

Engagement between Public Utility Commissions and State Legislatures

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Prepared by Danielle Sass Byrnett, NARUC CPI, and Daniel Shea, National Conference of State Legislatures

State legislatures and public utility commissions (PUCs), also called public service commissions, are inextricably linked. In the early 1900s, state legislatures established PUCs to regulate companies providing public services as monopolies to ensure equitable and quality service. What started with railroads and trolleys has evolved to include electricity, natural gas, water, sewage, telecommunications and various forms of public transportation, depending on the state. State legislators outlined the mission, jurisdiction, and organizational structure of PUCs through state statute. Where legislators make policy decisions across a broad range of issues relevant to the direction and goals of the state, PUCs are delegated a significant level of responsibility and expected to possess deep subject matter expertise on the industries they regulate.

Although state statutes that establish and empower public utility commissions are similar, the ways PUCs operate, both independently and with the legislature, is not uniform across states. In some cases, PUCs interact regularly with policymakers, serving as trusted sounding boards, whereas other PUCs have only budgetary interactions and exclusively focus on carrying out policy mandates on-the-ground. This divergence is more a result of practice—built on experiences and relationships—rather than explicit design.

Whatever the history, a strong and collaborative relationship between state legislatures and commissions is instrumental to establishing coherent, comprehensive, and cost-effective energy policies at the state level. Commissions are tasked with working out the details of the policies legislators create, meaning they are often well positioned to identify potential weak points and suggest ways to help policies arrive at their intended outcomes. Legislatures are in the position to change statutes that prove burdensome, antiquated, or inequitable but that commissions must abide by until updated. With a collaborative and trusting relationship, states benefit through a higher likelihood of realizing safe, reliable, and affordable utility services; better aligned policy-making and rule-setting with fewer surprises; and improved timeliness and quality of decision making.

This mini guide looks at ways in which these two organizations interact, how these relationships can be strengthened, and how legislators and commissioners can look to further engage with their counterparts. To inform the paper, the National Conference of State Legislatures (NCSL) and the National Association of Regulatory Utility Commissioners (NARUC) conducted interviews with state legislators and commissioners who have been successful in forming effective working relationships across the two bodies. NCSL also conducted statutory research.

State Public Utility Commission Composition and Scope

Under state law, PUCs have an obligation to ensure the establishment and maintenance of utility services and to ensure that those services are provided at rates and conditions that are fair, just, and reasonable for all consumers. PUCs typically oversee utility services (e.g., electricity, natural gas, telecommunications, water) by adjudicating utility rate setting, determinations around construction and siting for service-related infrastructure, and resources used to meet customer needs across a utility's

About the NCEP Mini Guide Series

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

territory. Commissions universally regulate investor-owned utilities, although a few also oversee rural electric cooperatives and municipal electric utilities to varying degrees. Depending on the state, commissions may also engage in statutorily defined rulemaking or regulation-writing processes, quasi-judicial proceedings, and/or non-contested investigatory matters.

Nationally, PUCs have between three and seven commissioners each, whose terms range from four to six years.¹ Much like legislators, commissioners come from many different backgrounds: former legislators, attorneys, accountants, real estate brokers, ranchers, politicians, energy consultants, commission staff, and more.

Most commissioners are appointed by the governor and approved by the state senate. In some states, the number of individuals from any one political party are limited (e.g., no more than two commissioners of any one party, no more than three commissioners from the governor's party). In 11 states, commissioners are elected by the public. In South Carolina and Virginia, the commissioners are selected by the legislature itself. Commissioners carry out the duties and exercise the authority of the PUC, along with its executive, legislative, and judicial functions.

Commissioners' actions are driven by their interpretation of state statute and evidence brought before them in quasi-judicial proceedings. In all states, the commissioners and the PUC must abide by administrative procedures and make objective decisions based on the record presented by the parties to a case. For contested cases, commissioners are strictly limited in their communications with anyone who could become a party to the case—referred to as *ex parte* communications—to insulate the commission against any lack of impartiality. As with traditional judicial proceedings, the decisions of the PUC are appealable, typically to the state Supreme Court. The state Supreme Court will review the record leading to the commission's decision relative to state law and statute.

“Normally, the general assembly will set the framework for a policy, but the PUC defines it further when implementing. That practice is very helpful for addressing unintended consequences, new technology changes, or other unforeseen issues that were not anticipated when legislation was passed.”

– Chairman Gladys Brown Dutrieuille, Pennsylvania Public Utility Commission

State Legislature Composition and Scope

State legislatures can be broken into three primary categories: full-time, part-time, and a hybrid of the two.² There are 10 full-time legislatures, composed of professional legislators who receive adequate compensation to work full-time as a legislator. In these states—which tend to correspond to the states with the largest populations—the legislature employs a large staff and the legislative session often runs for most of the year, much like the U.S. Congress.

