



IMPROVING THE PROCESS

ENABLING COMMUNITIES TO ENGAGE IN LOCAL ELECTRICITY SYSTEM
PLANNING AND USE CLEAN LOCAL ENERGY RESOURCES

Edward P. Yim

Topic Brief Outline

This brief will describe the following:



Key phases underlying a typical regulatory process:

APPLICATION (by utilities)

Utilities, whether owned by private companies (more than two-thirds of all electric utilities), local governments, or co-ops, give utility regulators notice about new project construction. To recover the costs of these projects from utility customers, utilities must show that the projects benefit the public.

JUSTIFICATION (by utilities)

Utilities may justify that proposed projects are in the public interest by showing they are *necessary* and *prudent*.

Necessary means demonstrating that the existing system is inadequate.

Prudent involves demonstrating that their proposed solution is the better choice over other options.

EVALUATION (by regulator)

Because utility customers pay for infrastructure projects through their bills, regulators must evaluate if the projects are in the public interest and should also provide a meaningful opportunity for the public to weigh in. The regulators often solicit public input before making their decision.

Common Terms Used in Utility Construction Projects

Name of the Utility Regulatory Body:

In most states this body is called "Public Utility Commission" or "Public Service Commission," but there are several variations such as "Department of Public Utilities" (MA), "Board of Public Utilities" (NJ), "Corporation Commission" (AZ, VA, KS), and "Commerce Commission" (IL), etc.

Name of the Utility System Planning Documents:

In many cases, utilities may plan for local electrical grid projects using various planning documents known as "Integrated Resource Plan," "Distribution System Plan," or "Distribution Resource Plan."

Capacity

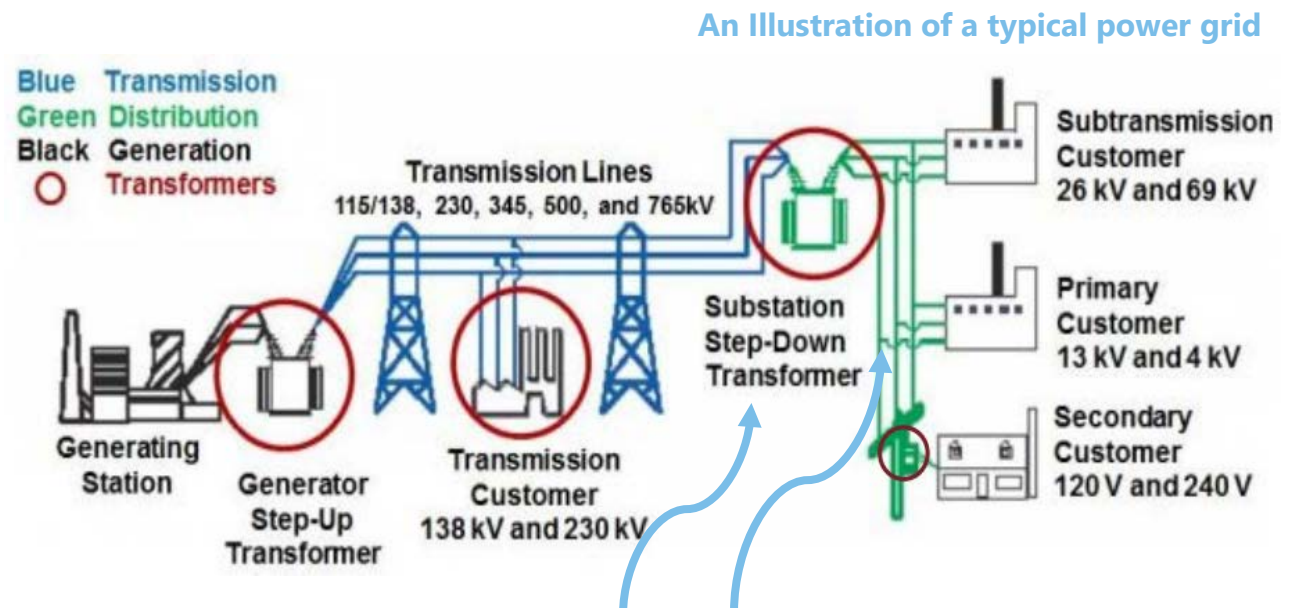
This refers to the amount of power that a system component, such as a transformer or feeder, can provide. Capacity is measured in a unit called mega-volt-ampere (MVA) or megawatt (MW); it is given a "nameplate rating," the designed maximum capacity for the equipment.

