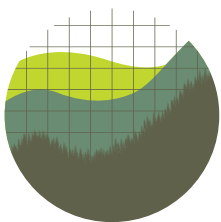




# Procedural Equity at Public Utility Commissions

*Developing a Baseline Assessment  
of Barriers and Opportunities*



Institute for  
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

January 2024  
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# Executive Summary

Combating climate change will require major transitions in the energy sector, including reductions in fossil fuel use, widespread electrification, and improved energy efficiency.<sup>1</sup> In the United States, a state-level government entity, typically called a public utility commission or public service commission (a Commission), will play a key role in this transition for most states.

As economic regulators of public utilities, Commissions make decisions that can affect where and when clean energy displaces fossil-fuel combustion, and how costs associated with energy system investments are passed on to consumers. Commission decisions can affect emissions outcomes as well as the health, energy, environmental, and affordability burdens faced by minority, low-income, and otherwise disadvantaged communities.

Although many Commission processes incorporate some form of stakeholder input or participation, it is often difficult for the public to participate due to the technical nature of these proceedings, as well as their procedural complexity and the resource-intensiveness of participation. These challenges can infringe upon procedural justice and contribute to inequitable outcomes. “Procedural justice” encompasses fair access to process, the right to equal voice and representation during decisionmaking processes, respectful treatment, access to adequate information, and the impartiality of the decisionmaker.<sup>2</sup>

Commissions can shape their processes in various ways to enhance—or undermine—procedural justice. But a lack of information on current practices makes it difficult to track measures that various Commissions have adopted, provide opportunities for Commissions to learn from one another, and encourage improvement over time.

In this report, we reviewed a range of practices and conditions potentially conducive to enhancing procedural justice at Commissions in nine states.<sup>3</sup> This review was based on a structured survey of Commissions’ websites, resources available to prospective participants, and relevant statutes and regulations.

## Key Findings

Our survey revealed a wide range of overall performance across states. Each state Commission appears to use at least some practices that we would expect to support procedural equity, but no state employed all of them. Among states that use a given practice, there was often significant diversity in the implementation details and quality of the practice. Overall, our results indicate a number of opportunities for states to both improve and to learn from one another.

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<sup>1</sup> E.g., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICY MAKERS, IN CLIMATE CHANGE 2022: MITIGATION OF CLIMATE CHANGE 28 (P.R. Shukla et al., eds., 2022), [https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC\\_AR6\\_WGIII\\_SummaryForPolicymakers.pdf](https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf).

<sup>2</sup> See *infra*. nn. 25–27 and accompanying text.

<sup>3</sup> California, New York, Texas, Georgia, Wyoming, Michigan, Pennsylvania, Massachusetts, and Illinois.

## Our investigation and findings concerned six categories of practices:

1. Financial Support: Intervenor compensation is a practice that can help level the playing field by providing a mechanism for individuals or groups to recoup the costs of their involvement in regulatory proceedings. Several Commissions had website information or regulations concerning such programs—but not all programs were in active use, and they varied in size, applicability, type of award, deadline, applicant eligibility criteria, and compensation limits.
2. Accessibility of Participation Opportunities: Public participation opportunities are not necessarily fully accessible to community participants. A majority of surveyed Commission websites displayed some practices to improve accessibility, including website translation tools, online commenting opportunities, at least some advance notice of meetings, and some meeting summaries or recordings. Some states also offered interpreters, mechanisms to ease lack of access to an attorney, more robust meeting summaries, more flexible meeting locations, more ample meeting notice, and clearer information about accommodations.
3. Meaningful Engagement: Even where there are public participation opportunities, such fora do not necessarily inform ultimate decisionmaking. For example, none of the Commission websites provided clear information regarding any broadly applicable requirement that the Commission *consider* public comments. California notably had a broad provision *allowing* the Commission to include public comments in the record, and a few states also had regulatory provisions that, in specific types of proceedings, required either that applicants summarize public comments or that the Commission consider public comments.
4. Informational Resources & Support: Community stakeholders may lack technical knowledge, preventing fully informed and thus effective advocacy. Most surveyed Commission websites offered some resources for understanding the substantive issues underlying their work and proceedings, but these resources varied in quantity, quality, content, and format. Most surveyed Commission websites also provided basic electronic filing instructions, but few additional procedural resources, although the California Commission offered more extensive resources. We also noted significant variability in the functionality and navigability of the Commissions' websites, which can limit or enhance the effectiveness of resources provided.
5. Transparency: The majority of the surveyed states had reporting requirements to make certain types of utility data available online or to particular stakeholders, but those requirements varied in the comprehensiveness of their applicability, the quality of the data, what types of data were covered, and ease of access. All states had open records and meeting requirements.
6. Equity Prioritization: Whether and to what extent equity is recognized as an important principle can also shape procedural equity. Multiple surveyed Commissions have efforts to improve equity, such as action plans, working groups, reports, inquiries in energy proceedings, and other measures to enhance diversity, equity, inclusion (including staff trainings and changes to hiring practices). Some Commissions were subject to legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some activities, but these requirements had significant variations.

# I. Introduction

Many states,<sup>4</sup> like the federal government,<sup>5</sup> have committed to prioritize achieving clean energy goals in an equitable manner. A state-level government entity, typically called a public utility commission or public service commission (a Commission<sup>6</sup>), will play a key role in this undertaking. While the structure and specific authorities of Commissions vary among states, they generally regulate gas and electric utilities to ensure safe, adequate, and reliable service at “just and reasonable” prices.<sup>7</sup> Depending on the state, Commission authority can include, for example, electricity resource planning and acquisition (i.e., resource adequacy), natural gas system planning, oversight of infrastructure siting, rate setting, safety, reliability and quality of service regulation, and implementation of renewable energy and energy efficiency goals.<sup>8</sup>

Commission decisions can reduce or increase greenhouse gas emissions—and, depending on their execution, they can reduce—or exacerbate—the health, energy, environmental, and affordability burdens faced by BIPOC (Black, Indigenous, and People of Color), low-income, and otherwise disadvantaged communities who have been made more vulnerable by historical inequities.<sup>9</sup> On average, low-income and Black communities in the United States experience greater exposure to air pollution from electricity generation and other sources, contributing to increased health risks and higher costs of medical care.<sup>10</sup> Additionally, low-income households in the United States spend a higher portion of their

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<sup>4</sup> Several states have already passed legislation requiring utility regulators to consider equity in different types of decisionmaking. *See, e.g.*, U.S. DEPT. OF ENERGY GRID MODERNIZATION LABORATORY CONSORTIUM, ADVANCING EQUITY IN UTILITY REGULATION: FUTURE ELECTRIC UTILITY REGULATION REPORT NO. 12 viii (Nov. 2021), [https://eta-publications.lbl.gov/sites/default/files/feur\\_12\\_\\_advancing\\_equity\\_in\\_utility\\_regulation.pdf](https://eta-publications.lbl.gov/sites/default/files/feur_12__advancing_equity_in_utility_regulation.pdf) [hereinafter ADVANCING EQUITY IN UTILITY REGULATION]; National Conference of State Legislatures, “Energy Justice and the Energy Transition,” <https://www.ncsl.org/energy/energy-justice-and-the-energy-transition#:~:text=Read%20More-,Equity%20and%20Broader%20Clean%20Energy%20Legislation,of%20energy%20justice%20and%20equity> (last visited Oct. 12, 2023) (“States including Illinois, Oregon, North Carolina, Washington, New York and Virginia have enacted broad clean energy or emissions reduction legislation in the past few years. As states pass these large energy bills, they often consider issues of energy justice and equity.”).

<sup>5</sup> The White House, “Justice40: A Whole-of-Government Initiative,” <https://www.whitehouse.gov/environmentaljustice/justice40/> (last visited Oct. 13, 2023).

<sup>6</sup> We use the term “Commission” throughout this report to refer to state entities that regulate utility companies. In most states, a single entity has oversight over both electric and gas utilities, but in Texas, the Public Utility Commission of Texas (PUCT) has jurisdiction over electric utilities while the gas utilities are regulated by the Railroad Commission; for purposes of this report, the term “Commission” refers to the PUCT but not the Railroad Commission.

<sup>7</sup> *See, e.g.*, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC), THE ROLE OF STATE UTILITY REGULATORS IN A JUST AND REASONABLE ENERGY TRANSITION 13–14 (Sept. 2021), <https://pubs.naruc.org/pub/952CF0F2-1866-DAAC-99FB-0C6352BF7CB0>; William Boyd, Ann E. Carlson, *Accidents of Federalism: Ratemaking and Policy Innovation in Public Utility Law*, 63 UCLA L. REV. 810, 823 (2016); U.S. EPA, STATE CLIMATE AND ENERGY TECHNICAL FORUM BACKGROUND DOCUMENT: AN OVERVIEW OF PUCs FOR STATE ENVIRONMENT AND ENERGY OFFICIALS 1–3 (May 2010), [https://www.epa.gov/sites/production/files/2016-03/documents/background\\_paper.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/background_paper.pdf) [hereinafter EPA OVERVIEW OF PUCs].

<sup>8</sup> *See, e.g.*, Boyd & Carlson, *supra* note 7, at 815–816, 823–840; Ari Peskoe, *A Challenge for Federalism: Achieving National Goals in the Electricity Industry*, 18 MO. ENVTL. L. & POL’Y REV. 209, 222, 241–42 (2011). The precise contours of various states’ PUC authority and activities vary based on state law as well as whether they have elected to rely primarily on multi-state Regional Transmission Organizations for their utilities’ resource adequacy. *See, e.g.*, Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, 109 CAL. L. REV. 209, 231–232 (2021).

<sup>9</sup> We use “disadvantaged communities” as an umbrella term at certain point in this paper to reference multiple communities adversely affected by energy system, environmental, and climate change impacts, including frontline and fenceline communities as well as communities that are poorly served by existing energy infrastructure and/or lack equitable access to the benefits of energy system development.

<sup>10</sup> *See* Maninder P.S. Thind et al., *Fine Particulate Air Pollution from Electricity Generation in the US: Health Impacts by Race, Income, and Geography*, 53 ENVTL. SCIENCE & TECHNOLOGY 14010, 14010 (2019) (observing higher exposure to energy-sector pollution among low-income and black communities); Mercedes A. Bravo et al., *Racial Isolation and Exposure to Airborne Particulate Matter and Ozone in Understudied US Populations: Environmental Justice Applications of Downscaled Numerical Model Output*, 92–93 ENV’T INT’L 247, 247 (2016); Abdulrahman

income on energy than other households.<sup>11</sup> As a result, low-income households may have to “make trade-offs concerning household purchases and behavior... includ[ing] utilizing dangerous mechanisms to heat the home, going without air conditioning during heat waves, and simply foregoing necessary purchases like food and medicine.”<sup>12</sup>

Commission decisions affect the distribution of these burdens and benefits in a variety of ways. For example, under their authority to influence infrastructure siting and the mix of energy generation within the state,<sup>13</sup> Commissions make decisions affecting where new, clean energy projects displace fossil-fuel-fired facilities, and where traditional generation facilities continue generating electricity accompanied by harmful pollution. Similarly, Commission decisions regarding electric system infrastructure needed to electrify transportation and building heating can affect the achievability, location, and speed of reductions in emissions from combustion of diesel fuel or natural gas. At the same time, Commissions’ decisions concerning energy system investments and rate design affect the price of electricity and the extent of the energy burden on low-income customers.<sup>14</sup> Commissions also work to mitigate energy burdens in multiple ways, for example, by requiring utilities to invest in weatherization and energy efficiency<sup>15</sup> and by offering bill assistance, or other measures to improve affordability.<sup>16</sup>

How burdens and benefits associated with regulated utilities are distributed has important equity and energy justice implications. Definitions of energy justice vary, but it has been defined by a multi-stakeholder process as follows:

Energy justice refers to the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those historically harmed by the energy system... Energy justice explicitly centers the concerns of marginalized communities and aims to make energy more accessible, affordable, clean, reliable, resilient, and democratically managed for all communities.<sup>17</sup>

This conceptual framework encompasses multiple dimensions, including distributional and procedural dimensions of equity.<sup>18</sup> Distributional justice recognizes the unequal allocation of benefits and burdens, such as environmental pollution

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Jbaily et al., *Air Pollution Exposure Disparities Across U.S. Population and Income Groups*, 601 NATURE 228 (2022).

<sup>11</sup> U.S. DEPT. OF ENERGY, *LOW-INCOME HOUSEHOLD ENERGY BURDEN VARIES AMONG STATES—EFFICIENCY CAN HELP IN ALL OF THEM 1* (Dec. 2018), [https://www.energy.gov/sites/prod/files/2019/01/f58/WIP-Energy-Burden\\_final.pdf](https://www.energy.gov/sites/prod/files/2019/01/f58/WIP-Energy-Burden_final.pdf); see generally AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY, *HOW HIGH ARE HOUSEHOLD ENERGY BURDENS?* (Sept. 2020), <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>.

<sup>12</sup> SHALANDA BAKER, *REVOLUTIONARY POWER: AN ACTIVIST’S GUIDE TO THE ENERGY TRANSITION* 113 (JAN. 2021).

<sup>13</sup> See U.S. EPA, *STATE CLIMATE AND ENERGY TECHNICAL FORUM BACKGROUND DOCUMENT*, *supra* note 7, at 2–3.

<sup>14</sup> For example, the following decisions can increase rates, and thus the energy burden, on disadvantaged communities: allowing utilities to make ratepayer-funded investments in fossil-fueled infrastructure that is likely to become stranded, relying on rate designs that fail to incentivize efficient customer behaviors, and authorizing rate increases or other charges that fund increased reliance on clean energy. Energy burden is defined by the Department of Energy to mean the percentage of gross household income spent on energy costs. U.S. Dept. of Energy Office of State and Community Energy Programs, “Low-Income Community Energy Solutions,” <https://www.energy.gov/scep/slsc/low-income-community-energy-solutions> (last visited Oct. 13, 2023).

<sup>15</sup> U.S. DEPT. OF ENERGY, *LOW-INCOME HOUSEHOLD ENERGY BURDEN VARIES AMONG STATES*, *supra* note 11, at 1–2.

<sup>16</sup> See, e.g., Colo. Public Utilities Commission, “Energy Bill Assistance Programs,” <https://puc.colorado.gov/LIprograms> (last visited Oct. 13, 2023).

<sup>17</sup> S. BAKER, S. DEVAR, AND S. PRAKASH, *THE ENERGY JUSTICE WORKBOOK* (2019), <https://iejusa.org/workbook/>; see also NARUC, *STATE ENERGY JUSTICE ROUNDTABLE SERIES: ENERGY JUSTICE METRICS 4* (Feb. 2023), <https://www.naruc.org/cpi-1/energy-customers/energy-justice/> [hereinafter NARUC Energy Justice Metrics Roundtable] (adapting definition from *The Energy Justice Workbook* and noting “Energy justice has recently become a priority for state and federal decisionmakers as the energy sector transitions from fossil fuels to low-carbon energy resources. NARUC supports state efforts to advance energy justice efforts through initiatives in partnership with U.S. Department of Energy, the National Association of State Energy Officials (NASEO), the National Governors Association (NGA), and others.”).

<sup>18</sup> Kirsten Jenkins et al., *Energy Justice: A Conceptual Review*, 11 ENERGY RESEARCH & SOCIAL SCIENCE, 174–182 (2016) (discussing addition-

from facilities and rising energy prices.<sup>19</sup> Procedural justice focuses on the fairness with which different communities are included in the decisionmaking process.<sup>20</sup> In recent years, scholarship and advocacy have brought more public attention to advancing energy justice, and the signature Justice40 effort of the Biden administration has responded to this increased awareness by directing at least 40% of benefits of federal spending to disadvantaged and underserved communities.<sup>21</sup> But advocacy and scholarship efforts have focused more heavily on questions of distributional justice than procedural justice,<sup>22</sup> leaving significant work remaining to understand both the current state of procedural justice at Commissions and how to best measure it.

