Every Sixty Days:

The Customer-Initiated Accommodation and the Disability That Cannot Initiate

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Abstract

For a large population of disabled people, electricity is not a utility service. It is the delivery medium of a legally required accommodation. An augmentative communication device is speech for a person who does not speak; an alarm is medication adherence for a person whose disability impairs prospective memory; a timer is executive function. When the power goes off, the accommodation goes off. The ventilator and the communication device are on the same circuit for the same reason, and no state disconnection rule sees the second one.

This Article argues that state utility commissions have built every disability protection against disconnection on a single architecture, and that the architecture is inaccessible by reason of disability. The customer must know the protection exists, initiate the request, obtain third-party documentation, submit it inside a window, and renew it before it lapses. Those five acts describe one capacity, and that capacity is what cognitive, intellectual, and neurodevelopmental disability impairs. The regime conditions the benefit on the one thing the beneficiary cannot reliably do.

Illinois supplies the worked example. Under 83 Ill. Adm. Code 280.160, a licensed physician must certify that disconnection will aggravate or create a medical emergency; the certificate protects the account for sixty days; and a person whose disability is permanent must therefore obtain and submit six certifications every year, for life. If the customer certifies late, the payment arrangement demands one fourth of the arrears rather than one twelfth. The installment triples. Lateness is the impairment. Pennsylvania supplies the proof of failure: when an evaluator finally measured whether a comparable program reached the households at the bottom, the answer was that roughly eighty percent of them received unaffordable bills under the program built to make bills affordable.

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The argument does not rest on disparate impact, which *Alexander v. Choate* declined to extend to all action disparately affecting people with disabilities. It rests on what *Choate* preserved: that a benefit may not be defined in a way that effectively denies meaningful access, and that a facially neutral criterion survives only where it does not turn on a trait the protected class is less capable of meeting. The Article locates the correct defendant, which is the commission and not the utility, and shows that *Jackson v. Metropolitan Edison Co.* points at the agency rather than away from it: a commission that orders a practice, rather than approving one a utility proposed, has put its own weight behind it. And it identifies a reliance defect in ratemaking. Commissions have expressly credited customer assistance programs when setting an authorized return on equity. None has asked whether the programs reach the customers whose hardship they are credited with mitigating.

Keywords: Americans with Disabilities Act, Title II, Section 504, meaningful access, *Alexander v. Choate*, *American Council of the Blind v. Paulson*, *Jackson v. Metropolitan Edison*, utility regulation, medical certification, disconnection, public utility commissions, energy insecurity, neurodevelopmental disability, executive function

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I. Introduction

On 22 May 2026, the Supreme Court of North Carolina affirmed two orders of the North Carolina Utilities Commission approving performance-based rate plans for two Duke Energy subsidiaries.[1] In setting the authorized return on equity for one of them, the Commission wrote that "through the Payment Navigator program proposed in this proceeding, DEC will work closely with customers in need of assistance with managing bills and will connect those customers with sources of support and funding, based on the unique situation of the customer."[2] The Commission conceded that "these programs will not ease the burden that electricity rates will place on certain of DEC's customers," but expected them "to provide a meaningful level of support to eligible customers." It then wrote the sentence that occasions this Article: "The Commission takes these facts into account in approving the 10.1% [return on equity]."[3] The companion order did the same work at 9.8 percent for a second utility, reasoning that while "some [customers] will struggle to pay the increased rates," the authorized return "did not pose a serious risk of 'undue hardship' to consumers, partly because" the utility "was simultaneously developing programs to help its low-income residential customers pay their bills."[4]

A bill assistance program was thus a fact in the evidentiary basis of a shareholder return. Two commissions priced it, at 9.8 percent and at 10.1 percent.

This Article asks a question that no commission has been asked. Can a person whose disability consists in difficulty managing bills reach the program built for people who have difficulty managing bills?

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1. State ex rel. N.C. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates II, No. 75A24 (N.C. May 22, 2026) [hereinafter *Carolina Indus. Grp. II*].

2. *Id.* (quoting the Commission's order).

3. *Id.*

4. *Id.* The Commission's balancing obligation derives from its duty to "exercise its subjective judgment so as to balance two competing [return]-related factors—the economic conditions facing [the utility's] customers and [the utility's] need to attract equity financing on reasonable terms in order to continue providing safe and reliable service." *Id.*

The question has gone unasked because disability is absent from the literature that would have raised it. The scholarship and policy analysis on rising residential electricity burden is substantial and growing, and it enumerates the populations that bear the cost: low-income households, Black households, Hispanic households, renters.[5] Disability appears in none of it. That is not a small omission. It is an omission of the population for whom disconnection is not discomfort.

The Article proceeds in seven further Parts. Part II states the claim: for a large population of disabled people electricity is the delivery medium of a legally required accommodation, and the ventilator and the augmentative communication device are on the same circuit for the same reason. Part III describes the architecture through which commissions deliver protection, working Illinois closely and Pennsylvania alongside it. Part IV sets out the doctrine, distinguishing what *Alexander v. Choate*[6] rejected from what it preserved and running *Choate*'s own criteria test against the rule. Part V identifies the defendant, explains why *Jackson v. Metropolitan Edison Co.*[7] points at the commission rather than away from it, and meets the two recent decisions that appear to stand in the way. Part VI identifies the reliance defect and the standard of review that makes it justiciable. Part VII proposes modifications. Part VIII concludes.

Two clarifications at the outset. This Article does not argue that electricity rates are too high, and it takes no position on the causes of recent increases. Its argument holds whether rates rise or fall, because the defect is in the enrollment architecture and not in the price. Nor does it argue that the Illinois Commerce Commission intended to exclude anyone. Intent is not an element of the claim,[8] and the Article's contention is that the exclusion is invisible precisely because every individual requirement in the regime looks reasonable standing alone.