Demand or load

This is the amount of power required to operate electrical equipment.

Transmission vs. distribution

High-voltage transmission lines deliver electricity from power generators so that electricity can be distributed among various energy users. Generally, before electricity can be consumed directly by residents and businesses, the high voltage level must be reduced by transformers so that it can be safely used for appliances. The lower-voltage lines that serve homes and businesses are generally referred to as distribution lines.



Local system example: Substation

A substation transfers electricity from power plants to transmission and distribution lines and to energy consumers, using transformers to adjust voltage levels. Higher voltage levels are required to supply electricity across greater distances from power plants, but home appliances require low voltage levels. Transformers in substations convert high-voltage electricity into low voltage for home appliances. A substation often houses several transformers, each of which can cost millions of dollars.

Local system example: Feeder

A feeder refers to a distribution line that delivers low-voltage electricity to a local area. Analogous to a natural gas main, a feeder distributes electricity into a network of even lower-voltage lines called secondary circuits that directly supply homes.

Local system example: Transformer

A transformer increases or decreases the voltage level of electricity, making it suitable for long-distance transfer or household consumption.

THE POWER OF ENGAGEMENT

Electric utilities have an obligation to deliver reliable electricity. Their facilities, including substations, are essential components of the grid for every community. Yet they can affect communities by competing with other land use priorities, by increasing system costs and utility bills, and through environmental pollution that may be associated with operating such facilities.

Residents and businesses should be enabled to participate meaningfully in the decision-making process for such facilities and ask critical questions such as

- Are other options available that use clean local energy resources to meet the needs of the system? How were these options evaluated?
- Can the proposed facilities be built smaller or later?
- What if the communities decided to use less energy during certain hours, or invest in home solar and batteries? Could such efforts reduce the need for a new facility? If so, could the utilities explore those options?

Ultimately, community engagement could lead to a better economic, environmental, and energy solution than the initial proposal.

TOOLS THAT WILL ENABLE COMMUNITY PARTICIPATION

Communities could ask their regulators to modify the current process to make it easier to participate meaningfully. These modifications could include the following:

- Utilities should notify the communities as to where their infrastructure plans call for building new facilities before giving notice of construction to regulators.
- After notice, utilities should convene informational meetings for affected communities and design those meetings to maximize attendance.
- Utilities should use plain language, translators, and other language access measures whenever possible.
- The utility regulator should establish a fund to pay for a technical expert the communities choose, who will represent the communities' interest and serve as their regulatory advocate (some utility commissions may need to obtain legislative authorization to establish such funds).
- Utilities should be incentivized and required to study and pursue community-informed options and to engage in a collaborative process with affected communities.

WHY PARTICIPATION HAS BEEN LIMITED

If utilities want to recover the project costs from customers, they must demonstrate that the project is necessary and prudent. They can demonstrate this by showing that existing customers are using more electricity, or that more electricity is needed for new developments or new technologies such as electric vehicles. Utilities then must show that the proposed project is the best option to meet that need.

Local utility infrastructure planning can involve technically complex details, and that complexity acts as a barrier to meaningful participation for community members who are not familiar with these topics. The regulatory process can be opaque and last many months, and participation can be very time consuming.

Many states have created an office of consumer/ratepayer advocate, but these advocates who intervene in utility proceedings are tasked with representing the interests of all ratepayers statewide. Given that the potential negative impacts of these projects may be acute only for a specific locality, such localized concerns may not receive sufficient attention from statewide advocates.

The utility commission often holds public hearing or listening sessions, in which anyone can provide comments orally or in writing. But the commission's decision must be based on the case record, and these public comments often do not become a part of the case record. As a result, the decision by the commission may not be required to address the concerns raised in those comments. Further, the lack of access to key technical data acts as a barrier for community members to ask critical questions regarding the project justifications and the viability of other options that may better serve their interests.

