



NW Energy Coalition

November 28, 2023

Kathy Hunter
Acting Executive Director & Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: Joint Comments on Behalf of the NW Energy Coalition, Washington Physicians for Social Responsibility, The Energy Project, Sierra Club, and Climate Solutions on the UTC energy equity and justice rulemaking (Docket A-230217)

Dear Ms. Hunter,

The NW Energy Coalition, Washington Physicians for Social Responsibility, The Energy Project, Sierra Club, and Climate Solutions appreciate the opportunity to provide comments in this inaugural rulemaking on energy justice and equity at the Utilities and Transportation Commission (“UTC” or “Commission”).

We appreciate that the Commission promptly responded to our request, and that of others, for a comment deadline extension as it is our hope that notices for public comment in this equity docket (and all dockets) will be issued, at a minimum, one calendar month ahead of the deadline. A sufficient notice timeline will promote inclusivity and procedural justice within this decision-making process. Sufficient notice to provide comments will also help ensure that all interested parties have the opportunity to provide substantive and well-supported feedback that will help us level-set in such an important and precedential rulemaking.

We offer the comments below in response to the direct questions that the Commission has posed in its September 29, 2023 notice for comments.

Introduction

Historically, decision-making processes within the energy system have been inaccessible for individuals and communities to meaningfully participate. This is due to the complex judicial nature of the decision-making processes and to the legacy of systemic racism embedded in many of our “business-as-usual” policies and processes. Energy justice is achieved by a “global energy system that fairly disseminates both the benefits and costs of energy services, and one that has representative and impartial energy decision-making.”¹ The four dimensions of energy justice—recognition, procedural, distributional, and restorative—are each critical components in addressing and changing the framework of the energy system. Procedural justice “reveals who is at the decision-making table and promotes diverse representation of impacted communities among decisionmakers and energy service providers.”²

What procedural justice considerations would you like to see discussed?

The following six procedural justice considerations highlighted in the 2022 Energy Equity Project Report³ are suggested for regulators, government agencies, and utilities.

1. **On-going engagement** with interested parties, including those who live, work, and play in frontline and named communities.
2. **Decision-making** processes should be transparent and decision-making power should be shared by historically excluded communities who are directly impacted by the decision.
3. **Co-creation** of processes, programs, and policies should be a focus for the Commission. This includes community-led program evaluation. Non-regulator and non-utility interested parties, especially frontline and named communities and those who provide services to these communities, can learn a lot about how to make a more effective and efficient program design for frontline and named communities (or for programs that impact these communities) if representatives from these communities are given the opportunity to help design the processes, programs, and policies.
4. **Informal opportunities to participate** can empower voices to speak up and speak freely. It can also encourage more productive deliberations. Informal opportunities to participate are avenues for people to dialogue, exemplify through actions, and, as a result, give input outside of political institutions.

¹ Michael B. Gerrard, *Review of Benjamin K. Sovacool and Michael H. Dworkin's Global Energy Justice: Problems, Principles, and Practices*, 40 Vt. L. Rev. 353 (2015). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/698

² Energy Equity Project, 2022. “Energy Equity Framework: Combining data and qualitative approaches to ensure equity in the energy transition.” p. 64. University of Michigan – School for Environment and Sustainability (SEAS).

³ Energy Equity Project, 2022. “Energy Equity Framework: Combining data and qualitative approaches to ensure equity in the energy transition.” p. 18. University of Michigan – School for Environment and Sustainability (SEAS).

5. **Range of supports and compensation to participate** are necessary considerations in enabling interested parties and the public to participate in the first place. If feedback and participation from frontline and named communities is desired, then these communities and community representatives must have access to resources to help them understand, participate in, and track the process. Additionally, sufficient time to participate in the Commission's formal processes and compensation for time and experience are necessary supports that can advance procedural justice at the Commission.
6. **Transparency and public data reporting** are essential. Clear information-sharing efforts that stem from data reporting and transparency are particularly important with named communities. This is because these efforts may help to avoid perceptions of institutional bias and improve residents' communications and trust with utilities and their regulators.

What element(s) of procedural justice are most important to you?

Fairness. Impartial and unbiased decision-making processes. Fairness includes equal treatment, absence of discrimination, and consistent application of rules and procedures.