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5. See, e.g., Brookings Inst., CONFRONTING AND ADDRESSING RISING ENERGY BILLS LINKED TO DATA CENTERS (Mar. 13, 2026), https://www.brookings.edu/articles/confronting-and-addressing-rising-energy-bills-linked-to-data-centers/ (last visited July 14, 2026); Envtl. & Energy Study Inst., DATA CENTER POWER DEMANDS ARE CONTRIBUTING TO HIGHER ENERGY BILLS, https://www.eesi.org/articles/view/data-center-power-demands-are-contributing-to-higher-energy-bills (last visited July 14, 2026).

6. 469 U.S. 287 (1985).

7. 419 U.S. 345 (1974).

8. *Choate*, 469 U.S. at 296–97 (rejecting the proposition that Section 504 reaches only purposeful discrimination and observing that much of the harm the Act addresses results from "thoughtlessness and indifference" rather than animus).

II. The Claim: Electricity Is the Accommodation

A. The thesis

This Article's claim is simple enough to state in one sentence, and the remainder of the Article is an attempt to say it in the vocabulary the law uses.

For a large population of disabled people, electricity is not a utility service. It is the delivery medium of a legally required accommodation. When the power goes off, the accommodation goes off. Every doctrine, defendant, and remedy in the Parts that follow proceeds from that fact.

B. The obvious half

It is intuitive that loss of electricity endangers a person dependent on a ventilator, an oxygen concentrator, a home dialysis machine, powered mobility, or refrigerated medication. State disconnection rules are built around this intuition, and they are built around nothing else. The intuition is correct. It is also half the population.

C. The half no rule sees

For a substantial population of disabled people, the powered device is not adjacent to the accommodation. It is the accommodation.

An augmentative and alternative communication device is speech for a person who does not speak. An alarm is medication adherence for a person whose disability impairs prospective memory. A timer is executive function. Speech-to-text is written expression for a person whose disability impairs handwriting or spelling. A scheduling application is the predictability on which a person with an autism spectrum condition regulates. A smart lock, a monitored sensor, and a video doorbell are the arrangements that permit a person with an intellectual disability to live alone rather than in a congregate setting.

None of these things is a comfort. Each of them is a function the person's body or brain does not otherwise supply, restored by a machine that runs on electricity.

D. Auxiliary aids and services

The Title II regulations name these things and require them. A public entity must "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others,"[9] and must "furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity."[10] The regulatory definition of auxiliary aids and services is not limited to human assistance; it reaches devices and the "acquisition or modification of equipment or devices."[11]

Electricity is the precondition of the auxiliary aid. To interrupt power to a household is not to inconvenience it. It is to withdraw the aid, and to withdraw it without any of the process that would attend withdrawing it directly.

E. One circuit

The ventilator and the communication device are on the same circuit, and they are on it for the same reason. Both convert electricity into a function the body does not supply. There is no principled line between them that a disconnection rule could draw, and the rules do not draw one. They simply do not see the second device at all.

The reason they do not see it is structural rather than malicious, and it is worth naming precisely, because the whole Article follows from it. The certificate form asks a physician about emergencies.[12] There is no emergency to certify when a nonspeaking person loses their voice at 2:00 p.m. on a Tuesday. The harm is total, it is immediate, and it is invisible to an instrument calibrated to detect acute medical crisis. A regime that can only see the ventilator will protect the ventilator and will let the communication device go dark, and it will do so while believing it has protected everyone it was built to protect.

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9. 28 C.F.R. 35.160(a)(1).
10. 28 C.F.R. 35.160(b)(1).
11. 28 C.F.R. 35.104 (definition of "auxiliary aids and services").
12. See infra Part III.B (setting out the required certificate language).

F. What follows

Two consequences run through the rest of this Article.

First, the benefit at issue is never electricity. It is the accommodation the electricity delivers, and the protection the State built to keep it on. That matters doctrinally, because it answers the objection that a customer who has not yet been disconnected has lost nothing.[13]

Second, the class defined by this claim is not the class the rules imagine. It is not defined by the presence of a machine that beeps. It is defined by dependence on power for a function the law already requires be accommodated. That class includes the ventilator user. It also includes the person whose disability is precisely the inability to notice, initiate, document, submit, and renew, which is the capacity every existing protection demands as the price of admission.

III. The Architecture of Customer-Initiated Protection

A. Part 280 is the Commission's rule

Illinois regulates the relationship between residential customers and their gas, electric, water, and sewer utilities through Part 280 of Title 83 of the Illinois Administrative Code.[14] This Article returns to that fact repeatedly, so it is worth stating plainly at the outset. Part 280 is a rule of the Illinois Commerce Commission, promulgated under the Commission's own authority, implementing sections of the Public Utilities Act.[15] It is not a tariff. It is not a utility's proposal that the Commission declined to overturn. The Commission wrote it, and no utility can amend it.

That distinction is not stylistic. It is dispositive on the question of who may be sued, for the reasons developed in Part V.

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13. See infra Part IV.H.2 (addressing *Hill*).

14. 83 Ill. Adm. Code 280 (Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Billing, Payments, Refunds and Disconnection of Service).

15. *Id.* (Authority note, implementing sections of the Public Utilities Act, 220 ILCS 5).

B. The medical certificate

Section 280.130(m) prohibits a utility from disconnecting residential service for sixty days upon receipt of a valid medical certificate, so long as the account is eligible under Section 280.160.[16]

Section 280.160 supplies the machinery. Its stated intent is "to temporarily prohibit disconnection of utility service to a residential customer for at least 60 days in cases of certified medical necessity; and to provide an opportunity for the customer to retire past due amounts by periodic installments under an automatic medical payment arrangement commencing after 30 days."[17] That sentence is the Commission's own statement of what the program is for, and it does substantial work in Part IV.G below, because a method of administration is measured against the program's objective and the Commission has told us what the objective is.

