

# Regulatory independence and ethics

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MICHIGAN STATE UNIVERSITY

# Introduction

- An institutional and policy analytic perspective (vs. legalistic)
  - ▶ A facilitated and interactive exploration
- A focus on interrelated issues
  - ▶ Politics of regulation
  - ▶ Independence of regulators
  - ▶ Ethical conduct
- Commitment to the public interest regardless of our roles
  - ▶ Tough without bias



# Ethical challenges



Q. What ethical challenges do today's regulators face? (chat function)

# Politics

- Why is it “good’ to be “legal,” “social,” “economic,” and “technical”?
  - ▶ But it is “bad” to be “political”?
- Politics is fundamentally about “who gets what, when, how” (H. Lasswell)
  - ▶ We live and work in a political world and culture
  - ▶ Politics and political behavior are “normal”
  - ▶ Politics are essential in a democracy for translating values into policy
- Political is not inherently unethical – but can be prone to favoritism
  - ▶ Heightened politics can exacerbate ethical conflicts and motivate ethical queries
  - ▶ Ethical controversies make for political theater
- Regulation and regulatory decisions
  - ▶ Must be politically acceptable to be sustainable – without sacrificing independence

## Poll E1: Trust in government

- **How much do you trust the government to do what is right?**
  - A. None of the time
  - B. Some of the time
  - C. Most of the time
  - D. All of the time

# Trust in government

## Public trust in government near historic lows

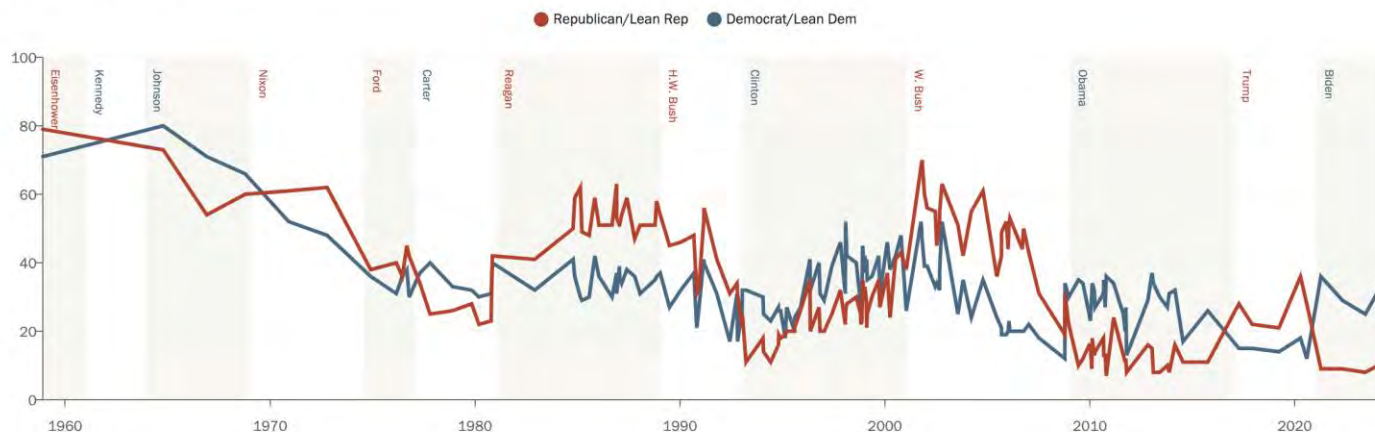
% who say they trust the government to do what is right just about always/most of the time



PEW RESEARCH CENTER

## Trust in government higher among members of party that controls presidency

% who say they trust the government to do what is right just about always/most of the time



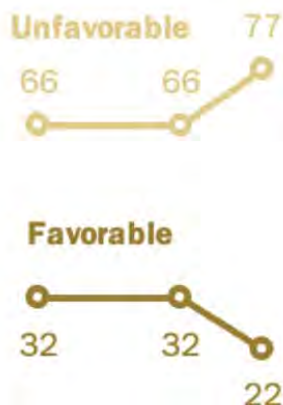
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# Opinions about government at all levels

## Americans' opinions of federal, state and local government have grown more negative since 2019

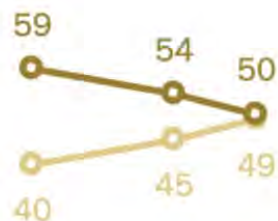
% who have a(n) \_\_\_ opinion of ...

**The federal government in Washington**



Aug 2019    May 2022    Dec 2023

**Their state government**



Aug 2019    May 2022    Dec 2023

**Their local government**



Aug 2019    May 2022    Dec 2023

Note: No answer responses are not shown.

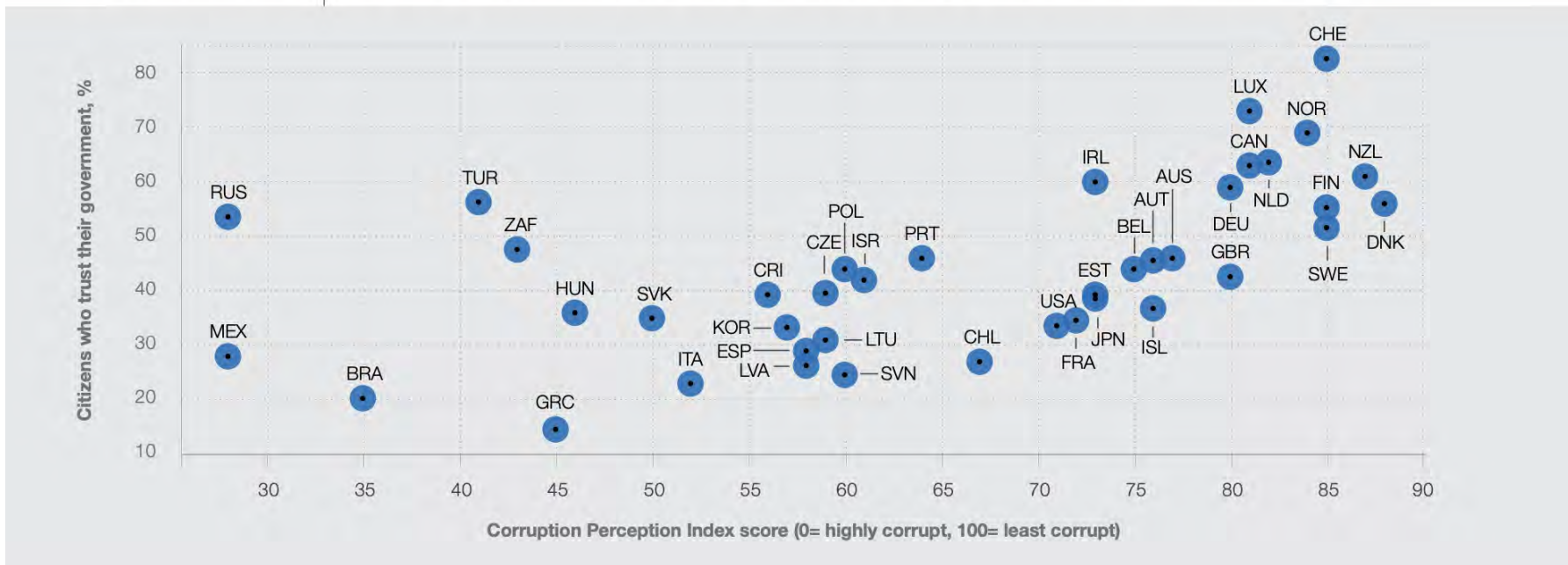
Source: Survey of U.S. adults conducted Nov. 27-Dec. 3, 2023.

**PEW RESEARCH CENTER**

# Trust and corruption globally (WEF, 2020)

FIGURE 1.4

Trust in government and Corruption Perception Index, selected economies





# Trust in institutions

## 2023 Confidence in Institution Ratings Compared With All-Time Lows

% Great deal/Fair amount of confidence in each institution

	June 1-22, 2023	All-time low	2023 vs. all-time low	Year of low
	%	%	pct. pts	
The military	60	50	10	1981
Small business	65	57	8	1998
Organized labor	25	19	6	2009
Banks	26	21	5	2012
The medical system	34	31	3	2007
The presidency	26	23	3	2022
The criminal justice system	17	14	3	2022
Television news	14	11	3	2022
The U.S. Supreme Court	27	25	2	2022
Newspapers	18	16	2	2022
The church or organized religion	32	31	1	2022
Congress	8	7	1	2014, 2022
The police	43	43	0	2023
The public schools	26	26	0	2014, 2023
Large technology companies	26	26	0	2022, 2023
Big business	14	14	0	2022, 2023

Get the data • Download image

GALLUP

## Average Confidence in Major U.S. Institutions, 1979-2023

Figures are the average percentage of U.S. adults who have a great deal or quite a lot of confidence in nine institutions measured consistently by Gallup



The average includes only those institutions rated consistently by Gallup since 1979. These are the church/organized religion, the military, the Supreme Court, banks, public schools, newspapers, Congress, organized labor and big business.

Get the data • Download image

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## Americans' Trust in the Three Branches of the Federal Government

How much trust and confidence do you have at this time in [the executive branch headed by the president // The judicial branch headed by the U.S. Supreme Court // The legislative branch, consisting of the U.S. Senate and House of Representatives] -- a great deal, a fair amount, not very much or none at all?

% A great deal/A fair amount



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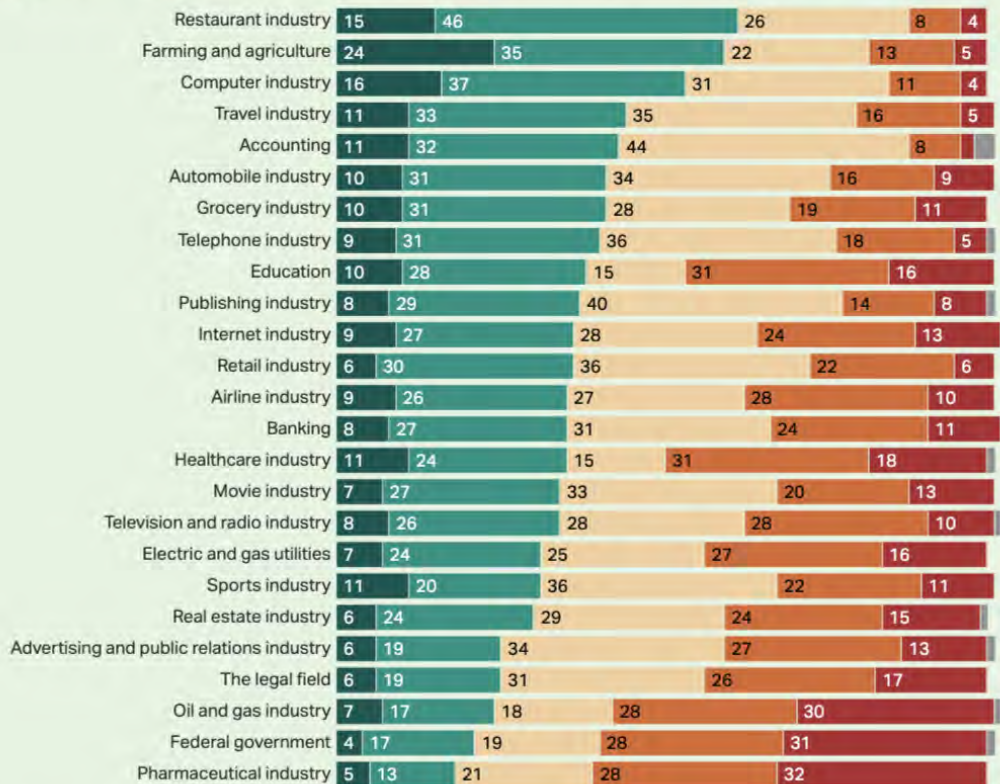
Americans losing trust in Supreme Court

# Trust in industries

## U.S. Business and Industry Sector Ratings, 2023

Please say whether your overall view of it is very positive, somewhat positive, neutral, somewhat negative or very negative.

■ % Very positive ■ % Somewhat positive ■ % Neutral ■ % Somewhat negative ■ % Very negative ■ % No opinion



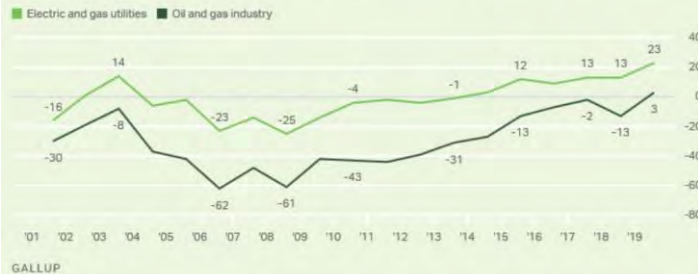
Sorted by total % positive  
Aug. 1-23, 2023

Get the data • Download image

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## Americans' Views of Electric/Gas Utilities and the Oil/Gas Industry, 2001-2019

Net positive trend = % holding a positive view of the industry minus % holding a negative view



GALLUP

## Wealthy Executives Make Millions Trading Competitors' Stock With Remarkable Timing

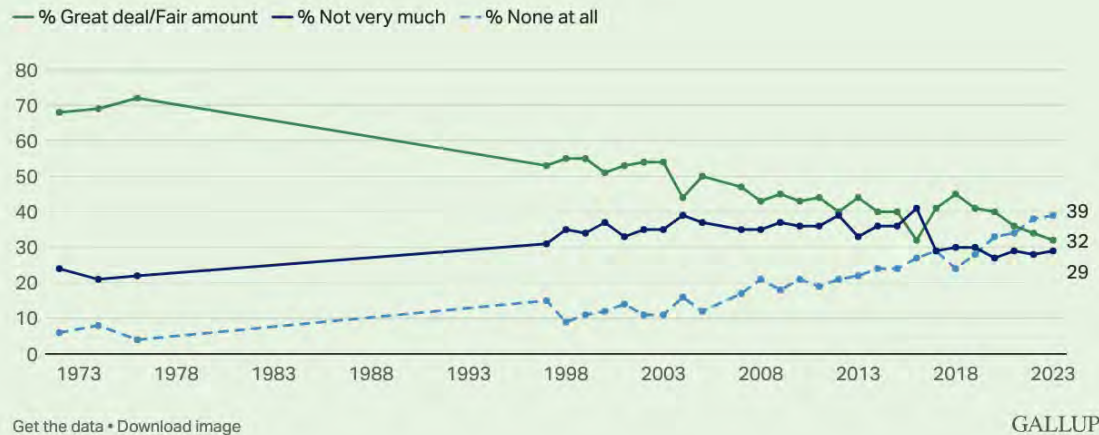
by Robert Faturechi and Ellis Simani

March 16, 5 a.m. EDT

# Trust in mass media

## Americans' Trust in Mass Media, 1972-2023

In general, how much trust and confidence do you have in the mass media -- such as newspapers, TV and radio -- when it comes to reporting the news fully, accurately and fairly -- a great deal, a fair amount, not very much or none at all?



