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ELECTRIC MUNICIPAL UTILITIES AND THE TRANSITION TO A CLEAN ENERGY FUTURE

A Guide for Municipal Utility Leaders

Climate Cabinet Education combines data science with policy expertise, local partnerships and cross-state experience to support climate leadership in local governments across the US — working towards a clean energy economy that creates jobs, improves community health, and unlocks local opportunity and leadership.

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Ken Colburn retired as RAP's director of US programs in 2020. He continues to contribute to the clean energy transition part-time through his LLC, Symbiotic Strategies.

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Authors, Researchers and Contributors:

Regulatory Assistance Project (lead author)
- Megan Anderson
- Camille Kadoch
- Ken Colburn
- Ruth Hare
- Donna Brutkoski

Pace Law
- Janine Midgen-Ostrander
- Craig Hart
- Jessica Laird

Climate Cabinet Education
- Emma Fisher
- Nick Arnold
- Ethan Kirkham

Pleiades Strategies
- Frances Sawyer

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IV. Good Governance

A. Foundations of Good Governance

As characterized by the American Public Power Association, public power is an expression of the American ideal of local people working together to meet local needs. It is a manifestation of local control. What makes municipal utilities unique is that their local nature enables them to reflect hometown characteristics and values.[169] Realizing these virtues and benefits requires adherence to principles of good governance to ensure the public interest is met.

The Organisation for Economic Co-operation and Development defines governance as the formal and informal arrangements that determine how public decisions are made and how public actions are carried out. The principal elements of good governance include accountability, transparency, efficiency, effectiveness, responsiveness and the rule of law.[170] Some of these elements are already articulated for municipal utilities in enabling statutes and ordinances. But principles of transparency and public engagement are usually less clearly spelled out in governance structures. We explore them more fully here.

Important elements of good governance for municipal utilities include:

- Clear governance and operations structures.
- Clear notice of public meetings.
- Opportunities to take advantage of community resources and interest.
- Transparent policymaking processes.

1. Clear Governance and Operations Structures

According to data from the American Public Power Association, most public power utilities are owned by cities and towns, but many are owned by counties, public utility districts and even states.[171] The types of municipal utility governance structures can vary greatly within a state, such as the following categories in Florida:[172]

- Utility services are provided by a department under the city, town or local government (in a council-manager form of government) or a division under a department head. The utility still has a designated top manager (e.g., an assistant city manager or director/supervisor), and it retains some degree of autonomy.
- Utilities are separate entities that answer directly to the city council or mayor. In this model, elected officials define policies and utility managers implement them. Typically, there is no difference between utility employees and city employees.
- Utilities are governed by an independent commission. The utility top manager (chief executive officer or general manager) does not interact directly with city officials but rather with an independent commission (utility authority) composed of specialists or citizens with broad public experience. Usually, the city mayor chairs this commission but is not allowed to vote.

Given the variety of governance structures among municipal utilities, it is important for each municipality to clarify for community members how the utility is governed and functions. Municipalities should make the following utility information accessible on their website and upon request.

- **Statutory mandate.** Generally, states define a public or municipal utility in statute or code. This statute also generally sets the governance structure, oversight and functions the utility must perform.
- **Oversight structure.** Utilities should publicize information about the oversight authority, which could be a board of directors, governing committee, government office or division of government. Information should also be included on the terms of the individuals involved in governance, if any, and roles, responsibilities and duties of the oversight body. Any governing principles for the board of directors or commission, typically articulated by the city, town or municipality through an ordinance, should also be publicly available.
- **Utility management.** Information on the utility manager, chief executive officer or executive management of the utility and major utility departments should be publicly available, along with contact information, including mail, telephone or internet.

169 American Public Power Association, n.d.

170 Organisation for Economic Co-operation and Development. (2015). *The Policy Framework for Investment (PFI).* http://www.oecd.org/investment/pfi.htm

171 American Public Power Association, n.d.

172 da Cruz, N. F., Berg, S. V., & Marques, R. C. (2013). Managing public utilities: Lessons from Florida. *Lex Localis, 11(2),* 101-118. https://bear.warrington.ufl.edu/centers/purc/docs/papers/1101_Cruz_Managing_Public_Utilities.pdf