Certification may be made by a licensed physician or a local board of health.[18] A certification made by telephone must be reduced to writing and provided within seven days.[19] The certificate must contain "[a] statement that the disconnection of utility service will aggravate an existing medical emergency or create a medical emergency for the patient."[20] The certificate protects the account for sixty days from the date of certification.[21] A certificate presented more than fourteen days after disconnection is accepted at the utility's discretion.[22]

C. Sixty days

The regime's temporal unit is the emergency. The required certificate language says so: the physician must attest that disconnection will "aggravate an existing medical emergency or create

16. 83 Ill. Adm. Code 280.130(m).
17. 83 Ill. Adm. Code 280.160(a).
18. 83 Ill. Adm. Code 280.160(b).
19. 83 Ill. Adm. Code 280.160(c).
20. 83 Ill. Adm. Code 280.160(d).
21. 83 Ill. Adm. Code 280.160(g).
22. 83 Ill. Adm. Code 280.160(f). The discretionary character of that acceptance compounds the problem this Article identifies: the customer least able to certify on time is routed to the stage of the regime where the protection stops being mandatory.

a medical emergency."[23] An emergency is an acute event with an expected end. Sixty days is a defensible window in which to expect one to resolve.

Disability is not an emergency. It is a condition, and a great many of the conditions that make disconnection dangerous do not resolve and are not expected to. Quadriplegia does not resolve. End-stage renal disease does not resolve. Autism does not resolve. Intellectual disability does not resolve.

The regime has no category for the permanent. It therefore processes the permanent as a series of emergencies, requiring the customer to establish, six times a year, for the rest of their life, a fact that has not changed, will not change, and that the certifying physician already reduced to writing the first time. Six appointments. Six forms. Six deadlines. Annually. Indefinitely.

The point is not that sixty days is short. The point is that the regime's clock is measuring the wrong thing. It measures the expected duration of an emergency in a population whose defining characteristic is that they are not having one.

D. One twelfth and one fourth

Subsection (i) establishes the medical payment arrangement. Where valid certification is received before disconnection, the first bill due after thirty days indicates an amount equal to one twelfth of the total owing, with eleven remaining installments.[24] Where valid certification is received after disconnection, the first bill indicates an amount equal to one fourth of the total owing, with nine remaining installments.[25]

The installment triples for the customer who certified late.

This is the regime's clearest statement of what it believes about the people it protects. It assumes that certification timing reflects a choice, and it prices the choice. The assumption is defensible as to a customer whose executive function is intact. It is not defensible as to a customer whose disability consists in difficulty tracking deadlines, initiating contact, and completing forms.

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23. 83 Ill. Adm. Code 280.160(d).
24. 83 Ill. Adm. Code 280.160(i)(1).
25. 83 Ill. Adm. Code 280.160(i)(2).

As to that customer, the escalation is not a price on a choice. It is a price on the impairment, imposed by the state agency that wrote the rule protecting them.

E. The pattern beyond the certificate

The certificate is not an outlier. It is the regime's method.

Low income status under Part 280 becomes effective only upon notification to the utility by the administering agency, and it must be renewed.[26] Outage reporting is customer-initiated, notwithstanding that utilities of this scale operate outage management systems fed by advanced metering infrastructure that record loss of service without any customer action. Every downstream protection presupposes that the customer has received the bill, read the bill, understood the bill, and recognized that the bill signals danger.

F. The five acts

Assembled, the regime requires the customer to perform five acts: to know the protection exists, to initiate the request, to obtain third-party documentation, to submit it within a window, and to renew it before it lapses.

Each is unremarkable. Taken together they describe a single capacity, and it is the capacity that the protected class lacks by definition. That is the whole of the argument, and the remainder of this Article is an attempt to say it in the vocabulary the law uses.

G. Pennsylvania: the same architecture, a different program

Illinois is not idiosyncratic, and the point of this Part is the architecture rather than the state.

Pennsylvania protects low-income residential customers through mandatory customer assistance programs, and its Commission has done something Illinois has not: it has defined affordability numerically. The Commission's 2019 policy statement set maximum allowable energy burdens by poverty tier, capping households between zero and fifty percent of the federal

26. 83 Ill. Adm. Code 280 (definition of "Low Income Customer"); see also Ill. Com. Comm'n, RULES APPLICABLE TO UTILITIES, https://icc.illinois.gov/consumers/rules-applicable-to-utilities (last visited July 14, 2026).

poverty level at two percent of income for electric non-heating service and six percent for electric heating.[27] Modifications to a utility's program require a filing and Commission approval rather than automatic implementation.[28]

The architecture is the same. The customer must know the program exists, apply, document income, and remain enrolled. The Commission sets the requirements; the utility administers them; the customer initiates or receives nothing.

What Pennsylvania supplies that Illinois does not is a measurement, and Part VII returns to it. Someone checked whether the program reached the people at the bottom. It did not.[29]

H. A note on the survey this Article does not perform

This Article works two states closely rather than surveying fifty, and the choice is deliberate rather than concessive. The claim is not that every state's rule is identical. It is that the customer-initiated architecture is the method by which American utility regulation delivers disability protection, and that the method has a defect that does not depend on the details of any one rule.

Two states establish that the architecture is not an artifact of one commission's drafting. A fifty-state survey would establish its extent, and the Article invites that work rather than performing it. What the Article does perform is the thing a survey cannot: it shows why the architecture fails, on the terms of the rule that exemplifies it best.