"I figure what I've lost in public trust I've gained in name recognition."

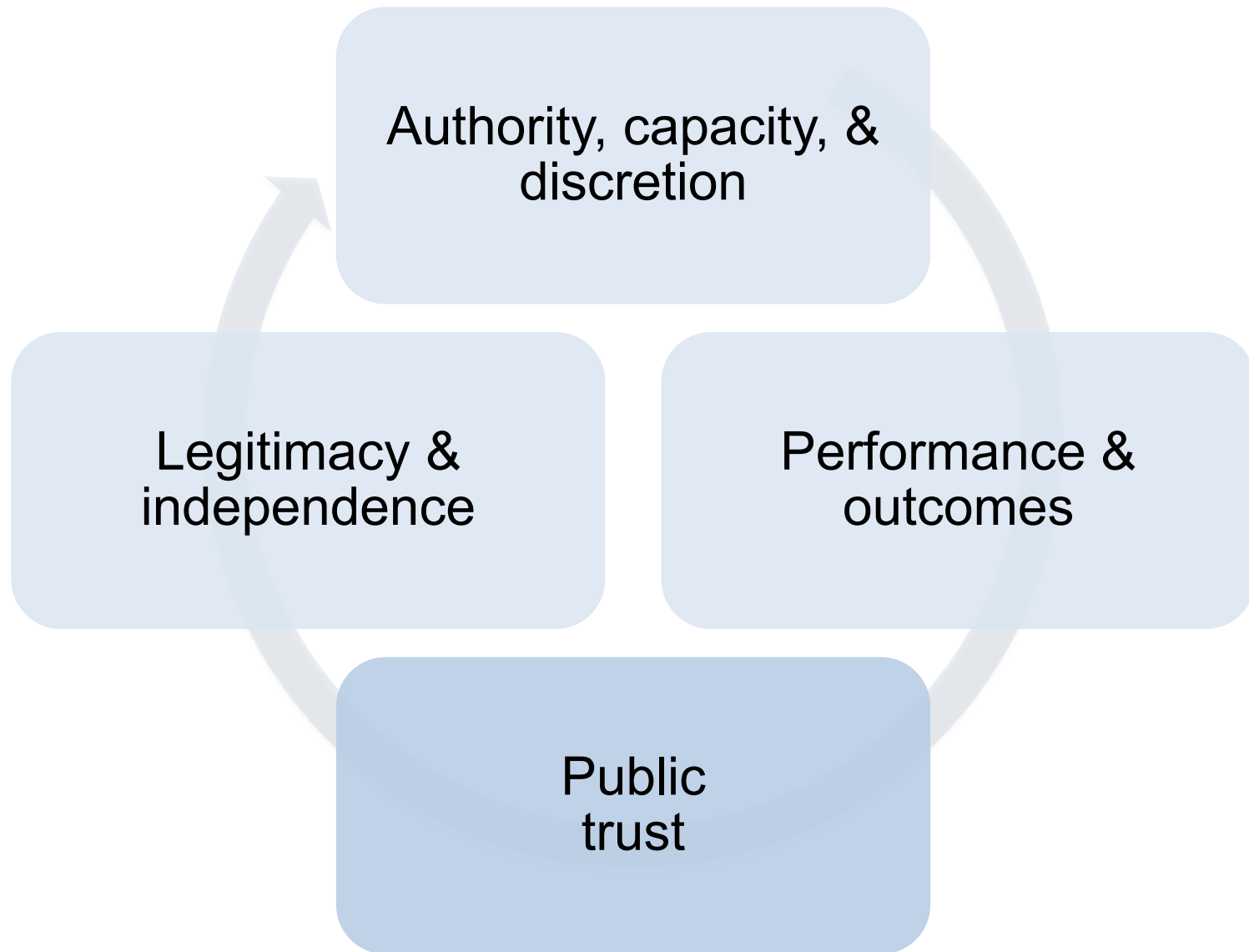
# A matter of trust

- Loss of faith and trust and government is palpable, understandable, and justified
  - ▶ Polls reveal the public's consistent mistrust of government and politicians
  - ▶ Public is wary of “cozy” relationships between lobbyists & public officials
  - ▶ Undermining the public trust has vast implications for governance
  - ▶ “Bad apples” cause a breakdown of trust and make things difficult for everyone
  - ▶ Once lost, rebuilding trust is always very arduous (see Flint)
  - ▶ Trust is essential to maintaining or expanding regulatory authority
- Honest mistakes & human imperfection are often forgiven, with accountability
  - ▶ *But not lies and cover-ups*
- Underlying structural weaknesses may also be at work
  - ▶ Institutional failure has become a risk factor
- There can be no trust without *truth*

**‘Outrageous’: DTE, Consumers enjoy close relationship with state panel that regulates them**



## Why it matters: trust and institutional performance



# Political independence

## Poll E2: Regulatory politics

- **Is public utility regulation affected by politics?**
  - A. Yes
  - B. No
  - c. Not sure

# Regulatory politics

- Regulation is fundamentally a nondemocratic institution
- Regulation is also a political microcosm – and always has been
- The regulatory policymaking role is controversial
- Elections, appointments, and appropriations are political processes
- Party is not always a clear predictor of regulatory policy
- Manifestations of political intensity tend to be cyclical
- Policy swings based on party or ideology can lead to instability, uncertainty
- The regulator's job is not easy or popular – *but it is essential*

Coal CEO slams Trump for picking 'inadequate bureaucrats'

by Matt Egan @MattEganCNN  
January 9, 2018 4:21 PM ET



Coal boss Robert Murray criticized the Trump administration for appointing "inadequate bureaucrats" to a regulatory commission that unanimously rejected a rescue plan for the crumbling coal industry.



# Do utilities (and regulators) “suck”? (Roberts, 2017)

- “Most people are at least vaguely aware at this point that power utilities are the Bad Guys in the story of renewable energy...”
- While there’s plenty of greed and animus to go around, the fact is, utilities are just doing what they’ve been designed to do... under what is called cost-of-service regulation (COSR). In a nutshell, they make money by building stuff...
- Utilities are state-protected monopolies, so we can’t have them profiting off their main product. By law, they have to sell power to ratepayers without any markup...
- We offer them — utility shareholders — a safe and predictable rate of return...
- All "prudent" capital investments by utilities are guaranteed the same rate of return; that’s how shareholders make money.
- The "prudent" part is supposed to be enforced by [PUCs]... but there’s an information asymmetry... *and PUCs are often cozy with utilities anyway.*”

## The simple reason most power utilities suck

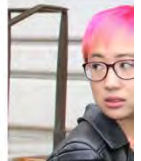
By David Roberts | @drvbox | david@vox.com | Updated Sep 4, 2017, 1:00pm EDT

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(Shutterstock)

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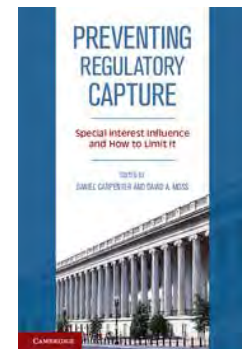


## How a Florida Power Project Flew Under the Regulatory Radar

The state’s biggest utility is building a 176-mile line that may be unsuitable or even unneeded. Its design minimized scrutiny. Critics see a pattern.

# Capture theory of regulation

- What is meant by regulatory capture?
  - ▶ Regulators may begin to identify with and think like industry and promote industry views (“Stockholm syndrome”)
  - ▶ Regulators may also succumb to political (partisan) capture
  - ▶ Utility ownership presents a tradeoff of regulatory capture and local corruption
- Capture is manifested by returns without risk
  - ▶ Investor-owned utilities must bear some risk in order to earn returns beyond that associated risk-free securities (i.e., a return with a premium)
  - ▶ Captured regulators “see no evil” - less vigilance about prudence and other standards
- Chicago School of economics: self-interest of all players, including regulators
  - ▶ Emphasizes controlling market entry as a means of protection and thus sees capture as a rationale for deregulation
- Counter-argument: evidence is mixed, especially long-term historical perspective
  - ▶ Industry-favorable policies alone do not prove capture
  - ▶ Most capture is “weak” vs. “strong” (*Preventing Capture*)
  - ▶ Capture is less apparent when regulation:
    - Covers multiple industries
    - Has as a strong scientific basis
    - Is technocratic (based on expertise)
- Capture is not limited to regulators
  - ▶ Legislators, consumer advocates, and academic researchers
  - ▶ Legislative capture undermines institutional legitimacy, regulatory capacities, & discretion



# Perceptions of conflict, coziness, or capture

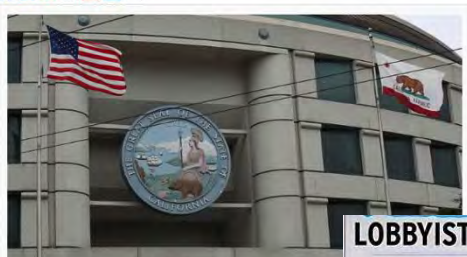
- *“Justice must satisfy the appearance of justice” (Offutt v. U.S., 1954)*
- Appearances are as important as the letter of the law
  - ▶ Some regulators enjoy rubbing shoulders with powerful corporate players
  - ▶ Former politicians should consider judges as role models
  - ▶ Perception is reality – apply the newspaper headline test
- Regulator-regulated co-mingling
  - ▶ “Educational” events, photo opps, talking points, opinion pieces, policy endorsements
  - ▶ Even outrageous behavior provokes little outrage



## Opinion: Is California's PUC Too Cozy With The Utilities It Regulates?

POSTED BY EDITOR ON AUGUST 23, 2017 IN OPINION | 135 VIEWS | 0 COMMENTS | LEAVE A COMMENT

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The California Public Utilities Commission headquarters in San Francisco. Photo by Tobias Commons

## REGULATION, SMART GRID, UTILITY SCALE Regulator / utility collaboration – the 3 states that do it best (and other tips for better relationships)

By SMART GRID NEWS  
 on August 04, 2016 at 2:00 PM  
 Post a Comment



## LOBBYISTS RUNNING FEDERAL AGENCIES



# Perceptions (continued)



Let me do the talking. I'll explain he's not in our car right now.

# Perceptions (continued)

Citing newspaper op-eds, judge finds Montana utility regulators biased against solar development

By Eric Dutton, Montana Free Press 23 hrs ago



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South Health, Trump's EPA chief meet with Dow Chemical execs before calling back a ban on pesticides



South Health, Trump's EPA chief meet with Dow Chemical execs before calling back a ban on pesticides



Sprint earns 26% after FCC chairman backs T-Mobile deal



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# Corruption scandals

## New York scrutiny: National Grid faces bribery investigation; revenues docked for Con Edison, NYSEG, RG&E

Regulators are launching an investigation into National Grid's upstate gas operations and lowering other utility revenues for failure to meet performance metrics.

Published June 22, 2021



### Top Ohio lawmaker charged with accepting \$61M bribe in scheme to pass nuclear bailout

FBI agents arrested Ohio House Speaker Larry Householder and four high-powered political consultants yesterday on bribery charges, following an investigation into how he allegedly engineered controversial legislation in 2019. [Read more →](#)

## FirstEnergy investigated by Ohio organized crime commission over bribes on energy bill

### Jury Convicts Former San Francisco Public Utilities Commission General Manager of Felony Bribery and Bank Fraud Charges

**ENVIRONMENT** 07/06/2020 05:45 am ET | Updated Jul 09, 2020

## How Utility Companies Use Charitable Giving To Influence Policy

The nation's 10 largest utilities spent about \$1 billion on charitable giving from 2013 to 2017, a move critics say is meant to shape policy decisions.



By Tom Perkins

## US gas utility funds 'front' consumer group to fight natural gas bans

## Trial Set for Ex-Arizona Regulator Charged With Bribery

A judge has set a new trial for former Arizona Corporation Commissioner Gary Pierce and three others who are charged in what prosecutors say was a bribery scheme aimed at benefiting a water company owner.

GRID EDGE

### ComEd Agrees to \$200M Fine on Federal Bribery Charge

The Chicago-area utility has struggled with key clean-energy and grid-modernization plans amid a scandal.

JEFF ST. JOHN

JULY 17, 2020



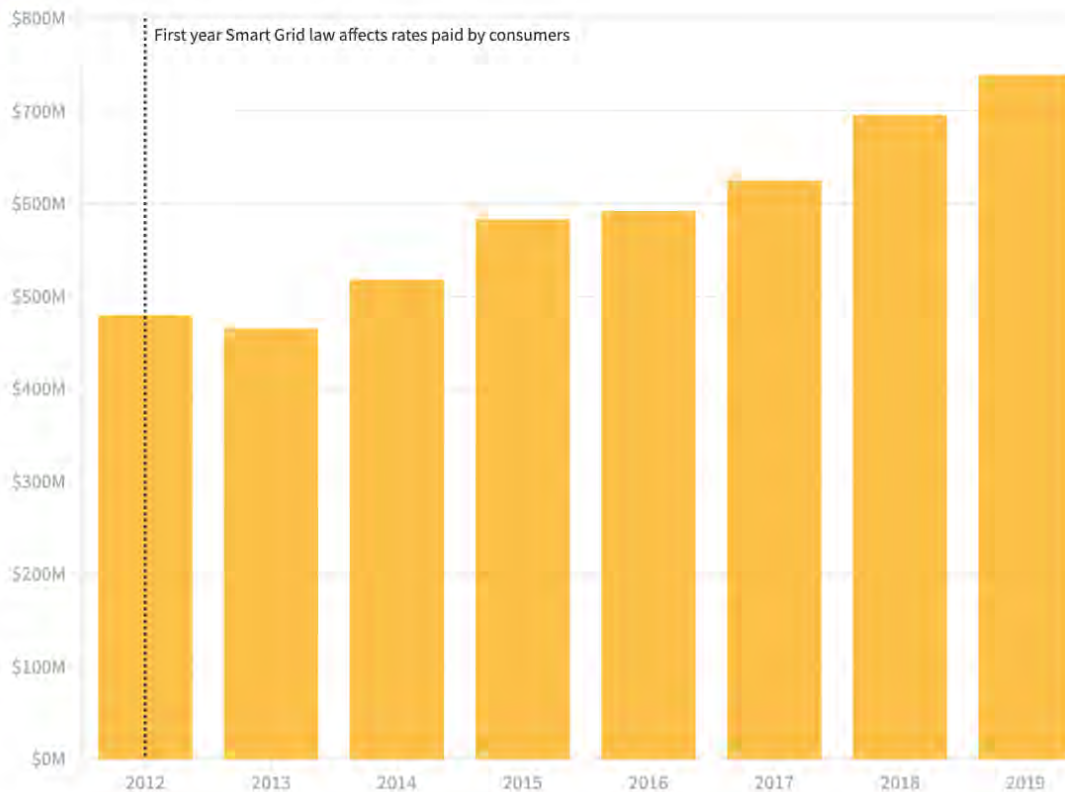
A bribery scandal has soured the Exelon subsidiary's legislative goals over the past year.

