

## *Accountability and Participation in Decision Making*

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Advocates seeking to improve water affordability can work within current decision-making structures to influence rates, policies, and programs. They can also work to change the decision-making structure to improve their ability to effect change and hold decision makers accountable.

Existing processes for decision making by—and oversight of—water and wastewater utilities can vary widely from place to place. To help orient advocates new to this work, this module explains the scenarios that typically arise.

This module also goes a step further, exploring how advocates—whether new or experienced—can seek to change the decision-making processes to improve their ability to achieve their goals. (As discussed in several other modules of this toolkit, advocates can also seek to bypass the decision-making processes of local governments and state utility commissions by appealing directly to state legislatures to establish rules, policies, and programs that apply uniformly to all utilities.)

Part 1 of this module addresses investor-owned utilities, which are regulated by state utility commissions. They are subject to very formal, structured, public decision-making processes. Part 2 addresses publicly owned utilities. While these utilities have widely varying governance structures, typically their decision-making processes are much less structured than utility commission procedures, and they offer fewer formal opportunities for public input.

Understanding these differences is essential to effective advocacy for change.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Understanding variations in water and sewer utility governance and oversight
- Using existing opportunities to influence decisions on rates, policies, and programs
- Improving public oversight and accountability of investor-owned utilities, including by:
  - Enabling affordability advocates to participate effectively in rate cases by providing compensation for their time and for retaining expert witnesses and by making proceedings more accessible
  - Strengthening requirements for utility data reporting to the commission
  - Strengthening policies concerning fair, transparent, and ethical decision making by utility commissioners
- Improving public oversight and accountability of publicly owned utilities, including by:
  - Creating an independent local ratemaking board and adapting decision-making processes from the state utility commission context
  - Creating a local Water Customer Advocate Office
  - Establishing partial or full oversight of publicly owned utilities by the state utility commission or other state agency

## PART I: HOLDING INVESTOR-OWNED UTILITIES ACCOUNTABLE

The overwhelming majority of people who receive drinking water from a utility (84 percent) are served by publicly owned utilities.<sup>1</sup> The remaining minority of water customers (and an even smaller percentage of wastewater customers) are served by private companies that are typically owned by corporate shareholders and referred to as investor-owned utilities (IOUs). Some small—typically very small—privately owned water companies are not investor-owned. This toolkit does not address issues unique to those systems.

As for-profit monopolies, IOUs are regulated by state utility commissions. This section explores the decision-making processes for commission-regulated utilities in regard to rates and consumer protections. (As will be discussed in Part 2, below, a small minority of publicly owned water utilities are also regulated by state utility commissions. Those utilities are covered by the same decision-making processes as IOUs.)

### QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions can help you identify relevant decision makers and opportunities to impact decisions concerning your utility.

- Is your utility investor-owned or publicly owned?
- Is your utility regulated by the state utility commission?
- If the utility is regulated by the state utility commission:
  - Are commissioners appointed or elected?
  - How can customers participate in decisions on rates and consumer protection rules and policies? For example, can an advocate or advocacy organization intervene as a party when the utility proposes a rate increase, or petition for changes in consumer protection rules?
  - How can you attend and participate in commission open meetings and/or comment on open proceedings?
  - Is there a ratepayer or consumer advocate?
  - How can you get information about how the utility is performing on matters concerning affordable access to service? (See the Data Collection and Transparency Module for recommended data that should be made publicly available.)
- If the utility is publicly owned and *not* regulated by the state utility commission:
  - What is the governance structure for the utility? For example, is it operated as part of the municipal government (like a water department or public works department) or as a separate entity (like an authority or special district)?
  - Are the people in governance positions elected or appointed? If appointed, by whom?
  - Who are the local decision makers on rates and consumer protection rules and policies, and what opportunities exist for public participation in decision making on those issues?
  - Is there a department, consumer board, or ombudsman to address consumer complaints?
  - Is there a ratepayer or consumer advocate?
  - How can you get information about how the utility is performing on matters concerning affordable access to service? (See the Data Collection and Transparency Module for recommended data that should be made publicly available.)

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84 percent of customers are served by publicly owned water utilities.

Most others are served by investor-owned private utilities.

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## Who has decision-making authority?

