

Finding Common Ground among Public Interest Advocates

Janine Migden-Ostrander, Regulatory Assistance Project

Jennifer Miller, Sierra Club

Olivia Wein, National Consumer Law Center

ABSTRACT

Energy efficiency (EE) is generally recognized as a least-cost option; however, the details of designing programs do not always lend themselves to easy consensus. These details include program size, cost recovery mechanisms, lost revenues, cost-allocation, and incentives. Adding other clean energy options to the agenda makes consensus seem even more difficult. Environmental groups, conscious of global warming, seek to replace high fossil fuel consumption with alternate solutions, like EE. Consumer groups worry that upfront costs will impact vulnerable populations that cannot afford their bills.

Last year, the Regulatory Assistance Project (RAP), Sierra Club (SC), and National Consumer Law Center (NCLC) launched the Finding Common Ground (FCG) project with the goal of sparking more dialogue between consumer and environmental advocates. The goal was to promote a better understanding of each group's concerns and help develop areas where the groups can build consensus and work together.

Consumer and environmental advocates have convened two summits aimed at facilitating constructive dialogue. Subject matter working groups have met, and webinars have been conducted. Further, collaboration has occurred among some of the Participants on issues like weatherization funding, on-bill financing, advocating for efficiency as a transmission alternative, etc. The group is dynamic, engaged, and invested in making progress.

This paper will first discuss ways to develop common ground, key advocate issues and concerns, and lessons learned about developing consensus among public interest advocates. The second part of the paper will address the authors' views about where to find common ground on issues.

Introduction

Both consumer and environmental activists participate increasingly in regulatory proceedings across the nation, in recognition that utility filings and commission decisions impact energy affordability, quality of life, and the environment. However, with this participation comes a significant history of clashes within commission proceedings, which in many instances has kept these two important groups polarized. Energy is a necessity; but the priorities of how it is managed vary among stakeholders, including those vested with serving the public interest. Consumer groups care about the environment, but they also care about affordability and the structure and allocation of energy costs. In some states, as many as one in ten households are being disconnected for nonpayment of utility service – even with the availability of low-income assistance programs. Rate increases and disconnection-issues are therefore a serious matter for consumer advocates. Moreover, for the working poor on the edge of poverty, increased energy costs can force decisions between paying for food, rent, medicine, or utility services, as their earned dollars do not stretch far enough. Further, for advocates in some states, there is political pressure to not publicly support environmental options over traditional resource options. Advocates in those states need to be able to justify supporting the costs of clean energy

alternatives as being in their customers' best interests. Supporting decoupling or lost revenue recovery can be challenging, for example, when newspapers run articles declaring that customers are paying the utility for unused energy!

For environmental advocates, the visible indicators of climate change and its scientifically-predicted acceleration require immediate and bold action to protect the planet for future generations. Short-term cost increases to incentivize energy efficiency (EE), renewable energy (RE), demand response (DR), and smart grid (SG) (an enabling tool for RE and DR) pale in comparison to the damage and adaptation costs that will be engendered should we fail to mitigate rising temperatures.

Both groups have reason to worry and to fight vigorously to protect their interests. However, as long as these two significant groups are fighting with each other, neither may succeed to the extent needed, and other opposing parties may instead take advantage of such disharmony to engage in a divide-and-conquer strategy. As Benjamin Franklin once famously said, “[w]e must, indeed, all hang together or, most assuredly, we shall all hang separately” (Franklin 1776). This sentiment is the genesis of the Finding Common Ground project, a search for ways to open dialogue, create understanding, and bridge the chasm so that these two important groups can begin to work together.

