

Certification of Regulatory Professionals: Reader Comments

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September 2019

In August and September 2019, I reprinted two prior essays that argued for certification of regulatory professionals—*Certification of Regulatory Professionals: Why Not? (Part I and Part II)*.

These essays drew several thoughtful comments—some with important information, others with well-reasoned questions about, or skepticism about, the idea. For what it's worth—and I should have made it clear—my focus was mostly on commissioners and staff: For commissioners, certification, preceded by serious education, would increase the chance of their rejecting non-merits forms of persuasion. For staff, I saw certification as way of recognizing the skills they bring and rewarding them for acquiring more skills.

Every word offered by the commenters below is worth considering. Thank you for these offerings.

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From Prof. Sandy Berg:

Our web site www.regulationbodyofknowledge.org is a resource for professional certification programs. It has been developed with the points you make in mind. IP3 has some programs but I do think they involve testing.

There is a formal PPP certification program that involves certified instructors and a test. That program was funded by the World Bank and the Study Guide is very comprehensive. So APMG manages that program now. It focuses on international capacity and would not be particularly relevant for US regulators, but it illustrates that carefully designed certification programs can be effective.

Public Utilities Resource Center at Univ. of Florida has a number of courses that would be appropriate for US Regulators: rate design, RIA, Benchmarking, and cost of service analysis. Finally, The narrative for the Body of Knowledge would be useful for new hires at agencies. And the resource material is good. Many of the FAQs on the BOKIR website are quite comprehensive.

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The North Carolina State Bar has a Utility Law Specialist designation. See <https://www.nclawspecialists.gov/for-lawyers/the-specialty-exams/exam-guides/utilities-law/>

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[From David Magnus Boonin, Founder, TBG Consulting]

Question: Who requires this certification? Although we agree that Commissioners should lead and not preside, judges hear cases in which they weigh evidence presented by witnesses, even expert witnesses. So do Commissioners need the same certification as experts? For that matter, what subject expertise does a lawyer need to represent a party in a regulatory proceeding? Do customer service representatives need even a basic certification? Do advocates, whether consumer, large user environmental or utility experts need certification, as they are not dedicated to the public interest? Do people who do research need the same qualifications as those who testify? And recognizing that two qualified experts can reach vastly different opinions when presented with same information (not necessarily facts) what answers would be accepted as correct in a test.

I would hope that regulators, however defined, would seek training wherever available. One thing I did for new hires at the PUC, including Commissioners, was to arrange for visits to facilities. What does the piping in nuclear look like? How big is a large hydro station? What does PJM's control center look like? What about a water treatment plant?.... I knew passionate, capable regulators dedicated to the public interest that couldn't keep a kW and a kWh straight. I continue to learn myself after over 45 years in the field.

How many expert analysts have been challenged because they don't know the definition of heteroscedasticity when presenting a simple statistical analysis?

I concur that training needs to be encouraged and funded. But could certification be so rigid as to limit creativity and lead to lots of me too thinking and inferior results. If you've been following my recent articles on rate design, I challenge the readers to refocus their efforts on pricing that encourages efficiency first and cost causation second if at all. I've witnessed paradigm shifts in resource analytics from supply-side and cost per kwh to demand-side and total costs to IRP and social costs to scenario planning and affordable costs... Should I have been disallowed certification when I promoted energy efficiency and load management and fought against the no losers test? Should I had been shunned when I fought for changing fuel cost adjustment mechanisms to fuel price adjustments? I was told that efficiency standards on nuclear plants would cause devastating accidents rather than drive capacity factors from 60% to over 95%. In short, common knowledge is not always wise. Even basic engineering standards that claimed that intermittent power beyond about 5% would cripple the grid are a thing of the past.

With these examples of change in our lifetime, do we really want tests and prescribed training or continuing and diverse education that evolves and even changes radically? Effective public interest regulators need to lead and to lead regulators needn't pass outdated tests; rather they need to challenge conventional wisdom as issues such as the issues get increasingly

complicated. We cannot afford to train and certify regulators based on yesterday's principles rather than tomorrow's challenges.

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[From a professor of economics]

As an economist, I have to ask a few questions that should be answered before consideration of certification (as well as a few preliminary thoughts):

1. Is there a market failure in the market for professional regulatory services? The presumed market failure seems to be one of informational asymmetries in which the qualifications of an attorney or expert witness are unknown or uncertain to those outside that individual. But doesn't the competitive, contested regulatory process sort out those qualifications and provide for full disclosure in due course, allowing for appropriate weight to be placed upon the product of each regulatory professional?

2. Is the market failure significant and do the costs of that market failure justify market correction by imperfect government solutions or some other licensing/certification organization? In economics, we caution policy makers that correction of market failures is only justified if the costs of that market failure are greater than the costs associated with imperfect government solutions.

3. Isn't it true that licensing or certification requirements can and have been used to limit competition and drive up the market price of regulatory professionals including expert witnesses and attorneys? Regulated monopoly utilities could benefit from this because the increased market price of "certified" regulatory professionals would give them an advantage over other parties and the regulatory commission itself.

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[From an attorney at a state commission]

I have been thinking about your certification essay from last month, and as I read this month's essay, I feel more convinced than ever that certification/specialization in our particular industry has great potential to be counter-productive. We work in a small and specialized industry and that creates its own set of filters. For example, in my state, there are only a small number of firms that practice before the Commission, and when there's a new firm that joins, it's usually because someone left an old firm after a few years and struck out on their own. Personal, as well as firm, reputation, is what drives the hiring of lawyers in this field.

It's not clear to me exactly what problem certification is trying to solve. It looks more like a solution in search of a problem than the other way around.

My personal philosophy to regulation is that the lightest touch possible is the best one (and requiring certification seems a bit heavy-handed). Useful regulation seeks to tweak the market framework to channel the strongest urges of human nature to work for the most fair and just outcome. Our current system of utility regulation falls far short of that; I don't see how certification would do anything other than further calcify a system which, quite honestly, tilts greatly towards the already powerful.

I was particularly troubled by the North Carolina Renewables lawyers grab at sanctioning another level of monopoly power which you cited. The 5 years experience at 400-500 hours per year is likely to create a new layer of serfdom for professionals that have already put in several years of rigorous academic study, challenging exams, and hazing by their peers in major firms (for those who leave law school and go directly to a large firm the workload and hours are legendary).

In the Commission I work at, we have a number of analysts and lawyers that came from the private sector or other non-regulatory areas. Most of us took a pay cut from our private sector jobs in exchange for a lifestyle and the opportunity to do "the people's work". My fear is that yet another layer of certification would interfere with that sort of flow of professionals looking for a new interesting set of questions....or worse yet, restrict the available workforce to a world of people only with academic experience or wealthy parents that can support them through the requisite internships.