Participation. Providing individuals and groups an opportunity to express their views, concerns, and preferences during decision-making processes. This element ensures that interested parties feel heard, have a chance to contribute to the decisions that affect them, and that they have representation in decision-making.

Transparency. Openness and clarity in processes and reasons supporting decisions. Transparency involves providing high-quality information and explanations about the rules, procedures, and decision-making criteria to the involved parties.

Impartiality. Ensuring decisions are made by unbiased individuals or entities without personal interests or conflicts of interest that could influence the decision-making process.

Respect and Dignity. Treating individuals and groups with respect and dignity during interactions and decision-making. This includes acknowledging the perspectives and concerns of all involved parties.

Accuracy and Consistency. Making decisions based on accurate information and applying rules consistently across different cases or rulemakings. This prevents inconsistent decisions.

Adaptability. Providing avenues for correction in case of errors or disputes in the decision-making process. This allows for potential mistakes or grievances to be addressed and rectified.

What is your interpretation of procedural justice?

Procedural justice emphasizes that the methods used to make decisions, enforce policy and regulations, and manage actions should be equitable and transparent. In context of the Commission, procedural justice is the extent to which BIPOC, frontline, and low-income communities are able to engage in UTC regulatory proceedings, rulemakings, and decarbonization planning; have access to learn about, qualify for, and enroll in programs; and have a meaningful voice in how plans and policies are designed and evaluated.

Procedural justice is about the fairness of procedures and the mechanisms in place rather than the outcome itself. It empowers and gives decision-making power to these historically excluded communities whose futures are intertwined with the clean energy transition.

How should the UTC implement procedural justice?

The University of Michigan’s 2022 Energy Equity Project Report describes three vital components of procedural justice— trust, credibility, and power. These components are thread throughout the report and begin to detail, at a high level, how utilities and their regulators can implement procedural justice⁴:

“With **trust**, we emphasized that equitably shifting energy systems must:

1. Ensure long term investments (time, financial resources, capacities, staff) that build community power and authentic relationships with communities,
2. Create inclusive listening sessions that uplift and value community wisdom,
3. Ensure a consistent process of sharing transparent information with communities (including demographic backgrounds of staff and commissioners), and
4. Expand the depth of racial, economic, and social equity knowledge that utility and PUC staff must maintain in order to continue their role.

With **power**, we aimed for communities to gain power in decision-making spaces through better representation and accessibility to these spaces to ultimately make their own energy decisions. We highlighted that equitably shifting energy systems must support and facilitate community influence over utility outcomes, including:

1. The impacts of utility actions and regulatory decisions,
2. Access to meetings, data, funding, and technical assistance, and

⁴ Energy Equity Project, 2022. “Energy Equity Framework: Combining data and qualitative approaches to ensure equity in the energy transition.” p. 64. University of Michigan – School for Environment and Sustainability (SEAS).

3. Ensuring community leadership in the design, implementation, and evaluation of programs, facilities, and procedures. When communities can exercise these forms of power, they are more likely to result in a more representative, accessible, and transparent energy sector.

With **credibility**, we underscored that equitably shifting energy systems must change the current explicit and implicit norms of the utility and PUC sector, including but not limited to:

1. Pivoting away from white supremacy cultural characteristics, ensuring flexibility to respond to arising concerns from communities,
2. Providing trauma-informed and accessible decision-making and meeting spaces,
3. Targeting outreach and trust building with historically marginalized communities,
4. Instating more authentic and representative decision-makers,
5. Ensuring transparent communications and materials, and
6. Being accountable to community inputs within IOU, PUC, and other agency processes.”