Given the far-reaching impacts of Commission decisionmaking on equity, it is appropriate that many Commission decisions are made through state regulatory proceedings that are designed to include stakeholder participation and notice-and-comment procedures.<sup>23</sup> But, in reality, there are a number of barriers to effective and equitable participation. First, participation in these processes is constrained by complicated rules, requirements, and procedures. Second, utility regulation is highly technical, requiring complex legal and economic analysis, making it hard to meaningfully participate without the assistance of experts. Third, stakeholder participation opportunities are time- and resource-intensive, especially in the case of contested or quasi-judicial proceedings, as further discussed below.

Cognizant of a gap in research concerning procedural justice in the Commission context, and recognizing that an assessment of current practices is a critical step for increasing equity by identifying existing barriers for engagement, this report reviews the rules, regulations, procedures, and websites of select state Commissions through a procedural equity lens. Given the lack of established metrics to measure procedural equity, we perform a high-level scoping exercise that reviews the Commission websites and regulatory materials of nine states to assess relevant rules and practices. We tailor this review to examine six categories of practices and conditions that have the potential to shape how effectively affected communities can participate in relevant proceedings: Financial Support, Accessibility of Participation Opportunities, Meaningful Engagement, Informational Resources & Support, Transparency, and Equity Prioritization. This preliminary review is meant to assess the range of current practice as a baseline to inform the development of further research and future advocacy.

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al dimensions of energy justice including recognition justice and restorative justice. Recognition-based justice focuses on “who” is unfairly represented, misrepresented, degraded, or devalued—such as ethnic minorities, the elderly, and disabled.); see also D. McCauley, R.J. Hefron, H. Stephan, K. Jenkins; *Advancing Energy Justice: The Triumvirate of Tenets and Systems Thinking*, 32 INT. ENERGY LAW REV. 107–116 (2013); Joohoo Lee & John Byrne, *Expanding the Conceptual and Analytical Basis of Energy Justice: Beyond the Three-Tenet Framework*, FRONT. ENERGY RES., Sept. 2019, at 2 (“Recognition justice emphasizes the need to understand different types of vulnerability and specific needs associated with energy services among social groups (especially marginalized communities.”). UNIVERSITY OF MICHIGAN SCHOOL FOR ENVIRONMENT AND SUSTAINABILITY, ENERGY EQUITY PROJECT REPORT 128 (2022), [https://energyequityproject.com/wp-content/uploads/2022/08/220174\\_EEP\\_Report\\_8302022.pdf](https://energyequityproject.com/wp-content/uploads/2022/08/220174_EEP_Report_8302022.pdf) [hereinafter ENERGY EQUITY REPORT] (explaining that restorative justice “does not have a single unified definition, but is often used to capture the many different practices centered around repairing harm and relationships.”)

<sup>19</sup> Jenkins et al, *Energy Justice: A Conceptual Review*, *supra* note 18, at 176.

<sup>20</sup> *Id.* at 177.

<sup>21</sup> Justice40, *supra* note 5.

<sup>22</sup> See *infra* II.A for discussion of existing scholarship and advocacy.

<sup>23</sup> Note that there are a range of different procedures with different rules regarding public participation. In particular, a number of proceedings, like ratemakings, have a quasi-judicial structure and are sometimes referred to as “contested proceedings,” while other proceedings like rule-makings have a more regulatory structure and are sometimes referred to as “uncontested proceedings” along with other informal decision-making processes. See further discussion in the introduction to the next section.



## II. Analyzing the Role of Procedural Justice at Public Utility Commissions

Commission processes can be challenging to navigate, especially for low-income and historically disadvantaged communities and the organizations that represent them. When these communities are unable to participate in a meaningful manner, their concerns and priorities can go unheard, leaving decisions to be shaped by those who do participate. This unequal capacity for parties to be heard in proceedings that affect them—a failure of procedural justice—can pave the way for inequitable outcomes.<sup>24</sup>

Scholars have defined procedural justice as “a call for equitable procedures that engage all stakeholders in a non-discriminatory way,”<sup>25</sup> “fair access to process,”<sup>26</sup> and “the right to equal voice and representation during decisionmaking processes.”<sup>27</sup> Some scholars note additional aspects of procedural justice, including respectful treatment, access to adequate information, and the impartiality of the decisionmaker.<sup>28</sup> Researchers have also portrayed such aspects as “criteria” that are required to achieve meaningful procedural justice.<sup>29</sup> In addition to its intrinsic value, procedural justice can also advance distributional justice and other more equitable outcomes.

Commissions conduct a variety of types of proceedings, each with distinct rules regarding public participation.<sup>30</sup> Some proceedings are quite informal, and some, like rulemakings, follow a more regulatory structure and are sometimes referred to as “uncontested proceedings.” Other proceedings, like ratemakings, tend to be conducted in “formal” quasi-judicial structure and are sometimes referred to as “contested proceedings.” Quasi-judicial, or “contested,” proceedings are often the fora in which utility proposals that will affect specific places and specific customers are considered. They bear some resemblance to court cases and are generally presided over by administrative law judges,<sup>31</sup> and as such, they are typically the most challenging type of Commission proceeding for stakeholders to engage in.<sup>32</sup>

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<sup>24</sup> See ADVANCING EQUITY IN UTILITY REGULATION, *supra* note 4, at 1.

<sup>25</sup> *Advancing Energy Justice*, *supra* note 18, at 108.

<sup>26</sup> BAKER, *supra* note 12, at 31.

<sup>27</sup> Shelley Welton & Joel B. Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 HARV. ENV'T L. REV. 307, 316 (2019).

<sup>28</sup> See, e.g., Catherine Gross, *Community Perspectives of Wind Energy in Australia: The Application of a Justice and Community Fairness Framework to Increase Social Acceptance*, 35 ENERGY POL'Y 2727, 2730 (2007) (“The primary principals of procedural justice are full participation in the process, the ability to express opinions freely and to be heard (voice), being treated with respect, being given adequate information, the impartiality of the decision maker and “decisions that are responsive to information and that are correctable in the face of new information,” quoting Lynn A. Maguire & E. Allan Lind, *Public Participation in Environmental Decisions: Stakeholders, Authorities, and Procedural Justice*, 3 INT. J. ENV'T ISSUES 133, 134 (2003)); Jan Zoellner, Petra Schweizer-Ries & Christin Wemheuer, *Public Acceptance of Renewable Energies: Results from Case Studies in Germany*, 36 ENERGY POL'Y 4136, 4137 (2008) (“[There are] ‘six essential criteria which have to be satisfied to give a process procedural justice. These criteria are the equal treatment of persons and situations (*consistency*), the absence of self-interest (*bias-suppression*), full and correct information (*accuracy*), the possibility to retract decisions (*correctability*), the involvement of all parties into the decisionmaking process (*representativeness*) as well as the adherence to elementary moral and ethical values (*ethicality*),” (quoting Gerald S. Leventhal, *What Should Be Done With Equity Theory*, SOCIAL EXCHANGE 27 (1980)).

<sup>29</sup> See Zoellner et al., *supra* note 28, at 4137.

<sup>30</sup> EPA OVERVIEW OF PUCs, *supra* note 7, at 5–6.

<sup>31</sup> In quasi-judicial proceedings, a “party” is a person, organization, or agency named or formally admitted to participate in a proceeding. This status often requires the party to obtain legal counsel and fulfill a suite of formal procedural requirements. In some cases, non-parties can more informally participate by commenting on these proceedings. In rulemaking and informal proceedings, one typically need not become a party to participate.

<sup>32</sup> Further, in the case of states that have opted to rely substantially on Regional Transmission Organizations (RTOs) for resource adequacy, some important energy system decisions, such as the selection of generation resources, may be made through RTO processes, which present their own distinct barriers to public participation. See Shelley Welton, *Electricity Markets and the Social Project of Decarbonization*, 118

## A. Opportunity to Supplement Existing Studies

Recent scholarship and advocacy have taken steps to evaluate energy equity including through case studies,<sup>33</sup> studies of relevant energy sector policy mechanisms,<sup>34</sup> and initiatives to define equity frameworks through diverse stakeholder engagement and then integrate those findings into energy scorecards.<sup>35</sup> However, such efforts have focused more heavily on distributional justice than procedural justice. A 2021 study of energy equity metrics produced for the U.S. Department of Energy (DOE) specifically noted a gap in metrics to measure community needs and the success of community inclusion efforts.<sup>36</sup> A 2023 report on energy equity actions in 22 states and the District of Columbia confirmed that energy equity metrics are still nascent and little-implemented, and that the few examples of such metrics primarily overlooked procedural dimensions.<sup>37</sup>

In just the past several years, however, a couple of initiatives have begun to grapple with identifying components of procedural equity in the energy context. These include the Justice in 100 Scorecard, which identified process-related requirements in state-level clean energy laws, and applied them to ten case studies available upon request and subject to further refinement of the scoring system.<sup>38</sup> Further, a 2022 report by the Energy Equity Project, incorporating input from diverse stakeholders, included procedural justice in its framework, but noted the underdevelopment of metrics in the procedural justice category and the need to develop quantitative ratings systems for qualitative performance across sub-dimensions in this category.<sup>39</sup> The Energy Equity Project report identified a dozen potential procedural equity metrics including ease of access to participate meaningfully, presence and involvement of public advocates, defined equity goals and principles, staff and decisionmaker representation, and information and transparency measures.<sup>40</sup>

While these recent studies have made important contributions to identifying barriers to achieving procedural justice at public utility commissions, considerable work remains. A multi-stakeholder round table hosted by National Association

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COLUM. L. REV. 1067, 1113 (2018). However, RTO processes are beyond the scope of this report.

<sup>33</sup> See, e.g., ILLUME ADVISING, THE ENERGY EQUITY PLAYBOOK (June 2021), (providing case studies that explore how energy equity is studied and strived for in different circumstances and locations in the US); VEIC, THE STATE OF EQUITY MEASUREMENT: A REVIEW OF PRACTICES IN THE CLEAN ENERGY INDUSTRY (Mar. 2019), <https://www.veic.org/clients-results/reports/the-state-of-equity-measurement-a-review-of-practices-in-the-clean-energy-industry> (finding infrequent use of the term “equity” in the clean energy industry, the industry’s focus on low-income customers without consideration of other demographic traits, the role of equity as a policy goal rather than a formal requirement, and that energy program administrators usually focus on three specific dimensions of equity (defining target populations, determining disparate impacts of programs, and including representative voices in program design and delivery)).

<sup>34</sup> NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC), STATE APPROACHES TO INTERVENOR COMPENSATION (Dec. 2021), <https://pubs.naruc.org/pub/B0D6B1D8-1866-DAAC-99FB-0923FA35ED1E> [hereinafter NARUC INTERVENOR COMPENSATION REPORT], NARUC ENERGY JUSTICE METRICS ROUNDTABLE, *supra* note 17; NATIONAL COUNCIL ON ELECTRICITY POLICY, PUBLIC UTILITIES COMMISSIONS AND CONSUMER ADVOCATES: PROTECTING THE PUBLIC INTEREST MINI GUIDE (Dec. 2021), [https://www.imt.org/wp-content/uploads/2022/01/FINAL\\_NCEP\\_Consumer\\_Advocates\\_Mini\\_Guide.pdf](https://www.imt.org/wp-content/uploads/2022/01/FINAL_NCEP_Consumer_Advocates_Mini_Guide.pdf) [hereinafter NATIONAL COUNCIL ON ELECTRICITY POLICY CONSUMER ADVOCATE MINI GUIDE].

<sup>35</sup> See AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY, ACEEE’S LEADING WITH EQUITY INITIATIVE: KEY FINDINGS AND NEXT STEPS (2021), <https://www.aceee.org/white-paper/2021/12/aceees-leading-equity-initiative>; ENERGY EQUITY PROJECT REPORT 2022, *supra* note 18, at 128.

<sup>36</sup> See PACIFIC NORTHWEST NATIONAL LABORATORY (PREPARED FOR U.S. DEPT. OF ENERGY), REVIEW OF ENERGY EQUITY METRICS 9 (Oct. 2021), [https://www.pnnl.gov/main/publications/external/technical\\_reports/PNNL-32179.pdf](https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-32179.pdf) (identifying 57 distinct metrics which the researchers grouped into three metric types).

<sup>37</sup> See BERKELEY LAB, ASSESSING THE CURRENT STATE OF U.S. ENERGY EQUITY REGULATION AND LEGISLATION 38–39, 46 (Feb. 2023), [https://eta-publications.lbl.gov/sites/default/files/equity\\_db\\_report\\_-\\_v9\\_-\\_final.pdf](https://eta-publications.lbl.gov/sites/default/files/equity_db_report_-_v9_-_final.pdf) (listing energy metrics in different states and revealing in most instances these metrics are not focused on procedural considerations).

<sup>38</sup> INITIATIVE FOR ENERGY JUSTICE, JUSTICE IN 100 SCORECARD (Jan. 2021), <https://iejusa.org/wp-content/uploads/2021/09/Justice-in-100-Scorecard-Interactive-PDF-Final-Version.pdf>.

<sup>39</sup> ENERGY EQUITY PROJECT REPORT, *supra* note 18, at 161.

<sup>40</sup> See generally *id.*

of Regulatory Utility Commissioners (NARUC) highlighted lack of data related to procedural justice as a key challenge to the further development of energy metrics and the need for meaningful stakeholder participation through an iterative data and metrics selection process.<sup>41</sup>

## B. Methodology

This report builds upon earlier efforts by reviewing a range of practices and conditions potentially conducive to enhancing procedural justice at various Commissions. We developed a set of 38 questions to review Commissions' public-facing information, resources available to prospective participants, and regulations. The questions were binary yes/no questions. To better capture nuances of different state practices, we also collected additional, narrative information with more specific sub-questions.

Our survey relied primarily on materials found online, mirroring, in certain respects, the experience of a would-be community participant who would similarly look to the agency website for basic information. For some questions with additional dimensions pertaining to regulatory or legislative obligations, we additionally considered whether the answer could be located by an unfamiliar participant reviewing the table of contents of state legislation and regulations and performing key word searches of those materials. In addition, for each state, we called a phone number provided on the Commission website to evaluate the usefulness of that channel to prospective stakeholders. A full discussion of our methodology is available in Appendix A and our set of questions is in Appendix B.

Due to time and resource constraints, we selected nine states intended to capture a variety of Commission approaches to procedural equity, including the practices of states considered leaders in the area. The states selected vary in geographic size, geographic region, population size, population density, dominant political party, and access to energy resources. The nine states selected were California, New York, Texas, Georgia, Wyoming, Michigan, Pennsylvania, Massachusetts, and Illinois.

Our methodology has some limitations. First, the information available on Commission websites does not necessarily fully capture activities on the ground in the state. Second, even where similar legal requirements exist in multiple states, states may describe them using disparate terminology and codify them in different places or using different terminology, such that even thoughtful key word searches may not turn up the full suite of procedural opportunities without supplementary review by experts familiar with a given state's legal and procedural framework. Third, even when statutory and regulatory requirements are properly identified, their application in practice, and the influence of additional requirements established through case law, are not readily discernible without supplementary review from a knowledgeable state expert. Fourth, as some Commission responsibilities may overlap with those of other state agencies, in some cases, there may be complementary or inter-agency actions taking place that were primarily discussed on the other agency's website.

