

Public Utilities Commissions and Consumer Advocates: Protecting the Public Interest

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Public utility commissions (PUCs) and consumer advocates (CA) share the responsibility of protecting ratepayer interests in the utility regulatory process. Whereas PUCs fulfill the complex role of balancing ratepayer, utility, industry, and other interests while maintaining reliable and affordable service, the CA is the only organization participating in proceedings whose primary mission is to represent the interests of ratepayers and the public interest generally. Given the increasing frequency of proceedings and complexity of issues brought before commissions, the role of the CA and its relationship to the PUC is of growing importance to realizing the vision of utility regulation in the public interest.

This guide describes the overlap and distinction between PUCs and CAs, examines the current and emerging state of engagement between the two parties, and offers ideas for how relationships can be strengthened based on the experiences of PUCs and CAs. To inform the paper, the Institute for Market Transformation (IMT) conducted interviews with commissioners, commission staff, and consumer advocates (from state agencies and nonprofits) who have experience working with their counterparts.

The Intertwined History of Utility Commissions and Consumer Advocates

During the 1970s, rapidly rising energy prices led to increased pressure from customers for better representation of consumer interests in utility regulation. This situation galvanized legislatures to create state-level independent consumer advocate offices because individual customers are greatly affected by utility regulatory decisions but could not realistically participate in the complex legal processes that make up regulatory proceedings.

This genesis of CAs is important to consider for two reasons. First, they were created to ensure that the balancing act among consumers, the utility, and other interests that the PUC must achieve did not underrepresent the consumer. Second, the CA role was designed and resourced to operate in the regulatory environment of the 1970s and 1980s, which focused on discrete and formal proceedings—typically rate cases and merger approvals. The current regulatory environment is changing rapidly for both the PUC and CA, and effective collaboration is more important than ever to protect consumers.

There are more outstretched hands than ever asking for ratepayer money, whether to meet policy goals or other objectives. I see upward pressures on rates to retire plants, build new ones, and invest in new infrastructure. The consumer advocates' role is to force a hard look at anyone and anything that is asking for ratepayer money—in an effort to keep service safe, reliable, and affordable. I think our role is going to be more important going forward than it's ever been.

— Chris Ayers, North Carolina Utilities Commission Public Staff

An econometric analysis of 1,349 rate reviews that occurred between 1980 and 2007 found evidence that, on average, the presence of a consumer advocate has a tangible downward pressure on rates. The authors found that states with a CA saw fewer

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The National Council on Electricity Policy (NCEP) is a platform for all state-level electricity decision makers to share and learn from diverse perspectives on the evolving electricity sector. The NCEP mini guide series promotes this dialogue by highlighting examples of successful engagement across its members. Each mini guide features collaborative approaches, lessons learned, and interviews with leading state and local decision makers.

rate cases, a lower permitted return on equity (that averaged 0.45 percentage points lower than states without a CA) and lower residential rates relative to other customer classes.¹

Although PUCs and CAs strive to work together, there are times when disagreements arise. For example, if there is a shared funding source for the two entities that requires negotiation or if there are conflicting opinions around PUC decisions in a proceeding, these challenges can affect the relationship. This paper offers ideas and examples for how to constructively work together when such differences arise. Given the independence of the PUC and CA, as well as the permanence of the relationship between them, the public benefits when the two types of organizations proactively manage their relationship.

Structure and Characteristics of Consumer Advocates

Forty-four states and the District of Columbia have consumer advocates. Consumer advocate offices fall into four general categories: independent state agencies, divisions of state attorneys general (AG), nonprofit organizations, or arms of the legislature. **Table 1** shows a comparison of CA categories. Acts of legislation created CAs, except some of the nonprofit CAs. The CAs created by legislation are bound by state statutes; however, the scope and details of statutes vary from state to state. Nonprofit CAs may or may not have legislative authority but are generally recognized as a complement to an existing CA or an alternative in the absence of an official CA. A board of directors directs nonprofits, and often with specifications that board members must reflect the communities the CA serves.

Table 1: Structures of Consumer Advocate Offices^{2,3,4}

	State Agency	Attorney General	Nonprofit	State Legislature
State Count	23	16	8	2
Structural Stipulations	May be administratively attached to another state agency. Must have separate mission, budget, and staff than the state PUC. Cannot report to commissioners.	May be a separate office within the state AG's office or a division within the AG's office.	May or may not have legislative authority to fill the role of the official CA. Otherwise, a nonprofit complements an existing CA.	An appointed public counsel represents ratepayers and reports to an oversight committee.
Appointment of the head of the CA Office	Generally appointed by the Governor or other executive official. Appointed by the state AG in MD and PA and by a Legislative committee in FL and MT. Some states also require confirmation by the Senate and/or House (e.g., ME, NJ, TX).	The state AG or AG staff appoints the CA. Iowa also requires confirmation by the Senate.	Board of Directors	State legislature or subcommittee
Funding	Appropriations from state budget or regulatory fee assessed on utility bills	Appropriations from state budget or regulatory fee assessed on utility bills	State funding, philanthropic funding, membership dues, or intervenor compensation	Appropriations from state budget

Seven states have multiple CAs – for instance, Illinois has both an AG and a nonprofit consumer advocate (**Figure 1**). Five states do not have any CA. Some CAs receive funding from state budgets, while others get funding through assessments against utility companies, member dues, intervenor compensation, or philanthropic funding. The head of the CA's office may be appointed by the governor, the legislature, the attorney general, or through other methods.^{2,3}

