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# RESPONSE

## UTILITIES' UTILITY IN AN UNJUST SOCIETY<sup>†</sup>

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## INTRODUCTION

The equity concerns in energy policy can seem like a game of infinite whack-a-mole. Measures that might address one crisis here—say, high carbon emissions or affordability for ratepayers—mean another crisis pops up over there, such as a land use or labor conflict.<sup>1</sup> Yet within the energy policy whack-a-mole game, there is one entity that rears its head often: the investor-owned utility (“IOU”), also known as the for-profit company tasked with furnishing the public necessity of electricity to most people.<sup>2</sup> It is so often the IOU that wields its political and economic power to jealously guard its investments in fossil fuel infrastructure, inflate costs and rates with its new infrastructure installations, and resist redistributive measures for workers, economic development, and ratepayers.<sup>3</sup> Scholars and activists alike often agree that overcoming the entrenched power of the incumbent IOU is one key to more equitable, lower carbon energy policy at the federal, state, and local levels.<sup>4</sup> Deploying the utility toward more equitable ends might not win the whack-a-mole game, but doing so could still whack a lot of moles at once.

In *Reckoning with Social Policy in Utility Regulation*, Gabriel Chan and Alexandra Klass offer an intervention that stands to help put utilities in their place, theoretically and otherwise. Many have called to upend the role of the utility as an obstruction to progress on climate, equity, and other important social goals, either through market deregulation or other means of reducing utilities’ power.<sup>5</sup> Chan and Klass, in advancing the growing body of scholarship on the potential

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<sup>1</sup> See *infra* Part II.

<sup>2</sup> See Sharon Jacobs & Dave Owen, *Community Energy Exit*, 73 DUKE L.J. 251, 258-61 (2023) (outlining the history of how IOUs came to dominate the U.S. energy market and continue to serve, “[a]s of 2017, nearly three out of four utility customers in the United States”).

<sup>3</sup> See Joel B. Eisen & Heather E. Payne, *Utilities with Purpose*, 76 FLA. L. REV. 987, 991 (2024) (explaining that failures in the regulatory system allow IOUs to greenwash their operations and “mislead[] the public about their ongoing efforts to build more, spend more, corrupt more, and pollute more”); Joshua C. Macey, *Outsourcing Electricity Market Design*, 91 U. CHI. L. REV. 1243, 1247-49 (2024) (outlining how utilities’ self-serving role in electricity market design undermines competition and harms ratepayers).

<sup>4</sup> See Macey, *supra* note 3, at 1305 (suggesting liberalizing energy markets would prevent incumbents from “design[ing] rules or mak[ing] investments decisions that pass the costs of reliability and climate regulations onto their captive ratepayers”); Jacobs & Owen, *supra* note 2, 253-54 (2023) (arguing that communities can improve energy provision by leaving a large IOU and establishing a smaller scale grid); Amna A. Akbar, *Non-reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2543-45, 2550-51 (2023) (highlighting activist challenges to the energy industry’s commodification of necessities).

<sup>5</sup> See, e.g., Jacobs & Owen, *supra* note 2, at 255 (noting that “[c]ontemporary rhetoric often disparages IOUs”); Macey, *supra* note 3, at 1307-09 (arguing in favor of structural change to utility regulation including market liberalization); Amy L. Stein, *Rejecting Public Utility Data Monopolies*, 112 CALIF. L. REV. 1321, 1327 (2024) (discussing antitrust and regulation as possible tools for breaking utilities’ monopoly on energy data); Eisen & Payne, *supra* note 3, at 991-92 (proposing that IOUs need fundamentally different corporate form).

of modern utilities and utility regulation,<sup>6</sup> offer an actual playbook—for the judge, the legislator, the regulator, the advocate, and the scholar—to mold the utility into an image of what utilities purport to be: institutions that exist to serve the public interest.<sup>7</sup> And their playbook is grounded in rigorous empirics that utilize past institutional behavior to help shed light on better ways forward.<sup>8</sup>

This Response to *Reckoning with Social Policy in Utility Regulation* proceeds in three Parts. I begin by summarizing and emphasizing two central points in Chan and Klass's article. The first point is that economic regulation (e.g., price-setting) and social policy (e.g., questions of social welfare and redistribution) are not and should not be considered separate spheres because processes of utility regulation inherently entail aspects of both.<sup>9</sup> My own work on rural infrastructure aligns with their view in that supposedly "economic" regulation, or lack thereof, in this context has virtually infinite downstream impacts on all aspects of rural social welfare.<sup>10</sup> Their second compelling central point is that state Public Utility Commissions ("PUCs") and parties who engage with them are well-positioned to leverage the interconnectedness of the economic and the social to achieve more equitable energy policy by way of PUCs' authority over IOUs.<sup>11</sup>

Part II then takes a step back and asks whether proposals to make for-profit electric utilities better, instead of eliminating or circumventing them, are examples of "reformism," seeking to tweak the margins of an inherently unjust system when more radical change in the energy and electricity industries is clearly necessary.<sup>12</sup> More radical change *is* necessary for diverse reasons, including

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<sup>6</sup> See, e.g., Alison Gocke, *Public Utility's Potential*, 133 YALE L.J. 2773, 2776-77 (2024) (arguing that state regulation of public utilities could facilitate the clean energy transition if policymakers overcome the perceived dichotomy of energy law and environmental law); William Boyd, *Decommodifying Electricity*, 97 S. CAL. L. REV. 937, 1016 (2024) (contending that it is "important to acknowledge the promise that public utility regulation holds for more public control over the direction of private capital investment and the mechanisms of cost recovery"); Jacobs & Owen, *supra* note 2, at 255 (noting that "[t]raditional energy systems, for all their flaws, are also important mechanisms for achieving equity").