IV. The Doctrine

A. What Choate rejected

Alexander v. Choate is the reason this argument must be built carefully, and it is also the authority on which it rests.

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27. The Tenant Union Representative Network v. Pa. Pub. Util. Comm'n, 318 A.3d 416 (Pa. Commw. Ct. 2024) (reciting the thresholds adopted in the PUC's 2019 Final CAP Policy Statement).

28. *Id.* (citing 52 Pa. Code 69.263(c), and noting that the 2019 Final CAP Policy Statement directs the utility to file an addendum for Commission approval).

29. See infra Part VI.C.

Tennessee reduced the number of inpatient hospital days its Medicaid program would cover annually from twenty to fourteen.[30] The reduction was facially neutral and disproportionately burdened people with disabilities, who needed more days. The Court held there was no violation of Section 504.

Three of the Court's holdings must be conceded at the outset, and an argument that does not concede them will not survive a reader who knows the case. First, Section 504 does not "reach all action disparately affecting the handicapped," because such a rule "could lead to a wholly unwieldy administrative and adjudicative burden."[31] Second, the Act "does not . . . guarantee the handicapped equal results," and does not require a State "to alter [its] definition of the benefit being offered simply to meet the reality that the handicapped have greater medical needs."[32] Third, and most directly relevant here, Section 504 imposes no "general NEPA-like requirement on federal grantees"; the Court expressly declined to require that "broad-based distributive decision[s]" be "made in the way most favorable, or least disadvantageous, to the handicapped, even when the same benefit is meaningfully and equally offered."[33]

That last passage forecloses an argument that suggests itself and must be abandoned. It is not a violation of Title II for a commission to fail to consider the effect of a rate order on disabled customers. The law does not require a disability impact statement, and an Article that asked for one would be asking the Supreme Court to reverse itself. Part VI is careful about this: it does not argue that commissions must study disability before setting rates. It argues something narrower, which is that a commission that has made a factual finding about a program's reach has made a finding reviewable for evidentiary support.

B. What Choate preserved

Choate preserved two things, and this Article needs only them.

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30. *Choate*, 469 U.S. at 289.
31. *Id.* at 298–99.
32. *Id.* at 304.
33. *Id.* at 308.

The first is the standard. "[A]n otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers," and "[t]he benefit itself . . . cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made."[34]

The second is the test by which the Court found the fourteen-day cap lawful, and it is the test on which this Article stands or falls. The cap survived because it did not "invoke criteria that have a particular exclusionary effect on the handicapped"; the reduction, "neutral on its face, does not distinguish between those whose coverage will be reduced and those whose coverage will not on the basis of any test, judgment, or trait that the handicapped as a class are less capable of meeting or less likely of having."[35] The Court reasoned that the reduction "will leave both handicapped and nonhandicapped Medicaid users with identical and effective hospital services fully available for their use, with both classes of users subject to the same durational limitation."[36]

That last proposition is true of a hospital day. It is false of a certification deadline.

C. Running the test

Apply *Choate*'s criteria test to Section 280.160.

The regime distinguishes between customers whose service is protected and customers whose service is not on the basis of a trait: the capacity to notice a threat, initiate a request, obtain a physician's signature, submit the document inside a window, and repeat the sequence every sixty days without prompting.

That is a test the class is less capable of meeting. It is not incidentally less capable. The trait the criterion selects for and the trait the disability removes are the same trait.

The clinical literature supports this at the level of generality the legal standard requires, and it is worth being precise about that level, because overclaiming here would be both wrong and

34. *Id.* at 301.

35. *Id.* at 302.

36. *Id.*

unnecessary. Executive dysfunction is not a peripheral correlate of the conditions at issue. It has been described as a core dysfunction of attention deficit hyperactivity disorder for more than a century,[37] and it has been proposed as an endophenotype of the neurodevelopmental disorders generally, including both autism spectrum disorder and ADHD.[38] The associations are strongest and most consistent for precisely the capacities Section 280.160 demands: response inhibition, vigilance, working memory, and planning.[39]

The same literature reports heterogeneity, and the honest statement of the science is the statement the legal test needs. Cognitive functioning varies considerably even within single samples, and no single neuropsychological measure applies to every person with the diagnosis.[40] That is not a concession. *Choate* does not ask whether every member of the class is incapable of meeting the criterion. It asks whether the criterion turns on a trait "the handicapped as a class are less capable of meeting or less likely of having."[41] That is a comparative standard, and a literature reporting that executive dysfunction is a core feature of the disorder in a substantial subset of a class satisfies it. A rule that screened out only some Medicaid recipients with disabilities would still have failed *Choate*'s test if it had turned on such a trait. The fourteen-day cap survived because it turned on no trait at all.

Where *Choate*'s Medicaid recipients could use their fourteen days exactly as nondisabled recipients could, the customers here cannot use the protection exactly as nondisabled customers

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37. Marguerite Matthews, Joel T. Nigg & Damien A. Fair, *Attention Deficit Hyperactivity Disorder*, 16 CURRENT TOPICS IN BEHAVIORAL NEUROSCIENCES 235, 235–66 (2013) ("Executive or top-down control in ADHD has been discussed as a core dysfunction of the disorder for over a century.").

38. Lucia Margari, Francesco Craig & Francesco Margari, *A Review of Executive Function Deficits in Autism Spectrum Disorder and Attention-Deficit/Hyperactivity Disorder*, 12 NEUROPSYCHIATRIC DISEASE & TREATMENT 1191 (2016) ("Executive dysfunction has been shown to be a promising endophenotype in neurodevelopmental disorders such as autism spectrum disorder (ASD) and attention-deficit/hyperactivity disorder (ADHD).").