The 14 states with part-time legislatures are on the opposite end of the spectrum, with citizen legislators whose work in office is supposed to amount to a part-time job. They tend to receive little compensation and often require other sources of income to make a living, meaning many work full-time jobs in addition to serving in the legislature. The legislative staff in these states tends to be much smaller, and the sessions only run for select months during the year. Four states only meet for biennial legislative sessions (Montana, Nebraska, North Dakota, and Texas).

Most states have hybrid legislatures—falling somewhere in the middle. In these 26 states, around two-thirds of a full-time job is spent working as a legislator. Although compensation tends to be higher than in part-time legislatures, the legislative session is still limited to several months each year, which allows many legislators to remain employed elsewhere. These legislatures tend to be staffed more robustly than part-time legislatures.

Fifteen states have placed term limits of between six and 12 years on state legislative seats, which can increase turnover within state legislatures.

There are more than 7,300 state legislative seats across the country. Most of those state legislators come into office focused on a limited number of policy areas, but often without specialized policy backgrounds on many of the topics they encounter. Therefore, state legislators are often open to receiving education and training on the topics they're expected to legislate on—and specifically, on the topics overseen in their committee assignments.

¹ In practice, the average term of a commissioner is 5.3 years, and the median term is 3.9 years (2018 data).

² For a map, see <http://www.ncsl.org/research/about-state-legislatures/full-and-part-time-legislatures.aspx>.

Engagement between Legislatures and Public Utility Commissions

Commissions and legislatures who report constructive working relationships approach their counterparts in a variety of ways. First and foremost, both sides recognize that collaboration and communication are key, so they make efforts to connect. Further, they respect the different roles and types of expertise that each party has in the energy space.

In most states, at least one committee within the state house and state senate has jurisdictional oversight over the commission due to its critical role in implementing state energy (and other) policy. Commission engagement with the legislature typically focuses on these committees.

The relevant committees may exercise some degree of control over **commission appointments**, approve **budgets**, require **regular reporting**, engage via **committee hearings**, request input or feedback on **policy formation**, or communicate via **official correspondence** between the legislature and the commission. These are the primary spaces in which most of the formal interactions between the legislature and the commission take place. However, much of the work underlying a productive working relationship takes place less formally.

Commission appointments. Many states require governor-appointed commissioners to be confirmed by the state Senate, offering the legislature an opportunity to weigh in on each candidate. While this practice is viewed as a formality in some cases, it does allow the senate a mechanism for overseeing the makeup of the commission—and the power to prevent some individuals from serving as commissioners. In two states, the legislature selects the commissioners outright.

Commission budgets. The degree to which legislatures have a role in determining the budget or staffing level of the PUC varies. In most states, PUCs are funded through fees or taxes paid by regulated utilities (e.g., California, Colorado, Delaware, Florida, Idaho, Illinois, Kansas, Maryland, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, Washington, Wyoming). Occasionally, these fees are directed to the state's general fund and the PUC's budget is derived independently from the collected monies (e.g., Georgia, Kentucky). In a handful of states, funds are appropriated year by year through the state's general fund, as for other state government agencies (e.g., Connecticut, Montana). Determination of staffing levels varies in similar ways, though in some cases, the staffing levels are legislated even though the budgets are not (e.g., Minnesota).

Regular reporting. Some states require regular reporting from the PUC. The Pennsylvania Public Utility Commission must submit annual reports to the legislature and the governor, and comprehensive reports every five years to outline how it has implemented its mandate, along with various performance and financial metrics. The reporting requirements in other states vary, but the commission is generally expected to keep the legislature apprised of its work and major actions. In some cases, commissioners send updates to committee chairs whenever significant decisions have been made. Similarly, most PUCs have at least one staff person whose job includes tracking legislative activity, engaging in an ongoing basis with the legislature, and updating commissioners about relevant legislative actions.

Committee hearings. In most cases, legislative committees will seek PUC testimony on relevant issues. This engagement can include testimony on matters related to the PUC and its work, whether general updates or issue-specific investigations. It may also involve proposed legislation that pertains to the PUC and the industries it regulates. Many commissioners make a point to proactively meet with committee chairs and new committee members at the start of any new legislative session to answer questions and let them know more about the PUC's roles.

Policy formation. Several states have established collaborative working relationships across the two bodies, where the legislature will reach out to the PUC to conduct studies or develop draft legislative language. In Maryland, Nevada, Washington, and Pennsylvania, state legislators regularly and formally ask for PUC input on potential impacts and approaches to meeting policy goals as options are considered. In Oregon, state statute explicitly outlines that part of the commission's role is to advise and inform the legislature on relevant policy questions. In some cases, commissions may also request statutory changes to the legislature, highlighting areas of existing law that are unclear or might be problematic.

Correspondence. At times, official correspondence is used between legislators and commissioners. Legislators may seek information or express their opinion on certain actions and decisions made on the part of the commission—or do so on behalf of a constituent. In some states, legislators can talk freely with commissioners because legislators are never parties to pending proceedings; in other states, legislators must file comments in a relevant docket if they want to engage with the commission about an open proceeding. Often, state committees will request fiscal notes from the PUC when considering legislation, whereby the commission is expected to respond with a policy's potential fiscal impacts to the state.