<sup>7</sup> See Gabriel Chan & Alexandra B. Klass, *Reckoning with Social Policy in Utility Regulation*, 105 B.U. L. REV. 1871, 1877-78 (2025) (arguing that regulators should "acknowledge and embrace their role in shaping social policy").

<sup>8</sup> See, e.g., *id.* at 1902-09 (discussing examples of legislatures and utility commissions construing their power to set just and reasonable rates to advance energy equity).

<sup>9</sup> See *id.* at 1875 (arguing that despite claims that utility regulators are economic actors, "state public utility regulators are—and have *always* been—social policy makers").

<sup>10</sup> See Ann M. Eisenberg, *Economic Regulation and Rural America*, 98 WASH. U. L. REV. 737, 742 (2021) (contending that economic regulation is central to prospect of rural revitalization).

<sup>11</sup> See Chan & Klass, *supra* note 7, at 1878-79 (asserting that regulators can and should consider "broad perspectives of both costs and benefits that are in the public interest").

<sup>12</sup> See Akbar, *supra* note 4, at 2518-19 ("The primary concern is that to focus on reformism is to orient action toward entrenching, rather than overthrowing or substituting, a fundamentally corrupt system, institution, or set of relations.").

ecological sustainability and the fundamental tension between private profit and public service provision. Even the decarbonized grid that many seek to pressure utilities to implement portends a massive, colonial, extractive project.<sup>13</sup> The very existence of IOUs may be incompatible with an emancipatory future in the spheres of electricity provision, indebtedness, human-environment relations, and racial justice.

Part III nonetheless concludes that one of the main contributions of *Reckoning with Social Policy in Utility Regulation* is its challenge to the kind of binary thinking that helped create and rationalize the many crises our society now faces, such as the false ideas that humans and nature or law and markets are somehow respectively separate.<sup>14</sup> In other words, just as the line between economic and social regulation is not so firmly delineated, so, too, is the case between within-the-system approaches and more radical interventions. On a spectrum between pure “reformism”—sometimes understood pejoratively among progressives to be an exercise in complacency<sup>15</sup>—and pure “non-reformism”—understood to be a more meaningful challenge to the status quo<sup>16</sup>—Chan and Klass’s proposal lands closer to non-reformism, even if it does not advocate more progressive interventions such as utility abolitionism or public acquisition of the means of energy production.

#### I. THE FALLACY OF STAND-ALONE ECONOMIC REGULATION AND THE POWER OF STATE PUCs

To start, the definitions of “economic regulation” and “social policy” are central to Chan and Klass’s analysis.<sup>17</sup> Utility regulation has often been viewed as a practice with a narrow, technocratic mandate synonymous with a form of regulation limited to a particular economic sphere.<sup>18</sup> The authors explain, “[a] commonly held view is that the primary purpose of utility regulation is to ‘prevent

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<sup>13</sup> See, e.g., Nicole Greenfield, *Lithium Mining Is Leaving Chile’s Indigenous Communities High and Dry (Literally)*, NRDC (Apr. 26, 2022), <https://www.nrdc.org/stories/lithium-mining-leaving-chiles-indigenous-communities-high-and-dry-literally> (documenting water crisis in Indigenous Chilean communities caused by the water-intensive industrial methods of extracting lithium for batteries).

<sup>14</sup> See Peter Elbow, *The Uses of Binary Thinking*, 13 J. ADVANCED COMPOSITION 51, 51 (1993) (noting that polar opposition in the form of “binary thinking almost always builds in dominance or privilege—sometimes overtly and sometimes covertly”).

<sup>15</sup> See Akbar, *supra* note 4, at 2518-19.

<sup>16</sup> See *id.* at 2527 (“[A] non-reformist reform aims to undermine the political, economic, and social system or set of relations as it gestures at a fundamentally distinct system . . .”).

<sup>17</sup> See Chan & Klass, *supra* note 7, at 1876, 1886 (defining “economic regulation” and “social policy”).

<sup>18</sup> See *id.* 1880-82 (outlining the traditionally constrained view of the role of utility regulators).

the exercise of monopoly power in the pricing of essential public services.”<sup>19</sup> This means that regulators’ mandate is frequently framed as a targeted exercise in price-setting for IOUs operating under the regulatory compact that protects them from competition.<sup>20</sup> Regulators are therefore beholden to ensuring utilities meet service needs in the most cost-effective fashion possible, or enforcing the “least-cost principle.”<sup>21</sup> PUCs’ assignment, then, is to set prices for IOUs and ensure efficient service provision.

“[S]ocial policy,” meanwhile, “refers to the expansive range of policy measures that promote welfare and social well-being with a particular focus on inequality and the common good.”<sup>22</sup> In the energy sector, social policy can be understood as “decisions that address energy-related state and local socioeconomic concerns such as job creation, tax revenues, and economic development, as well as past and current inequities regarding the provisioning of electricity and gas service to communities and individuals.”<sup>23</sup> Despite the clear connections between these two categories, anything regulators might consider outside of the economic mandate—and the set of elaborate, esoteric processes they use to fulfill this mandate<sup>24</sup>—risks being spun as them failing to stay in their lane.

The problem Chan and Klass identify is a sort of cognitive dissonance or willful obfuscation on the part of certain stakeholders in regulatory processes. This smokescreen comes in the form of a narrative that insists upon the economic and the social as distinct spheres.<sup>25</sup> The authors explain, “despite the centrality of social policy to state energy regulatory decisions, courts, stakeholders, and sometimes public utility commissioners themselves have maintained for decades that utility commissions are economic regulators, and that their jurisdiction does not include social policy.”<sup>26</sup> Regulators will “claim they are acting only as economic regulators though they are in fact affecting and shaping social policy.”<sup>27</sup>

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<sup>19</sup> See *id.* at 1880-81 (quoting JIM LAZAR, PAUL CHERNICK & WILLIAM MARCUS, REGUL. ASSISTANCE PROJECT, *ELECTRIC COST ALLOCATION FOR A NEW ERA: A MANUAL* 25 (Mark LeBel ed., 2020)).

