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Executive Summary

Historically, the American electricity sector is not only a significant national but global source of greenhouse gas emissions, which are driving climate change. As longtime gatekeepers to utility ratemaking and development, Public Utility Commissions (PUCs)—quasi-judicial bodies charged with regulating electric utilities in each American state—are navigating a complicated new role as potential stewards of statewide clean energy transitions in the electricity sector. Can state utility commissions lead in the clean energy transition?

To begin addressing this question, this report investigates utility commissions in six diverse states: Alabama, Florida, Pennsylvania, New Hampshire, New Mexico, and Washington. It draws out patterns that characterize the challenges and opportunities that PUCs face in becoming impactful stewards of decarbonization. Each profile examines how the nuances of a state’s political, economic, and cultural contexts, structural and procedural norms, and stakeholder dynamics explain how its PUC frames and acts on climate, as well as its overall success as a regulatory body.

This report advances nine findings:

1. Utilities often exert significant influence over commissioner appointments and elections.
2. Significant resource and structural advantages allow utilities to dominate PUC processes.
3. There is great variety in how PUCs frame and act on climate change.
4. PUCs pose significant technical and legal barriers to entry for many advocates, activists, the public, and journalists.
5. Rapidly changing renewable energy markets are influencing utility planning and commission regulation across the board.
6. The ‘players’ involved with PUC issues are relatively consistent across states.
7. Commission staffs vary greatly in size, expertise, and reputation.
8. Commissions fall on a spectrum from political to technocratic.
9. A revolving door between utility and commission officials is common.

While many of these findings highlight challenges to regulatory success and climate-forwardness on PUCs, they also suggest opportunities for solutions and progress. Approaches to major challenges faced by PUCs, including outsized utility influence, over-politicization, lack of legislative guidance on climate issues, and barriers to public engagement are complicated and must be tailored to the particularities of a certain state.

It is clear, however, that there is significant overlap across states concerning many of these major issues. The findings of this report—reflecting the opinions of diverse stakeholder interviewees across states—suggest that the consistent patterns in PUC challenges call for an increase in regional and national coordination on solutions. No one state’s regulatory environment is the same, but an effective and just decarbonization of the electric sector is an urgent national and global necessity. It is critical that stakeholders and experts of all stripes continue exploring opportunities to improve PUCs, and especially as burgeoning stewards of the clean energy transition.
Introduction

Because it is not feasible to have various competing companies running separate electricity, natural gas, water and sewage systems down every street, the U.S. states have granted monopoly access to one corporation to their own territories, or “service areas.” To oversee them, each state hosts state agencies often called public utility commissions (abbreviated as PUCs, PSCs, UTCs, PRCs depending on the state). A major responsibility of these state-level agencies is to regulate a state’s investor-owned utilities, which provide electricity among other services. PUCs, which operate in every American state, serve as ‘artificial competitors’ to natural monopolies are often charged with protecting the needs of consumers. PUCs’ specific regulatory duties for electric utilities are often extensive, and vary widely among states. Depending upon the state, these duties may include: overseeing utility rate-setting; regulating utility development, transactions, and financial decisions; and enforcing and implementing energy and environmental legislation. While PUC proceedings are often set up like quasi-judicial hearings, with commissioners acting in place of judges and utilities along with intervening stakeholders arguing respective cases, PUCs utilize a mix of legal, legislative, and regulatory procedures.

PUCs offer a novel subject for researching energy and climate governance for several reasons. First of all, they act as the primary regulators of America’s investor-owned utilities (IOUs)– many of which are some of the country’s most profitable and carbon-emitting companies, and whose services are essential to the lives of all customers they serve. Second, PUCs across the country vary extensively on virtually every metric, from commissioner selection processes, to procedural norms, to the political and cultural contexts that shape them. Exploring these differences can explain how and why utility governance, and especially its environmental outcomes, play out uniquely in each state. Third, as the Climate and Development Lab’s 2019 report titled American Utilities and the Climate Change Countermovement: An Industry in Flux describes, electric utilities are at a critical nexus. For utilities, a transition to clean energy is both technologically and economically feasible.¹ While market forces and national public policy both trend increasingly towards utility-scale clean energy development, much of utility planning continues to play out in the halls of state government and in company boardrooms. Representing approximately 4% of global emissions in 2019,² ³ the American electricity sector’s rate of decarbonization in the coming decades will significantly alter the global climate change trajectory.⁴ Now more than ever, the clean energy future of this critical industry is being shaped by PUC commissioners and staff, the utility officials that PUC officials both regulate and coordinate with closely, the intervening stakeholders that advocate for issues spanning climate action, consumer protection, and low energy prices, and the state legislatures and governors’ offices from which PUCs frequently take direction.

A mix of academic literature addresses utility commissions’ relationship with issues spanning transparency and accountability, regulatory capture, and innovations in consumer and climate policy. Much of the available literature, which spans back to the 1970’s, is narrow in scope. Often,

scholars have used quantitative social science methods to test the effect of some independent variable (say elected vs. appointed systems) on a dependent variable (electricity prices, in this example). Brown (2016) finds that utility influence on commissions can impede clean energy initiatives in both states with appointed and elected commissioners, and Scott (2014) finds that legislation or regulatory reforms that incorporate assessments of long-term climate risks will help commissions overcome the historical tendency to prioritize short-term economic outcomes.

Across the board, studies that utilize narrow investigations to make generalized recommendations for PUC improvement often struggle to draw clear conclusions about PUC improvement. For example, for decades scholars were divided on the question of whether elected or appointed systems lead to more successful PUC outcomes; more recent scholarship instead concludes that success depends on a host of independent, state-specific factors. The breadth and investigative methodology of the current report responds to this challenge of scope. For each profile, this report considers factors such as state economy and political culture, commissioner selection system, utility political involvement, and statewide climate legislation as interconnected rather than isolated factors affecting PUC outcomes.

In recent years, this more interconnected approach has been reflected in the work of scholars, advocates, and journalists beyond the realm of academia. For example, Stokes (2020) documents the ways in which industry groups have successfully influenced PUC climate-related regulatory decisions across the country, and ongoing research and reporting from the Energy and Policy Institute tracks how special interests affect PUC activities and obstruct opportunities for electric sector decarbonization. Journalists have reported instances in which PUCs have been subject to significant corruption, as with former Ohio PUC Commissioner Sam Randazzo’s implication in a $60 million bribery scheme between FirstEnergy and state officials. On the other end of the spectrum, clean energy organizations continually examine and advocate for regulatory innovations that would spur a wide array of clean energy technologies across states.

This report seeks to offer a new perspective on a question that permeates preceding research on PUCs: *Can state PUCs lead in the clean energy transition?* To shed light on this question, the report offers in-depth investigations of six diverse commissions across the country. Each profile attempts to give an account of the contexts, characteristics, and dominant issues that have shaped the identity of a state’s PUC for the past decade. By comparing key findings from these six

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investigations, this report draws out patterns explaining the challenges and opportunities that PUCs across the country face as potential stewards of a national clean energy transition.

Each profile examines how aspects of a state’s political, economic, and cultural contexts, structural dynamics, and stakeholder dynamics affect PUC energy & climate governance. State context refers to state-specific practices and attitudes that inform the activities of commissions, spanning a state’s political culture, energy resources, demographics, and cultural values. Structural dynamics includes a wide breadth of governmental, legal, and regulatory processes that shape the particular roles and procedures of a state’s commission, including the particular responsibilities reserved for PUCs, how commissioners are appointed or elected, and the laws regulating relationships between commissions and stakeholders. Stakeholder dynamics encompass the relationships between commission stakeholders (including environmental and consumer advocates, industry groups, utilities, non-PUC government officials), as well as the relationships between stakeholders and commission officials. Since utilities themselves are often the most powerful PUC stakeholder in a state, in some states stakeholder dynamics primarily consider the channels through which utilities directly and indirectly influence aspects of PUC governance. In each profile, unique combinations of state context, structural dynamics, and stakeholder dynamics help explain how and why certain outcomes unfolded.

This report seeks to illuminate instances of regulatory success and failure. While a PUCs ‘success’ can be defined in many ways, this report will consider it broadly in terms of functionality and climate-forwardness. Functionality refers to a commission’s ability to carry out its stated missions: setting just and reasonable rates, balancing the needs of utilities and consumers, promoting transparency and integrity in decision-making, opening channels for public and stakeholder engagement, and ultimately fostering a regulatory environment characterized by trust, consistency, and expertise. Climate-forwardness refers to the measures commissions have taken to incorporate climate change – especially the need for a transition towards clean energy in the electricity sector– into their regulation. This metric can be tenuous considering that many commissions across the country do not have statutory or legislative mandates to incorporate climate change into their regulation, even while virtually all PUC activities pertain to and affect greenhouse gas-emitting infrastructure. Including climate-forwardness as a metric of success reflects a widely held understanding that the electricity sector must rapidly decarbonize in order to limit global warming to the Paris Climate Accords goal of 1.5°C, and a developing idea that PUCs can be effective stewards of clean energy transitions on the state level.

Ultimately, by drawing out patterns between these six case studies, this report aims to illuminate the opportunities for and challenges to achieving these metrics of success. With utilities still operating at an energy crossroads, commissions are uniquely positioned to significantly drive or impede clean energy transitions across American states.

**Research Methods**

This report profiles six American states, which were selected to represent a diverse sample on the bases of region, PUC structure, and key indicators of state political, economic, and energy & climate governance environments. This sample enables the report to highlight the wide variation as well as the unifying patterns between states.

To select states to profile, this report sorted all fifty American states into seven ‘indices’: Region, commission staff size, appointed vs. elected commissioners, partisanship, presence of renewable portfolio standards, and relative strength of the fossil fuel extraction (coal, oil, and natural gas) and electric utility industries. The region index sought to include a state from most major regions of the country. Commission staff size and appointed vs. elected commissioners are areas of great variety among PUC structure. Partisanship was calculated using the methodology modeled in Sautter & Twaite’s 2009 paper titled, “A fractured climate? The political economy of Public Utility Commissions in an age of climate change.”

The index calculated the proportion of whichever party controlled each state’s governor’s office, House, and Senate from 2008-2020. Presence or absence of renewable energy portfolios (RPS) can be indicative of a state government’s present commitment to climate policy action; as of June 2020 30/50 states had binding RPS’s, with a great variety of ambition amongst the various standards. Proportional economic dominance of fossil fuel and electric utility industries measures the proportion of a state’s total GDP respectively generated by extractive industries (mining, oil & gas) and the electric utility industry, using 2018 data from the American Bureau of Economic Analysis. This index helps illuminate states’ relative economic reliance on historically carbon-intensive industries, and often translates to those industries’ level of political involvement.

Research for this report was conducted from March 2020-July 2021 (not all dockets discussed in the ‘climate-related outcomes’ sections will be fully up to date). Each profile used a combination of available news and investigative reporting, existing accountability research and data, and interviews with experts and stakeholders. In some states, regional journalists consistently cover PUC activities and nonprofits, think tanks, consultancies and other groups dedicate resources to conducting research about them. Both can serve as a useful resource. Most profiles also make use of publicly available PUC docket filings and political spending data.

In many states, robust PUC-related reporting and accountability research is scarce. PUCs are highly technical by nature, a barrier to entry that frequently positions them outside the spotlight of public interest and scrutiny. In each state, CDL researchers reached out to PUC stakeholders representing key groups involved in PUC governance: PUC commissioners or staffers, utility officials, business groups, consumer advocates, clean energy, environmental justice, and low-income advocates, and sometimes journalists and accountability researchers. Often, our requests for an interview were denied or our communication was ignored, more often by utility officials and business groups than advocacy groups. This sometimes yielded an imbalance of voices represented in our research process, which made it especially important to confirm information from interviews using outside sources. With that said, interview data provides a critical backbone to the profiles in this report: where reporting was absent, dockets or utility plans were highly

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technical, stakeholder relationships were nuanced, and backroom conversations were concealed from view, insiders and experts offered helpful perspectives on the PUCs they intervene in, staff, or are regulated by.

**Key Findings**

**Finding 1: Utilities often exert significant influence over commissioner appointments and elections.**

In several states profiled in this report, commissioner selection processes opened channels for stakeholders, especially utilities, to exert influence over who gets picked as commissioner. This dynamic played out in systems that both elect and appoint commissioners—most prominently Alabama and Florida, respectively.

In Alabama, which elects its commissioners, utilities and other stakeholders have exerted influence through dark money campaign contributions. In New Mexico, the state legislature recently voted that the Public Regulation Commission will shift from elected to appointed commissioner selection, a change whose effects on the avenues for special interest is a point of disagreement among stakeholders.

In other states, utilities have influenced commissioner appointments through the government officials involved in appointment processes. In Florida, utilities have heavily funded the campaigns of legislators on the PSC Nominating Council, governors, and the Florida Republican Party, all of which have outsized influence on the commissioner appointment process. Advocates can identify specific appointments in which utility influence over certain officials directly led to the selection of utility-friendly commissioners, or the expulsion of pro-consumer commissioners. In other states like Pennsylvania, experts point out how party politics in the governor’s office and state legislature often affects PUC appointments (and especially has recently), but are hesitant to directly attribute decisions to utility influence.

Influence over commissioner selection is important because the composition of a commission has significant bearing on the decisions it makes, especially pertaining to energy & climate change. In several states, stakeholders have emphasized how the political ideology and even personality of individual commissioners are primary factors shaping PUC outcomes. In states like Alabama and Florida, heavy utility influence in these processes have coincided with the selection of commissioners who consistently regulate in favor of utility preferences, yielding commissions that many describe as ‘captured’ by industry.

**Analysis & Recommendations:** State-level research suggests that opportunities for influence over commissioner selection may have less to do with the structure of a state’s process than the laws, traditions, and politics that surround it. Among the states profiled, those with strong institutions seem to fare better in minimizing special interests. With that said, states have historically experimented with shifting from elected to appointed systems to improve their selection processes, like New Mexico did recently. Although one system may not be inherently superior to the other, it is important that states take measures to creatively manage the often-subtle channels of influence that can interfere with the integrity of their commissioner selection processes.
Finding 2: Significant resource and structural advantages allow utilities to dominate PUC processes.

Compared to other stakeholder groups, utilities across the states profiled have what many described as ‘endless’ resources to participate in and influence PUC proceedings. How utilities have chosen to allocate those resources varies between states. Nearly every utility, and especially the larger and wealthier ones, maintain large teams of lawyers, regulatory experts, economists, and engineers with resources that help them dominate PUC proceedings. Many utilities further spend heavily on campaign finance, lobbying, and public relations to influence political processes that directly or indirectly affect PUC activity. Finally, in some states, there have been instances of utilities spending in shady dark money groups or even illegally ‘wining and dining’ PUC officials.

In Alabama, commissions have repeatedly adopted regulations that were directly drafted by utility officials outside formal commission procedures. In Washington, where the commission makes a point to prioritize the needs of advocates throughout its regulatory processes, many still express that they are vastly outnumbered and outspent by utility officials in virtually every situation.

Utilities also usually have a structural advantage in most proceedings. Advocates in Florida described having to ‘catch up’ on thousand-plus page documents that utility officials are not required to release publicly until a docket is opened.

Analysis & Recommendations: State-level research makes it clear that utilities do not necessarily need to make massive political expenditures or break the law in order to be the most powerful actors at PUC proceedings. The extensive resources and structural advantages enjoyed by powerful IOU’s allow them to advocate for themselves in a way that other stakeholders often cannot. This dynamic is especially complicated because the utilities’ technical expertise is often viewed as helpful—even indispensable—by commission staffs.

States should explore ways to explicitly support non-utility stakeholders in PUC processes, either financially or structurally. With improved resources, pro-consumer and environmental groups—potentially along with business groups, communities, and other intervening stakeholders—would be able to vouch for their interests in a more rigorous, technical fashion. Financial and structural support for non-utility stakeholders would make them more helpful for PUC staff and yield more balanced PUC procedures, especially in states where non-utility stakeholders are often marginalized. One example of this type of support are intervenor compensation programs, which several U.S. states use to fund or reimburse advocates for the cost of their contributions to a proceeding.

Finding 3: There is great variety in how PUCs frame and act on climate change.

Charged with regulating a historically high carbon-emitting but rapidly shifting industry, PUCs have a unique role with regards to climate change. None of the commissions reviewed in this report have constitutional mandates to include climate change into their regulatory activities, but many have incorporated various approaches to climate governance, clean energy development, or greenhouse gas emissions reduction into their activities. Washington, where robust legislation directs the commission to design rules for implementing electricity sector decarbonization, exemplifies a PUC actively facilitating climate action. Commissions can also act on or push to
amend statutory mandates for environmental protection, establish their own quasi-policies to address climate, or incorporate climate change into decision-making on a more ad-hoc basis.

Washington and New Mexico demonstrate how, given a clear legislative mandate, PUCs can incorporate high-impact climate and environmental action into their regulatory activities. In the past years, both states have passed comprehensive decarbonization plans, reserving much of the electric sector implementation to the PUCs. In each case, the existing resources, structures, and practices of the commissions have offered an effective, if not perfect, venue to implement legislation in a manner that is feasible, efficient, and balances the needs of stakeholders. There is a significant discrepancy between the climate-forwardness of Washington or New Mexico and New Hampshire or Pennsylvania, the latter of which lack clear climate legislation and have been hesitant to directly address climate change. This dynamic emphasizes that legislative direction can have a strong impact on a PUC’s ability and confidence addressing climate in their regulatory activities.

In these states and others, PUCs have experimented with other ways to indirectly and directly address climate. In Pennsylvania and New Hampshire, some commissioners have pointed towards pre-climate change environmental protection statutes as a justification for certain environmental and climate considerations. In many states, stakeholder arguments addressing climate change increasingly appear in dockets that either consider expanding or retiring fossil fuel infrastructure, or expanding or establishing clean energy programs; the extent to which commissioners themselves take up climate rhetoric in those dockets varies greatly by state. Commissions rarely directly refer to climate change as a determining factor for regulatory decisions, but incorporate it in a more case-by-case or indirect manner.

Florida and Alabama’s commissions have historically excluded climate change from their regulation and framing altogether. Florida’s PSC has in recent years begun to aggressively approve utility-scale solar development, but has done so in response to utility petitions, and using economic rather than environmental justifications. In Alabama, a sitting commissioner denies the reality of climate change and seeks to exclude environmental advocates from most PSC proceedings.

Analysis & Recommendations: Utility commissions are uniquely situated to be effective drivers not only of an electricity sector clean energy transition, but one that prioritizes the needs of stakeholders, the resilience of changing energy systems, and the long term economic prosperity of electricity providers. Washington and New Mexico demonstrate that a clear legislative mandate can be a strong signal to PUCs to transition into a new style of utility regulation fit for the climate change era, even if the details of PUC authority during implementation tend to be complicated. Programs designed by PUCs themselves, like incorporating the social cost of carbon emissions into economic modeling, performance-based regulation, or other financial incentives for decarbonization, have also shown promise as tools to incorporate climate change into some PUCs.

In states with governors, legislators, and electorates that are less enthusiastic for climate action, not to mention states where utilities are less willing to transition their energy generation or even historically dedicated to climate denial and delay, PUCs have and will continue to be less likely to prioritize— or even address— climate change. In these states, understanding the nuanced cultural,
structural, and procedural factors that characterize PUCs is a place to begin considering where creative opportunities for progress might lie.

**Finding 4: PUCs pose significant technical and legal barriers to entry for many advocates, activists, the public, and journalists.**

Even while much of the regulation that occurs at utility commissions has largely practical implications on the lives of everyday citizens—electricity rates being the most obvious example—there are significant technical and legal barriers for regular people and advocacy groups to participate in PUC activities. PUC proceedings are inherently formalistic: they are quasi-judicial, riddled in discussions about statute and case law. Even the less formal aspects of PUC regulation, like stakeholder working groups and engagement with commission staff, nonetheless require advanced fluency regarding energy policy, economics, and the structure of proceedings. Absent that, many members of the public, including local journalists and non-intervening consumer or environmental activists, face great challenges to participation in the regulatory process.

*Analysis & Recommendations:* High profile cases in some commissions can receive hundreds or even thousands of public comments, signaling the extent to which some PUC decisions matter to everyday citizens despite the challenges involved. To stimulate increased public participation, commissions should consider a combination of common sense and creative measures. Practical measures could involve updating antiquated websites and/or streamlining the public comment submission process (Alabama and Florida especially struggle here). More creative measures could include sponsoring town hall-style forums on major energy regulation issues in states, or building out presence on Twitter or other social media outlets that allow PUCs to update broader networks on proceedings and encourage participation. Washington’s WUTC is an excellent example of how a modern website, accessible public input process, active Twitter account, and frequent press release-style website updates seems to have encouraged a more public-friendly regulatory environment.

**Finding 5: Rapidly changing renewable energy markets are influencing utility planning and commission regulation across the board.**

For decades, Florida’s utilities and PSC ardently resisted meaningful efforts to develop renewable energy resources in the Sunshine State. In the past several years, however, Florida utilities have barraged the PSC with requests to develop utility-scale solar plants, hundreds of megawatts at a time.

This abrupt shift is representative of a dynamic occurring in many of the states profiled in this report, and seemingly across the country—presumably because, in 2021, it often makes economic sense. Many utilities are aggressively planning and implementing clean energy development, which some PUCs are approving despite traditions of hostility towards renewable energy. In Pennsylvania, where the PUC has been resistant towards incorporating environmental priorities into its regulation, a more gradual increase in utility proposals to develop renewable energy or pilot green infrastructure programs have also usually been approved. Alabama’s PSC is an exception to this pattern: in 2019, it rejected an Alabama Power petition to construct five solar and battery storage facilities, one of its only refusals of an Alabama Power request in recent years.
PUCs are further faced with the challenges involved with regulating distributed energy resources including distributed solar, behind-the-meter battery storage, and energy efficiency. Generally, utilities have more readily advanced smaller-scale programs proposed by utilities, rather than seeking to proactively establish more comprehensive regulatory frameworks. In states like Florida, where limited progress on distributed energy resource regulation has coincided with aggressive utility-scale solar development, advocates are concerned that opportunities to rethink energy systems and fully reap the benefits of behind-the-meter technologies are closing quickly.

*Analysis & Recommendations*: Utilities and commissions working together to expand clean energy development is an essential avenue for electricity sector decarbonization. However, especially in states with weak regulatory traditions, it is critical that aggressive renewable energy development is facilitated in a way that balances economic priorities with climate goals, is socially just, and includes viable options for distributed generation. Distributed renewable energy resources, especially rooftop solar and battery storage, are uniquely situated to offer communities and families more agency over their own energy resilience and provide many novel benefits to electric grids. As energy systems are reinvented in the coming decade, it is important that advocates pay close attention to how commissions– especially the weaker, more conservative, or historically pro-utility ones– allow utilities to consolidate control over renewable energy resources.

**Finding 6: The ‘players’ involved with PUC issues are relatively consistent across states.**

Across the various states, the categories of stakeholder groups active in PUC activities are fairly consistent. Naturally, utilities are usually the most active and most powerful stakeholder in every state’s PUC issues. Offices of the consumer advocate, usually housed within state attorney general offices and charged to formally represent the needs of consumers in proceedings, are frequently quite powerful as well. How consumer advocate offices across the country view utility commissions’ role in advancing climate and clean energy goals varies greatly. Groups advocating for clean energy, environmental justice, and consumer advocacy are active in every state, but their opportunities for participation and influence depends greatly on the state context. Business groups representing industrial consumers and/or fuel providers, independent companies, municipalities, and other communities are present on a more ad-hoc, context-specific basis.

*Analysis & Recommendations*: Across states and often within states, the particular stakeholders involved in reaching settlements can vary considerably. In some states like New Hampshire, certain PUC settlements are reached largely between commission staffers, utility officials, and the consumer advocate; in Alabama, a wide breadth of regulation occurs solely between APSC and Alabama Power officials, closed off to the public and advocacy groups. While in other states PUC proceedings are becoming increasingly attended and intervened in by advocacy groups, measures like intervenor compensation programs (explained in Finding 2) could improve the quality of PUC regulatory processes and encourage broader interest and participation.

**Finding 7: Commission staffs vary greatly on size, expertise, and reputation.**

Utility commissions are set up to operate like courts, with evidence around a case presented to commissioners to evaluate and make decisions. In this process, the detail and rigor of the ‘evidence’— which often requires very specific knowledge and capacities to aggregate— is incredibly important. With that said, the technical capacity of a commission is often significantly
affected by the quality of its staff, whose duties include conducting analysis, gathering evidence, and making recommendations in commission proceedings.

Across the states profiled in this state, commission staffs can vary from several dozen individuals (Alabama has ~66) to several hundred (Pennsylvania has ~526). Staff teams can also vary in expertise and reputation. In New Mexico for example, stakeholders have criticized the PRC staff for sometimes hiring based on personal or political ties rather than much-needed technical skills. In Alabama, a severe lack of resources and expertise has sometimes led to the PSC directly incorporating technical material prepared by utility officials into official documents.

