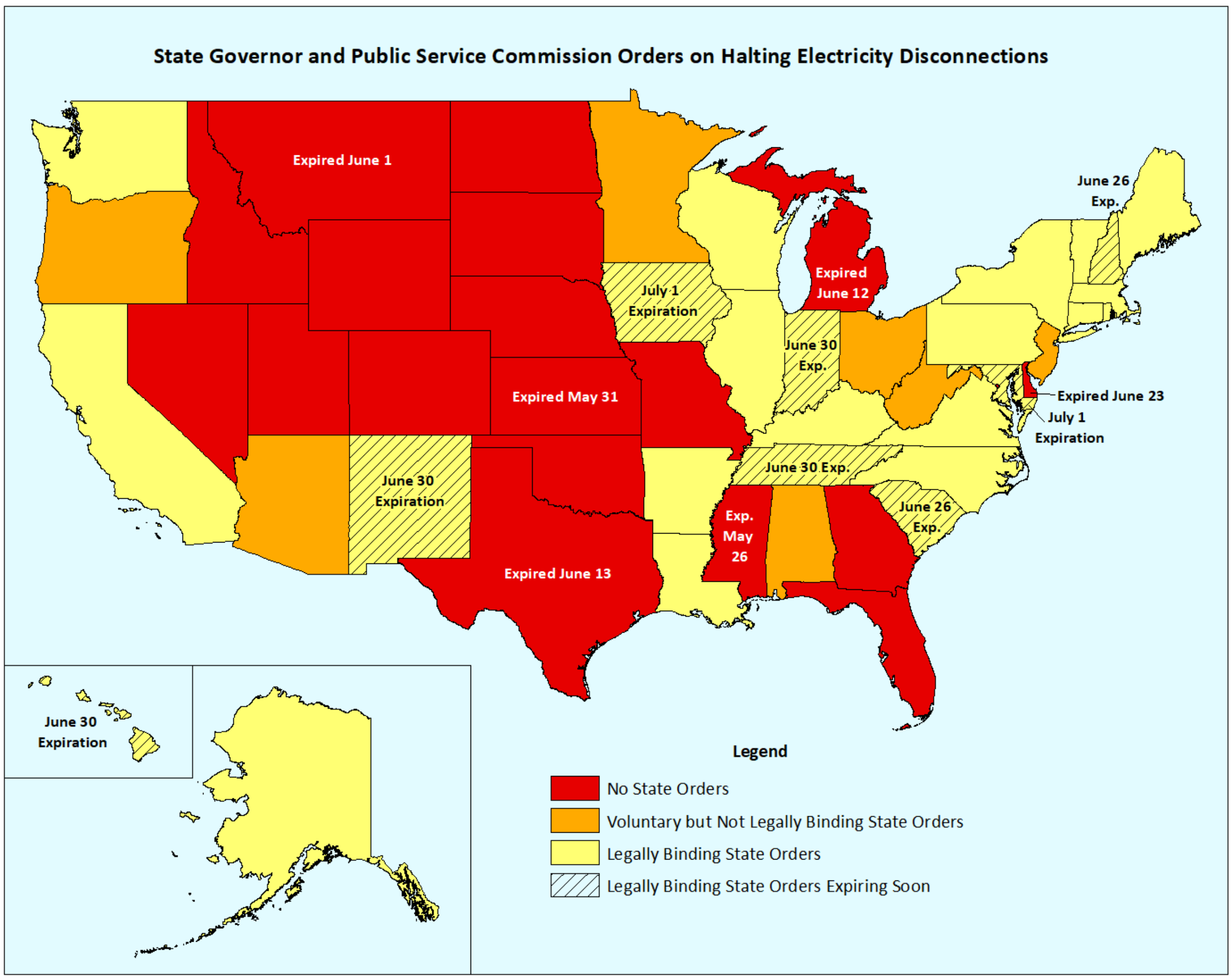
Currently half of states do not have any legally binding protections from electricity service disconnections during the COVID-19 crisis. Governors and utility regulators of these states have not issued any orders banning power disconnections for nonpayment.

Only 23 states are covered by mandatory orders from governors or utility regulators. Another two state legislatures, in Alaska and New York, passed moratorium bills. However, most of these orders appear to apply only to regulated utilities (mostly consisting of investor-owned utilities) and not *all* utilities. Missing from protective coverage are many rural cooperatives, municipal utilities and other public power providers that provide nearly 28% of American power overall.