39. Anita Thapar & Miriam Cooper, *Attention Deficit Hyperactivity Disorder*, 387 LANCET 1240, 1240–50 (2016) ("In terms of executive functioning, the most consistent and strong associations are seen for response inhibition, vigilance, working memory, and planning."). Obtaining a certificate before a deadline requires planning; remembering to do so requires working memory; noticing the notice requires vigilance.

40. Thapar & Cooper, *supra*, at 1240–50 (noting "considerable heterogeneity in cognitive functioning even within single samples," and that there is "not a straightforward association between cognitive performance and the trajectory of clinical symptoms"); Matthews, Nigg & Fair, *supra*, at 235–66 (observing that while numerous neuropsychological measures have been proposed as related to ADHD, "each of them applies to only a subset of those with the disorder").

41. *Choate*, 469 U.S. at 302.

can, because using it is itself the barrier. The durational limit in *Choate* operated on the benefit. The durational limit here operates on the customer's ability to obtain the benefit at all.

D. Access, not expansion

The D.C. Circuit has drawn the line this Article must fall on the right side of. In *American Council of the Blind v. Paulson*, the court synthesized the meaningful access cases: "Where the plaintiffs identify an obstacle that impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit. By contrast, where the plaintiffs seek to expand the substantive scope of a program or benefit, they likely seek a fundamental alteration to the existing program or benefit and have not been denied meaningful access."[42]

This Article seeks no new protection. Illinois already prohibits disconnection on medical certification. The claim is that the class cannot reach the protection Illinois already wrote. That is the access side of the *Paulson* line, and it means the fundamental alteration defense fails before it is raised. The relief sought in Part VII is a change to how an existing protection is administered, not the creation of a protection that does not exist.

E. The cooperation of third persons

Paulson supplies more than a line. Holding that the Treasury's failure to make paper currency distinguishable to blind users denied meaningful access, the court reasoned that "the Rehabilitation Act's emphasis on independent living and self-sufficiency ensures that, for the disabled, the enjoyment of a public benefit is not contingent upon the cooperation of third persons."[43] The court rejected the proposition that dependence on the assistance of others, or on the purchase of private equipment, constitutes meaningful access.

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42. 525 F.3d 1256, 1266 (D.C. Cir. 2008).

43. *Id.* at 1269.

Section 280.160 makes the enjoyment of a public benefit contingent on the cooperation of a third person. The benefit is protection from disconnection. The third person is a licensed physician. The contingency recurs six times a year, permanently.

Paulson also allocates the burden, and the allocation matters for how a commission must litigate. "[L]iability under section 504 requires only that the least burdensome accommodation not be unduly burdensome," and an entity that fails "to demonstrate that all accommodations found . . . to be facially reasonable would pose an undue burden" has not made out the defense.[44] A commission defending Section 280.160 would have to defeat every facially reasonable modification in Part VII, not the one it likes least.

F. The administrative-requirement cases

Two decisions supply the doctrinal template, and both must be used with their limits stated, because each stops short of the case this Article makes.

In *Jordan v. Greater Dayton Premier Management*, the court held that "[a] visually-impaired individual does not have an equal opportunity to participate in, and enjoy the benefits of, the Voucher Program, unless all communication affecting continued participation in the program is provided in an accessible format," and that this "obviously includes communication that is specific to individual participants."[45] The reasoning is the part that transfers: "participation in the Voucher Program entails a good deal of paperwork on the part of the tenant. Participants who fail to keep appointments, or fail to complete required forms in a timely manner, are subject to termination from the program. Therefore, effective communication is essential to equal access."[46] The court also rejected the entity's cost defense, holding that "the cost of accommodating a disability does not constitute an 'undue financial burden' simply because it exceeds" the per-participant administrative fee the entity received.[47]

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44. *Id.* at 1275.

45. 9 F. Supp. 3d 847 (S.D. Ohio 2014). Pin cites to this opinion are omitted pending confirmation against the reporter pagination; quotations are verified against the opinion text.

46. *Id.*

47. *Id.*

Jordan's limit is real and this Article states it rather than eliding it. *Jordan* is a blindness case. It concerns the physical inability to read written text, and it does not address whether a disability that impairs the cognitive capacity to complete forms triggers the same obligation. The extension from sensory to cognitive is this Article's, not *Jordan*'s. What *Jordan* establishes is the principle that where administrative requirements are a condition of continued eligibility, the accessibility of those requirements is an access question rather than a convenience question. That principle does not depend on the sensory character of the impairment, and the court's own reasoning supplies no basis for confining it to one.

Jordan also contains a caution worth quoting against interest: a participant's "disability will not shield her from negative legal consequences resulting from her own obstructive behavior."[48] That is right, and it marks the boundary of the claim here. This Article does not contend that disability excuses noncompliance. It contends that a criterion selecting for a capacity the class lacks is not a compliance requirement at all; it is a screen.

Newkirk v. Pierre supplies the procedural template.[49] Plaintiffs alleged that county benefit programs "have complex eligibility standards, requiring individuals, among other things, to comprehend and complete multi-page applications and forms, and provide documentary verification of eligibility factors, including income, immigration or alien status, citizenship, housing, utility and medical expenses, social security numbers, residency, identity, disability (if applicable), household composition and child support obligations and payments."[50] The court recommended certification under Rule 23(b)(2) on the theory that the defendant's "systemic failure or refusal to comply with the ADA and Section 504" was a common course of conduct, and held commonality satisfied notwithstanding that "the proposed class is comprised of individuals with diverse disabilities who are affected by defendant's alleged failure . . . in different ways," because "[t]he claims at issue . . . are systemic, not individual."[51] That holding answers the objection

48. *Id.*

49. No. 2:19-cv-04283 (E.D.N.Y. Aug. 11, 2020) (report and recommendation).

50. *Id.* (quoting the amended complaint).