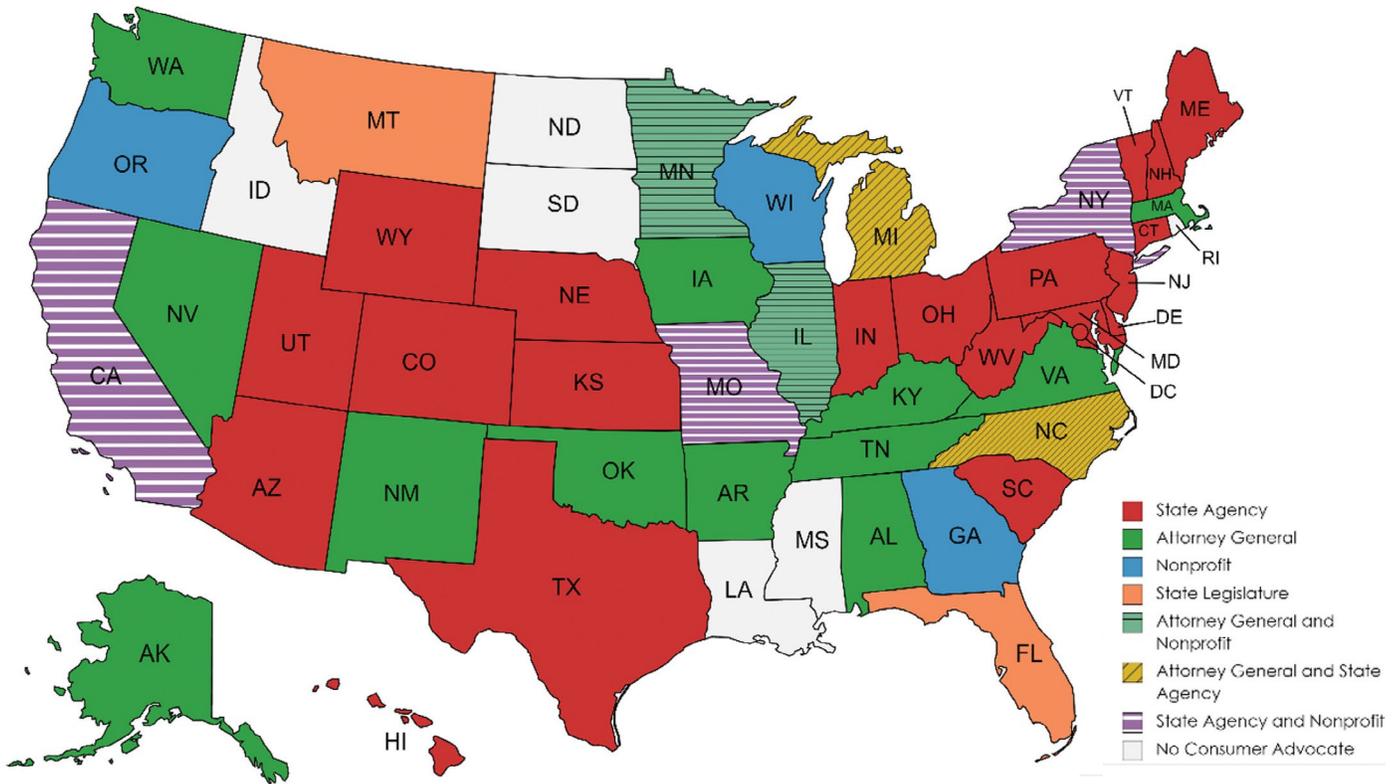
1 Fremeth, A.R., Holburn, G.L.F. & Spiller, P.T. The impact of consumer advocates on regulatory policy in the electric utility sector, *Public Choice* 161, 157–181 (2014), <https://doi.org/10.1007/s11127-013-0145-z>

2 Vermont Public Service Department. (Feb 22, 2016), An Evaluation of Ratepayer Advocate Structures Pursuant to Act 56, Section 21b, Retrieved from: <https://legislature.vermont.gov/Documents/2016/WorkGroups/House%20Commerce/Reports%20and%20Resources/W~Department%20of%20Public%20Service~An%20Evaluation%20of%20Ratepayer%20Advocate%20Structures%20Pursuant%20to%20Act%2056,%20Section%2021b~2-23-2016.pdf>.

3 The National Regulatory Research Institute. (Sept 2004), The Role of Utility Consumer Advocates in a Restructured Regulatory Environment, Retrieved from: <https://pubs.naruc.org/pub/FA8626E1-0000-871D-4660-18F3E7238C8A>.

4 IPU-MSU Database on Consumer Advocates in the U.S. (2020), Retrieved from: <http://ipu.msu.edu/wp-content/uploads/2020/02/IPU-Database-on-Consumer-Advocates-2020-2.3.20.xlsx>.

Figure 1: Map of Consumer Advocate Offices by State and Organizational Structure^{2,3,4}



Nationally, CAs operate with roughly 10 percent of the staff and budget that PUCs have, according to data gathered by the Institute for Public Utilities⁵ and RMI⁶ (**Table 2**). These data support findings from the literature and interviews that suggest that chronic underfunding limits the ability for the consumer advocate to fully participate in all proceedings needed to effectively advocate on behalf of the consumer.

Table 2: Comparison of PUC and CA Budgets and Staff^{5,6}

Organization	Average Budget (Million)	Median Budget (Million)	Average Staff Size	Median Staff Size
Public Utilities Commission	\$32.5	\$16.6	167	86
Consumer Advocate	\$4.2	\$2.0	18	8

Although consumer advocates vary greatly in size, activity level, and issue areas, three core characteristics define all legislatively created CAs.