<sup>20</sup> See *id.* at 1875-76 (“[C]ommissions obscure their social policy priorities by building these priorities into their decision-making while continuing to give normative primacy to cost minimization.”).

<sup>21</sup> See *id.*

<sup>22</sup> *Id.* at 1885.

<sup>23</sup> *Id.* at 1886.

<sup>24</sup> See *id.* at 1882 (highlighting the use of highly technical models “with hundreds of assumptions about fictitious supply and demand curves” that justify the decisions of utility regulators).

<sup>25</sup> *Id.* at 1875 (“The difficulty of distinguishing between the two is exacerbated by the fact that utility commissions often intentionally or inadvertently obscure the central role of social policy in their regulatory decisions behind a veil of dense, technocratic processes.”).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 1886.

The authors insist, however, “that state public utility regulators are—and have *always* been—social policy makers.”<sup>28</sup> Although “[t]he line between economic regulation and social policymaking has long been contested . . . commissions cannot avoid addressing social policy, and we contend they should not try to do so.”<sup>29</sup> Chan and Klass point to universal service mandates, local economic development, the life-and-death nature of household electricity access for healthcare needs, and energy affordability as clear examples of the direct social policy outcomes of IOU regulation.<sup>30</sup> They also point to utilities’ New Deal origins as entities mandated to serve a capacious view of “the public interest” and how this view has been undermined by efforts to “narrow and marginalize” the role of the utility.<sup>31</sup> The authors excavate and document strong traditions of social policy in utility regulation, whether pursued explicitly or not, with a particular focus on rates for low-income customers, rates to attract economic development, and efforts to protect coal economies.<sup>32</sup>

Chan and Klass call for states to be more explicit about incorporating energy justice principles into utility regulation, including by incorporating aspects of recognitional justice, distributional justice, procedural justice, and restorative justice.<sup>33</sup> They also offer guidance for state legislatures and agencies to pursue this goal.<sup>34</sup> States are more nimble than the federal government and positioned to be more responsive to local dialogues about competing interests in rate proceedings.<sup>35</sup> Finally, Chan and Klass in turn note the implications of their analysis for scholars attempting “to reform the foundational design of public utility regulation,”<sup>36</sup> the prospect of state courts and legislatures defining the role for state PUCs more broadly,<sup>37</sup> and the potential for frontline communities and advocates to participate in demanding more social policy in utility regulation processes, reorienting those processes as multistakeholder dialogues that recognize those dialogues’ far-reaching implications for social welfare.<sup>38</sup>

My view of these points is simple: Chan and Klass are right. Efforts to frame the economic and the social as separate spheres reflect a style of neoliberal thought and praxis that have helped deliver a variety of economic and social

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<sup>28</sup> *Id.* at 1875.

<sup>29</sup> *Id.*

<sup>30</sup> *See id.* at 1887-89.

<sup>31</sup> *See id.* at 1891; *see also id.* at 1891-93 (discussing *NAACP v. Fed. Power Comm’n*, 425 U.S. 662, 669 (1976) (rejecting argument that Federal Power Commission should ensure utilities do not engage in employment discrimination based on the “public interest” standard)).

<sup>32</sup> *See id.* at 1895, 1902-03.

<sup>33</sup> *See id.* at 1902-03.

<sup>34</sup> *See id.* at 1903-06.

<sup>35</sup> *See id.* at 1893 (noting that “state public utility regulators . . . have the benefit of working outside the constraints the Supreme Court has placed on federal agencies” and the constraints of the Federal Power Act).

<sup>36</sup> *See id.* at 1921-24.

<sup>37</sup> *See id.* at 1924-27.

<sup>38</sup> *See id.* at 1927-30.

crises today.<sup>39</sup> Just because specific statutory mandates or judicial interpretations have framed the utility regulator's task as a narrow question of economics does not mean that it has to continue to be that way, especially given the many decentralized avenues for agitation in other directions. Although the standard political-economic barriers will stand in the way where stakeholders do not *want* to prioritize justice or redistribution in regulatory proceedings, an artificial notion of the purity of economic regulation should be resisted as legitimate among those barriers.<sup>40</sup>

As a more specific case study that aligns with Chan and Klass's thesis, it is difficult to overstate the social welfare implications in rural regions of the past half-century of federal transportation and telecommunications deregulation.<sup>41</sup> While our legal systems tend to take the universal service mandate for electricity relatively seriously, this has not been the case for transportation systems and broadband internet.<sup>42</sup> Thus, the "economic regulation" questions of whether a rural locality has access to a train station, airport, or bus service and on what terms can be the deciding factor in virtually all aspects of that locality's destiny—and the destiny of the population within that locality.<sup>43</sup>

Utility and common carrier regulation, in other words, has life or death stakes for people and places, as Chan and Klass point out.<sup>44</sup> The idea that regulatory

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<sup>39</sup> See Akbar, *supra* note 4, at 2502-03 (linking neoliberalism to prioritization of markets, overcoming inefficiencies, and wealth maximization while "obscuring the structuring force of concentrated economic power").

<sup>40</sup> See Boyd, *supra* note 6, at 1027 ("[E]lectricity policy is climate policy. But it is also social policy, and it is no longer possible or prudent to ignore the connections between the two."). This is not meant to suggest "that regulators can or should act beyond the bounds of their legislative authority." Gabriel Chan & Alexandra B. Klass, *Regulating for Energy Justice*, 97 N.Y.U. L. REV. 1426, 1435 (2022).