The Finding Common Ground Project

The Finding Common Ground Project (FCG) was created as a partnership among the Regulatory Assistance Project (RAP), the National Consumer Law Center (NCLC), and the Sierra Club (SC) (collectively, the Partners) to bring together approximately two dozen organizations of national, regional, and state scope to discuss energy issues and explore where consensus might be achieved on utility issues, mostly at the public utility commission level but also on the legislative front.^{1,2} Having highly respected partners from both environmental and consumer groups (SC and NCLC) was invaluable not only in terms of their knowledge and ideas but also in building trust among Participants. As trusted leaders in their communities, the Partners were able to contribute meaningfully to the conversations and also provide guidance for more effective facilitation. This paper will discuss the process and speak generally about issues of concern to both groups. Most notably, participating organizations are beginning to reach out to one another for support and collaboration at the federal and state levels. While FCG is working on a more national scale, it is the hope of the Partners to plant the seeds for similar dialogues in states and regions across the nation. Conversations can occur informally (by an environmental or consumer advocate reaching out to the other in a proceeding) or more formally (by establishing an organized coalition that meets regularly and engages in joint strategies, filing of comments, and participation in legislative activity, among other activities).³

¹ RAP, NCLC, and SC would like to acknowledge the Energy Foundation for their support for this project.

² The names of the actual Participants and the details of the discussions are confidential so as to allow for unfettered exchanges without attribution to organization as many organizations have independent processes through which they must vet official positions.

³ An example of this is the Ohio Consumer and Environmental Advocates (OCEA), which began in 2008. This group, led by the Office of the Ohio Consumers' Counsel and consisting of as many as twenty consumer, environmental, low-income and local government advocates, filed close to 700 pages of joint written comments on Public Utility Commission of Ohio rulemaking, worked together in major cases either litigating or settling as a group, and notably filed joint comments supporting decoupling in accordance with a design that was the result of an internal negotiation. OCEA operated with a set of ground rules signed by each party that governed the relationship of each member to the group at large.

The point of FCG is to build trust, knowledge, understanding, and respect for other advocates' positions by exchanging information and perspectives on the quest for collaborative solutions. This paper discusses a process for closing this divide based on lessons learned in creating a space for a divergent group of consumer and environmental advocates to speak frankly on issues and work towards building common ground, and with more refinement, understanding areas of divergence.

The Mechanics of the Finding Common Ground Project

Participant selection was the first project work step. The selection criteria that the Partners considered included: having a nearly even number of consumer and environmental advocates; choosing groups that regularly appear before regulatory commissions; choosing individuals respected and known for their knowledge in their field and who support the project concept; overall group size – large enough to make it significant, but small enough to encourage relationship-building; and, geographic diversity. After selecting the group, the Partners identified subject matters (for which there were many subtopics) that would be the focus of conversations. These topics included: consumer protections (which encompassed service disconnections and related issues, prepaid service meters, and weatherization); EE; RE; dynamic pricing; smart meters; transmission investments; and carbon policies. Much attention and care was given to developing a carefully worded survey that elicited as much information as possible while preserving a neutral fact-finding tone. Each Participant received the survey so that Participants could prepare thoughtful responses. All three Partners participated in an individual survey phone call with each Participant. The purpose of this survey was to give the Partners a sense of individual Participants' views so that we could better gauge where common ground might exist and where there were the largest differences. It also gave the Partners an opportunity to determine the awareness of each group to the others' issues. A tabulation of the information according to Participant group showed that there were areas of agreement and areas that could require considerable effort to reach consensus. As can well be imagined, some areas had general agreement at the ten-thousand foot level with differences evidenced as the questions became more granular. The tabulated information was subsequently provided to the Participant group and discussed in the first face-to-face summit.

In preparation for the summit, the Partners and the extended team (which included an outside facilitator, additional members of RAP, and a consultant who works frequently with both groups of stakeholders) had numerous conference calls to plan the agenda and discuss the issues on which we believed consensus might be possible and the issues on which agreement would be more difficult. Our planning involved starting at the ten-thousand-foot level where there could be general consensus and then further focusing and dissecting issues by their component parts to get as far as we could on each component.

The summit played a central role in this project. It created the opportunity for Participants to gather more formally in facilitated discussions as well as more casually over the course of the summit. Having a structured process to cover issues and sub-issues was critical in order to delve into the substance of where agreement did or did not exist, and why. By the same token, the informal discussions that took place during meals or social activities allowed more one-on-one conversations that were important to build understanding and eventually forge alliances. The Participants listened, learned, and questioned each other to gain stronger insights into the concerns each faced. It was a time for knowledge building and understanding, and most importantly, a time to build trust and relationships. The meetings were structured so that most of interaction was topical, using questionnaire responses to frame the issue. Developing a set of

principles around which a consensus could be found was the initial goal. As can well be imagined, the groups made progress on some issues, but less on others. Ground rules for discussion helped maintain a good dialogue where differences were expressed in a respectful way. There were opportunities for separate caucus meetings for the two advocacy groups; however, we discovered that the Participants often preferred to stay together as one group rather than divide into their usual cohort.

