

## Legislatures and Commissions: How Well Do They Work Together?

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*The meeting of two personalities is like the contact of two chemical substances.  
If there is any reaction, both are transformed.*

— Carl Gustav Jung

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Legislatures delegate powers to commissions. To delegate is to decide: Which problems are best addressed by the legislature, which by the commission? Regulatory statutes often answer this question suboptimally. Here are three examples and three common causes, followed by two principles for effective legislature-commission relations.

### **Legislative Delegation: Three Examples of Suboptimality**

***Low-income families:*** For our poorest citizens, cost of service exceeds ability to pay. Legislatures underspend on poverty reduction. Conscientious regulators with hearts then allocate more fixed costs to variable charges, to cut bills for low-usage customers. This practice conflicts with economists' view that recovering fixed costs through variable charges lowers efficiency, reducing resources for all. Performing the political function of redistributing wealth—here, helping the poor by lowering their bills—diverts regulators from their duty to induce efficient performance. Could we avoid this conflict and diversion by improving the legislature–regulator relationship?

***Pollution:*** Electricity production pollutes. The cause of electricity production is electricity consumption. Consumption would pollute less if the consumer's price reflected pollution's cost. But regulators receive conflicting pressures: reduce pollution, keep prices low. The conflict reflects more mixing of political with technical. The political question is: What is the consumer's responsibility to bear the costs of his consumption? If legislatures provide the political answer, commissions then can deploy their technical expertise by crafting rate designs and designing efficiency programs to minimize the cost of the politician's decision. Legislative silence draws the commission into a political role, diminishing its credibility as technical problem solver and public truth teller.

***Market structure:*** How does a legislature authorize competition after decades of monopoly? Competing for attention are multiple bases for decisionmaking: ideology (markets or regulation?); political expediency (by Election Day, will prices rise or fall?); pressure group placation ("stranded cost" recovery for incumbents? high "shopping credit" to help new

competitors? price capped service for non-shoppers?); and facts (do economies of scale, reliability, efficiency increase or decrease with de-integration?).

Industry structure must serve industry purpose. Industries serve customers. Whether a given industry structure will serve customers well is a factual question. Answering factual questions requires objectivity and open-mindedness. Ideology, expediency, and placation belong at the margin. When deciding an industry's structure, what then is the best mix of legislative and commission powers? Just as the legislature created the utility's rights and obligations a century ago, so must the legislature initiate re-examination. By what process? Should the legislature change the structure itself, or should it delegate the desirability of change decision to an expert commission?

I would draw the political-technical boundary as follows: The legislature makes the political judgment that a century-old structure requires rethinking. The commission makes the technical judgments about which new structures work best. In retail electricity competition, most state legislation blurred these lines. Legislatures made political declarations that "competition" best served the public, then translated those declarations into fixed starting dates. But the workability of those declarations depended on technical facts about economies of scale, reliability, and readiness. The spottiness of effective retail competition shows that legislatures are not well suited to determine, and calibrate policies to, technical facts.

## **Legislative Suboptimality: Three Causes**

*Legislative staff resources:* Recurring subjects like budget, taxation, education, health care, and public safety have permanent legislative staff. Because utility legislation arises infrequently, staff faces steep learning curves.

*High political component:* With a modest push from interest groups, technical regulation slips easily into bipolarity and zerosumsmanship: shareholder versus ratepayer, economy versus environment, incumbent versus newcomer, residential versus industrial, technocrats versus equity advocates. Since legislators specialize in compromise, they find ways to make a majority. But like a house's concrete foundation, regulation's technical foundations of reliable service, economic efficiency, and performance standards do not gain strength from political balancing.

*Short-term stimuli:* Utility planning is long-term, but legislative stimuli are often short-term: A rate increase looms, a pipe bursts, a manufacturer departs, some existing regulatory practice bothers someone. This mismatch produces short-term fixes not well connected to long-term missions.

## **Effective Legislature–Commission Relations: Two Principles**

*1. Align responsibilities with comparative advantage.* Legislatures make the big tradeoffs. They establish the exchange rate among competing values, interest groups, and time

periods. Guns versus butter, schools versus manufacturers, and today versus tomorrow are legislative judgments. Regulators are better at the technical judgments: defining efficient performance, calibrating rewards and penalties to produce that performance, quantifying tradeoffs, and identifying solutions that avoid tradeoffs. Regulators also design procedures that produce objectivity—the engineering, accounting, and finance objectivity supporting the public's expectation that lights will turn on, water will flow, and phones will ring.

**2. *Make the legislature–commission relationship a team relationship.*** Since the legislature creates and empowers the commission (constitutional commissions excepted), oversight is inevitable. But the effective legislature-commission relationship is less supervisory than cooperative: shared goals, coordinated action, mutual trust, and two-way critique.

Shared goals require a shared definition of the public interest—a common view of that combination of economic efficiency, sympathetic gradualism, and political accountability that best serves the community. See essay on purposefulness. Coordinated action and two-way critique means the two bodies must determine who does what best (with emphasis on separating political from technical). If a legislature wants the commission to implement competition, but the commission finds that high economies of scale or technical impracticalities make competition inefficient, the commission should say so. If the legislature caps “default service” (sometimes called “standard offer service”) at a below-market price, the commission should explain how that distortion kills competition. The legislature should expect and invite these critiques. If the statute requires that mergers satisfy the long-term public interest but the commission approves mergers based on short-term rate freezes, the legislature should say something. That's two-way critique; that's teamwork.