That means that even in states with mandatory orders in place, a significant number of communities served by non-regulated utilities are left behind. One notable exception to this is North Carolina, which has an order that explicitly applies to *all* utilities. Iowa's order did apply to all utilities, but its protections for municipal utilities and electric cooperatives expired on May 28; now it only applies to investor-owned utilities.

What's more, 19 state orders could expire by the end of July if officials do not extend them. The orders of 8 of these states – Hawaii, Indiana, Iowa, Maryland, New Hampshire, New Mexico, South Carolina and Tennessee – are set to expire by July 1. Another 6 are set to expire by the end of July. The duration of 5 is unclear or undefined. Only 6 orders are clearly in place after July: Alaska's, California's, Illinois's, New York's, Pennsylvania's and Virginia's.

The quality of mandatory state moratoria also varies significantly. Of state orders, only about one-third include important provisions to protect low-wealth families, like suspending late fees and charges, re-connecting customers who have already lost their power, and creating transparent plans to help customers pay off their debt. Therefore, even if people don't see their power get shut off for now, they'll be racking up financially crippling bill debt that will likely result in their power getting shut off as soon as the state moratoria are lifted.



Some state orders are more robust than others. Largely in response to grassroots organizing efforts, both North Carolina's utility commission and governor issued mandatory moratorium policies. The governor's order ensures customers of all utilities — the major investor-owned utilities, electric cooperatives and municipal utilities — are covered. Late fees are suspended, reconnections without charges are encouraged, and customers are to be provided with the "opportunity to make reasonable payment arrangements to pay off over at least a six-month period" any debt they accrue.

Other states, like California, have instituted additional protections such as a directive to create a Percentage of Income Payment Plan (PIPP) pilot program and debt forgiveness program to help customers keep their power on. Under the PIPP program, households that obtain subsidized housing benefits would qualify to pay a monthly bill based on their income while their arrearages are forgiven by about 8% every month.

New York's moratorium is the only one we reviewed that clearly extends until after the state of emergency is lifted, with a 180-day buffer period.[v] Alaska's bill, one of the strongest protections identified, lasts until Nov. 15. California's seemingly applies until 2021.

But these are the outliers, and even they are imperfect. Reports in North Carolina show that more than 500 customers were disconnected in March, even *with* the protections in place. As explained further below, preliminary findings from a national survey show that as many as 4% of households nationwide have been disconnected.

Utilities' Voluntary Moratoria Don't Offer Nationwide Protections

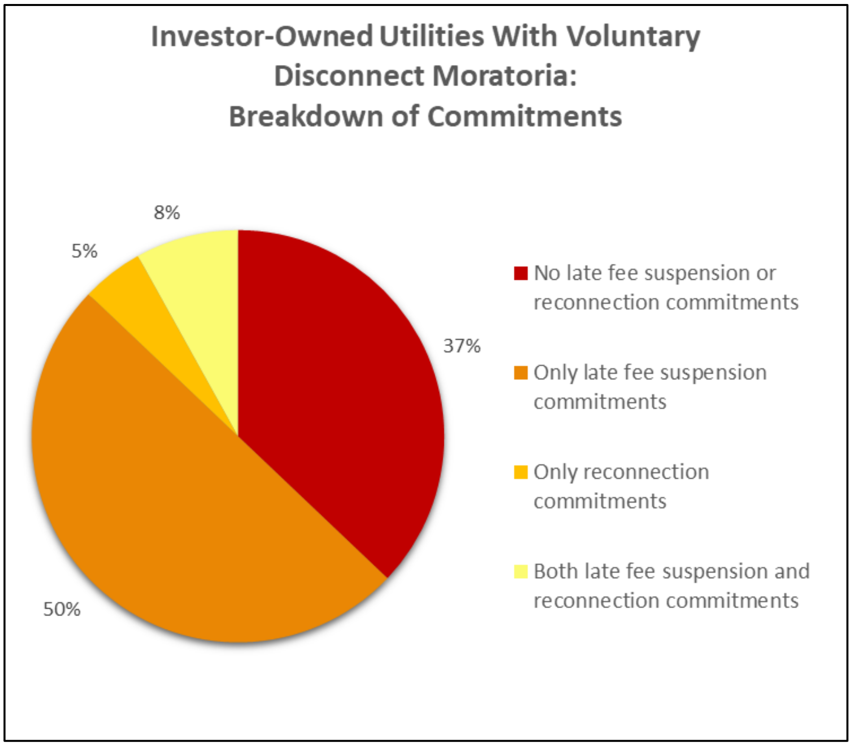
A number of electric utilities have voluntarily imposed suspensions on disconnections. The Edison Electric Institute, a powerful industry group that represents the majority of investor-owned utilities, announced that all of its members suspended disconnections for non-payment as a response to the COVID-19 crisis. [vi]

Some individual utility companies exceeded EEI's basic policies, including Duke Energy, one of the largest utilities in the country, which voluntarily suspended shutoffs and waived late fees starting in mid-March.