In Washington, UTC Director of Regulatory Services Mark Vasconi highlighted that maintaining a staff with diverse expertise and a culture of fairness, data-driven regulation, transparency, trust, and mutual accountability, are keys to its success. New Mexico PRC Utility Division Director John Reynolds stressed the importance of hiring qualified young people who are adept in navigating constantly changing regulatory landscapes.

_analysis & recommendations:_ It is clear that there is a correlation with a combination of increased personnel, improved expertise, and a strong team culture can optimize how commission staffs support successful regulation and help drive functional regulation related to climate and clean energy. States should devote resources to intelligently building PUC staffs to strive towards these progress areas.

finding 8: Commissions fall on a spectrum from political to technocratic.
Commissions and commissioners are viewed as more political in some states than others. Alabama’s PSC exemplifies a highly political commission: commissioners are selected in competitive and heavily funded elections, and often use the office as a ‘political launchpad’. Alabama commissioners have in recent years made statements that many would consider partisan or at least divorced from typical PUC formalism, including denying the science of climate change and publicly attacking environmental advocates involved in APSC matters. By contrast, stakeholders in Washington state view the WUTC and its commissioners as professional and technically specialized. All of Washington’s current commissioners are career government officials with reputations for competency and seeking consensus across party lines. The identities of most other commissions profiled in this report fall somewhere along this political to technocratic spectrum; most at least make an effort to appear apolitical, but sometimes individual commissioners can attract attention for making political or unprofessional statements.

_analysis & recommendations:_ It is relatively clear that in the highly technical office of PUC commissioner, politicization is erosive to institutional legitimacy and overall regulatory success. In Alabama, the commissioner election process provides a structural framework that has encouraged a tradition of politicization of the position, and in New Mexico some attribute what they see as a deep-rooted incompetency and unprofessionalism problem to the elected system of the past few decades. In this case, a well-functioning appointed system may lead to commissions that are more technical in nature and better insulated from politics.

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16 Mark Vasconi interview
Finding 9: A revolving door between utility and commission officials is not uncommon.

In many states, institutional relationships between commission staff and utility officials are strengthened by a ‘revolving door’ and other interpersonal relationships. In Florida, there is a distinct two-way personnel pipeline between PSC and utility officials, along with utility-contracted lobbying and law firms. There is also an accepted tradition in which utility officials host and coordinate with PSC officials at conferences and meals, which at times have been criticized for leading to illegal discussions about open dockets. In New Hampshire, where the PUC has demonstrated significant independence from the utilities it regulates, a significant revolving door nonetheless persists. Beyond the revolving door and ‘wining and dining’, special relationships sometimes emerge between commission and utility officials when the former are grateful for technical support the latter are able to provide.

Analysis & Recommendations: In states with especially strong regulatory institutions and traditions, like Washington, it appears that close interpersonal relationships between commission and utility officials are more beneficial than they are erosive to the regulatory process. In many other states, however, such relationships can serve to unfairly elevate the preferences of utilities and marginalize other stakeholders. In the worst cases, it can breed unlawful or unethical coordination between commissions and the companies they are charged to regulate.

In states with significant revolving door problems, authorities should consider tightening laws pertaining to utility-commission relationships and perhaps restrict former PUC employees from working for utility or utility-affiliated firms before a certain amount of years. In addition to these possible legislative changes, accountability experts and journalists should continue covering and scrutinizing these sorts of dynamics, and policy experts should continue evaluating options to formally monitor or alter them.
Public Policy Implications

As the gatekeepers to utility planning, the role that commissions have the potential to play in guiding utilities through the energy transition cannot be understated. PUCs are uniquely situated to steward a clean energy transition while pursuing their mandates to ensure just and reasonable rates for customers. Clean energy infrastructure is making growing economic, social, technical, and ecological sense, and examples of fossil fuel infrastructure posing threats to ratepayer wallets as well as the climate are becoming more apparent.

This report points towards several key factors affecting the success of commissions as they navigate their statutory mandates in the changing conditions of a clean energy transition. We emphasize three:

Commission independence, institutional strength, and expertise: A commission with independence, institutional strength, and expertise is a commission that operates in an environment buffered against industry influence, public mistrust, political manipulation, and technical incompetence. It is a commission that, guided by a tradition of balanced and informed regulation, is willing to take risks in changing circumstances. There is not an easy, generalizable public policy solution to build up a commission’s strength among these categories. However, two types of actions are key: improving accountability for utility companies’ lobbying and political campaign spending, and building commission resources and capacity through legislation and hiring.

Participation of civil society: Commissions with active public and civil society participation tend to better meet the needs of ratepayers and a changing climate. Intervenor compensation programs like those described in Finding 2, along with education and outreach measures to improve public awareness about PUC issues, could be effective approaches to improvement.

Legislative direction: Legislative direction may be the single most impactful factor determining a utility commission’s involvement in climate change and clean energy transition issues. This is made clear not only by the stream of regulatory changes and innovations that followed new energy transition laws in Washington and New Mexico, but also from the trajectories of commissions in New Hampshire and Pennsylvania, where in the absence of comprehensive climate legislation progress has been piecemeal by comparison.

Utility commissions are not designed as legislative authorities, and while some have taken discretion in rulemaking, platform legislation supports their action on clean energy. Effectively implementing climate and clean energy legislation is an entirely separate challenge: it tests commissions’ ability to balance the needs of stakeholders, weigh evidence, and function smoothly in the face of changing technical, political, and structural forces. But without policy cues, commissions face significant barriers to the regulatory innovation required by the uncharted territory of implementing a clean energy transition.
The Takeaway
The Alabama Public Service Commission (APSC) is one of the most opaque, politically motivated, and environmentally hostile commissions in the country. In Alabama commissioners are elected, and their campaigns are flush with untraceable PAC money. On the commission, APSC commissioners have denied the existence of climate change, expressed that environmental advocates should be excluded from decision-making processes, and shut down solar energy proposals that their own staff have demonstrated to be cost-effective. Weak transparency rules allow much of APSC regulatory decision-making to occur privately between commission officials and Alabama Power, an extremely powerful, profitable, and coal-reliant electric utility which has over twice as many lobbyists as the APSC has staff. The APSC lacks formal mandates to address environmental issues, and has been resistant to pursue even non-disruptive environmental goals like energy efficiency. The APSC is demonstrably a major impediment to any chance of a clean energy transition in Alabama.

Power in Alabama
The Alabama Public Service Commission (APSC) is a quasi-judicial body whose stated mission is “to ensure a regulatory balance between regulated companies and consumers in order to provide consumers with safe, adequate and reliable services at rates that are equitable and economical.”

Sixty-six staffers carry out the functions of its various offices and divisions, which include Legal, Administrative, Electricity Policy, Utility Services, Utility Enforcement, and Gas Pipeline Safety. Three commissioners, a president and two associates, are elected statewide to four-year terms, and there is no term limit.

Environmental stewardship is not an explicit duty of the commission. Furthermore, Alabama does not have a renewable portfolio standard (RPS) or goal, which are often overseen by public utility commissions.

Alabama has a regulated retail electric power market, meaning that utilities can generate and transmit electricity, in addition to distributing it. Alabama Power Company, a subsidiary of Southern Company, is the only electric utility regulated by the APSC. It delivers electricity to about 1.5 million customers in the southern two-thirds of the state.

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19 As of August 13, 2020, the “APSC Mission & History” page did not mention climate or the environment. Four interviewees were unaware of any law or guidance explicitly requiring commissioners to consider environmental factors. The fifth interviewee, Tim Lockette, was not asked.
is served by electric cooperatives and municipal utilities that buy power from the Tennessee Valley Authority (TVA). Electric cooperatives, municipal utilities, wholesale power generators, and the TVA—a federal agency and government corporation—do not fall under the commission’s purview.

Consumer and environmental advocates share grave concerns about the interests to which the commission is truly receptive. In 2015, a Greater Birmingham Ministries report titled “What Public Service? How the Alabama Public Service Commission's misplaced priorities put utility profits over people” described the APSC as a rubber stamp during 2007-2014: Alabama Power’s rates, profits, and salaries rose while the state’s economy suffered the effects of the Great Recession.

Daniel Tait of Energy Alabama often calls the APSC the Alabama Power Service Commission: “It basically does whatever the power company wants. So, I don't know that I've seen a decision or any action out of them that has taken any independence from the power company.” Stephen Stetson believes the APSC is uniquely problematic: “For people who do the work that I do, I am pretty confident in saying this is the most challenging public service commission in the country. I have colleagues who work in other states and when we compare stories or when they come here to help with the work that we’re doing, they are shocked. A lot of times they are incredulous.”

For this research, the CDL requested interviews from consumer and environmental advocates, business groups, utilities, and APSC officials. An Alabama Coal Association employee was interviewed, but they later denied permission to refer to or use any information provided. Unsuccessful attempts were made to interview all three current commissioners, as well as former Commissioner Terry Dunn. Alabama Power declined an interview request.

**State Context: Heavy Industry in a Republican Stronghold**

Largely due to its heavily industrial economy, Alabama’s industrial sector ranks within the top ten nationally in terms of energy consumption and sixth nationally in energy production. Alabama—and its dominant utility Alabama Power—produces the vast majority of its energy from fossil fuels. As of 2019, only 10% of the state’s electricity came from renewable sources, mostly hydroelectric. In 2019 only 3% of Alabama’s renewable energy came from utility-scale solar; Alabama has no utility-scale wind power. While Alabama voters have mixed opinions regarding the reality and urgency of climate change, a 2019 poll found that 75% support the state’s expansion of clean energy development.

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29 In a fall 2019 poll conducted by Third Way, 45% of Alabama voters responded that, “Climate change is an environmental problem that is causing serious impact now,” while 17% responded that, “The impact of climate change won’t happen until sometime in the future,” 23% rescinded that, “Climate change won’t have a serious impact at all,” and 14% responded, “Don’t know.” https://onecountryproject.com/wp-content/uploads/2019/10/Alabama-Climate-Change-Poll.pdf
Politically, Alabama is a deeply red state. Republicans have held the governorship and majority control of both chambers of the legislature since 2011. Former Commission President Lucy Baxley was the lone Democrat elected to a statewide office in 2008.\(^{31}\) Alabama’s 2017 Senate special election represents the only more recent Democratic victory at the statewide level, as Republican Roy Moore—facing multiple allegations of sexual misconduct—was defeated by Democrat Doug Jones.\(^{32}\) Three years later Jones was defeated by Republican Tommy Tuberville, who has cited religious beliefs in his denial of climate science,\(^{33}\) by an over 20-point margin.\(^{34}\)

**The Players**

**Commission & Staff:** In Alabama, commissioner elections appear to have created an environment in which commissioners take partisan positions more often than in other states. APSC President Twinkle Cavanaugh, for example, has denied the science of climate change and advocated for regulatory processes that actively exclude environmental advocates.\(^{35}\) \(^{36}\) Stephen Stetson of the Sierra Club believes that commissioners’ willingness to appear more partisan may be related to the fact that “the PSC has historically been a launching pad for ambitious politicians with their eyes set on a higher office.”\(^{37}\) Unlike some states, Alabama does not enforce a certain ratio of Democrats and Republicans sitting as commissioners; as a result, there has not been a Democratic commissioner since 2012.\(^{38}\)

With a staff of only sixty-six responsible for managing a myriad of issues, the APSC is limited in its capacity to regulate Alabama Power. In fact, in 2019 the Electricity Policy Division, which oversees the regulation of Alabama Power, consisted of just six employees: Director, Administrative Support Assistant, Public Utility Analyst Manager, Public Utility Analyst, Attorney, and Public Information Manager.\(^{39}\) In this environment, advocates point out how the APSC often relies on the technical regulatory capacity of Alabama Power, with whom it usually sets rates and makes other regulatory decisions outside the realm of public dockets.

**Alabama Power & the Utilities:** As the sole investor-owned electric utility regulated by the PSC, Alabama Power is also the most powerful stakeholder exerting influence over it. Alabama Power is a large and wealthy company, subsidiary to the still larger and wealthier Southern Company.


\(^{38}\) https://en.wikipedia.org/wiki/Alabama_Public_Service_Commission

Both companies have long been active in the climate change countermovement, a network dedicated to opposing climate action and undermining science for the last three decades. In 2018, Alabama Power reported collecting over $5.9 billion in electric revenues and employing 6,650 people at the year-end. In the second quarter of 2020, 16 individual lobbyists or firms worked for Alabama Power, which also gives generously to PACs to influence state and national elections. Terry Dunn, who lost an APSC election heavily influenced by the company, asked in a 2014 Montgomery Advertiser opinion piece, “Can you name a single corporate entity with more political influence in this state than Alabama Power?”

Alabama Power also operates at the APSC through the front group Energy Fairness, also known as Partnership for Affordable Clean Energy (PACE). Energy Fairness was incorporated by a lawyer whose firm represents Southern Company and other regulated utilities in utility commission matters in several southeastern states. Energy Fairness, which boasts a record of fighting net metering and distributed solar efforts and partnering with fossil fuel interest groups in several states, is a frequent APSC intervenor.

**Other Carbon-Intensive Industries: Coal, Steel, Agriculture:** Groups like Alabama Industrial Energy Consumers and Manufacture Alabama that represent the energy interests of industries like steel, agriculture, and real estate are sometimes active in APSC dockets. Rick Hill of the Alabama Industrial Energy Consumers commented that “our interests typically align” with those of Alabama Power. “Alabama Power is a company that understands that Alabamians need to have jobs and that a big factor in industries being in our state has to do with industrial energy costs and that if the costs are too high, these industries will go to a different state,” Hill continued. “We’re their biggest customers, so they have every interest to want to work with us and we with them.” Stetson also commented on the alliance between Alabama Power and carbon-intensive industries in APSC matters: “A lot of [coal, steel, and agricultural entities] have bought into the idea that a favorable regulatory environment is the best way to keep industrial electricity prices low.”

**Advocates:** A host of clean energy, environmental justice, and consumer advocacy organizations consistently advocate for a number of reforms in the APSC, to the extent they can. Prominent among these organizations are Energy Alabama, GASP, and Southern Environmental Law Center (SELC); renewable energy business associations like Alabama Renewable Energy Association (AREA) and Alabama Solar Industry Association (ASIA) are also active in APSC matters.

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46 Rick Hill. Personal interview. July 2020.
While the priorities of these groups are varied, most find common ground advocating for a clean energy transition in Alabama. In this effort, they face the challenges of a state with deep economic reliance on fossil fuel production and consumption, as well as great public and political wariness of environmental legislation. In the APSC context specifically, environmental groups are often structurally marginalized by its regulatory processes, which advocates and outside groups have characterized as some of the most opaque and insular in the country. On clean energy issues like energy efficiency and residential solar, environmental advocates fight to elevate Alabama from some of the worst rankings in the country; often, their resources are spent opposing expanding fossil fuel infrastructure development in the state.

**Becoming Commissioners**

Many political and industry players take an interest in Alabama PSC commissioner elections. Data collected from FollowTheMoney.org reveals the extent to which Alabama Power funnels finances through PACs and other carbon-intensive industries to finance campaigns, while the decisive 2014 campaign against APSC candidate Terry Dunn demonstrates the power of industry in determining election outcomes. Details are described below.

**Alabama Power & Dark Money**

In Alabama, regulated utilities are prohibited from contributing to candidates for the APSC. Alabama Power spokesman Michael Sznajderman has stated, “We do not participate, directly or indirectly, in Public Service Commission elections.” Still, advocates like Tait and Stetson have doubts. Tait claimed that Alabama Power “goes through law firms, it goes through contractors and lobbyists, it goes through fuel supply industry.”

In the absence of new evidence, settling these contradictory claims seems nearly impossible task. Stetson described Alabama campaign finance laws as a “complex morass,” noting that political action committees (PACs) have “very few disclosure requirements.” As a result, dark money abounds. Excepting Terry Dunn—who loaned $56,453.80 to his own campaign—Pride PAC II and T-Town PAC II were the number one and two contributors in each of the three APSC races in 2016 and 2018. In 2018, the *Montgomery Advisor* reported that Pride and T-Town are financed primarily by a shady entity named Extreme Development, have no websites, no descriptions of their services or sources of revenue, and have incorporation addresses, post office boxes, and phone numbers that are all dead ends. These PACs illustrate just how dark political money in Alabama can get.

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In 2010, Commissioner Twinkle Andress Cavanaugh accused her opponent, former Commissioner Jan Cook, of receiving indirect campaign contributions from regulated utilities through PACs. But leading up to the 2016 election, Cavanaugh received over $100,000 from PACs.

The role of non-utility actors in commissioner elections is highly visible. Data from FollowTheMoney showed that companies and PACs representing a range of Alabama’s carbon-intensive industries aligned behind a single candidate in nearly every race. For example, in the last three election cycles, the three sitting Alabama commissioners received hundreds of thousands of dollars from assorted carbon-intensive industries (agriculture, finance, insurance, real estate, mining, steel, Alabama Rural Electric Association) as well as PACs (prominently including Pride and T-Town). Cara McClure by contrast, who received $600 from finance, insurance, or real estate sector donors, is the sole example of a challenger being funded by industries or PACs during these cycles.

Any consideration of industry influence in commissioner elections must include the story of former Commissioner Terry Dunn. Dunn was elected to the APSC in 2010, and in January 2013, he made a motion to have formal hearings on the return on equity ranges for Alabama Power, Alabama Gas Corporation, and Mobile Gas Service Corporation. This was a call for formal rate reviews, a process that was essentially eliminated in 1982. According to Dunn, “For years, Alabama news media had been reporting that our rates for power and natural gas were significantly higher than those of utilities in surrounding states.”

Stetson said that in response to Dunn’s efforts, “The full force and weight of [Alabama Power] was brought to bear against him in the next election, and he was trounced.” Dunn’s primary challenger, current Commissioner Chris “Chip” Beeker, outspent Dunn 13 to 1. Tait said Alabama Power and its affiliates spent much of the money to get Chip Beeker elected. “All the money came out of nowhere... Anybody who knows Terry Dunn or has just followed anything to do with the commission... he’s not a liberal. He’s not an environmentalist... It was just a smear campaign.” Overall, Stetson offered a concerning perspective on the role of industry campaign contributions in determining elected utility regulators: “It’s not just about giving money to the people they want to win, it’s also about deterring credible challengers from running in the first place.”

On the Commission

Alabama Power takes what steps they can to influence sitting commissioners within the realm of legality: usually a combination of lobbying, conferences, and meals. Working for Alabama’s Republican Party before joining the commission, current Commission President Twinkle Cavanaugh said in 2010 that, “You have lobbyists wining and dining the [APSC] staff on a constant basis. Each division head has a lobbyist who is their lobbyist, who makes sure everything is taken care of. Those staffers, especially the department heads, are the ones that give the commissioners the information on how to vote.” Hill says that “sometimes [Alabama Industrial Energy Consumers] will have a lunch with commissioners” to voice its positions.

Commissioners also attend events and conferences, such as the annual presentation of Alabama Power’s environmental compliance plan and conferences hosted by the Southeastern Association of Regulatory Utility Commissioners. These meetings are often conducive to private conversations between utility and APSC officials. Stetson explained that such events “are not held in a boring hotel conference room here in Montgomery. They are really nice places where wining and dining transpires. So, attending a conference can be a good opportunity to have a candid conversation with a utility regulator.”

**Advocates on the Margins:** Among his greatest concerns about the APSC in practice, Stetson points to commissioners’ hostility toward advocates for clean energy and consumers. Current Commission President Twinkle Andress Cavanaugh has openly embraced such an image in her dealings with environmentalists. In an opinion piece opposing formal rate hearings, released through the APSC website, Cavanaugh wrote that groups like the Southern Environmental Law Center and the Alabama Environmental Council “hope that once formal hearings, which do not allow for public input, are convened, they can trot out their fancy San Francisco environmental lawyers and junk science hucksters to make what amounts to a legal, judicial case against coal production within our borders.” She later told AL.com columnist John Archibald, “I want to exclude the environmentalists from taking part in the process.”

In 2019, the commission denied the Southern Renewable Energy Association’s (SREA’s) petition to intervene in a proceeding regarding Alabama Power’s future energy portfolio on the grounds that SREA had “filed [sic] to demonstrate that it has members with a direct personal interest in the proceedings under consideration in this cause.”

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61 Ibid.
In addition to making it difficult for stakeholders to participate in regulatory proceedings, the process by which the APSC and Alabama Power construct Integrated Resource Plans (IRP) every three years is largely closed off to stakeholders and the public. IRP’s are often-extensive documents drafted by utilities regulated by commissions that set electricity rates, guide future financial decisions, and plan future development. In many states, dockets addressing proposed IRP’s are subject to much public input and scrutiny. In Alabama, according to Christina Tidwell of the Southern Environmental Law Center, “There is no stakeholder involvement in that process.”

Tait says the public version of Alabama Power’s IRP is so heavily redacted that we “have hardly any detail about what that plan actually looks like.” R Street, a libertarian policy research organization has pointed to the APSC when cautioning against an excessively secretive planning process, criticizing that in the 2019 IRP, “Vital information about the basics of the utility’s system peak and needs is not available to the public.”

For ratemaking, the APSC implemented a mechanism in 1982 which it says is “designed to lessen the impact, frequency and size of retail rate increase requests.” Under certain conditions, this mechanism allows Alabama Power to adjust rates without public evidentiary hearings in this process. The only other states with similar electric utility ratemaking processes are Louisiana and Mississippi, neither of which are as closed off to the public as Alabama’s process, according to a report from the Institute for Energy Economics & Financial Analysis. Louisiana and Mississippi have also historically permitted “substantially lower” returns on equity than Alabama; as of 2015, Alabama Power had the highest return on equity among over 100 investor-owned utilities in the U.S.

Rick Hill, Legal Counsel for the Alabama Industrial Energy Consumers (AIEC), has a different perspective about the APSC in practice: “I think it’s a good group of commissioners. I think that they are pro-business and are interested in helping Alabamians have jobs, and are generally helpful to consumers and industrial customers as well.” He also has “found the Public Service Commission to be very fair and transparent.”

**APSC Climate Related Outcomes**

**Energy efficiency:** A 2020 scorecard by the American Council for an Energy-Efficient Economy (ACEEE) ranks the 52 largest U.S. electric utilities by retail sales volume on “policy and program...
efforts to save energy.” Alabama Power is last on this list.71 When asked about the obstacles to improving energy efficiency in Alabama, Tait responded, “It’s just flat out the commission. There’s no other way around this one. The commission can and should... order the power company to do more on efficiency.”72

Tait continued, “At the end of the day, [Alabama Power is] supposed to provide the least-cost resources. Energy efficiency is the least-cost resource, but we don’t have any mechanism—like through an IRP or through a general rate case—to actually force those conversations to be had. And since we can’t force it, the only people who can are the commission. They just choose not to.” Stetson also emphasized the lack of a “toehold” to force the issue, particularly because environmental advocates cannot formally participate in the IRP process.

Stetson introduced a sort of broader, cultural hostility: “The company views [energy efficiency improvement] from the old-fashioned perspective of, ‘Why would we try to help you cause us to sell less of the product that we make?’... here [in Alabama] there is hostility baked into the DNA of the idea of energy efficiency, of, ‘Why would we want you to turn off your lights?’”

When asked about the ACEEE scorecard and obstacles to improve energy efficiency in Alabama, Hill, the only industry insider who agreed to conduct an interview, deflected: “I don’t know that I necessarily buy several presumptions that led you to that question. I’m all for energy efficiency, whatever that means.”

Residential Solar: As of January 2018, Alabama had just 1 megawatt (MW) of residential solar capacity. Among 43 states and Washington, D.C. ranked by Greentech Media Research, this placed Alabama at number 42.73 A high fee on residential solar and the low rate at which Alabama Power buys energy from customers likely explain much of the state’s residential solar deficiency.

Alabama Power’s residential solar fee—originally priced at $5/kW/month and applying to “the standard residential rate plan available to all customers”74—was introduced on December 20, 2012.75 Exactly three weeks later, the APSC approved the fee.76 There was no hearing or public testimony on the matter.77

Over a 30 year period, a $5/kW/month fee likely adds at least 50% to the original cost of installing solar. Tait and Katie Ottenweller, former Senior Attorney at SELC, both expressed the opinion that this was the most punitive residential solar fee levied by any regulated utility in the U.S. Tidwell said that SELC, representing the Greater Birmingham Alliance to Stop Pollution (GASP), filed a complaint with the APSC in April 2018 contending that the solar charge was “unjust, unreasonable, discriminatory, and not in the public interest.” Alabama Power responded to the complaint with a proposal to increase the fee to $5.42/kW/month, which the APSC unanimously approved in September 2020. The fee is now the subject of a federal lawsuit, which alleges that it purposefully and unfairly discourages the adoption of distributed solar in Alabama.

Alabama also lags behind other states on net metering policies. As of November 2017, Alabama, Tennessee, and South Dakota were the only three states without any of the following: net metering policies, non-net metering rules that still compensate for distributed generation, and utilities that voluntarily offered net metering. Alabama Power does buy power from distributed generation customers, but not at the retail rate: as of July 2020, residents could sell power they produced to the grid for as little as a quarter of its cost.