Examples of Effective Collaboration

Through the course of NARUC's and NCSL's interviews, commissioners and legislators discussed numerous approaches they have taken to enhance collaboration, engagement, and understanding across their organizations. These approaches are summarized here as thoughtful ideas that could be applied in other jurisdictions.

Joint Efforts that Encourage Collaboration

- Following invitation by a legislator or direct commission outreach, a commissioner briefs the relevant legislative oversight committees at the start of each legislative session (e.g., Vermont, Minnesota, Washington). Alternately or in addition, the commission hosts legislators at an open house or meet-and-greet at the start of a new session (e.g., Pennsylvania). The scope of the discussion might include PUC 101 (what the PUC does and doesn't do, how they operate), recent significant decisions, pending actions, likely upcoming proceedings, what keeps commissioners up at night, and/or topical questions and answers.
 - Tip: Schedule briefs within the first week of session before legislative calendars become full.
- Leadership (especially chairs) of commissions and legislative committees meet and communicate regularly. Conversations can be over coffee, in the state capital, in legislators' districts, or during formal briefings. When new members join the legislative oversight committees or commission, it is particularly opportune to reach out to one side or the other.
- Legislators and commissioners keep one another apprised of how they're handling issues relevant to both organizations.
 - The PUC shares a periodic (e.g., monthly, quarterly) report with the legislative committee chair that summarizes all cases and decisions made in the past period, in addition to major upcoming cases and expected timeframes (e.g., Pennsylvania, Minnesota).
 - PUC representatives brief legislators on rulemakings or regulations developed in response to enacted legislation.
 - Legislative committee chairs reach out to PUC representatives to keep them apprised of policy discussions taking place in the legislature (e.g., Washington).
 - Legislators working on legislation that would impact the PUC's work or the industries under PUC regulation reach out to discuss potential policy changes with PUC commissioners (e.g., Pennsylvania, Washington).

"I take the PUC legislative staff to the legislature often—that way you're moving out the middle man, you're leaving out the emails where you can misinterpret things, and you're sitting face-to-face and breaking down barriers. I emphasize to our staff here that taking a couple of extra minutes to deal with issues now will save you on the other end."

—Chairman Gladys Brown Dutrieuille, Pennsylvania Public Utility Commission

Public Utility Commission-Led Approaches that Encourage Information Sharing

- The commission designates a legislative liaison (can be anyone from commissioner to senior staff to hearing officer) to monitor activities at the legislature and creates an agenda item on the commission's calendar for legislative updates. In some commissions, there is a bureau of legislative affairs with more than one full-time person (e.g., Pennsylvania); in others, there is a staff person for whom legislative affairs is only one part of their job but is a defined area of responsibility (e.g., Vermont).
- When asked to testify at a committee hearing, the PUC sends its most knowledgeable commissioner or staff person on that topic, rather than the legislative liaison, to ensure that the legislature will have access to the best expertise available who can answer all of their questions (e.g., Vermont).
- If the commission is convening an internal learning session to educate its members and staff on trends and issues, inviting legislators and their staff to join can be a valuable way to jointly learn and engage in informal, but thoughtful discussion (e.g., Pennsylvania).
- The commission can provide legislators with written materials (e.g., pamphlets) about the PUC and how it can help constituents so legislators have something to share in their districts. The commission can conduct phone-in town hall meetings with legislators and their constituents to answer questions (e.g., Pennsylvania).

Legislature-Led Approaches that Encourage Collaboration

- Legislators send drafts of legislation/considerations of policy changes to the PUC for comment on potential implications (e.g., Pennsylvania, Washington).
- Legislators reach out to the PUC for testimony, briefings, or other education to contribute subject-matter expertise on topics before the legislature (e.g., Pennsylvania, Washington).
- Legislators ask the PUC to develop a study on a specific policy to provide insight into the current landscape, identify best practices, or seek out possible policy solutions to areas of interest (e.g., Washington).

MINI GUIDE EXAMPLES

To give commissions and legislatures a more complete idea of how these relationships work in practice, the following section presents condensed excerpts from interviews with legislators and commissioners from three states: Minnesota, Vermont, and Washington.

Table 1. Mini Guide Interviews

Name	Position	Organization
Hon. Dan Lipschultz	Vice-Chair	Minnesota Public Utilities Commission
Sen. Andrew Mathews	Senator, District 15; Committee Vice-Chair	Minnesota Senate
Hon. Margaret Cheney	Commissioner	Vermont Public Utility Commission
Rep. Curt McCormack	State Representative, District 6-3; Committee Chair	Vermont House of Representatives
Hon. David Danner	Chairman	Washington Utilities and Transportation Commission
Rep. Jeff Morris	Representative, District 40; Former Chair, House Technology and Economic Development Committee	Washington House of Representatives
Rep. Joe Fitzgibbon	Representative, District 34; Chair, House Environment and Energy Committee	Washington House of Representatives
Sen. Reuven Carlyle	Senator, District 36; Committee Chair	Washington Senate

The commissioners in these states have diverse statutory authorities, historical relationships, experience (e.g., two are former legislators), and scopes of responsibility, but they all bring similar philosophies to their engagement with the legislature. The legislators interviewed are all chairs or former chairs of committees with jurisdiction over the utility commission in their states.