- **Explicit mandate to represent consumers:** This requirement generally refers to all consumers, although some CAs are limited to some of the following classes: residential consumers, low-income customers, agricultural, or small businesses consumers.
- **Structural separation from the utility regulatory body:** According to the National Association of State Utility Consumer Advocates’ (NASUCA) constitution, all official consumer advocates must “operate independently of state utility regulatory commission(s) with respect to policy determination, hiring and firing of personnel, and fiscal control.”
- **Standing in cases and the power to appeal decision:** The legislation that creates the CA also defines their right to intervene, have legal standing in all cases at the PUC, and appeal PUC decisions to the state’s court.

5 IPU-MSU Database on Consumer Advocates in the U.S., (2020), Retrieved from: <http://ipu.msu.edu/wp-content/uploads/2020/02/IPU-Database-on-Consumer-Advocates-2020-2.3.20.xlsx>.

6 Ciulla, J., Cross-Call, D., Felder, C., and Schwartz, A. (Forthcoming). People: Optimizing PUC Resources for Emerging Industry Needs, RMI, <https://rmi.org/insight/puc-modernization-issue-briefs/>.

On the other hand, the following characteristics may vary among consumer advocates:

- Method of appointment or election of the head of the office of the CA
- Term, if any, of the head of the office
- Location or division of state government where the office is housed
- Stability, reliability, source, and magnitude of annual budget
- Scope of jurisdiction granted
- Class(es) of consumers represented

Structures of Public Utility Commissions

PUCs are also known as public utilities, service, corporation, commerce, or regulatory commissions, authorities, departments, or boards, depending on the state. Their core functions are determined by state legislation or constitution and historically center on ensuring utility investments and rates are fair, just, and reasonable for all customers. PUCs are generally comprised of two main components: the commissioners and staff.

Commissioners: Commissioners render decisions on cases regarding regulated utilities, ranging from rate cases to resource planning. PUCs may have three to seven commissioners whose terms may last from four to six years. In most states, the governor appoints commissioners, with senate confirmation. Eleven states hold public elections for commissioners. In two states, the legislature elects or appoints the commissioners. Staff size ranges from 20 to more than 1,000 employees.⁷

Although the organization of a PUC can vary greatly, there is often some separation between commissioners and some of the staff to enable the PUC as a whole to maintain ex parte rules.⁸

Executive Director: Most, but not all, PUCs have an executive director who is responsible for managing the staff, allocating staff resources, and sometimes acting as an intermediary for commissioners and staff. In some states, such as Maryland, this role is carried out by the executive secretary while the executive director coordinates technical staff.

Advisory Staff: These staff work directly or indirectly with commissioners to provide research and analysis on the cases before the commission.

Advocacy Staff: These staff are separated from the commissioners and advisory staff to provide independent testimony and analysis to proceedings in the public interest. Not all states use advocacy staff. Sometimes advocacy staff operate in addition to the CA and sometimes they fulfill the role of the consumer advocate. For instance, the public staff of the North Carolina Utilities Commission is the legislatively created consumer advocate and fulfills the role of the advocacy staff.

Depending on state protocols, PUC staff are either assigned advisory or advocacy roles on a case-by-case basis (e.g., Oregon), assigned a role permanently (e.g., Nevada), or housed in separate agencies (North Carolina).

Historical and Emerging Trends in PUC-CA Engagement

Consumer advocates engage at their PUCs in two general categories: formal intervention and informal collaboration. Consumer advocates are subject to the same ex parte rules as any other intervenor, which can limit the topics on which the PUC and CA can engage.

Formal Intervention. Although statute dictates that consumer advocates have standing in all cases before the PUC, the CA may or may not be present in all proceedings. However, the consumer advocate will likely be present in at least all major rate cases. The level of involvement by the CA generally corresponds to the level of resources they have available. Resource-constrained CAs must decide which cases to participate in and to what degree they will participate. For example, a smaller CA may limit itself to only hiring expert witnesses in major rate cases to conserve resources and not participate in dockets that have a less direct impact on rates. Other CAs with greater resources or a statutory directive actively participate in all major cases.

7 Ibid.

8 Ex parte communication occurs when one party to a case talks or writes or communicates directly with a commissioner, administrative law judge, or other decision maker in the commission about the issues in a pending case without the knowledge of other parties to the case. Ex parte communications are prohibited due to the decision-making duties and responsibilities of these positions.

Informal Collaboration. Processes outside of the traditional space of litigated PUC proceedings are increasingly influencing energy policy and aspects of rate setting. Processes such as PUC-led working groups, stakeholder groups, tasks forces, and informal inquiries, as well as state legislative action, are increasingly influencing the regulatory landscape. In many of these cases, communication between CA and PUC staff occurs on a near-daily basis. In these contexts, maintaining the relationships and establishing clear pathways for collaboration are essential to the success of both organizations. This informal collaboration has continuously proven to increase the effectiveness of and support for regulatory proceedings that address emerging issues. Below are three examples of recent and ongoing informal collaboration.