The establishment of ad-hoc working groups, often on a national level, on issues that were currently being addressed was another useful tool. In instances during our meeting where there was not enough time to reach consensus on an issue, or the group was too large to drill down, working groups were created with interested parties from both groups and staffed by the RAP team to help guide discussions towards agreement using conference calls. In some, but not all, instances, this achieved a measure of agreement that was then shared with the larger group.

The summit discussions spurred many Participants' interest in gaining a deeper understanding of the other advocacy group's issues. To facilitate that education and to enrich discussions, the Partners created webinars on these topics, which they recorded for further reference.⁴ The webinars, along with other FCG project documents, have been posted on RAP's webpage, with access limited to the Participants. This created a central repository whereby Participants could review information while protecting the confidentiality of the discussions.

As of the date of this writing, we have had two summits, eight webinars on distinct topics, working groups created to tackle various topics with the potential for common ground, caucus calls, and a list-serve created to facilitate Participant discussion on relevant issues. The work is ongoing and we hope to make more progress in the future.

This effort is distinguished from previous non-enduring efforts by the creation of a multilateral partnership comprising an environmental advocate, a consumer advocate, and RAP, whose role was to facilitate common level understanding that could translate into action⁵. Every decision and detail has been developed and agreed to by this committed and goal-oriented leadership group.

Lessons Learned

FCG is a learning experience for the Partners as well as the Participants. Progress in some areas exceeded expectations, and in other areas agreement did not materialize as envisioned. We continue work on these issues. Nonetheless, where possible, projects like this are useful, and there are a growing number of examples across the country where environmental and consumer advocates are working together.⁶ This should, and must, continue. Below are some of our learned lessons:

⁴ Topics included: utility shareholder incentives, dynamic pricing, consumer protections, net-metering, revenue regulation, state policies on RE, on-bill financing, and multifamily benchmarking.

⁵ RAP received anecdotal feedback from a few of the attendees that this effort was the most successful one they had participated in over the course of many years due to the structure, the respect given to all participant positions and the opportunities to delve into issues and learn.

⁶ For example in the Northeast, the National Consumer Law Center and Environment Northeast have collaborated to bring electricity consumer groups together on transmission issues in ISO-NE's capacity and reliability planning processes; and in the Northwest, the Northwest Energy Coalition has worked on many settlements that benefit energy efficiency and low-income customer interests.

- Be Patient: Building trust may take some time as parties have scars from previous disappointing interactions and current conflict among affiliates and allies continues.
- Process Matters: Setting forth a process and adhering to it, while retaining flexibility to detour from it based on group agreement will was necessary. Listening to what the Participants want and rethinking assumptions and goals based upon that input was also important.
- Set Ground Rules: At the beginning, ground rules should be set and agreed to by the group. Some of our ground rules included confidentiality, treating everyone with respect, and decision-making transparency. All documents were distributed with opportunities to comment on the confidential elements that memorialized discussions. It was also important to remember that what was said in these meetings remained in these meetings, without attribution. Even when it seemed the organizations had achieved consensus, many parties did not want to publicly commit to a position because of their organizations' internal position-establishment processes. This was especially important for national groups. For some consumer groups, the political environment in which they operate makes it difficult to openly support issues deemed to be imbued with the environmental perspective.
- Be Prepared to Do the Time: A difficult lesson we learned early on was that reaching consensus was going to be more difficult than we anticipated simply because there was often someone who could not get comfortable with the consensus position. Even where there might be agreement, there was concern among parties that statements contained in a set of principles could be used against them should they feel compelled to take a different position because of a specific fact or law during a proceeding in a particular state. To help groups become comfortable with a unifying set of principles, therefore, was going to take time and discussion. From this standpoint, replicating the process in individual states could prove more fruitful, because the goal there would be to build working relationships, paving the way for shared wins by agreeing to a joint/similar position in a judicial, administrative, or legislative forum that involves only a specific state.
- Recognize the Regional Differences: It was important to recognize that each state or region is different and presents unique challenges such that general policy agreements within this group might need to be tailored to the facts on the ground. On the other hand, areas where some of the Participants jointly achieved consensus did occur on the national level, such as their united support for EE legislation and weatherization funding. It seemed easier to find consensus with national issues than state ones, primarily because state issues are more fact dependent, whereas everyone was dealing with a common set of facts and laws on national issues.
- Be Prepared For Meetings: Time is precious. Plan the meetings so that factual presentations on issues are clear, informative, and unbiased. Have a plan for facilitating discussions after a topic presentation. To that end, for issues where we determined (based on survey results or discussion) a need for more education on a topic before having a meaningful conversation, the Partners had short presentations (prepared by either RAP or the consultancy, Synapse) in their pockets. These presentations were reviewed and edited in advance by the Partners to ensure that they were factual, unbiased, and tonally appropriate.
- Start with a Few Less Controversial Issues: A few early successes will give the group a sense of accomplishment and demonstrate that consensus can be achieved. Areas that more easily lend themselves to common ground are support for low-income and other