**Renewable Generation Certificate:** In September 2015, the APSC approved an Alabama Power petition, “By which [the company] would be authorized to develop or procure up to 500 megawatts of capacity and energy from renewable energy and environmentally specialized generating resources,” according to the commission’s order.

Alabama Power’s petition did not propose the construction or contracting of any specific facilities. Rather, the company essentially outlined a process to streamline the authorization of resource procurement when specific projects are proposed. As of July 2020, Alabama Power had only procured about 100 MW of the 500 that can be granted under the Renewable Generation Certificate. Furthermore, as will be discussed in more detail, the APSC has used the certificate to delay—and likely prevent—the contracting of solar projects proposed under a different docket.

**Natural Gas Expansion:** In September 2019, Alabama Power petitioned for permission to build, purchase, or contract for up to 1896 MW of additional natural gas resources; to contract for up to 400 MW of additional solar resources; and to “pursue approximately 200 MW” of energy savings,

efficiency, and optimization. This final 200 MW would be achieved through “demand-side management and distributed energy resource programs.” The APSC’s resulting decision dismayed environmental advocates.

Firstly, commissioners approved the natural gas expansion. According to Tidwell, the expansions were not paired with any plans to retire existing coal or natural gas plants. “This proposal is simply adding an additional 1900 megawatts of fossil fuels to its system,” she explained. Alabama Power justified this plan by making upward adjustments on its IRP forecasting and by using a new, separate winter target reserve margin, which Tidwell’s organization the Southern Environmental Law Center, representing Energy Alabama and GASP, argued was flawed and disputed in the expansion proceeding.

Secondly, commissioners approved the 200 MW of demand-side management and distributed energy resource programs. Tait emphasized that Alabama Power did not provide any details about intended energy efficiency programs; within the company’s petition, John B. Kelley, Director of Forecasting and Resource Planning, stated that, “The Company does not know the mix of programs it will seek to implement.”

Finally, the commission did not approve any of the five proposed solar photovoltaic and battery energy storage systems. Alabama Power had submitted analysis showing that each of the five solar projects would offer greater benefit relative to cost than any of the three natural gas ones. However, the APSC cited concerns about reliability and dispatchability, recommending the solar projects be considered under the aforementioned Renewable Generation Certificate. Here, Tait noted, “I guess [that] would be the first time that you could say I was wrong. [Alabama Power] asked for those [solar plus storage projects] and the commission didn’t give it to them… They don’t always get what they want.”

The Renewable Generation Certificate is expected to expire in September of 2021, and as of February 2021, Alabama Power had not filed anything related to the five solar projects under the certificate's docket. It is also worth noting that, given annual limitations contained in the

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87 The power company stated that, given operational parameters, the solar resources would only add 340 MW of winter capacity. “Request Approval of a Certificate of Convenience and Necessity for Alabama Power Company.” Alabama Public Service Commission. Docket 32953. September 6, 2019. Pages 2 and 5, and Direct Testimony of M. Brandon Looney, Exhibit MBL-1 (no page number).


Certificate, even swift action by Alabama Power following the APSC’s 2020 decision would likely have been limited to the authorization of 320 MW rather than 400 MW of capacity.  

**Conclusion**

It is difficult to draw any clear causal conclusions about Alabama Power’s influence and the APSC’s repeated actions impeding energy efficiency modernization and a clean energy transition. The commission’s resistance certainly emerges out of deep-rooted political, economic, and cultural contexts. For example, commissioners are elected through political campaigns in a heavily industrial, conservative state. This process, heavily influenced by business interests, sometimes yields commissioners bent on false and misleading rhetoric about energy and climate. The regulatory decisions of these commissioners, which sometimes contradict their own staff’s analysis, calls into question their willingness to regulate based on cost, safety, and reliability, let alone pursue long-term goals like climate and clean energy progress. “I believe that no matter what you call it, a myth is still a myth, and the so-called ‘climate change crisis’ is about as real as unicorns and little green men from Mars,” current Commissioner Beeker wrote before his election in 2014.

In Alabama, it is difficult to untangle Alabama Power’s direct influence from the contexts in which the utility and its regulator operate. Nevertheless, this research makes clear that Alabama Power has exerted significant influence beyond its formal participation in APSC proceedings. Ultimately, the APSC is a commission that lacks transparency, rarely limits the entity it is supposed to regulate, and is openly hostile to certain stakeholders.

**Interviews:**
- Christina Andreen Tidwell, Staff Attorney, Southern Environmental Law Center.
- Daniel Tait, COO, Energy Alabama.
- Rick Hill, Legal Counsel, Alabama Industrial Energy Consumers.
- Stephen Stetson, Senior Campaign Representative, Sierra Club Beyond Coal campaign in Alabama, Georgia and Mississippi.
- Tim Lockette, Star Staff Writer, The Anniston Star.


The Takeaway
In Florida, utility companies have historically held a near-total influence over the state PSC. Florida’s case demonstrates how a legislature-driven commissioner selection process can offer utilities a clear channel of influence, and recent controversies exemplify how this channel can be aggressively exploited. Florida’s PSC has been slow to take any action facilitating a clean energy transition in the sunshine state, and quick to approve utility requests that cost consumers millions. Over the past several years, the PSC’s role in Florida’s rapid expansion of utility-scale solar has been characterized by rapid approval of utility development plans and little action on expanding rooftop solar, thereby consolidating the utilities’ power and diminishing consumers’ role in their state’s climate & energy governance.

A Captured Agency
The Florida Public Service Commission (PSC) is, “Committed to making sure that Floridian consumers receive some of their most essential services — electric, natural gas, telephone, water, and wastewater — in a safe, reasonable, and reliable manner.” Florida’s PSC is charged with the following responsibilities: “1) Setting just and reasonable rates; 2) Approving the need for new power plants, and 3) Setting conservation goals.”

Experts and insiders agree that in its responsibility for protecting consumers from the state’s private utilities, Florida’s Public Service Commission is a failure. Instead of regulating utilities in any rigorous way, the PSC has, for over a decade, offered a consistent bureaucratic rubber stamp. Advocates argue that this has, in effect, allowed Florida utilities to abuse their power as regulated monopolies. The director of accountability group Integrity Florida Ben Wilcox argues that the Florida PSC is a “captured regulatory agency.”

This unfortunate reality reflects the broader dominance that Florida’s utilities enjoy throughout the state government. As former State Senator José Javier Rodríguez, who represented Miami-Dade in the 37th District, puts it, “In Florida, the investor-owned utilities run energy policy.”

Wilcox marks 2009-10 as a low point for Florida’s PSC from which he argues it has never recovered. This period was saturated in scandals and instances of clear industry political influence: PSC staffers regularly texting utility lobbyists, commissioners flown on jets and taken out to dinner by utilities, consumer advocates pushed out of power, and millions of dollars flooding into the power structures that influence the selection and decisions of PSC personnel, to name some prominent examples.

The October 12, 2010 resignation speech of self-described consumer advocate and former PSC Commissioner (2007-2010) and Chairwoman (2009-2010) Nancy Argenziano illustrates the deep-seated flaws she identified in Florida’s PSC at the time:

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“Most of you will understand the relief I feel at leaving the fetid pit of the PSC. I tell you that in my weirdest nightmare, I would not have expected to come upon the corruption; the bought and sold nature of everything related to the operation of the PSC; ... the incidents of legislators currying favor with the regulated entities, in an effort to earn their part of the $43,000,000 the regulated industry has contributed or expended in influencing public policy in the past eight years; the comfortable, smug circumvention of the letter and intent of the law by Commissioners; the inherently suspect legislation and judicial decisions by which the current PSC was born, and came to be the willing consort of the legislature.”

Over the past decade, major scandals have become less frequent but relatively little has improved regarding the PSC’s identity as a captured agency. While utility-scale solar development has recently exploded in Florida, the shift has been overwhelmingly directed by the state’s utilities rather than any central authority, according to a clean energy expert interviewed by the CDL.102

The research and interviews conducted for this report make it clear that Florida’s PSC is an outstanding case of regulatory capture. Accordingly, this profile will devote significant attention to the channels through which industry interests exert influence over the PSC, and consider some major implications of the PSC’s position in the past decade.

State Context: No Solar Strategy in the Sunshine State
Florida’s governorship, House of Representatives, and Senate have all been Republican-controlled since 1999.103 In the past several decades, it has rarely been a priority for Florida’s Republican Party to seriously act or even acknowledge climate change. Rick Scott, who led the party as Governor from 2011-2019, said during his first gubernatorial campaign that, “I’ve not been convinced that there’s any man-made climate change,”104 and in his second term directed the Department of Environmental Protection to avoid using the terms “climate change” and “global warming” in official publications.105 As solar development expands and Florida’s vulnerability to adverse climate impacts becomes increasingly urgent, Florida Republicans have only in the past several years begun adding the word climate change to their vocabularies, the Washington Post reports.106

The Sunshine State boasts some of the best solar energy potential in the country, trailing just behind Arizona and New Mexico.107 Danny Parker, Florida energy policy expert and author of the 2020 CleanTechnica report titled “What About Florida? Energy Efficiency, Solar Energy, and Regulatory Backwardness in the Sunshine State” writes that, “When the sun is out, there is no

cheaper way to generate power. Not coal, not nuclear, not even advanced combined cycle power plants.”

New solar installation has increased exponentially since 2015, placing Florida at fourth in the country in current installed capacity.

Despite significant climate vulnerabilities, Florida has no comprehensive plan for a clean energy transition. The closest Florida came to a statewide clean energy plan was when Republican Governor Charlie Crist (2007-2011) attempted to establish a Renewable Portfolio Standard (RPS) aiming for 20% renewable energy by 2020, alongside other climate goals. After Florida’s PSC initially approved the RPS, it was struck down by a legislative vote. The vote came after an intensive lobbying effort, in which Florida utilities pressured both the PSC and legislators to “weaken and dilute” the standard or scrap it altogether.

Since this episode, no effort has had substantive success in establishing a comprehensive energy transition plan. According to a clean energy advocate interviewed by the CDL, without any centrally mandated climate requirements or energy transition goals, the PSC operates in “a bit of a vacuum.” Former State Sen. José Javier Rodriguez attributed the absence of a comprehensive climate policy to utility companies’ hold over the Florida government. “When the utilities control policy, we can get very little change through the legislature, the PSC, or the governor, that isn’t showy optics,” he said.

The Players
Commission & staff: The Florida PSC is usually composed of five appointed commissioners and approximately 60 staff members. Three of the five current commissioners (as of early 2021) were appointed by former Republican Governor Rick Scott, while the commission’s rookie Commissioner Mike La Rosa was appointed by Republican Governor Ron DeSantis.

Florida Utilities: Florida’s major investor-owned electric utilities – NextEra (and its subsidiaries Florida Power & Light (FPL) and Gulf Power), Duke Energy, and Tampa Bay Electric (TECO) – are powerful players in state energy policy and regulation. As the country’s third largest investor-owned utility, FPL is also the largest and highest-revenue Florida provider, serving 55% of Florida customers and netting $2.3 billion in income in 2019. FPL also is often considered to

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112 Ibid.
utilities/
wield the most political power in Tallahassee, spending millions of dollars each year financing candidates and lobbying efforts.\textsuperscript{119}

The clean energy advocate interviewed by the CDL described Florida utilities as having “endless resources” to influence state politics and the PSC, adding that “other organizations do not come close to those legal, technical resources the utilities have in house.”\textsuperscript{120} In regulatory proceedings, the advocate continued, utilities have a clear procedural leg up. When the PSC opens a for a rate case, for example, the utilities involved have already taken months and months to prepare its case. “They have lined up their experts, they have already developed their testimony, and they file it. And that is the first time any other party will find it. The testimony is voluminous, and there is a lot of discovery to be done… I mean literally thousands and thousands of pages. Often the timeline favors the utility, because it’s time for everyone else to catch up and try to understand this before the evidentiary hearing.”\textsuperscript{121}

In his \textit{What About Florida?} report, Danny Parker describes a conflicted culture among Florida utility personnel: “They are a mixture of extremely intelligent — even brilliant — and dedicated individuals, but also — given the state culture — a dwindling group of institutional “good ol’ boys.”\textsuperscript{122}

**Clean energy advocates:** Florida is home to a host of environmental and clean energy advocacy organizations, many of which work on issues over which the PSC has jurisdiction. Some frequent PSC intervenors include nonprofits like the Southern Alliance for Clean Energy, Earthjustice, and Vote Solar, along with clean energy industry groups and coalitions like the Florida Solar Energy Industries Association. Two major priorities of Florida clean energy advocates are to better capitalize on the state’s solar potential, promote distributed solar, and defend the state’s net metering system.\textsuperscript{123} Historically, the PSC has been a difficult channel for these groups to pursue these overarching goals, especially considering the outsized influence of Florida’s utilities and lack of any comprehensive clean energy plan. Recently, Florida utilities have dually demonstrated enthusiasm for utility-scale solar development and opposition to policies that expand distributed solar development, a dynamic to which the clean energy advocate interviewed by the CDL simply responded, “We kind of think of successes incrementally here in Florida.”\textsuperscript{124}

**Consumer advocates:** In Florida, the state Office of Public Counsel (OPC) and industrial consumer groups often intervene at the PSC. The OPC is charged to “provide legal representation for the people of the state in utility related matters.”\textsuperscript{125} Under the 14-year term of Public Counsel J.R. Kelly, the office was a fiercely pro-consumer force in PSC proceedings. According to the


\textsuperscript{120} Anonymous clean energy advocate. Personal interview. December 2020.

\textsuperscript{121} Ibid.


\textsuperscript{124} Anonymous clean energy advocate. Personal interview. December 2020.

\textsuperscript{125} “About the Office of the Public Counsel.” \textit{Office of Public Counsel}. http://www.floridaopc.gov/Pages/About.aspx
Tampa Bay Times, Kelly was an “aggressive opponent to rate requests and legal maneuverings of the state’s largest utility, Florida Power & Light,” even while his office was often undermined. Following an especially heavy legislative spending cycle by the utilities, in February 2021 the Florida legislature elected to replace Kelly with Richard Gentry, a “veteran lobbyist” for Florida utilities. Layne Smith of the pro-consumer AARP Florida called Gentry’s nomination “a result of the direct relationship to the political power of the investor-owned utilities in Florida.”

Several groups representing industrial energy consumers also intervene in PSC proceedings, primarily advocating for maintaining low rates. Examples of such groups include the Florida Retail Federation, Florida Industrial Power Users Group, and South Florida Hospitals and Healthcare Association.

**Becoming Commissioners**

Concisely, the PSC appointment process is structured as follows:

1. Leadership from Florida’s House and Senate each appoint six officials to sit on the Public Service Commission Nominating Council.
2. In the case of a PSC commissioner seat vacancy, Florida citizens of any profession may put in applications to fill the seat. The Nominating Council then reviews these applications and selects three to send to the governor for selection.
3. The governor selects one of these three options, or vetoes them.
4. If the governor selects a candidate, the Senate either confirms them with a majority vote or denies their selection with a two-thirds vote. If the governor vetoes, the process repeats or the Senate overturns it with a two-thirds vote.

This has been the general process since 1978, when the system changed from three publicly elected to five appointed commissioners. The shift from election to appointment was intended to reduce industry influence, as energy companies were heavily contributing to commissioner campaigns. According to a 2017 Sun Sentinel Editorial Board piece, this reform-minded change has only deepened the problem. “The process of selecting PSC members has become a theater of the absurd,” it writes, “for which utility customers are paying an intolerable admission price.”

The legislature holds overwhelming power over the appointment of PSC commissioners. Legislators control the Nominating Council that narrows dozens of commissioner applications to

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127 Ibid.


three final nominees, and they maintain veto power after the governor makes their selection. According to Ben Wilcox, “The political influence of the energy companies has just been redirected [since the shift to an appointment system]. Instead of being applied directly to someone who’s running for the Public Service Commission, now they just use their influence over the legislature to get industry-friendly people put on the Public Service Commission.”

In this environment, understanding utility companies’ influence over the legislature, and especially the PSC Nominating Council, helps understand how they indirectly influence the commissioner selection process. Several important factors shape Florida legislators’ relationship to the energy industry: their overwhelming Republican Party affiliation; industry’s contributions to their campaigns; their close relationships with industry officials, as primarily characterized by meetings and lobbying; and their past business connections to industry.

Between 2018 and September 2020, Florida’s top three utilities have contributed just short of $6 million to the Florida Republican Party. Former PSC Chairwoman Nancy Argenziano argued that funneling resources through the party is a key avenue for the utilities to exert political influence—especially since Citizens United, a Supreme Court decision which allowed Political Action Committees and dark money streams to contribute large sums without disclosing their identity.

The energy industry also showers money on individual candidates. From 2010-2020, FollowTheMoney listed the Energy & Resources sector as the third highest candidate contributor in Florida. At almost $45 million, donations from NextEra Energy and its subsidiaries, Duke Energy and its subsidiary, and TECO Energy donated over $16.6 million to Republican committees and about $7 million to Republican candidates from 2010-2020. According to a 2014 Integrity Florida report, NextEra, the parent company of Florida Power & Light, “Gave at least $500, the maximum amount allowed, to 116 members of the 160 member legislature” in the 2012 election cycle. Similarly, NextEra maxed out at $1,000 donations to 125 Florida House and Senate candidates in the 2018 cycle.

Interviewees including Nancy Argenziano and former state senator Mike Fasano emphasized how when they were involved in the Florida government, influential Republican leaders of the early 2010’s consistently responded to this funding by consistently acting in favor of the utilities.

According to FollowTheMoney, Mike Haridopolos and Mike Bennett, influential Florida

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legislative leaders during the turbulent and overwhelmingly pro-utility 2009-2010 period, received maximum donations from the majority of Florida utilities or their PACs during every campaign they ran in the late 2000’s-early 2010’s period. Full data about Haridopolos & Bennett’s campaign finances can be accessed here.

A 2017 Energy and Policy Institute report further tallies the total political contributions made by four Florida utilities to the six senators and six representatives on the sitting PSC Nominating Council. It found that ten of twelve had received money from Duke Energy/Progress Energy, NextEra Energy/FPL/Gulf Power, and TECO, with the remaining two receiving money from three of the four utilities.¹⁴² As former Chair of the PSC Nominating Council, PSC Commissioner Mike La Rosa received campaign donations from every major Florida utility, according to the report. He also was Chairman of Florida’s American Legislative Exchange Council (ALEC) branch, a historically anti-climate action conservative think tank.¹⁴³

Lobbying Networks: Integrity Florida reports that in 2013, many of Florida’s most prominent lobbying firms were flush with utility contracts. Among Florida’s top fifteen lobbying firms, “Four were employed by Florida Power & Light, TECO employed three, and Gulf Power and Progress Energy each employed two.”¹⁴⁴ Utilities also funnel resources through business associations like Associated Industries of Florida (AIF) and the Florida Chamber of Commerce, which in turn fund and lobby politicians. The influence of such groups is so pervasive among Florida lawmakers that, when a group of progressive freshman lawmakers turned down invitations to the AIF kickoff party, it made headlines. Integrity Florida reports that Florida’s top four utilities contributed over $9.4 million to business groups in the 2014 and 2016 election cycles.¹⁴⁵

Relationships & Conflicts of Interest: There are many instances in which state legislators hold conflicts of interests between their professional and political careers. Many legislators worked for utility-adjacent organizations before, during, and following their terms in office, a fact that has changed little since a 2017 episode in which Governor Rick Scott gave Florida House Speaker Richard Corcoran “an earful” for his close industry ties¹⁴⁶. Such organizations include law, lobbying, consulting, and public relations firms that had companies regulated by the PSC as clients. The Energy and Policy Institute reports some examples:

- **State Sen. Joe Negron (2009-2018), State Senate President (2016-2018):** Negron worked for Gunster Yoakley & Stewart PA at least from 2012-2017, making $278,887 in 2016. Gunster is a lobbying firm run by former PSC chairwoman Lila Jaber. It has contracted out to FPL, Gulf Power, Southern Company, and several more energy companies regulated by the Florida PSC.¹⁴⁷

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● State Rep. Timothy Corcoran (2010-2018), Speaker of the House (2016-2018): Corcoran reported income of over $170,000 from legal firm Broad & Cassel at least 2012-2017. Broad & Cassel has represented clients regulated by the Florida PSC including TECO.\(^\text{148}\)

2009: No Room for Consumer Advocates on the PSC

Dominant utility influence on the Florida legislature, and by extension the PSC commissioner appointment process, solidified in 2009-2010. During this time, the integrity of the appointment process was eroded, trust in the independence of the commissioners was thrown into question, and the utilities’ power over the PSC was solidified. The period set expectations that have carried into the 2010’s and 2020’s, and ultimately resulted in a decidedly pro-utilities PSC.

In January 2009, the Florida PSC ruled against rate hike requests from FPL ($1.3 billion) and Progress Energy ($500 million). The 4-3 decision reflected a distinctly pro-consumer moment for the PSC. Voting against the requests were commissioners Nancy Argenziano, Nathan Skop, David Klement, and Benjamin “Steve” Stevens, who had all been appointed by the relatively pro-consumer Governor Charlie Crist. By the end of the year, the decision would reverse, and not one of those four commissioners would remain on the PSC.

Klement, a journalist, and Stevens, an accountant, had been nominated in January as ‘outsider’ commissioners, supposedly removed from the industry influence networks in Tallahassee. After the rate hike votes, the Senate elected to veto their appointments in April. Argenziano and Skop were longtime commissioners and outspoken consumer advocates. In October, the PSC Nominating Council chose not to renominate them.

To replace Klement and Stevens, Governor Charlie Crist selected comparably pro-industry Ronald Brisé and Art Graham. As a state representative for the Miami-Dade district before his appointment, Brisé received contributions from FPL, TECO, and Gulf Energy or their PACs, and Argenziano remembers Graham “wining and dining” with FPL officials in an out-of-state hotel lobby months into his term as commissioner.\(^\text{149} 150\) Argenziano and Skop would be replaced by Governor Rick Scott appointees. Scott, who received millions of campaign dollars from utilities and their PACs,\(^\text{151}\) chose commissioners with proven pro-industry sensibilities.\(^\text{152} 153\)

Consumer advocates, journalists, and the marginalized former commissioners expressed the extent to which utility lobbying influenced 2009’s personnel changes and rate decision reversal. “That was money,” Argenziano said about Klement and Stevens’ appointment veto. “That was FPL. That


\(^\text{149}\) Ibid.

\(^\text{150}\) Follow the Money. https://www.followthemoney.org/show-me?dt=1&f-fc=2&c-exi=1&c-t-eid=12999009&d-eid=37441%2C2567%2C1039%2C12646&c-r-ot=H#i1%gro=d-eid


was utility influence… the things that I saw in that process just boggled my mind.”

Klements commented to the Florida Business Observer: “All I can say to the ratepayers of Florida is, hold on to your wallets, because it seems clear that the Senate leadership is bent on appointing utility-friendly commissioners to the PSC.”

**On the Commission**

In the past decade, a combination of dynamics has contributed to Florida’s utilities’ abilities to gain influence over sitting PSC commissioners, and by extension, the decisions they took part in.

Florida’s standards of conduct for PSC commissioners prohibits commissioners from “accepting anything from any business entity that either directly or indirectly owns or controls any public utility regulated by the Commission,” from “accepting employment or engaging in business activity or having a financial interest with any utility or its owners regulated by the Commission,” and from “initiating or considering… ex parte communications (communications between the commission and one party in a dispute) in any pending proceeding.”

Without being able to directly fund, hire, lobby, or discuss open cases with commissioners, the utilities have a track record of capitalizing on unwritten understandings, legal loopholes, and illegal conduct to exert influence over PSC commissioners. Below are some examples.

**Technical expertise:** NextEra Energy/FPL and Duke Energy are among the largest and most well-resourced investor-owned utilities in the country. Understandably, the anonymous clean energy advocate interviewed by the CDL said that these companies have “endless resources” to work with the PSC commissioners and staffers on regulatory proceedings and technical challenges. They also said that the companies’ extensive in-house capacity gives them a leg ahead in PSC proceedings.

**The revolving door:** There has been a documented pipeline connecting former PSC commissioners with jobs at utilities or utility-adjacent organizations. A 2010 South Florida Sun Sentinel investigation identified 18 former regulators and government officials who went on to work for Florida Power & Light (FPL) or legal and lobbying firms that represented the company. One example is Braulio Baez, who represented FPL with the law firm Akerman LLP between stints as a PSC commissioner (2000-2006) and PSC executive director (2011-present).

**Six figures on the line:** In 2020, PSC commissioners were paid an annual income of $132,036.

Florida’s purge of pro-consumer commissioners in 2010 sent a clear message going forward: side with industry if you want to keep your six figures. “Many people say, okay, I'll do whatever you say, I just don't want to lose that [six figure] salary,” said Nancy Argenziano, who briefly enjoyed

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157 Ibid.