Each person interviewed expressed his/her own opinions. Inclusion in this document does not indicate the authors' or organizations' endorsement of any statement or suggestion.

Washington

The Washington Utilities and Transportation Commission (UTC) regulates numerous industries, including electricity, natural gas, freight, ferries, and more. The UTC's three commissioners are nominated by the governor for six-year terms and approved by the State Senate, and may not include more than two from any single party. The Washington State Legislature is a hybrid legislature. Two committees in each chamber have jurisdictional oversight over the UTC.

The following text is an abridged transcript of interviews conducted with David Danner, Chairman of the Washington Utilities and Transportation Commission; Jeff Morris, Washington State Representative; Joe Fitzgibbon, Washington State Representative; and Reuven Carlyle, Washington State Senator.

Can you talk broadly about what the working relationship looks like between the commission and the state legislature?

David Danner, Washington Utilities and Transportation Commission: It's built on communication. I work very closely with the chairs of the committees that have jurisdiction and they understand the need for the commission. They do not want to be doing our business; they do not want to be setting rates. They respect our expertise. This can be a bit of a double-edged sword because it means that we have more reports to do and they rely on us more, but it also means they do not undermine our work.

Jeff Morris, Washington State House of Representatives: It's a very collegial relationship and very collaborative. Because there's so much change happening so rapidly in the energy industry, everyone realizes that we need to come together to deal with this. So, there's been joint exploration of what this new world is going to look like going forward.

Usually, in state legislatures, there's a choice between whether the utility commission or state energy office will be consulted for input on legislation or studies on policy options. Here in Washington, there's a feeling that the commission tends to be neutral and more probing around regulations and facts.

My experience has been that regardless of how close our relationship is with the commission, the commission always appreciates some leadership from the legislature or the governor to give them a portfolio to go ahead and work in an area that is maybe outside their normal operations.

Reuven Carlyle, Washington State Senate: We have a high degree of confidence in the technical competence and skillset of the UTC—both commissioners and staff. They're absolutely central to our work and we rely upon them a great deal. We seek their advice and counsel. We might ask them to provide us with best practices or provide recommendations on certain issues. And we've given them, under the 100% Clean Electricity Bill, substantive authority to follow up and implement the legislation.

Joe Fitzgibbon, Washington State House of Representatives: When there were specific policy choices that came up for us recently in a 100% Clean Electricity Bill, we checked in with the UTC on their perspectives. I viewed them as an independent entity, and one that was trusted—that they were bringing a separate set of considerations from the Governor's Office.

Please share more about how the relationship operates in practice.

Danner: We have a citizen legislature in Washington (not full-time), so they have other jobs to do and are often in their districts. When I'm in their area I will look them up, have a cup of coffee with them, talk about what we're working on, let them know what we are up to. Some legislators are very interested in what's going on, some have no idea what we do and don't want to. Certainly the chairs, vice chairs, and ranking members on committees with jurisdiction are very engaged. Even the ones that are not necessarily my supporters, I do try and reach out to them, just let them know what my perspective is. All three UTC Commissioners have their own networks of relationships.

Carlyle: When I first came in as senate chair, I asked the commission chair for a comprehensive briefing of the scale and scope of their work, their challenges, and the real-deal issues they faced. I believe any incoming chair needs to invest time to really understand an agency over which they have strong regulatory oversight.

Morris: We regularly are consulting each other about, "Okay what's the best way to deal with this problem in Washington State?" One of the things that they've done that I've appreciated is inviting me in a number of times to meet with their key staff looking at emerging technology issues like storage and distributed energy resource (DER) planning. That's one of the most helpful things in having a collaborative relationship. Recognizing that a lot of this is still a personality-driven business, having that dialogue happen really helps the process a lot.

Do you have any illustrative examples you could share that show how you engage?

Danner: Sure. The legislature had been talking about the structure of the marine pilotage commission for years, including the rate setting process. The legislature floated the idea of the UTC taking on the rate-setting responsibilities, and all three of the UTC commissioners agreed. We had numerous meetings with the pilotage commission, the shippers, the pilots, and all of their associations. We also worked very closely with the transportation chair and ranking member through a series of meetings to work out how the changes would work. Commissioner Balasbas had very good relationships with the Republicans on the

Transportation Committee and I had good relationships with the Democrats on the Committee, and we were able to make sure that the legislation that they were drafting worked, wouldn't create problems for the UTC, and was sufficiently funded.