In addition, as we started data collection, it became apparent that for various broadly specified rules and practices that are thought to be capable of enhancing procedural equity, it is not always the case that the existence of such a rule or practice *in fact* enhances equity. For example, the existence of intervenor compensation will only enhance equity if it can in fact amplify the voices of parties that would otherwise find it difficult to impossible to participate. A second example is that the capacity of public advocates (established under state law to ameliorate procedural inequity) may be limited by the precise contours of their statutory mandate and their approach to community stakeholder interests that they see

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<sup>41</sup> NARUC ENERGY JUSTICE METRICS ROUNDTABLE, *supra* note 17, at 6, 10.

as outside their mandate. A third example is that allowing unrepresented parties to participate alongside parties that are represented by counsel presents risks of its own.

Despite these limitations, however, our approach has shed useful light on what information is likely to be available to new potential participants seeking to engage in these fora. In addition to serving as a baseline inventory of what practices appear to be more or less widespread, this preliminary data also helps highlight the heterogeneity of practices among states. This effort helps lay the groundwork for essential conversations between researchers and disadvantaged community stakeholders to facilitate joint efforts to identify more or less effective practices, and encourage the adoption of more effective practices for procedural equity in Commission practices.

## C. Six Categories of Practices to Support Procedural Equity

Our areas of inquiry concerned practices that fell generally into six categories: Financial Support, Accessibility of Participation Opportunities, Meaningful Engagement, Informational Resources & Support, Transparency, and Equity Prioritization. The types of procedural equity issues that may exist, and the types of practices that might ameliorate those issues, are further discussed in this section. These categories were developed based on a review of the energy and procedural justice literature and analyses of barriers to public participation in agency processes.<sup>42</sup>

### 1. Financial Support

Participation in Commission proceedings involves a variety of costs. Utilities typically have the resources to hire attorneys, expert witnesses, and consultants to bolster their positions at proceedings—and they can often pass those costs on to their ratepayers. These expenses can be prohibitively expensive for other actors.

Intervenor compensation is a practice that can help level the playing field by providing a mechanism for individuals or groups to recoup the costs of their involvement in regulatory proceedings. A 2021 report from NARUC identified sixteen U.S. states with authorized intervenor compensation programs, but only six that were actively in use by intervenors.<sup>43</sup> The particulars of these programs vary by state, including the types of proceedings covered, eligibility of applicants, compensation limits, deadlines for requests, and timing of reimbursements.<sup>44</sup> The potential for intervenor compensation programs to enhance procedural equity for community stakeholders depends on specific program attributes, including whether they are designed to help such participants.

Other forms of individual financial aid could also help reduce financial barriers to participation.<sup>45</sup> The availability of reimbursements for transportation expenses (potentially including public transportation, rideshare, parking, or mileage reimbursement) could unlock opportunities for low-income participants and other community stakeholders to participate in otherwise inaccessible meetings.<sup>46</sup>

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<sup>42</sup> See, e.g., MICHAEL SANT'AMBROGIO & GLEN STASZEWSKI, PUBLIC ENGAGEMENT WITH AGENCY RULEMAKING, ADMIN. CONFERENCE OF THE U.S. (2018), <https://www.acus.gov/sites/default/files/documents/Public%20Engagement%20in%20Rulemaking%20Final%20Report.pdf>.

<sup>43</sup> See NARUC INTERVENOR COMPENSATION REPORT, *supra* note 34, at 4–10.

<sup>44</sup> *Id.* at 11–13.

<sup>45</sup> For example, such financial aid could include reimbursement for transportation, parking, lost wages, or childcare. Low-income community participants are more heavily burdened by these costs, their limited resources “curtail[ing] their ability to be more engaged.” Amanda Moore McBride, Margaret S. Sherraden and Suzanne Pritzker, *Civic Engagement Among Low-Income and Low-Wealth Families: In Their Words*, 55 FAMILY RELATIONS 152, 159 (2006); see also John C. Duncan, Jr., *Multicultural Participation in the Public Hearing Process: Some Theoretical, Pragmatical, and Analeptical Considerations*, 24 COLUM. J. ENVTL. L. 169, 194–95 (1999).

<sup>46</sup> See John C. Duncan, Jr., *Multicultural Participation*, *supra* note 45, at 194 (explaining that “if meetings are held at inconvenient, distant loca-

## 2. Accessibility of Participation Opportunities

Even where Commission proceedings include public participation opportunities such as comment periods and open meetings, these opportunities are not necessarily fully accessible to community participants.<sup>47</sup> For example, physical meetings at the Commission’s headquarters without virtual attendance options may not be accessible to community participants due to logistical impediments, time constraints, geography, and other factors.

Some participants may have a difficult time attending Commission proceedings in-person or at a given time due to the work or life commitments, meeting location, or individual circumstances. Depending on the size of the state, limiting meeting locations to a small number of locations (as some Commissions do) can require participants to travel hours in order to attend a meeting, and make online and virtual participation options even more necessary to ensure access. Meetings that occur after the typical work schedule can be more accessible for some public participants,<sup>48</sup> while childcare limitations may make evenings more difficult for other participants. Varying meeting times, or having multiple times to hear from stakeholders, can help mitigate these barriers.

In addition, virtual attendance options that enable active participation by remote attendees can significantly expand access. To the extent in-person and remote participation cannot be made available for everyone, Commissions can help would-be participants remain informed by making the content of past recordings available to stakeholders in various formats, including video recordings, audio recordings, and/or transcripts. Advance notice of meetings, including key information such as whether the meeting is one where members of the public will have an opportunity to speak, is also important to allow participants to arrange logistical details.<sup>49</sup>

Language can pose an additional potential barrier to participation. As of 2019, 8% of the US population spoke English less than “very well.”<sup>50</sup> In environmental justice communities, a greater proportion of residents may speak English less than “very well;” as such, the EPA considers the proportion of English fluency, among other factors, when identifying environmental justice communities.<sup>51</sup> A language barrier can prevent or dissuade affected participants from participating in Commission proceedings.<sup>52</sup> In order to promote participation from all affected parties, including those with limited English fluency, Commissions can offer multilingual support that is tailored to the affected community. This support could take the form of providing interpretation services for participants at Commission meetings, translating online and

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tions, members of the public may not be able to travel to the forums.”).

<sup>47</sup> *Id.* at 194–95.

<sup>48</sup> See Cheryl Simrell King, Kathryn M. Feltey, & Bridget O’Neill Susel, *The Question of Participation: Toward Authentic Public Participation in Public Administration*, 58 PUB. ADMINISTRATION REV. 317, 323 (1998) (quoting an administrator discussing timing of meetings to increase public participation: “We’ve got to stop doing things the way we’ve always done them. We can’t be having meetings during the daytime and expect people to come. We can’t be doing things in a remote place and expect people to come at 8:00 at night . . . We’ve got to go to them.”); see also McBride, *Civic Engagement Among Low-Income and Low-Wealth Families: In Their Words*, *supra* note 45, at 161.

<sup>49</sup> For examples of this practice, see, e.g., Del. Valley Regional Planning Commission, “Public Participation Plan: A Strategy for Citizen Involvement” 4, 17 (2008) (stating two notice deadlines for participation: “Public notification of all meetings of DVRPC’s Board-established committees is provided at least ten (10) days prior to each meeting. The public notification includes a copy of a draft agenda and/ or a notice that includes the date, time, and location of the meeting” and “Advance notice will depend upon the project and its timeline, but a minimum of fifteen (15) days notice should be given for public involvement and participation events.”); Me. Public Utilities Commission, “How to Participate,” [https://www.maine.gov/mpuc/about/how\\_to\\_participate.shtml](https://www.maine.gov/mpuc/about/how_to_participate.shtml) (last visited Oct. 20, 2023) (“Prior to a hearing, the Commission will publish a public notice in a statewide newspaper at least seven days before the scheduled hearing, will post on social media, and will notify the news media about the event.”).

<sup>50</sup> U.S. Census Bureau, *Language Use in the United States: 2019 4–5* (August 2022), available at <https://www.census.gov/content/dam/Census/library/publications/2022/acs/acs-50.pdf>.

<sup>51</sup> See U.S. EPA, “Overview of Socioeconomic Indicators in EJScreen,” <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen> (last visited Oct. 20, 2023).

<sup>52</sup> See John C. Duncan, Jr., *Multicultural Participation*, *supra* note 45, at 198.

printed resources into languages commonly spoken in the community, offering translated captions for livestream video and uploaded meeting recordings, or developing a translation tool for the Commission website.

In addition to physical and linguistic limitations on accessibility, legal barriers may exist as well. State regulations can include criteria for who can participate fully in formal proceedings as a “party,”<sup>53</sup> including as an intervenor, and may require parties to have legal counsel for at least certain types of proceedings. Even within a given proceeding, different modes of participation may be available—some requiring counsel and others not. For example, in rate proceedings, those with party status may need to be represented by counsel, while non-parties, including stakeholders without representation, may be able to file public comments on the rate proposal.

### 3. Meaningful Engagement

Even where participation opportunities are in fact accessible to members of the public, there is good reason to suspect that participation at some such fora does not necessarily inform ultimate decisionmaking. For example, in some contested proceedings, public comments may be received but may go unconsidered where they are not incorporated into the evidentiary record or are otherwise excluded from the relevant decisionmaking process.

While it is challenging to measure the impact of public comments on eventual decisions, certain practices can better help facilitate meaningful engagement. Commissions can provide opportunities to receive input early in the process before decisions are fully formed, integrate public comments into the underlying record to the extent possible, and report on how public comments affected their final decision.

### 4. Informational Resources & Support

Community stakeholders may lack technical knowledge, which prevents fully informed advocacy, or procedural knowledge, which prevents advocating in the most effective ways. Commissions may make technical and procedural resources available through various channels, including on their websites. Such resources can include educational tools and training sessions for community stakeholders.<sup>54</sup> Non-expert participants of all types may rely especially heavily on web-based materials as they determine how to participate. Commissions can also provide guides in an easy-to-find location on the website, outlining the process for participation in proceedings and trainings on effective participation.<sup>55</sup> Ideally, the website should provide step-by-step instructions on how to submit comments and complaints, how to attend meetings and hearings, and how to appeal decisions,<sup>56</sup> and should state if there are any requirements that participants must fulfill prior to participating and how to meet them.<sup>57</sup>

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<sup>53</sup> “Parties” in docketed cases are formal participants with the rights to take such as actions as present testimony, cross-examine, file briefs, and request judicial review. They are able to formally affect the record. In some cases, there are other less formal methods of participation available, but they do not typically provide the same opportunity to shape the record upon which the final decision is based.

<sup>54</sup> See, e.g., Natalie R. Sampson et al., *Improving Public Participation to Achieve Environmental Justice: Applying Lessons from Freight’s Frontline Communities*, 7 ENVIRONMENTAL JUSTICE 45, 53 (2014) (recommending that agencies “[h]ire trainers” with technical and administrative backgrounds to act as ambassadors for the communities and “[d]esign and implement educational efforts tailored to specific communities and problems” to improve public engagement).

<sup>55</sup> See, e.g., *id.* (discussing best practices to provide that information to communities).

<sup>56</sup> See, e.g., N.Y. Dept. of Public Service, “File A Complaint,” <https://www3.dps.ny.gov/W/PSCWeb.nsf/All/755C4F39A58C924C85257B2F0067FCAS?OpenDocument> (last visited Oct. 20, 2023) (describing in detail how to submit a complaint to the PSC, including several different submission methods and notes about different types of complaints).

<sup>57</sup> See, e.g., *id.* (stating that individuals wishing to file a complaint must “[f]irst seek the assistance of [their] utility provider – [utility providers] are required by law to assist [them].”).

In addition to providing technical and procedural information resources, Commissions can better ensure that information on participation is accessible by providing an easily navigable website with a clear point of contact for questions, hiring staff dedicated to engaging the public and low-income community groups and members, and leveraging social media to provide information.

## 5. *Transparency*

Transparency is considered a fundamental feature of procedural justice. States have a variety of regulatory requirements related to open records and meetings for public processes. In addition to providing a reasonable level of transparency about their own activities and procedures, Commissions have an essential role to play in requiring utilities to be reasonably forthcoming in their disclosure of information in their possession. Utilities have unique access to several kinds of information that can be vital for sound decisionmaking—including, without limitation, information about their own processes and procedures, the systems they own and operate, energy consumption, and energy market participants. While privacy and other considerations may legitimately limit utilities' ability to disclose relevant information, it is up to the Commission to ensure that utilities do not withhold relevant information that could in fact be disclosed.

## 6. *Equity Prioritization*

Whether and to what extent equity is recognized as an important principle can also shape procedural equity. Legislatures can direct Commissions to advance equity, or Commissions can self-identify goals to improve equity. Under both approaches, the prioritization of equity might include explicit requirements for outreach and representation that directly affect procedural equity or may be limited to distributional equity targets.

More than 40 states have consumer advocates whose primary responsibility is to represent the interests of ratepayers and/or the public.<sup>58</sup> These advocates vary in their title, size, scope of jurisdiction, activity level, and structure, but legislatively created consumer advocates are generally recognized to all share an “explicit mandate to represent consumers,” “structural separation from the utility regulatory body,” and “standing in cases and the power to appeal [a] decision.”<sup>59</sup> Consumer advocates may provide various educational and procedural resources that can facilitate community stakeholders' participation in Commission proceedings, and their very existence speaks to a state's commitment to at least one dimension of equity, by elevating at least certain non-utility interests in Commission proceedings. The contributions of a public advocate to energy justice outcomes are not necessarily entirely positive, however, since there can be tradeoffs between lower rates and making other decisions that enhance equity by reducing disproportionate pollution burden.<sup>60</sup>

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<sup>58</sup> NATIONAL COUNCIL ON ELECTRICITY POLICY CONSUMER ADVOCATE MINI GUIDE, *supra* note 34, at 2.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> For example, closing dirtier generation in environmental justice communities can increase rates, or siting new pollution-emitting infrastructure in environmental justice communities may decrease rates (relative to siting the infrastructure elsewhere).

## III. Results

Our survey revealed a wide range of overall performance across states. Each state appears to use at least some of the specific practices that are expected to support procedural equity, but no single state employed all of them. Moreover, even among states that use a given practice, there was often significant diversity in the implementation details and quality of the practice.

For example, for California, our survey identified the largest number of relevant practices and requirements; for Georgia and Wyoming, our survey identified the fewest applicable practices and requirements, although those states still showed leadership in particular areas. Other states' practices and regulations are highly varied, and appear to be spread between these poles.

The wide range of practices indicates a number of opportunities for states to learn from one another. Importantly, even states with fewer readily identified mechanisms for procedural equity may have lessons for those states with more mechanisms for procedural equity. It is worth noting that there were some areas in which one of the states with fewer of the identified procedural equity attributes appeared to outperform states that otherwise appeared to show leadership. For example, it was relatively easy to reach the contact listed on the website for Wyoming by phone and ask questions, whereas California had an elaborate phone tree system to direct a higher volume of callers, which ultimately made it difficult to reach a person and ask a specific question about participation.

Our basic findings across the six main areas of mitigating practices are summarized in the remainder of this section. See Appendices C & D for tables distilling key results by category and state respectively.

### A. Financial Support

The survey included four questions to assess the website evidence for an intervenor compensation program or other programs to fund smaller, individual expenses. Regarding other programs, the survey looked specifically for evidence of programs to reimburse non-party participants in formal proceedings and participants in informal proceedings for individual expenses such as transportation, parking, lost wages, and childcare.