The rates and policies of IOUs, as well as their decisions concerning infrastructure investments, are overseen by state public utility commissions.<sup>2</sup> These commissions are sometimes referred to as public service commissions or public utility boards or departments. A public utility commission's authority is derived solely from state statute. The decisions and rules it issues must adhere to the framework outlined in a state's public utilities law.

In some states, the commissioners are appointed by the governor. In other states, they are elected by the public.

Typically, commissioners serve for a fixed number of years and may represent specific geographic areas within the state. The commissions are composed of a mixture of political affiliations, with the majority party typically mirroring the governor's party affiliation for appointed commissions.

In addition to regulating individual utilities' rates, state utility commissions have consumer protection regulations that apply to all utilities they regulate. The rules for water utilities may be in the same section as those for other utilities, or they may be in a separate section. Either way, rules usually apply equally to electric, gas, and water utilities, though there may be some variation.

Some utility commissions summarize their consumer protection rules in a customer "bill of rights." An official state consumer advocate office or independent, nonprofit advocacy organizations may also offer educational materials about these protections. Commission rules typically address applications for service, billing, meter-reading, deferred payment arrangements, late fees and deposits, shutoff protections and procedures (including notice requirements), customer complaints and dispute resolution, and other issues.

## How can the public participate in decision making?

Public utility commissions are subject to state open-meeting and open-records laws, as are most state government agencies. However, utility commissions use very formal legal proceedings to make decisions (for example, when setting rates). This can look very similar to a court trial, with participating "parties" having the right

to request documents from the utility (and vice versa), present evidence and expert witnesses, cross-examine other parties' witnesses, file legal briefs, and present oral arguments. Sometimes formal commission proceedings are used to establish policy or rules governing a class of utilities.

Each proceeding (or "case") has a "docket"—essentially a case number and copies of materials filed in the case. A commission will open a docket when the utility seeks to revise its rates or policies. Commissions may also open a docket on their own initiative to develop a new regulation or policy or to investigate issues concerning a specific utility. In many states, dockets can be accessed on the commission's website, sometimes with an option to subscribe for email notification when a new document is added to the docket.

A commission's rules of procedure and the commission's website may detail when and how members of the public—not limited to formal parties to a case—can make written and oral comments about matters of general concern or about any specific docketed proceeding.<sup>3</sup> The right to speak publicly to a commission is an important one that should be exercised early and often when seeking to challenge utility actions and policies. Inviting members of the press to observe and write about an open meeting in which advocates plan to speak can be an important method of gaining public attention. But timing is everything: Advocates should not wait until the date they expect a commission to make its decision to weigh in publicly. By then, commissioners' votes have largely been decided. Advocates' early and frequent participation in open meetings during the pendency of a case is key to keeping an issue on a commission's radar.

Advocates wishing to participate more extensively in a utility rate case or other commission proceeding typically must file a petition to "intervene" as a formal party to the case, most often through an attorney. Any person or organization that intervenes has all of the rights of parties, described above, to participate in the trial-type proceedings. Many if not most states require an intervening party to be represented by an attorney. (California is one exception to that rule.<sup>4</sup>) The National Consumer Law Center offers a consumer's guide to intervening in utility

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The right to speak publicly to a state utility commission should be exercised early and often.

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commission proceedings, which is a helpful resource to any advocates considering participating as intervenors.<sup>5</sup>

If unable to afford an attorney, advocates seeking to engage beyond general opportunities for public comment should contact the state office that represents residential ratepayers before the state commission, typically the state attorney general's office or a designated state consumer advocate office.<sup>6</sup> Representatives from these offices can advise you on how to obtain pro bono representation or may welcome the opportunity to work jointly with grassroots advocates on issues impacting residential customers. Similarly, if other like-minded organizations have intervened in a commission proceeding (as reflected in the formal docket), they might have an interest in collaborating. Advocates should also attempt to reach out to relevant commission staff member who may be working on a case to discuss concerns and positions in the case.<sup>7</sup>

Commission decisions can be appealed to state court. In these lawsuits, however, courts typically set a high bar for overturning the commission's decision.