residential weatherization, building energy codes, and appliance standards, among other issues which are important to both consumer and environmental advocates.

- Know Your Group: Be prepared to offer suggestions to find common ground. On some issues, this may be obvious but even for the more controversial issues, look towards identifying areas where parties, while not embracing a solution, might not object to it. Because the Partners participated in almost every survey and read the results of each one, we better understood Participants' varied perspectives. The survey interviews also gave us an opportunity to ask clarifying questions or gently probe positions as needed so we could understand the positions and their nuances. Look for the trade-offs. Find ways for each group to help the other on their most critical issues.
- Get Participants to Move Past Their Talking Points: We used various strategies including delving deeper into the components of an issue to determine what was and was not objectionable to the other side; having parties respond to the legitimate concerns raised by others; and focusing on how to address such concerns in a constructive way. As we listened, we also sometimes proposed pathways towards consensus that we would offer for discussion.
- Gently Explore Boundaries: When at an impasse, ask what parties could accept. In other words, dissect the issue and find out which parts the other Participant group could live with and which are absolute deal breakers. From there, determine whether you can fashion a solution that parties could live with.
- Look for the *Quid Pro Quo*: There are issues important to each group (discussed later in this paper) with which the other group, while generally in agreement, typically would not engage. Look for opportunities to support each other. For example, consumer protections are generally not on the agenda of environmental groups, but they might nevertheless be able to back up the consumer groups in their requests on this and conversely, the consumer groups might support the environmental groups on another issue. If one group helps the other, and vice-versa, on an issue important to them, discussion can be translated into action, and the groups can actually see the goals of FCG come to fruition. Note that this was not so much a negotiation, but rather an agreement to help each other out by adding a little support and work to issues that each party agreed to but were not priorities.
- Create a Comfortable Forum: More can be accomplished if the Participants are relaxed and do not feel threatened. It helps if they feel like they are being heard and their viewpoints are being considered. Another aspect of comfort that is sometimes overlooked is good, nourishing meals and snacks on a budget. The meetings are marathons and the Participants need to be well-fueled to go the distance!
- Keep the Momentum and Communications Going: The goal of Finding Common Ground is to open communications and help environmental and consumer groups network and reach out to one another. Ideally, this relationship building begins before positions are set in stone. Therefore, it is necessary to keep the efforts going in order to encourage and enable greater communications among the parties. We accomplished this by forming working groups, giving educational webinars, and keeping an email list-serve that was used between the meetings.

Finding Ways to Work Together

Fertile ground exists on issues where consumer and environmental groups should be able to agree and work together to achieve positive outcomes, build relationships, and engender trust. Environmental and consumer advocates should be encouraged to work together on these issues when there are opportunities to make progress.