- During the COVID-19 pandemic, PUCs were confronted with the challenge of balancing acute customer need for continued service with the economic fallout on utilities. The Illinois Commerce Commission turned to the state's two consumer advocates as well as low-income advocates and the City of Chicago to understand how they could best protect vulnerable customers in real time while also working with the utility on long-term financial solutions.
- In states that have wholesale markets, the PUC and CA may choose to share information and collaborate on wholesale issues and federally regulated matters where their interests align. For example, the Kentucky PUC and consumer advocate frequently work together on wholesale market issues, delineate focus areas, and find alignment on issues before the Federal Energy Regulatory Commission (FERC).
- PUC commissioners and staff are increasingly asked to address social equity concerns in their work; however, they may not have adequate or relevant experience to come to informed decisions. Consumer advocates, who advocate on behalf of ratepayers and work to ensure that vulnerable populations have access to adequate and reliable utility service at a reasonable price, can be a valuable resource as commissions are asked to integrate broader social equity concerns into utility regulation. The Oregon Citizens' Utility Board works to bridge the gap between environmental justice organizations and the PUC and local utilities.

As the regulatory environment and energy policy shift, several trends have emerged that are reshaping the consumer advocate and their role in utility regulation.⁹

The move away from litigated proceedings to more informal collaboration. Many important decisions that can affect consumers' rates and welfare are occurring outside of formal rate cases through informal collaborative processes. This evolution may cause challenges for CAs who were originally designed and resourced to engage in a narrow scope of litigated proceedings. The trend also requires new tactics and considerations from the CA, who historically may not have considered themselves as operating in a political environment. Tactics like establishing coalitions and bridge building with other parties have long been used by resource constrained CAs but may require new expertise and resources in the modern environment. Some CAs are increasingly leveraging media to engage their audience.

Fractured consumer interest in a complex and changing energy sector. Issues like net metering and grid modernization have split consumer interests, which, in some cases, can make it more difficult to represent consumers as a monolithic class. These new issues also bring new stakeholders to the table (e.g., solar developers, landowners) who occupy more and more of the CA's time. The tension between the urgency to act on climate change and the potential rate impact of those actions on customers, especially low-income residential customers, is at the forefront of many CAs' current concerns.

Increasing complexity and frequency of proceedings is a challenge for resource-constrained Consumer Advocates. The increasing number and complexity¹⁰ of issues under consideration is a challenge for both PUCs and CAs, but the impact is generally more pronounced for CAs due to their smaller budgets and more limited staff capacity. Many CAs have looked to external consultants, collaboration with their PUC and NASUCA, and educational materials to try to stretch their resources.

Intersection of state and regional or national issues. In states with wholesale markets, ratepayers are greatly affected by policies set by regional transmission operators (RTOs) and FERC. For example, the FERC's 2019 ruling establishing a Minimum Offer

9 Katz, E., and Schneider, T. (2020). The Increasingly Complex Role of the Utility Consumer Advocate. *Energy Bar Association*. Retrieved from: [https://www.eba-net.org/assets/1/6/5._\[Katz_Schneider\]\[Final\]\[1-21\].pdf](https://www.eba-net.org/assets/1/6/5._[Katz_Schneider][Final][1-21].pdf)

10 Lawrence Berkeley National Laboratory. (n.d.). The Future of Utility Regulation Series. Retrieved from: <https://emp.lbl.gov/projects/feur>.

Price Rule caused a national debate regarding its impact on consumers.^{11,12} Both PUCs and CAs may face expertise and capacity constraints when engaging with intra-state policy issues.

State legislation to align utility regulation with climate and equity priorities. Some states are reviewing the statutes that guide their utility commissions in light of modern policy goals around climate and social equity to determine if it is sufficient to meet those goals. In the last few years, at least 10 states and Washington, D.C., have passed legislation or otherwise ruled that their PUC must consider climate and/or equity in all or part of their decision-making processes. In some cases, this expansion of the mandate of the PUC also applies to the CA. Given the newness of such legislation, PUCs and CAs are still determining how it will impact their work. Several of the consumer advocates interviewed for this guide expressed concern about the unintended consequences of such policies on customers, especially how the costs of implementation might be borne disproportionately by those who already struggle to pay their utility bills.

The Public Benefits when Utility Commissions and Consumer Advocates Work Together

The relationship between PUCs and CAs can wax and wane over time as personnel turn over at each organization and as the issues they face change. The procedural nature of the regulatory realm may lend toward an adversarial relationship, unless both parties take actions to bridge the gap. Interviews for this document identified several opportunities for commissioners, staff, and consumer advocates to create a cooperative relationship and all work together to further their shared goal of serving the public.

I think that PUCs should look at their consumer advocate as if they were a retired commissioner with 30 years of experience who was now just a citizen concerned with their own rates who wants to participate in a rate case with a proposed rate increase. There's really no difference between that person and what the consumer advocate is and does.

– Chairman Kent Chandler, Kentucky Public Service Commission

Commission-Led Collaboration Opportunities

Commissions view consumer advocates as a resource. CAs can offer procedural history and regulatory insights to incoming and existing commissioners and staff. The advocate and staff frequently hold their positions for a long time and have garnered significant expertise by working with many commissioners and in many dockets. This institutional knowledge can prove invaluable for the PUC. At the start of their tenure, incoming commissioners can engage the consumer advocate to learn from their experience.

The PUC supports a more resourced consumer advocate. Given that consumer advocates must contend with the same issues as the PUC but, on average, have roughly 10 percent the staff and budget of the PUC, most CAs are chronically underfunded. CAs have learned to deal with this reality by using tactics such as selectively choosing when to engage, how deeply to participate, and partnering with other nonprofits and community organizations. Several interviewees noted the additional value that the CA can provide when they are well-resourced; for example, through filling gaps in the record of a proceeding by providing expert testimony.