### **How can decision-making processes be changed, to strengthen oversight and accountability?**

There are many steps that state legislatures and utility commissions should take to help level the playing field for consumer advocates as they attempt to impact policy and rates at state commissions. First, states can provide "intervenor compensation" to enable community-based advocates and concerned individuals to participate fully and effectively in often complicated and resource-intensive commission proceedings. Utility customers pay for the cost of a utility's legal representation and expert witnesses in commission proceedings, since these costs are recovered in the utility's rates. The same benefit should be provided to consumer advocates, who often lack the funds to hire an attorney, let alone expert witnesses.<sup>8</sup> States with intervenor compensation have typically enacted these benefits through state legislation.<sup>9</sup>

Second, beyond providing funding for intervenors, states and utility commissions should consider ways to make proceedings more accessible to community-based groups. For example, commissions could publicize important proceedings on their website and within potentially impacted communities, conduct workshops or trainings on how to participate, and/or hold public hearings on issues of importance at times and places that are accessible to impacted communities (again, ideally with financial support for under-resourced groups to participate).

Third, states should take proactive steps to increase the transparency of utility operations and customer impacts of utility rates and policies. For example, they should require utilities to file—and utility commissions should post online—monthly reports on shutoffs, reconnections and

other credit and collections data by zip code or U.S. Census tract. This information is critical to understanding how utility policies and rates impact households, determining whether disparate impacts on certain communities and populations are occurring as a result of utility policy and rates, and identifying places where assistance is most needed. (See the Data Collection and Transparency module for more detail on the information that should be collected and reported and examples from various states.)

Fourth, commission employees, including commissioners, should be required to undergo equity training as part of any job training. Understanding how structural racism in our laws and economy have contributed to the lack of generational wealth among communities struggling to afford essential utility services is critical to enacting change and understanding why utility bill affordability and debt relief are needed.

Fifth, strong "revolving door" provisions should be put in place to ensure that when their terms expire, commissioners aren't rewarded with jobs or consulting arrangements with utilities regulated by the commission or positions representing a regulated utility through employment at a law firm.<sup>10</sup> Revolving door rules would bar such activities for a period of time after a commissioner's term ends, helping to avoid conflicts of interest in commissioners' decisions.

Sixth, in order to ensure independent, evidence-based decision making, strong ex parte rules for commissioners and other key decision makers should be codified in law and strictly enforced. Ex parte rules place restrictions on private, "off-the-record" communications between decision makers and individuals or organizations with an interest in the outcome of a case. At a minimum, any communications by commissioners or their direct advisors with external parties concerning an ongoing, active proceeding should be documented and publicly reported.<sup>11</sup> Some states have also imposed additional restrictions, such as rules prohibiting any communications with parties within a certain timeframe of a decision, or preventing utilities from consulting with commissioners or their staff immediately before filing a rate increase.<sup>12</sup> Which restrictions are necessary or beneficial may depend on local circumstances, including the existing dynamic between commissioners, utilities, and any consumer or public interest advocates in the state.<sup>13</sup>

Advocates, however, should not be discouraged from contacting commission staff participating in formal commission proceedings to discuss positions and encourage consensus on issues. Conversations with commission staff are typically permitted, although the staff members may be required to document the meeting.<sup>14</sup> Such conversations are important because administrative law judges and commissioners, rightly or wrongly, often view commission staff testimony as the most objective opinion in a case.

## FORMAL OPPORTUNITIES FOR PUBLIC PARTICIPATION IN UTILITY DECISION MAKING

Public oversight of water and sewer utilities' rates and consumer protection rules is not an "on-off switch." Depending on the specific decision-making processes that apply to your utility—for example, whether it is regulated by a state utility commission—formal opportunities for advocates to hold water utilities accountable vary widely. These opportunities may include some or all the following, listed roughly in order of how robust they are:

- Advance notice of proposed rates, rules changes, and official meeting agendas
- Public hearings on proposals (either informal/off-the-record or formal/on-the-record)
- "Sunshine" or open-records laws requiring disclosure of information relied on by decisionmakers
- Right to formally petition for a change in rules or policies
- Requirement for decision maker to issue a formal, written decision that considers public comments, testimony, and/or evidence in the record
- Opportunity to submit evidence to support a position
- Opportunity to review and contest the utility's evidence supporting a rate increase
- Opportunity to intervene in formal legal proceedings before a neutral adjudicator
- Rules against improper ex parte communications with decisionmakers that ensure transparency
- Dedicated, funded public advocate to represent residential customers' interests (e.g., a consumer advocate office)
- Dedicated intervenor compensation for public interest groups to participate in rate-setting processes

