

Establishing Community Witnesses as Experts

Daubert, Frye, and Hybrid Standards

This document provides information about preparing community witnesses to qualify as experts and present testimony that regulators can credit.

Daubert or Daubert-Like Standards

Daubert and Daubert-like jurisdictions generally focus on whether expert testimony is **reliable, relevant, and will assist the decisionmaker**. Community witnesses may qualify as experts based on **knowledge, skill, experience, training, or education**, though formal academic credentials are not required. When a witness's expertise is grounded primarily in experience, legal advocates should be prepared to explain how that experience provides a reliable basis for the opinions offered and how those opinions fit the issues before the commission.

1. **Identify the regulatory issue** the testimony helps resolves, such as affordability, disconnections, outage impacts, public health and safety, grid reliability, siting impacts, or customer communications.
2. **Establish the witness's qualifications** through years of community work, organizing, technical experience, training, outreach, or repeated interactions with affected customers. Where expertise is based primarily on experience, explain why that experience provides specialized knowledge beyond that of an ordinary witness.
3. **Show the factual basis** for the opinion, including community surveys, intake records, outage logs, bill histories, public datasets, interviews, listening sessions, or direct observations.
4. **Connect to the opinion** and explain why the testimony will help the commission evaluate the utility practice, proposed investment, rate impact, or requested remedy.
5. **Define the limits of the testimony**. Keep opinions within the witness's expertise and available information. Community witnesses should not overstate conclusions or offer opinions requiring expertise outside their experience or supporting data.

Frye Standards

Frye states generally ask whether a scientific principle or method is **generally accepted** in the relevant field. Frye may matter most when the testimony depends on a novel scientific technique, methodology, or specialized analytical framework.

1. **Determine whether Frye applies**. Consider whether the testimony relies on a novel scientific methodology or instead reflects specialized experience, accepted professional practices, or routinely collected community information.
2. **Identify the relevant field or community of practice**. If Frye applies, identify the appropriate scientific or professional community, such as survey research, public health, environmental justice, community-based participatory research, utility consumer advocacy, emergency management, or another discipline relevant to the testimony.
3. **Demonstrate general acceptance**. Show that the underlying methodology is generally accepted through professional standards, published guidance, agency practice, peer-reviewed literature, or corroborating testimony where appropriate.
4. **Connect accepted methods to the witness's work**. Explain how the witness practices such as structured interviews, standardized intake forms, coded qualitative observations, outreach logs, or community-based participatory research—reflect accepted approaches within the relevant field.
5. **Frame the testimony carefully**. Ensure the witness explains only what the accepted methods and available evidence support and avoids presenting experience-based observations as scientific certainty.

Other or Hybrid Standards

Some jurisdictions combine elements of reliability, relevance, and general acceptance, while others apply state-specific expert standards or more flexible evidentiary rules in administrative proceedings. Utility commissions frequently admit evidence under standards that emphasize whether it is reliable, probative, and relevant, even when formal courtroom evidence rules do not strictly apply.

1. Review the commission's procedural rules, applicable evidence rules, and relevant state decisions governing expert testimony in administrative proceedings.
2. Prepare under the most demanding plausible standard by documenting the witness's qualifications, experience, factual foundation, reasoning process, reliability safeguards, and limitations.
3. Clearly distinguish between factual observations, experience-based expert opinions, and opinions that rely on scientific or technical methodologies.
4. Demonstrate how the witness's community-rooted expertise helps explain patterns, impacts, or customer experiences that are not readily apparent from utility records alone, while remaining within the witness's demonstrated expertise.

State-Standard Orientation Table

This table is intended as a practical starting point only. Expert witness standards vary by jurisdiction, proceeding type, and the nature of the testimony. Legal advocates should always verify current law and commission practice before filing testimony.

Category	General Approach	Examples & Verification Notes	How to Prepare a Community Witness
Daubert or Daubert-Like Reliability Approach	Courts or agencies generally focus on reliability, relevance, sufficient facts or data, reliable methods, and reliable application.	Many jurisdictions follow a Rule 702-style reliability framework or a state-law variant. Verify the current state rule and whether the utility commission applies the same standard in contested cases.	Document the witness's qualifications, factual basis, method, reliability safeguards, and limits. Tie the opinion directly to a disputed issue in the proceeding.
Frye or Frye-Like Approach	The principal inquiry is whether a novel scientific methodology is generally accepted within the relevant scientific community. Frye often does not apply to experience-based testimony.	States commonly associated with general-acceptance approaches include California, Illinois, Minnesota, New York, Pennsylvania, and Washington, although application varies and some jurisdictions limit Frye to novel scientific evidence.	First determine whether Frye is implicated. If so, identify the relevant field, demonstrate general acceptance of the methodology, explain how the witness's work reflects accepted practices, and avoid overstating scientific conclusions.
Other or Hybrid Approach	Jurisdictions may combine reliability, relevance, general acceptance, administrative flexibility, or state-specific expert standards.	Administrative agencies often apply more flexible evidentiary standards while still requiring reliable, probative evidence. Verify commission-specific rules and governing precedent.	Prepare as if reliability and fit will be tested. Clarify the witness's role, explain the data and methods, corroborate where possible, and define the scope of testimony carefully.