I have never met a fully, adequately staffed consumer advocate office. I've never met a consumer advocate who is able to be involved in all the issues that we need to be able to take care of without working double time.

– Chairman Kent Chandler, Kentucky Public Service Commission

Where possible, the PUC can support increasing the funding of the CA by the state legislature, as a stronger CA contributes to a robust regulatory environment and better protection for the consumer. The PUC may also be able to offer support with prioritization, fund third-party analysis in some cases, or provide their own analysis on a scenario presented by the CA. The PUC could also provide technical support to the CA when doing so does not violate ex parte rules.

Consumer Advocate-Led Collaboration Opportunities

Provide both perspective and evidence to the PUC. Consumer advocates generally excel at bringing unique perspectives to cases

11 Gogging, M. and Gramlich, R. (May 2020). A Moving Target: An Update on the Consumer Impacts of FERC Interface with State Policies in the PJM Region. *Grid Strategies*. Retrieved from: <https://gridprogress.files.wordpress.com/2020/05/a-moving-target-paper.pdf>.

12 Organization of PJM States, Inc. (May 2020). OPSI PJM MOPR Filing. Retrieved From: <https://opsi.us/resolutions-and-filings/>.

but may not always provide sufficient evidence to support these perspectives. This is especially problematic for less-resourced CAs that might not have economic and/or technical expertise on staff. Commissioners need evidence included in the official record to react to; CAs can provide a clear vision for the PUC to consider and include evidence on why it is pertinent and how to get there.

Providing more tangible evidence may be possible under current resource levels by reprioritizing staff efforts or changing communication strategies. The consumer advocate can strive to increase their own capacity by deepening their partnerships with local and national advocates, nonprofits, universities, and their own community. Community members and community-based organizations may have a strong interest in utility regulation but experience significant challenges to formal or informal participation in a docket. The CA can facilitate this process or help translate community needs to the PUC, thereby introducing novel evidence and perspectives to the case.

You've got to tell the story in a way that the commission can understand. It's not a matter of just making adjustments in a rate case and defending those on the technical grounds. I think we have to be able to explain why: How this relates to policy? How does it relate to longer term decisions of the commission? How it is in line with the way we regulate? My team is going to do the best if the evidence supports us, but the narrative and the story of the case supports us too. Where I've got good evidence and I'm losing the narrative, it's hard to win. Or I have good narrative, but the evidence doesn't support that narrative, I'm not going to win.

– Bob Jenks, Oregon Citizens' Utility Board

Joint Opportunities

Establish and maintain shared credibility. When the CA and PUC acknowledge each other's position, perspectives, and hard work, both entities benefit and regulatory efforts are streamlined. Because the PUC manages proceedings, it can ensure the CA has sufficient time and attention to adequately present their full case in a proceeding. Both the CA and the PUC are staffed by incredibly hard-working professionals, and it pays to acknowledge this.

Communicate frequently and proactively, when possible. There are intentional limitations on the communications that can happen in an active regulatory proceeding, as defined by ex parte rules. However, both the CA and PUC representatives interviewed emphasized the value of regular communications between the two parties, when possible. This engagement can help to build relationships, illuminate one another's perspectives, and address and prioritize emerging issues outside of docketed proceedings.

Something I didn't really appreciate as an incoming Commissioner was the range of things that the Consumer Advocate actually deals with day to day, but that don't ever rise to the level where they require a commission decision, commission action, or commission intervention. The things we see as Commissioners are only a very small slice of the work that they do.

– Commissioner Dan Clodfelter, North Carolina Utilities Commission

Finding out what's important to the commission can help the consumer advocate to focus where they want to allocate their resources in any particular case, particularly in smaller offices. Having a dialogue and understanding what is important to each other, really helps make cases smoother. Any time the two entities can align in the best interest of consumers, it's a good thing.

– Chris Ayers, North Carolina Utilities Commission Public Staff

We want to help CUB focus its resources on the most challenging issues. We want to know if there is some little problem causing challenges, that can disproportionately impact the ability to represent the consumers' interests. We talk informally with the CUB and others to take care of any of these little building issues. I call these my 'pressure release valve meetings.' If any tensions are building, let's talk about things and let that pressure out so we can all focus resources on the more important issues.

– Michael Grant, Oregon Public Utility Commission:

Invite each other and participate in joint learning opportunities. As noted, PUCs and CAs are all grappling with the increasing complexity and pace of change across the electricity system. Various organizations at the state, regional, and national levels offer learning opportunities for commissioners and staff of PUCs and CAs to support their education about new technologies, analyses, planning and ratemaking approaches, and more. In November each year, NASUCA and NARUC co-locate their annual meetings, which include many educational sessions and discussion opportunities. NCEP, DOE, and the DOE National Laboratories provide

educational materials and offer training events for members of NARUC and NASUCA (in addition to other state agencies). Increasingly, many NARUC trainings on electricity system issues have been open to NASUCA members as well. PUCs and CAs can spread the word within their state and region to encourage their counterparts to attend these events.

Additionally, some states or regional nonprofits offer educational events. In Illinois, the commission hosts regular summer and winter policy sessions and recently started to invite the attorney general’s office and other consumer advocates, in addition to the utilities, to talk about how the utility systems are running. During one event, the CA pointed out that NARUC and NASUCA both had adopted a resolution concerning affordability, which the commission took interest in.