Morris: Back in 2012/2013, I started pushing a proactive approach to DER planning as chair; however, in a part-time legislature, it's extremely difficult to be proactive on any issue. I wanted us to avoid what was happening in other states with organic, unplanned build-out of distribution resources, then investment in expensive capital expenditures to solve problems in a reactive way. In contrast, by planning and being predictive, we could avoid future rate shocks. After three years of discussion, I proposed: Let's commission the UTC to do a study about the best practices of DER planning, so that we have an apples-to-apples comparison as a state legislature. Among all the stakeholders, even the public, they hate when we try to move anything new to be regulated under the authority of the UTC, but when we ask the UTC to be a convener, there tends to be more acceptance of their expertise.

We asked the UTC to conduct workshops to explore this question and come back with recommendations about best practices, so they did. They came back with a study that had 12 recommendations. We boiled them down to nine and now those best practices for DER planning are being signed into law (Washington House Bill 1126-2019) by the governor.

Do you have a formal way of tracking legislative/commission activity?

Danner: The Legislative Director position began eight years ago when I was Executive Director. Because I had been both governor's staff and legislative staff, I took it on myself initially. When I became a commissioner, we created the Legislative and Policy Director senior staff roles, who work with the policy staff. Policy staff advise the commissioners on rate cases, rulemakings, and integrated resource plans; plus, they're also tracking legislation, giving their critiques of legislation, and talking about problems that legislation might create. In addition, all three commissioners have legislative backgrounds, so we all weigh in. During session, the Legislative Director also has one person assigned to track bills and make sure nothing falls through the cracks.

Even with a small agency, this is crucial. We have no more than 170 employees, but we get the third largest number of fiscal note requests of any agency, for which we need to estimate the fiscal impact of potential legislation. So, it's a large burden that necessitates tracking the many bills where we are involved or named.

Fitzgibbon: It's helpful that when the UTC makes a particularly important decision on a rate case or something else, they usually email us and let us know. That way, the legislators who are tracking that issue closely know who to follow up with and know how to get their questions answered.

It sounds like you often collaborate across the legislature and commission on potential bills. How does that work?

Danner: Committee chairs might approach the commission to help them write legislation. Recently, we've had legislators come to us to say "If I had a bill that wanted to do this, what would it look like?" And then they invite us to work closely with the legislative staff to talk and hash out concepts to turn ideas into bill language.

In addition, the commission can request legislation. The request legislative process for agencies is pretty well established and normal practice. In September, before the legislature starts meeting in January, we are asked to submit to the governor's office all of our requested legislation and they decide whether to approve or not approve.

A recent example was a bill dealing with regulatory flexibility. We had to fix a Court of Appeals decision that was written so restrictively that it limited us from doing anything other than pro forma adjustments on historical test years. Rather than appeal, we submitted our proposal to fix it to the legislature (Washington Senate Bill 5816-2019), to grant us authority to look forward in setting rates even though we've never done these things before. Ultimately, our proposal was included in Washington Senate Bill 5116-2019 and we got authorities that we were not sure we had, and now we're sure we have them.

Fitzgibbon: A recent example was legislation that the UTC and our investor-owned utilities came to us with (Washington Senate Bill 5816-2019). They were asking to overturn a Court of Appeals decision that the UTC and the utilities felt constrained their ratemaking discretion in a way that was unhelpful. We viewed this as being a technical fix. They would rarely take the lead on a major policy change.

Vermont

The Vermont Public Utility Commission (PUC) regulates electricity, gas, telecommunications, and private water companies in the state, along with energy efficiency. The PUC's three commissioners are nominated by the governor to six-year terms and approved by the State Senate. Only the chair is a full-time position; the other two commissioners serve 3/5 time. One of the Commissioners is a former State House Representative. The Vermont State Legislature is a part-time legislature. Two committees in each chamber have jurisdictional oversight over the PUC.

The following text is an abridged transcript of interviews conducted with Margaret Cheney, Commissioner on the Vermont Public Utility Commission and Curt McCormack, Vermont State Representative.

What types of jurisdictional relationships do the commission and legislature have?

Margaret Cheney, Vermont Public Utility Commission: There are many ways the legislature might exercise their jurisdiction. Of course, we were created by a legislative act (Title 30 of Vermont statutes) and the legislature can create and change the laws under which we operate. They may also direct us to conduct a policy investigation and report back to them, or ask for language to achieve a legislative goal. In such cases, they tell us what they want to achieve and ask, "What strikeout or new language in current statute would help achieve that?" They may also impose a framework by which we conduct our business. For example, directing the commission to conduct certain activities according to the Administrative Procedures Act or use a rulemaking process. Rulemaking provides a step at the end for the legislature to review the final rule (though they cannot stop the rule from going into effect). If the Legislative Committee on Administrative Rules (LCAR) objects to a section of the rule or to the rule itself, it may affect the presumption of validity that is applied if the rule is ever appealed in court.

In the other direction, the commission may proactively suggest legislative fixes to make our processes easier. Last year we identified adjustments to sections of Title 30 that outline what steps we take in various processes—some simplification or clarification that required a word here and there or a different timeline to achieve an outcome that was more realistic. We offer those kinds of solutions right at the beginning of the session.