- **Utility financial information.** Because they are public entities, public power utilities do not pay federal income taxes or most state taxes, but they support the local government through payments in lieu of taxes or transfers to the general fund. Unlike with investor-owned utilities, excess revenues stay in the local community and are invested in system improvements and utility reserves, shared with the local government, or returned to the customer in the form of lower rates. Public power utilities also generally have access to lower-cost tax-exempt financing and generally have stronger credit ratings than privately owned utilities.[173] Financial information about the municipal utility — including payments to the municipality, the amount and use of excess revenues and credit rating — should all be publicly available. General and nonconfidential financial information of the utility should also be publicly accessible, including compensation of top utility executives and federal 990 forms.
- **Public records and reports.** Sunshine laws — also known as open records laws, public records laws or FOIA laws, for the federal Freedom of Information Act — govern public access to governmental records. Municipal utilities should make public any meeting minutes of the board of directors, oversight committee and public utility meetings and any annual reports or other information provided by the utility.
- **Municipal goals, resource plans and strategic direction.** Section II discusses setting municipal goals, strategic direction and resource plans. General and non-confidential information on municipal goals, plans and strategic direction should be accessible to the public.
- **Customer program information and tariffs.** Section III discusses energy efficiency, weatherization programs and low-income bill assistance programs. It also covers the benefits of customer interactive tariffs, demand management programs and beneficial electrification, including electric vehicles, renewable energy and distributed generation programs. Information on these programs, including customer eligibility, benefits to the customer and program details, should also be clearly accessible for municipal utility customers.

2. Clear Notice of Public Meetings

Public power utilities are owned by and operated for the citizens they serve and therefore are accountable to their local owners. As articulated by the American Public Power Association, this local, independent regulation and governance gives utility policymakers greater agility in decision-making and protects the long-term viability of the utility, while permitting customer involvement in the process. Customer involvement ensures decisions reflect the values of the community,[174] so these benefits

Examples of good governance

- **Hutchinson Utilities Commission in Hutchinson, Minnesota**, has a very navigable website (https://www.hutchinsonutilities.com/about-huc/) that includes many documents outlining policies and procedures for cogeneration, interconnection, storage and so on, as well as details about the commission, including a link to commission minutes. It also has a joint website with Bright Energy Solutions (https://www.brightenergysolutions.com/municipalities-container/mn/hutchinson-utilities-commission/) that provides information on their many rebate programs, both residential and commercial.
- **Colorado Springs Utilities** (https://www.csu.org/Pages/default.aspx) is an example of a utility that is transparent in its governance and operations. The roles of the leadership figures are clearly identified by their elected or appointed status and their governing or advisory nature. The site even has information on how customers can engage with the utility's governing process and has community outreach programs that customers can participate in. Financial reports and planning, meeting agendas and minutes, energy portfolios and integrated resource plans are all readily available on the website, making it a transparent and educational resource for customers.
- **The Grand Rapids Public Utility Commission** (https://www.grpuc.org/) in Minnesota serves a town of almost 11,000 people. Despite the utility's modest size, its website is a comprehensive resource for its customers. It features an organizational chart, financial reports, plans, meeting minutes and a plethora of programs available to customers.

173 American Public Power Association, n.d.

174 American Public Power Association, n.d.

won't be realized unless municipal utility meetings are open, accessible and transparent.

As noted in the section above, information included on the municipal utility website and made available to municipal customers must include meeting minutes and public records. Information should also be made accessible on the following:

- **Notice of meetings.** Notices of regular and special meetings should be posted in accordance with public records and meeting laws. However, extra effort may be necessary to ensure that a diverse population is able to participate. Meetings during the day may be inaccessible to customers of a municipality. Therefore, utility managers should take steps to ensure that the location, timing and language of notices and materials supports the engagement of residents, including those with disabilities. Notices for meetings should be made in the languages spoken in the community and should be publicly posted at local community centers, libraries, faith organizations, clubs, community organizations, medical facilities, schools or other places where people commonly gather. Municipal utilities should also ensure that participants have relevant information on the topic or issue at hand that is written in commonly understandable language.
- **Decisions made in public meetings.** Decisions beyond day-to-day operational decisions should be made in public meetings. This enables municipal customers to participate in and understand utility processes and operations. All meetings should provide an opportunity for public comment.