We participate whenever we’re invited. We participate, give presentations, and have open discussion in conferences and policy sessions, which frequently yield progress on shared topics.
– Susan Satter, Illinois Attorney General’s Office

Collaborate on transmission issues. Both CAs and PUCs face resource and time constraints to engage in RTO processes or FERC proceedings. In some states, like Kentucky and Illinois, the CA and PUC have shared the responsibility of tracking FERC proceedings, engaging in information sharing, and where possible, split up the issues to tackle. Both PUCs and CAs have created regional coalitions of their own members to engage with RTOs, such as the Organization of PJM States¹³ and the Consumer Advocates of PJM States.¹⁴ Additionally, NARUC and NASUCA sponsor regional collaboration through task forces and workshops.

MINI GUIDE EXAMPLES

To give commissions and consumer advocates a more complete idea of how these relationships work in practice, the following section presents condensed excerpts from interviews with consumer advocates, commissioners, and commission leaders from three states: Illinois, North Carolina, and Oregon.

Table 3. Mini Guide Interviews

Name	Position	Organization	Organization Type
David Kolata	Executive Director	Illinois Citizens Utility Board	Nonprofit
Susan Satter	Chief	Illinois Attorney General: Public Utilities Bureau	Attorney General
Jim Zolneirek	Chief	Illinois Commerce Commission: Public Utilities Bureau	PUC
Chris Ayers	Executive Director	North Carolina Utilities Commission – Public Staff	State Agency
Dan Clodfelter	Commissioner	North Carolina Utilities Commission	PUC
Bob Jenks	Executive Director	Oregon Citizens’ Utility Board	Nonprofit
Michael Grant	Executive Director	Oregon Public Utility Commission	PUC

Each person interviewed expressed his or her own opinions. Inclusion in this document does not indicate an author’s or organization’s endorsement of any statement or suggestion.

Illinois

There are two consumer advocates in Illinois: Illinois Public Utilities Bureau of the Attorney General’s Office and the nonprofit Illinois Citizen’s Utility Board.

The following text is an abridged transcript of interviews conducted with David Kolata, Executive Director of the Citizens Utility Board; Susan Satter, Chief of the Public Utilities Bureau of the Office of the Illinois Attorney General; and Jim Zolneirek, Chief of the Illinois Commerce Commission Public Utilities Bureau.

Can you share some examples of the working relationship between the Commission and Consumer Advocate?

Susan Satter, Illinois Attorney General’s Office: Recently, the commission started to invite my office and other consumer advocates to twice-annual policy sessions, in addition to the utilities. We talked about affordability because rates were going up. We pointed out that NARUC and NASUCA both had adopted a resolution concerning affordability and our commission took significant interest in the issue, and we have made good progress. Now, is the topic of affordability completely addressed? No. But

13 <https://opsi.us/>

14 <http://www.pjm-advocates.org/>

we're gathering public data. That is very important, and my hat is off to the Commissioners for opening that door and letting us walk through it.

Jim Zolneirek, Illinois Commerce Commission Public Utilities Bureau: If the commission staff and the attorney general's office can work on issues together, we can often knock out issues completely. For example, every four years our utilities need to create an energy efficiency plan to govern how they're going to implement their efficiency programs over the next four years. In the most recent iteration, the utilities shared a proposal and all the parties got together and went through the plans in detail. We ended up reaching agreement on the plans for all of our major utilities before they submitted the plans to the commission. There was no litigated issue because everything got worked out beforehand, which was great.

How has your organization responded to the increased complexity and pace of the modern utility regulatory environment?

David Kolata, Citizen's Utility Board of Illinois: We feel comfortable about our capacity to engage; but we don't have the magic bullet to solve all the issues at hand because they are so enormous and complicated. In addition to the policy complexity, there are other factors like politics and the nuance of the utility business model.

I see a risk that just and equitable policies won't develop unless Consumer Advocates and other stakeholders advocate at the start to put a ratepayer-focused framework in place. For example, we have done significant modeling to show that electric vehicles could be a benefit to customers, but this won't happen automatically. If we have the right kinds of policies, we can envision a world in which we implement equitable grid optimization policies and all consumers will be better off as a result — even those who don't drive or own an EV.

Susan Satter, Illinois Attorney General's Office: In my opinion, this regulatory environment is no more challenging than past regulatory environments. Electricity regulation has always been a challenging field and has always been changing. I was in the industry when the 'complexity of the day' was nuclear plants and when it was restructuring. The only thing that's different now is an effort to shoehorn some environmental issues such as electrification and electric vehicles.

Consider this: we had virtually no air conditioning in the 60s and 70s and now everybody has air conditioning. That's an enormous increase in electric use. Will EVs do that? I don't know. But why are utility customers being asked to carry this transformation through rate-based EV infrastructure? At the end of the day, my job is to protect the utility customer and I think we should look critically at every single proposal to use ratepayer capital and ask if it is in their best interest.

How has the growing importance of non-litigated, informal engagement affected the relationship between the ICC and the Illinois consumer advocates?

Jim Zolneirek, Illinois Commerce Commission: It definitely helps that we can all get together, maybe with the utilities or maybe without the utilities, to talk through issues when they arise to see if we can find points of commonality. We don't always agree and sometimes we won't, but we can work out many issues before they reach the commissioners and narrow down the number of issues where folks don't agree. It makes litigation more efficient to be focused just on areas of disagreement. Once litigation gets to the commission, it's a lot harder to negotiate and resolve issues within a case. So, initial informal interaction is very productive.