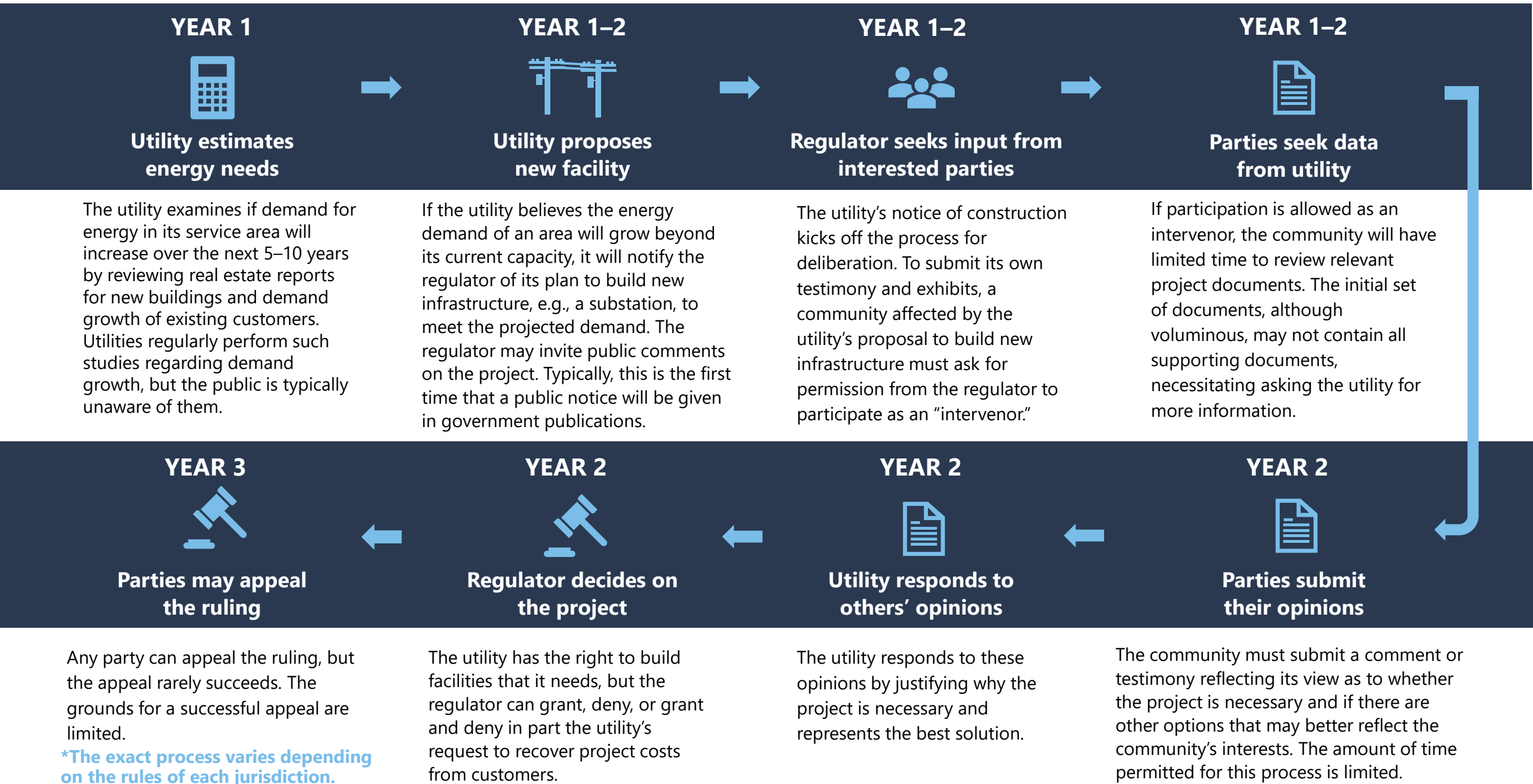
On the other hand, fully participating in utility proceedings means that the community must receive permission to participate as an "intervenor" at their own expense, and attend numerous meetings and wade through voluminous documents, often under tight timelines, before they can submit testimony and exhibits into the case record.

These and other factors make it difficult for communities to participate in a meaningful way and influence outcomes that reflect their values and choices. Barriers are often highest for the communities most impacted by energy system decisions, including communities of color and low-income communities.

For more information on barriers to community-driven infrastructure projects, see [Equitable Adaptation Legal and Policy Toolkit: Community-Driven Engagement Processes](#).

For more information on the remedy of intervenor compensation, see the report [State Approaches to Intervenor Compensation](#).

How does a typical process* for major utility projects work today?