In addition to the transformative strategies above, it is the duty of the UTC to measure progress and achievement towards procedural justice. Starting on page 68, the Energy Equity Project Report offers a “Procedural Index” that provides rationale for twelve procedural equity metrics as well as methods for evaluating the success that each metric can measure. These twelve metrics include:

1. Ease of access to participate meaningfully
2. Transparency measures in delivering high-quality information
3. Utility internal practice of equity
4. Presence and involvement of public advocates
5. Participatory budgeting and program design
6. Utility penalties for missing equity targets
7. Defined equity goals and principles
8. Engagement in policy writing and rulemaking
9. Access to public intervenor funds
10. Staff and decisionmaker representation
11. Limiting utility influence on regulators and legislators
12. Scale of investment in equity initiatives

We recommend that the Commission review this Procedural Index. A summary of the metrics and recommendations provided by the Procedural Index can be found in the figure below:

PROCEDURAL EQUITY: PROCEDURAL INDEX

Recommendations and Best Practices

MEANINGFUL PARTICIPATION Create and use indices for information accessibility and ease of procedural participation 	TRANSPARENCY Adopt measures for regulatory agencies, independent organizations, utilities and businesses 
UTILITY INTERNAL PRACTICES Assess internal best practices and initiatives related to equity 	PUBLIC ADVOCATES Adopt tailored oversight roles relevant to program types and community interests 
PARTICIPATORY BUDGET Adopt participatory budget with community involvement and design 	UTILITY EQUITY PENALTIES Assess penalties for clean energy plan and program commitments 
DEFINED EQUITY GOALS Create equity assessment and rating scales to guide equity principles 	POLICY DESIGN ENGAGEMENT Prioritize community engagement in policy-making processes 
ACCESS TO INTERVENOR FUNDS Promote equitable distribution of and access to intervenor compensation funds 	STAFF REPRESENTATION Ensure meaningful hiring practices, hire representatives from marginalized communities 
LIMIT UTILITY INFLUENCE Assess, track influence on legislators and regulators, impose strict limits, transparency 	INVESTMENT SCALE Allocate sufficient resources to meaningfully advance/track equity initiatives, DEI trends 

The UTC has already taken steps towards achieving many of these recommendations and best practices. With the creation of its 2023 Pro-Equity Anti-Racism (PEAR) Strategic Action Plan, its PEAR Plan and Playbook, intervenor funding, and the commitment to equity that is being noted in regulated utility filings, we are seeing the Commission take steps toward implementing aspects of procedural justice. We applaud this work and encourage the Commission to continue along this path.

Below we offer ways we've identified from our experiences working with and alongside the UTC in which the Commission can further implement the above procedural equity best practices.

Meaningful Participation

- Meetings and hearings should be made more accessible to historically excluded groups by increasing support services such as onsite childcare, providing transportation or supplementing transportation costs, providing refreshments, and compensating participants. Nevertheless, meaningful engagement should not solely focus on bringing in new voices and frontline communities to the UTC. Instead, the UTC should actively venture into communities to gather direct feedback. This objective can be accomplished

by partnering with and funding community-based organizations. These organizations can then collect and convey meaningful feedback from their communities. The UTC should consider additional staffing positions to organize and operationalize this work. If this objective is added to someone's current workload it can fail to meet the needs of the community and not result in increased participation.

- Public comments should be allowed and encouraged to be submitted in the language appropriate to the interested commenter(s) as well as submitted in informal venues such as email.
- Public comment periods should be announced at least one calendar month prior to the due date.
- Develop and disseminate material in multiple formats (i.e., written, video, interpersonal) designed to welcome newcomers into UTC processes, provide foundational information, and help them identify and navigate opportunities to engage. Material should be vetted by community partners and reviewed periodically for iterative improvements.
- The UTC website should be updated to reflect best practices for accessibility, i.e., font colors and sizes, readability of content, and multiple languages offered. The UTC website should also make dockets that could have high impact on historically excluded communities and dockets with public comment periods very easy to find and access. Examples of these relevant dockets could include affordability-related rulemakings, low-income tariff filings or revisions, and integrated resource plans. All of which can impact energy bills and future access to clean energy.
- Wherever possible, the UTC should identify and advance opportunities to shift decisions from forums and proceedings with higher barriers to entry (such as general rate cases) to more accessible forums and proceedings (such as rulemakings and investigations that do not require formal party status, technical expertise spanning a wide range of issues, or sustained engagement over long periods), especially on issues that most directly affect members of the public and their interests.