All that said, they give us direction, but we also work completely independently of them and the administration. When we make quasi-judicial decisions, we make those without input or oversight and our decisions are appealable to the State Supreme Court.


Curt McCormack, Vermont State House of Representatives: The primary oversight of the Public Utilities Commission is from a policy committee: The Energy and Technology Committee. But you always have the issue that the appropriations committees also have a degree of oversight and I think it's a common complaint that policy committees think that appropriations overstep their jurisdiction. It's an area where oversight could become inconsistent because the desires of the different legislative committees could be different—between the House and the Senate, and the policy committee and the appropriations committee in each chamber. I think sometimes that leads to the PUC presenting testimony differently, depending on who they're talking to. I've had this happen where I heard testimony and I find out that the testimony was presented totally differently in another committee.

We also have LCAR. It's a very powerful committee even though it's not supposed to be. It's a group of eight legislators—four senators, four representatives—and they meet to hear from agencies about rules that have been drafted. When the PUC promulgates a rule, it's a regulation and they have to be authorized under the law. This committee hears from them and determines if the rule is consistent with legislative intent. I think that's important. But in my opinion, we shouldn't have a special committee for that. We should have the committee with jurisdiction on the legislation—the committee that wrote the legislation under which the rule was authorized—because they're going to be much more familiar with the legislative intent.

What are some of the rules that you live by in engaging with your counterparts?

Cheney: Don't surprise people. If a legislator hears from a constituent that the commission has done something the constituent or another group is worried about, it's much better for the legislator if they already know about it. A well-informed legislator can help dispel false impressions. The most basic way to achieve this is to communicate our work as clearly as possible so they understand what we do and why. We offer to go to the legislature at the beginning of each session for a 101 to not only remind them of how we work and what we do, but also give them a heads-up on issues that are currently concerning us.

Ensure somebody initiates the outreach; it does not matter who. When I was in the legislature, the chair of our committee invited all the relevant players to conduct 101 briefings as the session was getting under way. The chair realized that he needed



all the members of his committee to be up to speed because it would be counter-productive for some of them to be at sea on these really complex subjects. More recently, it's been up to the PUC to offer to come in at the beginning of each year. I make sure we reach out ahead of or during the first few days of the session when chairs of committees are usually not so busy because they haven't been sent any bills to consider yet.

Know one another. Legislators need to know what a public utility commission does, what it doesn't do, and why it matters. There is a big turnover element in the legislature; within 10 years, you can have a really different cast of characters who are dealing with lots of different issues. I am a former legislator, so I know the recently appointed chair of the committee. I reached out to offer an informal coffee before the session started, to fill him in on what's been going on, and what he might see coming up, and help to share some of the current nuances.

It's also important for a commission to know the legislature—to have at least one person who acts as the legislative liaison, whether it is their primary role or not. In Vermont, we have a legislative liaison who is also a hearing officer. Throughout the legislative session, he watches the agenda of the relevant committees and is always in the room when they take up anything relevant to the commission. Sometimes he just listens; in other cases, he offers that we may want to testify; sometimes he may be asked by one of legislators to help clarify something or if he has an opinion. Furthermore, during the session we always have an agenda item at commission meetings in which he brings us up-to-date on what has happened.

Anticipate problems. Be spontaneous; don't just stick to a pattern of how you have engaged in the past. There may be situations where it's important to do something different and have a conversation without having planned it. Recently, our level of engagement increased after we completed two controversial rule makings. With distributed generation and renewable energy, legislators are hearing things from their constituents that are all over the board.

For example, we had a very controversial decision related to an area of Vermont in which there's too much renewable generation relative to electricity demand. Existing, low-cost renewable installations were already being required to dial back by the regional independent system operator (ISO) when there was pressure on the grid from over-generation. The commission denied a certificate of public good to a proposed 1/2 megawatt solar net metering project under these circumstances, in large part because it would have displaced existing renewables available at lower cost to consumers. We realized that the decision might have been interpreted as a commission-imposed moratorium on renewable energy, which could have been controversial and inaccurate. So, we deliberately wrote the beginning of our order in a story fashion that explained the issue before we got into the technicalities of the decision. We also issued a press release that provided basic information about the case in plain English. By issuing that simultaneously with the order going out, we avoided a lot of misunderstanding and helped legislators, too. They could talk to their constituents about it.

What are some important things your counterparts should know about your governmental body, but they might not?

Cheney: The PUC is funded by a gross receipts tax on regulated utilities, so the amount of money that we receive is totally dependent on the revenue of those utilities and the percentage of the gross receipts tax that's coming in—not by the state general fund. We divide that revenue with the Department of Public Service, which is the advocacy and administration-connected part of this regulatory design so that the commission is the quasi-judicial body. They are the consumer advocate and they are part of the administration, but we are not.

