

"Politics": How Can Regulators Respond?

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The hardest part of my job is the politics.
— Mid-Atlantic Commissioner

The essay “‘Politics’: The Public and Private Versions” described two forms of regulatory politics: *public-interest politics*—the need to make tradeoffs among meritorious but conflicting goals; and *private-interest politics*—the pressures from forces seeking benefits only for themselves. One enhances, the other undermines, regulation's public-interest mission.

The effective regulator can resolve public-interest tensions with traditional tools: facts, logic, statutory language, clear explanations and proper procedure. How does she diminish the distortions of private interest politics? Some suggestions follow.

Explain the Tradeoffs

Outages happen, water needs purifying, even dial tones fail. Absolutism is expensive, so regulators make tradeoffs. But when tradeoffs disappoint, private-interest pressure rises.

In regulatory disappointment as in human disappointment, understanding assists acceptance, and explanation assists understanding. We can do more with explanation. Ken Costello has observed that in rate design—replete with multiple, competing objectives—commission tradeoffs are often ad hoc, implicit, and reactive to interest-group pressures. "Over time, policy becomes unpredictable, thus diminishing credibility." [*Decision-Making Strategies for Assessing Ratemaking Methods: The Case of Natural Gas*](#) (NRRI 07-10), pp. 23-25. He recommends that commissions, at the outset of a proceeding, identify and weigh objectives systematically and explicitly. Repeating this practice in each proceeding will moderate private-interest expectations by putting the parties in the regulator's shoes.

Channel Private Interests Toward Public-Interest Goals

No rational residential consumer advocate wants a weak utility, unable to modernize its infrastructure. No rational utility investor wants discipline-draining auto-recovery of imprudent costs. Even aggressive drivers want red lights to prevent accidents; restaurant check splitters want pre-dinner guidelines to prevent postprandial sticker shock. In utility regulation, as in all regulation, unconditional accommodation does no one good.

For no party is purely private. We tend to view the array of interveners as a spectrum, each interest occupying a unique segment. This is optical error, magnified in commission hearing rooms by the ethics of advocacy. The industrial customer's lawyer is duty-bound to

represent only industrial customers, the utility shareholders' lawyer only the shareholders. But every industrial customer, every shareholder, every individual citizen, is a combination consumer-producer-polluter-environmentalist-investor-worker. Former Vermont Board Chair Michael Dworkin tells of a heated hearing on a proposed power line from Quebec to Boston. The farmers' reflexive opposition cooled when one declared, "If those Boston folks can't run their refrigerators I can't sell my milk."

It becomes the commission's task to hold up the mirror, display the common interests, and describe the consequences of unconditional accommodation to each private interest. By anchoring every proceeding in the public interest—requiring parties to address the public needs rather than private needs—the regulator can influence private expectations, turn positions into perspectives, and produce better results.

The alternative is not pretty. Analyze major regulatory events—recent and historic, utility and nonutility. The variable that consistently distinguishes failures from successes is the ratio of private-interest gratification to public-interest insistence.

Create a Culture of Commitment to the Long Term

Compare two hypothetical statements:

1. One hundred years from now, people need to breathe.
2. Starting in 2011, purchasers of electricity from coal-based plants must pay the cost of pollution.

No one disagrees with the first; plenty of people disagree with the second. Private-interest gratification is magnified when immediacy is emphasized. The opposite is also true. The longer-term the perspective, the less large the differences. Consider the intra-regional disputes over transmission cost allocation. Long-term thinking allows for intergenerational logrolling. Over 20 years, the ups and downs can balance out. Looking only at the next five years, every project has an opponent.

It is not easy for regulators to play the long-term card. The average commissioner term is under four years. The tendency to avoid short-term pain for long-term benefit is understandable. Regulatory legend Charles Stalon (appointed to the Illinois Commission and the Federal Energy Regulatory Commission described the problem: "There is NIMBY (not in my back yard), and there is NIMTOO (not in my term of office)."

There are exceptions. The regulatory community is blessed with several dozen commissioners—many in leadership roles—now in their second decade of service. Governors can help: I knew of one who told his commission chairman annually, "Your job is to take care of the long term." And in every state, there is an infrastructure of practitioners consisting of long-termers: commission staff, residential advocates, industrial customer advocates, utility lawyers, all spending more time with each other in hearings rooms than with their families in living

rooms. Utilities have the longest term of all—an obligation to serve and a right to provide service exclusively—for as long as performance remains high.

The ingredients thus exist for a culture of commitment to the long term. This perspective is neither naive nor unheard of. Readers with relatives who lived through World War II recognize that today's political freedoms and economic opportunities owe much to the generation that bought war bonds, recycled tin cans, rationed food and fuel, and gave lives. Utility regulation, oriented long-term, is no less important.

Regulators can be political leaders, in the best sense of both words. They can be political by resolving tradeoffs forthrightly. They can be leaders by persuading the populace to make investments today for the public of tomorrow. They can say, “If our generation's usage wore down our infrastructure, our generation's dollars should rebuild it. If our consumption diminished our air quality, our investments should restore it.”

Conclusion

Explaining tradeoffs explicitly, channeling private interests toward public-interest goals, and creating a culture of commitment to the long term: These measures are a regulator's best strategy for practicing public-interest politics and avoiding private-interest pressures. They all call on the commission's strong suits: expertise, objectivity, and legal obligation to the public interest.

What about compromises? “Compromise” is a problematic term, ambiguous from overuse. Making tradeoffs among conflicting public-interest values is legitimate compromise. Departing from principles is not compromise; it is caving. This distinction translates into several recommendations for regulators.

1. Compromise on techniques, not on purposes.
2. Compromise on pace, not on principle.
3. Compromise on the angle of change, not on the direction of change.
4. Compromise not among private interests that diverge from the public interest, but among inherently conflicting components of the public interest.