# Does corruption pay off?

## ComEd profits surged after key legislation passed in Springfield

The 2011 "Smart Grid" law secured reliable rate increases for ComEd, which has 4 million customers in northern Illinois. The power company also benefitted from a 2016 law approved by state lawmakers.

ComEd's net operating income



Source: Illinois Commerce Commission records, federal court records

BRIEF

### ComEd CEO says no ratepayer funds involved in alleged bribery, misconduct

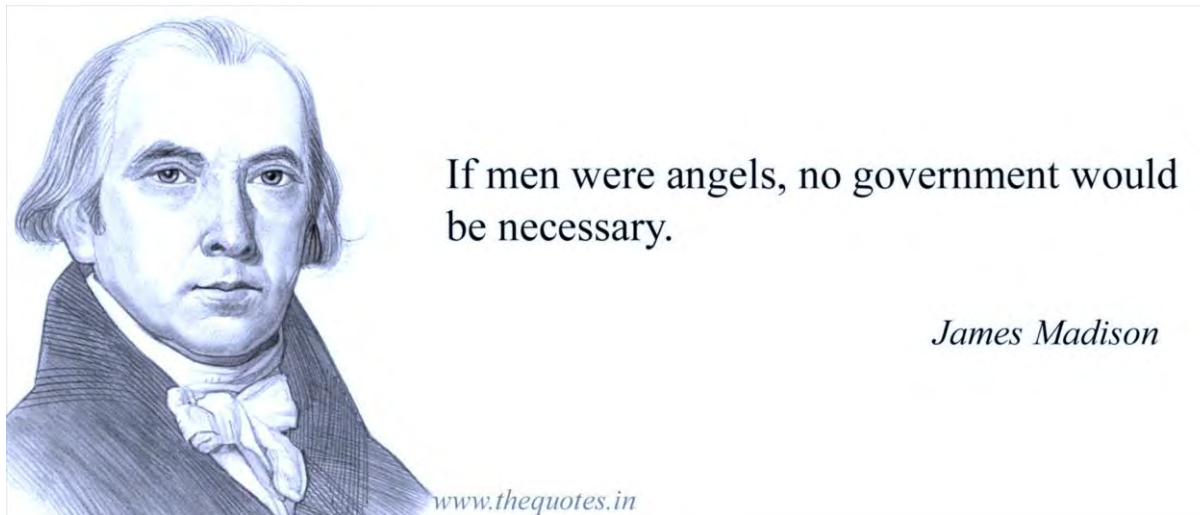


Permission granted by ComEd

A Flourish chart

## Historical perspective

- Origins of regulation – political reformers and industry leaders
- New Deal period – public power and holding company issues
- 1980s – energy crisis, nuclear power, divestiture of AT&T
- 1990s – restructuring and deregulation
- 2000s – rethinking regulation and regulatory adaptation
- 2010s – institutional challenges to regulation and independence





## FDR's Portland Speech (1932)

- “Let me make it clear that I have no objection to the method of control through a public service commission. It is, in fact, a proper way for the people themselves to protect their interests. In practice, however, it has in many instances departed from its proper sphere of action, and, I may add, has departed from its theory of responsibility. It is an undoubted and undeniable fact that in our modern American practice the public service commissions of many States have often failed to live up to the very high purpose for which they were created. In many instances their selection has been obtained by the public utility corporations themselves. These corporations, to the prejudice of the public, have often influenced the actions of public service commissions. Moreover, some of the commissions have, either through deliberate intent or through sheer inertia, adopted a theory, a conception of their duties wholly at variance with the original object for which they were created.
- Let me illustrate: When I became Governor, I found that the Public Service Commission of the State of New York had adopted the unwarranted and unsound view that its sole function was to act as an arbitrator or a court of some kind between the public on the one side and the utility corporations on the other. I thereupon laid down a principle which created horror and havoc among the Insulls and other magnates of that type.
- I declared that the Public Service Commission is not a mere judicial body to act solely as umpire between complaining consumer or the complaining investor on the one hand, and the great public utility system on the other hand. I declared that, as the agent of the Legislature, the Public Service Commission had, and has, a definitely delegated authority and duty to act as the agent of the public themselves; that it is not a mere arbitrator as between the people and the public utilities, but was created for the purpose of seeing that the public utilities do two things: first, give adequate service; second, charge reasonable rates; that, in performing this function, it must act as agent of the public, upon its own initiative as well as upon petition, to investigate the acts of public utilities relative to service and rates, and to enforce adequate service and reasonable rates.
- The regulating commission, my friends, must be a Tribune of the people, putting its engineering, its accounting and its legal resources into the aach for the purpose of getting the facts and doing justice to both the consumers and investors in public utilities. This means, when that duty is properly exercised, positive and active protection of the people against private greed!”

# Is commission regulation “more” political today?

- Regulation has always been political
  - ▶ Today’s political context is divisive, highly charged, and somewhat dysfunctional
- Independence is central the design of regulation in the public interest
  - ▶ Concerns about political independence are as old as regulation
  - ▶ Regulatory politics can be pluralistic, positional, and polarizing.
  - ▶ Regulator and legislator turnover can be a factor
- Issues are complex, the debate can be fervent, and stakes are high
  - ▶ Dissonant politics of market restructuring and climate change
  - ▶ Regulators are on the front line with regard to politicization of science
  - ▶ Trebing warned of “unholy alliances” between utilities and consumer, environmental
- Regulators, like judges, are supposed to be “unswayed”
  - ▶ By partisan interests, public clamor, or fear of criticism”
  - ▶ Does not mean indifference to public opinion or preferences
- Regulation and partisanship
  - ▶ Nonpartisan regulation is not the same as bipartisan
  - ▶ Regulation is meant to be technocratic
  - ▶ Loss of institutional memory is a problem

Sierra Club seeks climate champion for MPSC

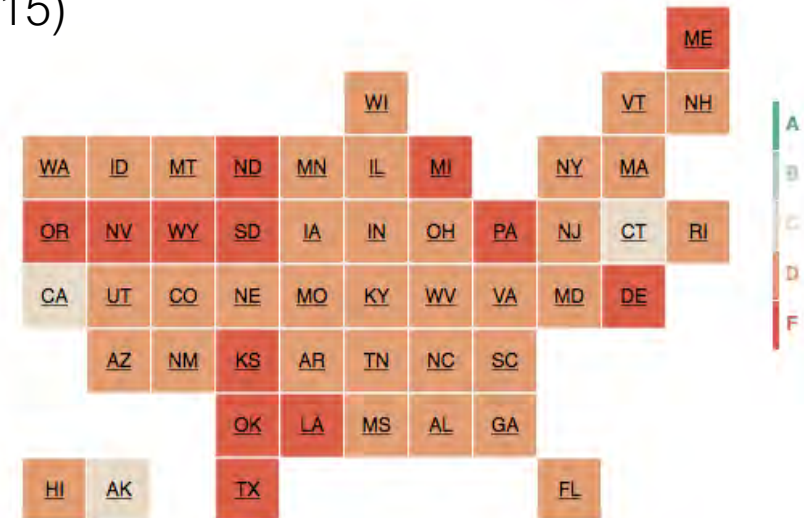


# Center for Public Integrity

## ■ Reports

- ▶ “Nice Work If You Can Get It: Political Patronage Rules in State Utility Commissions.”
  - “The intrusion of politics into deciding who will sit on a board created to look out for the public interest is not uncommon. Commissioners are much more likely to have a background in politics or the utility industry than experience as consumer advocates” (Nov. 2005)
- ▶ “State Utility Commissions Fail Transparency Test”
  - “More than half of the states received a failing grade on making personal financial information of the nation's utility board members available for public inspection, according to a Center for Public Integrity study examining laws in all 50 states” (Nov. 2005)

## ■ Ranking states in terms of accountability (2015)



# Energy and Policy Institute



## The Utility Industry's Influence at Universities: Behind the Education of Public Regulators

Matt Kasper and Gabe Elsner

### Introduction

Universities and professors, funded by fossil fuel and utility special interests, are increasingly producing academic reports, supporting advocacy efforts, and amplifying positions that either recommend policies or provide credence to what the energy industry seeks to achieve in the legislative and regulatory arenas.

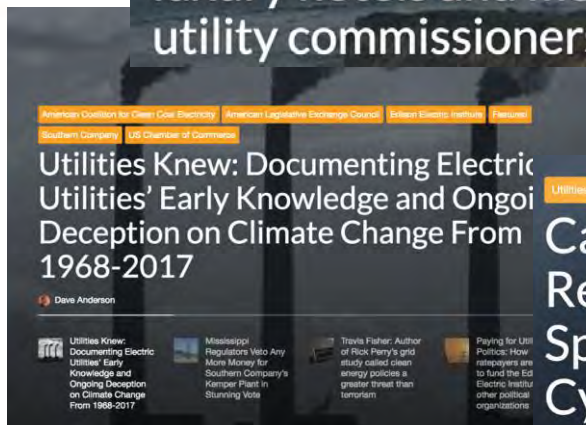
Energy and Policy Institute (EPI) conducted an investigation in an attempt to understand how utility companies and their trade association, Edison Electric Institute (EEI), are influencing the political and regulatory process through university-based institutes and faculty.

Utilities

Strings Attached: How utilities use charitable giving to influence politics and increase investor profits

Utilities

Pollution Payday: Analysis of executive compensation and incentives of the largest U.S. investor-owned utilities



# Independent role of the regulator

- According to the public-interest model, commissioners and staff are expected to be relatively independent from
  - ▶ Each other: among commissioners from staff advocates
  - ▶ Executives: influence of presidents, governors
  - ▶ Legislatures: avoidance of legislative regulation or pressure
  - ▶ Political parties: balance, party should not predict
  - ▶ Interest groups: interest-based organizations and lobbyists
  - ▶ Ancillary interests: third-party advocates, think tanks, financial community, manufacturers, vendors
  - ▶ Regulated utilities: corporations and their various agents (law firms and consultants)
- Should the president, governor, or legislature manage or direct the commission?
  - ▶ Regulators are increasingly constrained by legislatures, including “legislative ratemaking”
  - ▶ Beyond installing judges, do they interfere with the courts – and should they?



# Legislative and executive ratemaking

## Missouri Senate committee advances utilities rate proposal

May 26, 2017

By Katie Kull, Associated Press



JEFFERSON CITY, Mo. (AP) — Ameren Missouri customers will see changes to electricity bills under a proposal allowing manufacturers to pay lower rates. A Missouri Public Service Commission staff analyst says the proposal would allow manufacturers to pay lower rates than other customers.



Department to Design Clean Energy Standard, Ensuring that 50% of Electricity in New York State Comes From Renewable Energy Resources by 2030

Announcement Comes as New York and World Leaders Continue Climate Change Discussions in Paris

Governor Andrew M. Cuomo today directed the State Department of Public Service to design and enact a new Clean Energy Standard mandating that 50 percent of all electricity consumed in New York by 2030 result from clean and renewable energy

NEWS / BEST STATES / NEW MEXICO NEWS

f t r e MORE

## New Mexico Lawmakers Question Utility's Exit From Coal

State lawmakers from coal industry-dependent regions of northwestern New Mexico are urging utility regulators to consider the broad economic consequences of utility plans to shut down two coal-fired power plants.

July 19, 2017, at 7:28 p.m.

**“He has total veto power”: Greg Abbott takes control over who will lead Texas’ troubled power grid, sources say**



BRIEF

## Connecticut Gov. Malloy orders financial review of Millstone nuke

## LaFleur cautions on administrative interference as she exits FERC

The commissioner speaks frankly about a missed opportunity — opening a natural gas pipeline docket in 2016 — and challenges ahead.