Speaking about Vermont, it's important to know that the legislature and the commission share some fundamental values. In our case, the commission puts a high priority on climate change issues, a high priority on protecting ratepayers, a high priority on ensuring that any project built in Vermont meets statutory criteria that have been imposed by the legislature. It's amazing how few people, including me when I first got to the legislature, know that if a project is going to be built in Vermont, it has to meet a long list of environmental criteria. They don't know that a project must be in the public good and it has to pass a test economically, environmentally, etc., etc. Those kinds of things help convey the values that set the framework within which we work.

McCormack: It's important to remember that we're part-time legislators in Vermont, but I think we deserve to have some of the same resources as the executive branch. The executive branch is full-time—that's their job. They have a lot of staff. I'm a committee chair, and I don't have any personal staff. So, we have to do our own research. And that can make things difficult. But the one advantage is that when a Vermont legislator gets behind something and is persistent, that person actually knows quite a lot about it. So that actually helps because there's a lot of credibility with that information when you get up to the floor and you've got answers; that actually gives you some power.

Could you provide an example of a time when proactively reaching out helped overcome a challenging situation?

Cheney: A few years ago, the legislature directed the commission to devise net metering incentives via rulemaking. Historically, we were given flexibility to proceed by rule or by order. Proceeding by order is more nimble and preferable for complex programs in case we find out later that there is an issue in practice that we did not anticipate in theory. Through orders, we can provide a remedy or adjust much more quickly. Rulemaking typically takes up to 18 months because of requirements about the steps to take. In 2017, we issued the rule on net metering incentives and appeared before LCAR to explain and justify portions of the rule that were controversial. There was scrutiny and some debate but were no objections.

Unfortunately, there were some challenges with implementation of the rule so we opened another rulemaking to fix the problems that had come up. Upon learning that we were doing this, the legislature started taking testimony on the draft rule. We thought it would be very confusing to have the legislature taking testimony, as we were also doing required public hearings. So, we talked to the legislature and gave them the background on how we ended up doing it by rule—at the direction of a prior session of the legislature. With the turnover at the legislature, they didn't realize the history but by talking with one another, we were able to resolve the issue.

Minnesota

The Minnesota Public Utilities Commission (PUC) consists of five commissioners appointed by the governor to six-year, staggered terms. By law, no more than three commissioners can be of the same political party and at least one commissioner must reside at the time of appointment outside the seven-county metropolitan area. The Minnesota State Legislature is a hybrid legislature, with one policy committee in each chamber charged with jurisdictional oversight of the PUC.

The following text is an abridged transcript of interviews conducted with Dan Lipschultz, Vice-Chair of the Minnesota Public Utilities Commission and Andrew Mathews, Minnesota State Senator.

Can you describe how the working relationship has evolved between the legislature and the commission?

Dan Lipschultz, Minnesota Public Utilities Commission: When I came to the commission five years ago, the commission had virtually no relationship with the legislature at all. Our interface was over two things: to request the commission's budget or respond to a fiscal note request from the legislature. At that time, there were also a number of bills pending to change the commission's make up and authority.

Now, we have a dialogue with committee leadership and committee members that have jurisdiction on what we're doing, what we plan to do, and on things we've done. Each session, the chair and the vice chair meet with both committee chairs and the ranking member of each committee, plus some committee members. We have an ongoing relationship of sharing our thoughts and listening to the legislature through those committee members, listening to their thoughts on what we do, and answering their questions. Every two years, post-election with new members, both committees will ask us to come make a presentation describing who we are and what we do. It's not just an opportunity to explain the PUC, it can also become an opportunity for legislators to ask questions on policy issues. It's actually easy to have an informal dialogue with legislators because, unlike stakeholders, they are rarely parties in pending proceedings.

Another thing we started is a legislative report that we send to the chairs and the ranking members of the two committees. We provide a monthly summary of decisions we just made, the major cases that are pending, and the general timeframe for upcoming decisions.

Andrew Mathews, Minnesota State Senate: There is a dialogue that I would consider positive. The commission—either the top commission clerk or sometimes the clerk and one or two commissioners—will make at least one visit each session with members of the energy committees. They will usually come and give a lay-of-the-land overview, and offer what they're seeing in the broad picture. This is very helpful, especially if I only see things mainly from my district or region. Sometimes that information helps inform me on the issues in other parts of the state.

In terms of dialogue on policy discussions, the commission tends to keep to itself. The commissioners only testify officially for their budget proposal or a staffing increase request. They tend to not make official comments on pending cases or situations that are coming up before them, and they usually leave us to make the policy decisions on our own.

What are some common misperceptions about the commission?

Lipschultz: The biggest misconception is that we're policymakers; but we're policy implementers. We are only doing things that the legislature has mandated, and the way we're doing them is analytical, fact-based, and aligned with administrative

procedures that have been handed to us. We've needed to meet with legislators to share that we're an objective, rational group of commissioners, and that we're making decisions based on the law that they write, and the facts as presented to us.

Mathews: Usually, your points of contention come into play when the PUC makes a decision that a group of legislators disagree with, and there's not a mechanism to claw that back or reverse a decision. But sometimes legislation can be passed afterwards that would change the framework moving forward, or to allow for a certain course of action for a specific situation.

