

# **A Letter to Governors and Legislators**

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## **On Appointing Excellent Regulators**

Dear Governors and Legislators,

Congratulations on your (re-)election. Your many duties include appointing and confirming public utility commissioners. They are responsible for inducing high-quality performance by providers of electric, gas, water, and telecommunications service. Your appointees' decisions will affect millions of consumers; billions of investor dollars; the local, regional, and national economies; and our air, land, and water. Here are eight thoughts on producing top-notch results:

### **1. Appointments Rooted in Principle**

“Regulation” is not a political whipping boy, something to campaign against. Nor is it a unidimensional spectrum on which “more” is better than “less.” Serious regulators do not debate oversimplifications like “command and control” versus “light-handed” regulation. (The regulatory legend Peter Bradford once noted, “I've heard of light-headed regulation, light-fingered regulation, and red-handed regulation; I know little of light-handed regulation.”) Regulation, instead, is about performance: aligning utilities' behavior with the public's needs. Principled regulators ask five questions: (1) What outcomes do we seek to produce?; (2) What specific behaviors, engaged in by whom, will produce those outcomes?; (3) Which behaviors will occur naturally, without regulation, because they align with the actor's self-interest?; (4) Which behaviors, in contrast, will occur only if regulation intervenes?; and (5) To produce those behaviors, what specific rewards and penalties must regulation introduce?

### **2. A Ten-Dimensional Job**

Utility regulation used to be straightforward. Utilities built infrastructure, sold products and services, proposed rate increases. Commissions approved projects and set rates. Their central aim was to protect customers from monopoly abuse—in the form of imprudent investments, inefficient operations, and undue discrimination against choiceless customers—while setting rates that gave investors a fair shot at a reasonable return.

Today's regulators do much more: They make markets, design programs, administer investment funds, incubate renewable energy industries, disseminate broadband, promote energy efficiency, protect critical infrastructure, and resolve stakeholder differences. They even act as political shields for governors and legislators paralyzed by the complexity of it all.

With all these demands, what does it take to excel at regulation? On a personal level, what must regulators be, and what must they do, to be effective? Next are some thoughts on attributes, experience, vision, ideological baggage, and political skill. I'll close with an alert about asymmetry.

### **3. Personal Attributes**

An effective regulator is purposeful, decisive, and independent. A purposeful regulator defines the public interest by articulating a vision (see #5 below). A decisive regulator acts to align utilities' and consumers' private behavior with that vision. An independent regulator accepts the pressures of public-interest politics (the need to make tradeoffs among meritorious but conflicting goals) but avoids the distortions of private-interest politics (the pressures from narrow forces seeking benefits for themselves). Recognizing that commissions are not courts and regulators are not judges, she not only presides; she leads. She rejects the rhetorical bipolarity of “markets versus regulation” because she understands, per Dr. Alfred Kahn, that her “central, continuing responsibility” is “finding the best possible mix of inevitably imperfect regulation and inevitably imperfect competition.” She prefers facts and logic over adjectives and adverbs.

### **4. Professional Experience**

Regulation is an eighty-miles-an-hour bus. Someone up front needs to know how it runs and where it should go. Aim for at least one appointee with deep regulatory experience. Promoting a staff person gives a double punch, boosting agency morale while ensuring experience. Add someone who has worked in a regulated industry: not a talker but a doer—someone who planned, financed, built, or operated infrastructure, or who connected with customers. You'll take a hit for the “revolving door,” but you'll gain someone who knows how it feels to be regulated.

### **5. Vision**

A vision is more than a two-sentence mission statement. It is purpose depicted. The regulator with vision can describe the optimal industry structure (in which motivations, behavior, and performance all align with the public interest), its microeconomic features (the product array, customers' experience, sellers' profitability); and its macroeconomic features (the industry's overall performance, its contribution to the state and regional economies, its environmental effects). An effective regulator tests that vision against present facts, makes adjustments, and then designs and sequences the regulatory steps to produce it.