Weatherization

As discussed elsewhere, weatherization is as much an EE tool as it is a sustained means of helping low income customers. Ensuring funding continuation for the federally funded Home Weatherization Assistance Program as well as support for local weatherization programs is a good way to work together. The identification of this issue and the concerns regarding pending funding cuts at the federal level enabled parties to rally together to advocate for preserved funding.

Benchmarking

Multifamily dwellings are the often hardest to reach to provide EE services. Benchmarking is a good tool to determine energy waste within the dwelling in order to determine the most cost-effective EE programs to use. While consumer advocates worry about disclosure of personal usage information, this can be addressed by providing aggregate information. The National Association of State Utility Consumer Advocates (NASUCA) recently passed a resolution on this, so it is another area in which advocates could come together.

Energy Codes and Appliance Standards

Better codes and standards reduce energy consumption, thereby reducing utility bills, and are generally not funded through ratepayer dollars. Strengthening codes and standards is one of the most cost-effective forms of EE, in which both consumers and the environment benefit. Nevertheless, there are a number of powerful interest groups that have opposed more efficient standards. This is a fertile area for partnerships. The FCG group touched on this lightly, and in looking for areas to work together, this would be a logical future choice.

Process and Fairness

All of the Participants appear before commissions and, in some cases, legislatures. In some states or regions, there is a full opportunity to be heard, and decisions are rendered with consideration of all stakeholders' positions. In other jurisdictions, there is a sense that the utility has unfair advantages in decision-making processes. Due process and fairness are important. In that regard, the parties generally agreed that process matters and that creating a level playing field for all Participants is critical for solid energy policy and practices.⁷

⁷ In fact, OCEA put together a set of principles for due process in proceedings.

Crossing the Bridge Issue by Issue

As noted above, the first goal of the FCG project was to identify the issues that were most important to environmental and consumer advocate groups. A one-size-fits-all “playbook” is not always feasible given the contours of any particular issue, which will vary by the circumstances of a particular location, the organizations involved, the limitations or opportunities within a political landscape, etc. However, if we establish a groundwork where environmental and consumer groups understand each other’s priorities and there exists a willingness to support or endorse the positions of the “other,” even if not fully within the parameters of a group’s funding priorities, the potential for finding areas of policy common ground grows.

To quote Alexander Dumas’ *Musketeers*, “[a]ll for one and one for all, united we stand, divided we fall” (1884). This illustrates the value of FCG. If environmentalists want support from consumer groups, they have to be prepared to show up and weigh in on consumer issues with which they can agree, whether that is part of their agenda or not. The same rings true for consumer advocates, whose voices could be incredibly helpful regarding environmental protections. Note that in these instances, it does not require a great draw of resources for environmentalists to support consumer advocates, and vice versa, because typically the group with the vested interest in the issue will do the drafting and heavy lifting. It is then incumbent on the other group to sign on to a pleading, endorse the issue in its own brief through references, or back up the other group in a negotiation. The issue-specific discussion below will focus on consumer issues and EE.⁸

Thus far, this paper has addressed the framework and process for FCG. The discussion below on various issues where common ground may take place does not reflect the discussions or unofficial agreements of the Participants as those discussions are confidential. Rather the discussion below reflects the conversations of the Partners based on our collective knowledge of the issues and concerns of either the environmental or consumer groups (or both) and our experiences navigating regulatory proceedings.

Weatherization

Funding for low-income weatherization is a key tool in addressing chronic energy services unaffordability. Weatherizing a home can significantly reduce energy consumption, thereby reducing energy bills to more affordable levels. The typical low-income home that has been retrofitted through the Weatherization Assistance Program experiences average energy savings of 35 percent (Eisenberg 2010). By the same token, these energy reductions either reduce the subsidies paid by other consumers or free-up funds for other customers to get bill assistance. From an environmental standpoint, weatherization is an EE program that reduces energy consumption and reliance on fossil fuels. Thus, this is an issue in which the Participants can join forces to advocate for the continued funding of the federal Home Weatherization Assistance Program (HWAP) and for low-income, whole-house utility EE programs, which under a best case scenario leverages the funds from HWAP.