Transparency

- The UTC should re-examine which of its internal processes and the utility processes it regulates have historically lacked transparency that leads to or perpetuates harm in historically excluded and marginalized communities. For example, the UTC could assess transparency and reporting related to energy insecurity, including requiring utilities to provide outage data with high spatial and temporal resolution that can facilitate public health surveillance of power outages, especially during extreme weather events. Alternatively, electric utilities could be required to conduct analyses on differential exposure of overburdened communities to power outages and share these results with the public. Other examples include requiring consistency in how utilities report arrearages and disconnections and storing it in a way that is accessible.⁵
- The UTC should require utilities to make a meaningful effort to review each workpaper file for sensitive commercial information and, to the extent reasonable, ensure that any

⁵ Richards C, Amiri S, Walden VP, et al. Association of Social Vulnerability Factors with Power Outage Burden in Washington State: 2018-2021. under review.

non-confidential information within a workpaper designated as confidential is also provided in a non-confidential workpaper.⁶

- The UTC should require that, upon request, utilities provide UTC Staff with support regarding utility modeling processes that influence its system planning.⁷
- The UTC should require utilities to ensure the readability of materials at 5th grade level, and when engaging community partners, ensure that it is delivered in a way that is understandable (e.g., X and Y axes of figures are explained, non-technical information is used).

Utility Equity Penalties

- Equity penalties ensure equity targets are met and not treated as a “bonus”. The UTC should explore how other states and jurisdictions have identified, used, and enforced utility equity penalties.

Policy Design Engagement

- Meaningful follow-through on the priorities voiced by the named, low-income, and BIPOC community members. Participation from these communities should not be tokenizing. Rather, it should lead to action towards desired outcomes.

Limit Utility Influence

- The UTC should assess utility influence on itself, legislators, and communities at multiple levels, which can be integrated into a rating scale that tracks utility influence and supports stricter limits on utilities, deeper community review, and greater transparency. Please see pages 82-83 of the Energy Equity Report for more details on how to do this.⁸

Investment Scale

- The UTC should ask whether it has sufficient resources needed to meaningfully advance equity initiatives both internally (e.g., recruiting, hiring, and retention), and in its role as a regulator (e.g., facilitating rulemakings pertaining to utility efforts that directly impact underserved communities, participating in utility advisory groups).

Conclusion

“When institutions fail to recognize the diversity of people's needs and experiences, they tend to produce (or reproduce) inequalities.”⁹ We are glad that, as an influential institution, the Commission is looking at procedural justice and we look forward to deeper dives into recognition, distribution, and restorative justice.

⁶ *WUTC v. PacifiCorp. d/b/a Pacific Power & Light Company*, Docket No. UE-210829, Appendix A to Order 06, PacifiCorp Settlement Stipulation at page 10. Condition 18. (October 25, 2023).

⁷ *WUTC v. PacifiCorp. d/b/a Pacific Power & Light Company*, Docket No. UE-210829, Appendix A to Order 06, PacifiCorp Settlement Stipulation at page 10. Condition 22. (October 25, 2023).

⁸ Energy Equity Project, 2022. “Energy Equity Framework: Combining data and qualitative approaches to ensure equity in the energy transition.” p. 82-83. University of Michigan – School for Environment and Sustainability (SEAS).

⁹ Liévanos, R., and Horne, K. 2017. “Unequal Resilience: the duration of electricity outages.” *Energy Policy* (108), 201-211.

Procedural justice is crucial for the clean energy transition. Inclusivity in participation processes leads to more representative outcomes that reduce the risk of marginalized communities bearing the brunt of the negative impacts and being left behind. Transparency in Commission processes and the utility processes it oversees enhances accountability. Overall, when people feel that they've been heard and that decisions are made through fair processes, trust is fostered in the institutions leading the transition.

Thank you for considering our comments.

Respectfully submitted,

/s/ Charlee Thompson
Policy Associate, NW Energy Coalition
charlee@nwenergy.org

/s/ James Moschella
Climate and Health Program Manager, Washington Physicians for Social Responsibility
james@wpsr.org

/s/ Shaylee Stokes
Director, The Energy Project
shaylee@wapartnership.org

/s/ Jim Dennison
Staff Attorney, Sierra Club
jim.dennison@sierraclub.org

/s/ Megan Larkin
Washington Clean Buildings Policy Manager, Climate Solutions
megan.larkin@climatesolutions.org