Virtually all of these protections exist for customers of systems that are regulated by state utility commissions, which are primarily investor-owned utilities. (The main exception is intervenor compensation, which is available in only a minority of states.<sup>15</sup>)

For systems not regulated by utility commissions—including the publicly owned systems that serve the vast majority of the U.S. population—practices vary widely. As you proceed down the list, the more robust protections become increasingly rare; in some places, even the most basic protections may be missing. There are exceptions, however. For example, an amendment to Philadelphia's city charter and subsequent city ordinance created a rate-setting process that includes all of these procedures except intervenor compensation.<sup>16</sup>

Typically, a final decision on rates, whether made by a state utility commission or by a publicly owned utility, is subject to challenge in state court. In these lawsuits, however, courts typically set a high bar for overturning a decision.

In principle, all of the practices listed above could be applied to any utility, with or without bringing the utility under the jurisdiction of a state utility commission. Existing oversight processes are not set in stone; they are established by local and/or state laws. And, as all advocates know, laws can be changed.

## PART 2: HOLDING PUBLICLY OWNED WATER AND WASTEWATER UTILITIES ACCOUNTABLE

The two primary types of publicly owned water and wastewater systems are municipal utilities or entities known as authorities or special districts. Municipal water utilities are run directly by the local government of the area they serve, such as the water department or public works department of a city, town, or county. Authorities or special districts serve one or more municipalities (sometimes dozens across a large metropolitan area), but they exist and are governed as legal entities separate from the municipal government.<sup>17</sup>

The vast majority of publicly owned water and wastewater utilities in the United States are *not* regulated by state utility commissions, although there are notable exceptions

in some states.<sup>18</sup> (See text box below, "Existing Utility Commission Regulation of Publicly Owned Water and Wastewater Systems.") Additionally, public-private partnership arrangements between publicly owned systems and private companies or investors typically are not subject to state utility commission oversight, even though they introduce a substantial element of for-profit management and finance that affects (for good or ill) both quality of service and rates.<sup>19</sup>

Therefore, for most publicly owned utilities, local decision makers have wide discretion to set rates.<sup>20</sup> They also have discretion to establish rules and policies concerning nonpayment of bills and other matters of concern to water affordability advocates. Opportunities for public oversight and participation in these decisions vary widely.

## EXISTING UTILITY COMMISSION REGULATION OF PUBLICLY OWNED WATER AND WASTEWATER SYSTEMS

In about 10 states, utility commissions are involved to at least some degree in oversight of publicly owned water and/or wastewater systems.

Wisconsin is the only state where virtually all publicly owned water systems are commission-regulated. Publicly owned wastewater utilities are not commission-regulated in Wisconsin, except that the commission will review the reasonableness of rates, rules, and practices if a customer files a complaint.<sup>21</sup>

In approximately 10 other states (Alaska, Indiana, Kentucky, Maine, Maryland, Mississippi, New Jersey, Pennsylvania, Rhode Island, and West Virginia), utility commissions have varying degrees of limited jurisdiction over publicly owned water and/or wastewater utilities.<sup>22</sup> Some regulate publicly owned utilities unless the utility opts out; others regulate only the rates charged to retail customers outside of their own municipal boundaries; and others regulate only very small water or sewer districts. In some of these states, public water authorities or districts may be fully exempt from commission regulation, even though utilities owned by a municipality are subject to the commission's limited jurisdiction.<sup>23</sup> (As noted above, Wisconsin's utility commission also exercises limited oversight of wastewater utilities.)

In Pennsylvania, state law singles out one specific publicly owned utility (Pittsburgh Water and Sewer Authority) for full commission regulation.<sup>24</sup> There may be arrangements like this in other states as well.

### Who has local decision-making authority?

For municipal systems—assuming they are not regulated by a state utility commission—the water department or public works department sometimes has full authority to set rates and adopt rules, answerable only to a mayor. Elsewhere, a city council is responsible for rate-setting; in that case, the utility would develop a proposed rate schedule and submit it to the council for approval. In still other places, rate-setting may be the responsibility of an independent board, commission, or similar body that has been created specifically for that utility and whose members are typically appointed by a mayor and/or city council.