160 “State of Florida Employee Salaries.” Florida Has A Right to Know. [https://salaries.myflorida.com/](https://salaries.myflorida.com/)
the commissioner salary. “And that's why they stay and they get treated well, and they just do whatever the utility or the legislature tells them to.”

**Special treatment:** The laws that bar utilities from paying off PSC commissioners contain an important exemption: they allow commissioners to attend conferences, events, or receive meals even if they are sponsored by utilities. Reports from the late 2000’s show how this loophole has been used as a way for industry to build relationships with and influence commissioners.

The *South Florida Sun Sentinel* reports that between 2008 and 2009, years in which Progress Energy and FPL had requested significant rate hikes, four of the five PSC commissioners joined utility executives at conferences organized by utility-funded trade groups. Former PSC Commissioner Katrina McMurrian, who attended a dozen conferences and events during that period, accepted travel expense reimbursements of almost $3,000 from utility-funded trade groups like the Edison Electric Institute.

During this period, many commissioners were also regularly “taking golfing trips,” “flying on planes,” and “wining and dining” with utility officials, said former PSC Chairwoman Nancy Argenziano. “We're not talking like a sandwich at Arby's, we're talking lobster dinners,” she added.

PSC official Ryder Rudd pushed the boundaries of the law in 2009 when he attended a Kentucky Derby party thrown by FPL Vice President Ed Tancer. Rudd stepped down from his position following the incident. It is unclear whether such dynamics continue to be at play in the 2020’s.

**Illegal communication:** In a high-profile 2009 scandal, many PSC commissioners and their staffers were shown to be in close communication with utility officials. The scandal occurred amidst the PSC’s review of FPL and Progress Energy’s rate hike requests.

While the investigation implicated virtually every commissioner— including the consumer advocates Nancy Argenziano and Nathan Skop— the activities of PSC Commissioners Matt Carter and Lisa Edgar and their offices were by far the most troublesome. Commissioner Carter’s top aide, Bill Garner, was in “near-daily contact” with FPL officials, the *Miami Herald* reported. The record shows that Garner made 107 calls with FPL lobbyists and attorneys during the six-month period following FPL’s rate hike request. That figure likely represents a fraction of the actual communication— the investigation found that many messages and calls were made via unrecoverable private Blackberry PIN messaging codes, and commissioners admitted other calls were made on personal cellular devices not subject to investigation.

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Nancy Argenziano remembers Commissioner Lisa Edgar maintaining near constant communication with utility officials on her personal phone. Edgar had two phones, said Argenziano— one with an aqua colored case, another with a purple case. During hearings, she would switch between them in order to send messages on her protected private device. On the private phone, Edgar would update staff members, who would relay information to utility lobbyists, Argenziano claimed. “At 2:15, 2:19, and then at 2:21, that's how often it was going back and forth,” she said.169

**PSC Climate Related Outcomes**

According to Ben Wilcox of *Integrity Florida*, the energy industry has since 2010 “just solidified its hold over the Florida Public Service Commission.” He continued that, “There’s been no pushback on it from any members of the legislature. It’s just business as usual.”170 Below are examples that illustrate the extent of utility power over the PSC. Many of which have had significant implications on consumers and climate, including rate increases, stranded costs, expanding fossil fuel infrastructure, and the consolidation of Florida’s rich renewable energy resources in the hands of its utilities.

**2012 Rate Hike:** In its 2014 Power Play report, *Integrity Florida* writes that, “The imbalance between consumer and industry influence at the PSC and the legislature is probably best illustrated by looking back at the outcomes of several high profile rate hike requests by electric utilities.”171 The 2012 rate increase exemplifies this dynamic: after investing $1.3 billion in new plants and upgrades in a single quarter,172 FPL and NextEra proposed to finance another new natural gas plant by increasing consumer electricity bills by $10 a month.173 The Florida PSC approved a slightly lowered version174 of this rate proposal.

**2013 Nuclear Cost Recovery:** In a 2013 decision, Florida’s PSC allowed Progress Energy to collect $1.5 billion from ratepayers to finance the construction costs of the proposed Levy nuclear plant in advance. The Levy Plant never got built, but consumers were not able to recoup their money due to a Florida law allowing energy companies to “pass the preconstruction costs of new plants onto customers long before a plant is ever built and even if the plant is never built.”175 While Progress Energy shareholders profited $150 million from customer rates,176 the costs were stranded and the PSC was silent.

**2015 Oklahoma Drilling:** In December 2014, Florida’s PSC approved an FPL plan to come into a $191 million venture with an Oklahoma energy company to conduct out-of-state exploratory

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169 Ibid.
173 Ibid.
174 Ibid.
176 Ibid.
hydraulic fracturing. Six months later, the PSC approved a measure that forced 4 million FPL ratepayers to finance it, and other projects like it, for up to $500 million a year.

**2019 FEECA Goals & Energy Efficiency:** In November 2019, the PSC decided to oppose the request of the utilities and maintain Florida’s Federal Energy Efficiency and Conservation (FEECA) goals, which sets twice-a-decade conservation goals for utilities. The 4-1 decision marked a rare rejection of the utilities, who argued that such goals—which include increased efficiency of energy consumption, development of demand-side renewable energy, and efforts to reduce energy use—were not cost-effective. Danny Parker offers a more critical reason for the utilities’ issue with energy efficiency standards: “Without motivating incentives from regulators,” he writes in his *What About Florida?* report, “Investor-owned utilities, with profits still linked to sales, will not seek to most effectively reduce the energy consumption of its ratepayers.”

Rather than slashing the PSC-set energy efficiency goals to near-zero, the decision upheld the goals set in 2014. Importantly, the 2014 goals had gutted the previous ones by 90%, a decision that gave “the investor-owned utilities virtually everything they wanted.” In this light, while the 2019 FEECA decision was a rare moment of PSC resistance, it substantively accomplished little more than extending an unambitious status quo.

**2020 Attack on Net Metering:** Florida’s modest net metering program, which provides incentives on rooftop solar but as of September 2020 only enrolled 0.05% of Floridians, came under attack in Fall 2020 by utility-funded legislators. The PSC scheduled a workshop to review the state’s net metering rules after state representative Lawrence McClure, who has been heavily funded by Florida utilities his whole political career and has close ties to utility front group Energy Fairness, asked them to. Following the workshop, the commission chose not to make changes to the program.

**Utility-scale solar blitz, residential solar attacks:** As solar costs have plummeted in recent years, Florida utilities have doubled or tripled their installed capacities every several years. In the rapidly evolving market environment, new utility-scale solar projects almost always require PSC approval. According to the clean energy advocate interviewed by the CDL, the commission has been quick to approve nearly every recent utility proposal for solar development, irrespective of concerns regarding financing and consumer rights.

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181. Ibid.


One central controversy regarding the utilities’ recent solar energy frenzy concerns the role of small-scale rooftop solar. Florida utilities seem to have adopted a clear dual strategy for designing Florida’s renewable future: rapidly expand utility-scale solar, and find creative ways to disincentivize distributed solar. For example, the utilities lobbied for a ballot measure in 2016 that, while appearing pro-solar, would have allowed utilities to increase rooftop solar installation costs. More recently, the Energy and Policy Institute has closely followed Florida Rep. Lawrence McClure, who is heavily utility-funded and connected to utility front group Energy Fairness, in his efforts to attack Florida’s net metering policies. Florida newspapers have followed this controversy closely, and new examples of this dynamic seem to emerge on a weekly basis.

**Conclusion**

The industry takeover of Florida’s legislature and PSC has considerable implications for the state’s climate & energy governance. There are significant systemic issues, like campaign finance laws that allow utilities to flood candidates and the Republican Party with PAC money, a PSC nominating process that puts utility-influenced legislators in the driver’s seat, high wages and lenient conflict of interest laws that incentivize Commissioners to adopt pro-industry agendas, to name a few.

Then there is the utilities’ sheer power. They have the resources to drive elections, lobbyists to exert influence over policymakers, political strategists who stay “one step ahead,” and PR teams that effectively convince customers that they’re pro-solar and pro-consumer.

Since 2009, the PSC has done virtually nothing to impress consumer and clean energy advocates, and plenty to demonstrate its close ties to the companies it is charged to regulate. Even as Florida surges forward in solar energy development, the PSC appears to remain a rubber stamp for the utilities, who seem to be doing everything in their power to continue controlling energy resources in the state.

The theoretical opportunities for reform are plentiful, but the pragmatic windows are narrow. Multiple interviewees have advocated for return to an election-based system as an option; others continue advocating for legislative climate goals like an RPS or emissions reduction plan. Clean energy advocates are cautiously optimistic about Florida’s move towards renewables generally, but credit market forces and shifting utility planning rather than the PSC for driving that transition. Recent years have made it clear that the conflict between utility-scale solar farms and distributed solar will continue to be a key controversy in Florida energy debates, and could present an opportunity for the PSC to move past its previous failures. Whatever the reforms, it is clear that if Florida’s PSC is to uphold its mission to ensure that Florida consumers receive essential services like energy in a “safe, reasonable, and reliable manner,” something significantly needs to change.

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188 “The PSC Commissioners.” *Florida Public Service Commission*. [http://www.psc.state.fl.us/](http://www.psc.state.fl.us/)
Interviewees:
- Nancy Argenziano, former Florida State Senator, PSC Commissioner & Chairwoman.
- Mike Fasano, former Florida State Congressman, Senator.
- Ben Wilcox, Director, Integrity Florida.
- Mary Ellen Klas, Tallahassee Bureau Chief, Miami Herald.
- José Javier Rodriguez, former Florida Senator. Representing 37th District Miami-Dade at the date of interview.
- Anonymous clean energy advocate.
The Takeaway

The Pennsylvania Public Utility Commission (PAPUC) has demonstrated a rigid reluctance to facilitate clean energy development in the state. The commission operates in a challenging environment for clean energy progress: A Republican-controlled legislature and politically powerful natural gas industry have ensured that legislation that might direct the PUC to enforce emission standards or encourage clean energy development are all but stagnant. Still, recent opportunities for the commission to modestly push utility planning towards clean energy initiatives have failed, with the language of PUC decisions usually expressing what many interpret as conservative views of its jurisdictional limitations. Opportunities for clean energy progress at the PAPUC are somewhat up in the air, but advocates agree that as climate change advances, neighboring states transform their economies towards clean energy, and Pennsylvania utilities continue burning natural gas, something needs to change soon.

Reaching for Traction in A Deregulated, Natural Gas State

The Pennsylvania Public Utility Commission stands as a relatively uninfluenced agency in a state whose legislature has been is “captured” by the natural gas industry. According to its website, “The mission of the Pennsylvania Public Utility Commission is to balance the needs of consumers and utilities; ensure safe and reliable utility service at reasonable rates; protect the public interest; educate consumers to make independent and informed utility choices; further economic development; and foster new technologies and competitive markets in an environmentally sound manner.”

While Pennsylvania may have a healthy appetite for fossil fuels, it is one of twenty-one U.S. states that has some kind of environmental protection enshrined in its state’s constitution. The amendment, which was adopted in 1971, states that: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

The PUC has been resistant towards applying this statute to reducing greenhouse gas emissions and preventing the impacts of climate change. Mark Szybist, Senior Attorney at the Natural Resources Defense Council (NRDC), stated that this is partly because since 1996 Pennsylvania’s once vertically integrated utilities were restructured so that companies compete to provide various aspects of electricity service, a system in which the PUC itself is not as responsible for regulating generation fleets. Pennsylvania’s legislature, which is heavily influenced by the state’s dominant natural gas industry, has according to Michael Zimmerman of Duquesne Light Company, “Not

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192 Pennsylvania Constitution, Article 1 Section 27: Natural resources and the public estate.
193 Ibid.
194 Ibid.
passed policies that would direct the PUC to drive a clean energy transition in the electricity sector.\textsuperscript{196}

As renewable energy in Pennsylvania reaches price parity with fossil fuel and natural gas infrastructure faces increasing criticism for harmful methane leakage, stakeholders have developed competing opinions about how the PUC should navigate its role in the clean energy transition. The commission itself has taken a conservative approach to its environmental responsibility, rejecting a series of recent campaigns by environmental advocates to intervene on utility climate planning. Environmental advocates want to see clean energy progress, but the broad reach of Pennsylvania’s powerful natural gas industry and the conservatism of the commission remain formidable barriers. In the absence of explicit legislative guidance, cultural or personnel changes on the commission, or significant changes in the utility energy proposed to the commission, serious progress will remain a challenging goal.

**State Context: Where Energy and Politics Are One and the Same**

In the mid-2000’s, geologists discovered that Pennsylvania was sitting atop approximately two thirds of the expansive Marcellus Shale natural gas reserves, and that the resource could be tapped into with hydraulic fracturing (“fracking”) and horizontal drilling techniques. In the nearly two decades since, the natural gas industry has exploded in the state, extending its reach into state politics, utility regulation, and the lives of everyday Pennsylvanians.\textsuperscript{197}

Today, Pennsylvania is the nation’s second largest producer and fourth largest consumer of natural gas.\textsuperscript{198} The resource has largely replaced coal, which was a major economic engine for over a century– and like Pennsylvania’s gas, can be found in the western half of the state. In fact, transitioning from coal to natural gas electricity has caused Pennsylvania to have the largest percent drop in carbon emissions since 2005 of any state,\textsuperscript{199} even though it still has the third-largest energy-related CO\textsubscript{2} emissions by state in the country.\textsuperscript{200}

With Pennsylvania’s utilities deregulated, the PAPUC regulates utility rate-setting but not electricity generation and gas production itself.\textsuperscript{201} Even so, the commission has been entangled with Pennsylvania’s natural gas industry. For example, it was charged to manage the state’s ‘impact fee’, which compensates municipalities for extracted oil and gas.\textsuperscript{202} It also is supposed to

\textsuperscript{196} Michael Zimmerman. Personal interview. December 2020.  
\textsuperscript{198} “Frequently Asked Questions (FAQs)” *U.S. Energy Information Administration (EIA)*.  
\textsuperscript{199} Ibid.  
\textsuperscript{201} Irwin A. “Sonny” Popowski. Personal interview. October 2020.  
regulate confidential information related to natural gas pipeline safety, for which it has regularly come under fire for insufficient enforcement.\textsuperscript{203}

The geographic distribution of Pennsylvania’s fossil fuel resources mirrors the state’s increasingly divided political landscape, in energy policy and beyond. According to Irwin A. “Sonny” Popowski, former Pennsylvania Consumer Advocate, geographic proximity to natural gas-producing regions may play as much of a role in people’s politics as their party.\textsuperscript{204} In western Pennsylvania, natural gas heats homes, provides power plant jobs, and keeps manufacturing cheap, making it widely popular.\textsuperscript{205} Eastern Pennsylvania certainly consumes cheap natural gas, but its more progressive, urban population are concerned with carbon emissions associated with natural gas.\textsuperscript{206} This report’s “On the Commission” section examines how Pennsylvania’s trend towards partisanship has trickled down to the PAPUC.

Despite these regional differences, the natural gas industry’s political spending— and resulting power— is ubiquitous in Pennsylvania. From 2007-2018 the natural gas companies, coalitions, PACs, lobbyists, and executives spent $69.6 million on lobbying and $11.2 million on campaign committees in the state, according to Conservation Voters of PA’s Marcellus Money database. That money was spent to influence lawmakers and elections from almost every district, Democrat and Republican.\textsuperscript{207}

Whether due to Pennsylvania’s Republican-controlled legislature, political polarization, natural gas political spending, or all of the above, Pennsylvania has had limited success in passing legislation addressing climate change or facilitating the development of clean energy resources. The state has an Alternative Energy Portfolio Standard (AEPS), which in 2004 required the state to generate 8% of its portfolio from renewable energy by May 2021, and another 10% from ‘Tier II’ alternative sources including waste coal.\textsuperscript{208} Legislation aiming to modestly update AEPS beyond 2021 are currently in Pennsylvania House and Senate committees.\textsuperscript{209} More recently, Democrats in the state have been pushing to join the Regional Greenhouse Gas Initiative (RGGI), a multi-state program enacted in 2008 that sets caps on carbon emissions from the power sector.\textsuperscript{210} Broadly, Pennsylvania lags behind neighboring states in climate legislation.\textsuperscript{211}


\textsuperscript{204} Irwin A. “Sonny” Popowski. Personal interview. October 2020.

\textsuperscript{205} Ibid.


\textsuperscript{207} “Marcellus Money.” \textit{Conservation Voters of PA}. http://marcellusmoney.org/


Even still, the clean energy sector is among the fastest growing in the state, with job growth over four times the state average from 2017-2019. The state has solid wind resources, and the development of wind power occupies an increasing share of Pennsylvania's renewable resources compared to nuclear and hydropower.

The Players:
Commissioners & Staff: The Pennsylvania Public Utility Commission (PAPUC) traditionally has five commissioners, although there are currently two vacant seats. Along with the commission’s mandated 3-2 split between Democrats and Republicans, commissioners have often appeared to be divided regarding their support of continued fossil fuel development. In proceedings, interviewees generally described the commissioners as professional and balanced, although Rebecca Moss of Spotlight PA commented that they sometimes seem like they have already made up their minds upon arriving at hearings. Minnott said that commissioners have made themselves more available to environmental advocates in recent years.

The PAPUC employs 526 staff members in 12 different departments, ranging from legal, technical expertise, communications, and more. Despite the relatively large staff size, the anonymous clean energy advocate interviewed by the CDL noted that the PUC has limited resources compared to some neighboring commissions, making policy innovation more difficult. According to Clearfield, the staff has in recent years displayed a higher level of professionalism and expertise than in earlier years that he worked on PUC cases.

Utilities: Pennsylvania is somewhat unique for its large number of utilities, which can largely be explained by the state’s deregulated model. The PAPUC regulates nine gas distribution companies, eight electric distribution companies, and three companies that distribute both electricity and natural gas.

The CDL requested interviews from various companies, but only representatives from Duquesne Light Company responded. Most experts interviewed by the CDL agreed that the utilities are generally respectful the ex parte laws barring commission and utility officials from discussing active proceedings, but inherently have strong influence in proceedings due to their large and well-resourced staffs.

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218 Ibid.


While utilities and environmental advocates are often at odds, some utilities have recently “seen the writing on the wall” regarding the clean energy transition and have initiated more progressive environmental policies. Some experts hold that environmental programs are often much more successful when initiated by the utility companies themselves, rather than advocated for by environmental stakeholders in PAPUC proceedings.\textsuperscript{224}

While Zimmerman of Duquesne Light Company argued that the PAPUC goes out of its way to promote fairness and balance among intervening parties,\textsuperscript{225} other interviewees pointed out that Pennsylvania utilities’ expansive resources and expertise give them a clear upper hand at proceedings.\textsuperscript{226} As Marx put it, “There is a price to admission in these kinds of proceedings and that is the ability to hire experts that are going to be able to influence the commission. And it's not cheap.”\textsuperscript{227}

**Consumer Advocates:** The Office of the Consumer Advocate (OCA) was created in 1976 to give ratepayers an expert legal voice in PUC proceedings, and is arguably the primary entity representing consumer interests at the PUC. The office is a well-established intervenor with a large budget for consultants and lawyers; its interests are taken very seriously by the commission.\textsuperscript{228} The OCA is present in practically every proceeding, and most experts agree they do a very good job of representing ratepayers against utility interests.\textsuperscript{229} Logan Welde of the Clean Air Council also noted that, given their credibility and resources, they could be more effective in arguing environmental goals than environmental groups if they chose to.\textsuperscript{230}

Pennsylvania’s Office of the Small Business Advocate and statewide industrial consumer groups like the Industrial Energy Consumers of Pennsylvania represent the energy priorities of businesses. Like in many states, these entities often advocate for low energy costs.\textsuperscript{231}

**Pennsylvania Utility Law Project (PULP):** As a legal aid program, PULP represents the interests of low-income residents primarily as an intervenor in rate cases of Pennsylvania’s many utilities. Experts agreed that especially in the last decade, PULP has been a serious and well-respected presence in PUC proceedings.\textsuperscript{232} While PULP usually aligns with the OCA, low-income programs in Pennsylvania are usually funded by raising rates for the residential ratepayers represented by the OCA, which sometimes causes tension.\textsuperscript{233} For decades, PULP was often at odds with environmental advocates as many environmental programs led to higher rates for low-income customers. Recently, however, PULP and environmental advocates have found common ground

\textsuperscript{224} Anonymous clean energy advocate. Personal interview. November 2020.
\textsuperscript{225} Michael Zimmerman. Personal interview. December 2020.
\textsuperscript{227} Elizabeth Marx. Personal interview. November 2020.
\textsuperscript{228} Dan Clearfield. Personal interview. December 2020.
\textsuperscript{231} “About ICEPA.” Industrial Energy Consumers of Pennsylvania. https://www.iecpa-energy.org/about-iecpa
\textsuperscript{233} Elizabeth Marx. Personal interview. November 2020.
on environmental justice issues and clean energy solutions that do not necessarily harm low-income consumers.234

**Environmental Advocates:** In recent years, environmental advocates from the Natural Resources Defense Council (NRDC), Clean Air Council (CAC), Keystone Energy Efficiency Alliance (KEEA), and the Sierra Club have had a more substantial presence at PUC proceedings.235 Szybist said that while the NRDC has engaged relatively often in PUC proceedings, his organization and the environmental community still have “relatively little influence” compared to the utilities, OCA, and PULP.236 Experts from CAC said that they do their best to align with ratepayer groups and low-income advocates whenever possible, and have worked with utilities in the past on a case-by-case basis.237 According to Szybist, “We also don't hesitate to oppose [utilities] when we think they're screwing up.”238

**Becoming Commissioners**

In Pennsylvania, five commissioners are appointed by the governor and approved by two-thirds of the state senate.239 Since 1998, only three of the five commissioners could be members of the governor’s political party, and commissioners are appointed for staggered five-year terms.240 In 2020, commissioners were compensated with an annual salary of $155,813.241

The process of selecting and approving PAPUC nominees can be political in nature.242 Szybist explained that PUC commissioner nominations have become increasingly political in recent years, even as Pennsylvania’s politics have become increasingly dysfunctional. As of October 2021, the PUC had only three commissioners because Senate Republicans have resisted confirming any Governor Wolf’s nominees while his administration is advancing a regulation to limit carbon pollution from power plants, said Szybist.243 In general, Clean Air Council Executive Director and Chief Counsel Joe Minnott said the opposite: he argued that especially since the Marcellus Shale boom, the natural gas industry has exerted exceeding influence on officeholders, and more pro-natural gas commissioners have been appointed as a result.244

This dynamic could help explain why the most recently nominated commissioner, Hayley Book, was not approved by the state senate.245 She has a climate-forward record: her most recent position was with the Pennsylvania Department of Environmental Protection (DEP) where she spearheaded the effort developing a proposal for the state to join the Regional Greenhouse Gas Initiative (RGGI).246 Wolf appointed Book after Andrew Place, previously a strong progressive

234 Ibid.
voice on the commission, resigned in April 2020. Subsequently, the legislature delayed approving Book despite the stagnation that stemmed from a series of deadlocked 2:2 decisions, and ultimately elected to refuse the nomination. Some experts suspected that this outcome was largely because leadership in the Senate, which is currently Republican, is opposed to the initiatives Brooks supports, including RGGI.

On the Commission

PAPUC commissioners have maintained significant independence from potential utility influence, but a mixed degree of entanglement with Pennsylvania politics.

Examples of problematic industry influence are sporadic and anecdotal rather than consistent. Most experts agree that while there may be a kind of “revolving door” between those working in the utilities and the PAPUC, this is more a symptom of the kind of work that energy policy entails than corruption. Marx said that these close relationships inherently exist between the commission and the utilities are not unique to Pennsylvania, and that the state is no worse than others.

Perhaps the most noteworthy case of industry influence pertains to former commissioner Robert Powelson (2008-2017), who in 2013 violated the PUC ethics code by accepting football tickets from large electric utility NRG Energy. Powelson was also reimbursed to speak at many state and national electric utility and natural gas industry events, at some of which he belittled environmental issues as the priorities of “lacrosse moms” and once declared that the “jihad has begun” against gas pipeline projects (he later apologized for the Islamophobic language). Powelson, who left the PUC in 2017 after being appointed to the Federal Energy Regulatory Commission (FERC) by President Trump, is a fringe example of industry influencing active commissioners; no other recent commissioners have been caught violating the PUC ethics code, nor aligned so publicly with the natural gas industry.