<sup>41</sup> See Eisenberg, *supra* note 10, at 743-45 (discussing how deregulation of transportation and telecommunications exacerbated the economic decline of rural communities); Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1767-68 (2021) ("In numerous ways, the Progressive Era and New Deal regulatory order in the United States promoted geographic dispersion of economic activity. . . . [R]egulatory policies in the areas of transportation, communications, trade, and anti-trust helped construct an era of geographic convergence . . . and deregulation in those same areas contributed to the rise of geographic inequality over the last generation.").

<sup>42</sup> See Eisenberg, *supra* note 10, at 744 (noting that "developments in transportation and telecommunication in particular replaced principles of non-discrimination and universal service with regimes favoring competition").

<sup>43</sup> See, e.g., Aditi Shrikant, *Why Air Service is So Crucial for Small Cities*, VOX (Nov. 12, 2018, 12:01 PM), <https://www.vox.com/the-goods/2018/11/12/18080806/air-service-small-cities-crucial> [<https://perma.cc/MAT4-EZQN>] (explaining that communication and transformation infrastructure often determines economic activity in rural regions); see also Eisenberg, *supra* note 10, at 746 (arguing "that rural decline was undoubtedly in part a foreseeable consequence of a large-scale movement to favor consumer choice and service providers' profits over measures designed to actively sustain rural communities and the positive externalities that they generate").

<sup>44</sup> See Chan & Klass, *supra* note 7, at 1880.

processes can or should be treated as technical, value-neutral, and isolated flies in the face of reality. Chan and Klass's playbook for mainstreaming energy justice into utility regulation is both compelling and useful.

All of that said, one question looms in discussions of IOUs and their potential as vehicles that can help deliver on energy equity: Is it possible that a more robust pathway to energy justice does not involve working with or seeking to improve these entities through regulation, but something else entirely? For example, the loss of service by common carriers has often been a severe challenge for rural localities over the past half century.<sup>45</sup> Yet that does not mean that the common carriers were *good* prior to when they were allowed to abandon service.<sup>46</sup> The history of U.S. utilities and common carriers in diverse sectors often paints a picture of corruption and inadequacy, with profit-seeking frequently seeming to triumph over the public interest mandate.<sup>47</sup>

This question implicates the prospect that proposals to rein in IOUs are instances of "reformism"—efforts to make marginal changes within a system that involves "entrenching, rather than overthrowing or substituting, a fundamentally corrupt system, institution, or set of relations."<sup>48</sup> The next two Parts explore this prospect.

## II. ARE PROPOSALS TO IMPROVE IOUs "REFORMIST"?

Chan and Klass focus on two main economic issues relevant to questions of equity in energy policy: concerns for workers and regions reliant on energy industries and concerns for ratepayers struggling to pay their electric bills.<sup>49</sup> Both issues are serious, under-addressed problems throughout the United States.

However, the game of energy equity whack-a-mole is even vaster, which suggests that PUCs and regulatory processes are one small entry point into a much bigger problem.<sup>50</sup> Suppose that you were a broadly empowered Energy Czar who could shut down all the coal mines, the natural gas drilling sites, the coal-fired power plants, and the natural gas-fired power plants scattered across the

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<sup>45</sup> See, e.g., Shrikant, *supra* note 43 (reporting that loss of air service often leads to rural areas being cut off from the national and international economy).

<sup>46</sup> See, e.g., Eisenberg, *supra* note 10, at 771 (discussing poor service in passenger rail prior to deregulation).

<sup>47</sup> See generally *id.* at 771-78 (recounting the history of transportation and telecommunications services before and after deregulation and patterns of decline in rural communities).

<sup>48</sup> Akbar, *supra* note 4, at 2518-19.

<sup>49</sup> See Chan & Klass, *supra* note 7, at 1887-89 (highlighting that economic development and affordable rates are among the social concerns implicated by utility regulation).

<sup>50</sup> The "whack-a-mole" analysis is inspired by Judah Schept's description of how systems of racial capitalism create initial crises, then create more crises through attempting to use capitalist tools to solve the initial crises it created in a never-ending loop. See generally JUDAH SCHEPT, COAL, CAGES, CRISIS: THE RISE OF THE PRISON ECONOMY IN CENTRAL APPALACHIA 116-30 (2022) (exploring the history of poverty-producing capitalist extraction of Appalachian wealth and subsequent attempts to revitalize the exploited region through private prisons).



country. You would curtail these installations' many environmental and public health problems for populations near and far, including their substantial contributions to the greenhouse gas emissions driving climate change.<sup>51</sup> That would be a very big deal—one major mole whacked in the game of energy equity whack-a-mole.

The next two moles you need to whack are ones Chan and Klass raise in the form of worker and regional economic dependence and energy poverty challenges.<sup>52</sup> So you implement transitional employee assistance for displaced workers and local government subsidies for distressed regions.<sup>53</sup> Whack, whack. Then, for the ratepayers, you invest in massive amounts of new renewable energy generation to keep bills down, while also providing bill subsidies and funding for shutoff programs.<sup>54</sup> Whack. Maybe your siting decisions for renewables are even equitable, and you somehow manage to reconcile land use constraints with public participation and redistributive economic policy for burdened communities to enjoy the fruits of the clean energy economy.<sup>55</sup> Great—whack. And perhaps you've implemented the proposals in Chan and Klass's article, forcing regulatory processes to grapple with all of these issues and spread the costs and benefits of energy provision out more equitably.<sup>56</sup> Excellent—whack.

But there are more moles, and one might say even more serious moles, even if they are getting further away and more invisible. Among them are issues with

<sup>51</sup> See, e.g., Kiley Bense, *Kids in Pennsylvania Are Breathing (Much) Easier After a Coal Plant Shuttered*, INSIDE CLIMATE NEWS (Aug. 5, 2025), <https://insideclimatenews.org/news/05082025/pittsburgh-asthma-cases-drop-after-coal-plant-closure/> [<https://perma.cc/9WNQ-44LU>] (reporting that local ER visits for pediatric asthma dropped 40% after a coal processing plant closed).