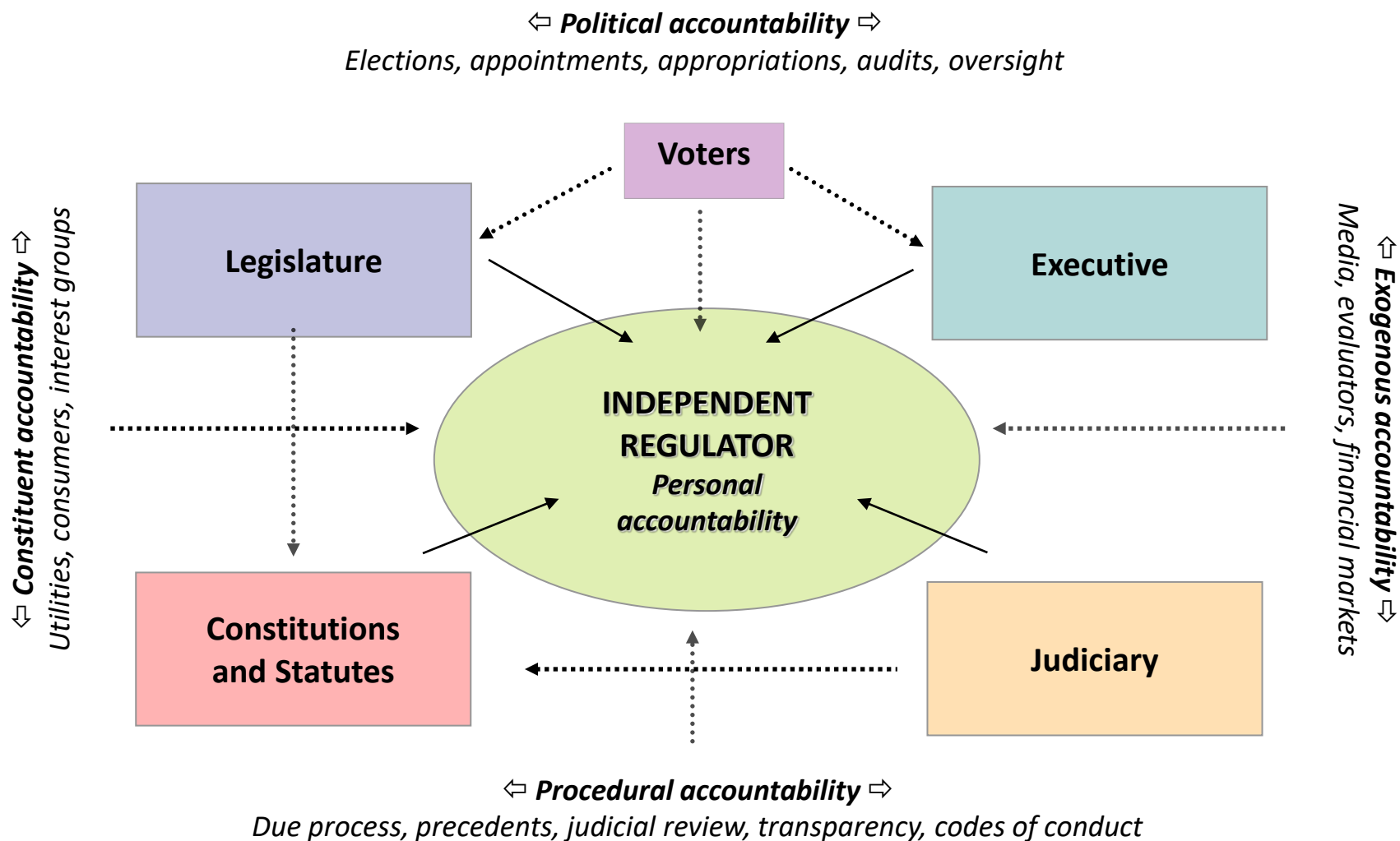


(Credit: Ryan McKnight, FERC.)

# Structural independence

- Commission structural design and procedural rules safeguard and reinforce independence from political and other forms of influence
  - ▶ Number of commissioners, diversity of party and background, term staggering
  - ▶ Governmental reorganization may affect institutional independence
  - ▶ Commissioner qualifications and certification have been considered
- People disagree about whether regulators should be more independent or less independent, especially re policymaking
  - ▶ Does the commission make policy or simply interpret legislation?
  - ▶ Although controversial, commissions almost invariably do both
  - ▶ Fine line between shaping policy in a particular direction and pre-approval
- Regulation will always take place in a political environment, in which resisting expedience and maintaining independence is challenging
- Independence is not absolute but “bounded” by and it comes with much responsibility and accountability (albeit diffuse)
- Independence and discretion must be earned and asserted

# Bounded independence of the regulator





## Poll E3: Elected or appointed commissioners

- **Should public utility regulators be elected to office?**
  - A. Yes
  - B. No
  - c. Not sure

# Mechanisms of commission oversight

- Governmental mechanisms
  - ▶ Political accountability to voters, the legislature, and the executive (e.g., democratic elections, (re)appointments, appropriations, audits, and legislative oversight)
  - ▶ Procedural accountability to the rule of law is imposed by constitutions, statutes, and the judiciary (e.g., rules of due process, precedents, judicial review, transparency, and codes of conduct)
- Nongovernmental mechanisms
  - ▶ Constituent accountability (e.g., utilities, consumers, interest groups)
  - ▶ Exogenous accountability (e.g., media, evaluators, financial markets).
- Both governmental and nongovernmental mechanisms of accountability provide means to engage the public in addition beyond procedural opportunities



# Interests and influence

- Power and influence shape institutions, policies, and decisions
  - ▶ Research shows the pronounced political influence of utilities (Basseches, 2023)
- Special interests are legitimate but more narrowly defined than public interest
  - ▶ Legitimate interests (e.g., financial well being) may be pursued illegitimately
  - ▶ Providing “favorable” information via various means is a lobbying tool
  - ▶ Special interests may also form coalitions with others, including utilities
  - ▶ The public interest is the “special interest” of independent regulators
- Influence may be attempted by “principal” parties or their “agents”
  - ▶ May be targeted to legislation, orders, rules, resolutions, advisory boards
  - ▶ Modes can be explicit (e.g., bribery, job offers, other quid pro quo)
  - ▶ Influences is usually more nuanced (e.g., ego gratification)
- Public officials also may be the instigators – expecting or requesting favors
  - ▶ Opinions vary about whether policies or positions can be “bought”
  - ▶ Beware of rationalizing (“can’t buy my love,” “one golf game can’t hurt,” etc.)
- Be vigilant and discerning about all sources of information and influence
  - ▶ Who wrote it?
  - ▶ Who paid for it?
  - ▶ Who reviewed it?



# Lobbying and regulation

- Both regulators and industry are and should be concerned about ethics
- Industry influence in regulation relates to information asymmetry
- Third-party lobbying and influence play a much larger role
- Stakeholder sponsorship of professional and education forums is challenging
- Influence can be perceived unexpectedly (e.g., differential registration fees)
- Transparency, ground rules, and consistency are critically important
- Lobbying expenses should be allocated “below the line” to shareholders
- Public officials must be willing to say “no” – and will be respected for it

**13 FirstEnergy utilities paid \$144 million for external affairs to service company involved in Ohio bribery scandal**

Dave Anderson · February 10, 2021

**Political operative Julia Johnson to leave FirstEnergy board as fallout from bribery scandal continues**

Dave Anderson · David Pomerantz · March 24, 2022

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**FERC Commissioners received free travel to secretive beach conference, organized by FirstEnergy board member**

# Financial influence in regulatory politics and “dark money”

## GOVERNING

THE STATES AND LOCALITIES  
FINANCE | HEALTH | INFRASTRUCTURE | MANAGEMENT |



### Complaint: utility-backed group in Michigan violates tax, campaign laws

The state's decision to disclose the foundation's donors and contribution amounts breaks several years of relative silence on the matter. Pence's predecessor, then-Gov. Mitch Daniels, disclosed a list of foundation donors in an annual IEDC report in 2011. That list included donors that gave at least \$5,000 but did not list the amount of each donor's contributions.

#### Top 10 donors

Private companies and others have given \$2.19 million to the Indiana Economic Development Foundation since 2014\*. Here are largest contributors. Go to IndyStar.com for a full list of donors.

1. Indiana Michigan Power, \$424,000.
2. Duke Energy, \$381,654.
3. Vectren, \$267,150.
4. Northern Indiana Public Service Co., \$260,000.
5. Indianapolis Power & Light Co., \$157,500.
6. Duke Energy Foundation, \$75,000.
7. ISDA, \$50,000\*\*.
8. NIPSCO, \$50,000.
9. Purdue Research Foundation, \$50,000.
10. Hoosier Energy, \$37,500.

\*Jan. 1, 2014, to June 10, 2015



### As Duke Energy promotes controversial legislation in N.C., money pours in and rumors fly

An analysis from a campaign finance expert shows a surge in political spending by Duke Energy's PAC, board members, and the company itself, with some Democrats fearing retribution for opposing its bill.

by Elizabeth Duzts  
August 13, 2021



**Strings Attached: How utilities use charitable giving to influence politics and increase investor profits**

Energy and Policy Institute • December 10, 2019

#### NEWS LINK

### When Utility Money Talks

Share Like Comment

Aug 3, 2020 8:37 am GMT 190 views

#### SPOTLIGHT

### Dominion increased political spending while pushing for law

The Associated Press 22 hrs ago 0 2 min to read

ENERGY AND POLICY INSTITUTE

Watching inspiring the attitude on renewable energy and conservation

Utility Industry Contributing Millions to National Political Party Groups

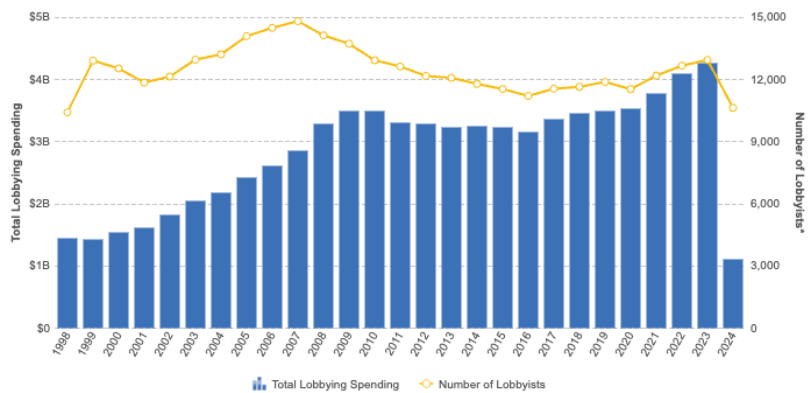
Over \$1 billion in contributions to certain 400-500 political organizations in 2017. More than \$100 million over the past decade.

Math Kasper • February 26, 2018

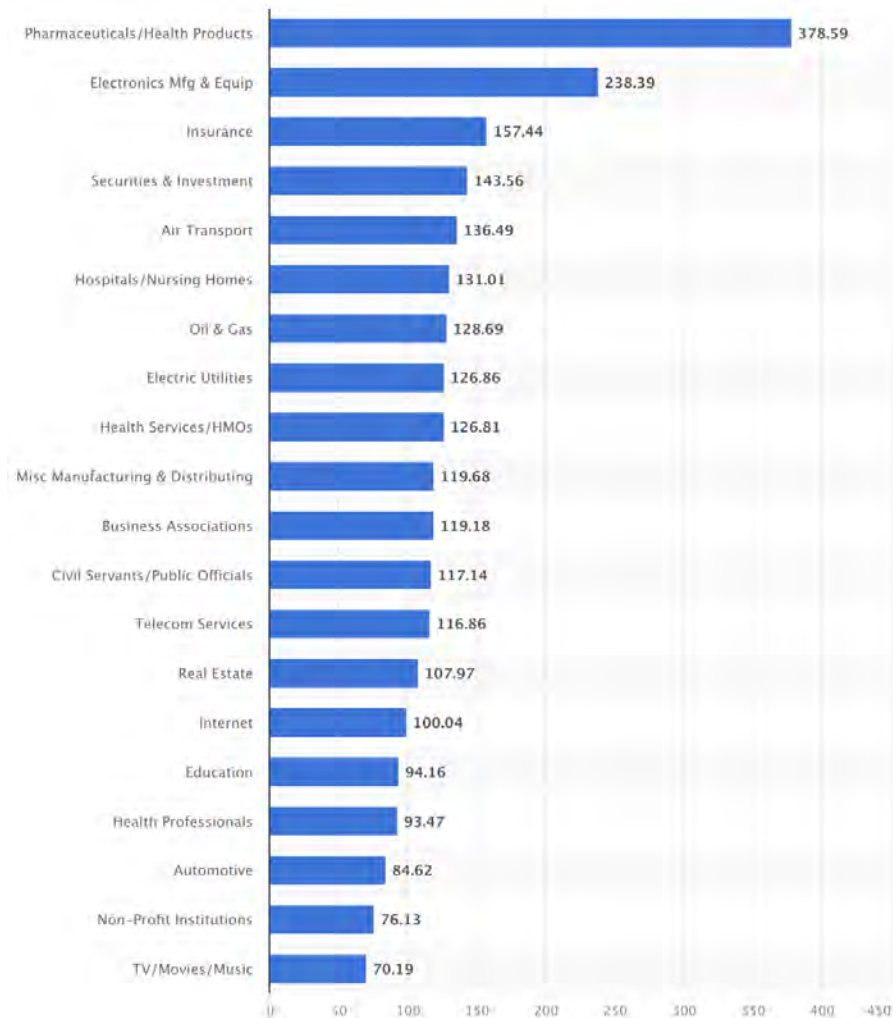
### FirstEnergy utility gave to pro-Trump dark money group

By Jeffrey Tomich | 03/28/2022 07:03 AM EDT

# Lobbying activity overall and by industry



<https://www.opensecrets.org/federal-lobbying/summary>

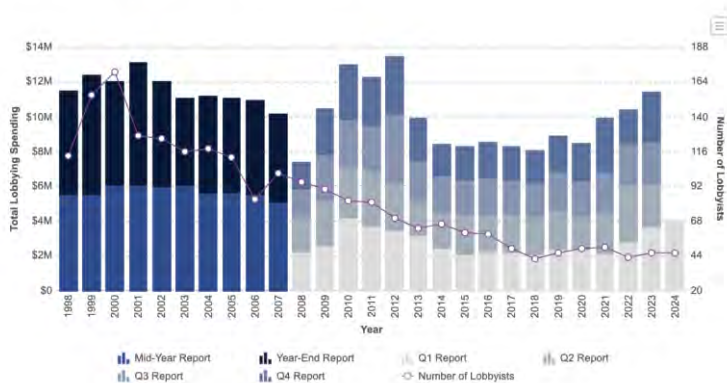


<https://www.statista.com/statistics/257364/top-lobbying-industries-in-the-us/>

# Lobbying expenditures by industry associations (OpenSecrets.org)

- Disclosure and publicity are tools for ensuring ethical conduct

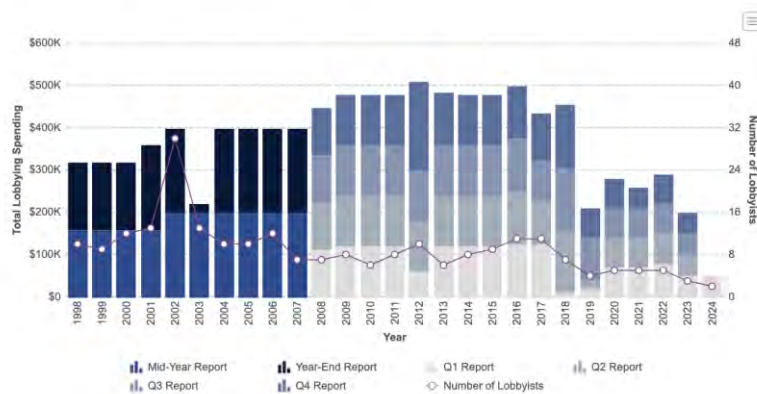
**Annual Lobbying by Edison Electric Institute**



**Annual Lobbying by American Gas Assn**



**Annual Lobbying by National Assn of Water Companies**



# Utility policies and disclosures (AWK)



## Political Contribution Policy

**Policy Number:** POL-COMMEA02      **Effective Date:** 12/31/18 (as amended 04/12/2022)

**Applicability:** American Water Works Company, Inc. ("Parent Company") and its subsidiaries (collectively, "American Water" or the "Company")

**ELT Sponsors:** Senior Vice President, Communications and External Affairs

**Document Author:** Vice President, Chief SEC Counsel and Secretary

### I. PURPOSE

This Policy governs the (1) approval and reporting of Political Contributions and (2) reporting of certain Third-Party Payments, each as defined in this Policy. This Policy applies equally to the Company's regulated and market-based businesses.

