

Tweeting and Polling: Insults to Effective Regulation

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A Texas judge once granted a woman a protective order “after taking a poll of everyone present in his crowded courtroom (the majority of whom were present for unrelated cases) and following the result of the vote.” <https://www.texasobserver.org/2132-the-worst-judges-in-texas-in-these-courtrooms-justice-comes-to-a-screeching-halt/>

It was 1992, so the judge didn’t tweet his poll. But days before voting on whether to let Georgia Power continue building the Vogtle nuclear plant—a multi-billion dollar decision—Georgia Commissioner Tim Echols did. From his December 14, 2017 tweet:

Should we...

56% *Finish despite overruns*

38% *Cancel w/ 5B put in rates*

01% *Costly conversion to gas*

05% *You decide. Your job.*

This was not Commissioner Echols’s only poll. As he told *Nuclear Intelligence Weekly* (Feb. 15, 2017): “When I go to a rotary club [meeting] ... I ask people to raise their hands, ‘how many of you think we should move forward given all these difficulties,’ still two-thirds of the people want to move forward. That gives politicians ... the cover to be able to take a bold stand like I’m taking.”

Oversimplification and artificial sampling

Tweeting a poll has no place in serious regulation. Let’s talk oversimplification, then sampling.

“Finish despite overruns”: “Finish” at what incremental cost? Relative to what other options, at what other costs? Even “overrun” tells us nothing. If the original budget was below prudent cost, then an overrun might simply reach prudent cost. And if the original budget exceeded prudent cost, finishing on budget—meaning, no overrun—would be imprudent. “Overrun” without context lacks meaning.

“Cancel with 5B in rates”: Cancelling needed capacity requires replacement capacity. At what incremental cost? Then—How does the sum of that incremental cost, plus cancelled-

Vogtle's 5B, compare to the total cost of completing Vogtle? And who says the 5B of uselessness goes "in rates"? (In a separate tweet, Comm. Echols said Georgia law puts the 5B in rates if prudent, but has there been full inquiry into all elements of prudence? *See below.*) "Cancel with 5B in rates," like "Finish despite overruns," lacks factual context.

"Costly conversion to gas": Again--at what incremental cost? Relative to what alternatives? All options are "costly." Where's the factual context?

Oversimplification aside, one needs no degree in statistics to see the flaw in the sample. The respondents were Comm. Echols's "followers"—a self-selected, English-speaking, artificial subset of the millions affected by Vogtle; a subset likely lacking a full understanding of utility law, while viewing tweeting as an appropriate forum for billion-dollar decision-making. Assessing nuclear construction prudence is analytically complex; handled properly it separates actions like a prism separates colors. Forecasting demand, choosing nuclear, selecting contractors, setting construction schedules, estimating cost, overseeing contractors, monitoring the spending in light of alternatives (with each month's project continuation literally a distinct decision which could be prudent or imprudent): Each action and sub-action requires separate prudence analysis. A nuclear plant is no place for a poll.

My issue is not with Comm. Echols, whom I've met. He's a genial, gracious person. And tweets are fine ways to announce decisions, reports and public meetings. But for substance, tweeting and polling, individually or together, insult the regulatory process. Insult becomes infection, because every tweet spawns retweets and reacting tweets, sucking serious practitioners into superficial prose-play. That the President does it doesn't make it right. True, utility regulation is less complex, with less at stake, than our relations with North Korea. But 140 characters on multi-billion dollar decisions is no way to get serious.

Regulation's main principles: In tweet form

It's true—tweeting is tempting. So for the new year, I've tried to distill regulation's essence into 14 principles, each (approximately) 140 characters.

1. All regulation, from speed limits to return on equity, has the same purpose: to align private behavior with the public interest.
2. Whether applied to monopoly markets or competitive markets, regulation's purpose is performance.
3. "What gets measured, improves." (*Peter Drucker*)
4. Regulation does not "balance the interests of shareholders and ratepayers." A balance presumes opposites, but shareholders' and ratepayers' legitimate interests are compatible.

5. The appropriate balancing is not between competing private interests but between competing components of the public interest.
6. The midpoint between two wrong positions is not necessarily the right position.
7. The “central, continuing responsibility of legislatures and regulatory commissions” is “finding the best possible mix of inevitably imperfect regulation and inevitably imperfect competition.” Alfred Kahn, *The Economics of Regulation* (1971).
8. Regulation should emulate competition. So regulation, like competition, must penalize those who don’t measure up.
9. The purpose of a rate case is not to recover costs but to align compensation with performance.
10. Rates are not “low” or “high”; rates are right or wrong—depending on whether they induce efficiency in production and consumption.
11. The Constitution (specifically, the Fifth Amendment’s Takings Clause and the Fourteenth Amendment’s Due Process Clause) does not guarantee recovery of all prudent costs. *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).
12. “The due process clause ... prevent[s] governmental destruction of existing economic values. It ... cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.” *Market St. Railway Co. v. Railroad Commission of California*, 324 U.S. 548 (1945).
13. Calls for “consensus” only reward the holdouts—those with the resources to wait out everyone else.
14. Commissions are not courts; regulators are not judges. Effective regulators don’t preside; they lead.

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Fourteen principles, one for each month and two in reserve. To my readers, please accept my best wishes for the New Year.