<sup>52</sup> See Chan & Klass, *supra* note 7, at 1887-89.

<sup>53</sup> See ADELE C. MORRIS, NOAH KAUFMAN & SIDDHI DOSHI, CTR. ON GLOB. ENERGY POL'Y, THE RISK OF FISCAL COLLAPSE IN COAL-RELIANT COMMUNITIES 7 (July 2019), [https://www.energypolicy.columbia.edu/wp-content/uploads/2019/07/RiskofFiscalCollapseinCoalReliantCommunities-CGEP\\_Report\\_040424.pdf](https://www.energypolicy.columbia.edu/wp-content/uploads/2019/07/RiskofFiscalCollapseinCoalReliantCommunities-CGEP_Report_040424.pdf) [<https://perma.cc/6BPB-KNWL>] (explaining that a carbon tax could fund “economic development of coal-dependent communities and direct assistance to coal industry workers”).

<sup>54</sup> Cf. *Electricity Explained: Factors Affecting Electricity Prices*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/energyexplained/electricity/prices-and-factors-affecting-prices.php> [<https://perma.cc/94EM-UUV9>] (last updated June 29, 2023) (explaining how supply constraints and disruptions can increase prices); Ann M. Eisenberg & Emily Winston, *Securitization of Coal Plant Retirements: Implications for just Energy Transitions*, 33 COLO. ENV'T L.J. 317, 320-22 (2022) (discussing how states have financed renewable infrastructure while restructuring debt to ease burdens on ratepayers); Adrienne L. Thompson, *Protecting Low-Income Ratepayers as the Electricity System Evolves*, 37 ENERGY L.J. 265, 271-73 (2016) (discussing utility bill subsidy programs such as LIHEAP and WAP).

<sup>55</sup> Cf. SHALANDA H. BAKER, REVOLUTIONARY POWER: AN ACTIVIST'S GUIDE TO THE ENERGY TRANSITION 9 (2021) (noting that “‘easy’ climate solutions might actually threaten . . . [to] displace and divide Indigenous communities and rural communities and have cumulative environmental impacts on ancestral land”).

<sup>56</sup> Cf. Chan & Klass, *supra* note 7, at 157-60 (discussing strategies “for how state utility commissions can be venues for advancing social policy goals”).

supplying the materials for a decarbonized grid and other electrification technologies.<sup>57</sup> These issues become a convenient talking point for opponents of renewable energy.<sup>58</sup> Unfortunately, the issues are very real, and the prospect of tackling them seems elusive.

A simple example is that global grid decarbonization will require at least an estimated 50% of the world's silver stores.<sup>59</sup> A majority of the materials designated as critical minerals necessary for low-carbon technologies are on or near Indigenous land.<sup>60</sup> It is daunting, even grim, to consider what a global decarbonization project might really look like for the world's Indigenous communities whose lands host most of those materials and who often face off with powerful, sometimes murderous, multinational corporations over natural resources.<sup>61</sup> Most readers of this Response would probably not want to work in or live next to the Pan American Escobal silver mine in Guatemala.<sup>62</sup> Does grid decarbonization advocacy tacitly endorse reopening that mine?

Supply chain labor issues, both domestic and international, are also moles that U.S. policy has never whacked, or cared to whack, in the energy equity game.

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<sup>57</sup> See Meg Bernhard, *Nevada's Lithium Could Help Save the Earth. But What Happens to Nevada?*, N.Y. TIMES (Jan. 24, 2025), <https://www.nytimes.com/2025/01/24/magazine/nevada-lithium-mines.html> (discussing tradeoffs between generating clean energy and the industrial processes needed to supply clean energy technology).

<sup>58</sup> See e.g., Wyatt Myskow, *In Nevada, Clean Energy Divides the Senate Race*, INSIDE CLIMATE NEWS (Sept. 11, 2024), <https://insideclimatenews.org/news/11092024/nevada-senate-race-clean-energy> [<https://perma.cc/4J5A-53WP>] (reporting on opposition to deployment of clean energy due to conservation concerns).

<sup>59</sup> See Charlie Hoffs, *Mining Raw Materials for Solar Panels: Problems and Solutions*, UNION OF CONCERNED SCIENTISTS: THE EQUATION (Oct. 19, 2022, 1:07 AM), <https://blog.ucs.org/charlie-hoffs/mining-raw-materials-for-solar-panels-problems-and-solutions> [<https://perma.cc/9HDC-UVNB>] ("By 2050, in a 100% renewable energy scenario that assumes current solar technology and current recycling rates, solar power's demand for silver could be more than 50% of world reserves.")

<sup>60</sup> See Julia Simon, *Demand for Minerals Sparks Fear of Mining Abuses on Indigenous Peoples' Lands*, OPB (Jan. 29, 2024, 10:05 AM), <https://www.opb.org/article/2024/01/29/lithium-mining-indigenous-native-land/> [<https://perma.cc/2TNU-TAD2>] (more than half of projects to extract lithium, cobalt, copper, and nickel are "on or near the lands of Indigenous peoples in the U.S. and around the world").

<sup>61</sup> See *id.* (reporting that Indigenous people are already fighting to protect land and sacred sites from the environmental harms caused by mining companies); Katie Livingstone, *Berta Cáceres' Murder Shocked the World in 2016, But the Killing of Environmental Activists Continues*, INSIDE CLIMATE NEWS (Aug. 24, 2021), <https://insideclimatenews.org/news/24082021/berta-caceres-murder-environmental-activists> [<https://perma.cc/9TGQ-H73K>] (reporting that "more than 200 environmental rights activists were murdered around the world in 2019 alone").