### II. POLICY STATEMENT

In furtherance of its business strategy and objectives, the Company participates responsibly in the political process and, where appropriate, the Company may make reasonable political contributions consistent with all applicable federal, state and local laws and reporting requirements. Political contributions of the Company reflect the Company's interests and those of its customers and not those of its individual employees, officers and directors.

## 2023 POLITICAL CONTRIBUTIONS AND LOBBYING EXPENDITURES

### 1. Direct political contributions by American Water or a subsidiary (comprised only of corporate contributions to a subsidiary PAC):

Name of American Water Entity	Date	Form of Payment	Amount of Contribution	Title of Approver	Name of Recipient Subsidiary PAC
California American Water	3/31/2023	Check	\$ 9,100	President of California American Water	California American Water Employee Political Action Committee
Illinois American Water Company	1/17, 4/13, 7/12, 10/11	Check	\$ 27,400	President of Illinois American Water	Illinois American Water Company Political Action Committee
Indiana American Water	2/6/2023	Check	\$ 22,000	President of Indiana American Water	Indiana American Water Political Action Committee
Kentucky American Water	8/29/2023	Check	\$ 5,000	President of Kentucky American Water	Kentucky Water PAC
Tennessee American Water	12/19/23	Check	\$ 20,000	President of Tennessee American Water	Tennessee Valley Water Alliance
<b>Grand Total</b>			<b>\$63,500</b>		

### 2. Political contributions by the Employee Federal PAC or a state subsidiary or line of business PAC:

Name of PAC	Date	Form of Payment	Amount of Contribution	Recipient Name
American Water Works Company Inc. Employee Federal PAC	4/28/2023	Check	\$ 5,000	NAWC PAC
American Water Works Company Inc. Employee Federal PAC	8/23/2023	Check	\$ 5,000	Kentucky Water PAC
American Water Works Company Inc. Employee Federal PAC	9/12/2023	Check	\$ 5,000	Iowa American Water Political Action Committee
American Water Works Company Inc. Employee Federal PAC	9/12/2023	Check	\$ 5,000	Mike Bost for Congress Committee
American Water Works Company Inc. Employee Federal PAC	10/24/2023	Check	\$ 5,000	Garamendi for Congress
American Water Works Company Inc. Employee Federal PAC	5/4/2023	Check	\$ 2,900	Donald Norcross for Congress
American Water Works Company Inc. Employee Federal PAC	3/7/4/2023	Check	\$ 1,000	Mike Bost for Congress Committee
American Water Works Company Inc. Employee Federal PAC	7/6/2023	Check	\$ 1,000	Rosen for Nevada
American Water Works Company Inc. Employee Federal PAC	7/6/2023	Check	\$ 1,000	Deb Fischer for U.S. Senate, Inc.
American Water Works Company Inc. Employee Federal PAC	7/12/2023	Check	\$ 1,000	Dale Strong for Congress
American Water Works Company Inc. Employee Federal PAC	8/8/2023	Check	\$ 1,000	Nikki for Congress
American Water Works Company Inc. Employee Federal PAC	10/12/2023	Check	\$ 1,000	Pete Aguilar for Congress
American Water Works Company Inc. Employee Federal PAC	10/31/2023	Check	\$ 1,000	LaHood for Congress
American Water Works Company Inc. Employee Federal PAC	12/19/2023	Check	\$ 1,000	Houchin for Congress
<b>American Water Works Company Inc. Employee Federal PAC Total</b>			<b>\$ 35,900</b>	

<https://amwater.com/corp/About-Us/Ethics-Responsibility/Political-Contributions-And-Lobbying-Expenditures/>



# Calls for transparency (Michigan AG, 2023)



Michigan Department of Attorney General

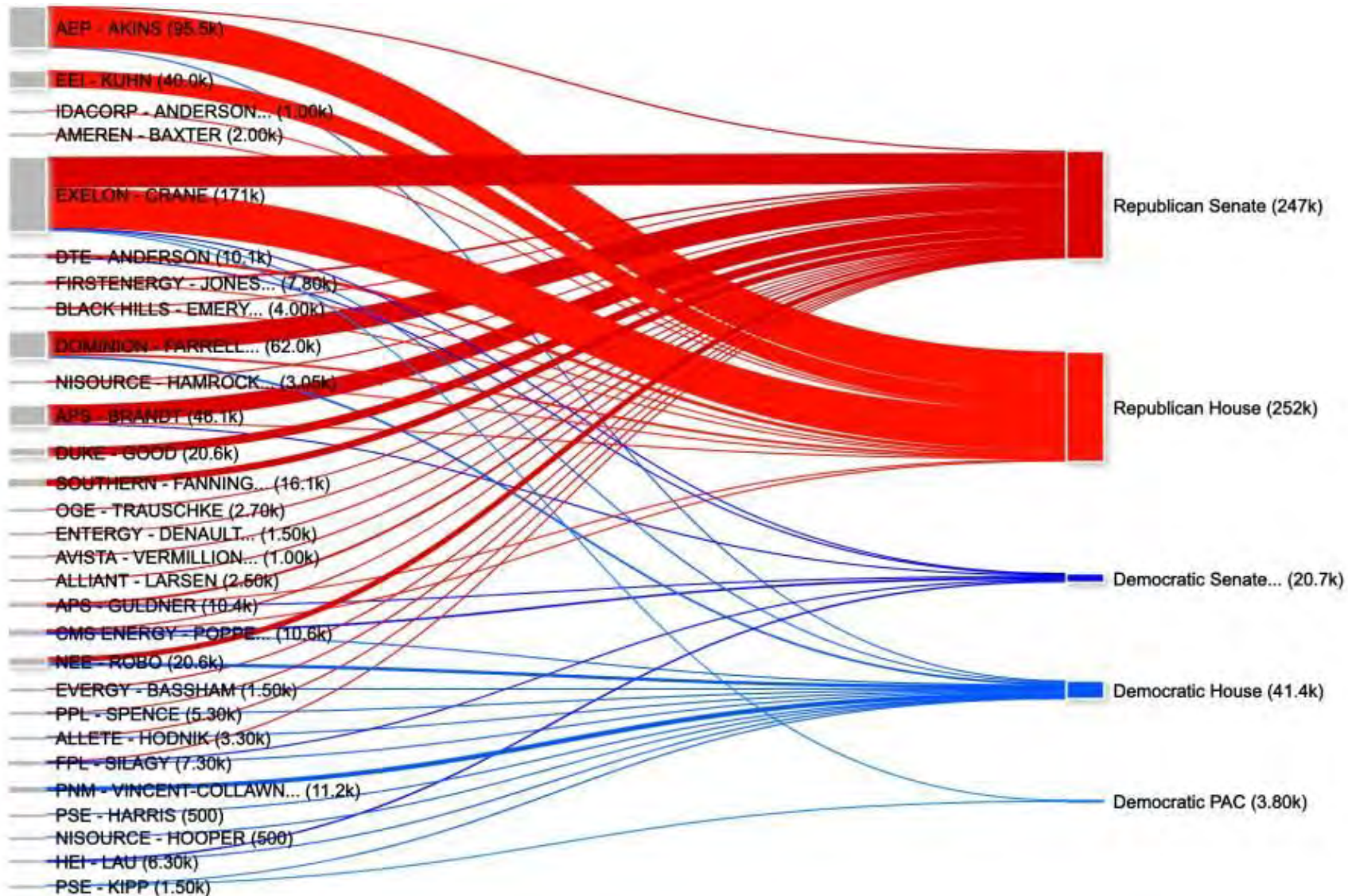
## AG Nessel Requests More Transparency on Lobbying Influence by Utilities

February 15, 2023

As to the request for greater transparency on the expenses to include public policy, the Attorney General specifically requested the following:

- a. Expenses for the purpose of influencing regulation or legislation directly or indirectly through affiliates.
- b. Expenses for the purpose of influencing public opinion about policy issues or about the company's reputation directly or indirectly through affiliates.
- c. Expenses relating to all proceedings before the Commission, with specificity about how and how much the company spent on the previous rate case and how much it forecasted for the current general rate case.
- d. The 501(c)(3) and 501(c)(4) contributions to each non-profit organization, including those organizations receiving contributions from the utility's affiliated 501(c)(3) charitable foundations.
- e. Expenses for any litigation that utilities file seeking to overturn rules or statutes.

# Campaign contributions (Energy and Policy Institute, 2020)



# Elected commissions: campaign finance

**Table 1: Total Contributions and Contributions by Top Industries to Public Service Commission Candidates, 2007-2014**

State	Total Contributed	Top Sources of Money <sup>3</sup>	Top Money Source as Percent of Total
Texas	\$20,031,658	Oil & Gas	31%
Arizona	\$6,821,030	Public Funds	83%
Oklahoma	\$6,287,206	Oil & Gas	24%
Louisiana	\$4,830,821	Lawyers & Lobbyists	9%
Alabama	\$3,552,724	Lawyers & Lobbyists	16%
Mississippi	\$2,288,249	Unitemized Contributions	16%
New Mexico	\$1,872,733	Public Funds	68%
Georgia	\$1,853,423	Lawyers & Lobbyists	17%
North Dakota	\$1,531,566	Unitemized Contributions	24%
South Dakota	\$1,201,718	Unitemized Contributions	18%
Montana	\$699,967	Retired	12%
Nebraska	\$467,819	Unitemized Contributions	55%

**SANTA FE**  **NEW MEXICAN**  
 Solar firm gives to PRC members after vote in its favor  
 PNM spends \$440,000 in race for its regulator

**FBI questions Arizona utility officials, watchdog group in 2014 election investigation**  
 By [Robert Walton](#) | July 8, 2016  print

**BRIEF**  
**Arizona's chief utility regulator pressures APS to cut political spending**



## Poll E4: Money in regulation

- Do we need to address how money and power influence regulation?
  - A. Yes
  - B. No
  - C. Not sure

## Three bounded policymaking roles of independent commissions

### Quasi-administrative: *regulator as expert*

- Commissions apply expertise like a bureaucratic agency; implementation and enforcement; controversial as to effectiveness and efficiency.

### Quasi-legislative: *regulator as trustee*

- Commissions make policy like a legislature; rulemaking and standards development; controversial as to authority, discretion, and policy activism.

### Quasi-judicial: *regulator as judge\**

- Commissions deliberate and make decisions like a specialized economic court; procedural due process, impartiality, judicial demeanor; controversial as to conflicts of interest.

## Role models: regulators as judges

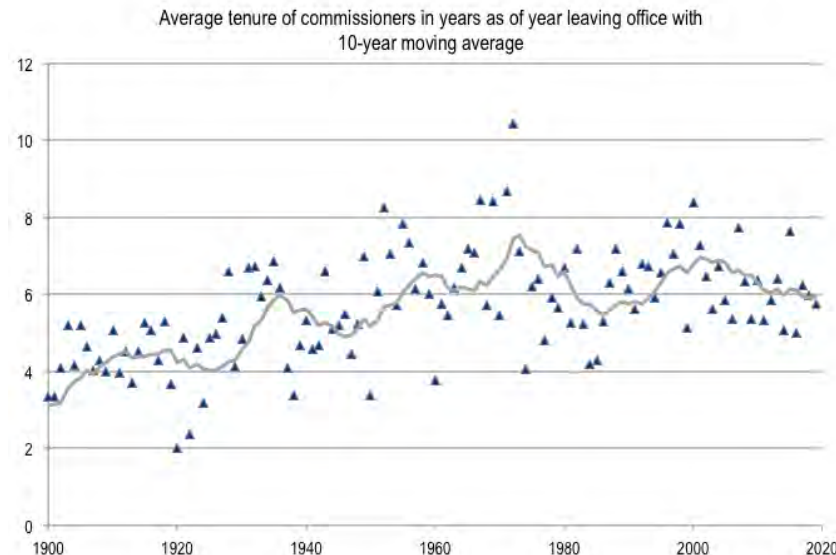
- *Should regulators “lead or preside”... “Commissions are not Courts; Regulators are not Judges... To view the Commission as a court -- to ‘preside’ rather than lead – undermines regulatory effectiveness” (S. Hempling)*
- Commissioners must balance their roles as trustees, experts, and judges
  - ▶ The impartial judge is an appropriate role model for regulators (Beecher)
  - ▶ Political tools are often inappropriate (e.g., consensus building, brokering)
  - ▶ Due process of judicial model helps protect the disenfranchised and under-resourced
  - ▶ Regulators, like judges, should be nonpartisan (as reflected in codes of conduct)
  - ▶ As agents of the state and guardians of the public interest, the commission is most effective when it maintains its institutional standing as a court of primary jurisdiction for economic regulation
- In the bombardment of information, interests, and influence, a need for FDR’s “Tribune of people” for “getting the facts and doing justice” (1932)
- Regulation is not a democratic institution in terms of direct accountability
  - ▶ Should commissions and commissioners ever take an active “lead” in terms of policy?
  - ▶ Are new commission roles blurring lines? (e.g., environmental policy and grants)
  - ▶ How does the lens of experience, privilege, and values affect perceptions about this?

