

## “Framing”: Does It Divert Regulatory Attention?

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*Framing a discussion appropriately is ‘an ethically significant act.’*

— R. Frank, “The Impact of the Irrelevant,” *The New York Times* (May 30, 2010) (quoting psychology professors D. Kahneman and A. Tversky).

... [D]escription is prescription. *If you can get people to see the world as you do, you have unwittingly framed every subsequent choice.*

— D. Brooks, “Description is Prescription,” *The New York Times* (Nov. 26, 2010) (discussing Leo Tolstoy)

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Most regulatory proceedings originate with utilities seeking to improve their profitability. Profitability being part of the public interest, these submissions deserve our attention. But what if these filings are “framed” to divert our attention away from our public-interest mission?

Robert Frank, a Cornell University economics professor, writes about the difference between false advertising and “promotional puffery.” Our laws ban the former but allow the latter. Why? Frank says we assume the targets are “suitably skeptical.”

Not so fast. Recent behavioral research says we should be skeptical about our skepticism. Frank describes a psychology study conducted in the 1970s. The subjects had to spin a wheel, then guess what percentage of African countries were members of the United Nations. The subjects assumed the wheel was neutral, but it was rigged: For one group of subjects it always stopped on 10, for the other group it always stopped on 65. On average, the first group guessed that the percentage of African countries in the UN was 25 percent; the second group guessed 45 percent. The irrelevant wheel influenced judgment. The psychologists concluded, in a 1981 paper, that “the adoption of a decision frame is an ethically significant act.”

A utility proposal is not necessarily “promotional puffery,” but it is an exercise in framing—framing a private-interest quest (profitability, market share maintenance) as a public-interest question (viability, reliability, “synergies”). Does this framing determine, or at least influence, which problems receive regulatory attention, which solutions win approval? Does framing divert us from our public-interest mission?

For three common utility filings, I’ll describe the frame, the proposal, and the risk of diversion. What comes through is the false conflict between the framer’s private-interest mission

and the regulator's public-interest mission. By locating and eliminating the false conflict, we avoid the diversion. Then the needs of the utility and the public can be served simultaneously.

### **Example #1: "Formula Rates"**

**Frame:** "We face rapidly rising costs, so we need expedited cost recovery."

**Proposal:** "Formula rates"—a mechanism by which most cost increases flow through to ratepayers without a general rate case.

**Diversion risk:** If costs are rising, the better question is: Is our utility making all possible efforts, using the most effective practices, to identify and control cost drivers? Is compensation dependent on competence? Focusing on cost recovery alone diverts attention from accountability.

**False conflict:** There is no conflict between expediting cost recovery and insisting on best practices. We do need to decide, though, which goal is the minimum condition. "Prove use of best practices, then we will expedite cost recovery" is a better approach than "We'll expedite cost recovery because you asked."

### **Example #2: Inter-Regional Utility Merger**

**Frame:** "We need to be 'more competitive' by producing 'synergies.'"

**Proposal:** A merger between southeastern and midwestern utility holding companies.

**Diversion risk:** Most regulators do not wake up each day saying, "The path to performance is to merge—let's tell our utilities to go for it." Despite dozens of mergers over the last two-and-a-half decades, no one has proved that beyond a certain minimum size, large company combinations have lower per-unit costs, higher rates of innovation, or better customer service, or that a reduction in the number of players improves competition. Merger proposals easily occupy 6 to 12 months of regulatory resources—time better spent identifying best practices and inducing the local utility to adopt them.

**False Conflict:** Mergers can be efficient. Many utilities' service-area boundaries were determined more than 70 years ago. Technological progress in power production and telecommunications certainly has changed economies of scale and scope. Whether those changes favor smaller companies (by allowing the efficient separation of presently integrated functions) or larger companies (by allowing the integration of distant assets and activities) deserves more attention. A merger, or a divestiture, allows regulators to explore these questions. But an opportunistic merger proposal, framed in an "approve it by September or the deal dries up" manner, precludes such reflection.

### **Example #3: “Pre-Approval” of a Major Power Plant**

**Frame:** “We need 400 MW of long-term firm capacity, to be ready in five years. Without certainty of cost recovery, granted now, we cannot finance the plant and get it built on time.”

**Proposal:** Pre-approval of a decision to build a major power plant, along with a commitment to allow recovery of construction costs.

**Diversion risk:** By insisting that the regulator focus on a specific project—its costs, financing, and timing—the utility diverts attention from the larger questions: Has the utility investigated all options? Has the utility empowered its customers to take all cost-effective measures to reduce demand and consumption? Has the commission designed rates to induce efficient usage? Did the utility paint its regulators into a corner by waiting so long to propose the project that there is no time to study alternatives?

**False Conflict:** There is no inherent conflict between inducing efficient consumption and building new capacity. The conflict arises if cart precedes horse—build now, address efficient consumption later. One avoids the conflict by establishing preconditions: “We will approve projects that emerge from an investigation that investigates all reasonable scenarios and ranks all options by cost effectiveness.”

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Framing happens so frequently we almost don’t notice it. And framing works (for the framer, that is), for three reasons: (1) It depends not on deception but on emphasis. No one loses face from framing. (2) Every framed proposal has some public-interest component: Cost recovery shouldn’t lag behind expenditures, mergers can improve efficiencies, new power plants can avoid blackouts. Unlike the psychologists’ wheel, the utilities’ frame is rarely irrelevant. (3) Framing rearranges regulators’ priorities, since utility filings tend to trigger statutory deadlines while commission-initiated cases do not.

**Solutions:** We can insist we’re neutral, that framing has no effect. But the behavioral researchers say we’re probably wrong. An obvious solution is to recast private-interest proceedings as public-interest inquiries—by asking deeper questions, by consolidating narrow cases with broader investigations, by conditioning private approvals on public commitments. Legislatures can help too, by enacting statutes that make commission-initiated proceedings no less mandatory than utility-initiated proceedings. And if a commission lacks sufficient resources to pursue its own priorities along with the utilities, it needs to inform the legislature—whose constituents, if informed, would not tolerate public tax dollars being spent only on private submissions.