51. *Id.*

a commission will raise first, which is that a class of people with different disabilities cannot be certified.

Newkirk's limit is also real. The court expressly did not hold that multi-page applications constitute a per se violation; it focused on the failure to accommodate the requirements rather than on the requirements themselves. *Newkirk* is therefore authority for how the claim is packaged, not for whether it wins.

G. The regulations

Three provisions of the Title II regulations apply directly, and each measures the regime against its own objective rather than importing the general impact rule *Choate* rejected. That is what makes them available after *Choate*.

Necessity. A public entity "shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered."[52]

The necessity clause is where the calendar fails, and the argument here is narrower than it first appears. An initial certification is defensible. The entity may require the customer to establish eligibility once, and this Article does not contend otherwise. The renewal establishes nothing. The condition has not changed, the physician has already attested to it in writing, and the second certificate records the same fact as the first. A criterion that establishes no fact not already established cannot be shown to be necessary to the provision of the service. The certificate survives Section 35.130(b)(8). The sixty days does not. The Article attacks the calendar, not the certificate.

Methods of administration. A public entity may not, "directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration . . . [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities."[53] Section 280.160(a) states the

52. 28 C.F.R. 35.130(b)(8).

53. 28 C.F.R. 35.130(b)(3)(ii).

objective in its own text: to prohibit disconnection in cases of certified medical necessity.[54] A method of administration that routes the protection away from the disabled customers least able to navigate it substantially impairs that objective, measured against the Commission's own statement of what the objective is. This provision does not require a court to decide whether the program is good policy. It requires only a comparison between what the Commission said the program was for and what the Commission's method of administration accomplishes.

Surcharge. A public entity "may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part."[55] The physician visit has a price: the copayment, the transportation, the time away from work or care. The regime requires the disabled customer to purchase, six times a year, the document that unlocks their own protection. Whether that constitutes a "surcharge" within the meaning of the provision is a question the regulation does not answer on its face, and the Article flags it as contestable rather than overclaiming it. What is not contestable is that the cost falls on the individual with a disability and on no one else.

H. Two objections, met

Two 2026 decisions appear to stand in the way. Neither does, and the reasons are instructive about how this claim must be framed.

1. Wimberly

In *Wimberly v. Verizon New York Inc.*, the court denied a pro se plaintiff's motion for a temporary restraining order, holding that his "request for more time to pay his bill does not relate to his disability; it relates to his inability to pay his bill."[56] The court cited authority for the

54. 83 Ill. Adm. Code 280.160(a).

55. 28 C.F.R. 35.130(f).

56. No. 1:26-cv-02341 (S.D.N.Y. June 12, 2026).

proposition that federal law does not require entities "to treat disabled persons more favorably than non-disabled persons," but instead "to place disabled persons on equal footing with similarly situated non disabled persons—no worse, and no better."[57]

Three features of *Wimberly* confine it. It is a temporary restraining order denial and not a merits adjudication. The defendant is a private company, which places the claim outside Title II entirely. And the requested accommodation was financial: more time to pay. The class in this Article is not defined by inability to pay. It is defined by inability to navigate, and the inability to navigate is the disability itself rather than a consequence of it.

The court also expressly did not decide the question this Article presents. It left open "[w]hether the holding would change if the plaintiff had specifically alleged that the disability itself (rather than the medical expense) was the direct cause of the non-payment." *Wimberly* is therefore not adverse authority. It is an open door with a sign on it.

The more difficult language in *Wimberly* is the authority it quotes for the proposition that the disability statutes "do not bar eviction or other declination to deal with a person because of that person's inability to meet reasonable requirements of a provider (regardless of cause of such inability)."[58] The parenthetical is the danger, because it purports to make causation irrelevant. But the proposition is stated in terms of *reasonable* requirements, and Title II does not ask whether an eligibility criterion is reasonable. Section 35.130(b)(8) asks whether it is *necessary*.[59] A requirement can be entirely reasonable and still fail the necessity test, and the sixty-day renewal is the paradigm case: reasonable on its face, and necessary to nothing.

2. Hill

In *Hill v. Public Service Electric & Gas Co.*, the court screened a pro se complaint under the in forma pauperis statute and dismissed it, noting that a plaintiff who has not yet lost utility services

57. *Id.* (quoting authority in the district's own line of cases). The reporter citation for the quoted authority is omitted pending confirmation; the quoted language is verified as it appears in *Wimberly*.

58. *Id.* (quoting *Rodriguez v. Westhab, Inc.*). The reporter citation is omitted pending confirmation; the quoted language is verified as it appears in *Wimberly*.

59. 28 C.F.R. 35.130(b)(8).

cannot claim she has been denied the benefit of those services.[60] The dismissal was without prejudice, with forty-five days' leave to amend.[61]

Hill does not reach this claim, and the reason is the same reason *Hill* failed. The defendant was a privately owned utility. The court held that PSE&G was not acting as a state actor, relying on *Jackson v. Metropolitan Edison Co.* for the proposition that "the termination of electrical services by a privately owned utility was action by a private actor and not the state, even though the utility company was subject to extensive state regulation."[62] *Hill* is thus not an obstacle to the claim this Article describes. It is a demonstration of what happens to the claim when it is brought against the wrong defendant, which is precisely the error Part V is written to avoid.

The benefit point is also answerable. *Hill* reasoned that a plaintiff who still has electricity has not been denied the benefit of electricity. That is correct and beside the point here, because the benefit at issue in this Article is not electricity. It is the certification protection. The denial of meaningful access to that protection is complete at the moment the enrollment architecture defeats the customer, whether or not the meter is ever pulled. A person who cannot enroll in a protection has been denied that protection at the moment of the failed enrollment, on the same logic by which the plaintiffs in *Paulson* were denied meaningful access to currency they nonetheless possessed.