⁸ Subjects such as renewable energy, smart meters, dynamic pricing, transmission, and renewables, etc. were addressed by this group, but given page limitations for this paper and also for the subject matter of the conference. The decision was made to focus on the energy efficiency and the consumer *quid pro quo*.

Affordability and Shut-off Protections

A core issue for consumer advocates is ensuring that there are procedures in place to protect customers threatened with disconnection for non-payment. These issues can include notice provisions that provide the customer with a reasonable opportunity to pay the bill or make payment arrangements; reconnection provisions to ensure that service is restored promptly once payment is made; medical certification to protect customers from disconnection when doing so can cause serious harm to a household member who is ill; notifications to tenants when utility service is included in the rent and the landlord does not pay; and, importantly, rules requiring the utilities to provide extended payment plans to avert a pending disconnection. Disconnection in the winter can cause hypothermia and in the summer, especially among seniors, heat stroke. Anyone who has endured a significant outage understands the inconvenience and hardship caused by not having heat or electricity. While these are core issues for consumer advocates, they are not issues in which environmental groups engage, although most environmentalists are sympathetic to such concerns. As a show of good faith for the support that environmentalists will seek from consumer groups, environmentalists should themselves consider lending their support to these issues. As noted above, it would likely require minimal resources, especially if the environmental group is signing on in a “me too” capacity.

Prepaid Service

While some utilities have promoted prepaid service under the guise of EE, consumer advocates view it as a credit and collections strategy that utilities use to target low-income communities. The use of prepaid meters often deprives customers of disconnection procedures and protections, because as soon as the meter runs out of money, so does the energy. With traditional utility service, the energy continues to flow until the utility can lawfully disconnect for nonpayment after providing the requisite notice. In most states, there are opportunities for consumers to negotiate payment plans prior to shut-off. Studies by some consumer advocates suggest that prepaid service has accelerated the number of disconnections. Again, this is an area where support from the environmental community would help build goodwill inasmuch as this is not a legitimate EE tool, and utilities should be pushed to implement tried-and-true efficiency programs instead.

Energy Efficiency

EE is a key issue for environmental advocates as it is viewed as a cost-effective means to reduce energy consumption and thereby reduce pollution and climate change impacts. EE can also be a tool for consumers since, to the extent that consumers can engage in EE, they can reduce their usage costs. Moreover, in the context of integrated resource planning, EE is a least-cost option that can defer the need to add more expansive supply-side resources, lower overall demand, and reduce wholesale energy rates. At the ten-thousand-foot level, it is fairly easy to find agreement that EE is good, but a deeper dive into the details of these issues can produce more controversy.

- Program Size and Cost Recovery: While consumer advocates may be supportive of EE, they are wary of rate increases. Moreover, they sometimes view the benefits of EE as down the road while the cost is upfront. On the other hand, significant savings through EE is key to displacing fossil fuel investments, making EE a priority for environmental groups. Possible agreement can be found on cost-effectiveness screening protocols for EE

programs and on selecting a portfolio of those programs that are the most cost effective. There should be attention focused on facilitating low-income efficiency programs. While weatherization may not be among the most cost effective programs, it possesses other benefits in terms of reducing disconnections and bad debt, which can be included in the screening to make this more valuable to advocates. Robust evaluation, measurement, and verification (EM&V) can also help consumer advocates get more comfortable with dollars spent on EE if it is proven that the savings did materialize. Moreover, choosing an array of programs available to each customer class and subcategory that provides some benefit to as many customers as possible could allow a wide spectrum of customers to enjoy cost savings that offset rate increases. In so doing, it may be useful to correlate the beneficiaries of a program with those who must pay for it. There are other tools that could be explored such as what level of increase can be accepted in exchange for the ensuing system benefits.