To a certain extent, state politics has entered into PUC regulation through the ideologies of individual commissioners. The anonymous advocate interviewed by the CDL explained that outcomes and political implications of PUC decisions can sometimes have more to do with commissioner ideology than anything else. For instance, since the pro-competitive market

253 Ibid.
254 Ibid.

The PUC has also been affected by increasing partisanship in Pennsylvania. During the period where political polarization increased and natural gas resources were aggressively developed, the PUC has gradually shifted from a culture that predominantly valued consensus to one where 3-2 splits are more common. The increased frequency of split decisions shows a willingness of commissioners to take on ambitious priorities, the divisiveness may lead to excessive politicization of the commission’s activities.\footnote{Anonymous advocate. Personal interview. November 2020.}

Disputes over the PUC’s role in environmental regulation also stem from disagreements about the role of commissioners. Many interviewees agreed that the commissioners— and especially Commission Chair Gladys Brown Dutrieuille— see their role as overwhelmingly judicial, usually limited to enacting policies directed by the legislature rather than designing their own.\footnote{Rosemary Chiavetta & Tom Charles. Personal interview. November 2020; Dan Clearfield. Personal interview. December 2020.} A\footnote{Anonymous clean energy advocate. Personal interview. November 2020} According to Marx, the PUC’s hesitance to move forward with certain environmental issues “has less . . . to do with the PUC enabling statutes than it does with [the] culture” of the commission.\footnote{Elizabeth Marx. Personal interview. November 2020.} 262

Confusion about the commissioners’ role and jurisdictional limitations are not unfounded, as the Pennsylvania legislature has done little to guide the PUC’s regulation of many emerging energy innovations. New technologies like net metering to demand response programs are going to be developed with or without clean energy legislation, and as a result the PAPUC is confronted with managing a changing energy landscape with no clear guidance. The PUC is also arguably handicapped by Pennsylvania’s deregulated system, which limits the commission’s jurisdiction in regulating utilities’ electricity generation practices.\footnote{Mark Szybist. Personal interview. November 2020.}

**PAPUC Climate Related Outcomes**

**Alternative Rate-making:** In December of 2015, the PUC released a statement that it would be holding a hearing for stakeholders to present information on the efficacy of alternative rate-making mechanisms. The commission wanted information on whether mechanisms like revenue decoupling, which ensures that a utility’s financial well-being is not entirely dependent on the volume of their sales,\footnote{“Revenue Decoupling.” *Elcon*. https://elcon.org/revenue-decoupling/} could encourage utilities to better implement energy efficiency measures. The docket also sought to determine whether decoupling mechanisms could be “just and
reasonable,” in the public interest, well suited to changing patterns in electric consumption and distribution, and whether their overall benefits outweigh potential costs. The alternative ratemaking hearing was held in March 2016 and attracted comments from a diverse group of parties. Environmental groups supported decoupling policies that financially rewarded utilities for achieving certain energy efficiency goals. Low-income group PULP expressed criticism that decoupled rate designs could adversely impact low-income consumers. While not explicitly ruling out alternative ratemaking structures, the OCA and utilities each held that the preexisting energy efficiency programs worked sufficiently well. In 2017 and 2018, the PAPUC issued a series of orders investigating specific aspects of various decoupling mechanisms, and in July of 2019, the commission released its final policy statement. The commission agreed with most proposals that discouraged a ‘one-size-fits-all’ policy approach, and required that a review of alternative ratemaking mechanisms consider a variety of factors to determine whether a given rate design qualifies as ‘just and reasonable’. These considerations specifically included limiting or eliminating emergent disincentives from energy efficiency programs, examining the impact on incentives for consumer-level energy efficiency and distributed energy programs, and considering the general impact on low-income customers. Both the anonymous clean energy advocate interviewed by the CDL and Szybist commented that, following an almost five-year proceeding, the final order was limited in its scope, in part because of supervening legislation passed at the urging of utilities.

**Climate Change and Utility Planning Cases**

In 2020, two PAPUC cases addressing future energy planning provided insight into PAPUC stakeholder discussions around climate, and tested the commission’s willingness to incorporate emissions reductions into its regulatory framing and action.

**PECO 2020 DSP:** The first case concerned electric utility PECO Energy’s 2020 default service plan (DSP) proceeding. A DSP essentially establishes the energy mix a utility will offer customers for several years in the future. In PECO’s DSP proceedings, environmental advocates argued that the utility should include more long-term renewable contracts because they would provide a more “prudent mix” of resources, and would be a more cost-effective use of ratepayer dollars.

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270 ibid.

271 ibid.


273 ibid.

Importantly, the environmental advocates chose not to explicitly describe the climate advantages of renewable energy contracts, implying that the commission is not readily amenable to that argument. Arguing against mandated renewable contracts, PECO made the case that it should be the legislature rather than the commission’s role to facilitate emissions reduction policy.

By the time the parties involved in the DSP proceeding made a settlement, the environmental stakeholders were the lone advocates for long-term renewable contracts. After an especially long, contested, and public series of hearings, the commission ultimately denied the advocates’ request on the grounds that they had not provided sufficient evidence regarding the benefits of long-term renewable contracts.

**PGW 2020 Rate Case:** In a 2020 rate case, environmental advocates argued that natural gas utility Philadelphia Gas Works (PGW) should address climate change and include an emissions reductions plan in their planning. The advocates asserted that this planning would lead to more efficient use of ratepayer dollars, avoid stranded asset risks posed by future climate change regulations, and fall in line with the city of Philadelphia’s commitment to reduce greenhouse gases. The commission denied these arguments, issuing a statement that, “It is undisputed that the Commission does not have jurisdiction to enforce environmental laws and regulations” and “has no authority to regulate environmental issues, create environmental regulations or mandate strict environmental action.”

In the same decision, however, the PAPUC made a seemingly contradictory statement that could potentially open a channel for environmental enforcement. In the case, “The Environmental Stakeholders met their burden in establishing that the Commission may consider environmental issues when determining whether a rate increase is just and reasonable,” read the order. It then recommended that future rate cases include “information on PGW’s planning regarding the impact of warming trends on PGW’s future infrastructure projects and costs.”

The result of this case confirms the fact that the commission does not currently see itself as having authority over environmental or climate matters, especially in the absence of executive or legislative mandate. At the same time, the language of the case’s final order provides important precedent for potentially providing a basis for enforcement related to climate impact mitigation in future rate cases.

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277 Ibid.
279 Ibid.
280 Ibid.
Conclusion
As a whole, Pennsylvania’s PUC may best be described as unremarkable. Especially in contrast to the Pennsylvania legislature, which Szybist commented may as well be a subsidiary of the natural gas industry, most interviewees regarded the commission as generally well-functioning and respectable. On the flipside, subtle natural gas industry influence through channels like the commissioner appointment process are inescapable, and the commission has been rigid in its willingness to push clean energy initiatives. As state energy landscapes change rapidly in Pennsylvania and across the country, the PAPUC has buckled down on its conservative jurisdictional approach.

So, what could be the silver bullet for pushing the PAPUC on clean energy progress? Some advocates feel that without strong climate legislation the commission will continue as they have been; many also feel pessimistic about prospects for new laws in the Republican-controlled, polarized, natural gas-funded legislature. Others brought up with cautious optimism that some Pennsylvania utilities have been and will continue to explore the clean energy space on their own accord, but seriously disrupting the status quo would require the state’s many companies— and especially those specifically involved with the generation phase of the energy ecosystem— to shift in conjunction. Finally, advocates are optimistic that new alliances between environmental and low-income advocates could materialize into a stronger force pressuring the PUC to act on climate change; skeptics point towards the large teams of well-resourced experts that Pennsylvania utilities have always brought to make their case at PUC proceedings.

Pennsylvania is a uniquely challenging state for PUC reform. For the most part, the commission stays out of the spotlight, but its shortcomings regarding clean energy innovation are clear and growing more worrisome with each passing year— especially as Pennsylvania continues expanding its natural gas industry despite concerns about methane leakage and oversupply. Whether, when, and how the PAPUC will seriously address climate change remains an open question.

Interviewees (in order of date interviewed):
- Rebecca Moss, Reporter, Spotlight PA.
- Irwin A. “Sonny” Popowsky, former PA Consumer Advocate.
- Julian Boggs, former Policy Director, Keystone Energy Efficiency Alliance.
- Elizabeth Marx, Executive Director/Counsel, Pennsylvania Utility Law Project.
- Rosemary Chiavetta, PAPUC Deputy Press Secretary, and Tom Charles, PAPUC Director of Communications.
- Mark Szybist, Senior Attorney, Climate and Clean Energy Program at Natural Resources Defense Council.
- Joseph Minnott, Executive Director/Chief Counsel and Logan Welde, Staff Attorney, Clean Air Council.
- Dan Clearfield, Attorney, Eckert Seamans.
- Michael Zimmerman, Regulatory Counsel, Duquesne Light Company.
- Anonymous clean energy advocate.
- Anonymous advocate.

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The Takeaway:
In recent years, as climate change and clean energy has gained momentum as a legislative and regulatory issue in New Hampshire, the New Hampshire Public Utilities Commission (NHPUC) has ardently affirmed and reaffirmed its role as an economic rather than environmental regulator. Faced with dockets whose outcomes have outsized effects on the state’s future carbon footprint, from proposals to expand natural gas infrastructure to action expanding energy efficiency and modernizing the grid, the NHPUC’s rhetoric and decisions have remained rigidly economic. The commission has usually acted independently of pressure from the public, advocates, and sometimes even the more powerful Office of the Consumer Advocate and utilities, although some would argue that it is becoming increasingly receptive to mounting pressure to act on climate change. Many believe that given clearer legislative or gubernatorial, the traditionally conservative commission might become more willing to acknowledge and act on its potential impact addressing climate change through energy regulation.

Leading from the Rear
The New Hampshire Public Utilities Commission (NHPUC) has seen a great deal of change in responsibility just over the past 12 years. For decades, the NHPUC had a simple job: to set just and reasonable rates for gas, electric, and other utilities, balancing the needs of utilities and customers. Today, proceedings before the commission have morphed to include a large array of stakeholders and issues, including net metering, distributed energy resources, grid modernization, and much more. However, despite this changing energy landscape, the commission itself is reluctant to adopt progressive policies without explicit direction from the legislature. While the lack of legislative guidance may be considered the key barrier for more ambitious climate governance at the NHPUC, New Hampshire's political reality— for which a strong statewide libertarian ethic and a tendency to "lead from the rear" compared to neighboring states both play a significant role— begin to explain the state's relative reluctance to lead on ambitious climate and energy policy.

Today, according to the NHPUC website, the mission statement of the commission is:
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To ensure that customers of regulated utilities receive safe, adequate and reliable service at just and reasonable rates.
To foster competition where appropriate.
To provide necessary customer protection.
To provide a thorough but efficient regulatory process that is fair, open and innovative.
To perform our responsibilities ethically and professionally in a challenging and supportive work environment.”

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Brian Buckley, staff attorney at the PUC, described the main purpose of the PUC is to act as an arbiter between the interests of the utilities and those of the customers, and consider as many other perspectives and information as may be relevant to the proceeding. In addition to these formal responsibilities, the NHPUC has in recent years been navigating its role as a regulator for environmental issues. Officially, the NHPUC does have a constitutional mandate that includes the environmental priorities of maximizing energy efficiency, protecting public health, and the physical environment, while also taking into consideration “the financial stability of the state’s utilities” and prioritizing a “reliability and diversity of energy sources.” This balancing act takes place in least cost integrated resource plans (LCIRP’s), utility planning documents submitted to the PUC twice a decade. The extent to which the PUC stresses environmental priorities in LCIRP proceedings, as opposed to traditional priorities like low consumer rates, has largely determined its changing role in practice as an environmental regulator.

PUC officials and key stakeholders have a variety of opinions regarding the NHPUC’s role regarding the environment and climate change. Don Kreis, New Hampshire’s Consumer Advocate, argued that since it is in the public interest to consider environmental impact, the commission absolutely has a responsibility to do so: “What's missing from that equation is a voice for climate change or environmental policy,” he told the CDL. Alternatively, Matthew Fossum, currently a regulatory attorney with Eversource and former NHPUC employee, proposed that the NHPUC is a financial rather than environmental regulator and should be focused on implementing laws created by the legislature rather than interpreting policies themselves. According to Steven Mullen, Director of Regulatory Affairs at New Hampshire utility Liberty, even though the commission has clearly commented that it is not an environmental regulator, increasingly prevalent clean energy dockets are blurring that line. Somewhere between these differing opinions is a more encompassing truth about the NHPUC and environmental issues, reflected in a host of recent decisions: the commission is hesitant and inconsistent in prioritizing environmental goals, but has made small steps towards innovation in some programs.

State Context: Too Partisan, Too in Flux for Environmental Policy

Amidst a prominently Democratic New England, New Hampshire stands out for its political “purpleness.” Over the last 12 years, the state has had eight years of a Democratic and five years of a Republican governor, and has oscillated between majority Republican and Democratic in the legislature twice. This political volatility is exacerbated by the fact that New Hampshire is one of just two states with two year—rather than four year—gubernatorial terms. In this environment, passing environmental legislation is difficult because even when interest exists, by the time those policies are constructed their authors and advocates have sometimes already been voted out.

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291 Matthew Fossum. Personal interview. July 2020. Fossum stated that his comments are individual and do not represent the positions of Eversource.
With so much turnover, the commission itself is often reluctant to take a strong stance on environmental issues, which could cause regulatory uncertainty and confusion if those policies were reversed. According to Kreis, this dynamic has made the NHPUC “very cautious and conservative compared to, say, its counterparts in Vermont and Maine.”

Additionally, New Hampshire has been referred to by some as the libertarian capital of the country. In energy and climate, libertarian priorities often include opposition to regulation and taxes (not wanting to be like “Taxachusetts”), which can lead to reluctance towards adopting environmental policies seen as expensive.

Stephanie Scherr, founder and director of environmental organization ECHO Action NH, has also found that New Hampshire has a culture of “politeness” in which people are hesitant to question or push back on others. She suspects this may be because the state is small and therefore people need to maintain good relationships across the aisle. However, she also argued that, because it is a small state, people have a lot more access to their legislators and therefore they should take that opportunity to engage and use their political power.

In 1996, New Hampshire became the first state in the nation to begin the process of restructuring, meaning utilities were separated from their generation fleets, and the NHPUC was mandated to develop a statewide restructuring plan. Despite having direct regulatory power over its utilities’ electricity generation, New Hampshire has lagged in implementing other standard energy policies like adopting a Renewable Portfolio Standard (RPS) and Energy Efficiency Resource Standard (EERS). Even restructuring has taken the state over 20 years to finalize, with the sale of Eversource Energy’s generation fleets not being finalized until November of 2017.

Becoming Commissioners

In New Hampshire, three PUC commissioners are appointed by the governor for staggered 6 year terms and are officially nonpartisan. They must also be approved by the executive council, made up of 5 members that are elected every 2 years, that acts to ensure appointees are in the public interest. Between the three commissioners, one must be an attorney and member of the New...
Hampshire Bar and one must have experience in engineering, accounting, finance, or economics.  

The Players

PUC/staff: The primary players in PUC decisions are the commissioners and their staff. Besides the three commissioners, there are seventy staffers\textsuperscript{306} and there has been little turnover as commissioners change.\textsuperscript{307}

Across the board, most experts agree that commissioners have historically maintained an above-average level of political integrity. Kreis asserted that the commissioners have taken their independence from the political process very seriously to maintain objectivity.\textsuperscript{308} While governors have the opportunity to appoint people that align with their policy preferences,\textsuperscript{309} the executive council limits the governor’s powers in influencing the commissioners themselves.

In 2008, the PUC staff created a new sustainability division, which over the years has become an increasingly effective internal force for elevating and building out resources about renewable energy issues.\textsuperscript{310} The broader PUC structure itself, however, has resisted change on environmental issues; the most significant expansions of NHPUC jurisdictions have come from stakeholder pressure.\textsuperscript{311} Stephanie Scherr of ECHO Action NH has direct experience with this and stated that during her involvement in energy policy proceedings since 2014 she has seen some members of the PUC staff shift due to increased public engagement.\textsuperscript{312}

Utilities: New Hampshire utilities—Eversource, Liberty, and Unitil—usually only intervene when it’s relevant to their business, though they all have long standing “elaborate” relationships with the PUC and its staff.\textsuperscript{313} Compared to other stakeholders, these companies have the advantage of “seemingly infinite resources” and the ability to send many representatives to relevant PUC sessions.\textsuperscript{314} They also mobilize these resources to lobby commission officials and legislators. For example, according to Scherr, Liberty has at times sent lobbyists to the PUC and the State House to “educate with misinformation” about the false environmental benefits of fracked gas.\textsuperscript{315}

Though utilities tend to be at odds with environmental advocates,\textsuperscript{316} some have started to take up clean energy projects as market forces and consumer preferences change.\textsuperscript{317} Their ambition in this transition has sometimes been limited by the requirement that they recover any additional costs

\textsuperscript{305} “Appointment, Qualification, Etc.” \textit{The Public Utilities Commission}. Chapter 363, Section 1. \texttt{http://www.gencourt.state.nh.us/rsa/html/XXXIV/363/363-1.htm}

\textsuperscript{306} Commissioners and Staff.” \textit{New Hampshire Public Utilities Commission}. \texttt{https://www.puc.nh.gov/Home/AboutUs/commissioners-staff.htm}

\textsuperscript{307} Matthew Fossum. Personal interview. July 2020.

\textsuperscript{308} Don Kreis. Personal interview. July 2020.

\textsuperscript{309} Matthew Fossum. Personal interview. July 2020.

\textsuperscript{310} Don Kreis. Personal interview. July 2020.

\textsuperscript{311} Henry Herndon. Personal interview. July 2020.

\textsuperscript{312} Stephanie Scherr. Personal interview. July 2020.

\textsuperscript{313} Don Kreis. Personal interview. July 2020.

\textsuperscript{314} Stephanie Scherr. Personal interview. July 2020.

\textsuperscript{315} Don Kreis. Personal interview. July 2020.

\textsuperscript{316} Melissa Birchard. Personal interview. July 2020.

\textsuperscript{317} Henry Herndon. Personal interview. July 2020; Steven Mullen. Personal interview. August 2020.
generated by clean energy programs, causing extra financial risk compared to other types of development.\footnote{Mark Dean. Personal interview. August 2020.}

**Office of the Consumer Advocate (OCA):** The Office of the Consumer Advocate (OCA) “represent[s] the interests of residential utility customers.”\footnote{Don Kreis. Personal interview. July 2020.} The office is present in every major PUC proceeding and has the most direct access to the PUC. It is even housed in the same building, and of the five employed at the OCA, three are former PUC employees. Even with this strong relationship, Consumer Advocate Donald Kreis doesn’t see the OCA getting better outcomes than other stakeholders\footnote{Ibid.} especially as they are limited by their small staff size.\footnote{Steven Mullen. Personal interview. August 2020.}

The OCA does not have a set agenda on clean energy and may side with the utilities or environmental groups, depending on what they believe is in the best interest of the ratepayer.\footnote{Brianna Brand. Personal interview. July 2020.} However, since Kreis became the Consumer Advocate in 2016, the OCA has been more focused on environmental policies and increasing public engagement in energy policy proceedings.\footnote{Mark Dean. Personal interview. August 2020.}

**“Others”:** A host of other groups regularly intervene or otherwise participate in PUC proceedings, but do not share the same longstanding relationships that the utilities and OCA enjoy nor the resources to engage as consistently.\footnote{Don Kreis. Personal interview. July 2020.} These groups include unions, special interest groups, environmental advocates, renewable energy companies, and more.

The Conservation Law Foundation (CLF), Clean Energy New Hampshire (CENH), and ECHO Action NH are among the NHPUC’s most prominent intervening environmental advocacy organizations. These groups have advocated for a host of environmental and clean energy priorities, including net metering, grid modernization, energy efficiency, and opposing natural gas pipeline projects. Stephanie Scherr, founder of the environmental justice-focused ECHO Action NH, commented that New Hampshire’s environmental groups have gained influence in NHPUC matters as legislative and regulatory attitudes about environmental issues shift.\footnote{Matthew Fossum. Personal interview. July 2020.}

The New England Ratepayers Association (NERA), a 501(c)(4) group which claims to advocate for residential utility customers’ rights but whose advocacy often aligns with electric utilities and the fossil fuel industry, is another significant stakeholder in NHPUC activities.\footnote{Ibid.} Though Eversource attorney Matthew Fossum stated that the company does not explicitly support NERA nor are they a member, NERA’s interests almost always align with utilities and the fossil fuel industry.\footnote{“New England Ratepayers Association.” Energy and Policy Institute. https://www.energyandpolicy.org/new-england-ratepayers-association/} In a policy brief from 2015, they state their opposition to virtually all environmental energy programs, including RPS, energy efficiency, and net metering.\footnote{Ibid.} The organization’s

current president, Marc Brown, has past ties lobbying for the fossil fuel industry along with current Governor Sununu and brother Michael Sununu, both of which are longtime antagonists to climate science and clean energy policy.\textsuperscript{330}

**On the Commission**

The only commissioner after ~2008 that garnered controversial press was Michael Harrington. He spent over 20 years working for PSNH (now Eversource), served on the NHPUC from 2005-2013, and now serves as a member of the New Hampshire State House of Representatives. He is also on the advisory board of the New England Ratepayers Association, and as a State Representative has introduced bills to target policies opposed by NERA, including net metering and RGGI. In one rate case concerning a coal plant owned by PSNH, Harrington refused to recuse himself even though there were conflict of interest concerns as he was still receiving a pension from the company.\textsuperscript{331} Beyond Harrington, advocates and other stakeholders the CDL spoke to have expressed approval for the professionalism and integrity of NHPUC commissioners and staff.

The process of docket review and decision-making are crucial to understanding whose voice is most heard in NHPUC proceedings. Most proceedings begin with a petition from a utility.\textsuperscript{332} After a petition is filed, stakeholders apply for intervenor status, give testimony, participate in technical sessions, and have settlement conferences. The process concludes with a litigated hearing,\textsuperscript{333} after which the commission approves, conditionally approves, or rejects a final settlement agreement.\textsuperscript{334} Outside of these formal proceedings, parties are free to negotiate informally towards an agreement before the official settlement conference.\textsuperscript{335} This consensus-oriented approach has, in recent years, been increasingly popular.\textsuperscript{336}

In formal proceedings, stakeholders have no interaction with NHPUC commissioners outside of written testimonies, and, technically, all stakeholders have equal access to the staff. However, Herndon described that as critical stakeholders, if an agreement can be reached between the utilities and consumer advocate, it is generally a strong foundation for a broader coalition.\textsuperscript{337} This is not surprising considering the OCA and utilities are the most frequent PUC intervenors, and the interpersonal relationships that emerge from prevalent personnel exchanges between the PUC staff, the OCA, and New Hampshire utilities.

In this environment, Liberty official John Shore reported that settlement agreements are often workshopped and reached at meetings between representatives of utilities, the OCA, and the


\textsuperscript{332} Matthew Fossum. Personal interview. July 2020.


\textsuperscript{334} Steven Mullen. Personal interview. August 2020.

\textsuperscript{335} Ibid.

\textsuperscript{336} Mark Dean. Personal interview. August 2020.

\textsuperscript{337} Ibid.
Once a settlement agreement is reached, other intervenors can either sign onto the agreement or supply opposition testimony, but in practice the commission is unlikely to refuse the settlement when those most “powerful” actors agree. Even though groups like CENH have made a concerted effort to consistently attend hearings and show up for dockets, Brand expressed that the sheer amount of manpower and resources that the utilities have is unmatchable, and Herndon explained that the system seems to inherently exclude stakeholders who are advocating for specific priorities or have fewer resources.

**NHPUC Climate Related Outcomes**

In the past five years, the NHPUC has regulated a new net metering mechanism, two gas pipeline proposals, a hydropower transmission line, grid modernization, energy efficiency, and vehicle electrification. While all of these dockets are directly related to climate, the power of the commission to affect their outcomes is often limited by the direction from the legislature. For that reason, NHPUC staff attorney Brain Buckley regards utility least cost integrated resource plans (LCIRPs) and rate cases as the most impactful dockets for delving further into the nuances of “just and reasonable rates” and in deciding what investments made by utilities are prudent.

**Natural Gas Pipeline Decisions**

A series of natural gas infrastructure dockets throughout the past decade illustrate the NHPUC’s reluctance to identify itself and act as an environmental regulator, and its tendency to make economics-driven decisions uninterested with backlash from the public, environmental and consumer advocates, and sometimes utilities.

**Northeast Energy Pipeline:** In December 2014, Liberty subsidiary EnergyNorth petitioned for approval of a 20 year agreement with Tennessee Gas Pipeline company on the proposed Northeast Energy Pipeline. Both the OCA and PLAN argued that the proposal “assumed unreasonably high growth” for natural gas demand and should have investigated environmental and health impacts of communities along its route and associated costs. After initial opposition to the agreement, the NHPUC ultimately found the proposal to be in the public interest, holding that it addressed sufficient environmental overrun costs and considerations.

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**Northern Pass Transmission:** In October 2015, Eversource petitioned for an approval of a lease agreement for the Northern Pass Transmission (NPT), which would have consisted of building 192 miles of transmission lines connecting a Hydro-Quebec hydroelectric plant with several New England states. The project would have provided a significant renewable baseload electricity resource for states across the northeast. New Hampshire residents’ public back lash to the proposal was significant: the transmission lines would have intersected the White Mountain National Forest and other forested areas, and many saw no reason their landscape should be ruined for another state’s benefit. Despite the public outcry, the NH PUC approved a 40-year lease agreement for Eversource; the SEC subsequently denied the agreement, demonstrating just how controversial and complicated this PUC decision proved to be.