Where the city council or an independent body sets rates for a municipal utility, the same entity may also have responsibility to adopt rules concerning nonpayment of bills and other matters. Alternatively, the municipal utility itself (i.e., the water department or public works department) may have this responsibility.

For water authorities or special districts—again, assuming they are not regulated by a state utility commission—a governing board is wholly responsible for setting rates, adopting rules and policies, and managing and operating

the water or sewer system. This board is often composed of representatives from some or all of the municipalities in the service area. Board members may be appointed or directly elected.

### How can the public participate in local utility decision making?

In some places, residents may be entitled to little more than notice of a pending rate increase and, perhaps, an opportunity to speak in support or opposition at a meeting of the city council, water board, or other utility governing body. At the opposite end of the spectrum, some larger municipalities may have a formalized rate-setting process that looks something like a trial, similar to a state utility commission rate case, in which advocates can intervene as parties and have the right to present expert testimony and cross-examine the utilities' witnesses. Philadelphia offers a prominent example of that model.<sup>25</sup> In many places, the process will fall somewhere in between. (See text box above, "Formal Opportunities for Public Participation in Utility Decision Making.")

## IT'S NOT ALWAYS EASY TO FIND LOCAL WATER RATES OR UTILITY POLICIES

Public oversight of a utility requires that people be able to find basic information such as the utility's current rates and its policies on things like shutoffs, payment arrangements, and billing disputes. But this may be easier said than done, especially for publicly owned systems. To improve accountability and public oversight, you may need to push the utility to prominently post the most basic information on its website and make it easily available in other ways for people who lack internet access.<sup>26</sup> Similarly, you may need to press your utility to communicate clearly about how it makes decisions on critical issues and urge more effective public notice and outreach when proposals are made.

### The role of politics

Regardless of the formal governance structure, it is important to keep in mind that wherever elected officials (or their appointees) are responsible for overseeing water department rates and policies, their decisions may be influenced by political priorities unrelated to sound utility financial management.

For example, they may be reluctant to approve a rate increase to pay for critical infrastructure investments. Or they may seek to divert utility rate revenues for nonutility purposes (e.g., to fill budget gaps in the municipal general fund). The flip side of that coin, however, is that advocates can exert *political* pressure to achieve their goals, regardless of whether the utility's formal decision-making processes allow for meaningful public participation.

## How can decision-making processes be changed, to strengthen oversight and accountability?

There are many potential tools in the public participation toolbox. And there's a good chance that many of them are lacking for your utility. (See text box above, "Formal Opportunities for Public Participation in Utility Decision Making.") You may want to consider pushing to get more of those tools incorporated into the local decision-making processes for your utility. This may require local or state legislation.

In Philadelphia, for example, a city charter amendment and ordinance created an independent rate-making board and rate-setting process that closely resembles a utility commission rate case, complete with a paid, independent consumer advocate who participates as a party and funding for the advocate to retain expert witnesses.<sup>27</sup>

As another approach, recent water affordability legislation in Baltimore created an Office of Water-Customer Advocate within the city's water department. This office is charged with collecting data on customer concerns and making recommendations on "changes to the department's rules, regulations, policies, or procedures that will promote fairness to customers and resolve customer concerns."<sup>28</sup> In developing proposed reforms, this office must give "great weight" to data derived directly from customer experiences.<sup>29</sup>

Another option is to push for state utility commission oversight of publicly owned water and/or wastewater utilities in your state, or even of just your utility specifically. This would almost certainly require state legislation. For example, Pennsylvania enacted legislation specifically to make the Pittsburgh Water and Sewer Authority subject to utility commission regulation.<sup>30</sup> This has opened up new advocacy opportunities for community-based organizations.<sup>31</sup>

There are pros and cons to commission oversight, of course. On the plus side, such oversight provides a check on the discretion of local officials (useful where systems are poorly managed), ensures a formal and typically robust role for ratepayers in decision making, and can significantly enhance transparency. The flip side is that it takes control over decision making away from local officials, who in theory should be responsive to local constituents' concerns. Control shifts to remote state officials, who are subject to partisan swings in state politics and, in some states, are seen by utility consumer advocates as too cozy with utilities. Academic experts have explored other arguments, both pro and con.<sup>32</sup>

It is also possible to pursue approaches that involve the state utility commission but are short of full commission regulation. There are many existing models for this approach. (See text box above, "Existing Utility Commission Regulation of Publicly Owned Water and Wastewater Systems.")