I'll give an example: In my first session, I had a coal plant in my district that was working on a plan before the PUC to try to convert some of the burners from coal to natural gas. There was concern with how long it was taking, that it was a strategy to try to drag it out until the plant just shut down. I don't think that was going to happen, but I did want to make sure my district wasn't left with nothing, so my first piece of big legislation (Minnesota Senate File 85-2017) was to pass a law to allow a gas plant to be built on this site. Later, a commissioner said they probably would have ended up approving the plant and that they understood why I went that route, and the politics behind it. That was a big win for my district. But that's the biggest example that I've been involved in where the legislature was unclear over where the PUC would end up, and decided to set the framework to reach a specific end goal. It was a way of removing some of the uncertainty around a PUC decision.

Lipschultz: When we denied Xcel Energy's request to approve the construction of a gas plant to replace a coal plant, we found that even though they might be able to justify the gas plant, they needed to go through the "Certificate of Need" process, as they would for any other large energy facility, before we could give them approval to construct it. Xcel Energy instead obtained legislation (Minnesota Senate File 85-2017) that specifically authorized them to build the gas plant they wanted. So, we scheduled meetings with the leadership and every member of the two committees of jurisdiction to explain the basis for our decision. There was a misperception that it was based on hostility to Xcel or a lack of understanding of the economic concerns where this coal plant was being closed. In fact, it was a matter of process that the legislature had placed in statute, because the requirement for a certificate of need is in the law that we implement.

What advice would you have for an incoming commissioner and legislator?

Lipschultz: To a commissioner, I would emphasize that we need to be an independent, expert agency who acts in a quasi-judicial capacity, and each of us needs to make sure we're conducting ourselves in that manner. Think of yourself as a judge, making objective decisions based on the law and the facts. If we do, it will help us earn the respect and trust of the legislature on whom we depend for our budget, for our authority, and who could benefit from our advice if they trusted us to provide it.

To a Legislator, I would advise that they not look to the commission as a policy driver, but as a policy implementer. The commission is not an alternative path to the legislature in making policy. I would also suggest that legislators invite us to come and address each committee at the beginning of every session to talk about what we've done, what we're doing, and what we see out ahead rather than having us come every two years just to educate new members on who we are. Lastly, fixing problems with legislation is very hard after it's been passed and implemented. If the PUC is trusted and involved at the front end, we could help the legislature end up with results that could be win-win.

Mathews: I would strongly encourage any new legislators to prepare themselves. If it's a confirmation hearing, they should be ready to ask the hard questions, the pertinent questions for their district. You want to be informed and to be able to ask thought-provoking questions. The same goes for the personal office visits. Use the time to get a lay of the land, to learn about the big picture, energy outlook in the state, and come with specific questions and issues; don't be afraid to ask those hard questions.

For commissioners, I think they are probably coached to be careful, especially in the confirmation process. And I understand that. But if that makes all your answers so vague that they're pretty much meaningless, that definitely becomes a frustration for legislators. So, I would encourage a new commissioner to really try to push the line as far as they can, and to be as specific as they can for legislators, to give us useful answers.

Has there been a situation where you think more consultation across the two bodies would have resulted in better outcomes for the state?

Lipschultz: Yes. About six years ago, the legislature passed a solar garden statute that had very strict parameters. Xcel was directed to propose and implement a solar garden program that would provide a bill credit to customers who subscribe. The legislation stated that both the credit and payment to developers had to be either the applicable retail rate or a "value of solar" rate that the Department of Commerce would develop. The statute also prohibited the commission from putting any cap on the total quantity of solar garden capacity.

To a degree, the legislation accomplished what it intended, in that we have 600 megawatts and might ultimately have 900 megawatts of solar capacity. However, many of the solar gardens are one-megawatt facilities being built on farmland at the edge of the distribution system at economies of scale equal to utility scale solar. This is very expensive solar because solar gardens are getting paid the residential retail rate, which all gets passed on to ratepayers through the fuel clause. If the PUC had been involved or consulted, we could have helped the legislature design a community solar garden program that achieved just as much solar capacity at a much lower cost.

How do the two bodies work best with each other? What is the ideal relationship?

Mathews: I think the best way they interact is when the legislation is clear enough and offers strong guiderails, and then the commission is disciplined enough to stay within its jurisdiction. The disagreements usually come if a legislator claims the commission didn't interpret the law the way the legislature intended. I think, for the most part, the commissioners have been good about staying inside the law and making decisions within that. But it's probably one of those aspects that the legislature watches over really intently—and particularly when a commissioner is first appointed, trying to figure out whether this person is going to lean too hard one way or the other.

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ON ELECTRICITY POLICY**

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NARUC

National Association of Regulatory Utility Commissioners

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NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues, and is an effective and respected advocate for the interests of the states in the American federal system. Its objectives are:

- Improve the quality and effectiveness of state legislatures.
- Promote policy innovation and communication among state legislatures.
- Ensure state legislatures a strong, cohesive voice in the federal system.

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