## **6. Ideological Baggage**

In regulation, the shopworn dichotomies are false dichotomies. There is no Republican or Democratic way to regulate. Federal versus state, markets versus regulation, urban versus rural, generation versus efficiency, incumbent versus newcomer, publicly owned versus investor-owned, publicly traded versus closely held: All these “versuses” lead to zerosumsmanship, usually boiling down to mine versus yours. The best ideas come not from ideology, hope, or promises of “good faith”; they come from facts, logic, and extrapolation from experience.

## **7. Political Skill**

Twenty-five years ago, the politics of regulation were easy to follow: Investors wanted solid returns; customers wanted reasonable rates. Positions were predictable; the debate was over dollars. Today, the interests have multiplied in numbers and diversity. The investment community is no longer just shareholders and bondholders; we have private equity, hedge funds, short sellers, holding companies from Scotland, England, Australia, Germany, and France. The consumer community is also splintered; the simple threesome of residential, commercial, and industrial has given way to a United Nations of irrigation farmers, computer manufacturers, military bases, casinos, gold mines, and ski resorts. Each technology has its own interest, from wind turbine manufacturers to smart-grid installers. There are environmentalists, labor unions, privacy advocates, and terrorism consultants.

Many of these newcomers are new to regulation's purpose. Some view the commission as just another government agency—a “public resource center” obligated thereby to give out benefits to those who ask. Others seek protection—from high prices and complicated choices. Dealing with this diversity requires political skill. The choice is between channeling these perspectives toward a long-term vision of industry structure and performance or producing a series of “compromises” that produce only short-term peace.

## **8. Resource Asymmetry**

With rare exceptions, utility executives know more than their regulators. This asymmetry invades every relevant knowledge category: costs (including opportunities for cost reductions); operations (e.g., the capability, availability, and vulnerability of physical plants); customers (consumption patterns, product preferences, payment histories); market value and financing opportunities; utility staff capabilities; and technological potential.

Addressing this asymmetry is key to regulation's credibility. To induce the utility to provide excellent service at reasonable cost, the regulator must establish standards, then compensate the utility to the extent that it meets those standards. To do so credibly and effectively, the regulator literally needs to know what he's doing. His expertise must match the

utility's. The under-resourced, under-informed commission risks (a) setting performance standards too low or rates too high, causing captive ratepayers to overpay for subpar service; or (b) setting performance standards too high or rates too low, weakening the company and losing investors' trust. Regulation's credibility is undermined by asymmetry.

Governors who want independent regulators must obtain for them the staff resources that independence requires: staff whose credentials—and pay—match the utilities'. Ratepayers already pay for the utility's personnel; they won't mind paying for objective staff who can judge utility performance. Allowing commissions to finance their operations through the same rates that pay for utility personnel is the most direct solution to asymmetry.

## **Conclusion**

It's asking a lot to find women and men with the personal attributes, experience, vision, objectivity, and political skill demanded by this ten-dimensional job. But they exist, and they succeed. If you can find them and appoint them, your public will thank you. Good luck.

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In my January essay, *Tweeting and Polling: Insults to Effective Regulation*, I argued that tweeting a poll on a multibillion dollar plant risks oversimplification. I also said that the author of the tweet at issue, Georgia Commissioner Tim Echols, was a “genial and gracious” person. Proving himself equal to that description, Comm. Echols offered a response. Here it is:

### ***Why Social Media is Important to Me (a response to Scott's last newsletter)***

**By Tim G. Echols, Vice-Chair, Georgia Public Service Commission**

*When I first was elected in 2010 and began attending NARUC (National Association of Regulatory Utility Commissioners) functions, several folks cautioned me against being too much of an “activist.” Commissioner Phil Jones from the state of Washington, and Scott Hempling, who I met in a “New Commissioner Luncheon,” at the winter meeting were just two of those voices. Their caution and concern was and is appropriate.*