#### *Intervenor Compensation Programs*

New York, California, Michigan, and Illinois Commissions had information on their websites or authorizing provisions in their regulations concerning intervenor compensation programs. The remaining states had no information indicating the existence of an intervenor compensation program. Both the California and Michigan programs were actively in use. California's program was the largest; it reported issuing 114 decisions in 2020 and administering \$10-\$15 million in awards annually.<sup>61</sup> Legislation enabling the Illinois program went into effect in September 2021.<sup>62</sup> New York had existing programs to compensate certain intervenors, but they were limited to proceedings related to siting generation and transmission lines.<sup>63</sup> Intervenor compensation programs vary in terms of the types of proceedings for which they are

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<sup>61</sup> NARUC INTERVENOR COMPENSATION REPORT, *supra* note 34, at 14.

<sup>62</sup> 20 ILL. COMP. STAT. 730, Public Act 102-0662, Article 5 (2021); *see also* 220 ILL. COMP. STAT. 5/9-229 (establishes a provision for an intervenor compensation fund).

<sup>63</sup> *See* N.Y. Public Service Commission, Siting Board FAQs, <https://dps.ny.gov/siting-board-faqs> (last visited Oct. 20, 2023) (discussing the fund for municipal and local parties); *see also* N.Y. PUB. SERV. LAW § 163, 3-4 (discussing pre-application procedures for siting major elec-



available, type of award, deadline, applicant eligibility criteria, and compensation limits.<sup>64</sup> These differences can affect the effectiveness of the programs in increasing participation and reducing procedural inequities.<sup>65</sup>

The usefulness of an intervenor compensation program as a lever for improving procedural equity is affected by whether potential applicants can readily find information alerting them to the existence of the program and instructing them on how to apply. For this reason, we additionally surveyed the presence of more detailed information and instructions related to the intervenor compensation programs, as discussed further in the subsection on Information Support & Resources.

### *Other Compensation Programs*

We found no evidence on Commission websites or in state regulations that any of the surveyed states currently provide reimbursement for individual expenses associated with participation; such as lost wages, transportation, childcare, or other incidental costs; for non-party participants in formal proceedings and participants in informal proceedings. Nor did we find evidence of community members receiving compensation for their time. Similarly, no state provided evidence on the website of a policy in favor of locating physical meetings near public transportation or providing reimbursements for parking.

## **B. Accessibility of Participation Opportunities**

Our second set of questions evaluated legal, linguistic, and logistical arrangements that increase or decrease the accessibility of opportunities to participate in Commission proceedings.<sup>66</sup>

### *Legal Barriers*

We found no explicit regulatory prohibitions against the participation of individual community members or ratepayers in the states that we surveyed. All states had regulatory language in their state utility codes either defining a party or clarifying who may apply for intervenor status. This information is technical and finding it within the state utility codes may be beyond the scope of what the typical interested person, or community group without expert legal representation, would do.

The details on participation requirements varied from state to state. For example, California's provisions contained no requirements, but reserved that an administrative law judge can "where circumstances warrant, deny party status or limit the degree to which a party may participate."<sup>67</sup> New York's regulations noted that "any person" may ask for permission to intervene and that "[p]ermission will be granted if the intervention is likely to contribute to the development of a

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tric generating facilities including access to an intervenor compensation fund); N.Y. COMP. CODES R. & REGS. TIT. 16, § 1000.10, § 85-2.4 (providing how local and municipal parties can access intervenor compensation funds for participation in processes related to generation siting and transmission).

<sup>64</sup> NARUC INTERVENOR COMPENSATION REPORT, *supra* note 34, at 11–13.

<sup>65</sup> Analyzing these differences is relevant to a comprehensive assessment of procedural equity at PUCs, but given NARUC's recent report on this issue, we do not delve more fully into them here, except to note that all of the current programs show room for further improvement. For example, beneficiaries of California's more established and well-resourced program note that California could still further improve by decreasing the time until compensation is received, removing potential administration challenges for new parties, and streamlining the application process. NARUC INTERVENOR COMPENSATION REPORT, *supra* note 34, at 22–24.

<sup>66</sup> The availability of financial assistance in covering travel costs is covered above under "Other Compensation Programs."

<sup>67</sup> Cal. Public Utilities Commission, RULES OF PRACTICE & PROCEDURE, Rule 1.4(C) (Participation in Proceedings) (2021).

complete record or is otherwise fair and in the public interest.”<sup>68</sup> Texas permitted an intervention if the person “(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.”<sup>69</sup> Timing constraints on applications for party status may also impact participation. For example, in Georgia, parties must apply for intervenor status within 30 days of when notice for a proceeding is published.<sup>70</sup>

The precise extent to which the need for local counsel constitutes a barrier to procedural equity for community stakeholder participants proved challenging to evaluate through online materials alone. States often have varying rules for different procedures and include this information in different parts of their regulations under different terminology, making it difficult for the typical prospective participant to find this information. In some cases, the Commission websites provided clear guidance for participants regarding whether they did or did not need an attorney for particular types of participation.<sup>71</sup>

None of the states surveyed appeared to require legal representation for *all* possible participation opportunities before a Commission. For certain types of cases, such as ratemaking proceedings or generation siting hearings, counsel may be required for a stakeholder to participate as a party unless that stakeholder is an individual participating on a *pro se* basis—that is, appearing on their own behalf rather than to represent a group.<sup>72</sup> In certain states, such as Michigan, the requirement for counsel applied to any “proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing.”<sup>73</sup> Massachusetts provided a “limited participant” option that does not require an attorney,<sup>74</sup> and, for certain circumstances where an attorney would normally be required, had a process for parties to waive that requirement.<sup>75</sup>

While some states required that groups be represented by attorneys in certain types of proceedings, other states, such as New York, explicitly provided in regulations that a group representative need not be an attorney,<sup>76</sup> and several other state regulations referenced an authorized “representative” other than an attorney, which may imply an option for non-attorney representation.<sup>77</sup>

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<sup>68</sup> N.Y. COMP. CODES R. & REGS. TIT. 16, § 4.3(c).

<sup>69</sup> 16 TEX. ADMIN. CODE § 22.103(b).

<sup>70</sup> GA. CODE ANN. § 46-2-59(c).

<sup>71</sup> See, e.g., Pa. Public Utilities Commission, “The PUC Ratemaking Process and the Role of Consumers,” (Dec. 2012), [https://www.puc.pa.gov/general/consumer\\_ed/pdf/Ratemaking\\_Complaints.pdf](https://www.puc.pa.gov/general/consumer_ed/pdf/Ratemaking_Complaints.pdf) (“Individual consumers may become formal parties by filling out a formal complaint form. Consumers may speak for themselves, or an attorney may represent individual consumers or groups of consumers.”).

<sup>72</sup> See, e.g., 980 MASS. CODE. REGS. 1.05(1)(i) (requiring legal representation for intervenors (not appearing *pro se*) in an energy facilities siting board case).

<sup>73</sup> Mich. Public Service Commission, “Get Involved,” <https://www.michigan.gov/mpsc/consumer/get-involved> (last visited Oct. 20, 2023) (“A proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. MCL 24.203(3). All parties must be represented by licensed attorneys, except that individuals who are not licensed attorneys may represent themselves.”)

<sup>74</sup> See 220 MASS. CODE. REGS. 1.03 (e) (“The Commission, or the presiding officer... may allow a person who is not a party to make limited appearance by making an oral or written statement of his position on the issue, or by such other participation as the Commission or the presiding officer may determine.”); see also Commonwealth of Massachusetts, “File a petition to intervene in an EFSB or DPU siting case,” <https://www.mass.gov/how-to/file-a-petition-to-intervene-in-an-efsb-or-dpu-siting-case> (last visited Oct. 20, 2023).

<sup>75</sup> See 980 MASS. CODE. REGS. 1.05(i) (concerning energy facility siting board cases).

<sup>76</sup> N.Y. COMP. CODES R. & REGS. TIT. 16 § 2.1(a) (“A party’s case may be presented personally or through a representative. A party’s representative need not be an attorney....”).

<sup>77</sup> See, e.g., 055-5 WYO. CODE. R. § 5-6(a) (“A party, whether it be an individual, corporation, partnership, governmental organization or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure (W.R.C.P) may appear through an attorney or representative prior to a ruling on the motion to intervene.”); WYO. STAT. ANN. § 16-3-107 (j) (2013) (regarding contested cases, the regulations

## *Language Barriers*

Seven Commissions provided at least website translation, though often only through Google Translate plug-in. Only the California, New York, and Illinois Commission websites stated that translators or bilingual counselors were available upon request to support participation, but they varied in how many languages were available and for which circumstances translation services were available.<sup>78</sup> States that used YouTube for meeting recordings by default had the recordings available with subtitles in other languages, and California by default offered Spanish captions for videos of their livestreams.

## *Notice, Scheduling, and Location Barriers*

All states had livestreaming options for meetings, but not all clearly allowed for participation virtually. Commissions in California, Texas, Georgia, Wyoming, Michigan, and Pennsylvania consistently posted meeting minutes and/or video recordings online for their public meetings, but not all states consistently provided robust written summaries. New York did not post materials for all meetings, but consistently provided recordings and session transcripts for monthly Commission sessions and Board on Electric Generation Siting and the Environment meetings. Many states had some form of statewide requirement mandating that minutes or recordings are posted for open meetings.

Some Commissions may have changed their meeting recording practices due to the COVID-19 pandemic. Most states that had recordings or allowed virtual attendance<sup>79</sup> did so pre-pandemic. Massachusetts was a clear outlier: meetings were wholly in-person, but went fully remote during the pandemic. The calendar was switching back to in-person at the time data was collected. California modeled a constructive practice of providing clear instructions about how to participate on the calendar event description pages for individual meetings. These instructions clarified how to attend an online broadcast and how to call in to leave a comment by phone for a meeting, rather than expecting a participant to have familiarized themselves with that information elsewhere.

California, New York, and Massachusetts Commission websites noted opportunities to participate in proceedings of public importance both during and outside of normal business hours—in some cases even holding two meetings for the same docket item (one during business hours and one outside of business hours). Most of the other states indicated consistent meeting times during the workday. The Georgia Commission website invited public engagement by stating expressly at what time during hearings and meetings the Commission would take public comment.<sup>80</sup>

No state provided an explicit policy on its website indicating how far in advance meeting times/dates should be announced. All states posted at least some public meetings more than ten days in advance. Several states showed a practice of posting their regularly scheduled commission meetings for the entire year. Some states had information

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provide “[a]ny person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel or, if permitted by the agency, by other qualified representative.”)

<sup>78</sup> For example, the website for the California Commission noted that interpreter services were available for events and were not limited to a single language. Cal. Public Utilities Commission, “Language Interpretation and Translation,” <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/public-advisors-office/language-interpretation-and-translation> (last visited Nov. 20, 2023). The website for the Illinois Commission noted Spanish-speaking counselors were available by phone on the hotline with “a group of consumer counselors prepared to assist with questions or concerns or to assist with making a public comment on a docketed matter.” Ill. Commerce Commission, “Climate and Equitable Jobs Act Implementation,” <https://www.icc.illinois.gov/programs/climate-and-equitable-jobs-act-implementation> (last visited Nov. 20, 2023).

<sup>79</sup> As of review in July 2022.

<sup>80</sup> Ga. Public Service Commission, “Public Hearings and Public Comments,” <https://psc.ga.gov/> (last visited Oct. 20, 2023) (“Public Comments are heard during the first hour of each hearing day and the last 15 minutes of Committee Meetings.”)

on their regularly scheduled general Commission meetings, but not other types of hearings open to the public, and Massachusetts, while having abundant information on other types of hearings, left it unclear when regularly scheduled Commission meetings were held.

The California Commission's meeting calendar indicated that meetings were available in a variety of urban centers around the state.<sup>81</sup> New York and Illinois indicated meeting locations in at least two cities, but five of the remaining states appeared to offer meetings in only one location and the last state did not provide information on meeting locations. Texas had a statutory requirement to hold all evidentiary hearings in Austin unless another compelling reason exists.<sup>82</sup>

### *Online Commenting*

Providing the opportunity to submit comments online helps ensure an accessible means to participate. Eight states clearly allowed participants to submit comments/concerns via online channels based on their Commission websites. Only Wyoming did not provide any information in its regulations or on its Commission website stating whether online comment submission was an option.

### *Accessibility & Reasonable Accommodation*

California, New York, Texas, and Michigan showed evidence of accessibility statements or otherwise clearly communicated that reasonable accommodations were available with notice on their Commission websites. While it is possible that additional states may make other reasonable accommodations, the ease of finding this information can also affect accessibility. California made accessible information itself more easily accessible by posting pertinent notice and contact information for receiving special accommodations as part of event descriptions on the calendar.<sup>83</sup>

## **C. Meaningful Engagement**

Our survey found that typically, the public had the opportunity to participate in proceedings once matters were fairly well-developed. For example, the California Commission provided an opportunity for public comment on a formal hearing, but that opportunity occurs after the ALJ had formulated a draft decision for the Commission to vote upon.<sup>84</sup> However, even though California showed room for improvement, its Commission website did the best job of facilitating opportunities for shareholders to give early input by providing clear direction on filing an application to become a party and holding public advisory group meetings and workshops.<sup>85</sup>

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<sup>81</sup> See, e.g., Cal. Public Utilities Commission, "Disadvantaged Communities Advisory Group Meeting," <https://www.cpuc.ca.gov/events-and-meetings/disadvantaged-communities-advisory-group-meeting-05-20-2022> (last visited Oct. 20, 2023).

<sup>82</sup> 16 TEX. ADMIN. CODE § 22.201 ("All evidentiary hearings shall be held in Austin, unless the commission determines that it is in the public interest to hold a hearing elsewhere. The commission may, when it is in the public interest, hold regional hearings to obtain public comment.").

<sup>83</sup> See, e.g., Cal. Public Utilities Commission, "Public Forum on SoCalGas Rate Requests," <https://www.cpuc.ca.gov/events-and-meetings/a2205015-socalgas-pph-2023-03-06> (providing a summary or a Public Forum on SoCalGas Rate Requests which included the statement, "If special accommodations are needed to attend, such as non-English or sign language interpreters, please contact the CPUC's Public Advisor's Office at [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov) or toll-free at 866-849-8390 at least five business days in advance of the public forum.").

<sup>84</sup> Cal. Public Utilities Commission, "How to Participate in CPUC Proceedings" 2, [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/pao/proceedings\\_081121.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/pao/proceedings_081121.pdf).

<sup>85</sup> See, e.g., Cal. Public Utilities Commission, "Disadvantaged Communities Advisory Group Meeting," <https://www.cpuc.ca.gov/events-and-meetings/disadvantaged-communities-advisory-group-meeting-05-20-2022> (last visited Oct 20, 2023) (indicating holding of meeting on May 20, 2022); Cal. Public Utilities Commission, "Methods for Becoming a Party to a Proceeding – Rule 1.4," <https://www.cpuc.ca.gov/proceedings-and-rulemaking/cpuc-public-participation-hearings/methods-for-becoming-a-party-to-a-proceeding> (last visited Oct. 20, 2023).

As noted above, all state Commissions appeared to offer livestreaming of at least some proceedings, providing a minimum level of access to the meetings. However, only a few websites made clear that virtual attendance would be done through a platform to accommodate remote participation rather than passive observation. The California, Wyoming, Michigan, and New York Commissions had calendar events that clearly indicated opportunities to participate remotely.