3. Opportunities to Utilize Community Resources and Customer Interest

As community-owned enterprises, public power utilities have the ability to focus on specific customer needs and local priorities, which may include new technologies, environmental concerns or advanced communications.[175] The municipal governance structure also typically allows greater agility in decision-making and the ability to try new programs and sources of supply and more effective utilization of local resources than investor-owned utilities can muster. Municipal utilities should take steps to realize these unique resources and opportunities. Methods to do this include the following.

a. Public Meetings About Potential New Programs and Resources

Public power utilities have a history of innovation and have "been leaders in every new technology that reduces emissions, enhances reliability, and increases efficiency for customers. Many of those efforts have been 'incubated' in our small communities and then extrapolated to larger communities."[176] Familiar concepts that were first trialed in public power settings include wind generation, landfill-gas-to-energy projects, community solar, energy efficiency programs, electric vehicle infrastructure early adoption and hydroelectricity.[177] Earlier in the report we have described various methods to achieve municipal goals through energy efficiency and clean energy programs, which offer a starting point for introducing new programs and resources to municipal utilities. Meetings, either general or special, are an excellent venue to educate community members about these programs and new opportunities that municipalities may pursue. Municipalities are also able to utilize municipal land for renewable energy development opportunities or community solar gardens (see Section III-D).

b. Direct Public Involvement

In addition to a history of innovation, public power utilities also have a valuable resource in engaged municipal customers. The public can be included in general meetings and through specific public engagements on big municipal decisions. But active customers of the municipality can also be engaged in other ways, including on specific topics or in outreach to other customers.

One important tool for engaging and utilizing municipal customers is a volunteer task force to study specific issues and make recommendations. Some issues before a municipal utility may require technical expertise and require the use of paid consultants. Others, particularly at early stages of exploration, may be more suited to community-sourced research. With a clear directional charge, timeline and sufficiently detailed expectations, volunteer task forces made up of interested members of the public can provide

175 American Public Power Association, n.d.

176 American Public Power Association. (2021b, May 14). *Public power: At the forefront of innovation.* https://www.publicpower.org/blog/public-power-forefront-innovation

177 American Public Power Association, 2021b.

analysis of specific issues and make recommendations. Issues particularly suited for this approach could be determined in a public participation process, such as researching innovative resource options.

4. Transparent Policymaking Processes

Public power utilities, like investor-owned utilities and cooperatives, engage in policymaking through the planning processes explored in Section II. These include integrated resource plans, energy efficiency strategies, electrification plans, renewable portfolios and distribution system plans, among others. Many of these planning processes can benefit from public engagement in some form as further discussed in Section IV-B below.

Lessons learned on transparency and good governance

Transparency and good governance practices are valuable tools that not only provide better outcomes for the municipal utility and individual customers but also help ensure that these public bodies are free from corruption and regulatory capture.[178] Sharing information and inviting participation in decision-making processes provides the public a greater understanding about how and why the utility is making certain decisions. Where stakeholders do not agree with the assumptions or data upon which those decisions are based, open processes also provide an avenue to secure additional information or ideas. Without such good governance practices, customers and stakeholders may feel that the municipal utility's decisions are not well grounded, and without any means by which to review or contest those decisions, they may grow skeptical and distrustful, possibly leading to more costly challenges such as court challenges.

Clear explanation of the specific planning processes, their schedule and the reasons for them will help the public and stakeholders participate. Additionally, current planning documents should be available to the public.

B. Ensuring Public Participation in the Clean Energy Future

Energy customers increasingly desire clean energy sources. In 2019, 40% of surveyed customers wanted renewable generation, up from 25% the prior year.179 Given the increased customer interest in clean energy resources and desire for input into the process, a strategy to engage in robust public engagement will enable municipal utilities to incorporate members of the public in an effective and efficient manner. The International Association for Public Participation notes that the idea of public participation is based upon the "belief that those who are affected by a decision have a right to be involved in the decision-making process." This sentiment is especially applicable to municipal utilities and public power agencies.

The International Association for Public Power defines five levels of public participation that are particularly applicable to public power utilities. These include duties to:[180]

1. **Inform.** Provide the public with balanced and objective information to assist them in understanding the problem, alternatives and/or solutions.
2. **Consult.** Obtain public feedback on analysis, alternatives and/or decisions.
3. **Involve.** Work directly with the public throughout the process to ensure public issues and concerns are consistently understood and considered.
4. **Collaborate.** Partner with the public in each aspect of the decision-making, including the development of alternatives and the identification of the preferred solution.
5. **Empower.** Place the final decision-making in the hands of the public.