For example, when COVID-19 hit, the question many utility commissions faced was what to do in response, how to protect consumers, etc. We immediately started discussions with our utilities, the attorney general's office, and other stakeholders. The attorney general was instrumental in working with us and the utilities to find common solutions that we then brought to the commission; a lot of that was done informally, prior to the commissioners' involvement.

North Carolina

The consumer advocate, the North Carolina Public Staff (NCPS), is an independent state agency with a large staff that participates in nearly all cases before the North Carolina Utilities Commission (NCUC).

The following text is an abridged transcript of interviews conducted with Commissioner Dan Clodfelter, North Carolina Utilities Commission and Chris Ayers, Executive Director, North Carolina Utility Commission Public Staff.

Can you describe the working relationship between the Commission and Consumer Advocate?

Chris Ayers, North Carolina Public Staff: In North Carolina, there are two aspects to that working relationship: as a party to a case and in a collaborative role in non-litigated projects. First, the bulk of our working relationship is as a party before the Utilities

Commission, just like any other intervenor in a docket. When a utility files a rate case, a new program, or other filing, the public staff is responsible for investigating and auditing that file. For example, in rate cases, we go through the filing and issue hundreds of discovery requests. We review data and documents and then put a case together with an eye towards what is best for consumers. We present that case to the commission, along with other intervenors and the utility, and then we go to hearing in front of the commission. The public staff is bound by the same ex parte rules as all the other parties before the commission. We have to function just like a party, and then we await a decision from the commission just like everyone else.

The second part of our relationship covers the various times when we work in a collaborative manner with the commission on special projects. For example, we may be asked to evaluate proposed legislation in the state, participate in a workgroup like the NARUC-NASEO Task Force on Comprehensive Electricity Planning as part of a North Carolina team, or work on federal issues.

When is the relationship between the PUC and the Consumer Advocate at its best?

Chris Ayers, NCPS: The relationship functions at its best when the PUC and the CA both have tremendous credibility and trust with one another. Our organization is a party in proceedings and thus has a burden that is wrapped up in credibility, competency, expertise, transparency, and accuracy. When the consumer advocate is credible and competent, the commission can take a great deal of confidence in relying on evidence brought forward by the Advocate. Similarly, when the commission treats all parties equitably and provides the CA the opportunity to fully present their case, then the CA can trust their work will be valued, evidence will be input into, and the commission will render a decision accordingly. What makes a real difference is not how many or how few people you have, but that you are credible on an issue and with the evidence that you're putting before the Commission.

How have the PUC and CA responded to the increased complexity and frequency of the utility regulatory environment?

Commissioner Clodfelter, North Carolina Utilities Commission: Fifteen years ago, the universe of the parties who were providing input into the regulatory process was much more limited. In North Carolina, we have a very rich and diverse group of participants now. In any given docket of significance, we may have seven or more interest groups appear in front of us. That means that sometimes we'll have a particular intervenor in a case who is advocating for a particular point of view and course of action. To some extent, that lets the public staff separate themselves and focus on other items because that viewpoint is covered. The more parties at the table, the more flexibility the consumer advocate has about choosing which particular issues they want to focus in on any particular regulatory proceeding. I think that's a real benefit.

Chris Ayers, NCPS: Dealing with complexity is sometimes an issue of expertise and sometimes an issue of workforce capacity. Many regulatory processes are becoming increasingly complex and granular. One example: whereas seven or eight years ago, we had a tariff that defined a fairly simple avoided cost rate, now, we have more dynamic avoided cost rates that are responsive to the cost of energy on the system between seven and eight in the morning on January 1, versus a 102-degree day on August 15. Resource and system planning is increasingly complex and data dependent. Fortunately, we have staff right now that speak the language and are capable of tackling the increasingly complexity and presenting recommendations to the Commission. However, that is not always the case. When we do not have the necessary expertise on staff, we go out and get some additional expertise or capacity to get the job done.

What should incoming commissioners know about their CA?

Commissioner Clodfelter, NCUC: What I didn't really appreciate as an incoming commissioner was the range of things that the public staff deals with that don't ever rise to the level of a commission decision, commission action, or commission intervention. I didn't appreciate the number of informal things they handle: inquiries, questions they fulfill, requests for advice they get from other advocates and the utilities, like "What do you think we should do about this?" or, "How do you think the commission would look at that?" or "What do you think the reaction would be if we did a, b, and c?" Questions like that come in on an hourly basis, and the public staff processes and reacts to those. I do not think I had any appreciation for that work before I came onto the commission; it's really critical. The things we see as commissioners are only a very small slice of the work that they do.

Oregon

The Citizens' Utility Board (CUB) is recognized in statute as the entity designated to represent the interests of residential customers in the state of Oregon.

The following text is an abridged transcript of interviews conducted with Bob Jenks, Executive Director of the Citizens' Utility Board of Oregon and Michael Grant, Executive Director of the Oregon Public Utility Commission.

Can you describe the working relationship between the CUB and the PUC in Oregon?

Bob Jenks, Oregon Citizens' Utility Board: Oregon is probably one of the least litigious states related to utility regulation: most dockets have settled for many years. I've been doing this now for about 30 years; I've only taken the commission to court twice over their decisions during that time span. In most cases, we sit down with the staff of the commission and the utilities and are able to work out a reasonable compromise on most issues. In that respect, I think the stakeholders try to cooperate to get to fair energy policy. It helps that we know we've had a good commission, in my mind, for consumers.