For all Commissions, our survey identified some degree of responsibility to offer a period for public comment on at least some types of proceedings. States typically had a variety of statutory and regulatory provisions pertaining to providing comment periods, which varied in whether they were Commission-specific or statewide, applicable types of proceedings (especially whether to proposed projects, regulations, or adjudicatory hearings), and whether they permitted, recommended, or required an opportunity for public comment. For example, California had different Commission-specific provisions concerning an opportunity to comment on regulations, proceedings before commissioners in general, and specific proceedings before commissioners (quasi-legislative, adjudication, rate setting, catastrophic wildfire proceeding), and various types of plans. New York had a statewide requirement for agencies to provide an opportunity for public comment before adopting regulations, and additional Commission-specific requirements regarding establishment of particular programs or tariffs and more broadly regarding certain types of compliance filings and scoping statements for siting major electric generating facilities.

None of the Commission websites provided clear information regarding any requirement, applicable to all proceedings, to summarize or consider public comments submitted to the Commission. California had a broad provision *allowing* the Commission to include public comments in the record and requiring that parties to the proceeding be provided a reasonable opportunity to respond to comments that are part of the record.<sup>86</sup> A few states also had provisions that, in specific types of proceedings, required either that applicants summarize public comments<sup>87</sup> or that the Commission consider public comments.<sup>88</sup>

## D. Informational Resources & Support

Our fourth set of questions addressed the extent to which Commissions make technical and procedural information about proceedings available to prospective community stakeholders.

### *Substantive Information*

Commission websites for all states but Wyoming offered at least some online resources to help participants understand substantive issues underlying their work and proceedings. These resources varied in quantity, quality, content, and format. The California Commission offered the most robust resources navigable across its webpages. California also linked resources to relevant events on its calendar.<sup>89</sup> For example, it had an explanation of electric rates that explains rate

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<sup>86</sup> CAL. PUB. UTIL. CODE 1701.1 (g) (“The commission shall permit written comments received from the public to be included in the record of its proceedings, but the comments shall not be treated as evidence. The commission shall provide parties to the proceeding a reasonable opportunity to respond to any public comments included in the record of proceedings.”).

<sup>87</sup> See, e.g., N.Y. COMP. CODES R. & REGS. TIT. 16, § 1000.5 (g) (discussing requirements for applicants siting major electric generating facilities and providing “[w]ithin 21 days after the closing of the comment period, the applicant shall prepare a summary of the material comments and its reply thereto, and file and serve its summary of comments and its reply in the same manner as it files and serves the preliminary scoping statement pursuant to subdivision (c) of this section.”).

<sup>88</sup> See, e.g., 220 ILL COMP. STAT. ANN. 5/16-108.18 (d)(5) (discussing requirements related to ratemaking proceedings and providing that “[i]n determining prudence and reasonableness of rates, the Commission shall make its determination based upon the record, including each public comment filed or provided orally at open meetings consistent with the Commission’s rules and practices.”).

<sup>89</sup> See, e.g., Cal. Public Utilities Commission, “Public Forum on PacifiCorp’s Rate Increase Request,” Proceeding A.22-05-006, <https://www.cpuc.ca.gov/events-and-meetings/public-forum-on-pacificorp-grc-a2205006-1pm> (last visited Oct. 20, 2023) (public forum on a rate

proceedings and links to relevant annual reports, previous proceedings, and forthcoming events.<sup>90</sup> The Massachusetts Department of Public Utilities, offered overviews of substantive topics directly on the website.<sup>91</sup> The Michigan and Pennsylvania Commissions both included issue briefs on relevant substantive matters with plain language explanations that made the connection to past or current proceedings.<sup>92</sup> Some states' Commissions, such as those in Georgia, Texas, and Illinois, offered resources for consumers regarding matters like billing and utility assistance, but provided less information on Commission proceedings.<sup>93</sup> New York's Commission offered an occasional resource, such as a slide deck and FAQ resource on siting major electric generating facilities,<sup>94</sup> but its Commission website included no centralized resource center.

## Procedural Information

The Pennsylvania<sup>95</sup> and Wyoming Commission websites provided almost no information on how to participate. The California Commission website included extensive resources on procedures for participation, including website instructions, informational guides, and templates,<sup>96</sup> which covered a variety of processes including voting meetings, providing public comments, intervening, participating in public forums, and becoming a party to proceedings. Other states span the spectrum, but most Commissions provided basic electronic filing instructions, but limited additional resources.<sup>97</sup>

Among the four states with intervenor compensation programs, the California Commission's website stood out for offering detailed, relatively easy to access, instructions on utilizing the program. The New York and Michigan Commissions also provided some guidance material on their websites, but the unique naming convention for the Michigan program and decentralized placement on the website made it more difficult to locate this information. At the time of the initial survey,

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increase request that links to resources explaining what is at stake and how to become involved).

<sup>90</sup> See Cal. Public Utilities Commission, "Electric Rates," <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-rates> (last visited Oct. 20, 2023).

<sup>91</sup> See, e.g., Commonwealth of Mass., "Electric Service Overview," <https://www.mass.gov/info-details/electric-service-overview> (last visited Oct. 20th, 2023).

<sup>92</sup> See, e.g., Pa. Public Utilities Commission, "Transmission Line Siting, the PUC and the Role of Residents," [https://www.puc.pa.gov/general/consumer\\_ed/pdf/Transmission\\_Lines.pdf](https://www.puc.pa.gov/general/consumer_ed/pdf/Transmission_Lines.pdf) (last visited Oct. 20, 2023) (discussing transmission line siting); Mich. Public Service Commission, "Issue Brief: Consumers Energy 2021 Integrated Resource Plan," (June 29, 2022), <https://www.michigan.gov/mpsc/-/media/Project/Websites/mpsc/consumer/info/briefs/Consumers-Energy-2021-Integrated-Resource-Plan-Issue-Brief.pdf?rev=189754ab9b914ac0ba4846ff917b5e2e> (discussing integrated resource planning).

<sup>93</sup> See, e.g., Tex. Public Utilities Commission, "Get the Facts," <https://www.puc.texas.gov/consumer/facts/Facts.aspx> (last visited Oct. 20, 2023); Ill. Commerce Commission, "Consumers," <https://www.icc.illinois.gov/consumers> (last visited Oct. 20, 2023).

<sup>94</sup> See N.Y. Board on Electric Generation Siting and the Environment, "Article 10 of the Public Service Law: Siting Major Electric Generating Facilities," (Sept. 2020), [https://dps.ny.gov/system/files/documents/2022/11/art10\\_presentation083120.pdf](https://dps.ny.gov/system/files/documents/2022/11/art10_presentation083120.pdf) (last visited Oct. 29, 2023).

<sup>95</sup> Pennsylvania has a guide to ratemaking proceedings, but it could not be easily found on the website. See JAMES H. CAWLEY AND NORMAN J. KENNARD, A GUIDE TO UTILITY RATEMAKING (2018 Edition), [https://www.puc.pa.gov/General/publications\\_reports/pdf/Ratemaking\\_Guide2018.pdf](https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf).

<sup>96</sup> See Cal. Public Utilities Commission, "Creating Formal Documents—Templates Provided," <https://www.cpuc.ca.gov/proceedings-and-rulemaking/cpuc-public-participation-hearings/creating-formal-documents---templates-provided> (last visited Oct. 20, 2023).

<sup>97</sup> For example, Wyoming provided instructions on e-filing, but this isn't connected to any guidance on participating in proceedings. New York, Texas, and Pennsylvania provide fairly limited resources on filing. Michigan and Massachusetts did not have particular guides, but their websites described proceedings and procedures and helped the user navigate through the different processes. See, e.g., Michigan Public Service Commission, "Ratemaking," <https://www.michigan.gov/mpsc/regulatory/ratemaking> (last visited Nov. 20, 2023). Illinois provided a pdf guide on how certain proceedings work including Commission meetings, commenting, and intervening, but it was difficult to locate as it was on the "Climate and Equitable Jobs Act" Implementation program page. See Ill. Commerce Commission, "Citizen's Guide to Illinois Commerce Commission," available at <https://www.icc.illinois.gov/programs/climate-and-equitable-jobs-act-implementation> (last visited Nov. 20, 2023). Texas offers a very short overview of participation opportunities in formal and informal actions. See Public Utility Commission of Texas, "Making Rules at the PUC," <https://ftp.puc.texas.gov/public/puct-info/industry/projects/administrative/PUCTX-RulemakingProcess-fin.pdf> (last visited Nov. 20, 2023).

we did not find guidance on the intervenor compensation program on the Illinois Commission’s website, but at the time of publication we found a guidance document on participating in the program.<sup>98</sup>

### *Information Accessibility*

Most websites were in working order, but had at least some deficiencies in functionality and navigability, such as lacking a clear place for those interested to learn how to participate. The website for the Wyoming Commission presented greater than average challenges during our test use, but when we phoned the various Commissions to assess their response to phone inquiries, we found that the Wyoming Commission was especially responsive and able to provide information in that manner.

While some Commission websites provided points of contact for complaints or outages, only the California, New York, Pennsylvania, Illinois, and Massachusetts Commission websites provided a clear point of contact specifically for questions about Commission proceedings and participating in proceedings.<sup>99</sup> Most Commissions enhanced access to information through use of social media, with the Georgia and Massachusetts Commissions being the exceptions.

## **E. Transparency**

The survey considered Commission requirements concerning the public disclosure of utility data and transparency requirements applicable to the Commissions.

### *Public Disclosure*

For six of the states reviewed, we identified reporting requirements to make certain types of utility data available online, but they varied in the comprehensiveness of their application, the quality of the data, what types of data were covered, and to whom the disclosure should be made. The New York, Georgia, and Wyoming Commissions did not have disclosure requirements clearly discernable from our keyword search of regulatory requirements, but Georgia posts annual reports on its website that contain some limited information on its chief activities. The quality of data disclosure also varies in terms of how easy it is to locate disclosed data and how frequently it is updated in a publicly accessible place. For example, the California Commission had developed “data dashboard”<sup>100</sup> and “transparency & reporting”<sup>101</sup> webpages with links to different data resources, creating easier user access. However, most of the resources posted on the California Commission dashboard, and their underlying data, were more than five years old.

### *Broader State Requirements for Governmental Transparency*

All of the states surveyed showed evidence of open meeting and record laws. Almost all states surveyed showed clear evidence of code of conduct/ethics and ex parte communication requirements (concerning communications between

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<sup>98</sup> See Ill. Commerce Commission, “Consumer Intervenor Compensation Fund,” <https://www.icc.illinois.gov/informal-processes/Consumer-Intervenor-Compensation-Fund> (last visited Nov. 20, 2023) (including a link to a “Consumer Intervenor Compensation Fund Program Guide” document dated June 29, 2023).

<sup>99</sup> The Illinois Commerce Commission contact was particularly difficult to locate as it was on the “Climate and Equitable Jobs Act” Implementation program page linked to above. It noted that Spanish-speaking counselors were available by request.

<sup>100</sup> See Cal. Public Utilities Commission, “Data Dashboard,” <https://www.cpuc.ca.gov/about-cpuc/transparency-and-reporting/dashboard> (last visited Oct. 20, 2023).

<sup>101</sup> See Cal. Public Utilities Commission, “Transparency & Reporting,” <https://www.cpuc.ca.gov/about-cpuc/transparency-and-reporting> (last visited Oct. 22, 2023).

a decisionmaker and an interested person in a formal proceeding). While these measures can do important work to enhance transparency and a fair process, it can be difficult for non-lawyers and participants who are new to Commission advocacy to find information on these procedures. The California Commission provided an overview of its ex parte requirements<sup>102</sup> on its website rather than relying on participants to familiarize themselves with the regulations.<sup>103</sup>

## F. Equity Prioritization

We looked for several potential indicators to help identify equity prioritization: requirements to consider harms to disadvantaged communities, Commission steps to explicitly advance equity (such as reports or committees), targeted outreach to disadvantaged communities, and legally mandated public advocates.

### *Consideration of Harms to Disadvantaged Communities*

Our review found evidence of legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some Commission activities in California, New York, Massachusetts, Illinois, and Michigan.<sup>104</sup> These requirements varied in a number of ways, including whether they stemmed from broader statewide efforts, whether they generally prioritized equity or specified particular types of actions for these requirements, the types of proceedings to which they applied, and how and where they defined terms like “environmental justice community” or “disadvantaged community.”<sup>105</sup>

For example, New York had statutory requirements to consider environmental justice impacts in state energy plans<sup>106</sup> and major generation siting,<sup>107</sup> as well as requirements to ensure that renewable energy programs benefit disadvantaged communities.<sup>108</sup> California also had a variety of statutory requirements to consider impacts on disadvantaged communities, which notably for procedural equity concerns, included establishment of “a disadvantaged community advisory group consisting of representatives from disadvantaged communities... [which] shall review and provide advice on programs proposed to achieve clean energy and pollution reduction and determine whether those proposed programs will be effective and useful in disadvantaged communities.”<sup>109</sup> The California Public Utilities Code directs the Commission to require load-serving entities to file integrated resource plans that must “[m]inimize localized air pollutants and other greenhouse gas emissions, with early priority on disadvantaged communities” among other objectives.<sup>110</sup> In Massachusetts, lawmakers in 2021 enacted new requirements that the Department of Public Utilities consider equity and reductions of greenhouse gas emissions, among other priorities in carrying out its legal duties.<sup>111</sup>

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<sup>102</sup> See Cal. Public Utilities Commission, “Ex Parte Communications,” <https://www.cpuc.ca.gov/about-cpuc/transparency-and-reporting/ex-parte-communications> (last visited Oct. 22, 2023).

<sup>103</sup> *Id.*

<sup>104</sup> These legal requirements were distinct from the antidiscrimination requirements, often related to provision of service, which are not necessarily used to enhance environmental or energy justice.

<sup>105</sup> These requirements were not necessarily apparent on PUC websites and given that they can stem from broader state requirements or specific PUC requirements they can be difficult to comprehensively review by a search of state codes alone and our list may not be exhaustive.

<sup>106</sup> See N.Y. ENERGY LAW § 6-104 (Consol. 2021) (“2. The state energy plan shall include: ... (g) An environmental justice analysis ... (k) Assessment of the impacts of implementation of the plan upon economic development, health, safety and welfare, environmental quality, and energy costs for consumers, specifically low-income consumers ...”).

<sup>107</sup> See, e.g., N.Y. PUB. SERV. LAW §§ 164, 168 (Consol. 2021).

<sup>108</sup> See, e.g., N.Y. PUB. SERV. LAW § 66-p (Consol. 2021).

<sup>109</sup> CAL. PUB. UTIL. CODE § 400 (g)(1) (West 2023).

<sup>110</sup> CAL. PUB. UTIL. CODE § 454.52 (a)(1)(I) (West 2023).

<sup>111</sup> MASS. ANN. LAWS CH. 25, § 1A (LexisNexis 2023) (“In discharging its responsibilities under this chapter and chapter 164, the department shall, with respect to itself and the entities it regulates, prioritize safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N.”).