*Back home in Georgia, my fellow commissioners gave me similar cautions as I sought to “increase the stature” of the Georgia PSC. My effort to keep our agency in the news, and have citizens understand more about what we do, received mixed reviews, and clearly I made a lot of rookie-mistakes that first year in office. But my mentors stuck with me and continued to help me mature and balance my efforts to engage people with our issues. For that, I will always be grateful.*

*Fast-forward 6 years to last month and my friend Scott Hempling uses a Twitter posting I made, along with some Rotary Club comments, to suggest in his essay that maybe I haven't learned my lesson after all. Here is why this is different.*

*First, as an elected official, and a regulator, engagement with the public and soliciting feedback is important to my survival. I troll Facebook and Twitter almost daily and engage with people, especially those who post negative comments or who disagree with me. I often send them a direct message thanking them for their opinion and offer an article or rationale for my action, vote, or article. They respond, and I keep the conversation going. If complicated, I will ask them to call me on my cell and have a conversation. When the off-line communication is over, what often happens, without any prompting from me, is that the person makes another public-posting recounting my reaching out to them, the positive nature of the interaction, and most importantly, a shout-out to me for caring and listening. And if I do this in a timely way, they seem to give me bonus points.*

*Second, we live in a day when people are cynical about politicians. Despite me not liking that word, I am a politician because I run for office, raise money, and engage in the electoral process. Almost 80% of states in our country appoint regulators like me. Those colleagues are not “politicians,” and certainly their activities, comments, opinions, media appearances, interviews are often subject to great scrutiny by the very person or entity that appointed them. In some ways, my appointed colleagues have one constituent—the Governor of their state. While regulatory commissioners are judicial in nature, they don't have lifetime appointments, and therefore they serve at the pleasure most often of the state's chief executive. If a commissioner in those states stray[s] far from the agenda or message of that Governor, they might get a call or receive a “message” to cease and desist, or something even worse. Scott also has a few things to say about that as well I am sure.*

*Given the cynicism in the public square, and my background in training young people through my non-profit, TeenPact, I take great measures to change the way people “feel” about my agency and government in general. I have almost one hundred essays and op-eds for newspapers and magazines over the last seven years, and usually invite people at the end to engage with me by putting my cell phone number, email address, and social media handles.*

*As Scott has opined, being in the “energy” business as a commissioner is a difficult and challenging job. You have to learn to deal with kilowatts, inverters, dockets, turbines, sub-stations and a host of words and concepts created from initials—like NARUC, EPA, FERC and maybe the NRC. When you add Twitter and Facebook to the mix, especially with the controversy around how Donald J. Trump has used it, it is enough to drive one crazy. Who needs the liability, Scott would suggest. I think there is another way to look at this.*

*Let's start with the most popular social media—Facebook. You may have thought that Facebook was just for people who wanted to post videos of dogs, cats, their dinner, and of course—selfies.*

*But many in the energy world use Facebook to connect with customers, ratepayers and anyone looking around on the internet.*

*Companies like Duke Energy advertise their refrigerator-recycling program on Facebook. Georgia Power has a special Facebook page dedicated just to their electric vehicle program. Entergy has a Facebook page for every division and uses it to brag on customers and employees. EMC's use the "throwback Thursday" hashtag #TBT to post historic events from their past for their Facebook friends to see. The California Public Utilities Commission allows anyone to "vent" on their Facebook page, including the posting of photos. Austin Energy's Facebook page is a virtual brag-book of company accomplishments. You get the idea. It is a free scrapbook with settings that give the page owner as much control as you like. In fact, you can even create a "secret" group that only invited people can see.*

*What about the infamous Twitter? Despite what you might think, Twitter is not just for mean people. Believe it or not, Twitter has been with us for almost 12 years now. I first started using it in 2007 and it seemed like a complete waste of time. A professor made me set up the account in my Mass Communication Masters program.*