# Commission staff roles

- Staff roles and rules of conduct vary by subject, proceeding, and time
  - ▶ Administrators that help implement policy
  - ▶ Advisors in policy formulation and decision assistance
  - ▶ Advocates appearing before the commission as experts
- Staff advocates
  - ▶ Generally have a high degree of independence and a professional work ethic
  - ▶ Require organizational separation and controls (i.e., ex parte rules)
  - ▶ Should be viewed as “first among equals” in proceedings
  - ▶ Represent the public interest (long-term, societal perspective)
  - ▶ Build the decision record “in the middle”
  - ▶ Redress the resource imbalance favoring utilities
  - ▶ May support a position or provide a range of supportable options
  - ▶ Staff should avoid directing the commission (“the commission should...”)
- Commission organizations often face staffing, funding, and political issues
  - ▶ Can limit regulatory capacities
  - ▶ Preservation of institutional and technical knowledge is critical

# The value of staff independence

- An independent staff adds long-run value to the quality of regulation
  - ▶ Experienced staff members have institutional memory and substantive knowledge
  - ▶ New regulators benefit greatly from staff experience and insight
  - ▶ Staff technical expertise can help cool or mitigate regulatory politics
  - ▶ Staff expertise is needed to formulate, refine, and implement regulatory policy
- Alternative organizational and management structures matter
  - ▶ Control of staff by another agency may invite external politicization
  - ▶ Control of staff by commission may invite internal politicization





# Roles and perspectives

	Perspective	
	<i>Commissioner</i>	<i>Staff member</i>
<i>Commissioner</i>	I. How commissioners view their own role	II. How staff members view the commissioner role
Role		
<i>Staff member</i>	III. How commissioners view the staff role	IV. How staff members view their own role

# Commissioner and staff relations

- An inherent and mostly healthy tension
  - ▶ Between commissioners and professional staff in the complex commission model
  - ▶ Complicated by commissioner turnover and political differences, major shifts in public policy, and external pressures
  - ▶ Varies over time with different administrations
- Executive management strategies
  - ▶ Ensure that commissioners and parties understand respective roles
  - ▶ Conduct a “post mortem” of major cases and decisions
  - ▶ Provide leadership and socialization opportunities
  - ▶ Help staff sharpen positions in future cases
  - ▶ Encourage resiliency and appropriate adaptation
  - ▶ Direct the evolution of the organization to meet changing needs
  - ▶ Promote constructive conflict management in the organization – move on

**FCC Admits Its Website Wasn't Hacked During Net Neutrality Commenting.  
Ajit Pai Blames Obama Hire**

# Commissioner and staff obligations

- Both commissioners and staff should want a thoughtful counterpart
  - ▶ Not yes-people staff or rubber-stamp commissions
- Commissioner obligations
  - ▶ To appreciate staff role and the value of staff independence
  - ▶ To not simply seek validation or pressure staff witnesses
  - ▶ To explain decisions from the bench and clarify expectations
- Staff obligations
  - ▶ To support the commissioners and the regulatory process
  - ▶ To respect the commission's ultimate authority and not undermine it
  - ▶ To "tell them what they need to know, not just what they want to hear"
  - ▶ To avoid recalcitrance or retrenchment
  - ▶ To refine arguments over time in recognition of evolving policy

## ENERGY POLICY

### Top staffer plunges FERC into Trump's coal, nuclear fight

Sam Mintz and Peter Behr, E&E News reporters

Published: Thursday, August 9, 2018

# Regulatory networks as opportunity for exchange

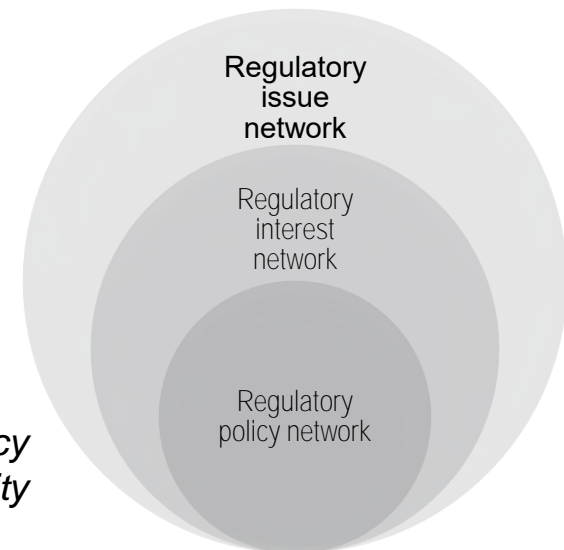
- Regulatory networks can serve the goal of independence
  - ▶ Provide a platform for information exchange and peer-based discourse
  - ▶ Develop capacity and competency through technical knowledge and skills
  - ▶ Help address information asymmetry favoring utilities
  - ▶ Provide a means of combining forces and pooling resources
  - ▶ Provide common support for research and education
  
- Networking can be problematic
  - ▶ Industry and special interests can dominate attendance at regulatory meetings
  - ▶ Beware of social networking that violates restrictions on communications

## American Water to Contribute Expertise to Several Panels at NARUC Summer Policy Summit

July 14, 2023 12:00 PM Eastern Daylight Time

CAMDEN, N.J.--(BUSINESS WIRE)--American Water (NYSE: AWK), the largest publicly-traded U.S. water and wastewater utility company, announced today that three representatives will join regulatory policy panels at the National Association of Regulatory Utility Commissioners (NARUC) Summer Policy Summit, taking place from July 16 through 19 in Austin, TX. American Water will have a leading presence at the conference, with several expert presenters joining NARUC's Committee on Water forums.

*Regulatory policy  
community*



# Can networks provide too much of a good thing?

Cultural role	Positive form of network exchange	Negative form of network exchange
Professional socialization	Inculcation	Insularity
Capacity development	Diffusion	Didacticism
Institutionalization	Consensus	Cooptation

## NARUC as network

- NARUC's ethical canons (advisory)
  - ▶ A commissioner should uphold the integrity of the commission.
  - ▶ A commissioner should avoid impropriety and the appearance of impropriety in all activities.
  - ▶ A commissioner should perform the duties of office impartially and diligently.
  - ▶ A commissioner may engage in activities to improve regulation and administration.
  - ▶ A commissioner should regulate his or her outside activities to minimize the risk of conflict. (Adopted by the 89th NARUC Annual Convention on November 17, 1977, Convention Proceedings, pages 315-318)
- Regulators could self-police but do not
  - ▶ No means of oversight or enforcement by the association – and conflict aversion
- Meetings facilitate interaction among interests
  - ▶ Sponsorship by utilities is not allowed - but sponsorship by associations and third parties is allowed
  - ▶ Social distancing poses new issues in lobbying



*One-on-One Chats with Commissioners  
Sign up for brief meet-and-greets. Tuesday,  
July 21: 2:00-3:00 PM (ET)*

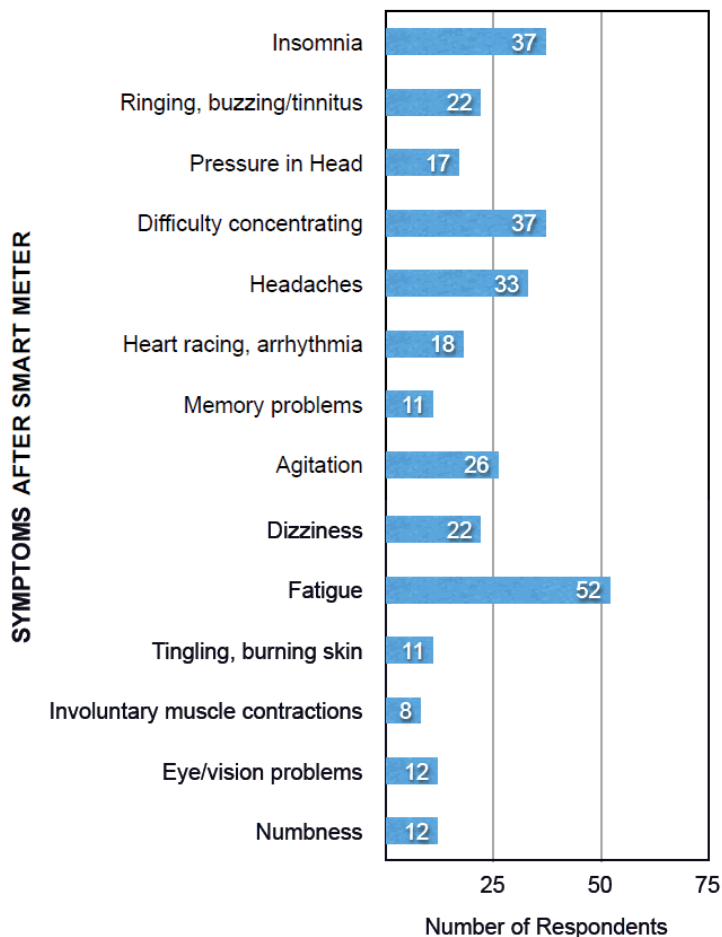
# Independence vs. isolation or indifference

- Commissions cannot ignore the general will or flout legislative intent
  - ▶ Regulatory independence does not mean isolation or indifference to constituents
  - ▶ Public opinion and comments can influence regulation, but not all views expressed will be representative
- Methods exist for commissioners to enter certain types of information
  - ▶ For example, entering published studies in the record
  - ▶ Reading published materials and attending educational and professional forums (local and national) are appropriate
  - ▶ Commissioners also benefit from opportunities to share experiences and ideas with their peers (e.g., regulation of multi-state utilities)
- Commission decisions must be supported within “the four corners of the record”
  - ▶ With proper notice and due process
- New challenges may call for new methods and rules
  - ▶ For exchanging information, resolving disputes, engaging stakeholders, and translating values into policy
  - ▶ But we also need *rules for making the rules*

# Public opinion on smart meters

■ Severe & Worsened

Number of respondents who checked both Severe & Worsened



Meter Comparison	Smart Meter	Analog meter
View daily energy use	✓	✗
Remote service capabilities	✓	✗
Remote meter reading	✓	✗
Initial fee	Free	\$75.00 <sup>1</sup>
Monthly charge	Free	\$10.00 <sup>2</sup>

## SAY "NO" TO BIG BROTHER SMART METERS



"I SEE THAT YOU TAKE A SHOWER AT 5 A.M."

SMART METERS ALLOW 24/7 SURVEILLANCE AND MONITORING OF ACTIVITIES INSIDE YOUR HOME OR BUSINESS BY UTILITIES AND GOVERNMENT.

SMART METERS VIOLATE YOUR 4TH AMENDMENT RIGHTS.

THERE IS NO FEDERAL MANDATE TO INSTALL SMART METERS.

SMART METERS WILL BE USED TO RATION AND CONTROL AS OUTLINED IN UNITED NATIONS AGENDA 21.

SMART APPLIANCES CAN BE REMOTELY CONTROLLED BY UTILITIES. THEY WILL "TALK" TO THE UTILITY AND RESPOND TO PRICE SIGNALS. THEY CAN BE SHUT DOWN BY UTILITIES.

"HERE COME THE ENERGY POLICE! Millions of 'smart meters' installed to monitor electricity usage"  
<http://www.wrd.com/?pagelds=228337>

FOR MORE INFORMATION: [STOPSMARTMETERSNOW.COM](http://STOPSMARTMETERSNOW.COM)  
[EFUSESMARTMETER.COM](http://EFUSESMARTMETER.COM) · [STOPSMARTMETERS.ORG](http://STOPSMARTMETERS.ORG) · [NOSMARTMETERS.ORG](http://NOSMARTMETERS.ORG)



# Decline of regulatory independence

- Lack of institutional memory and inculcation with less interest in why vs. how
- Less emphasis on research, professional development, and staff engagement
- Executive (re)appointment practices, holdovers, and keener interest
- Commission relocation within state government and control of staffing
- Political removal of commissioners (serve at pleasure, pressure to resign)
- Audits, sunset reviews, & budgetary constraints on commissions & advocates
- Collaborative processes and partnering vs. traditional processes
- Legislative constraints on regulatory discretion and single-issue policies
- Rise of interest-based methods and self-serving “best practices”
- Third-party and commercial influence on the regulatory process
- Industry drafted policies and resolutions without vetting (“self-regulation”?)
- Automated cost recovery (operating & capital) and formulaic ratemaking
- Regulatory activism by commissions or commissioners (out of remit)

## Weakening of regulation (a few examples)

- Commissioners serve at the pleasure of the governor (MA)
- Executive control of agency personnel (UT)
- Commission reorganization (CT)
- Part-time commissioners (TN)
- Reappointment politics (IA)
- Limits to commission discretion (VA)
- Formulaic ratemaking (IL)
- Cost trackers (IN)
- Multi-year rate plans (MN)
- Preapproval of financing costs (SC)
- Legislative conflict (OR)
- Political pressure (NV)
- Risk shifting to customers (FL)
- Recovery of stranded cost (OH)
- Bonus rates of return (FERC)
- Valuation of property (several)
- Mechanization of regulation and ratemaking: cost-recovery, revenue-assurance, and earnings mechanisms (several)

Opinion | Process | Jul 21, 2020

### Revisiting the Constitutionality of Independent Agencies

Bernard W. Bell



# Ideas for enhancing regulatory independence

- Depoliticize regulation
  - ▶ Rebrand commissions: Essential Services and Infrastructure Commission (or Court?)
  - ▶ Regulators as courts of expertise – less political, more technocratic
  - ▶ Judicial role model in terms of demeanor and impartiality (compare to legislative role)
  - ▶ Allow for discretion within statutory boundaries and mission
- Inform the commissioner selection process
  - ▶ Inform the electoral and (re)appointment processes (commissioners and those who select them) about the requirements and realities of the position
  - ▶ Specify eligibility criteria, screening methods, and qualification rating systems
  - ▶ Adopt longer commissioner terms (with removal for cause)
- Develop regulatory agency capacity
  - ▶ Require continuing education and training for regulators and industry
  - ▶ Inform regulation through independent scientific research
- Enforce strict ethical codes
  - ▶ Longer stay-out, cooling-off periods or transitional public employment for retirees
  - ▶ Prevent seeking or negotiating employment while in office
  - ▶ Public servants must accept the terms of the job

**Ethics Panel Rules That Storms Broke the Law**

The Indiana State Ethics Commission ruled that Scott Storms, the former top lawyer for the Indiana Utility Regulatory Commission, violated the law by presiding over cases involving a utility with which he was negotiating for a more lucrative job.