**Access Northeast pipeline:** In February 2016, Eversource petitioned the commission for approval of a 20 year contract to buy natural gas on the Access Northeast (ANE) pipeline project from Algonquin Gas Transmission, which it claimed would provide a new low cost resource to the electricity mix. Environmental and consumer advocates stressed that this 20 year contract would unnecessarily lock New Hampshire into a gas dependent energy future while the competitive electricity market is continually changing. In this case the commission sided with the opponents and dismissed the petition, agreeing that “the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity,” a standard which the ANE did not meet. While the commission’s actions in this case may be seen as environmentally agreeable, their primary concerns with this utility petition was the potential obstruction to free competition and that Eversource was not a gas utility.

**Hanover & Lebanon service expansion:** In November 2016, Liberty petitioned the commission to expand its franchise into the Town of Hanover and the City of Lebanon, which it argued would lower overall fixed costs and provide natural gas as a “clean, more convenient, and less

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348 Ibid.
expensive fuel option” for residents.\(^{356}\) The Town Manager of Hanover and City Councilor of Lebanon each testified that the expansion was inconsistent with the towns’ goals to reduce carbon footprint and transition to renewable fuel sources.\(^{357,358}\) In March 2018, the NHPUC approved a settlement agreement between Liberty, the PUC, and the OCA to conditionally approve the expansion.\(^{359}\) In response to the town governments and public’s environmental concerns, the commission reasserted its role as an economic regulator, reiterated that New Hampshire’s Department of Environmental Services is the primary environmental regulator, and commented that “energy and environmental policy is the purview of the legislature and none of the parties or commenters has demonstrated that any law or regulation would prohibit the expanded distribution of natural gas in the state.”\(^{360}\)

**Granite Bridge LNG:** In December 2017, Liberty submitted a petition to approve the Granite Bridge project, including the construction of a 27 mile in-state pipeline and LNG storage tank.\(^{361}\) The project, which its proponents argued would decrease prices and meet the needs of future consumers, was very popular among a broad coalition of New Hampshire groups— from Governor Sununu and nearly the entire state senate\(^{362}\) to the United Steelworkers.\(^{363}\) Opponents argued that the project overestimated energy needs,\(^{364,365}\) would adversely impact the climate, and failed to consider other low cost options like heat pumps;\(^{366}\) even the PUC staff concluded that Liberty had


\(^{362}\) Stephanie Scherr. Personal interview. July 2020.


not justified potential risk and consequences of the facility nor demonstrated that the Granite Bridge Pipeline is the best option to provide this capacity.\textsuperscript{367} After setbacks to the project, Liberty amended their petition to recover costs from consumers in July 2020. This request was denied by the NHPU C primarily due to technical legal concerns,\textsuperscript{368} the project dissolved. This case demonstrates that while the commission may often side with the utilities, legal precedent can emerge as a dominant force in its decision-making.

**Clean Energy Programs**

**Liberty Battery Storage Pilot Program:** In December of 2017, Liberty petitioned for approval of a battery pilot program for 1,000 customers, with goals to save transmission costs and study other potential benefits.\textsuperscript{369} A settlement agreement was reached between almost all parties,\textsuperscript{370} although the project was scaled back.\textsuperscript{371} An exciting aspect of this project, according to Herndon, is that Liberty is installing time of use (TOU) rates that charge different rates for battery storage based on peak or off-peak usage.\textsuperscript{372} The program is in its early stages, and as of August 2021 Liberty had installed 162 batteries in 81 homes.\textsuperscript{373}

**Net Metering:** In May 2016, House Bill 1116 increased New Hampshire’s net metering\textsuperscript{374} cap from 50 to 100 MW and required the NHPU C to develop an alternative net metering tariff. The tariff would consider the costs and benefits of customer-sited generation, impacts on customers, and to avoid “unjust and unreasonable cost shifting” to non-participating customers.\textsuperscript{375}

This PUC proceeding consisted of many intervenors and, in an unusual event, resulted in two competing settlement agreements: the “Utility Consumer Coalition” (UCC) made up of the utility companies, the OCA, and NERA, and the “Energy Futures Coalition” (EFC) made up of environmental organizations and solar companies.\textsuperscript{376} UCC members argued that current net

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\textsuperscript{371} John Shore. Personal interview. Date

\textsuperscript{372} Henry Herndon. Personal interview. July 2020.

\textsuperscript{373} John Shore. Personal interview—email follow-up. July 2020.

\textsuperscript{374} Net metering is the standard mechanism for which residential solar installation are compensated for the electricity they produce.


\textsuperscript{376} Development of New Alternative Net Metering Tariffs and/or Other Regulatory Mechanisms and Tariffs for Customer-Generators; Order Accepting Settlement Provisions, Resolving Settlement Issues, and Adopting a New Alternative Net Metering
metering tariffs unfairly shift costs to non-participating customers and that compensation for net metering should be reduced.\textsuperscript{377} EFC members argued that net metering benefits all customers and that there is no unjust or unreasonable cost shifting to non-participating members. After reviewing the two agreements, the commission decided that, at the current low penetration level, there was little evidence of cost shifting to customers without distributed generation. Overall, the PUC decided to leave the original tariff basically unchanged for small scale generators\textsuperscript{378} and ordered system and customer data to be analyzed to create pilot programs and better understand the value of DER in the future.\textsuperscript{379} New Hampshire's net metering policies remain weaker than surrounding states,\textsuperscript{380} but this decision nonetheless represents an economics-based affirmation of a small but effective source of climate-friendly electricity in the state.

**Energy Efficiency Resource Standard (EERS):** When an investigative docket opened in March 2015 to review options for implementing an Energy Efficiency Resource Standard (EERS) in New Hampshire, the state lagged significantly behind the rest of New England in energy efficiency.\textsuperscript{381} Energy efficiency planning was, at the time, planned by utilities and regulated only as a matter of compliance by the NHPUC.

From its inception, the docket aimed to establish a framework that placed more structural authority with the NHPUC in improving energy efficiency in New Hampshire through an EERS. It recommended that the NHPUC “act promptly” to establish an EERS, and, among other measures, establish mandatory electricity and natural gas savings targets at an increased rate than it was achieving with its current standards.\textsuperscript{382} Consumer and environmental advocates strongly supported the initiative,\textsuperscript{383} utilities provided comments in support but stressed that caution should be taken in deciding on new energy savings targets and encouraged the commission to continue to use utility-run programs to implement these changes.\textsuperscript{384}

In response to enthusiasm across the board, an adjudicative docket was opened in May of 2015 to develop the EERS.\textsuperscript{385} After many parties intervened, a settlement agreement extending the utility-run energy savings program through 2017 and establishing an EERS the following year was reached. A host of frameworks were put in place to gradually transition administration from utilities to the state, determine savings goals, recover lost revenue, and maintain diverse stakeholder participation in the process.\textsuperscript{386}
Overall, energy efficiency, as Kreis put it, is the perfect intersection of ratepayer advocacy and environmental concerns as there is “no cheaper way of meeting the next kilowatt hour or BTU of demand than by investing in energy efficiency period.”\(^{387}\) The energy efficiency proceedings can be viewed as a quick and effective response to a broadly popular mechanism to save energy, lower rates, and curtail emissions.

**Grid Modernization:** In July of 2015, House Bill 614 mandated the NHPUC to open a docket on electric grid modernization (‘grid mod’).\(^{388}\) Grid modernization encompasses a broad set of priorities, including replacing old infrastructure, integrating distributed generation, increasing education and outreach, and more. According to Brianna Brand of Clean Energy NH, the series of grid mod proceedings have amounted to a “slow moving machine” that has been limited in its accomplishments.\(^{389}\)

Over the course of the several PUC decisions, working groups, and reports, two central controversies have dominated the grid mod proceedings: whether the issue should be reviewed as an investigative or adjudicated docket, and whether grid modernization should occur within the traditional least cost integrated resource planning (LCIRP) framework or a new one, called Grid Modernization Planning (GMP). The controversy surrounding investigative versus adjudicated docket addresses whether the issue of grid modernization should be considered in an information-gathering context (investigative) or as part of a quasi-judicial proceeding aimed towards changing an aspect of utility planning (adjudicated). Throughout the grid mod proceedings, New Hampshire utilities and the PUC staff supported the less committal investigative dockets, while the OCA, environmental advocates, and some public actors argued for adjudicated dockets; at one point, all parties except the commission itself were in favor of a GMP framework.

From July 2015 until the current, the grid mod proceedings have been limited by the NHPUC’s reluctance to open an adjudicated docket on the issue. In 2015, the commission opened an investigative docket to gather more information.\(^{390}\) The docket established a working group comprised of all IOU utilities, environmental organizations, OCA, DES, EFCA, low income advocates, and solar advocates. The group drafted a consensus report that, among other stipulations, recommended that the PUC replace the old system of LCIRP’s with GMP. The OCA articulated that the commission must act “boldly” and “not simply expect the utilities to produce brilliant work based on the vague specifications” of the LCIRP framework and investigative process.\(^{391}\) In early 2019, the PUC issued a series of decisions that shocked some members of the working group: one recommended that utilities should in the future integrate grid mod

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\(^{387}\) Don Kreis. Personal interview. July 2020.


considerations into LCIRP planning,\textsuperscript{392} and another reaffirmed that the docket was purely investigative.\textsuperscript{393} This decision was met with staunch criticism from the OCA and advocates, but a year later in May 2020, the NHPUC doubled down on its position by establishing a Grid Modernization Stakeholder Group (GMSG) to facilitate the utilities’ distribution system planning process via LCIRP’s.\textsuperscript{394}

After a heated half-decade of controversy around the LCIRP’s versus GMP’s and investigative versus adjudicated dockets issues, the GMSG was for many a disappointing conclusion. The situation got more discouraging in summer 2020, however, when Eversource filed a motion arguing that the GMSG process should be excluded from most resource planning for technical legal reasons.\textsuperscript{395} The commission was quick to suspend the group in late July, undermining the prospects for grid mod progress in New Hampshire, which has not regained momentum since.\textsuperscript{396}

The years-spanning grid mod proceedings are a clear regulatory failure in New Hampshire. Like EERS, grid mod is a common sense 21st century regulatory mechanism, aimed towards updating both outdated physical infrastructure and planning structures. The NHPUC’s reliance on investigative dockets, working groups, and seemingly antiquated LCIRP’s undermined the process; if it had been more reliant to open adjudicated dockets along the way, or adopt GMP’s like all stakeholders agreed, maybe New Hampshire would be in a different position regarding grid modernization by the 2020’s.

\textbf{Transportation Electrification:} In August 2018, the State Senate passed a law requiring the PUC to determine if expanding electric vehicle (EV) charging infrastructure should require utility rate design changes. An investigative docket was opened in January 2020 to address this question, and to consider incorporating novel EV rate design considerations, including cost of service, time of day, seasonal, and uninterruptible rates, and load management techniques, into NHPUC practice.\textsuperscript{397}

While many stakeholders agreed about the utility of time-of-use (TOU) rates for EV charging,\textsuperscript{398} a central controversy that arose throughout the docket revolved around the ownership and deployment of charging stations. While the utilities sought ownership, the OCA cautioned that such a model would backtrack restructuring laws by allowing them to own, essentially, “transportation fuel.” Kreis instead proposed a public-private partnership model which allowed


\textsuperscript{395} Ibid.


\textsuperscript{397} “New Hampshire Senate Bill 575.” LegiScan. https://legiscan.com/NH/text/SB575/id/1685285

\textsuperscript{398} https://www.puc.nh.gov/Regulatory/Docketbk/2020-20-004/LETTERS-MEMOS-TARIFFS/20-004_2020-02-20_CENH_COMMENTS.PDF
utilities to “invest in and rate-base cost-effective and suitably located service drops while leaving to unregulated firms the task of deploying and operating fast chargers themselves.”

The commission’s final order focused on a narrower set of questions regarding rate design. It gave specifications for how utilities should design TOU rates, how those rates should be coupled with other tools including load management techniques, and opened a subsequent docket to direct the utilities’ proposals for TOU rate design.

**Conclusion**

Like other states in this report, the positioning of the NHPUC on energy and climate is in flux. Since 2014, many more stakeholders have gotten involved in NHPUC issues, beginning to seriously challenge the longtime status quo in which the PUC, OCA, and utilities wholly dominate the regulatory process. Intervenors of all types have become more active in NHPUC proceedings, especially those with implications on energy infrastructure and clean energy programs.

The NHPUC has proven hesitant and inconsistent in their framing of environmental responsibilities and regulation of environmental matters. The commission does not have any mandate to act on climate or facilitate a clean energy transition, nor any real authority to implement climate mandates. However, in recent years the issues under its consideration have increasingly been closely intertwined with climate, from evaluating proposed natural gas infrastructure to facilitating the implementation of clean energy programs. Through these changes, NHPUC officials have repeatedly voiced their role as an economic rather than environmental regulator, an identity that appears to be reflected in their actions. Nevertheless, between New Hampshire utilities beginning to recognize and adapt to changing energy needs and mounting public and stakeholder pressure for clean energy progress, the NHPUC’s economics-first regulation has in recent years inherently had more and more to do with clean energy.

Stakeholders offered a range of suggestions about how the NHPUC might improve. Advocates especially emphasized the need for a more collaborative process, in which stakeholders beyond just the OCA and utilities are active in settlements. Among the NHPUC’s options for driving economically strong clean energy development, the OCA argued in favor of decoupling utilities from their energy resources in order that they make money independent of how much energy they export. Finally, proponents of further clean energy development in New Hampshire emphasized that the PUC will always act relatively conservatively, but strong leadership in the legislature and governor's office—especially in the form of formal clean energy transition mandates—will give it structure and a framework to more deliberately expand its regulation into the realm of climate and environment.

**Interviewees:**
- Melissa Birchard, former Attorney at Conservation Law Foundation and Keyes & Fox, now with Acadia Center.

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399 Ibid.
400 Ibid.
401 Ibid.
- John Shore, Communications Manager, and Steven Mullen, Director of Rates and Regulatory Affairs, Liberty.
- Brianna Brand, former Senior Program Director, and Henry Herndon, former Director of Local Energy Solutions, Clean Energy NH.
- Don Kreis, New Hampshire Consumer Advocate.
- Stephanie Scherr, Director & Founder, ECHO Action NH.
- Herman Trabish, Reporter, Utility Dive.
- Matthew Fossum, Senior Regulatory Counsel, Eversource.
- Brian Buckley, Hearings Examiner, NHPUC.
- Mark Dean, Representing Attorney, NHEC.
The Takeaway

In a historically fossil fuel-dependent state, amidst a whirlwind of structural changes, and in an environment that many describe as dysfunctional, over-politicized, and resource-deficient, the New Mexico Public Regulation Commission (NMPRC or PRC) is working to drive forward a New Mexican clean energy transition. The PRC’s few years of implementing of the 2019 Energy Transition Act (ETA), an ambitious statewide decarbonization law, have already been marred by controversy and even conflict—most prominently between the PRC and New Mexico’s legislature, governor’s office, and many stakeholders in a high-profile case surrounding the decommissioning of a coal-fired power plant. Some stakeholders in New Mexico view the PRC’s conduct in that case and others as an extension of a long history of regulatory incompetence, a characterization which many New Mexicans associate with the PRC’s two-decade-old system of electing commissioners. After an aggressive campaign whose supporters included New Mexico’s progressive governor, large environmental groups, and fossil fuel interests, a fall 2020 New Mexico constitutional amendment is set to change the commissioner selection process from election to appointment by 2023. In the meantime, the PRC’s five elected commissioners and small utility division staff will continue to drive New Mexico’s fast-moving energy transition.

Clean Energy and Dirty Politics

The New Mexico Public Regulation Commission (NMPRC or PRC) is formally charged to ensure that electric and other utilities offer “fair and reasonable rates” and to “assure reasonable and adequate services to the public as provided by law.” The commission as it now exists was established in 1996, when a constitutional amendment merged the former New Mexico PUC with the State Corporation Commission, which once regulated corporations, insurance, telecommunications, railroads, and motor carriers.

In just two-and-a-half decades, the PRC has generated a fair deal of controversy and frustration. Instead of improving the commission, many see the 1996 amendment as the start of decline in the quality of the PRC, continuing until today. In 2019, many stakeholders criticized how the PRC handled a case related to decommissioning a major coal plant under new climate legislation. Frustration over the case, paired with general disillusionment with the commission, set in motion a campaign for PRC reform that led to another constitutional amendment: this time to change the commissioner selection process from an election to appointment system. The shift is set to take effect in 2023.

New Mexico’s landmark climate legislation is titled the 2019 Energy Transition Act (ETA), which mandates a 50% renewable energy standard for electric utilities by 2030, 80% by 2040, and a fully emissions free grid by 2045. In recent years, designing and implementing rules related to the ETA and other clean energy legislation have dominated PRC activity. By most metrics, the PRC has been quite progressive in its climate-related regulation of New Mexico’s utilities, although some stakeholders claim that the commission sometimes supports clean energy initiatives on an overly political basis— which is to say, without robust modeling and analysis to support its decisions. Putting those criticisms aside, PRC Utility Division director John Reynolds said that,

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403 https://www.eenews.net/stories/1063372511
“The ETA gives our agency some teeth. It gives us real focus and strong authority to go forward on a clear path.”

The PRC faces diverse challenges in its new role as a steward of decarbonization. New Mexico’s historical economic reliance on fossil fuels, the poverty of a substantial proportion of its population, and its urban-rural divide makes the disruptive changes of an energy transition extremely delicate. According to many interviewees, economic development and the needs of low-income New Mexicans permeate every decision made at the PRC. Reconciling these considerations with the financial well-being of the IOU’s and the mandate for a rapid transition away from fossil fuels will continue to present a complicated challenge for the PRC.

State Context: The Mineral, Political, and Cultural Geographies of New Mexico

The five districts represented by the NMPRC’s elected commissioners feature great diversity along the lines of energy resources, economic status, political demographics, and cultural values. Districts 1, 3, and 5 host New Mexico’s significant urban centers of Albuquerque, Santa Fe, and Las Cruces—and limited fossil fuel resources. By contrast, districts 2 and 4 are rural. District 2, situated atop the mineral-rich Permian Basin, has a deep history of oil and gas drilling; in District 4, which contains much of the Navajo Nation, coal mining and coal-fired generation have long been essential to the economy. New Mexico’s solar and wind resources are excellent across the state, but the largely outdated transmission grid is sparse and better suited to fossil fuel than renewable energy infrastructure.

According to Commissioner Hall of District 1, essentially the Albuquerque metropolitan area, New Mexico’s energy resources “affect the political culture we operate in because the presence of the fossil fuel sources is geographic in nature.” Hall said that in New Mexico, legislators from the fossil fuel-rich northwest and southeast part of the state “are aggressive in trying to protect those jobs.” Elected commissioners from those districts have responded similarly to constituents, said Hall.

In a state with such split geography, the now-mandated clean energy transition is a delicate and complicated challenge. Nearly every interviewee voiced that despite its rich resources, New Mexico is a poor state by most metrics. In this environment, the goals of prioritizing economic development, protecting jobs, and not overburdening the state’s low and middle-income communities are a large factor guiding the culture and regulation of the PRC. For every PRC decision, the question of, “Long term, how is this going to affect economic development in the state?” is usually on the mind of every stakeholder and PRC official, according to Peter Gould, who represents large consumer advocacy group NM AREA.

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405 Commissioner Cynthia Hall. Personal interview. June 2021.
408 Commissioner Cynthia Hall. Personal interview. June 2021.
While some interviewees expressed optimism about the state’s prospects for solar and wind development, former PRC commissioner Doug Howe argued that renewable infrastructure just won’t provide the same number of jobs as coal plants and oil refineries once did. While many low-income and tribal groups have come to support a clean energy transition, the path forward is unclear and divisive, and the strain of a disappearing economic engine is unavoidable. In short, many agree that the economic needs of New Mexico’s low and middle income communities are essential to protect and grow, but achieving those goals amidst the energy transition remain incredibly challenging.

**The Players**

**Commissioners & Staff:** Currently New Mexico’s PRC is composed of five commissioners, each elected to represent one of five districts. The diversity of the commissioners’ backgrounds, which span environmental litigation and advocacy, oil well installation and cattle ranching, and native American energy policy, reflects that of the varying demographics, economies, and political cultures of the various districts.

Three of New Mexico’s five commissioners express a commitment to stewarding the state’s clean energy transition in their official bios. These commissioners, who represent the districts with New Mexico’s major urban centers and less fossil fuel infrastructure, often align on a more progressive approach to climate and energy issues, said Commissioner Hall. She also said that the commission seeks consensus wherever possible in order to maintain what she calls a “very cooperative, respectful, and friendly” environment.

The NMPRC staff operates fairly independently from the commissioners, as advocates for the public interest rather than advisers; John Reynolds, Director of the Utility Division, emphasized that, “Our independence is something I’m very protective about.” Reynolds described that the staff acts as an intervenor in all PRC cases, statutorily charged to balance the needs of IOU customers and shareholders. While no laws beyond those prohibiting ex parte communications bar staff members from engaging informally with commissioners or other intervenors, Reynolds said that that the lion’s share of those engagements occur within the formalities of commission cases. Peter Gould stated his opinion that the relationship between commissioners and staff appears occasionally strained.

During debates in early 2020 over House Bill 11, which would have restructured the PRC had it passed, the condition of PRC staff was at the forefront. Proponents of the bill like former PRC commissioner Doug Howe testified that PRC staff are, “Underpaid and often undervalued, and

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414 https://www.eenews.net/stories/1061970419
416 Ibid.
417 Commissioner Cynthia Hall. Personal interview. June 2021.
420 Ibid.
seriously overworked — particularly now with all that the Energy Transition Act has placed on them to do.”

Commissioner Hall and Reynolds both voiced that the passage of ETA, while motivating for many staffers, has increased the workloads and expanded the technical expertise required of the approximately 18-person utility division. “We definitely need more staff with the right skillset,” she noted. Peter Gould of NM AREA gave an example of this dynamic: during the process of resource replacement for the coal-fired San Juan generating station, the PRC staff had “absolutely no one single person that can run the models that our utilities use,” he said, adding that “the commission doesn’t seem to be worried about it.”

**The Utilities:** The PRC regulates three investor-owned electric utilities (IOU’s). PNM is by far New Mexico’s largest utility, powering 530,000 customers in most of New Mexico’s urban centers, while El Paso Electric and Xcel Energy subsidiary Southwestern Public Service (SPS) mostly service parts of southeastern New Mexico. The NMPRC is currently reviewing a proposed merger between PNM and Avangrid, a large utility owned by Spanish company Iberdrola; if the merger is approved, all three of New Mexico’s IOU’s will be owned by out-of-state companies. Peter Gould offered colorful context on New Mexico utilities: “We are a bug on a bug’s behind compared to other utilities. But because it’s the biggest thing in the state and it’s a small state, what PNM does for us is very important.”

Officials from New Mexico’s IOU’s engage formally with the PRC at hearings, and informally at open meetings, according to a utility official who spoke with the CDL. They also communicate with PRC commissioners and staff when either party has “a specific question that’s not related to a case.”

PRC and utility officials interviewed by the CDL both emphasized that at least in recent years, the ex parte rules governing commission-utility interactions have been well respected.

PNM recently committed to a carbon-free generation fleet by 2040, five years before the Energy Transition Act (ETA) mandates. However, in recent cases dealing with coal resource replacement, the utility has proposed building new natural gas infrastructure; a key facet of the utility’s plan for adhering to the ETA, as laid out by drafts of its upcoming integrated resource plan (IRP), is building more gas infrastructure as late as the 2030’s then eventually converting plants to hydrogen energy. The utility official interviewed by the CDL explained that the transition to renewable energy poses “operational complexities” that require time and experience, and that to “just get rid of gas and go all renewables before the Energy Transition Act mandated” could pose risks to the

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423 Commissioner Cynthia Hall. Personal interview. June 2021.