For example, the Commission did some really good stuff on COVID last year. We had asked them to extend the moratorium through the winter. We suggested that they ask each utility to put aside 1 percent of its revenue requirement as a fund to help manage the arrearages that the customers had built up in COVID, so that was a significant amount of money — \$39 million among the utilities in Oregon. On a whole series of issues, the commission has set good policies, even as the commission has changed.

Michael Grant, Oregon Public Utility Commission: At any given time, we probably have 30 to 40 major proceedings going on at the agency. One thing that I've appreciated about CUB is that they focus on both the short-term and the long-term interests of customers. They haven't taken an approach of just focusing on the lowest rate possible but instead look at the bigger picture. Oregon has been leading a lot of transition in the energy sector and CUB has recognized that maybe a little investment now could help reduce costs to a greater extent in the future, so the long-term interest would favor this transition to renewables, for example. CUB has been on the cutting edge of a lot of discussions about greenhouse gas reductions —transformational policy work in addition to the lot of the nuts and bolts of ratemaking.

When is the relationship between the PUC and the consumer advocate at its best?

Michael Grant, OPUC: I think the relationship works best when the consumer advocate can clearly articulate and define its top priorities and focus attention and allocate resources on those priorities. Usually, getting into the evidentiary hearing stage is not good for anybody, because it takes a lot of resources and may force the commission to make hard decisions that could be avoided if folks were able to get together and come up with informal resolutions of dockets that everyone can live with. CUB has done a really good job partnering with the industrial customer group on joint issues, and they have even divided up issues of common interest in rate proceedings. That helps everybody because it's a more efficient use of resources and streamlines issues for consideration on the commission's behalf. I think having an approach of problem solving, focusing on your key priorities, and developing partnerships with other entities helps facilitate informal resolution of cases.

Would you say the relationship between the CA and PUC is unique, compared to other participants in regulatory processes in your state?

Bob Jenks, OCUB: I generally think the role of the consumer advocate is unique. I have always thought that the utilities and industrial customers are, first and foremost, looking out for their bottom line. While we are also looking out for customers' economic interests, it's not the same. We're dealing with people who are struggling to pay bills, and we're trying to get policies in place that make sense for those people. The consumer advocate is the party that tends to wear our hearts on our sleeves a little bit. The PUC staff does some of that as well, but they operate from more of a purely technical position, and it's just not the same.

For example, we recognize that we've got to make a transition because of climate change. We can't ignore it, and if we do it in a thoughtful manner, it's going to be more affordable for customers. Industrial customers, on the other hand, focus on short-term economic benefit according to their incentive structure. They don't want to accelerate depreciation of a coal plant to retire it early because that could push up rates in the short-term, even though it's also a long-term reduction in stranded cost and litigation risks.

Michael Grant, OPUC: If you'd asked me that question 10-15 years ago, I would probably say no, the relationship is not unique because all the folks who participated in our proceedings then had worked together for a long time and had good working relationships that helped resolution of disputes. Now, we have a whole lot of new players before us representing various and new interests, and some of those (particularly those with discrete financial interests) are taking a more traditional, litigious role and may not be focused so much on public policy problem solving. The consumer advocate's approach stands apart from many new players due to their focus on customer welfare.

What should new participants at the PUC know about the regulatory process?

Bob Jenks, OCUB: The regulatory process is slow and does not respond immediately. There's a level of impatience among new folks coming in. The commission must build evidence and make decisions, which is a legalistic process, and folks aren't necessarily ready for that. In the natural gas docket, for example, there are a lot of folks who want to immediately ban new gas hook-ups. However, it is not clear the commission could even do that on the back end of this docket. Regardless, it can't do that without

first exploring all sides of the important questions: What is the risk of those new gas hook-ups? What impact does that have on customers? What costs are being incurred? The parties need to build an evidentiary case first before starting to propose policies.

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About the Institute for Market Transformation

The Institute for Market Transformation (IMT) is a national 501(c)(3) nonprofit organization that catalyzes widespread and sustained demand for energy-efficient buildings. Founded in 1996 and based in Washington, D.C., IMT specializes in driving the intersection of real estate and public policy to make buildings more productive, affordable, valuable, and resilient.



NATIONAL COUNCIL
ON ELECTRICITY POLICY

About the National Council on Electricity Policy

NCEP is a platform for all state level electricity decision makers to share and learn from diverse perspectives on the evolving electricity sector. The community includes representatives from state public utility commissions, air and environmental regulatory agencies, governors' staffs and energy offices, legislatures, and consumer advocates. NCEP is administered by the National Association of Regulatory Utility Commissioners (NARUC) Center for Partnerships and Innovation (CPI).

NCEP serves as a forum for collaboration around grid-related topics at state, regional, and national levels, offering a unique opportunity for state electricity decision makers throughout the country to examine the ways new technologies, policies, regulations, and markets impact state resources and the bulk power system.



NARUC

National Association of Regulatory Utility Commissioners

About the NARUC Center for Partnerships & Innovation

NARUC CPI identifies emerging challenges and connects state utility commissions with expertise and strategies to navigate their complex decision-making. We accomplish this goal by building relationships, developing resources, and delivering training that provides answers to state commissioners' questions. CPI works across four key areas on a wide range of projects: energy infrastructure modernization; electricity system transition; critical infrastructure, cybersecurity, resilience; and emerging issues. CPI is funded by cooperative agreements with the U.S. Department of Energy (DOE), the National Institute of Standards and Technology (NIST), and charitable sources.