- Lost Revenues - This will likely rank among the most controversial issues. Generally, environmentalists tend to favor decoupling as the best means of addressing lost revenues because of its ability to separate sales as the driver for obtaining revenues, thereby making utilities indifferent to reduced sales and removing the disincentive for utilities to embrace EE. The devil is truly in the details, as there are many ways to structure decoupling. Below are some of the challenges that should be put on the table to work through in a discussion among consumer and environmental advocates:
 - Consumer advocates who support lost revenue recovery may find it hard to explain to the public why they should pay for the electricity they do not consume.
 - If the consumer groups can get past that public perception barrier, could there be support for a Lost Revenue Adjustment Mechanism (LRAM) which allows the utility to only recover the costs associated with the EE program and nothing more? How would the groups address the concern that utilities could actually game the system and achieve greater financial windfalls by overestimating the costs of EE programs and overestimating EE gains? What about the fact that LRAM does not reduce the utility incentive to decrease sales because the utility keeps the revenues from increased sales from other sources (i.e. new business, for example) while also collecting on lost sales from EE? If the goal is to encourage EE, will LRAM change the corporate mindset in favor of embracing EE?
 - Could there be support for decoupling with certain restrictions, including: (1) Symmetry in which over-collections as well as under-collections are reconciled at year end, so that there is a credit or surcharge? (2) Creating a deadband on the size of an annual adjustment with carry-over provisions, so as to avoid significant rate increases? (3) Revising the return on equity downward in order to reflect the reduced risk that the utility will carry as a result of the assurances of meeting its revenue requirements? and (4) Whether any kind of interim rate or inflation adjustment should be included in a decoupling mechanism or whether any adjustments that affect revenue requirements should be handled in a rate case?
 - Sensitivity of parties to riders that generally increase rates without a corresponding review and netting of cost decreases, as would occur in a rate case.
 - The desire of some parties (certain environmental groups) to ensure that the revenue recovery is adequate, a key to obtaining utility support. Conversely, the desire of other parties (some consumer groups) to ensure that decoupling does not result in increasing revenue requirements.

- One place fertile for building common ground is united opposition to the Straight Fixed Variable (SFV) rate design, because it does not send appropriate price signals to encourage consumers to conserve. SFV often results in low-use, usually lower income customers subsidizing high-use, usually higher income customers, while increasing the payback on EE investments.
- Performance Incentives: This is yet another controversial area that parties should not necessarily shy away from, but will require care to prevent damaging relationships moving forward. Consumer groups, again mindful of cost increases to struggling customers, may not be supportive of a performance reward, viewing it more as an extra incentive to utilities for doing their job. Those that are more supportive of EE incentives, however, may still have a very hard time explaining to the public why an incentive is being granted for less than full compliance. Utilities point out that because the target for EE may be set rather high, meeting 80 percent of that target, for example, is cause for reward. In any event, where incentives are likely to be awarded, it may be possible to find common ground around how to shape or constrain the incentive.
 - Can a middle ground be reached where incentives begin at 100 percent compliance?
 - Should the size of the incentive be commensurate with the amount of over-compliance in order to reward utilities for doing more and provide them with less for doing the bare-minimum? There may be divergent views on the role of caps. Some environmental groups may not be supportive of having caps on EE incentives because of concerns it would have a chilling effect in spurring utilities to be more assertive with EE, especially when management is weighing whether to develop more supply-side resource options. Consumer groups may view caps as a means to protect consumer exposure to rate increases, and having some kind of limitation provides protection.
- Energy Efficiency Planning: There are fundamental principles regarding EE on which agreement may be possible. For example, EE should be considered before any supply side option is selected. This simple tenet is critical in preventing investments in fossil fueled power plants (of concern to environmentalists) that may be more costly than EE (of concern to consumers). Program screening methods are important as well. There may be grounds for agreement in rejecting the Ratepayer Impact Measure, which is too restrictive, in favor of a test that recognizes non-energy benefits associated with low-income programs. Other non-energy benefits could also be explored. While issues of lost revenue and incentives may be more complex, agreements on prudent cost recovery may be viewed as more basic. That EE program funding should be decided with input from all parties is a point that plays to notions of fairness and due process discussed above. Another example of possible common ground would be that funds allocated by customers for EE should not be allowed to be diverted elsewhere, as has occurred in some states that have used such funds to balance budgets rather than invest in EE.
- Energy Efficiency Design: Agreement on some best practices such as robust programs available to all customer classes and types to meet unique situations may be possible. In addition, participant funding or expert consultant assistance for interveners can also be useful. Programs avoiding lost-opportunities (i.e., not taking advantage of all energy savings opportunities at the right time, such as not installing an Energy Star replacement appliance) may be an additional area of agreement. Once best practices are identified, they should be applied irrespective of whether the program administrator is the utility or another party. Other easy but important areas of agreement may include ensuring

contractors hired by the utility or the customer are qualified. Finally, all parties can probably agree that EM&V must be included and done properly.