PROCESS EXAMPLE: District of Columbia

Project: Four substation and transmission projects costing roughly \$1 billion

Observation: *The approval process took 14 months (June 2018–August 2019). Note that Pepco became aware of the potential neighborhoods that would be affected in April 2016, and the public was notified in May 2017.*

The public had only three months to decide to participate, then request, receive, and analyze Pepco data, and finally formulate and submit a response or comment to the utility commission.

4/2016: Pepco submits the Annual Consolidated Report to the Public Service Commission, containing Pepco’s demand forecast (“load growth forecast”) for 2015–2025, showing that energy demand in certain neighborhoods may exceed Pepco’s capacity by 2022.

5/2017: Pepco submits the Notice of Construction for those neighborhoods. Commission allows any person to submit comments.

2/2018: Commission orders Pepco to refile its Notice of Construction to include other projects, and it provides 90 days for the public to submit comments from the date of filing.

6/2018: Pepco refiles Notice of Construction (beginning of the process)

7/2018: Parties submit data requests.

9/2018–11/2018: Parties submit comments and Pepco responds.

12/2018: Parties respond back to Pepco via “supplemental comment.”

8/2019: Commission approves the application of Pepco’s projects for cost recovery.

PROCESS EXAMPLE: Virginia

Project: Two transmission line projects costing \$37.5 million

Observation: *This approval process took eight months (February 2022–October 2022). Note that Dominion became aware of the neighborhoods that would be affected in September 2021 and the affected communities were notified in March 2022.*

Community members have two months to decide to participate. Subsequently, they have one month to request, receive, and analyze Dominion data, then formulate a response or comment for the public. The time frame here is even more constraining than the District of Columbia example.

9/2021: Dominion submits its Integrated Resource Plan, noting areas that will require additional electric facilities.

2/2022: Dominion applies for approval of electric facilities to the State Corporation Commission (beginning of the process).

2/2022: Commission requires Dominion to notify local officials of affected communities by March 2022. Commission allows anyone to submit comments by August 2022, but they must file a separate Notice of Participation if they want to participate in the hearing by May 2022. Parties that participate must submit testimony and exhibits by June 2022.

3/2022: Dominion serves Notice to local officials.

5/2022: Interested parties file a Notice of Participation.

6/2022: Parties submit testimony and exhibits.

7/2022: Dominion responds to the parties.

8/16/2022: Commission holds a two-day hearing on the application.

10/16/2022: Commission approves the application.

Process changes that would improve community participation

YEAR 1



Utility estimates energy needs

The utility learns of the potential locations for new projects months before it provides notice of construction and begins a dialogue with the affected communities.

Suggested change: *The utility could proactively notify the affected communities for collaborative discussions when it first learns of the potential project locations.*



YEAR 1-2



Utility proposes new facility

At this stage, the utility and the regulator provide public notice of proposed projects via government publications of notice (e.g., utility commission website), but the public is often unaware of these notices. As a result, it often takes more time for the communities to become aware.

Suggested change: *The utility could directly notify local community officials.*



YEAR 1-2



Regulator seeks input from interested parties

At this stage, community members wishing to intervene may have to obtain permission to do so from the regulator.

Suggested change: *The regulator could automatically grant the intervenor status for community members directly affected by the proposed project.*



YEAR 1-2



Parties seek data from utility

At this stage, intervenors must request any utility data that are not included in the project application. Reviewing sensitive data could require additional discussions, negotiations, and confidentiality rules.

Suggested change: *The utility could include supporting data in the initial stage to ease the data access effort, and it could streamline the process for reviewing sensitive data.*



YEAR 3



Parties may appeal the ruling

Appeals courts rarely overturn the decisions of utility regulators, absent significant legal errors.

Suggested change: *The appeals court could examine whether there was a fair and meaningful process (e.g., time, opportunity, means).*



YEAR 2



Regulator decides on the project

YEAR 2



Utility responds to others' opinions

The adversarial nature of the process rarely promotes collaboration and consensus.

Suggested change: *The regulator could require the utility to have settlement-type discussions with the affected communities before the utility formally responds to public comments.*



YEAR 2



Parties submit their opinions

It may take technical expertise to review whether the proposed project is the best option and in the interest of the affected community.

Suggested change: *The regulator could establish a fund to pay for an expert to represent the affected community's view.*

Digging deeper: What else should communities ask for ?

YEAR 1



Utility estimates energy needs

YEAR 1-2



Utility proposes new facility

YEAR 1-2



Regulator seeks input from interested parties

YEAR 1-2



Parties seek data from utility

Utilities often do not account for potential energy contributions from the buildings in the community, such as energy efficiency and rooftop solar. This may lead utilities to overestimate the problem.