By Shannon Green and Sue Reisinger | May 13, 2011 at 12:00 AM

# Ethics

# Morals vs. ethics

	Morals	Ethics
What are they?	Principles or habits with respect to right or wrong conduct. While morals also prescribe dos and don'ts, morality is ultimately a personal compass of right and wrong	The rules of conduct recognized with respect to a particular class of human actions or a particular group or culture
Where do they come from?	Individual (internal)	Social system (external)
Why do we do it?	Because we believe in something being right or wrong	Because society says it is the right thing to do

Source: [http://www.diffen.com/difference/Ethics\\_vs\\_Morals](http://www.diffen.com/difference/Ethics_vs_Morals)

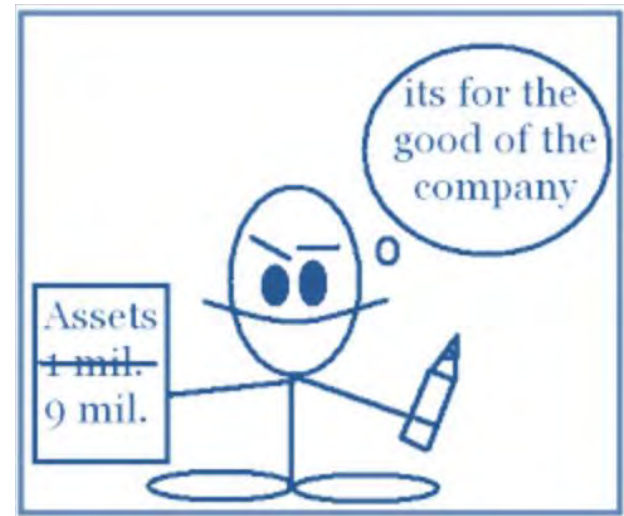
# Ethics in the real world

- Ethics are an ongoing challenge in public life
  - ▶ Platitudes (“do the right thing”) do not really work
- Complex situations and moral dilemmas
  - ▶ Conflicting moral obligations and loyalties
  - ▶ Family obligations/loyalty vs. work obligations/loyalty
  - ▶ Can bread winners be whistle blowers?
- Ethical conduct requires
  - ▶ Meaningful rules
  - ▶ Reinforcement and monitoring
  - ▶ Consequences for violation



# Ethics and character

- *“Look well to the characters and qualifications of those you elect and raise to office and places of trust” (William Paterson, signer of the Constitution, Senator Governor, and Supreme Court Justice invoking Proverbs 29:2, May 24, 1800)*
- The Law of Good People (Yuvai Feldman, 2018)
  - ▶ Erroneous wrongdoers – blind spots but do not rationalize
  - ▶ Situational wrongdoers – rationalize behavior believing they are good
  - ▶ Calculative wrongdoers – intentionally engage in bad behavior
- Six pillars of ethics (Josephson)
  - ▶ Trustworthiness
  - ▶ Respect
  - ▶ Responsibility
  - ▶ Fairness
  - ▶ Caring
  - ▶ Citizenship



## Good regulators lead to good regulation: characteristics

- Dedicated to public service as expert, trustee, and judge
- Understanding and appreciation of the public interest
- Intellectual curiosity and a genuine interest in the subject
- Humility in the face of the public interest charge and difficulty of the task
- Independent from political interests, unbiased, impartial, non-ideological
- Judicial demeanor & disposition, circumspect, mature, sensible, patient, collegial
- Committed to the highest ethical standards



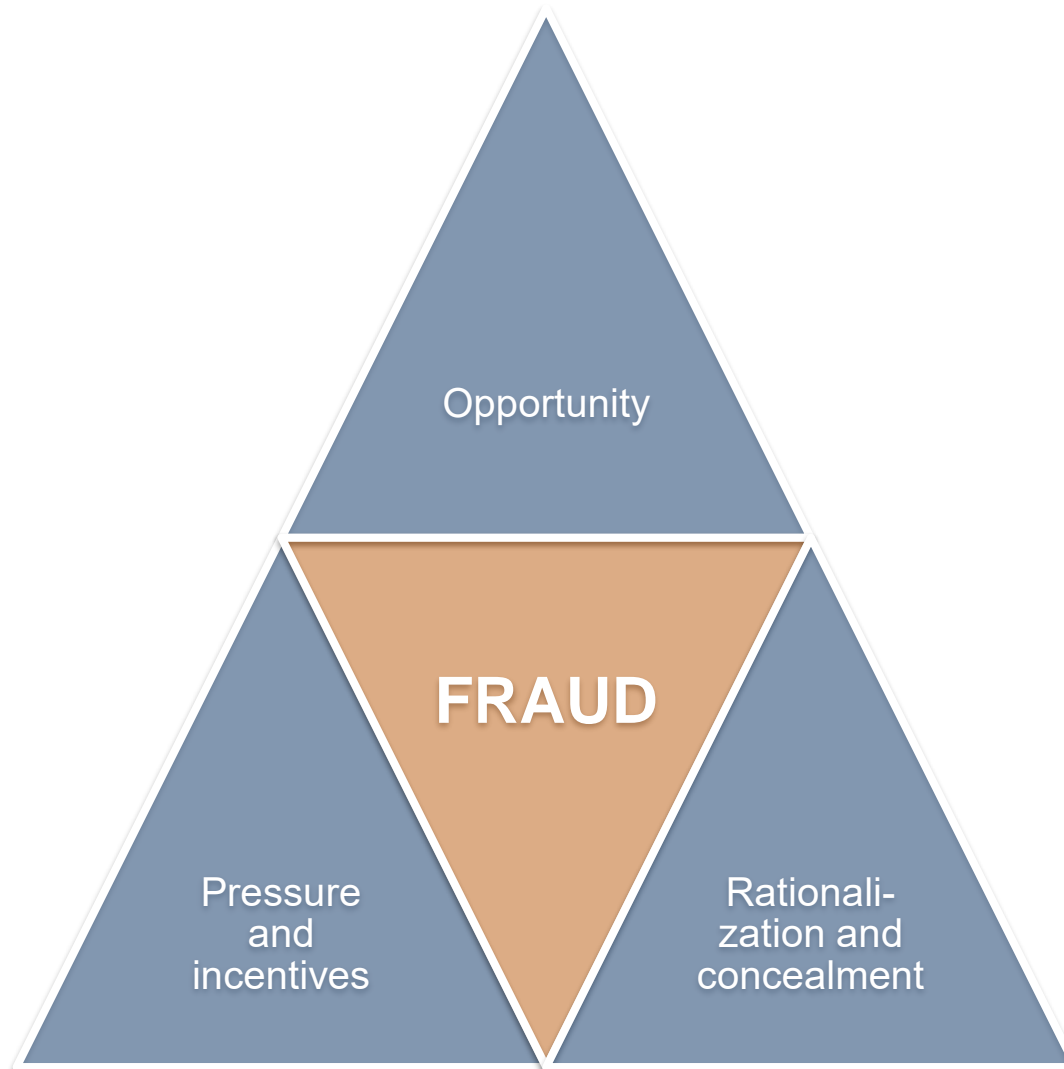


# Understanding ethics

- Synonyms for ethics: conduct, belief, conscience, convention, conventionalities, criteria, decency, ethic, ethos, goodness, honesty, honor, ideal, imperative, integrity, moral code, morality, mores, natural law, nature, practice, principles, standard, standards, value
- Conflicts of interest alone do not constitute impropriety (e.g., we are all ratepayers)
- Conflicts can be removed, disclosed, or mitigated (e.g., recusal), but conflicts will create problems of appearances and sometimes temptations for abuse of knowledge or influence (e.g., inside trading)
- The sad reality of the fraud triangle: opportunity, pressure or incentives, and rationalization or concealment



# Fraud triangle

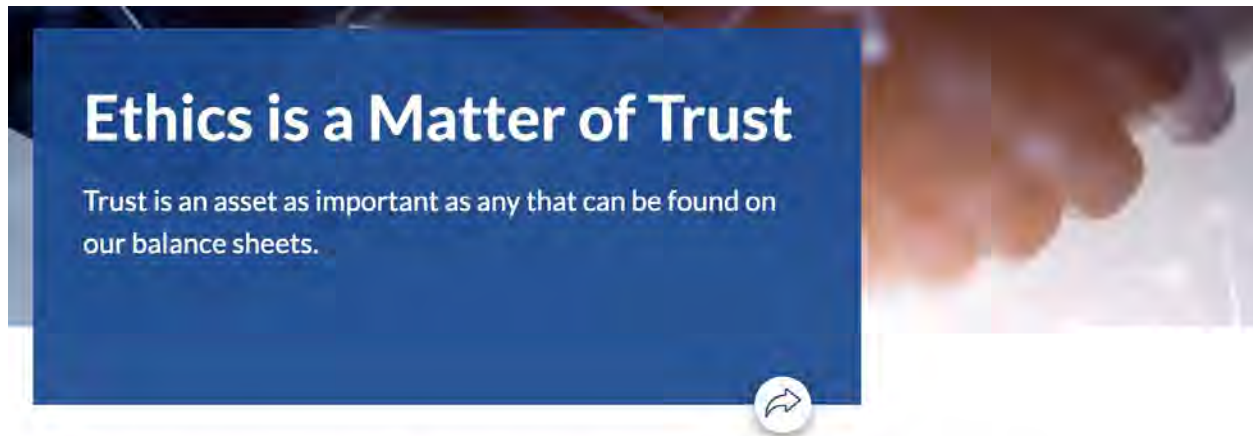


# Imbuing ethical behavior

- Institutional and legal frameworks (openness)
- Clear and meaningful ethical standards and professional codes of conduct
- Protection of whistleblowers (even if “disgruntled”) and rewards (effective)
- Enforcement with consequences for noncompliance (criminal and civil penalties)
- Oversight and policing by executive managers, attorneys, and law judges
- Vocal advocacy of multiple interests
- Informed and engaged public
- Political will, leadership, and demeanor
- Smart and vigilant media, including diffuse web-based
- Freedom of Information Act (FOIA) and discovery procedures
- Promotion of personal responsibility (nudging and shaming)
- Inclusion of more women in policymaking positions
- Watching matters (eye picture above the money jar)



# Government Finance Officers Association (2019)



**Public service is a special trust.** The finance office plays an important role in the public service. The finance office has stewardship over citizens' shared financial resources. These resources make possible the services that are essential to the safety, livability, and vitality of our communities.

**We, the government finance officers of the United States and Canada, have a deep and abiding desire to show that we are worthy of the trust that has been bestowed upon us.** We strive to show it to the citizens of the communities we serve and to their elected representatives. We strive to remain true to the values that drive our work as public servants.

**Trust is an asset as important as any that can be found on our balance sheets.** But how can we maintain and grow this asset?

# Commission ethics policies



## About the PSC

The Missouri Public Service Commission regulates investor-owned electric, natural gas, steam, water and sewer utilities in Missouri. The Commission also has limited jurisdiction over telecommunications providers in the state. In addition, the Commission regulates the operational safety of the state's rural electric cooperatives and municipally owned natural gas utilities. The Commission also regulates manufacturers and dealers of manufactured homes and modular units, and enforces initial home or unit installation. The Commission was established in 1913. There are five commissioners on the PSC. They are appointed by the governor with advice and consent of the Missouri Senate.

- Division Descriptions
- Email Directory
- Telephone List (Detailed)
- Telephone List (Key Personnel)
- A Snapshot of What We Do
- PSC Information Guide
- Quick Guide To The PSC
- Celebrating A Century Of Service (1913-2013)

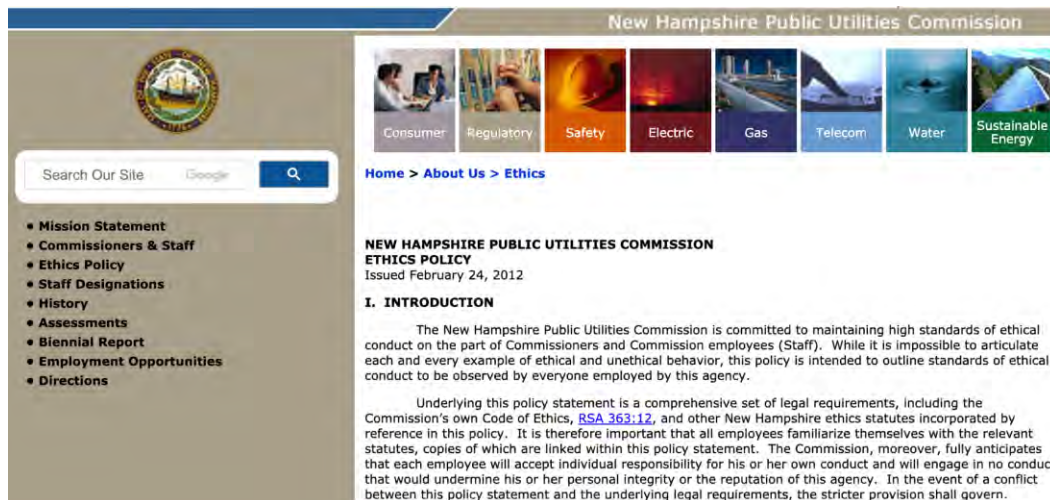
### Vision Statement

Informed Consumers, Quality Utility Services, and a Dedicated Organization for Missourians in the 21<sup>st</sup> Century

### Mission Statement

#### We will:

- ensure that Missourians receive safe and reliable utility services at just, reasonable and affordable rates;
- support economic development through either traditional rate of return regulation or competition, as required by law;
- establish standards so that competition will maintain or improve the quality of services provided to Missourians;
- provide the public the information they need to make educated utility choices;
- provide an efficient regulatory process that is responsive to all parties, and perform our duties ethically and professionally.



## NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

### ETHICS POLICY

Issued February 24, 2012

#### I. INTRODUCTION

The New Hampshire Public Utilities Commission is committed to maintaining high standards of ethical conduct on the part of Commissioners and Commission employees (Staff). While it is impossible to articulate each and every example of ethical and unethical behavior, this policy is intended to outline standards of ethical conduct to be observed by everyone employed by this agency.

Underlying this policy statement is a comprehensive set of legal requirements, including the Commission's own Code of Ethics, [RSA 363:12](#), and other New Hampshire ethics statutes incorporated by reference in this policy. It is therefore important that all employees familiarize themselves with the relevant statutes, copies of which are linked within this policy statement. The Commission, moreover, fully anticipates that each employee will accept individual responsibility for his or her own conduct and will engage in no conduct that would undermine his or her personal integrity or the reputation of this agency. In the event of a conflict between this policy statement and the underlying legal requirements, the stricter provision shall govern.