A 2020 Michigan executive directive required all Integrated Resource Plans filed by utilities to be consistent with the directive's climate goals, including environmental justice and health impact considerations, and set requirements for the Commission to analyze evidence of environmental justice and health impacts collected by the Department of the Environment.<sup>112</sup> Illinois had broader state policies concerning environmental justice and equity, such as the Climate and Equitable Jobs Act, and implements related programs at the Commission.<sup>113</sup>

### *Steps to Improve Consideration of Equity at Commissions*

The websites for the California, New York, Massachusetts, Michigan, and Illinois Commissions all showed evidence of efforts to improve equity considerations. These efforts took various forms, including action plans, working groups, reports, opening an inquiry to enhance inclusivity and participation in energy proceedings, and diversity, equity, inclusion initiatives, which covered measures like staff trainings and changes to hiring practices. For example, California's Commission had released the second version of an Environmental and Social Justice Action Plan (after receiving input from community stakeholders on the first version), which, in addition to goals related to improving distributional outcomes, included commitments to integrate equity and access considerations throughout Commission regulatory activities, enhance outreach and public participation opportunities for disadvantaged communities in Commission decisionmaking processes, and improve relevant staff trainings and development.<sup>114</sup>

An iterative focus to solicit input and integrate into Commission processes is apparent in other states as well. In April 2021, the Massachusetts Department of Public Utilities opened an inquiry to enhance inclusivity and participation in energy proceedings.<sup>115</sup> In February 2022, it approved the state's Three-Year Energy Efficiency Plan (2022-24), which centered equity as one of its main goals and targets underserved and lower-income customers.<sup>116</sup>

Websites for the New York and California Commissions also indicated the presence of diversity, equity, inclusion working groups or initiatives to help drive forward staff training and changes to hiring practices.<sup>117</sup> Some efforts are also interagency

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<sup>112</sup> See Governor Gretchen Whitmer, "Executive Directive 2020-10" (Sept. 23, 2020), <https://www.michigan.gov/whitmer/news/state-orders-and-directives/2020/09/23/executive-directive-2020-10>.

<sup>113</sup> See Ill. Commerce Commission, "Climate and Equitable Jobs Act Implementation," <https://www.icc.illinois.gov/programs/climate-and-equitable-jobs-act-implementation> (last visited Oct. 22, 2023).

<sup>114</sup> See CAL. PUBLIC UTILITIES COMMISSION, ENVIRONMENTAL & SOCIAL JUSTICE ACTION PLAN VERSION 2.0 (Apr. 2022), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf> [hereinafter CALIFORNIA PUC ENVIRONMENTAL & SOCIAL JUSTICE ACTION PLAN].

<sup>115</sup> Mass. Dept. of Public Utilities, "Department of Public Utilities Opens Inquiry to Enhance Inclusivity, Participation in Energy Proceedings," (Apr. 16, 2021), <https://www.mass.gov/news/department-of-public-utilities-opens-inquiry-to-enhance-inclusivity-participation-in-energy-proceedings> ("As part of these efforts, the DPU has opened this investigation to explore how to boost community outreach and increase participation and engagement in energy proceedings. The DPU expects to ultimately establish comprehensive rules, guidelines, procedures and/or regulations which will support robust, comprehensive and equitable public engagement in proceedings.").

<sup>116</sup> Mass. Dept. of Public Utilities, "DPU Approves Massachusetts' Nation-Leading Three Year Energy Efficiency Plan," (Apr. 16, 2021), <https://www.mass.gov/news/dpu-approves-massachusetts-nation-leading-three-year-energy-efficiency-plan>.

<sup>117</sup> See, e.g., CALIFORNIA PUC ENVIRONMENTAL & SOCIAL JUSTICE ACTION PLAN, *supra* note 114, at 18 ("The DEI Working Group implemented several initiatives to celebrate diverse communities, highlight their challenges, and improve diversity of recruitment and hiring through training for all CPUC management, hiring panels with diverse representation, and increased recruitment from diverse professional associations."). A news release indicates that as of 6/16/22 the NY PSC launched a DEI initiative for hiring practices within utilities. "Going forward, the Commission said utility DEI plans should identify corporate strategies and communication training, including but not limited to consultant-led efforts to inform DEI strategies, specific DEI roles added to the organization, as well as employee outreach efforts. Utility DEI plans should identify training efforts to educate employees throughout the organization, including but not limited to offering formal training programs, periodic employee training sessions, and available employee resources (e.g., online databases and learning portals)." N.Y. State Public Service Commission, "PSC Launches Utility Employee Diversity, Equity and Inclusion Initiative" (June 16, 2022), <https://dps.ny.gov/system/files/documents/2022/10/psc-launches-utility-employee-diversity-equity-and-inclusion-initiative.pdf>.

in nature, such as New York’s interagency environmental justice taskforce<sup>118</sup> or the Massachusetts Department of Public Utilities’ implementation of a state-wide environmental justice policy.<sup>119</sup> The Michigan Commission website showed evidence of work groups dedicated to improving equity,<sup>120</sup> and the Illinois Commission website showed implementation of the Climate and Equitable Jobs Act through initiatives that contribute to energy equity.<sup>121</sup>

## Consumer Advocates

All nine states had some form of consumer advocate, but while eight states had at least some form of public government entity in the role, Georgia had only a non-profit entity.<sup>122</sup> New York had a state entity, which is a division of consumer protection with the New York Department State, and an additional nonprofit entity named the Public Utility Law Project of New York. New York also had an Office of Consumer Affairs within its Public Service Commission, but this lacks the independence of a separate office.<sup>123</sup> California and Illinois both also had a state agency and a nonprofit.<sup>124</sup> Wyoming, Pennsylvania, and Texas had only a state entity.<sup>125</sup> Massachusetts had only an entity in the Attorney General’s Office, and Michigan had entities in both the Attorney General’s Office and a state agency.<sup>126</sup>

In addition to its general consumer advocate positions, Michigan had also created a state-wide environmental justice public advocate through a 2019 executive order.<sup>127</sup> The California Commission website showed evidence of two additional offices focused around providing educational resources, outreach, and procedural support relevant to Commission proceedings. That website indicated the presence of “Local Government and Community Liaisons” that “represent specific regions throughout the state and maintain relationships with government officials, community-based organizations, and other stakeholders by providing timely information to enhance awareness of the [California Public Utility Commission’s] policies and priorities.”<sup>128</sup> California’s Commission also had a “public advisor” established by statute that is responsible for providing procedural information to the public to promote participation in formal proceedings as well as programs and services to educate and assist the public.<sup>129</sup>

We additionally looked for clear evidence of targeted public outreach to involve disadvantaged communities, but found evidence of significant efforts only on the website of the California Commission<sup>130</sup> and some limited discussion on the

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<sup>118</sup> N.Y. State Dept. of Conservation, “Environmental Justice,” <https://www.dec.ny.gov/public/333.html> (last visited Oct. 22, 2023).

<sup>119</sup> Commonwealth of Mass., “Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs,” (June 24, 2021), <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

<sup>120</sup> Mich. Public Service Commission, “Workgroups,” <https://www.michigan.gov/mpsc/commission/workgroups> (last visited Nov. 19, 2023).

<sup>121</sup> Ill. Commerce Commission, “Climate & Equitable Jobs Act Implementation,” <https://www.icc.illinois.gov/programs/climate-and-equitable-jobs-act-implementation> (last visited Nov. 19, 2023).

<sup>122</sup> See Georgia Watch, <https://georgiawatch.org/> (last visited Oct. 22, 2023).

<sup>123</sup> It could be helpful for a future metric or analysis to capture this type of distinction in the independence of consumer advocate offices. New York’s governor rejected a 2021 bill that would have established a separate independent consumer advocate office, which proponents stressed would have a broader mandate and scope of authority than the consumer protection division.

<sup>124</sup> NATIONAL COUNCIL ON ELECTRICITY POLICY CONSUMER ADVOCATE MINI GUIDE, *supra* note 34, at 3.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Mich. Department of Environment, Great Lakes, and Energy, “Office of the Environmental Justice Public Advocate,” <https://www.michigan.gov/environmentaljustice/> (last visited Oct. 22, 2023).

<sup>128</sup> Cal. Public Utilities Commission, “CPUC Local Government and Community Outreach,” <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/cpuc-local-government-and-community-outreach> (last visited Oct. 22, 2023).

<sup>129</sup> CAL. PUB. UTIL. CODE § 321 (2022).

<sup>130</sup> See, e.g., Cal. Public Utilities Commission, “CPUC Local Government and Community Outreach,” <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/business-and-community-outreach/cpuc-local-government-and-community-outreach> (last visited Oct. 22, 2023); Cal. Public Utilities Commission, “Business and Community Outreach,” <https://www.cpuc.ca.gov/about-cpuc/divi->

Pennsylvania Commission’s website.<sup>131</sup> No Commission websites surveyed showed evidence of a employing a non-party, skilled facilitator, despite the recognition that such a facilitator is a best practice.<sup>132</sup>

## IV. Conclusion

The nine states surveyed demonstrate a wide range of Commission practices and conditions relevant to advancing procedural equity. While the experience of states with more programs and practices designed to enhance procedural equity can offer important learnings for other states, efforts to advance procedural equity remain relatively undeveloped in all states, leaving substantial room for further improvement. This preliminary research provides an informational baseline; the next step, currently underway, involves more extensive surveying of individuals with specific on-the-ground knowledge in various fora. Together, these two sets of findings can inform further research and advocacy to spur action for a race to the top.

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sions/news-and-public-information-office/business-and-community-outreach (last visited Oct. 22, 2023).

<sup>131</sup> See Pa. Public Utility Commission, “Consumer Education and Outreach Services,” <https://www.puc.pa.gov/about-the-puc/consumer-education/consumer-education-and-outreach-services/> (last visited Oct. 22, 2023).

<sup>132</sup> NARUC, “Public Utility Commission Stakeholder Engagement: A Decision-Making Framework” (Jan. 2021), [https://pubs.naruc.org/pub/7A519871-155D-0A36-3117-96A8D0ECB5DA?\\_gl=1\\*um502\\*\\_ga\\*ODQ2MDE5MDE0LjE2NzIxMDkzNTQ.\\*\\_ga\\_QLH1N3Q1NF\\*MTY3MjEwOTM1NC4xLjEuMTY3MjEwOTY3MS4wLjAuMA](https://pubs.naruc.org/pub/7A519871-155D-0A36-3117-96A8D0ECB5DA?_gl=1*um502*_ga*ODQ2MDE5MDE0LjE2NzIxMDkzNTQ.*_ga_QLH1N3Q1NF*MTY3MjEwOTM1NC4xLjEuMTY3MjEwOTY3MS4wLjAuMA). However, we observed information about the use of neutral facilitators by the Illinois Commission on another website. See Illinois.gov, “Press Release: Swift Action by the ICC Sets Implementation of Climate and Equitable Jobs Act in Motion,” (Oct. 22, 2021), <https://www.illinois.gov/news/press-release.24041.html> (describing actions taken by the Commission to include “Initiating the process to select an independent, third-party facilitator for multi-year integrated grid plan workshops.”).

# Appendix A: Methodology

Based upon review of the relevant literature on procedural and energy justice and analyses of barriers to public participation in agency processes, we identified potential challenges a community stakeholder may face when seeking to participate in Commission proceedings. We generated a list of questions intended to measure presence of those challenges as well as practices, or other conditions, with the potential to mitigate those challenges. For each survey question, we reviewed the materials available on the applicable Commission website. For some questions with additional dimensions pertaining to regulatory or legislative obligations, we additionally considered whether the answer could be located by an unfamiliar participant reviewing the table of contents of state legislation and regulations and performing key word searches of those materials. For certain questions, we included additional steps to cross-reference with specific reports containing relevant information and/or perform google searches with specified keywords. For example, we also included information on legislation to improve environmental justice consideration at state entities for category six.

Review and feedback from several practitioners in the field informed further amendments to the questions, including adding a set of transparency-related questions. We tested the amended set of questions through a pilot review of two states and then further refined the questions to better capture the observed nuances and facilitate administering the survey. The data was first collected between June and August of 2022. Select questions were rechecked in February 2023. In cases where we became aware of relevant subsequent developments, we noted those developments in citations to the report, but did not change the results described in Appendices C and D.

We designed the questions to yield “yes” or “no” answers with a “yes” answer indicating the presence of a potentially mitigating practice.<sup>133</sup> For several of the questions, we distinguished between “no information available” (NIA) and a negative answer to better clarify the absence of online evidence of a practice rather than absence of the practice itself. In many cases, NIA answers may represent a “no” answer in reality. We also developed additional sub-questions to collect further detail on the scope and nature of these practices, allowing for more robust understanding of the variability within a “yes” answer, and to document underlying source material. In a few questions, where the dichotomy of “yes” and “no” seemed to obscure key distinctions among states, we provided an option that would land on the gradient between “yes” and “no.” We tracked all answers in a series of spreadsheets, which are on file with the authors.

To enhance analysis, we divided questions into six categories of potential mitigating practices: Financial Support, Accessibility of Participation Opportunities, Informational Resources & Support, Meaningful Engagement, Transparency, and Equity Prioritization.

Due to time and resource constraints, we selected nine states intended to capture a variety of Commission approaches to procedural equity. The states selected vary in geographic size, geographic region, population size, population density, dominant political party, and access to energy resources. The nine states selected were California, New York, Texas, Georgia, Wyoming, Michigan, Pennsylvania, Massachusetts, and Illinois.

We answered each question based upon review of the relevant Commission’s website, and for questions concerning legal requirements, the state’s statutes and regulations. Particularly in the case of a “no” answer, we crosschecked this result with a google search and supplemental review of state policy trackers, published reports, and other state government entity websites. This supplemental review was intended to help prevent a false “no” result. However, state legal regimes

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<sup>133</sup> Some of these practices may have features that can potentially cut both for and against procedural equity so their impact is unclear.

have significant variation in language and structure, which makes it challenging to conduct a fully exhaustive review. Additionally, while case law may further shape the implementation and understanding of regulations and statutes, a review of case law was outside the scope of this survey. For a question concerning the availability of a point of contact for questions, we called any listed phone number to assess whether that number was working and determine whether the call recipient would direct the caller to further resources. Finally, for questions where we were aware of existing studies of state practices that were relevant, we cross-checked these resources and supplemented our findings in the discussion of results.

This methodology was designed to develop a baseline understanding of the current range of processes to enhance procedural equity at a variety of state Commissions. The heavy reliance on materials available online presents limitations in that it may not accurately capture the full range of challenges to participation or the full range of useful resources that exist on the ground. However, despite these limitations, our methodology allows for a basic understanding of the landscape that would be perceived by a new prospective stakeholder looking to engage in the Commission process.

# Appendix B: Full Set of Questions

## *Category 1: Financial Support*

- Q1: Does the Commission offer an intervenor compensation program?
- Q2: Does the Commission's website indicate that they offer reimbursement for individual participant participation expenses for non-parties in formal proceedings?
- Q3: Does the Commission's website indicate that they offer reimbursement for individual participant participation expenses in informal proceedings or other Commission-led activities?
- Q4: Does the website note a policy that in-person, public Commission meetings be held in locations that are easy-to-access by public transportation and with options for free or reimbursed parking (or does the website or materials related to in-person events provide information that such access and support is available)?

## *Category 2: Accessibility of Participation Opportunities*

- Q5: Is there broad authorization for interested parties to request formal party status without restriction?
- Q6: Does the Commission website or state regulations discuss an option to participate without an attorney in ratemaking or other adjudicatory proceedings?
- Q7: Does the commission's website provide or indicate that multilingual support to members of the public is available?
- Q8: Does the Commission's website indicate opportunities to participate in proceedings of public importance both during and outside of normal business hours?
- Q9: Are at least some Commission meeting dates, times, locations, and agendas posted online at least 10 days in advance with adequate time for participant planning?
- Q10: Can participants submit comments/concerns via online channels as well as physical ones?
- Q11: Are meetings offered remotely and/or in multiple locations throughout the state? (Y if at least one true)
- Q12: Are meeting minutes and/or video recordings posted online for all public meetings?
- Q13: Does the Commission have an accessibility statement or otherwise clarify that it offers reasonable accommodations with notice?