- Third Party Administrators of EE Programs: In situations where utilities are reluctant to undertake EE or are not trusted to do so in good faith, jointly discussing ways to implement a third-party administrator might be a pathway to common ground. Just as general ratepayers currently do not pay lost revenues for customer-installed supply options, third-party administrators could parallel that option. An area for discussion could be to explore having third-party administrators handle energy efficiency as a solution to addressing utility cost recovery and possibly lost revenues and incentives. It should be noted that agreement on best practices for program administrators, whether it be the utility or a third party, is a potential area of agreement.

With each of these issues, the key is to segment areas where consensus can be built versus areas for which differences persist.

Carbon Policies

Agreeing to the need for a carbon policy may be common ground, as concern is growing throughout the country regarding climate change, and climate impacts are already disproportionately affecting low-income and vulnerable communities.⁹ This may provide an opening to discuss alternatives that could include cap-and-trade policies in the event of a legislative initiative. This in turn could lead to discussions on the distribution of auction allowance revenues, which could include customer refunds, allocation of allowance revenues for low-income weatherization, and EE, among other options. Separately, with the U.S. Environmental Protection Agency's (EPA) work on new and existing power plant emissions regulations, there could be an opportunity for common ground conversations about efficiency programs, including low-income mitigation of potential bill increases, in state plans under 111(d).¹⁰

Conclusion

Finding common ground is a substantial process and often takes time. Sometimes the barrier to collaborative action stems more from failed relationship building at the outset than from the substance of an issue. Strong relationships and understanding among consumer and environmental advocates can enable swift, collaborative action and can minimize the ability of other stakeholders to drive a wedge between consumer and environmental interests. Ultimately, the goal of such collaboration is building long-term relationships that result in a sustainable model for collective action and paving the way to meaningful victories that benefit consumers and the environment.

Perhaps the biggest challenge is getting parties comfortable agreeing to a principle and its implication on the ground. At the ten thousand foot level, this might be possible, but as the discussion becomes more granular, consensus becomes more difficult. In part, this is because

⁹ Because any hope of legislation became stalled, FCG did not address this issue; however, it will be on the agenda for the next meeting, especially in light of the U.S. Environmental Protection Agency (EPA) rules on 111(d).

¹⁰ The EPA in 2012 proposed performance standards for carbon dioxide (CO₂) emissions from new fossil fuel-fired power plants. Once finalized, the new-source standards will trigger section 111(d) of the Clean Air Act, which required the EPA to regulate CO₂ emissions from existing power plants. Broad statutory language and limited legal precedent suggest that a variety of policy design options are available to the EPA and states when regulating CO₂ emissions from existing power plants (Tarr, Monast and Profeta 2013).

circumstances, markets, and laws vary from state to state. A philosophical construct may make sense at a very high level but may not ultimately work based on the facts on the ground. Having acknowledged this, however, the value of this project resides in the agreements reached, the relationships created, and the ability for stakeholders to take that broad array of issues forward and to reach out to each other to collaborate for the best policy outcomes. What is accomplished through the FCG process can be used by stakeholders as a basis of coalition-building efforts at the local and state levels. We hope too, that this project will serve as a reminder to consumer and environmental advocates that outreach to their counterparts is important and can make them collectively stronger than they would otherwise be individually.

Creating dialogues and building coalitions both nationally and locally among organizations can have lasting benefits, even if consensus cannot always be achieved. By committing to work together, environmental and consumer public interest groups can strengthen their advocacy and their ability to achieve more public interest outcomes. This is especially so in cases which are in settlement talks. While this project is still in its early stages, progress is incremental and will be fully achieved when it becomes second nature for environmental and consumer groups across the nation to collaborate for mutually beneficial solutions.

We should keep in mind as we forge ahead that while priorities might vary among the groups, all participants care about the environment and about protecting consumers.

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