

# Effective Utility Regulation: A Unifying Cause for a Divided America

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We have 50 sovereign states, five inhabited territories and 3.8 million square miles. We have 320 million people and plenty of political differences. Yet across this diverse and divisive land, from Maine to New Mexico to Washington to Florida, the principles and practices of utility regulation are held in common. Why? Here are nine possible answers—each one a lesson for our nation's leaders.

**1. *We don't build walls.*** One of the 20th century's greatest engineering achievements was the electrification of America. See [\*National Academy of Engineering, Great Achievements and Great Challenges\*](#). Electrical interconnection made America great. Interconnection brought integration—of diverse power sources from diverse markets. Supporting that electrical integration today is institutional integration—regional transmission organizations, formed by the broad-minded: government-owned and investor-owned utilities; independent producers, transmitters and marketers; conventional and renewable sources; centralized and dispersed sources; industrial, commercial and residential customers. Big-tent thinking.

Breaking down walls, regulators build unity from diversity. That diversity promotes short-term economic efficiency (by substituting low-cost power for high-cost power); long-term cost savings (by making winter peaking capacity available for summer peak loads); clean air (by displacing high-polluting sources with low-polluting sources); and mutual support (as teams from fair-weather regions help restore service in storm-ravaged regions). Diversity supports a common goal: a reliable, low-polluting infrastructure for a national economy. None of this could happen without regulation—the principles and practices that align self-interest with the public interest. In regulation, we don't build walls. We build connections, because success comes not from artificial isolation but from joint performance.

**2. *We don't discriminate.*** Ever since the Interstate Commerce Act of 1887, every regulatory statute has prohibited discrimination. Immigrant or native; Jewish, Christian, Muslim, Hindu, atheist or agnostic; red, purple or blue: Regardless of race, ethnicity, age or sexual orientation, every like customer receives like service on like terms. Microeconomics 101 tells us why: For the economically powerful, discrimination is tempting because discrimination is profitable. So we ban discrimination, because the discriminator's profit is made not from merit but from extraction. Regulation does honor differences—rate structures vary with load size, load shape and geographic location, because different customer-types cause different costs and bring different benefits. So regulation is like our Constitution: It prohibits discrimination for economic profit, just as our Constitution prohibits discrimination for political profit.

**3. *We make tax returns public.*** Cost-based ratemaking means basing rates on cost. Taxes are a cost. If utilities want their rates to recover their costs, they must disclose their taxes. Disclosure exposes excess profits, conflicting business ventures and undue financial risks. Disclosure reveals the facts that help the public hold their utilities accountable.

**4. *We don't fake facts.*** With billions of dollars at stake and profits to make, “players” on the regulatory field have incentive and opportunity to exaggerate, over-promise, distract and deceive. It happens in regulation as it does in politics. But effective regulation makes the truth-hiders and fact-deniers accountable. Witnesses have to work under oath; cross-examiners are trained to expose the distortions; and regulatory decisions emerge as signed orders, with transparent explanations subject to appellate review. If everyone does his or her job, “alternative facts” have short lives, and those who repeat them—or tweet them—have short careers. (That “if” is important: Witnesses must be expert witnesses, not billboard advertisers; cross-examiners must aim for the jugular, not clip toenails; commission opinion-writers must cite hard facts rather than copy applicants' soft claims; and reviewing courts must call out soggy reasoning rather than hide behind “judicial deference.”)

**5. *We honor science.*** Investigation, facts, reinvestigation, more facts. Everything we know about electricity production, water pumping, data transmission, gas molecules, pipelines, transmission lines—we learned it all from science. Utility service seems like magic, but it's not. Turn on the toaster and 500 miles away a generating plant puffs out smoke. But utility service is not magic, it is science; and climate change is not a hoax, it is science. When 320 million lives depend on utility services, regulators lack the luxury of dismissing science.

**6. *We pay for the present and invest in the future.*** Responsible regulators don't ask “How low can I set rates to ensure my re-appointment?”; they ask, “What dollars do we need to make the system strong?” To responsible regulators, legislators who cut taxes, while leaving children under-educated and bridges unrepaired, are a remote genus in the Animal Kingdom of policymaking. Enlightened regulators talk of “revenue requirement,” not “rate burden,” just as enlightened legislators talk of “tax responsibility” rather than “tax burden.” (See George Lakoff, *Don't Think of an Elephant: Know Your Values and Frame the Debate* (2004).)

**7. *We don't use government positions to pad family profits.*** Thanks to longstanding, universally-accepted rules, regulators do not invest in businesses affected by their official decisions. Nor do their children. No exemptions.

**8. *We don't personalize.*** I have known, worked with and testified before hundreds of regulators. Plenty of egos, ambitions and sensitivities, like normal human beings. But I have never seen a regulator conflate his position with his person. No regulator tells a legislature “Don't change my statute,” or tells a court “Don't reverse my ruling,” or tells a reporter “Don't underestimate my support.” No regulator tells a witness “Don't tell me what I don't want to hear.” There is no regulatory version of “*L'État, c'est moi.*” That separation of position from person, that placement of institution above ambition, is repaid with trust and respect. Hundreds of decisionmakers affect billions of dollars, yet the regulatory community is remarkably free of gossip, backbiting, leaks and recriminations. We prize our professionalism, so we act like professionals.

**9. *We know our decisions aren't "the greatest."*** Regulation has its faults and makes its mistakes. Ask the South Carolinians about the Summer nuclear plant, the Georgians about the Vogtle nuclear plant, the Long Islanders about the Shoreham nuclear plant. Ask the Mississippians about the Kemper coal gasification plant, and the Californians about the San

Bruno gas pipeline explosions. Ask the Internet users who now face discrimination from the FCC's undoing of net neutrality; the schoolchildren whose download speed is less than South Korea's. Ask the National Association for the Advancement of Colored People, whose groundbreaking work on asthmatic children is compelling a rethinking of where we place our power plants. See [\*Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil and Gas Facilities on African American Communities\*](#).

Effective regulators don't say they're "the greatest"; they avoid adjectives and adverbs in favor of facts and logic. They own their decisions and admit their errors. If they want to unify our nation, if they want to keep America great, they have no choice.