<sup>62</sup> See Hayley Woodin, *Controversial Canadian Silver Mine "Likely" to Reopen in Guatemala Despite Opposition*, BUS. VANCOUVER (Feb. 26, 2024, 1:07 PM), <https://www.biv.com/news/resources-agriculture/controversial-canadian-silver-mine-likely-to-reopen-in-guatemala-8359490> [<https://perma.cc/A9LV-SSP8>] (recounting history of Indigenous resistance to water pollution from the Escobal silver mine and violent retaliation by Pan American's private security force).

Discrete energy sources have only ever been considered “cheap” due to the harms that have been imposed on workers and their localities, since these harms result in savings which get passed on to utilities and consumers. For instance, if silica mines really had to have adequate workplace protections for miners, would solar panels still be considered affordable?<sup>63</sup> And then there are the moles of increasing weather extremes and the proliferation of data centers, meaning overwhelming new demands and pressures will be placed on the already strained power grid.<sup>64</sup>

This intricate web of concerns can seem insurmountable. From the perspective of the burgeoning degrowth movement and related critiques of wealthy countries' dominant economic systems, they probably are insurmountable.<sup>65</sup> If we accept that it does not count as solving a problem if we simply move the

<sup>63</sup> The semiconductors in solar panels are largely made of silicon. *Solar Photovoltaic Cell Basics*, U.S. DEP'T OF ENERGY, <https://www.energy.gov/eere/solar/solar-photovoltaic-cell-basics> [<https://perma.cc/MSB2-S6UR>] (last visited Oct. 7, 2025). Silica mining carries a high risk of respiratory diseases, especially with lax workplace safety standards and enforcement. See David Rosner & Gerald Markowitz, *Refining the Tools to Stymie Government Regulation: Industry's Misuse of Science in the 1970s*, 74 DEPAUL L. REV. 519, 540 (2025) (“Silica has long been identified as a cause of silicosis, the severe fibrosis of the lungs, and is perhaps the historical mother of dust-caused diseases. It disabled and killed thousands of workers . . .”). Even if there were effective occupational safety standards in some countries, globalized and entangled supply changes thwart efforts to consistently purchase ethically produced solar panels. See Dustin Mulvaney, *Governing Solar Supply Chains for Socio-Ecological Justice*, in GEOGRAPHIES OF SOLAR ENERGY TRANSITIONS: CONFLICTS, CONTROVERSIES, AND COGNATE ASPECTS 125, 129-30 (Siddarth Sareen & Abigail Martin eds., 2024) (“Silicon metal and polysilicon production has recently been linked to human rights abuses in the Xinjiang autonomous region in northwestern China, where 45 per cent of the global supply of polysilicon is produced. The accusations assert that ethnic minority Uyghur, Kyrgyz, Kazakh, and Tibetan peoples are used in forced labour schemes . . .”).

<sup>64</sup> See Marc Levy, *As Electric Bills Rise, Evidence Mounts That Data Centers Share Blame. States Feel Pressure to Act*, AP NEWS (Aug. 9, 2025, 12:03 AM), <https://apnews.com/article/electricity-prices-data-centers-artificial-intelligence-fbf213a915fb574a4f3e5bbaa7041c3a> (reporting that increasing electricity demand caused by new data centers is raising costs for ordinary ratepayers); Mose Buchele, *Amid Extreme Heat, Some Power grids May Struggle to Keep Up with Rising Energy Demands*, NPR (June 26, 2025, 5:13 PM), <https://www.npr.org/2025/06/26/nx-s1-5443660/amid-extreme-heat-some-power-grids-may-struggle-to-keep-up-with-rising-energy-demand> [<https://perma.cc/6YSV-VKVN>] (explaining that as temperatures rise, utility infrastructure underperforms while demand for power increases, straining the power grid).

<sup>65</sup> See generally JASON HICKEL, *LESS IS MORE: HOW DEGROWTH WILL SAVE THE WORLD* 4 (2021) (advocating for a “shift from an economy that’s organised around domination and extraction to one that’s rooted in reciprocity with the living world”); Carmen G. Gonzalez, *Racial Capitalism, Climate Change, and Ecocide*, 41 WIS. INT’L L.J. 479, 482-83 (2024) (arguing that racial capitalism, which racially stratifies humans for profit, creates “insatiable demand for cheap raw materials, cheap labor, and cheap waste disposal in its ceaseless quest for profit,” and is a direct cause of climate change); BAKER, *supra* note 55, at 9-10 (noting efforts by fossil fuel companies to be involved in the energy transition, “seeking to profit off the disaster they created” and questioning plans to put “unwavering trust in the very same entities and interests that got us into this disaster”).

problem to another place—a place where people’s lives are considered less valuable—we may start to understand that existing systems are incapable of delivering a just energy system at all, let alone a transition to renewable energy. Modernity itself starts to seem unearned and untenable.

At a fundamental level, it is far from clear that capitalist economic systems are compatible with an Earth that remains habitable for humans, not to mention the provision of energy on an equitable basis. Capitalism is based on the pursuit of growth without an endpoint—for wealth, businesses, cities, populations, economies, and infrastructure networks. It seems obvious that, in a world of finite resources, infinite growth is just not going to be possible. And the pursuit of that growth has gone hand in hand with destructive natural resource extraction and the suppression and displacement of Indigenous communities.<sup>66</sup> Even in a system that transitions to renewable energy while keeping ratepayer bills low and protecting workers, those improvements do not seem poised to change the fundamental dynamics.