Suggested change: Direct utilities to work with affected communities to explore the impact of the customer-sited resources.

Utilities are often required to study alternative options to meet energy needs. However, being risk averse, they tend to display a bias for solutions they have relied upon before.

Suggested change: Financially incentivize utilities to seek customer-sited or customer-owned solutions in affected areas, to motivate them to work collaboratively with those communities.

There is little time for affected communities to prepare their response once the process begins.

Suggested change: Incentivize or require utilities to work proactively with affected communities before the formal notice or application is filed.

YEAR 3



Parties may appeal the ruling

YEAR 2



Regulator decides on the project

YEAR 2



Utility responds to others' opinions

YEAR 2

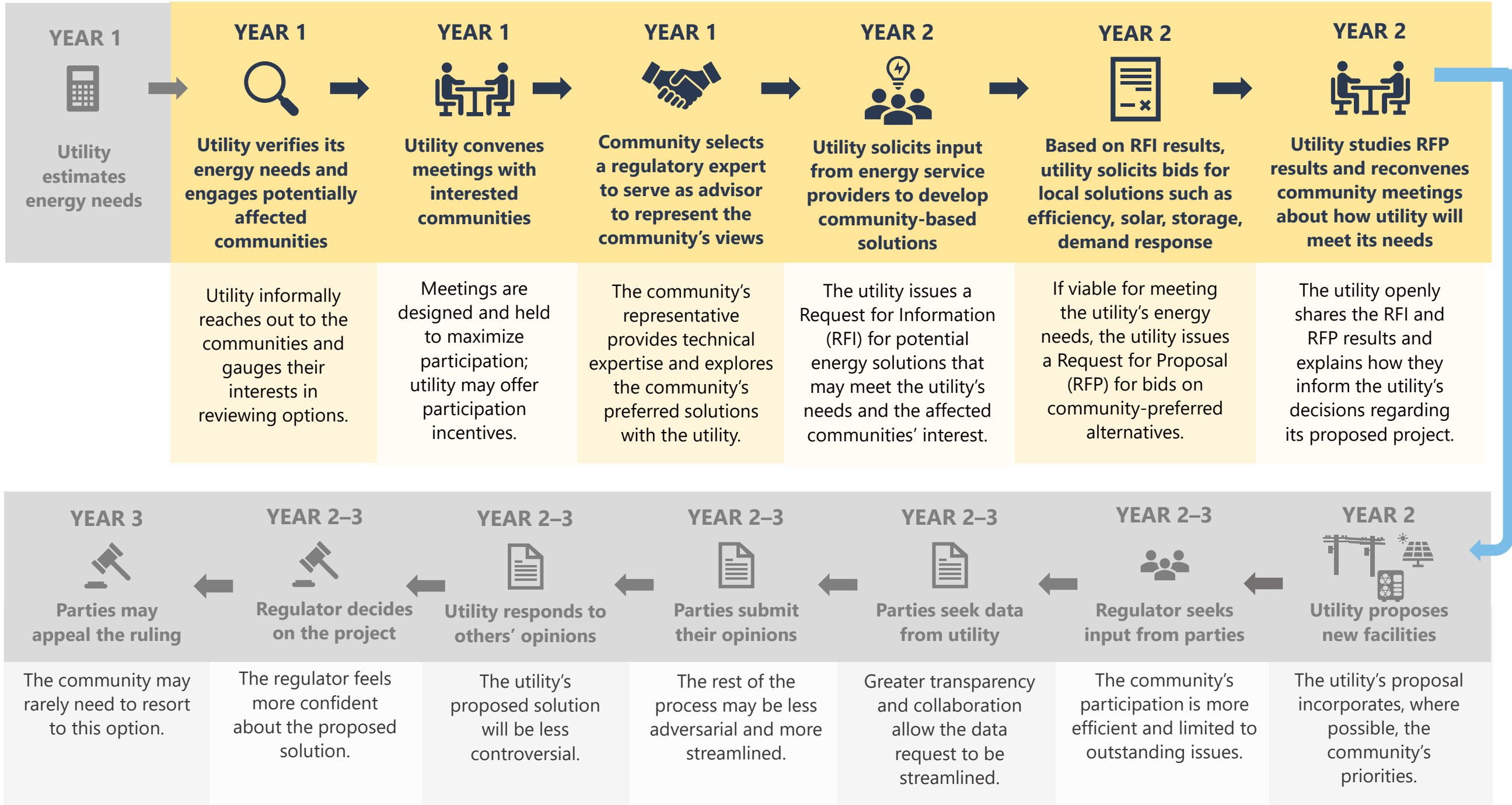


Parties submit their opinions

If the previous suggestions are implemented, the result could be that the utility engages early with the affected communities, who would be enabled to meaningfully contribute to the proposed project. That could streamline the legal process because the utilities' proposal would be better informed, and the regulator would have more confidence that the proposed project reflects the public interest. It should also render the process less adversarial and more streamlined.

Additional justifications for a commission-funded technical expert for the affected community: (1) The process often includes numerous meetings, conference calls, and data request challenges. Most people cannot afford to participate in the full process due to time constraints and a gap in expertise. (2) The local nature of project impacts may receive insufficient attention from statewide ratepayer advocates.

What could a revised process look like? (see yellow area for changes)



Asking for an expert: Intervenor compensation program

CURRENT STATUS

Most states have yet to establish a program that would pay for technical experts for affected communities in proceedings involving utility infrastructure projects.

Eight [active state programs](#) (CA, ID, IL, MI, MN, OR, WA, WI) pay legal and expert fees for utility proceedings, but only four of them may apply to proceedings involving infrastructure projects (CA, ID, OR, WI), and some of those programs may be limited in funds or other restrictions, e.g., reimbursement rather than upfront payment as grant, which could further reduce their usefulness.

Eight more states have authorizing rules or statutes to implement such programs (AK, CO, HI, KS, ME, NH, TN, WV).

Typically, such programs are initially paid for by the utility, and the utility later recovers those funds from its customers with permission from the commission.

Ideally, an intervenor compensation program would make sufficient funding available to affected communities at the beginning of the process rather than use a reimbursement process that the utility must initially fund.

REQUESTING CHANGE OR ORGANIZING FOR CHANGE

If the commission in your state does not have a program to pay for technical experts and related fees, there are two options that could be pursued:

