Commission Positioning: Five Actions for Influence

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Today's trends are headed every which way. In local telecommunications services, legislatures press to diminish government regulation, even as they draw government into broadband investment. Smart grid opens the possibility of consumer empowerment and diverse service providers, even as nuclear-power proponents look to lock in customers to a single utility supplier (ensuring the fixed dollar flow needed to make nuclear bankable). Some states are reevaluating their commitments to retail competition in gas, while others are reopening their prior rejection of retail competition in electricity (California 2000 now a memory sufficiently distant that facts and merits can replace "Enron" as grounds for decision). And the prospect of renewable energy sources, both local and geographically scattered, has national policymakers looking at multistate transmission planning.

This swirl of forces causes commissions to ask, "How do we position ourselves?" Some define positioning defensively, as in "How do we avoid having our commission downsized, merged with other agencies, or repealed?" Others define it actively, as in "How do we channel these trends toward the public interest?" Some define it both ways. Under any of these approaches, "positioning" has at least five components.

Focus on Utility Performance

Regulation's purpose is performance. Regardless of trends or pressures, effective regulators establish expectations: What products and services, at what quality levels, at what price ranges, does the public need?

Answering that question leads to another: What market structures will most likely produce the required performance? The answers will vary with the products and services. My paper on demand response noted six structural elements, different combinations of which yielded 25 possible market structures—with the choices exclusively the state's to make. Comparing the options requires facts—on seller cost structure, entry barriers, economies of scope and scale, and customer readiness. By gathering those facts, the positioning commission gets ahead of the markets so it can guide the markets. An excellent example is Maine, whose legislature directed the commission to assess the costs and benefits of appointing a "smart grid coordinator" to address market-structure questions. (Full disclosure: NRRI is assisted the Maine Public Utilities Commission in this inquiry.)

Performance and market structure require new skill sets. Evaluating economies of scale, reducing entry barriers, and measuring competitiveness are different from setting revenue requirements and designing rates. A positioned commission acquires these skills through internal education and new staff acquisitions. It values, through salaries and recognition, the credentials necessary to lead these efforts. (For a discussion of credentialing's importance, see "Certification of Regulatory Professionals.")

Engage Other Jurisdictions

Privacy, economic development, climate change, exploding pipes, water shortages: These multi-jurisdictional challenges affect commissions, along with sister bodies in legislatures and executive branches both federal and state.

Legal boundaries confine commissions' decisions but not their insights. The positioned commission therefore thinks across jurisdictions -- identifying extra-jurisdictional effects and intra-jurisdictional gaps while creating the cross-fertilized policies that solve problems. To avoid extra-jurisdictional action because "it's not my department" is to preside rather than lead, to forget that "Commissions Are Not Courts, Regulators Are Not Judges." Adopt the alert appended these days to everyone's emails: "If you see something, say something."

Communicate Complexity Objectively

Learn Spanish in 30 Easy Lessons: Confusion and anxiety breed simplistic solutions. The Duke and Dauphin did this with Huck and Jim: They found the fearful and sold them snake oil.

The tool is language. Even a simple term like "increase" is easily abused. Renewable energy's opponents say it will "increase" your rates. Sure it will—but compared to what? To status quo prices, yes—but status quo prices are not future prices. Considering likely price paths, those steepened by carbon pricing, oil and gas shortages, environmental retrofits, and global commodity inflation, will renewable energy "increase" your prices? Maybe not.

In regulation, we risk our own oversimplifications. A pipeline regulator insisted to his parliament that he tolerated "zero fatalities." Is this truthful? If we intended no highway deaths we'd set speed limits at 20 mph. We don't. If we intended no pipeline explosion deaths we'd bury the pipes a hundred yards deep and encase them in concrete. We don't.

Regulation's credibility comes from its objectivity. With other actors so tempted to cut communication corners, the positioned regulator should aim for the straightaway. The trust gained will outweigh the discomfort caused.

Expand Time Horizons

A rate case focuses on the foreseeable—five years at most. Regulators now need to think and see farther out. For a utility merger, an investment in broadband, or a multistate transmission facility, the time horizon is more like 40 years. A nuclear power plant—try 100,000 years. (See *Into Eternity*, a documentary on ONKALO, Finland's permanent waste repository.)

In contrast to actors tied to quarterly earnings and annual reports, regulators now must deal with the less foreseeable and the non-foreseeable. As economist David Boonin has pointed out, regulators now must deal not only with plans but also with scenarios. See "Utility Scenario Planning: 'Always Acceptable' vs. the 'Optimal' Solution." Commission positioning, therefore, means creating internal thought-cultures that expand to the relevant time horizons.

Recalibrate Procedures

Today's issue-swirl calls for new procedures, recalibrated to the need to lead. Here are two examples.

Active procedures: Processing a rate case is reactive; establishing performance expectations is active. Processing a merger proposal is reactive; establishing market structure standards is active. (These are pole points on a spectrum. Any procedure mixes reacting and acting, listening and deciding; what counts are the relative emphases.) The more industry participants aim for advantage, the more commissions must act rather than react, by channeling those aims toward the public interest.

Decisional off-ramps: Greater uncertainty means greater risk—the risk of an uneconomic result. There is value, therefore, in options that are change-friendly. Energy-efficiency programs can expand or contract, but a half-built power plant cannot be returned to the vendor for refund. Related to off-ramps is the segmented decision. Say a commission, looking to hedge against climate change costs, chooses nuclear. But what size nuclear—one large plant for $12 billion, or 6 smaller ones totaling $18 million, each entering service as load grows? The smaller versions cost more per kW but pose less risk because a change in facts involves less sunk cost. What we lose in scale economies we gain in risk reduction. (Credit goes to NRRI's Tom Stanton for stimulating this thought.) The positioning commission creates procedures to make these comparisons—at the time of investment and continuously thereafter.

Conclusion

Pressing for performance, talking across jurisdictions, embracing complexity, expanding time horizons, and recalibrating procedures: These are five ways to position your commission.