178 Regulatory capture occurs when a regulatory body that is charged with protecting the public interest instead advances the political or commercial interests of the companies or entities it is supposed to be regulating. For more information on regulatory capture, see such resources as Carpenter, D., & Moss, D., (2014). *Preventing regulatory capture: Special interest influence and how to limit it.* Harvard University. https://www.tobinproject.org/sites/tobinproject.org/files/assets/Introduction%20from%20Preventing%20Regulatory%20Capture.pdf; and Nash, B. J. (2010). Regulatory capture. Richmond Federal Reserve. https://www.richmondfed.org/publications/research/econ_focus/2010/q3/~/media/26F9F09B51BF43BFB25FCCCB4BCFC909.ashx#:~:text=The%20ICC%20is%20now%20regarded,not%20just%20maximum%2C%20shipping%20rates

179 Escalent. (2019, April 22). *Consumer demand for clean energy significantly increases.* https://escalent.co/news/consumer-demand-for-clean-energy-significantly-increases/

180 American Public Power Association. (2007, April). *Public participation for community-owned utilities.* http://courses.washington.edu/bse190b/data/6a_i.pdf

These steps are important for municipal utilities to implement, particularly when facing decisions on building or procuring new resources or setting municipal climate and conservation goals.

Typical public power decisions that warrant specialized effort for public participation include, but are not limited to:

- Acquiring or procuring new generation.
- Expanding service territory.
- Siting a power plant.
- Adding a substation.
- Restructuring rates or new tariff designs.
- Designing energy efficiency, demand management, distributed generation or electrification programs.
- Revising or expanding low-income programs.
- Starting or revising green power programs.
- Building a transmission line.
- Expanding services beyond power supply.
- Selecting a general manager or other important executive position.
- Setting or revising municipal goals for the utility.[181]

Public engagement and input is also useful as a regularly recurring strategic planning effort. The following principles of public engagement can help municipal utilities gather meaningful input into decisions from a variety of public perspectives.[182]

Inclusive Planning and Preparation

Robust public engagement activities take planning to ensure that the goals of the engagement are accomplished and that the affected members of the community are present. This means that the planning process for the public engagement itself also requires inclusive planning. Inclusive planning ensures that the design, organization and convening of the public engagement process serves the defined municipal purpose and the needs of the participants. Developing the plan will require input from appropriate local officials, as well as representative members of the community. This early planning enables municipalities to equitably incorporate diverse people, voices, ideas and information to lay the groundwork for a good outcome.

Transparency

Clear statements of the purpose of the public engagement process, the steps in the process and how the municipality will incorporate results of the public engagement process will provide transparency. Readily available information on where customers can find out more details on the topic at issue, the process and contact information is also helpful.

Authentic Intent

The primary purpose of public engagement activities is to solicit views and ideas from municipal customers that will help shape the policy discussion. As noted by the Institute for Local Government, the purpose should not be to persuade customers to accept a decision already made.[183] Consequently, the planning and preparation step is important to ensure that diverse viewpoints are presented and heard so that a variety of options may be considered.

Broad, Informed and Accessible Participation

Robust public engagement processes include people and viewpoints that are broadly reflective of the municipal utility's population. Extra effort may be necessary to ensure that a diverse population is able to participate. This includes taking steps to ensure that the public engagement process is broadly accessible in terms of location, time and language and that it supports the engagement of residents with disabilities.

Clear and Engaging Public Process

Public engagement processes that utilize discussion formats that are responsive to the needs of municipal customers and encourage full, effective and equitable participation work well. Municipal engagement leaders should be clear about the public engagement process and the steps involved at each stage. They should provide a public record of the organizers, topics, range of views and ideas expressed and outcomes.

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181 American Public Power Association, 2007. Additional items added to this list.

182 These principles of public engagement are derived from the best practices identified in National Coalition for Dialogue & Discussion. (2010). *Resource guide on public engagement.* https://www.ncdd.org/uploads/1/3/5/5/135559674/ncdd2010_resource_guide.pdf; and Institute for Local Government. (2015). *Principles of local government public engagement.* https://www.ca-ilg.org/sites/main/files/file-attachments/principles_of_public_engagement_jan_2015.pdf?1497552327

183 Institute for Local Government, 2015.

Sustained Engagement and Participatory Culture

Utilizing public engagement as a regular part of municipal utility governance decisions helps to promote a culture of participation from and with the community. Consequently, participation in utility programs will be more robust, and community value from and appreciation for municipal utility services will be high.

Useful Resources on Public Engagement

American Public Power Association. (2007). *Public Participation for Community-Owned Utilities: An Implementation Guide.* http://courses.washington.edu/bse190b/data/6a_i.pdf

Institute for Local Government. (2015). *Principles of Local Government Public Engagement.* https://www.ca-ilg.org/sites/main/files/file-attachments/principles_of_public_engagement_jan_2015.pdf?1497552327

National Coalition for Dialogue & Discussion. (2010). *Resource Guide on Public Engagement.* https://www.ncdd.org/uploads/1/3/5/5/135559674/ncdd2010_resource_guide.pdf