IOUs, meanwhile, are creatures of capitalism, premised on their possession of private property, their accrual of profit, and their relationship to market economies.<sup>67</sup> As a system, capitalism has also proven an inadequate vehicle for delivering public necessities. Thus, there is reason to believe that working with and reshaping IOUs through PUC regulation risks entrenching longstanding patterns of domination, rather than pursuing more emancipatory horizons. Improving utility regulation as it looks today is arguably “a strategy to regulate capitalism and redistribute its spoils.”<sup>68</sup> Efforts to do so might be considered classic instances of reformism—a proposal premised on trusting and reifying existing arrangements of power despite their untenability.<sup>69</sup>

Progressive activists and scholars have advanced a variety of ideas for playing a different game than whack-a-mole—to stop the moles from popping up in the first place. Many agree that, in the energy space, “non-reformist reform” that does not go down the path of another era of extraction and Indigenous oppression involves embracing principles of decolonization and the decommodification of natural resources.<sup>70</sup> This might come in the form of a degrowth economy, in which societies pursue “a planned reduction of excess energy and resource use to bring the economy back into balance with the living world in a safe, just, and equitable way.”<sup>71</sup> It might involve efforts within the Global North to learn

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<sup>66</sup> See Gonzalez, *supra* note 65, at 483-86 (connecting the history of colonialism and environmental degradation to the profit-seeking motive of capitalism).

<sup>67</sup> See Boyd, *supra* note 6, at 1012-13.

<sup>68</sup> Akbar, *supra* note 4, at 2570; see also Nicholas F. Stump, *Ecosocialism, Degrowth, and Global South Thought: Critical Legal Transformations*, 49 WM. & MARY ENV’T L. & POL’Y REV. 367, 416-20 (2025) (discussing radical, non-reformist visions for an eco-socialist society).

<sup>69</sup> See Akbar, *supra* note 4, at 2570 (describing attempts “to regulate capitalism and redistribute its spoils” as “a conventional reformist approach”).

<sup>70</sup> See *id.* at 2497, 2530-31, 2535.

<sup>71</sup> HICKEL, *supra* note 65, at 29.

from pre-industrial and Global South lifestyles that are not associated with such high emissions and patterns of ecological destruction.<sup>72</sup>

Non-reformist reform might also require a future without IOUs altogether. That could come in the form of public ownership and public takeovers of energy systems or other ways of democratizing these systems.<sup>73</sup> It could come in the form of free, fully publicly subsidized electricity that does not render people vulnerable to indebtedness.<sup>74</sup> If a radical, emancipatory future entails the de-commodification of natural resources, Indigenous land, and the fundamental necessities of life, it is unclear what place IOUs will have in that future.

Yet IOUs' deep connection to existing capitalist systems does not necessarily mean that analyses like that in *Reckoning with Social Policy in Utility Regulation* are overly narrow or complacent. The next Part explores aspects of Chan and Klass's arguments that give their article a non-reformist character, blurring the line between approaches that purport to improve the system and those that purport to upend it.

### III. THE DIVERSITY OF AVENUES TO RECLAIMING POWER

Even if IOUs may be incompatible with an emancipatory future in energy systems, proposals to improve or rein in IOUs are not necessarily mere reformism. This Part emphasizes several aspects of Chan and Klass's proposal that I suggest render their theory an advancement of meaningful structural change, rather than a superficial tweak to an unjust system. On a spectrum between pure "reformism" and pure "non-reformism," Chan and Klass's proposal lands closer to non-reformism. This, in turn, suggests that progressive scholars do not necessarily need to limit their pursuit of energy justice to narrow conceptions of utility abolitionism or steps to acquire energy systems outright. Utility regulation is a platform for contestation, public participation, and the reclamation of power.

First, Chan and Klass's proposal challenges binary thinking.<sup>75</sup> They "refuse the division between politics and the economy . . . and the elevation of the economy over politics essential to neoliberal conceptions."<sup>76</sup> Similarly, in doing so,

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<sup>72</sup> See BAKER, *supra* note 55, at 8 (noting that we live in a "geologic era marked by humanity's devastating impact on Earth's atmosphere, waters, and soils"); HICKEL, *supra* note 65, at 21, 39 (noting that low-income countries, including most countries in the Global South, are still living within planetary boundaries, and that "[f]or approximately 97% of [human existence] our ancestors lived in relative harmony with the Earth's ecosystems").

<sup>73</sup> See Akbar, *supra* note 4, at 2549-51, 2559-60 (examining non-reformist efforts by organizations to shift ownership of basic needs like housing and the energy industry from private to public).

<sup>74</sup> See *id.* at 2550-51 (envisioning non-reformist reforms that de-commodify basic needs by nationalizing utilities and canceling debt).

<sup>75</sup> See Chan & Klass, *supra* note 7, at 1875 (challenging idea that utility regulators are either economic or social policymakers).

<sup>76</sup> Akbar, *supra* note 4, at 2535.

they “fundamentally contest the power, expertise, and worldview of the ruling class.”<sup>77</sup>

Second, Chan and Klass’s scholarly contribution is itself a form of participation in multiple social and intellectual movements that are challenging the prevailing social, political, and legal order.<sup>78</sup> Their article references the movement to reexamine the role of Networks, Platforms, and Utilities, engages the work of scholars and activists in the Law and Political Economy movement,<sup>79</sup> and incorporates and speaks to the demands of movements for energy justice and energy democracy.<sup>80</sup> They are participating in a collective action project, actively engaged in power- and coalition-building.

Third, their proposal treats law as instrumental, a tool to be used to achieve the outcome of justice and redistribution. Chan and Klass appeal to and seek to advance the involvement of diverse stakeholders participating in the design and contestation over energy systems.<sup>81</sup> They identify avenues for “strategic battles that might serve as a bridge through popular agitation.”<sup>82</sup> Tacitly rejecting a vision of the law as the playing field for elites and top-down decision-making, they treat law as instrumental to justice and emancipation, not a neutral phenomenon existing in isolation.<sup>83</sup>

Fourth, in a similar vein, their proposal speaks to laypeople. Chan and Klass acknowledge the importance of frontline communities taking advantage of the vehicles available to them to reclaim power and offer guidance for communities to do so.<sup>84</sup> This intervention has a democratizing function, in contrast to treating law as merely under the purview of lawyers and legal institutions.<sup>85</sup>

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<sup>77</sup> *Id.* at 2564.