429 Commissioner Cynthia Hall. Personal interview. June 2021.

430 Commissioner Cynthia Hall. Personal interview. June 2021.


reliability of service. “We’re all learning this together, so it makes the regulatory cases very difficult and contentious so far,” they said.\textsuperscript{433}

**Clean energy advocates:** A network of environmental and clean energy organizations have a strong presence in New Mexico. In many cases this spectrum of organizations, which include national ‘big green’ organizations like the Sierra Club, NRDC, EDF, and Vote Solar, regional and state environmental groups like Western Resource Advocates and New Energy Economy, and local renewable energy development groups, align on PRC issues. Many such organizations coordinate through the Coalition for Clean Affordable Energy (CCAE), which is active in many PRC proceedings.\textsuperscript{434} According to John Reynolds, Director of the PRC Utility Division staff, environmental groups have “beefed up their professional and technical capabilities significantly” since the passage of the ETA, and their activity as intervenors has become more rigorous.\textsuperscript{435}

In other scenarios, fractures in the environmental coalition have emerged. For instance, New Energy Economy, which forefronts the needs of low and middle-income electricity consumers more than some other groups, broke from the mainstream environmental groups by fighting against the ETA. The organization claimed that the ETA’s plan for financing the decommissioning of coal infrastructure would strip important aspects of the PRC’s authority, benefit utilities far more than low-income New Mexicans, and was unconstitutional.\textsuperscript{436} More recently, local renewable energy developers pushed for New Mexico’s Community Solar Act and associated PRC rulemakings to include provisions prioritizing local labor, concerned that the legislation would bring in unwanted competition from out of state.\textsuperscript{437}

Rick Gilliam, Program Director of Regulatory Policy for Vote Solar, described environmental groups’ relationship with New Mexico utilities as “cordial” but not necessarily “collaborative.” In high-profile proceedings, “it has gotten pretty nasty at times,” said Gilliam.\textsuperscript{438}

**Consumer groups:** In New Mexico, the Attorney General’s office advocates for residential and small electricity consumers, and the New Mexico Affordable Reliable Energy Alliance (NM AREA) primarily represents larger consumers.\textsuperscript{439} Both groups are regular intervenors, and primarily advocate for keeping electricity rates low.\textsuperscript{440} Peter Gould, who represents NM AREA, stressed its important role of providing the PRC, which he called under-resourced, with sophisticated modeling and analysis.\textsuperscript{441} He described advocating for consumers in a small state where virtually everyone knows each other: “We have knock-down drag-out fights sometimes with other stakeholders… eventually everybody calms down and we’re able to make deals.”\textsuperscript{442}

\textsuperscript{433} Mark Fenton. Personal interview. June 2021.
\textsuperscript{434} Rick Gilliam. Personal interview. June 2021.
\textsuperscript{435} John Reynolds. Personal interview. June 2021.
\textsuperscript{437} Rick Gilliam. Personal interview. June 2021.
\textsuperscript{438} Rick Gilliam. Personal interview. June 2021.
\textsuperscript{439} John Reynolds. Personal interview. June 2021.
\textsuperscript{440} Mark Fenton. Personal interview. June 2021.
\textsuperscript{441} Peter Gould. Personal interview. June 2021.
\textsuperscript{442} Ibid.
Cities, Towns, & Citizens: According to several interviewees, representatives from a host of New Mexican cities including Albuquerque and Santa Fe, smaller towns and counties, and the Coalition for Sustainable Cities have shown up to intervene and/or participate in PRC proceedings. Interviewees have also described a growing contingent of citizen experts and activists participating in PRC cases and rulemakings, including “a core group of about 20-25 [stakeholders] who devote a lot of free time to helping improve the rules in New Mexico.” Many of the cities, towns, and citizens advocate for expanding renewable energy.

Becoming Commissioners
The PRC commissioner selection process is a case of much controversy and change in recent years. On November 3, 2020, New Mexico legislators voted Constitutional Amendment 1 into law, which mandated that the PRC switch from an elected to appointed system, slated to take full effect in 2023. A legislative nominating committee will produce a list of candidates, from which the governor will appoint commissioners to be approved by a state senate vote. The PRC is phasing from five to three commissioners, and from four to six-year terms, will maintain a 2:1 balance of political parties represented by the commissioners, and will incorporate educational requirements for commissioners.

The elected system which is being replaced has been in place since the late 1990’s. During the debates surrounding Constitutional Amendment 1, proponents of the elected system argued that commissioners have had a tradition of representing the diverse priorities of New Mexico’s five regions, and that the public vote has been relatively successful in resisting the intrusion of special interests. For example, in a 2018 primary, progressive commissioner Steve Fischmann won against moderate candidate Sandy Jones, who had campaigned with hundreds of thousands of dollars of funding from New Mexicans for Progress, a dark money group connected to PNM and other utilities. Current commissioners Becent-Aguilar (D) and Byrd (R) summed up the anti-amendment group’s main arguments in an Associated Press op-ed, arguing that Constitutional Amendment 1 would, “Make our state’s most powerful regulatory agency less representative, less responsive to the public and more susceptible to the influence of powerful special interests.”

Meanwhile, a coalition including progressive Governor Lujan Grisham, progressive PRC Commissioner Hall, the majority of New Mexico’s environmental groups, utility and ExxonMobil-funded front group Committee To Protect New Mexico Consumers, and dark money PAC Vote

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444 Commissioner Cynthia Hall. Personal interview. June 2021.
445 “New Mexico Constitutional Amendment 1, Appointed Public Regulation Commission Amendment (2020),” Ballotpedia. https://ballotpedia.org/New_Mexico_Constitutional_Amendment_1,_Appointed_Public_Regulation_Commission_Amendment_(2020)
446 Commissioner Cynthia Hall. Personal interview. June 2021.
Yes to Reform the New Mexico PRC,\textsuperscript{451} supported the change. In arguments supporting the amendment, many of these groups focused on the potential influence of special interests along with professionalism and competence issues on the PRC. The Committee To Protect New Mexico Consumers distributed flyers characterizing elected commissioners as “back-slapping politicians who have visited every Rotary Club in their district, but none of the power plants.” In a blog post, NRDC official Noah Long simply argued that, “New Mexico’s Public Regulation Commission (PRC) should be led by experts, not politicians.”\textsuperscript{452}

The pro-amendment coalition far outspent its opponents\textsuperscript{453} and was heavily active in the working group involved with designing the bill.\textsuperscript{454} Bryan Metzger, who covered the amendment for \textit{New Mexico In Depth}, attributed the success of the bill more to that coalition’s aggressive campaigning than grassroots momentum for reform.\textsuperscript{455}

Many insiders involved in the Constitutional Amendment 1 episode explain the seemingly puzzling pro-amendment coalition in light of the PRC’s early implementation of the Energy Transition Act (ETA), and the political and interpersonal complexities that stemmed from it. The PRC’s hesitance to review the decommissioning of a large coal-fired power plant under the ETA frustrated Governor Lujan Grisham and environmentalists, who sought to make quick progress in New Mexico’s decarbonization; many legislators and other state government officials, who viewed the PRC’s tactics as political and unprofessional; and PNM and other business interests, who were eager to recover the plant’s costs through a framework established by the ETA. Generally, New Mexicans of various stripes viewed the vote as a culmination of what they saw as a deep-seated professionalism and expertise problem within the elected commission.\textsuperscript{456}

Since the appointed system will not take full effect until 2023, there is no way of telling how the change will affect the commission selection process – and especially the key concerns of special interests and professionalism. After covering the whole Constitutional Amendment 1 narrative, Metzger of \textit{New Mexico In Depth} concluded that, “It’s certainly going to run more smoothly in 2023. Whether it’s going to run in the public interest is an open question.”\textsuperscript{457}

\textbf{On the Commission}

A review of how modern PRC commissioners and staff conduct themselves and engage with utilities and other stakeholders would be incomplete without consideration of the commission’s troublesome early history. In its early years, bi-partisan think tank Think New Mexico describes a PRC marred by often under-qualified and sometimes corrupt commissioners and overwhelmed by jurisdiction over too many industries. In its first decade, PRC commissioners were far less qualified than in other states, with significantly lower rates of bachelors and masters degrees in

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\item Noah Long, “Vote Yes on NM Constitutional Amendment 1,” NRDC. October 21, 2020. https://www.nrdc.org/experts/noah-long/vote-yes-nm-constitutional-amendment-1\textsuperscript{452}
\item Bryan Metzger. Personal interview. June 2021.\textsuperscript{453}
\item Bryan Metzger, “Dark money group pushing PRC reform tied to major oil company,” \textit{New Mexico In Depth}. February 12, 2021. https://nmindepth.com/2021/02/12/dark-money-group-pushing-PRC-reform-tied-to-major-oil-company/\textsuperscript{454}
\item Bryan Metzger. Personal interview. June 2021.\textsuperscript{455}
\item Doug Howe. Personal interview. June 2021.\textsuperscript{456}
\item Bryan Metzger. Personal interview. June 2021.\textsuperscript{457}
\end{enumerate}
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relevant fields like economics and engineering. Commissioner Hall, who had returned to a staff position at the PRC in the late 2000’s after working there before the restructuring, said that under the new system, “Some of the commissioners did not seem to be very knowledgeable or very intellectually engaged.” Meanwhile, nearly every year throughout the 2000’s hosted some instance of corruption or controversy at the PRC. Sometimes these related to utility influence, as with Commissioner Tony Schaefer’s habit of staying nights at the Santa Fe home of an active utility lawyer, and others time to offenses spanning embezzlement, drug abuse, and sexual assault.

In addition to electric utilities, the new commission was charged with regulating everything from telecommunications to railroads to insurance, while also hosting seemingly random divisions like the Fire Marshal’s office. At the time of its formation, this consolidation yielded what the PRC acknowledged as “the largest jurisdictional agency in the United States”—a reality that Think New Mexico argues has detracted from the overall efficiency and expertise of the PRC.

Critics of the contemporary PRC— and especially proponents of Constitutional Amendment 1— see the legacy of this early tumult as relevant today. Some contemporary stakeholders complain about dysfunction, incompetence, and over-politicization among the PRC’s commissioners, and lack of resources and mismanagement at the staff level. Doug Howe, former PRC commissioner and vocal critic of the elected system, explained that, “Most people would tell you that the most important job of the commissioners is to listen to the cases carefully, to adjudicate them carefully, and to deliver good orders.” In his opinion, by contrast, “They think their job is to manage the place. To fire and hire people.” Peter Gould of NM AREA complained that in some cases, the commissioners, “Will take a position where they feel that something the utility is proposing isn’t right, but they can’t articulate either a doable alternative, or can’t articulate exactly why it’s wrong.” Both Howe and Gould are optimistic that the switch to appointed commissioners will lead to necessary staff hires and a more professional culture.

Like most commissions, PRC proceedings consist of a mix of formal hearings and rulemakings. John Reynolds said that about 90% of his team’s relationships with regular intervenors occur in cases in front of the commission; Commissioner Hall, the utility official interviewed by the CDL, and other stakeholders described a similar dynamic. Both PRC and intervenor interviewees described situations in which informal conversations might take place within the bounds of ex parte rules, such as when commissioners need additional information or a complication has occurred with grid infrastructure.

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466 Commissioner Cynthia Hall. Personal interview. June 2021.
468 Commissioner Cynthia Hall. Personal interview. June 2021.
PRC Climate Related Outcomes
Since its passage in 2019, many of the PRC’s highest profile cases have revolved around implementing New Mexico’s Energy Transition Act (ETA). Specifically, the PRC has facilitated decommissioning processes for major coal-fired power plants, and the implementation of a host of clean energy programs.

San Juan Generating Station: Just months after the passage of the ETA, controversy over the decommissioning of PNM’s coal-fired San Juan Generating Station brought many uncertainties about ETA implementation to a front.

The ETA was arguably designed with the decommissioning of San Juan and Four Corners Generating Stations, the state and PNM’s two largest coal-fired power plants, in mind. When the ETA passed in the legislature, Governor Lujan Grisham and large environmental groups were enthusiastic to rapidly progress the retirement of these high-emitting plants. Many local clean energy and community groups also supported the ETA-sponsored severance pay and reemployment programs for those put out of work by decommissioning. PNM had negotiated significant decommissioning cost recovery options under the ETA, including selling bonds and raising customer rates. Some advocacy groups like New Energy Economy argued that those stipulations removed significant authority from the PRC to set just and reasonable rates, and called the ETA an “enemy of the poor.”

The major controversy around San Juan came when the PRC attempted to incorporate PNM’s July 2019 decommissioning application into a pre-ETA abandonment proceeding. The move, which PRC officials insisted was to provide ample time to ensure due process, was described by Governor Lujan Grisham as, “Procedural maneuvers to undermine the law and the Legislature’s role in setting energy policy.” ETA advocate State Sen. Jacob Candelaria even accused the PRC of “political game playing.”

In January 2020, the New Mexico Supreme Court issued a writ of mandamus affirming that the PRC was required to facilitate the decommissioning of San Juan according to the ETA framework. The court found that the law had passed before PNM’s application, but also emphasized that the PRC had created a “cloud of uncertainty” in its management of the case.

A year later, the PRC issued an order mandating that PNM replace San Juan’s capacity completely with solar power and battery storage rather than a ‘hybrid’ option including natural gas infrastructure, which was originally proposed by PNM. Commissioner Hall told UtilityDive that

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473 Ibid.
474 Ibid.
476 Ibid.
477 Ibid.
478 Ibid.
the decision was “basically unavoidable” in order to ensure the transition meets the requirements of the ETA.479

**Newman 6 Generating Unit Denied:** In December 2020, the NMPRC decided not to approve the construction of a 228 MW El Paso Electric Newman 6 natural gas-fired generating station, which the utility proposed as a means of replacing older units serving Texas’ El Paso and New Mexico’s Las Cruces regions. The commission’s decision was unanimous, as was the opposition of nearly all intervenors to the case. In fact, only the PRC staff and El Paso Electric itself supported the project.480

The still-young ETA was at the heart of the proceedings. Commissioner Byrd, who expressed support for the project throughout the proceedings before eventually voting against it, initially argued that relative to the infrastructure it would replace, the new plant’s reduced emissions were an effective step towards the ETA’s targets while ensuring reliability.481 Other commissioners and many intervenors argued that Newman 6’s planned 40-year life cycle would bring the emitting plant over a decade past New Mexico’s mandated 2045 target for carbon-free electricity, rendering the project in direct conflict with the ETA.482 Opponents of the project also argued that the PRC staff overestimated the costs and underestimated the reliability for alternatives to natural gas, and that the Newman 6 project was designed in accordance with Texas’ needs and laws more than New Mexico’s.483

In their recommendation to the commission, which was adopted, PRC attorneys Elizabeth Hurst and Russell Fisk affirmed that, “The highest duty of the Commission is to comply with established law” and that “EPE had failed to meet its evidentiary burden by failure to consider the ETA and amended RPS.”484 Subsequently, Chairman Fischmann suggested that future applications for new infrastructure by New Mexico IOU’s include a plan detailing how the project would comply with the ETA.485

**Avangrid-PNM Merger & Four Corners Decommissioning:** The PRC will rule in August 2021 on a proposed merger between PNM, the state’s largest utility, and Avangrid, a large utility that operates in regions across the country and is a subsidiary of Spanish utility Iberdrola.

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482 Ibid.


485 Ibid.
Proponents of the merger argue that it will bring significant benefits to New Mexico’s electricity customers, economy, and the environment— and represent a large step towards advancing a statewide energy transition. PNM spokesperson Kelly Ranae-Huber told the New Mexico Political Report that, “Our proposed merger transaction with Avangrid, a national leader in renewable energy, will help realize New Mexico’s clean energy potential;” Avangrid’s strong track record on renewable energy development demonstrates this point, argued PNM CEO Pat Vincent-Collawn in an op-ed. In the PRC proceedings around the merger, a coalition of environmental, labor, and community groups were able to secure a $270 million investment in customer, economic, and environmental benefits as a term of the merger, which commentators generally regard as a strong reflection of the companies’ material commitments to New Mexico’s economy and citizens. Supporters of the merger also pointed out that PNM’s executive and board officials will still primarily be New Mexicans.

During the merger proceedings, PRC officials, some environmental groups, and other stakeholders scrutinized PNM and Avangrid on various counts. PRC hearing examiner Ashley Schannaur required Avangrid to address $60 million in fines recently charged in other states for unreliable and costly electric service, which the company had failed to mention in its original filing. Some environmental groups are concerned about PNM’s murky plan for the high-emitting Four Corners generating station, which leaves open the possibility of selling its 13% stake to the Navajo Transitional Energy Company (NTEC), who would likely keep the plant operational for several years to come. New Mexico State University faculty member and utility consultant Larry Blank is also concerned that were the deal to pass, PNM and Avangrid could “use the size of the merged companies to essentially quash renewable energy development that does not belong to Avangrid,” a market domination that could potentially stifle New Mexico’s ability to keep up with the most innovative clean energy technologies. The utility official interviewed by the CDL dismissed this point, pointing out that New Mexico’s laws regulating utility resource procurement are very strict.

Other advocates are concerned that the merger is not doing enough for low-income customers, to keep rates low, and to make sure the merged companies are governed by a board of independent and New Mexican officials.

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490 Ibid.  
491 Ibid.  
494 Ibid.
Transportation Electrification Plans & Other Clean Energy Rulemakings: By mandate of the 2019 Transportation Electrification Act, all three of New Mexico’s IOU’s have in the past year submitted plans for expanding New Mexican vehicle electrification infrastructure. For New Mexico utilities, environmental advocates, New Mexico consumers, and the PRC, which quickly approved the plans of all three utilities, these plans are cause for optimism.

El Paso Electric (EPE) and PNM each have plans to introduce rebates for customers to build residential and commercial EV charging stations, including PNM’s initiative for expanded rebates for low-and-middle-income customers. They also have plans in place to reduce rates at non-peak hours to reduce stress on the grid, work with community groups on outreach programs promoting vehicle electrification, and continue studying developing opportunities to expand electric vehicle infrastructure in New Mexico. PNM’s Transportation Electric Plan budget for 2021-2022 is clearly the largest at $8,438,00; EPE’s totals $605,420495 and Xcel is setting aside $3,168,000 through 2023.496

In addition to the PRC rulemakings related to the Transportation Electrification Act, a handful of other new laws are currently directing clean energy rulemakings. For example, New Mexico passed the Community Solar Act in spring 2021, and the PRC has until April 2022 to finalize rules regulating how community solar project applications are processed.497 Similarly, the legislature passed the Energy Grid Modernization Roadmap in 2020. In June 2021 New Mexico utility SPS filed the first application to the PRC under the law, which will seek to recover costs for investments in net metering and other technologies– and put the PRC’s interpretations of the law to the test.498

Conclusion
The NMPRC is unique to this report as a commission whose metrics of success are split: its recent history has featured both ambitious action on climate change along with widespread criticism for dysfunction, incompetence, and over-politicization. New Mexico’s 2019 Energy Transition Act (ETA) put the commission in a position to seriously advance an energy transition in the electricity sector, a charge which it has for the most part implemented aggressively into its regulation. Yet, the commission’s recommendations have sometimes been criticized as over-political and under-researched, and its interactions with utilities, stakeholders, and other branches of state government has garnered an overwhelming sense of disapproval and frustration. This sentiment, which came to a head during the events surrounding the decommissioning of the San Juan generating station, fueled an aggressive– and shadly– campaign to reform the PRC from an elected to appointed commissioner selection system. Most of the interviewees that spoke the CDL are optimistic that the change has the potential to improve the expertise and professionalism of the commissioners along with the personnel and resources of the staff.

The fast-moving energy transition continues making disruptive changes to New Mexico’s economic and physical landscapes, and a significant authority for guiding that transition now takes place in the halls of the NMPRC. The commission has showed its commitment to the transition; hopefully, restructuring will restore New Mexicans’ confidence in its ability to regulate with expertise, balance, and integrity.

**Interviews:**
- Kendra Chamberlain, Reporter, NM Political Report.
- Bob Perls, former New Mexico state representative.
- Brian Harris, assistant and advisor to NMPRC Commissioner Fischmann.
- Bryan Metzger, Reporter, New Mexico In Depth.
- NMPRC Commissioner Cynthia Hall.
- John Reynolds, Director, NMPRC Utility Division.
- Former NMPRC Commissioner Doug Howe.
- Anonymous New Mexico utility official.
- Rick Gilliam, Program Director of DG Regulatory Policy, Vote Solar.
- Peter Gould, Gould Law Firm & NM AREA.
- Anonymous New Mexico consumer advocate.
The Takeaway
Washington’s Utilities and Transportation Commission (WUTC) is characterized by institutional strength and good governance, and tasked with implementing one of the nation’s more ambitious electricity sector decarbonization plans. Washington governors have been consistent in appointing specialized government officials as WUTC commissioners, who in turn have, alongside their staffs, consistently carried out their duties in a highly technical and balanced manner. Stakeholders across the spectrum report productive and balanced relationships with WUTC officials, and commend the commission for facilitating similar engagements amongst themselves in procedural contexts. In recent years, the WUTC’s task of implementing Washington’s aggressive Clean Energy Transformation Act (CETA) has dominated its activities and provided a number of hotly contested rulemaking issues. That process renders the WUTC one of the country’s most climate progress-oriented commissions. However, it is facilitated by Washington legislation rather than more internal WUTC actions, begging the question of what further opportunities remain for centering climate change in WUTC regulation.

Facilitating Decarbonization, by Legislative Mandate
The Washington Utilities and Transportation Commission (WUTC or UTC) is a three-member body charged with regulating electric and gas utilities, telecommunications, transportation, and aspects of waste and water management. The commission’s website describes its mission “to protect the people of Washington by ensuring that investor-owned utility and transportation services are safe, available, reliable and fairly priced.” WUTC commissioners are appointed by the governor and confirmed by the State Senate.

A large portion of the WUTC’s duties involve regulating the state’s three investor-owned utilities: Puget Sound Energy (PSE), Avista Energy, and PacifiCorp. Officially a “quasi-judicial” body, the commission has the power to act as judge and litigant while ruling on topics including “rates, expenses, and programs” proposed by the utilities. The commission describes itself as a defender of public interest against market abuses, acting as a “substitute for competition” for the utilities, which are natural monopolies.

Like many others, the commission refrains from explicitly framing any of its duties in terms of combating climate change, but its activities have become increasingly decarbonization-focused since the passage of Washington’s 2019 Clean Energy Transformation Act (CETA). In an interview, high-ranking commission staffer Mark Vasconi explained that, “Our guiding principle is to set rates that are fair, just, and reasonable. The embrace of environmental considerations and externalities, and even social externalities… those explicitly come out at CETA.”

CETA commits Washington to ban coal-fired electricity generation from its electric portfolio by 2025, achieve carbon-neutrality by 2035, and 100% renewable or non-emitting electricity by 2045. The bill calls on many state agencies to participate in its implementation and enforcement,

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500 ibid
but reserves much of the process to be guided by UTC rulemaking. As such, the commission’s role in the recent years has largely involved CETA rulemaking, from facilitating the restructuring aspects of Washington utility integrated resource plans, to hosting proceedings determining the role of social cost of carbon in Washington, and much more. For some, the details of CETA are as unclear as they are ambitious, leading to several contested debates across various topics of CETA implementation.

Interviewees generally agree that in the last decade, the WUTC has demonstrated relatively high levels of functionality and integrity to its stated mission. Specifically, the WUTC has successfully fostered a relatively level playing field among diverse stakeholders, made its activities accessible to the public and civil society groups, and operated without any major scandals. A Washington utility official told the CDL that the WUTC “stands apart as one of the most functional commissions.” With that said, stakeholders have plenty of qualms with various aspects of the commission. For example, some clean energy advocates argue that the commission could be more ambitious in CETA implementation, while some business groups express that the commission should at times use more caution to avoid overstepping its regulatory authority.

Even those more critical of the commission, however, expressed a baseline level of respect for its competency and professionalism. While this report purposefully refrains from categorically defining a successful utility commission in rigid terms, it is clear that the WUTC has been effective in building mutual trust with stakeholders and the public, and has been an impactful steward of consumer rights and the clean energy transition.

### State Context: Politeness, Collaboration, Hydro, and a Green Ethic

**Jay Inslee, the Democratic Majority, and Climate Change:** WUTC staffer Mark Vasconi described the people of Western Washington, where the majority of the state’s population resides, as one of the most environmentally concerned populations in the country. Mariel Thuraisingham of environmental justice advocacy group Front and Centered expressed that this public often exerts, “A lot of external pressure on lawmakers and policymakers to demonstrate that they [are] actually serving the public interest, trying to align the political agenda with social welfare and social justice.” Dan Kirschner of the Northwest Gas Association simply noted that, “There’s a lot of anti-fossil fuel sentiment in this state,” and that attitude affects all levels of government.

These political attitudes often manifest in Washington’s elected offices as well. Washington voters recently re-elected Washington’s Democratic Congressional majority and elected Democratic Governor Jay Inslee, who is well-known for his progressive climate policies, for his third term. Washington’s liberal electoral outcomes have had clear policy implications for climate and energy

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Governor Inslee continues a string of Democratic executives in Washington that have held office since 1985. An anonymous interviewee told the CDL that this party consistency has opened space for cultural values like a ‘green ethic’ to materialize in WUTC decision-making. They also expressed that, in their opinion, the commission under Governor Inslee has become more politically motivated than it may have been in the past, especially with regards to climate change and energy issues.\(^{510}\) The utility official interviewed by the CDL echoed that WUTC officials have a strong relationship to Governor Inslee’s office, which may affect the commission’s approaches to regulatory issues.\(^{511}\)

WUTC staffer Mark Vasconi was candid about the commission’s role in the broader state political context. “A utility commission’s operation is really a reflection of the kind of institutional forces that the state government seems to have in play,” he said, adding that its decisions often reflect patterns in legislative and gubernatorial policy.\(^{512}\)

**Hydropower, Markets, and the Resource Economy:** Hydropower has a large place in the history of Washington’s natural resources and energy markets. In Washington, hydropower resources are owned by investor-owned utilities, public utilities, and the federal government. They serve as a key alternative to coal as a consistent, dispatchable baseload energy source.