## *Category 3: Meaningful Engagement*

- Q14: Does the website provide evidence that the Commission involves public participants early in the policymaking process through proceedings to obtain their input that don't involve a formal party structural or formal (i.e. quasi-judicial) hearing?
- Q15: Do scheduled events make clear that members of the public can not only attend, but also participate virtually in Commission proceedings?
- Q16: Are there requirements to provide an opportunity for public comment?
- Q17: Is the Commission or relevant utility required to summarize or respond to public comments?
- Q18: Is the Commission required to consider comments in its decisionmaking or treat them as part of the record?

#### ***Category 4: Informational Resources & Support***

- Q19: Does the Commission offer online educational resources with further information on how to participate or trainings to support public participation?
- Q20: Does the Commission offer online instructions or other support to complete the intervenor compensation application?
- Q21: Does the Commission make information on the intervenor compensation program easily accessible online and/or does the website indicate that the commission conducts outreach to inform stakeholders who might benefit from the program?
- Q22: Does the Commission website outline key procedures for participation?
- Q23: Does the Commission offer online resources to help participants understand substantive issues underlying its work and proceedings?
- Q24: Can users access the Commission's website and records request tool without experiencing significant barriers to functionality or navigability?
- Q25: Does the Commission provide a clear point of contact specifically for questions about Commission proceedings and participating in proceedings?
- Q26: Does the Commission use social media platforms to inform, consult, and educate the public and/or perform outreach?

#### ***Category 5: Transparency***

- Q27: Are there public disclosure and reporting requirements for utility data?
- Q28: Does the Commission make utility data or related disclosures available on its website?
- Q29: Does the Commission provide information on commissioner terms and professional backgrounds on its website?
- Q30: Are there conflict of interest (or code of conduct/ethics) requirements or guidance?
- Q31: Are there ex parte communication requirements?
- Q32: Are there open meeting requirements for public access?
- Q33: Are there open records requirements?

#### ***Category 6: Equity Prioritization***

- Q34: Does the website suggest that the Commission conducts targeted public outreach to involve target communities in decisionmaking procedures?
- Q35: Is there a demonstrated commitment to ensuring a non-party and/or skilled facilitator conducts at least some Commission proceedings?
- Q36: Does the Commission have formalized rules that mandate the consideration of harms to target communities?
- Q37: Is there a legally mandated consumer/ratepayer public advocate, ombudsperson, or people's counsel who intervenes in ratemakings on behalf of consumers?
- Q38: Is the Commission taking steps to prioritize equity in its work?

# Appendix C: Category Tables

As discussed in the report, the question set was designed to build a baseline understanding of practices at different state Commissions and better identify the viability of a binary yes/no rubric.

Category 1: Financial Support										
		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q1	Does the Commission offer an intervenor compensation program?	Y	Y	No info available	No info available	No info available	Y	No info available	No info available	Y
Q2	Does the Commission's website indicate that they offer reimbursement for individual participant participation expenses for non-parties in formal proceedings?	N	N	N	N	N	N	N	N	N
Q3	Does the Commission's website indicate that they offer reimbursement for individual participant participation expenses in informal proceedings or other Commission-led activities?	N	N	N	N	N	N	N	N	N
Q4	Does the website note a policy that in-person, public Commission meetings be held in locations that are easy-to-access by public transportation and with options for free or reimbursed parking (or does the website or materials related to in-person events provide information that such access and support is available)?	N	N	N	N	N	N	N	N	N

■ Evidence of practice  
 ■ Partial or limited evidence of practice  
 ■ No evidence of practice



Category 2: Accessibility of Participation Opportunities

		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q5	Is there broad authorization for interested parties to request formal party status without restriction?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q6	Does the Commission website or state regulations discuss an option to participate without an attorney in ratemaking or other adjudicatory proceedings?	Y	Y	Y	N	Y	N	N	Y	N
Q7	Does the Commission's website provide or indicate that multilingual support to members of the public is available?	Interpreter Services & Materials Translation	Interpreter Services & Materials Translation	Materials Translation	Materials Translation	N	Materials Translation	N	Materials Translation	Materials Translation & Spanish-Speaking Counselors Listed as Available by Phone
Q8	Does the Commission's website indicate opportunities to participate in proceedings of public importance both during and outside of normal business hours?	Y	Y	N	N	N	N	N	Y	N
Q9	Are at least some Commission meeting dates, times, locations, and agendas posted online at least 10 days in advance with adequate time for participant planning?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q10	Can participants submit comments/concerns via online channels as well as physical ones?	Y	Y	Y	Y	No info available	Y	Y	Y	Y

■ Evidence of practice ■ Partial or limited evidence of practice ■ No evidence of practice

Category 2: Accessibility of Participation Opportunities (Continued)

Q11	Are meetings offered remotely and/or in multiple locations throughout the state? (Y if at least one true)	Y	Y	Y	No info available	Y	Y	Y	Y	Y
Q12	Are meeting minutes and/or video recordings posted online for all public meetings?	Y	Y (partially)	Y	Y	Y	Y	Y	N	N
Q13	Does the Commission have an accessibility statement or otherwise clarify that it offers reasonable accommodations with notice?	Y	Y	Y	N	N	Y	N	N	N

■ Evidence of practice  
 ■ Partial or limited evidence of practice  
 ■ No evidence of practice

Category 3: Meaningful Engagement

		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q14	Does the website provide evidence that the Commission involves public participants early in the policymaking process through proceedings to obtain their input that don't involve a formal party structural or formal (i.e. quasi-judicial) hearing?	Y	N	N	N	N	N	N	N	N
Q15	Do scheduled events make clear that members of the public can not only attend, but also participate virtually in Commission proceedings?	Y	Y	N	N	Y	Y	N	N	N
Q16	Are there requirements to provide an opportunity for public comment?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q17	Is the Commission or relevant utility required to summarize or respond to public comments?	N	Y (limited)	N	N	N	Y (limited)	N	N	N
Q18	Is the Commission required to consider comments in its decisionmaking or treat them as part of the record?	N (permissive language)	N	N	N	N	N	N	N	Y (limited)

■ Evidence of practice   ■ Partial or limited evidence of practice   ■ No evidence of practice

Category 4: Informational Resources & Support

		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q19	Does the Commission offer online educational resources with further information on how to participate or trainings to support public participation?	Y	Y (limited)	Y (limited)	N	N	Y (limited)	Y (limited)	Y (limited)	Y (limited)
Q20	Does the Commission offer online instructions or other support to complete the intervenor compensation application?	Y	Y	N/A	N/A	N/A	Y	N/A	N/A	N
Q21	Does the Commission make information on the intervenor compensation program easily accessible online and/or does the website indicate that the Commission conducts outreach to inform stakeholders who might benefit from the program?	Y	Y	N/A	N/A	N/A	N	N/A	N/A	N
Q22	Does the Commission website outline key procedures for participation?	Y	Y	Y	Y	N	Y	N	Y	Y
Q23	Does the Commission offer online resources to help participants understand substantive issues underlying its work and proceedings?	Y	Y	Y	Y	N	Y	Y	Y	Y
Q24	Can users access the Commission's website without encountering broken links?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q25	Does the Commission provide a clear point of contact specifically for questions about Commission proceedings and participating in proceedings?	Y	Y	N	N	N	N	Y	Y	Y
Q26	Does the Commission use social media platforms to inform, consult, and educate the public and/or perform outreach?	Y	Y	Y	N	Y	Y	Y	N	Y

■ Evidence of practice ■ Partial or limited evidence of practice ■ No evidence of practice

Category 5: Transparency

		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q27	Are there public disclosure and reporting requirements for utility data?	Y	N	Y	N	N	Y	Y	Y	Y
Q28	Does the Commission make utility data or related disclosures available on its website?	Y	N	Y	Y	N	Y	Y	Y	Y
Q29	Does the Commission provide information on commissioner terms and professional backgrounds on its website?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q30	Are there conflict of interest (or code of conduct/ethics) requirements or guidance?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q31	Are there ex parte communication requirements?	Y	Y	Y	Y	Y	No info available	Y	Y	Y
Q32	Are there open meeting requirements for public access?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q33	Are there open records requirements?	Y	Y	Y	Y	Y	Y	Y	Y	Y

■ Evidence of practice  
 ■ Partial or limited evidence of practice  
 ■ No evidence of practice

Category 6: Equity Prioritization

		CA	NY	TX	GA	WY	MI	PA	MA	IL
Q34	Does the website suggest that the Commission conducts targeted public outreach to involve target communities in decisionmaking procedures?	Y	N	N	N	N	N	Y	N	N
Q35	Is there a demonstrated commitment to ensuring a non-party and/or skilled facilitator conducts at least some Commission proceedings?	N	N	N	N	N	N	N	N	N
Q36	Does the Commission have formalized rules that mandate the consideration of harms to target communities?	Y	Y	N	N	N	Y	N	Y	Y
Q37	Is there a legally mandated consumer/ratepayer public advocate, ombudsperson, or people’s counsel who intervenes in ratemakings on behalf of consumers?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q38	Is the Commission taking steps to prioritize equity in its work?	Y	Y	No info available	No info available	No info available	Y	No info available	Y	Y

■ Evidence of practice  
 ■ Partial or limited evidence of practice  
 ■ No evidence of practice

# Appendix D: State-Level Summaries of Notable Findings

These are representative rather than comprehensive findings for each state.

California – California Public Utilities Commission (CPUC)	
Category 1: Financial Support	<ul style="list-style-type: none"> <li>Intervenor compensation program was initiated by the CPUC in 1981 and codified by the California legislature in 1985 (with subsequent legislative modifications).</li> <li>Compensation for the “advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding.”</li> <li>Active program and not limited to non-profit or government entities.</li> <li>Information on the program provided on the CPUC’s website.</li> <li>No evidence on the CPUC’s website of reimbursement for non-parties or for participants in informal proceedings.</li> </ul>
Category 2: Accessibility of Participation Opportunities	<ul style="list-style-type: none"> <li>Both translation and interpreter services available based on the CPUC website review.</li> <li>Evidence of meetings scheduled on the CPUC’s online calendar at least 10 days in advance, at different locations in the state, and both within and outside of regular business hours.</li> <li>Option to file public comments online.</li> <li>Evidence of meeting minutes or meeting recordings on the CPUC’s website.</li> <li>Information on accessibility on the CPUC’s website.</li> </ul>
Category 3: Meaningful Engagement	<ul style="list-style-type: none"> <li>Evidence on the CPUC’s website of efforts to involve the public early in the decisionmaking process through dedicated community liaisons, frequent public meetings, clear invitation to community members through social media, and dedicated webpage discussion of outreach program.</li> <li>Evidence on the CPUC’s website that members of the public could participate virtually (not only passively view broadcast).</li> <li>Regulations include broad permissive language that “[t]he commission shall permit written comments received from the public to be included in the record of its proceedings,” but did not require a mandatory public comment period or that public comments are summarized or treated as evidence in proceedings.</li> </ul>
Category 4: Informational Resources & Support	<ul style="list-style-type: none"> <li>The CPUC’s website includes information on steps to participate in various types of processes, as well as detailed procedural information, and templates for various forms.</li> <li>The CPUC’s website includes summaries of substantive issues.</li> </ul>
Category 5: Transparency	<ul style="list-style-type: none"> <li>Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>The CPUC’s website includes additional information on ex parte communications specific to the CPUC process.</li> <li>Evidence of public disclosure and reporting requirements for utility data; utility data displayed on the CPUC’s website in data dashboard, but much of it was not recently updated.</li> </ul>
Category 6: Equity Prioritization	<ul style="list-style-type: none"> <li>Second version of an Environmental and Social Justice Action Plan released by the CPUC (after receiving input from community stakeholders on the first version) that, in addition to goals related to improving distributional outcomes, includes commitments to integrate equity and access considerations throughout the CPUC regulatory activities, enhance outreach and public participation opportunities for disadvantaged communities in the CPUC decisionmaking processes, and improving related staff trainings and development.</li> <li>Evidence of a public advocate as well as dedicated community liaisons to provide information and education to specific regions within the state.</li> <li>No information on a practice of including trained facilitators.</li> <li>Evidence of legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some CPUC activities.</li> </ul>

New York – New York Public Service Commission (NYPSC)

<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• Evidence of programs to compensate intervenors, but these programs are limited to proceedings related to siting generation and transmission lines. Limited information is available about these programs on the NYPSC website.</li> <li>• No evidence of reimbursement for either non-parties or for participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• Both translation and interpreter services available based on website review. Translation services offered in a variety of languages.</li> <li>• Clear regulatory language providing that a group representative need not be an attorney and that permission for intervention should be granted if likely to contribute to a complete record or is otherwise conducive to the public interest.</li> <li>• The NYPSC’s online calendar indicated a relatively high volume of meetings open to the public, but the availability of materials, meeting minutes, and recordings/transcripts varied based on the type of proceeding.</li> <li>• The NYPSC’s website provided virtual attendance options and showed scheduled meetings both during and outside of normal business hours.</li> <li>• The NYPSC’s website provides information on the availability of reasonable accommodations.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• The NYPSC’s website postings for certain scheduled events explained how participants could comment remotely in addition to streaming a webcast or listening by teleconference and in at least some cases noted that remarks from the hearing would become part of the docket record.</li> <li>• There was not an easily identifiable broad regulatory requirement for the NYPSC to summarize comments or include them in the record or as evidence, but there was a limited requirement for an applicant in a generation siting proceedings to summarize public comments. There is evidence of a state-wide requirement for agencies to provide an opportunity for public comment before adopting regulations and additional NYPSC-specific requirements regarding establishment of particular programs or tariffs and more broadly on certain types of compliance filings and scoping statements for siting major electric generating facilities.</li> <li>• The online docket system also facilitated public review of comments, submission of comments, and requests for party status.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• The NYPSC provided resources to educate participants on the relevant procedures and substantive matters, but the availability of these materials varied by type of proceedings and were not comprehensive across different types of significant proceedings. Many of the resources pertained to activities of the New York State Board on Electric Generation Siting and the Environment, a distinct entity within the Department of Public Service. The capabilities of the online docket system may have reduced the need for more detailed procedural instructions in other matters.</li> <li>• The NYPSC provided a clear point of contact and used social media to engage participants.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• A keyword search did not display clear requirements for general public information disclosures of utility data or easily accessible utility data on the website.</li> <li>• The website included biographical information on commissioners.</li> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• The NYPSC’s website shows evidence of a DEI Initiative meant to encompass corporate strategies and communication training, including but not limited to consultant-led efforts to inform DEI strategies, specific DEI roles added to the organization, as well as employee outreach efforts.</li> <li>• New York has a state entity that is an associate member which is a division of consumer protection with the New York Department of State and additional nonprofit entity called the Public Utility Law Project of New York. (New York additionally has an Office of Consumer Affairs within its Public Service Commission, but this lacks the independence of a separate office.)</li> <li>• The NYPSC’s website did not provide a clear overview of targeted public outreach.</li> <li>• The NYPSC’s website did not provide evidence of a policy of using a neutral facilitator.</li> <li>• Evidence of legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some Commission activities.</li> </ul>



Texas – Public Utility Commission of Texas (PUCT)