To their credit, these policies have provided assurance to their customers in states without mandatory moratoria. But these voluntary moratoria from corporations are not legally binding and have other major flaws.

First, EEI's commitment, as well as the commitments of some of its individual members that have voluntarily adopted their own policies, are insufficient. EEI's commitment does not specify how long these protections will last. It also says nothing about late-payment fees, reconnections, or how to help people pay their bills in the future. Although some individual utilities have implemented their own policies on late fees and bill payment plans, the majority have not.

Of the 62 major investor-owned utilities reviewed in April, 29 have not promised to suspend late fees, 56 have not promised to reconnect service for people who already had their electricity shut off, and 48 say nothing about creating payment or assistance plans to facilitate debt forgiveness for their customers. Only four explicitly offer a discount program or a fund to help with bill forgiveness. So, while families can't afford to pay their bills, they'll be racking up debt that utilities will eventually try to recover from them, and it's not clear how or when that will happen.



Second, in the 21 states without mandatory state orders, customers of electric cooperatives and public utilities are still left at the whim of their utility. That means that if they lose their jobs and can't pay their bills, thousands of households could have their power shut off. Many of these are already low-wealth households living in rural communities. They could be accruing vast arrearages of unpaid bills and late payment fees with few prospects of recovering power without assistance.

Grassroots efforts to pressure cooperatives to institute moratoria have paid off in some cases. In North Carolina nearly 30 organizations, including Appalachian Voices and the NC Justice Center, sent a letter urging Gov. Cooper to ensure that all utilities, including rural electric cooperatives and municipal utilities, be forced to suspend disconnections after a previous order by utility regulators covered only investor-owned utilities. About a week later, the governor did exactly that.

But during this emergency, it's unreasonable to expect individuals to pressure their small utilities — many of which are genuinely facing financial ruin if enough customers can't pay their bills — to suspend disconnections without federal assistance and guidance.

Public power and electric cooperatives are not in the same financial position as larger investor-owned utilities to offer these protections. And individuals who can barely afford to pay their bills under normal circumstances certainly shouldn't be expected to rack up further debt just to keep their lights on during a pandemic.

Policies For Planning and Reporting Disconnections During the Pandemic Vary Widely

Regulator responses to post-moratoria planning and recovery have varied widely. Pennsylvania and Vermont utility commissions have required utilities to report their plans for resuming disconnections after their moratoria are lifted. It is unclear if utilities in other states have been required to do the same. But without plans in place, it will not only be unclear to residential customers struggling to pay their bills when and under what criteria their power will be shut off, but it will also be impossible for regulators, utility justice advocates and other stakeholders to hold utilities accountable.

At least a few utility commissions are requiring customer protections after moratoria expire. Colorado, for instance, ordered utilities to continue waiving late fees and develop customer payment plans to help prevent disconnections even after its moratorium order expired. Montana's regulators have stated that in order to maintain service after the state's June 1 moratorium expiration date, customers must "make a basic showing" that they are adhering to a shelter in place order, are a member of a vulnerable population, and have been financially impacted by the pandemic. In Michigan, the Department of Health and Human Services is making payments directly to utilities to prevent customer disconnections.

Multiple other state utility commissions have required utilities to track and report financial impacts of disconnection moratoria, including Louisiana and West Virginia. Kansas regulators have explicitly said that utilities can track lost revenue as deferred assets for their next rate case. But the majority of states have yet to decide how utilities must track and report disconnections and the financial impacts to utilities themselves from the pandemic.

A Nationwide Moratorium Is Essential

The patchwork of state protections shows why we need a national moratorium on *all* utility shutoffs. This policy should combine the best elements of state policies. That should include ensuring that no one will lose power during and for an extended period after the official state of emergency, suspending all late payment fees, automatically reconnecting service for those who already had their power shut off, and requiring utilities to assist their customers in managing any accrued bills, including loan forgiveness for low-wealth families.

More than 830 public organizations and 113 members of Congress have called for this nationwide moratorium to be included in the next coronavirus rescue package. The current House Bill language includes such necessary provisions. But it fails to provide sufficient funding to protect families from crippling debt accumulation and grow our clean energy industries.