Apart from those models currently in use, there are other ways to provide varying degrees of oversight by a state utility commission or other state agency. A few scenarios for commission oversight of publicly owned water utilities, adapted from a longer list offered by Janice Beecher at Michigan State University's Institute of Public Utilities, are listed below.<sup>33</sup> In each scenario, it would also be possible to substitute some other state agency for the utility commission, such as a state agency with financial oversight responsibility over local governments or a state agency with consumer protection responsibilities.

- **Accounting and reporting requirements:** Publicly owned systems could be required to file financial reports, rate schedules, and other information annually with the commission, to be posted publicly.
- **Audits:** The commission could be empowered to audit specific aspects of financial and managerial performance.
- **Incentivizing (or requiring) best practices:** Publicly owned systems could be made subject to commission oversight but exempted from some or all aspects of oversight if they comply with certain best practices. States could also adopt legislation that *requires* all systems to comply with specified best practices and gives the commission responsibility for enforcement.
- **Customer dispute resolution:** Uniform consumer protection rules could be applied to publicly owned utilities, with commission jurisdiction to investigate complaints and enforce those rules.

Additionally, although this module is focused on participating in formal decision-making processes, informal communication with local utility officials and staff can also be valuable, either in a group setting or individually. Advisory committees, work groups, and the like have potential to be useful if they do not devolve into a rote exercise in which utility staff "talk at" community members rather than engage in two-way dialogue and collaborative problem solving. Similarly, community meetings may be designed in ways that facilitate attendance by the most impacted community members if care is taken to make them inclusive. Unfortunately, local water and sewer utility leaders often must be reminded that meaningful engagement with impacted individuals and communities is essential to achieving their mission of providing safe, affordable water services. And they must be educated by advocates on what meaningful engagement really looks like.

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## KEY RESOURCES:

Charlie Harak, John Howat and Olivia Wein, *A Consumer's Guide to Intervening in State Public Utility Proceedings*, National Consumer Law Center, March 2004, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/report\\_may2003.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_may2003.pdf).

*This guide provides a plain-language overview of key considerations for consumer and public interest groups to participate in public utility commission proceedings. (Although it is close to 20 years old, it is still relevant today.)*

Janice A. Beecher, "Potential for Economic Regulation of Michigan's Water Sector: Policy Brief for the Incoming 2019 Gubernatorial Administration," *Michigan State University*, November 7, 2018, 7-8, <https://ipu.msu.edu/wp-content/uploads/2018/12/Policy-Brief-for-the-Incoming-2019-Gubernatorial-Administration.pdf>.

*This policy brief on the potential for subjecting Michigan water utilities to state utility commission regulation includes a summary of how water utilities are regulated across the 50 states and the District of Columbia (see pages 6-8), as well as a discussion of the benefits and drawbacks of public utility regulation of water systems (see pages 8-10).*

University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Navigating-Pathways-to-Rate-Funded-CAPs.pdf>.

*This report includes a state-by-state analysis of which decisionmakers are responsible for setting water and sewer rates, both for utility commission regulated utilities and non-commission regulated utilities (see pages 19-121).*

River Network, *Equitable Water Infrastructure Toolkit*, 2021, [http://www.rivernetwork.org/wp-content/uploads/2021/06/rn\\_ewit.pdf](http://www.rivernetwork.org/wp-content/uploads/2021/06/rn_ewit.pdf).

*In this toolkit from a national water advocacy organization, the "Utilities" and "Decision-Making and Influence" chapters provide tips on engaging with local water utilities.*