WUTC staffer Mark Vasconi sees Washington’s hydroelectric history as a critical foundation for other clean energy development. He said its abundance in the state makes Washington’s “embrace of clean energy… somewhat easy.”\(^{513}\)

For Doug Howell of the Sierra Club, who shares similar sentiments, hydropower has not only replaced coal as a base load source for Washington’s energy mix, but has also greatly affected the development of natural gas in the energy mix. According to Howell, “Our natural gas system was built up alongside our hydro system” and now constitutes a ‘capacity’ source, which is used more flexibly than hydropower or coal. In other words, Howell views natural gas in Washington as an electricity source to be dispatched during periods of peak demand, when hydropower and other renewable electricity need support. Howell added that for environmental advocates in a soon to be coal-free Washington, “When we’re talking about climate change in the electricity sector, we’re talking about gas now.”\(^{514}\)

The utility official interviewed by the CDL contested the idea that hydropower made developing clean energy ‘easy’, calling that assertion a “complete overstatement.” For them, private utilities’ access to regional energy markets, which include various hydropower sources along with coal, gas, and renewable power from across the West, has been the “lynchpin” for facilitating the clean energy transition.\(^{515}\)

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\(^{513}\) Ibid.


Good Governance: Mark Vasconi repeatedly highlighted the importance of ‘good governance’, or focusing “on what’s good for those who are governed,” in understanding Washington’s political culture and its implications for the WUTC. Washington, he said, has “cultural foundations… that are generally founded in a sense of respect.” He sees this attitude as both widely shared by citizens and government officials, noting how a string of moderate Republican governors in the late 20th century especially set a positive example for Washington. Several interviewees viewed Washington’s three sitting UTC commissioners as strong, balanced leaders who have made significant progress promoting good governance. Many interviewees also explicitly mentioned the commission’s mandate to provide safe and reliable energy at just and reasonable rates, perhaps indicating that this concept is well-communicated and widely understood across stakeholder groups.

‘Northwest Nice’: Another cultural element that several interviewees brought up as relevant to the Washington regulatory arena is what Doug Howell calls ‘northwest nice’, or a general sense of politeness and cordiality. Howell argued that this cultural phenomenon has at times created more space for across-the-aisle collaboration, including in regulatory settings. Joni Bosh of the Northwest Energy Coalition, which advocates for clean energy, described that, “Up here even the people who strongly disagree with the testimony I’d just given were friendly to me in the hallway.”

With that said, both Bosh and Howell have noticed a subtle shift in this dynamic in the past several years. Bosh mentioned that there has been an uptick in tension and sometimes even hostility in the years since Donald Trump’s presidency, and while that’s mostly been concentrated in the legislature, there is sometimes spillover into the WUTC.

Howell and others described a “culture shift” within the WUTC itself since the conservative-leaning Republican commissioner Jay Balasbas was appointed. While the WUTC commissioners have always strived towards consensus, says Howell, “There’ve been many climate decisions as of late where Balasbas has been a dissenting opinion. This is a new age.” An anonymous business advocate sees the polarization going two ways, with trends such Washington’s growing “anti-fossil fuel sentiment” contributing to there being “more politics injecting into the process than there have been in the past.”

Mark Vasconi, a senior commission staffer, was more cautious about such sweeping characterizations.

The Players
Commission and Staff: Washington’s three commissioners are supported by 150 staff, split into several divisions. The Energy Section staff are given major responsibilities in UTC procedures, including acting as a litigant in proceedings and participating in various advisory groups. Joni Bosh

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520 Ibid.
522 Ibid.
said that commissioners are generally receptive to the recommendations of their staff, whose insulation from political incentives and high level of expertise make them a powerful resource and the driving engine of the commission.\textsuperscript{526}

Both WUTC commissioners and staff are generally described by interviewees using adjectives including competent, functional, stable, knowledgeable, and accessible. The utility official interviewed by the CDL pointed out that the commission’s strong leadership and a close relationship with the governor’s office are keys to its success.\textsuperscript{527} Dan Kirschner of the Northwest Gas Association said that WUTC commissioners and staff, “Seem to have a pretty open door policy, not just to me but in general. All three of them are really interested in learning as much as they can from as many stakeholders as they can.”\textsuperscript{528}

While Tyler Pepple of industrial energy group AWEC stated his view that the Commission is balanced and accessible, he mentioned that it would be more successful if it were to more actively recognize its jurisdictional limitations, or in his words, act “as a regulator rather than a board of directors” to Washington utilities.\textsuperscript{529} Pepple was not the only interviewee to express the opinion that the WUTC at times oversteps its authority, a pattern which is especially complicated as both a quasi-judicial entity (i.e. rate cases) and quasi-legislative entity (i.e. CETA implementation and rulemaking).

Mark Vasconi of the WUTC emphasized that objectivity, credibility, and fairness were core values for the commission. One example he offered of how these values manifest on the commission is its efforts to create healthy space between the daily activities of commissioners and staff, which Vasconi says avoids groupthink.\textsuperscript{530} Another example is balancing the commission with staff with diverse backgrounds, making sure staffers with environmentalist outlooks are complemented by more technical thinkers. Vasconi tells his teams that, “They can have whatever bias they want, but their recommendations have to be thrown down the middle of the plate.” He continued that, “The output of the organization has to be reflective of sound economics and sound engineering… I don’t want ideologues. I want people that have a close association with reason and facts.”\textsuperscript{531}

Research and interview data yielded limited evidence of any legally or ethically questionable conduct between commission officials and Washington utilities or stakeholders in general.

**“Joint Utilities”:** Washington’s three main investor-owned utilities, Puget Sound Energy (PSE), Avista, and PacifiCorp, are often referred to in dockets as the “Joint Utilities”. Often, the utilities participate in hearings as a coordinated front, sometimes also joined by Washington natural gas utilities. Of the three, PSE maintains the largest business operations in Washington and is generally the most heavily active in WUTC proceedings.

Altogether, Washington utilities appear relatively progressive compared to some others across the country, with plans to comply with Washington’s requirement for 100% non-emitting electricity

\textsuperscript{526} Joni Bosh. Personal interview. October 2020.
\textsuperscript{527} Anonymous utility official. Personal interview. December 2020.
\textsuperscript{528} Dan Kirschner. Personal interview. December 2020.
\textsuperscript{529} Tyler Pepple. Personal interview. November 2020.
\textsuperscript{530} Mark Vasconi. Personal interview. November 2020.
\textsuperscript{531} Ibid.
by 2045 and very few instances of political scandal or disrespect of the WUTC regulatory process.\textsuperscript{532}

The Washington utility official interviewed by the CDL described “some interesting power dynamics” between the utilities, especially when it comes to government and regulatory involvement. They ordered relative influence in Washington from most-to-least, with PSE at the top, then PacifiCorp, Avista, and the gas utilities. The big three investor-owned electric utilities often coordinate in regulatory issues, they said, noting that “coordination among the utilities is critical as single-utility efforts could face opposition from other utilities or lack the statewide political capital to get legislation across the finish line.” They added that “PSE, with its large customer base plays a major role in influencing legislative and regulatory outcomes.”\textsuperscript{533}

To what extent statewide political attitudes influence utility decision-making is complicated in Washington. CETA requires that the utilities rapidly decarbonize, a process largely planned and facilitated in utility Integrated Resource Plans (IRP’s), which are released roughly every three or four years. While long-term planning, according to the utility official, is “very divorced from the political conversation,” it is simultaneously influenced by tensions and “moving targets” caused by changing political environments in Washington state and elsewhere.\textsuperscript{534} This is especially complicated for companies like PacifiCorp, which service six states throughout the West.

WUTC staff Mark Vasconi described utility planning as “driven by financial interests,” but more readily highlighted the importance of customer political attitudes in shaping those interests. In Western Washington, for example, Vasconi points out that PSE has to respond to the popularity of environmental values and “balance it against what could potentially be price increases in pursuit of renewables.”\textsuperscript{535}

“\textbf{The Advocates}”: The group often referred to in dockets as “The Advocates” is primarily composed of environmental and consumer advocacy organizations, prominently including The Sierra Club, Northwest Energy Coalition, Front and Centered, and others. These organizations advocate for a range of climate and energy policies including clean energy development, decarbonization, and energy equity measures like keeping rates down during the COVID-19 pandemic. While the advocates are all frequent intervenors in WUTC dockets, The Sierra Club is the most “frequent flyer” on the commission’s radar, according to Mark Vasconi.\textsuperscript{536}

Although environmental and consumer groups usually have significantly smaller staffs and resources than the utilities dedicated to WUTC issues, they have inarguably made a significant impact on the commission and Washington climate and energy politics at large. As with many states, Washington’s advocacy organizations show up week after week to WUTC proceedings, and had a large role in pushing for the passage of CETA, the retirement of units of the Colstrip coal-fired power plant managed by Washington utilities, and COVID-19 consumer protection measures.

\textsuperscript{532} Joni Bosh. Personal interview. October 2020.
\textsuperscript{533} Anonymous utility official. Personal interview. November 2020.
\textsuperscript{534} Ibid.
\textsuperscript{535} Mark Vasconi. Personal interview. November 2020.
\textsuperscript{536} Mark Vasconi. Personal interview. November 2020.
While it is clear that environmental advocates wield a considerable amount of political power in Washington state, some stakeholders have alluded to times where they have been difficult to work with. The utility official interviewed by the CDL noted that environmental advocates rarely have to deal with the “implications from the implementation and tactical operation of a utility system,” which makes it easier to “take extreme positions.” Vasconi said about some environmental advocates that, “You can have particular voices that are particularly loud, but unless they’re bringing something other than an unfiltered advocacy position that’s based more on rhetoric than fact, they don’t necessarily help the record a lot.”

**Consumer Advocates: AWEC & the Public Counsel:** There are two major institutions advocating for electricity consumers in Washington: the Attorney General office’s Public Counsel Unit, and the Alliance of Western Energy Consumers (AWEC). The major distinctions between the two are essentially that the Public Counsel is a government group mostly protecting small-to-medium energy consumers like residential homes and small businesses, whereas AWEC is a business group advocating for large industrial consumers. Both groups are frequent intervenors at WUTC proceedings, although the nuances of their respective advocacy issues are often markedly different.

According to its website, the Public Counsel Unit “represents customers of state-regulated, investor-owned utility companies” in WUTC as well as legal and legislative settings. The Public Counsel’s mission is simply to “ensure that regulated utilities charge fair and reasonable rates and provide safe and reliable service.” As an intervenor, the Public Counsel has dynamically aligned with AWEC, Washington utilities, and environmental advocates depending on the issue at hand. The Unit’s involvement in climate and environment issues is especially complex, as it sometimes balances its clear mandates for cost minimization and a more implied responsibility to ensure long-term sustainability – both economic and environmental – in the utility industry. The CDL was not able to interview an official from the Public Counsel Unit.

AWEC represents large industrial consumers in diverse industries including manufacturing and technology. AWEC’s stated mission is to “ensure reasonably priced, reliable power for its members.” Compared to the Public Counsel, AWEC is usually less eager to make sacrifices to low costs for positive environmental outcomes – simply because energy-using companies have different priorities than private citizens. Tyler Pepple, who works with a law firm that often intervenes on behalf of AWEC, said that AWEC usually seeks to align its interests with the Public Counsel on pure rate issues. Pepple said regarding environmental advocates, however, that, “A lot of the time their interests just don’t overlap with what we are interested in in that case, so we kind of just exist in different bubbles.”

**Becoming Commissioners**

The WUTC is composed of three commissioners and their staff, always with at least one commissioner of the minority political party. Commissioners are appointed by the governor and confirmed by the state senate majority. Once confirmed, commissioners serve six-year terms.

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In the past decade, only two appointments have taken place, of current commissioners Ann Rendahl (D) and Jay Balasbas (R). Both appointments were regarded as generally uncontroversial, and met limited pushback from the state senate and public. Joni Bosh of NW Energy Coalition accredits this in large part to the fact that each appointment were considered ‘insiders’; Rendahl held several roles within the UTC prior to becoming a commissioner, and Balasbas previously served in the governor’s Office of Financial Management and in the Washington House of Representatives. Bosh describes Washington’s commissioners as highly competent technocrats that “understand the UTC’s responsibilities and their breadth of coverage completely.” Other interviewees, including Mark Vasconi and the utility official interviewed by the CDL, highlighted the commissioners’ background working within Washington’s political and regulatory spheres as a key to their competence.

While much of the power over the commissioner appointment process falls in the hands of Washington’s governor, attributing gubernatorial campaign financing trends to potential industry influence may in this case be tenuous. Washington hasn’t had a Republican governor since the 1980’s, and the current governor Jay Inslee has historically accepted limited or no campaign contributions from utility companies. It may be worth noting, however, that Insee has collectively received tens of thousands of campaign contributions over the course of his political career from environmental groups including the League of Conservation Voters, the Sierra Club, Environment America, and others. With that said, Washington governors’ recent history of appointing officials already embedded in state government implies a realized value of institutional competency over forces like partisanship or special interests.

**On the Commission**

Stakeholders engage with the WUTC and each other in a variety of formal and informal settings, as with all states. The commission’s three basic decision-making procedures, as described on its website, are:

1. A formal rate case, filed by the company;
2. A commission-initiated rulemaking case to handle broad issues; and
3. A mediation to resolve case issues or party disputes without litigation.

Formal rate cases are quasi-judicial processes in which a docket is opened, stakeholders and the public can intervene, and the commission issues an order. Rulemakings are like a “legislative fact-finding process” in which the commission, utilities, and any interested parties coordinate informally in settings like comment submissions, workshops, and meetings to determine how to interpret laws, like CETA. Mediation processes occur when stakeholders wish to settle a dispute.

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543 Ibid.
547 Follow the Money. https://www.followthemoney.org/show-me?dt=1&c-t-eid=2912405&d-cgc=5#f1[gro=d-eid

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without the long processes of full legal hearings or rulemakings, and are less common than rate cases or rulemakings.\textsuperscript{550}

When asked which stakeholder voices get most heard over the course of WUTC hearings and rulemakings, interviewees from different backgrounds agreed that the commission works hard to balance the diverse positions of utilities, advocates, consumer groups, and the public. Diverse interviewees further expressed that WUTC officials provide balanced access regardless of the stakeholder. Many interviewees highlighted the commission’s efforts to make itself accessible as a major part of its success building institutional trust, transparency, and a strong regulatory process.

Mariel Thuraisingham from Front and Centered, whose staff is significantly smaller than utility companies’ government relations teams, said that, “Advocates are able to and do ask for things here that would be pretty unimaginable in other places,” and that staffers occasionally reach out actively seeking an opinion.\textsuperscript{551}

When asked whether utility officials have any special access to the commission, staffer Mark Vasconi simply replied, “They clearly provide their point of view to us informally, but so does everybody else.”\textsuperscript{552}

Advocates do feel that the utilities generally get more access to regulators, but that it’s largely a function of their comparatively extensive resources. Thuraisingham noted that utilities have the money to pay full-time lobbyists, personnel for whom “all they do is try to find the ears of the commission, all they do is ask for meetings, and submit filings, and do informal reach-outs.”\textsuperscript{553} Joni Bosh said that all three Washington investor-owned utilities have “massive staffs” and “whole government affairs and regulatory review departments.” Bosh often represents NW Energy Coalition on calls where “there’ll be six or seven people from PSE, five people from Avista, another five people from Pacific.”\textsuperscript{554}

With that said, Thuraisingham rejected that dynamics like “back-scratching between utilities and commission staff… in some closed room somewhere,” are relevant in Washington.\textsuperscript{555} The utility official interviewed by the CDL emphasized that their company’s relationship with the commission holds itself to high legal and ethical standards;\textsuperscript{556} Vasconi noted that informal lobbying from various stakeholders is sometimes “really helpful” to the commission and that “there’s only so much that you can correctly impart on paper.”\textsuperscript{557}

An exhaustive search of archival newspapers via Lexis Nexis seemed to confirm the uncontroversial nature of commission-stakeholder interactions, yielding only one case of reporting about problematic utility interference: a 2002 article from The Electric Daily titled “Puget Knuckles Wrapped for Lobbying Tactics.” This story described an occasion in which PSE stockholders wrote to public officials asking that they pressure commissioners over a rate case;

\textsuperscript{550} Ibid.
\textsuperscript{551} Mariel Thuraisingham. Personal interview. October 2020.
\textsuperscript{552} Mark Vasconi. Personal interview. November 2020.
\textsuperscript{553} Mariel Thuraisingham. Personal interview. October 2020.
\textsuperscript{554} Joni Bosh. Personal interview. October 2020.
\textsuperscript{555} Mariel Thuraisingham. Personal interview. October 2020.
\textsuperscript{556} Anonymous utility official. Personal interview. November 2020.
\textsuperscript{557} Mark Vasconi. Personal interview. November 2020.
after the commission issued a warning, PSE promptly called their action “not right” and a “healthy reminder of the rules.”

**WUTC Climate Related Outcomes**

**CETA Implementation:** When Washington’s legislature passed the Clean Energy Transformation Act (CETA) in the spring of 2019, much of the implementation work was delegated to the WUTC. Specifically, the WUTC undertook a three-year long series of rulemakings and mandates that span outlining guidelines for CETA-required Clean Energy Implementation Plans, reworking requirements for utilities’ Integrated Resource Plans, and setting new standards around renewable natural gas (biomethane), EV’s, and net metering. The WUTC is also tasked to facilitate several stakeholder workgroups to coordinate on such issues. The commission provides an in-depth overview of their role in CETA implementation [here](#).

Most interviewees, representing every major stakeholder group, described CETA as unclear and dense legislation. Tyler Pepple, whose law firm often intervenes on behalf of the Alliance of Western Energy Consumers (AWEC), described how technical ambiguities throughout CETA have “resulted in a lot of differing interpretations on what the law requires and what the UTC should be doing in its rules.”

Interviewees highlighted several key examples of controversies in CETA implementation. Since CETA rulemaking procedures began, for example, stakeholders have disagreed about simple questions of when compliance with aspects of the law begins and when utilities have to hit certain targets. Stakeholders have also argued about whether CETA should require utilities to incorporate the social cost of carbon into planning and acquisitions decisions outlined in their IRP’s, a debate that often centers around disputes about whether carbon pollution should be considered a fixed or variable cost. They have also disputed how to regulate Washington utilities’ frequent participation in electricity from regional energy markets, especially when other states’ energy infrastructure may consume more carbon than Washington’s. Some stakeholders argue that CETA requires a system that ensures every electron Washington utilities bring to load comes from renewable or non-emitting sources, while others argue that such a system would be “technically impossible,” could “frustrate larger Western market dynamics,” and “make it cost prohibitive to comply with CETA.”

**Colstrip Power Plant:** The last half decade has hosted a series of divisive and high-profile regulatory controversies in the WUTC surrounding Colstrip Power Plant in eastern Montana, the Northwest’s largest coal plant. Currently, all three of Washington’s major investor-owned
utilities own stakes in Colstrip: PacifiCorp owns 10%, Avista 15%, and PSE 25% of each of Colstrip’s remaining operational units, 3 and 4. Even though Colstrip is an out-of-state facility, it is of great importance to the WUTC as a longtime provider of a significant portion of Washington’s electricity.

Tensions over Colstrip between environmentalists, the WUTC, and Washington’s utilities predate the 2019 passage of CETA. Over the course of the 2010’s, building anti-coal political pressure in Washington influenced a series of WUTC investigations and eventual mandates for the retirement of Colstrip coal-fired generating units. By the late 2010’s, the retirement schedule for Colstrip units were tightened to 2027, only two years later than CETA would subsequently mandate.

After the passage of CETA, the WUTC ruled to block a proposed sale of Puget Sound Energy’s 25% stake in units 3 & 4 to South Dakota-based utility NorthWestern Energy. The WUTC docket’s October 2020 resolution emphasized that the sale could end up costing customers, did not constitute the Least Cost Resource to meet CETA decarbonization goals, and would prematurely sell electricity transmission infrastructure that would be valuable for future energy markets. According to Doug Howell of the Sierra Club, this WUTC decision ruled against a deal that would have allowed PSE to ‘export emissions’ out of state at a heightened cost for consumers.

A current WUTC matter of significant debate is how to replace the baseload power historically provided by Colstrip Units 3 & 4. While the matter is far from resolved, Mark Vasconi and other interviewees anticipate the gap to be filled by a mixture of new development in natural gas, renewable energy, energy storage and efficiency, as well as continued participation in regional energy markets. The pressing question is how those options will be weighed in utility planning, government investment, and WUTC regulation.

Clean energy advocates like Howell are especially optimistic about Montana’s excellent wind sources, while Mark Vasconi is supportive of aggressive wind energy development but skeptical that it can occur at the pace necessary to give energy security. Vasconi insists the shift away from Colstrip’s coal-powered energy “has to be done in such a way that we don’t have brownouts,

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572 Ibid.
because if we have brownouts, we lose support for the ongoing development of renewables."  

Vasconi, along with Dan Kirschner of Northwest Gas Association, shared concerns about meeting peak energy demand in winter, where sun and wind resources are both low, as well as concerns relating to transmission infrastructure and relying too heavily on the resources of other jurisdictions. They see natural gas as a logical option to address this challenge.  

Realistically, while stakeholders will push the WUTC in all directions in their regulation of Washington utilities post-Colstrip, future developments in Washington’s energy transition will be far from uniform.

**Conclusion**

Washington’s utility commission appears to be outstanding for its integrity to its stated mission, promoting transparency and balance in stakeholder and public engagement, and high level of functionality and staff competency. By virtue of its responsibilities in the CETA implementation process, the WUTC has also been effective in facilitating one of the most ambitious state-wide grid decarbonization efforts in the country. What have been keys to the WUTC’s relative success as a regulatory agency, how can it be further improved, and what can it tell us about the potential roles of climate governance across utility commissions?

Interviewees across the board highlighted that strong state institutions serve as a key foundation for the WUTC’s success. A tradition of stability and good governance along with shared expectations between the commission and its stakeholders create an environment amenable to building out robust institutional knowledge and conducting functional operations.

Those involved in the commission – commissioners and staff, utilities, and advocates – themselves play an integral role in constructing and maintaining a successful commission. WUTC officials seem to make a concerted effort to promote balance and cooperation between diverse stakeholders, maintaining lines of communication with representatives from every major stakeholder group and often promoting coordination through working groups and forums. Among other benefits, this priority has narrowed power imbalances between utilities and advocates and contributed to an environment in which all stakeholders interviewed expressed attitudes of mutual respect and usual willingness to work together.

The WUTC staff also appears to be a strong asset: interviewees described it as large, specialized, and well-organized, with relatively infrequent commissioner and staff turnover and active engagement with resource-sharing organizations with commission officials on the regional and national scale. On the last point, Mark Vasconi commented, “State commissions cannot operate in their own sort of universe.”

Some stakeholder groups argue that the WUTC can at times overreach its jurisdictional responsibilities, such as interfering with unnecessarily particular aspects of utility operations. Stakeholders also point out that the commission is becoming increasingly politicized: some

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574 Ibid.
criticized it for injecting statewide climate politics into its regulatory duties, while others voiced that Commissioner Balasbas had specifically threatened the commission’s standard of consensus with his politically conservative tendencies.

The WUTC’s trajectory in recent years provides a complicated case for examining potential roles for utility commissions as climate governance agencies. The WUTC has been active in facilitating CETA implementation, an outstandingly progressive clean energy plan. However, whether or not it deserves credit as a ‘climate-forward’ commission remains a difficult question. With no constitutional mandate, the WUTC’s activity facilitating Washington’s clean energy transition generally comes in response to legislative action, as with CETA, or as an implicit aspect of more technical regulatory activity, as with Colstrip Power Plant dockets.

Climate change is a daily concern for WUTC staff and stakeholders, but a central question remains: is the utility commission a climate agency? Would the WUTC’s work facilitating Washington’s decarbonization be possible without the state’s consistent Democratic electoral majority, ‘green ethic’, and access to robust hydropower and wind markets? The WUTC is arguably the most climate-forward commission featured in this report, but it is important for experts to evaluate the nature of this identity – and opportunities for further regulatory innovation.

**Interviewees:**
- Mariel Thuraisingham, Clean Energy Policy Lead, Front and Centered.
- Joni Bosh, Senior Policy Associate at NW Energy Coalition.
- Doug Howell, Senior Regional Representative, Sierra Club.
- Mark Vasconi, Director of Regulatory Services, WUTC.
- Anonymous utility official.
- Tyler Pepple, Attorney at Davison Van Cleve, which often represents Alliance of Western Energy Consumers.
- Dan Kirschner, Director, Northwest Gas Association.