1. Petition the commission to consider implementing such a program.
2. If the commission believes it needs legislation to authorize such a program, the community may need to lobby its elected officials to provide a remedy.

WORKING WITH STATUS QUO

Currently, affected communities can still advocate for their interests in several ways if expert resources are not available:

- Engage your statewide ratepayer advocate or statewide nonprofit advocates to ensure your community's views are included in their advocacy (note: much of the existing utility advocacy happens on a statewide level, and it often does not include local projects).
- Stay informed on notices and filings of local infrastructure projects.

Use public comments to raise awareness of your community's views by the commission and your elected representatives.

Takeaways for Community Members



SEEK EARLY NOTICE

In the current process, by the time you become aware of a proposed project in your neighborhood, some key decisions may have already been made.

Ask your utility regulator to require that the utility inform your local officials as early as possible when it learns that your neighborhood may be a potential site for a new infrastructure project.

Early notice will give your community time to discuss whether to participate, and, if so, to plan the community's participation and develop options.

As an example, a utility in Washington, DC, has modified its system planning process to make room for early notice and engagement before it proposes a new infrastructure project.



ASK FOR A TECHNICAL EXPERT

The process often involves attending numerous meetings and calls, and reviewing volumes of technical documents, and the time-consuming nature of these activities makes direct participation of the community unrealistic.

The affected community could ask the regulator or their locally elected representative to fund a technical expert to represent the views and interests of the community. In choosing the expert, the community could seek recommendations from other public interest advocates working in the utility sector.

This remedy currently exists only in a handful of states, and it may be possible that the regulator in your state may be able to provide this remedy if it does not already exist. If your regulator believes that new legislation is required, it could take a considerable amount of community advocacy before lawmakers to create this remedy.



PREPARE AND COLLABORATE

If engaged early, the utility may be open to exploring various options to meet its energy needs.

It should be acknowledged that the utility must deliver reliable energy, which may narrow the options, and that, in the case of investor-owned utilities (IOU), it must deliver attractive profits to its shareholders. Given that much of IOU profits come from construction projects, addressing this issue will be key to successful outcomes.

Exploring potential solutions early on that can satisfy both the community's interests and the utility's interests could lead to a more equitable and balanced set of solutions.