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## ENDNOTES

- 1 Manny Teodoro, “Graphic Realism,” *Manny Teodoro Blog*, July 15, 2020, <https://mannyteodoro.com/?p=1636>.
- 2 For more background on regulation of investor-owned utilities in the United States, see Regulatory Assistance Project, *Electricity Regulation in the US: A Guide*, March 2011, <https://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-electricityregulationintheus-guide-2011-03.pdf>. Although the report is focused on electric utilities, the discussions in chapters 5 through 8, regarding the role of state utility commissions and their decision-making processes, are equally relevant to regulation of investor-owned water utilities.
- 3 Public notice of meetings and agenda items are typically published on a commission’s website. Notice of commission meetings may also appear in a weekly state bulletin announcing formal agency actions.
- 4 Cal. Code of Regs., tit. 20, § 1.4.
- 5 Charlie Harak, John Howat, and Olivia Wein, *A Consumer’s Guide to Intervening in State Public Utility Proceedings*, National Consumer Law Center, March 2004, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/report\\_may2003.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_may2003.pdf).
- 6 National Association of State Utility Consumer Advocates, “Members,” accessed April 20, 2022, <https://www.nasuca.org/members/>. Most state utility consumer advocacy offices (often state-funded but sometimes independent nonprofits) are members of NASUCA and are listed on this website.
- 7 Utility commissions have professional staff who present testimony and take positions in a rate case. The commissioners (and administrative law judges who take evidence and make a recommended decision to the commission) will often, rightly or wrongly, look to commission staff as the neutral party in the case and write decisions that favor commission staff positions on contested issues. Establishing communications early with these staff witnesses, to educate them on your position in a case and the evidence you have gathered, may help gain their support as a case progresses.
- 8 This is especially important when a commission requires parties to have an attorney to participate; without intervenor compensation, this may be an insurmountable barrier to participation.
- 9 FTI Consulting, *State Approaches to Intervenor Compensation*, National Association of Regulatory Utility Commissioners, December 2021, <https://pubs.naruc.org/pub/B0D6BID8-1866-DAAC-99FB-0923FA35EDIE>. Some states have stronger statutes than others. For example, Illinois’s statute is not a strong example because compensation is dependent on whether a party prevails in the commission’s final order on the issues raised.
- 10 For example, rules could provide that no commissioner or commission employee be permitted to obtain such employment within a minimum of two years of leaving commission employment.
- 11 For example, the California Public Utilities Commission’s ex parte rules permit meeting with decision makers in ratesetting proceedings up to three days before the issuance of an order, but require prompt notification of such meetings to all parties and detailed reports of communications, including service of a copy of any written, audiovisual, or other material used for or during the communication. Cal. Code Reg. tit. 20, div. 1, ch. 1 §§ 8.2, 8.4.
- 12 See, e.g., Cal. Code Reg. tit. 20, div. 1, ch. 1 §§ 8.2 (prohibition on meetings with decision makers within three days of an order); 220 IL Comp. Stat. 5/9-201(d) (prohibition on utility meetings with decision makers prior to the filing of a rate increase request).
- 13 For example, New Jersey recently relaxed its restrictions on communicating with commissioners *outside* an active proceeding. N.J. Stat. Ann. §§ 48:2-32.9, <https://law.justia.com/codes/new-jersey/2021/title-48/section-48-2-32-9/>. The change has benefited public interest advocates, by allowing them to meet with directly with commissioners and staff and raise awareness on issues of concern. Personal communication with Eric Miller, NRDC, May 24, 2022. However, the state’s ex parte restrictions still apply *within* active proceedings.
- 14 How ex parte rules apply to staff, if at all, varies from state to state. In some states, commissioners and staff work closely together to develop policy positions and final decisions in contested proceedings. Elsewhere, commissioners may be “walled off” from staff for purposes of proceedings, with staff treated much like any other intervening party. In the second instance, ex parte rules are less likely to apply.
- 15 FTI Consulting, *State Approaches to Intervenor Compensation*, 7–9.
- 16 City of Philadelphia, “Water, Sewer & Storm Water Rate Board,” accessed April 20, 2022, <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/>; Phila. Home Rule Charter § 5-801, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-182806#text-2-1](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182806#text-2-1); Phila. Code ch. 13-100, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-203161](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161).
- 17 Significantly, authorities and special districts typically maintain a credit rating separate from the municipality or municipalities they serve, backed by their ability to self-fund their budgets through water and sewer rates.
- 18 For a general overview of state approaches, see Janice A. Beecher, “Potential for Economic Regulation of Michigan’s Water Sector: Policy Brief for the Incoming 2019 Gubernatorial Administration,” Michigan State University Extension, November 7, 2018, 7–8, <https://ipu.msu.edu/wp-content/uploads/2018/12/Policy-Brief-for-the-Incoming-2019-Gubernatorial-Administration.pdf>.
- 19 These are typically not commission-regulated because they do not involve actual private ownership of the utility. For example, public–private partnerships include situations in which a private company operates a water or sewer system under contract with a publicly owned utility. They can also include situations in which a private company leases a system by making annual payments to the local government and in return gets the right to retain ratepayer revenue. In some cases, these arrangements have resulted in rate increases far in excess of the increases anticipated when contracts were negotiated, in order to generate a guaranteed level of profit for the private company and its investors. See Danielle Ivory, Ben Protes, and Griff Palmer, “In American Towns, Private Profits From Public Works,” *New York Times*, December 24, 2016, <https://www.nytimes.com/2016/12/24/business/dealbook/private-equity-water.html>.
- 20 For a state-by-state discussion of laws that govern rate-setting by systems not subject to state utility commission regulation, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Navigating-Pathways-to-Rate-Funded-CAPs.pdf>.
- 21 Public Service Commission of Wisconsin, “Water Utility Regulation,” accessed April 20, 2022, <https://psc.wi.gov/Pages/ForUtilities/Water/Water.aspx>; Public Service Commission of Wisconsin, “Water Sewer FAQs,” accessed April 20, 2022, <https://psc.wi.gov/Pages/ForConsumers/WaterSewerFAQ.aspx>. For more detailed descriptions of Wisconsin’s approach, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 117–118 and Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 8–9.
- 22 One national survey identified nine states with partial utility commission jurisdiction over publicly owned water utilities. The authors of this toolkit are aware of at least one more state (Kentucky). Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 7–8.
- 23 For an overview of these variations, see Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 7–8. For a state-by-state discussion of commission jurisdiction over water and wastewater in *all* states, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*.