Category 1: Financial Support	<ul style="list-style-type: none"> <li>• No evidence of intervenor compensation program on the PUCT’s website.</li> <li>• No evidence of reimbursement programs for non-parties in formal proceedings or participants in informal proceedings on the PUCT’s website.</li> </ul>
Category 2: Accessibility of Participation Opportunities	<ul style="list-style-type: none"> <li>• The PUCT’s regulations did not appear to prohibit group representation by a non-lawyer and provide a right to intervene for persons with a justiciable interest which may be adversely affected by the outcome of the case.</li> <li>• The PUCT’s website showed evidence of only limited translation services.</li> <li>• The PUCT’s website did not clearly offer participation opportunities both within and outside of normal business hours.</li> <li>• The PUCT’s website allowed for online submission of comments.</li> <li>• The PUCT’s website provided information on reasonable accommodations for users with hearing loss or speech impediments.</li> </ul>
Category 3: Meaningful Engagement	<ul style="list-style-type: none"> <li>• Had requirements to provide opportunities for public comment, but our search did not find requirements to summarize the comments or have the commission rely upon the comments.</li> <li>• The PUCT’s website did not provide evidence of particular efforts to engage impacted communities early in the process.</li> <li>• The PUCT’s website did not or clarify that remote attendance allowed for participation rather than just observation.</li> </ul>
Category 4: Informational Resources & Support	<ul style="list-style-type: none"> <li>• The PUCT’s website provided key information on participation procedures, and a very limited overview of ways to participate in formal and informal processes.</li> <li>• The PUCT provided some information on substantive issues.</li> <li>• The PUCT uses social media to reach stakeholders but did not have a clear point of contact on the website specifically for procedural participation matters.</li> <li>• We were able to use the website and records request tool without significant obstacle.</li> </ul>
Category 5: Transparency	<ul style="list-style-type: none"> <li>• The PUCT’s website included at least some information on utility data and commissioner backgrounds.</li> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> </ul>
Category 6: Equity Prioritization	<ul style="list-style-type: none"> <li>• Evidence of a ratepayer advocate.</li> <li>• The PUCT’s website did not show other evidence of other efforts to prioritize equity, conduct outreach to communities, formalize consideration of harms to target communities, or require a skilled, neutral facilitator.</li> </ul>

Georgia – Georgia Public Service Commission (GPSC)

<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• The GPSC’s website showed no evidence of an intervenor compensation program.</li> <li>• The GPSC’s website showed no evidence of reimbursement programs for non-parties in formal proceedings or participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• From search of regulations, it was not clear whether a non-attorney could represent a group.</li> <li>• The GPSC’s website showed evidence of limited translation services.</li> <li>• The GPSC’s online calendar showed meetings schedule with at least 10 days’ advance notice, but did not clearly schedule public meetings both during and outside of regular business hours. It was unclear whether meetings could be attended remotely or from different geographic locations in the state.</li> <li>• The GPSC provided meeting recordings on youtube.</li> <li>• The GPSC’s homepage states at what point during the regular commission meetings and hearings the public will be invited to comment.</li> <li>• The GPSC’s website allows for submission of public comments online with clear directions from the homepage and does not require personal details for comment submission.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• Evidence of regulatory requirements to provide opportunities for public comment in at least some proceedings, but our search did not find requirements to summarize the comments or have the commission rely upon the comments.</li> <li>• The GPSC’s website did not clarify whether remote attendance allowed for participation rather than just observation.</li> <li>• The GPSC’s website did not provide evidence of particular efforts to engage impacted communities early in the process or clarify that remote attendance allowed for participation rather than just observation.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• Some limited information on substantive issues provided on GPSC’s website.</li> <li>• Key information on participation procedures to file public comments and speak at public hearings provided on the GPSC’s homepage, but less information on filing as a party.</li> <li>• No evidence that the GPSC used social media consistently to reach stakeholders.</li> <li>• No evidence on the GPSC’s website of a clear point of contact specifically for procedural participation matters.</li> <li>• We were able to use the website and records request tool without significant obstacle.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• Our keyword search did not reveal clear evidence of the GPSC information disclosure requirements, but the GPSC posts annual reports on its website that contain some limited information on its chief activities.</li> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The GPSC’s website displayed information on commissioners’ backgrounds.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• Evidence of a general consumer protection division.</li> <li>• No evidence on the GPSC’s website of other efforts to prioritize equity, conduct outreach to communities, or require a skilled, neutral facilitator.</li> </ul>

## Wyoming – Wyoming Public Service Commission (WPSC)

Category 1: Financial Support	<ul style="list-style-type: none"> <li>• The WPSC’s website showed no evidence of an intervenor compensation program.</li> <li>• The WPSC’s website showed no evidence of a reimbursement programs for non-parties in formal proceedings or participants in informal proceedings.</li> </ul>
Category 2: Accessibility of Participation Opportunities	<ul style="list-style-type: none"> <li>• Based on the WPSC’s website, it was not clear whether multi-lingual support was available.</li> <li>• On the WPSC website, there was evidence of public meetings being scheduled with 10 days’ advance notice, but they did not clearly occur during both business and non-business hours.</li> <li>• The WPSC’s website did not indicate whether comments could be submitted online.</li> <li>• Recordings were available for the WPSC meetings and downloadable meetings minutes.</li> <li>• Evidence of options to attend meetings remotely.</li> <li>• The WPSC’s website did not appear to provide clear information on reasonable accommodations, other than a statement about providing website information in alternative formats upon request to comply with the ADA.</li> </ul>
Category 3: Meaningful Engagement	<ul style="list-style-type: none"> <li>• Evidence of requirements to provide opportunities for public comment in at least some proceedings, but our search did not find requirements to summarize the comments or have the commission rely upon the comments.</li> <li>• No evidence on the WPSC website of particular efforts to engage impacted communities early in the decisionmaking process.</li> <li>• The WPSC’s website makes clear that there are options for virtual participation as well as observation.</li> </ul>
Category 4: Informational Resources & Support	<ul style="list-style-type: none"> <li>• Limited information and support available on the WPSC’s website, and the website was difficult and counterintuitive to navigate. We experienced issues opening documents in the online docket.</li> <li>• The WPSC’s website did not have significant resources providing guidance on procedural or substantive issues, although there was a page outlining how to submit e-docket filings.</li> <li>• The WPSC was very responsive when contacted by phone, and used social media for outreach.</li> </ul>
Category 5: Transparency	<ul style="list-style-type: none"> <li>• Our keyword search did not reveal clear evidence of information disclosure requirements at the WPSC, and the WPSC’s website did not provide reports on utility data.</li> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The WPSC’s website displays information on commissioners’ background.</li> </ul>
Category 6: Equity Prioritization	<ul style="list-style-type: none"> <li>• Wyoming has a general consumer advocate’s office and an office of the consumer advocate within the WPSC.</li> <li>• The WPSC’s website did not appear to display evidence of other efforts to prioritize equity or conduct outreach to communities.</li> <li>• No evidence on the WPSC’s website of requirement for a skilled, neutral facilitator.</li> </ul>

Michigan – Michigan Public Service Commission (MPSC)

<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• Evidence of an active intervenor compensation program and there is information about that program on the MPSC’s website.</li> <li>• Compensation is limited to nonprofit organization and local government parties.</li> <li>• No evidence on the MPSC’s website of programs to compensate non-parties in formal proceedings or participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• Requirements for attorney representation in contested cases.</li> <li>• The MPSC’s website shows evidence of limited translation support.</li> <li>• The MPSC’s website did not clearly schedule meetings both within and outside of regular business hours.</li> <li>• The MPSC’s website provided the option to submit public comments online.</li> <li>• The MPSC provided meeting recordings and more detailed meeting minutes on its website.</li> <li>• The MPSC’s website displays information on providing reasonable accommodations.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• Evidence of requirements to provide opportunities for public comment in at least some proceedings. Our search found limited requirements for electric utilities of a certain size to summarize comments as part of their application to build transmission lines, but no clear requirement to have the commission rely upon public comments in proceedings.</li> <li>• The MPSC’s website did not provide evidence of particular efforts to engage impacted communities early in the decisionmaking process.</li> <li>• The MPSC’s website states clearly that there are options for virtual participation as well as observation.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• The MPSC offers basic information about the intervenor compensation program on its website, but it was somewhat difficult to locate in part because it is called a consumer representation fund rather than an intervenor compensation program so did not fit in our search terms.</li> <li>• The MPSC’s website provided both substantive resources for participants.</li> <li>• The MPSC’s website provided procedural information to participants including some more detailed resources for certain types of procedures.</li> <li>• The MPSC used social media to reach stakeholders but did not have a clear point of contact on the website specifically for procedural participation matters.</li> <li>• We were able to use the MPSC website and records request tool without significant obstacle.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The MPSC’s website included at least some information on utility data and commissioner backgrounds.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• The MPSC’s website showed evidence of work groups and a state environmental justice public advocate.</li> <li>• The MPSC’s website did not display evidence of particular outreach to communities.</li> <li>• The MPSC’s website did not display evidence of requirements for a skilled, neutral facilitator.</li> <li>• Evidence of legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some Commission activities.</li> </ul>

**Pennsylvania – Pennsylvania Public Utility Commission (PA PUC)**

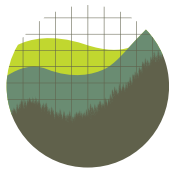
<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• The PA PUC’s website did not show evidence of an intervenor compensation program.</li> <li>• The PA PUC’s website did not show evidence of any reimbursement programs for non-parties in formal proceedings or participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• Rate cases require attorney representation.</li> <li>• The PA PUC’s website did not provide a clear option to translate the website or information on interpreter services, although a few documents appear in Spanish.</li> <li>• The PA PUC’s calendar did not make clear whether meetings are scheduled both during and outside of business hours. At least some public meetings were scheduled with at least 10 days’ notice, and meeting recordings were posted online.</li> <li>• The PA PUC’s website allowed the public to submit comments online.</li> <li>• The PA PUC’s website did not provide information about reasonable accommodations.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• Requirements to provide opportunities for public comment in at least some proceedings, but our search did not find requirements to summarize the comments or have the commission rely upon the comments.</li> <li>• The PA PUC’s website did not display evidence of particular efforts to engage impacted communities early in the decisionmaking process.</li> <li>• The PA PUC’s website did not make clear whether remote attendance allowed for participation rather than just observation.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• The PA PUC provided some information on substantive topics for participants.</li> <li>• The PA PUC’s website did not outline the key procedures participation, but did provide some more detailed information filing to e-dockets and tips for public speaking.</li> <li>• The PA PUC’s website provided a clear point of contact and the Commission used social media to engage participants.</li> <li>• We were able to use the website and records request tool without significant obstacle.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The PA PUC’s website included at least some information on utility data and commissioner backgrounds.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• The PA PUC’s website displayed some evidence of outreach to communities and has consumer representation.</li> <li>• The PA PUC’s website did not display evidence of other efforts to prioritize equity or requirements for a skilled, neutral facilitator.</li> </ul>

Massachusetts – Massachusetts Department of Public Utilities (MA DPU)

<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• The MA DPU’s website did not show evidence of an intervenor compensation program.</li> <li>• The MA DPU’s website did not show evidence of reimbursement programs for non-parties in formal proceedings or participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• The MA DPU’s website described a process for limited participation without an attorney and a mechanism to waive other attorney requirements.</li> <li>• The MA DPU’s website provided translation of its website in a large number of languages, but did not clearly indicate the availability of interpreter services.</li> <li>• The MA DPU’s website did indicate that meetings were scheduled during and outside of regular business hours.</li> <li>• The MA DPU’s website allowed for submission of comments, but also noted requirements for simultaneous paper submission for certain types of documents in hearings.</li> <li>• The MA DPU’s website did not clearly offer meeting recordings or minutes online.</li> <li>• The MA DPU’s website did not make clear whether reasonable accommodations were available.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• Requirements to provide opportunities for public comment in at least some proceedings, but our search did not find requirements to summarize the comments or have the commission rely upon the comments.</li> <li>• The MA DPU’s website did not display evidence of particular efforts to engage impacted communities early in the decisionmaking process.</li> <li>• The MA DPU’s website did not clarify that remote attendance allowed for participation rather than just observation.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• The MA DPU’s website had easy-to-access webpages with key information on participation procedures as well as a more detailed resources explaining participation in generation siting board proceedings.</li> <li>• The MA DPU also had a webpage dedicated to substantive information on the electric industry for consumers.</li> <li>• The MA DPU used social media to reach stakeholders, and did provide a clear point of contact on the website specifically for procedural participation matters.</li> <li>• We were able to use the website and records request tool without significant obstacle.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The MA DPU’s website included at least some information on utility data and commissioner backgrounds.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• The MA DPU’s website displayed evidence of providing consumer representation and prioritizing equity. In April 2021, the MA DPU opened an inquiry to enhance inclusivity and participation in energy proceedings. In February 2022, it approved MA’s Three-Year Energy Efficiency Plan (2022-24), which centers equity as one of its main goals and targets underserved and lower-income customers.</li> <li>• The MA DPU’s website did not display evidence of other efforts to conduct outreach to communities or require a skilled, neutral facilitator.</li> </ul>

Illinois – Illinois Commerce Commission (ICC)

<p>Category 1: Financial Support</p>	<ul style="list-style-type: none"> <li>• No evidence on the ICC’s website of an active intervenor compensation program at time of analysis, but legislation enabling an ICC program went into effect in September 2021. There was no information on the ICC’s website regarding the program.</li> <li>• No evidence on the ICC’s website of other programs to provide compensation to non-parties or participants in informal proceedings.</li> </ul>
<p>Category 2: Accessibility of Participation Opportunities</p>	<ul style="list-style-type: none"> <li>• The ICC has requirements for attorney representation.</li> <li>• The ICC’s website offered website translation, but didn’t indicate availability of interpreter services.</li> <li>• Meetings were not clearly scheduled during and outside of business hours, but appeared on the calendar at least 10 days in advance.</li> <li>• The ICC’s website allowed comments to be submitted online.</li> <li>• Neither meeting recordings nor minutes appear to be regularly available. The website provided no information regarding the availability of reasonable accommodations other than discussion of providing text as an alternative to webcast on remote corner of the website.</li> </ul>
<p>Category 3: Meaningful Engagement</p>	<ul style="list-style-type: none"> <li>• Evidence of requirements to provide opportunities for public comment in at least some proceedings. Our search did not identify requirements that comments be summarized, but did find a statutory requirement related to ratemaking proceedings that “the Commission shall make its determination based upon the record, including each public comment filed or provided orally at open meetings consistent with the Commission’s rules and practices” “[i]n determining prudence and reasonableness of rates.” 220 Ill. Comp. Stat. Ann. 5/16-108.18.</li> <li>• The ICC’s website did not provide evidence of particular efforts to engage impacted communities early in the decisionmaking process.</li> <li>• The ICC’s website did not clarify that remote attendance allowed for participation rather than just observation.</li> </ul>
<p>Category 4: Informational Resources &amp; Support</p>	<ul style="list-style-type: none"> <li>• The ICC’s website provided information on substantive issues.</li> <li>• The ICC’s website provided easily accessible key information on how to file public comments or speak at a public meeting as well as a more detailed resource explaining participation opportunities.</li> <li>• The ICC did use social media to reach stakeholders and provided a clear point of contact on the website specifically for procedural participation matters. The point of contact listed that Spanish-speaking counselors were available upon request, but the contact information was difficult to locate as it was embedded on a page related to implementing programs under the Climate and Equitable Jobs Act.</li> <li>• We were able to use the website and records request tool without significant obstacle.</li> </ul>
<p>Category 5: Transparency</p>	<ul style="list-style-type: none"> <li>• Evidence of state-level open meeting, open records, and other transparency requirements.</li> <li>• The ICC’s website included at least some information on utility data and commissioner backgrounds.</li> </ul>
<p>Category 6: Equity Prioritization</p>	<ul style="list-style-type: none"> <li>• The ICC’s website showed evidence of legal requirements to prioritize equity or consider harms to disadvantaged communities for at least some Commission activities, and implementation of the Climate and Equitable Jobs Act through initiatives that contribute to energy equity.</li> <li>• Evidence of consumer representation.</li> <li>• The ICC’s website did not show evidence of particular efforts to conduct outreach to communities, or requirements to use a skilled, neutral facilitator.</li> </ul>



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