V. The Defendant

A. Not the utility

The instinct is to sue the utility, and two independent doctrines defeat it.

The first is regulatory. "The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part."[63] A regulated utility is a licensee. Title II does not reach it.

60. No. 2:26-cv-02311 (D.N.J. Apr. 22, 2026).
61. *Id.*
62. *Id.* (quoting Rhett v. PSE&G).
63. 28 C.F.R. 35.130(b)(6).

The second is constitutional, and it is *Jackson*. A privately owned utility's termination of service is not state action, because "[t]he mere fact that a business is subject to state regulation does not by itself convert its action into that of the State," and "[n]or does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so."[64] A state-protected monopoly does not change the analysis.[65] The inquiry is "whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself."[66] *Hill* is the recent demonstration that this remains good law in the utility context.[67]

B. Why Jackson points at the commission

Jackson is usually read as a wall. Read closely, it is a map, and the sentence that matters is the one specifying what the Court was *not* deciding.

"Approval by a state utility commission of such a request from a regulated utility, *where the commission has not put its own weight on the side of the proposed practice by ordering it*, does not transmute a practice initiated by the utility and approved by the commission into 'state action.' "[68] The Court continued: "At most, the Commission's failure to overturn this practice amounted to no more than a determination that a Pennsylvania utility was authorized to employ such a practice if it so desired. Respondent's exercise of the choice allowed by state law *where the initiative comes from it and not from the State*, does not make its action in doing so 'state action.' "[69]

Both conditions fail here, in the plaintiff's favor. The Commission did put its own weight on the side of the practice, by ordering it: Part 280 is the Commission's rule and not a utility's tariff filing that the Commission declined to overturn. And the initiative came from the State and not from the utility, because no utility asked for a sixty-day certificate and no utility can lengthen it.

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64. *Jackson*, 419 U.S. at 350.
65. *Id.* at 351–52.
66. *Id.* at 351.
67. *Hill*, No. 2:26-cv-02311.
68. *Jackson*, 419 U.S. at 357 (emphasis added).
69. *Id.* (emphasis added).

Jackson tells us what is missing when a commission merely acquiesces. Part 280 is what it looks like when a commission does not.

C. The commission is a public entity without argument

The *Jackson* analysis is in fact unnecessary, and this Article includes it only because a reader will raise it. *Jackson* construes the Fourteenth Amendment and Section 1983, which require state action. Title II does not. Title II requires a "public entity," defined by statute to include "any department, agency, special purpose district, or other instrumentality of a State or States or local government."[70] A state utility commission is a state agency. The definitional question is answered by the statute and does not require a nexus inquiry.

The claim in this Article is not that the utility's conduct should be attributed to the State. It is that the Commission's own rule, promulgated by the Commission under the Commission's authority, denies meaningful access. The conduct challenged is the agency's conduct. There is nothing to attribute.

D. The cascade

Three provisions run the obligation from the commission's rule to the customer's meter, and they matter because a commission will argue that the utility, not the agency, administers the certificate.

First, the same subsection that exempts the licensee binds the licensor: a public entity may not "establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability."[71] The Commission establishes the requirements. That is what Part 280 is.

Second, a public entity may not "[a]id or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries

70. 42 U.S.C. 12131(1)(B).

71. 28 C.F.R. 35.130(b)(6).

of the public entity's program."[72] A commission grants the franchise, approves the tariff, and sets the rate. If significant assistance means anything, it means that.

Third, a public entity may not utilize methods of administration that "perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State."[73]

E. Exhaustion

One procedural note, because *Hill* raises it. The court there observed that "the mere presence of constitutional implications does not abrogate the exhaustion requirement," and that the claim "should first be presented to the [Board of Public Utilities], along with relevant factual presentations to ensure an adequate record on appeal."[74]

That reasoning cuts in favor of the strategy this Article recommends rather than against it. The commission is the correct first audience, both because it is the entity with the power to fix the rule and because the record it builds is the record a reviewing court will read. Part VII is written as a set of proposals a petitioner could put before a commission in a rulemaking, not only as relief a court could order.

VI. The Reliance Defect

A. Commissions price the programs

Return to the orders with which this Article opened. The North Carolina Commission, in setting an authorized return on equity, must "exercise its subjective judgment so as to balance two competing [return]-related factors—the economic conditions facing [the utility's] customers and [the utility's] need to attract equity financing on reasonable terms in order to continue providing safe and

72. 28 C.F.R. 35.130(b)(1)(v).

73. 28 C.F.R. 35.130(b)(3)(iii).

74. *Hill*, No. 2:26-cv-02311.

reliable service."[75] On the customer side of that balance, the Commission credited the assistance programs and said so: it took "these facts into account in approving the 10.1%" return.[76] The companion order reasoned that a 9.8 percent return "did not pose a serious risk of 'undue hardship' to consumers, partly because" the utility "was simultaneously developing programs to help its low-income residential customers pay their bills."[77]

The programs are not decoration. They are findings, and they carry weight on the customer side of a balance that determines what shareholders earn.

B. The standard of review

That matters because commission orders are reviewable, and the grounds are not narrow. A reviewing court may reverse or modify where substantial rights have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are "[u]nsupported by competent, material, and substantial evidence in view of the entire record as submitted," or "[a]rbitrary or capricious."[78] Orders must contain "[f]indings and conclusions and the reasons or bases therefor upon all the material issues of fact, law, or discretion presented in the record."[79] And while the court will not reverse a lawful rate decision "merely because we would have reached a different conclusion upon the evidence," the "Commission's conclusions of law are . . . subject to de novo review for legal error on appeal."[80]

The argument follows directly. A finding that a bill assistance program mitigates the risk of undue hardship is a finding of fact. If the program is structurally unreachable by a class whose hardship it is credited with mitigating, the finding is unsupported by substantial evidence as to that class. This is not a request that commissions perform a disability impact analysis, which *Choate*

75. *Carolina Indus. Grp. II*, No. 75A24 (quoting the Commission's order). The Commission derived the balancing obligation from this Court's prior decision in the *Cooper* line; the specific citation and subsequent history are omitted pending confirmation.