*Twitter, unlike Facebook, is not meant for friends and family. Rather, Twitter is for people you are trying to communicate WITH. For me as an elected commissioner, that is voters, ratepayers and the media. You can follow anyone and they can follow you. No permission is required like on many Facebook pages. Usually, only people who follow you see your messages, so the idea is to increase the number of people who follow you. There are tricks to doing this—including using surveys like the one Scott mentioned in his essay soliciting feedback about my Vogtle vote.*

*How much can you say in 280 characters you might ask? That is what a "tweet" is usually limited to. Actually, you can say quite a bit because you are forced to boil it down to the core message quickly. By adding a link, which journalists do, followers can get more. In fact, most reporters I know use Twitter to "tease" their stories and drive people to their publication website. (Maybe Scott should think about this for his publication).*

*Just make sure the link matches what you tweet. The "Politifact" project took a tweet I did on solar jobs in Georgia and deemed it a "half-true" on the front page of the local section of the Atlanta Journal Constitution because the figure in the link did not match what I put in the "Tweet." Pause, fact-check, then Tweet is the take-home lesson there. Never mind that a trade association gave me the number. If it goes out on your account, it is attributed to you.*

*For utilities, many use it for "breaking news" types of alerts: power outages, emergency info, etc. Twitter is the social media of choice for media types and they are the most prolific users of this platform in my opinion. Not a day goes by when CNN or other outlet[s] [are] not attributing a tweet to the President or other official. In some ways, Twitter has become the loudest voice a person can use.*

*PPL Electric and many utilities have staff who monitor their Twitter feed and allow customers to report outages, communicate concerns, or whatever—which the utility can then respond to. The PUC of Texas uses Twitter to provide followers with info about hearings, customer service information or agency news. ERCOT uses their Twitter feed to advertise job opening[s], provide historical info and provide forecast details. NARUC uses their Twitter account to “live tweet” interesting photos and tidbits from their nationwide meetings. Fortnightly uses Twitter to push out magazine content—always using a link so readers can get directly to the content.*

*The EPA has 582,000 Twitter followers, which is huge. They have a Twitter account for every region and use it many times per day to communicate meaningful information to their followers. These include photos of the Administrator and various staff busy at work, info on grants, and programs. In fact, the EPA has its own hashtags on Twitter such as #CPP, #ActOnClimate, #DisasterPrep, #CleanPowerPlan and others. Virtually all federal agencies do the same.*

*Using hastags allow a user to assign a particular subject to a Tweet, and the EPA uses hashtags as well as anyone. Followers searching or tracking a “trend” may discover your account and begin following you as a result of a hashtag. If you are on Twitter, try using a hashtag the next time you tweet.*

*And probably best of all, Twitter allows companies to get instant customer service—assuming the account is monitored. I often use it when trying to communicate with a company like Delta Airlines when I am in a crowd. Their response time is within seconds and I don’t have to bother people around me at the airport with one of those obnoxious phone calls. You know the kind I am talking about. When I have my airline issue resolved, I just go back in and delete that Twitter activity. If I don’t, it is sitting there for all the world to see.*

*In a way, Scott’s theory is right: “Tweeting a poll has no place in serious regulation.” His concern about oversimplification and sampling is merited. But what he didn’t know was what I was really doing, and how it fits into how I see my role as a constitutional officer in the state of Georgia.*

*In the meantime, let’s keep learning from each other so that we may serve the public in a more effective and meaningful way. Let’s be gracious, accept criticism, and engage in discussion that leaves all parties feeling better. Thank you Scott for starting this conversation. Keep up the good work.*

*- Tim*

*Tim Echols was elected statewide to the Georgia Public Service Commission in 2010. He drives an electric car, preaches energy efficiency, and installed solar thermal on his home. He recently authored the motion to keep Georgia building new nuclear reactors. He has three degrees from the University of Georgia, one wife, and 7 kids.*