- 24 Pa. Pub. L. 1208, No. 65 (Dec. 21, 2017) § 2, codified at Pa. Stat. and Cons. Stat. Ann. tit. 66 §§ 3201-3209 (West), <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2017&sessInd=0&act=65>.
- 25 University of Michigan Water Center, “Reimagining the Water Rate-Setting Process in Philadelphia,” accessed April 20, 2022, <https://graham.umich.edu/media/pubs/Water-CS-Reimagining-the-Water-Rate-setting-Process.pdf>; City of Philadelphia, “Water, Sewer & Storm Water Rate Board.”
- 26 Center for Water Security and Cooperation, *American Water Access Survey*, Spring 2022, 21–22, <https://drive.google.com/file/d/10LjfhNyz3q8p368XjQTn512VegSikub/view>.
- 27 University of Michigan Water Center, “Reimagining the Water Rate-Setting Process in Philadelphia”; City of Philadelphia, “Water, Sewer & Storm Water Rate Board”; Phila. Home Rule Charter § 5-801 [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-182806#text-2-1](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182806#text-2-1); Phila. Code ch. 13-100, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-203161](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161); Phila. Water, Sewer, and Storm Water Rate Bd. Regs. §§ I(n), II (2021), <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>.
- 28 Balt. City Code art. 24, § 2-17(c)(3)(ii)(a), [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water\\_\(rev%2004-11-22\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water_(rev%2004-11-22).pdf).
- 29 Balt. City Code art. 24, § 2-17(d)(4), [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water\\_\(rev%2004-11-22\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water_(rev%2004-11-22).pdf).
- 30 Pa. Pub. L. 1208, No. 65 (Dec. 21, 2017) § 2, codified at Pa. Stat. and Cons. Stat. Ann. tit. 66 §§ 3201-3209 (West).
- 31 Pennsylvania Public Utility Commission, “PUC Approves Pittsburgh Water and Sewer Authority Rate Settlement for Water, Wastewater and Stormwater Services,” press release, November 18, 2021, <https://www.puc.pa.gov/press-release/2021/puc-approves-pittsburgh-water-and-sewer-authority-rate-settlement-for-water-wastewater-and-stormwater-services>; Demos, Pittsburgh United, and Our Water Campaign, *Water as a Public Good: Pittsburgh’s Our Water Campaign*, February 8, 2022, [https://www.demos.org/sites/default/files/2022-02/PGHOurWater\\_FINAL.pdf](https://www.demos.org/sites/default/files/2022-02/PGHOurWater_FINAL.pdf).
- 32 For example, see Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 8-10.
- 33 *Ibid.* at 11–12.