<sup>78</sup> See Chan & Klass, *supra* note 7, at 1878 (framing analysis as means for “active stakeholders . . . [to] advance social policy through state utility regulation”). Cf. Akbar, *supra* note 4, at 2527 (explaining that non-reformism aims to undermine current relations, create a distinct system, and build popular strength and coalitions).

<sup>79</sup> See Chan & Klass, *supra* note 7, at 1921-24.

<sup>80</sup> See *id.* at 1902-03.

<sup>81</sup> See *id.* at 1878 (“[A]ctive stakeholders—including utilities, climate and community activists, labor unions, tribes, local governments, and state commissions themselves—can advance social policy through utility regulation.”).

<sup>82</sup> Akbar, *supra* note 4, at 2510.

<sup>83</sup> See Chan & Klass, *supra* note 7, at 1929 (recognizing that utility commissions are an arena for strategy and confrontation to achieve policy outcomes). Cf. Akbar, *supra* note 4, at 2531, 2562-63 (non-reformism entails “a theory of social change that cabins law and legal processes to a tactical terrain of action” and a combination of “‘inside’ and ‘outside’ strategies” in relation to the legal system).

<sup>84</sup> See Chan & Klass, *supra* note 7, at 1931 (emphasizing and recommending strategies to bring frontline communities into utility regulation process).

<sup>85</sup> See Akbar, *supra* note 4, at 2563-64 (explaining that non-reformist reform views law as one among many strategic vehicles for activists).

Fifth, Chan and Klass's substantive priority is forcing the private to submit to public will and the public interest.<sup>86</sup> The elevation of social policy to be on equal footing with economic regulation is indeed an effort "to remake power, politics, and the state" by forcing the state to grapple with the intersection of utility regulation and everything else.<sup>87</sup> It reflects "an extension of popular power . . . over the dictatorship of profit"<sup>88</sup> and to make society more "responsive to popular input and human and planetary need,"<sup>89</sup> illustrating how "the public sector can come in and correct [the] tyrannies of the private sector."<sup>90</sup>

Sixth, Chan and Klass's proposal is not incompatible with a longer-term, further-reaching progressive agenda for more radical change.<sup>91</sup> Building power through such advancements is a potentially useful precursor and foundation to challenging systems of domination in more fundamental ways.<sup>92</sup> Establishing that utility regulation inherently encompasses social regulation could be one step further down the road toward more public takeovers of utilities in the form of municipalization, for instance.<sup>93</sup>

This analysis confirms what some commentary has already observed: The lines between "reformist" and "non-reformist" interventions can be blurry and the distinction itself is contestable.<sup>94</sup> Chan and Klass's contribution helps create a foundation for progress in diverse spaces and at multiple potential scales. They take full advantage of their technical knowledge of energy and legal systems and articulate a playbook for advancing the system toward more just outcomes.<sup>95</sup> Even if they do not outright advocate the outcomes progressive activists and scholars may seek, this playbook should be taken seriously as a component for an emancipatory agenda for the nation's energy systems. While all scholarship on IOUs may not necessarily share these traits of non-reformism, Chan and

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<sup>86</sup> See Chan & Klass, *supra* note 7, at 1878 (emphasizing that commissions as social policymakers "are more essential than ever as evidence-gathering, deliberative forums open to the public").

<sup>87</sup> See Akbar, *supra* note 4, at 2520.

<sup>88</sup> *Id.* at 2529.

<sup>89</sup> *Id.* at 2535.

<sup>90</sup> *Id.* at 2555.

<sup>91</sup> See Chan & Klass, *supra* note 7, at 1929-31 (outlining strategies for building community power to improve regulation of privately owned utilities). *Cf.* Akbar, *supra* note 4, at 2570 (describing prospect of developmental stages toward a socialist state that keep the structure of the capitalist economy at first but seed long-term transformation); René Reyes, *Abolition Constitutionalism and Non-Reformist Reform: The Case for Ending Pretrial Detention*, 53 CONN. L. REV. 667, 670 (2021) (discussing potential for an "incremental, non-reformist reform agenda").

<sup>92</sup> See Akbar, *supra* note 4, at 2570.

<sup>93</sup> See Jacobs & Owen, *supra* note 2, at 270 (discussing public ownership through municipalization).

<sup>94</sup> See, e.g., Akbar, *supra* note 4, at 2536; Zohra Ahmed, *Take Revolution Seriously*, 123 MICH. L. REV. 1209, 1213 (2025) (describing line between non-reformist and reformist proposals "is more art than science and requires patient observation").

<sup>95</sup> See Chan & Klass, *supra* note 7, at 1929-31.

Klass's article suggests that seeking to improve utility regulation and pursuing radical, systemic change are not inherently incompatible. The fight for a more just society will require a diverse set of thought processes, strategies, and approaches. Chan and Klass's article, and other calls to reexamine utilities and utility regulation, are useful exercises toward that end.

#### CONCLUSION

*Reckoning with Social Policy in Utility Regulation* persuasively establishes the intimate connections between economic regulation and social welfare and the prospect of utility regulation to serve as a more robust vehicle for redistributive outcomes in energy policy. Just as the line between economic and social regulation is not so firmly delineated, so too is the case between within-the-system approaches in pursuit of justice and more radical interventions. Capitalist economic systems and emancipatory environmental and energy futures for marginalized populations may be incompatible; IOUs, similarly, may not have a place in this more egalitarian world. For now, though, utility regulation is nonetheless an important avenue for reclaiming power.