We've just begun to see the impacts of this pandemic on the energy sector, and there's no telling how companies and individual states will continue to respond as the crisis lengthens. With federal guidance and funding, we could ensure that *all* residential and small business customers can keep the lights on without racking up unmanageable debts. This support needs to ensure that smaller electric utilities, including rural electric cooperatives and municipal utilities, can weather the storm alongside the larger investor-owned utilities.

Critically, a true recovery plan would not only offer the short-term solutions of the moratorium but address the chronic issues of disconnections.

According to the most recently available 2017 data from the [U.S. Census Bureau](), 1.2 million households (or approximately 1% of total households) experienced utility shutoffs within three months after taking the survey, and 18.4 million households (or approximately 15% of total households) reported receiving notice within the prior three months that they would have utilities shut off for missed payments. Preliminary data from a [nationwide survey]() shows that in the early months of the COVID-19 crisis, 9% of households received disconnect notices and 4% had their service disconnected. This data also showed that Black communities and other communities of color have been hit disproportionately hard.

Federal and state policy is required to address these chronic problems and spur immediate job creation to recover our economy from the pandemic. Policy that supports distributed clean energy and efficiency program development drives not only local job generation, but also energy security and community resilience in the long term.

As millions across the country face the threat of electricity shutoffs due to coronavirus-precipitated job losses, especially in the summer months as dangerously high temperatures and climate-exacerbated hurricanes and wildfires are expected, it's more apparent than ever that we need solutions that allow families to generate their own power and decrease dependence on centralized utilities. That will allow them to weather such crises, which are sure to rise in the face of growing wealth inequality and increasing climate impacts.

A just transition off fossil fuels and onto distributed clean energy would increase community and ecological resilience after this crisis is over — if we start planning now.

CENTER for BIOLOGICAL DIVERSITY

Because life is good.

Greer Ryan is an energy policy analyst with the Center for Biological Diversity's Energy Justice Program.
For media or other inquiries or updates you would like to share, please contact gryan@biologicaldiversity.org.

[i] Rakesh Kochhar, "Unemployment rose higher in three months of COVID-19 than it did in two years of the Great Recession," Pew Research Center (June 11, 2020).

[ii] Study results also showed that 17%of respondents with income at or below the federal poverty line were unable to pay their energy bills in the past month, 9% received a shut off notice from their utility, and 4% had their service disconnected. *See* Sanya Carley and David Kosinsky, *Survey of Household Energy Insecurity in Time of COVID: Preliminary Results of Wave-1,* (June 10, 2020), https://oneill.indiana.edu/doc/research/energy-insecurity-survey-june-2020.pdf?_ga=2.193138478.266324279.1592587836-492723392.1592338011.

[iii] For a comprehensive overview of common disconnection protections and policies employed by utilities nationwide before the COVID-19 crisis, as well as a discussion of critical issues that should be considered in the development of disconnection policies, *see:* Mike Alksnis, Lorah Steichen, and Chiquita Younger, "Lights Out In The Cold: Reforming Utility Shut-Off Policies as If Human Rights Matter," NAACP Environmental and Climate Justice Program, (2017).

[iv] U.S. Energy Information Agency. "Investor-owned utilities served 72% of U.S. electricity customers in 2017." Available at https://www.eia.gov/todayinenergy/detail.php?id=40913#.

[v] Washington, D.C.'s order, which expired on June 23, extended for 15 days after the emergency was lifted (June 8).

[vi] The Congressional Research Service issued a report discussing electricity disconnection moratoria nationwide, focusing on individual utility commitments rather than governor or state utility commission bans. The report highlights that 1,055 electric utilities have independently made or are subject to some kind of state-level disconnection moratorium commitment but that these commitments vary in scope, duration, and other details. It explains that utility disconnect policies are generally determined at the state or local level, due to Federal Power Act requirements, but that federal bills could be passed that would "effectively establish a national disconnection moratorium" without "directly alter[ing] utility existing disconnection policies." Importantly, the CRS report does not: 1) distinguish the voluntary — and thus unenforceable — utility commitments from state-level moratoria; 2) sufficiently acknowledge that cost recovery for COVID-related revenue losses will likely be shouldered by ratepayers who should not be penalized for COVID, as is starting to play out in new rate hearings called by utilities nationwide; and 3) discuss the significance of the approximately 12% of residential utility customers living without any protections. *See* Richard J. Campbell and Ashley J. Larson, "COVID-19 Electric Utility Disconnections," Congressional Research Service, (June 9, 2020), https://fas.org/sgp/crs/misc/R46401.pdf.