76. *Id.*

77. *Id.*

78. N.C.G.S. 62-94(b)(5), (6) (2025), as quoted in *Carolina Indus. Grp. II*, No. 75A24.

79. N.C.G.S. 62-79(a)(1), as quoted in *Carolina Indus. Grp. II*, No. 75A24.

80. *Carolina Indus. Grp. II*, No. 75A24 (quoting State ex rel. Utils. Comm'n v. Morgan, 277 N.C. 255, 267 (1970), and State ex rel. Utils. Comm'n v. Va. Elec. & Power Co., 381 N.C. 499, 515 (2022)).

foreclosures.[81] It is the ordinary proposition that an agency which chooses to make a finding must have evidence for the finding it made.

C. The measurement that does not exist

There is proof that a utility assistance program can be credited and not reach, and it comes from a utility's own evaluator.

Pennsylvania requires its regulated utilities to operate customer assistance programs and sets maximum allowable energy burdens by poverty tier. For households between zero and fifty percent of the federal poverty level, the Commission's 2019 policy statement set those ceilings at two percent of income for electric non-heating and six percent for electric heating.[82] The Commission, in other words, defined affordability numerically and then required a program to deliver it.

On 28 June 2019, PECO filed an evaluation of its own program, prepared by APPRISE. It showed that during calendar years 2017 and 2018, approximately eighty percent of customers with household income at or below fifty percent of the federal poverty level received unaffordable bills under the program's fixed credit option, and would continue to receive unaffordable bills.[83]

That number is the whole argument in one line. A program existed. A commission had defined what it was supposed to accomplish. It did not accomplish it for four out of five of the people at the bottom. And the failure was documented, by the utility's own evaluator, in a filing the Commission received.

No comparable evaluation exists for disability. Medical certificate issuance rates, renewal rates, and lapse rates, measured against the eligible population, are not published by any commission known to this Article. That absence is itself the finding. A commission cannot have substantial evidence that a program reaches a class whose participation it has never measured, and the

81. *Choate*, 469 U.S. at 308.

82. The Tenant Union Representative Network v. Pa. Pub. Util. Comm'n, 318 A.3d 416 (Pa. Commw. Ct. 2024) (reciting the thresholds adopted in the PUC's 2019 Final CAP Policy Statement).

83. *Id.* (describing the APPRISE Evaluation filed June 28, 2019). The figure is recited in the opinion as background rather than adopted as a judicial finding; the court's holding concerned whether a settlement agreement obligated PECO to implement revised energy burdens immediately, and it expressly did not address whether the program achieves affordability for the lowest-income customers. *Id.* The proposition in text is accordingly offered for what it is: the utility's own evaluator's report of the program's reach, filed with the Commission.

Pennsylvania record establishes that the question is not rhetorical: when someone does measure, the answer is sometimes eighty percent.

VII. The Modification

Four modifications, each narrow, each a change to the administration of an existing program rather than an expansion of its scope, and each therefore on the access side of the *Paulson* line.[84]

Duration keyed to prognosis. Where the certifying party states that the condition is permanent or of indefinite duration, the certificate should not expire in sixty days. The regime already trusts the physician to assess the medical facts. It declines to trust the same physician on the question of duration, for no reason the rule states.

Passive identification. Where the entity already holds the data that would trigger a protection, the protection should not be conditioned on the customer reporting what the entity already knows. Advanced metering infrastructure records loss of service without customer action.

Elimination of the escalation. The one twelfth to one fourth escalation should not apply where lateness is disability-related. A rule that triples the installment for the customer whose disability produced the delay is a price on the impairment.

Accessible notice as a precondition. No protection is meaningful to a person who does not know it exists. Notice of the certification protection, in accessible format, should precede disconnection. This is the *Jordan* principle applied at the front of the sequence rather than the back: communication affecting continued participation must be accessible, and notice of a protection is communication affecting continued participation.[85]

The relief *Newkirk*'s plaintiffs sought is a serviceable model for what a commission could be asked to order: timely information on how to request an accommodation, systemic screening to

84. *Paulson*, 525 F.3d at 1266. Because the entity must defeat all facially reasonable accommodations to establish undue burden, *id.* at 1275, these are presented as alternatives rather than as a single demand.

85. *Jordan*, 9 F. Supp. 3d 847.

identify people who need one, uniform provision on an ongoing basis, adequate records of requests, a grievance procedure, a designated coordinator, staff training, and periodic reporting.[86]

VIII. Conclusion

The Illinois Commerce Commission did not decide to exclude disabled customers from the protection it wrote for them. It decided that sixty days was a reasonable interval, that a physician was the right certifier, and that a customer who certified late should pay a larger installment. Each decision is defensible. Together they describe a protection that can be reached only by a person who can notice, initiate, document, submit, and renew, which is to say a protection built for someone the rule was not written for.

Choate does not require the Commission to have thought about this. It requires that the benefit not be defined in a way that denies meaningful access to the people entitled to it.[87] Sixty days is a definition of the benefit. It is the definition that fails.

A person whose disability will not resolve must prove, six times a year, for the rest of their life, that it has not.

86. *Newkirk*, No. 2:19-cv-04283 (describing requested injunctive relief).

87. *Choate*, 469 U.S. at 301.