## Code of Ethics

### PREAMBLE

The Arizona Corporation Commission is dedicated to ensuring the public trust. As members of a public body, the Commissioners should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission. This code of ethics is intended to recognize and establish the moral duties and obligations of Commissioners that involve not only obeying the law, but also performing their duties with the highest standards of ethical and professional conduct.

Source: NARUC Code of Ethics, Canon I; Ariz. Code of Judicial Conduct, Canon I, Rule 1.2



### About PUC

- Our Team
- Commissioners
- Executive Secretary
- Staff Directory
- Commission Information
- Directions
- Careers @PUC
- Affirmative Action Plan
- History
- Contact Us

## Ex Parte Communications

The Commission encourages constituents to come forward with their thoughts and opinions; however, contacting a Commissioner directly may result in an [ex parte communication](#).

The best way to submit your comments is to visit our [Public Comment](#) page.

### Preparing To Comment

- Select Open Discussions to see what's open for comment
- Think about what you want to say
- What decision do you want the Commission to make?
- How will the issue affect you, your family, your job, your community?
- What's important to you?
- Are you trying to stop or delay an action, fix an error, support an issue, offer an alternative?

## Poll E5: Ethics policy

- **Does your agency or organization have an ethics policy?**
  - A. Yes
  - B. No
  - c. Not sure

# Whistleblower protection and rewards

## Trump rule chills Energy Dept. nuclear whistleblowers

By Joe Davidson | Columnist February 9



The Forrestral Building, one of two main headquarters for the U.S. Department of Energy. (Department of Energy)

Like a stinging winter wind, Trump administration action gives a chill to Energy Department whistleblowers.

The department has temporarily halted an Obama administration regulation permitting civil penalties against federal nuclear contractors that retaliate against whistleblowers who report waste, fraud and dangerous conditions.



# Openness in governance

- *“Publicity is the very soul of justice... It keeps the judge himself, while trying, under trial. In the darkness of secrecy, sinister interest and evil in every shape, have full swing... Where there is no publicity there is no justice” (Jeremy Bentham, 1748-1832)*
- Openness (transparency) of government is valued in our political culture and is a condition of regulatory independence
  - ▶ “The public’s business should be conducted in public”
  - ▶ “Sunlight is said to be the best of disinfectants” (Justice Brandeis)
- Open proceedings: “sunshine”
  - ▶ “The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.” (PA Statute § 702).
- Open records: “right to know” and “freedom of information”
  - ▶ Provide equal access to public, stakeholders, media
  - ▶ Annual and other financial reports of utilities
  - ▶ Rate-case and other filings
  - ▶ Maps and other information
  - ▶ Commission studies and reports
- Balancing openness, propriety, security, and regulatory scrutiny
  - ▶ Potential chilling effect on documentation – staff audit papers, draft reports

Transparency is not about restoring trust in institutions. Transparency is the politics of managing mistrust.

Ivan Krastev  
PICTUREQUOTES.COM



## Rules for openness

- *"Just because something is done behind closed doors doesn't mean the process isn't transparent" (New York Governor Andrew Cuomo, 6-Jul-17)*
- Open meetings allow external observation of communications & deliberation
  - ▶ Rules vary (e.g., openness for meetings of a majority of a quorum)
  - ▶ Pre-filing meetings with parties
    - Allows for logistical coordination and clarification
    - May appear to favor filing party and undermine trust
- Exceptions for closed meetings
  - ▶ Personnel and labor issues, legal matters
  - ▶ Discussion of real estate purchases
  - ▶ Potential to violate privileges or breach confidentiality
  - ▶ Potential to move financial markets
  - ▶ Educational and professional conferences
  - ▶ Certain working sessions (e.g., boards of auditors)

### **Both FirstEnergy and its shareholders seek secrecy around company's bribes**

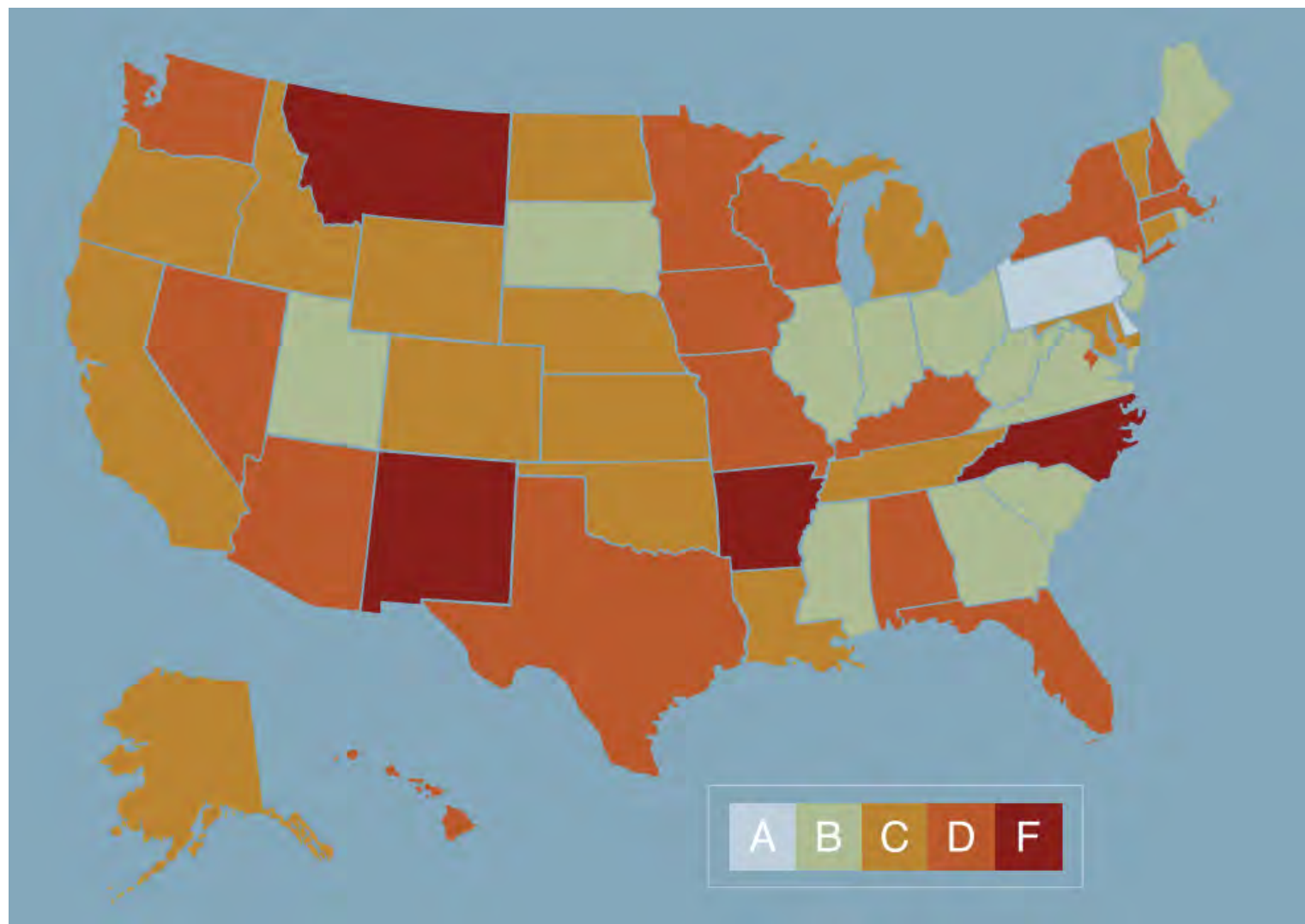
BY: JAKE ZUCKERMAN - MARCH 18, 2022 3:55 AM



# Challenges associated with openness

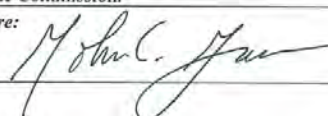
- Possible drawbacks
  - ▶ Chilling effects, quality of dialog, and longer learning curves
  - ▶ Serial or staff-mediated communications or brokering
  - ▶ Overexposure or over familiarity of commissioners to constituents
  - ▶ Less efficient decision-making process
  - ▶ Favors parties of interest (who attend) over general public (who do not)
- Key questions
  - ▶ Is openness the price of democracy?
  - ▶ Do concerns about openness vary with political culture?
  - ▶ Should all of the public's business be conducted in public?
  - ▶ Should commissions operate more like legislatures or like courts?
  - ▶ Should commissions be allowed to deliberate in private before or after record is closed?

## State ratings based on open records (CSLDF, 2023)



<https://www.cslfd.org/wp-content/uploads/2021/10/CSLDF-Report-2023.pdf>

# Meeting disclosure for the record

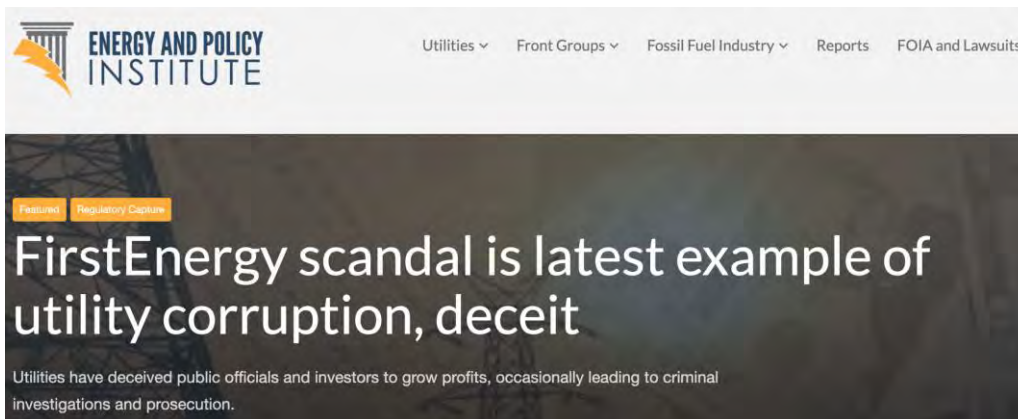
<b>COLORADO PUBLIC UTILITIES COMMISSION STATUTORY MEMORANDUM FOR RECORD</b>		
<p>§ 40-6-122, C.R.S. requires PUC Commissioners and Administrative Law Judges to disclose all private communications to or from interested persons concerning matters under the commissioners' or judges' jurisdiction. This memorandum will be filed with the Director of the PUC and will be maintained on file and available for public inspection for a minimum of three years after submission. This memorandum is not required for communications made during public meetings.</p>		
DATE: November 29, 2021	TIME: START: 2:00 PM END: 2:45 PM	LOCATION: Remote
OTHER LOCATION:		CITY, STATE
<input checked="" type="checkbox"/> MEETING	<input type="checkbox"/> PHONE CALL	<input type="checkbox"/> EMAIL OTHER: Remote/Google Meets
<b>PUC Persons Present:</b>		
Commissioner John Gavan		
PUC Staff: Ron Davis		
PUC Staff:		
PUC Staff:		
<b>Others Attending:</b>		<b>Representing:</b>
Brooke Trammell, Regional Vice President, Rates & Regulatory Affairs		Xcel Energy
<b>Subject of Communication</b>		
<p><i>Checkpoint meeting with Brooke Trammell of Xcel.</i></p>		
<b>Brief Description of Communication:</b>		
<p><i>Discussed various possible options for the termination of a power purchase agreement. Also learned about Xcel's preparations for its Dist. System Planning effort.</i></p>		
I certify that the subject matter of this communication was not related to any pending adjudicatory proceeding before the Commission.		
Signature:		Date: 11/29/21

g:\ossil\forms\disclosure

*Doug Dean*

# The media as watchdogs

- Are the media friend or foe?
- The value of good media relations
- Nothing is “off the record”
- Role of the (new) media in democracy (websites, blogs, etc.)
- Media sensitivities (e.g., closed meetings)
- Are the media effective in their oversight role?
- Can the media go too far (watchdog vs. attack dog)?
- Spin: even small infraction will be reported as “violation of the ethics rules”



## MONEY & POWER

The secret origins — and public collapse — of the campaign to privatize Jacksonville's electricity and water

NATE MONROE | CHRISTOPHER HONG

DAVID BAUERLEIN | MARK WOODS

The Florida Times-Union

## Social media and emails

- Considered by many as a form of public outreach and engagement
  - ▶ Provide a record that may indicate favoritism – and grounds for appeals
  - ▶ Judicial demeanor calls for a certain lack of emotion
- Growing challenges of social media for public and private sectors

### PUC general counsel out after tweet under pseudonym



Matt Neifeld, left, and Jacy Sparkman with Robco Electric installs solar panels at a home in northwest Las Vegas on Friday March 13, 2015. (Jeff Scheid/Las Vegas Review-Journal)

By SEAN WHALEY  
LAS VEGAS REVIEW-JOURNAL

CARSON CITY — The general counsel to the Nevada Public Utilities Commission is no longer employed by the agency after it was pointed out that he had commented on the net metering policy under review on social media.

Carson City resident Fred Voltz, who comments frequently on the commission, said he linked former general counsel to a tweet with the name "DixieRaeSparx."

JURISPRUDENCE

**“Emails Are the Tools of the Devil”**



**IURC chief and Duke exec were pals, e-mails show** November 29, 2010

## Rules of conduct – the three “Cs”

- Communications
  - Need for ex parte rules
- Conflicts of interest
  - Need for disclosure and means of recusal
- Corrupting influence – subtle and explicit quid pro quo, including job prospects
  - Need for ethical codes of conduct
- “Crime” is a fourth area that goes without saying
  - Felonies, misdemeanors, and acts of obvious immorality that fall under criminal and civil law and social mores
- Violations may trigger an ethics proceeding and may result in a commissioner’s removal from office “for cause”
- When it comes to any questions about the rules, seek advice from your ethics officer

got ethics?



# Restrictions on behavior

- Constitutional, statutory, general administrative law and procedures, and commission rules; professional codes of conduct (e.g., bar association)
  - ▶ “No corporation organized or doing business in this State shall be permitted to influence elections or official duty by contributions of money or anything of value” (§ 40, Oklahoma Constitution).
- Closed meetings, other communications among commissioners
  - ▶ Openness, sunshine, FOIA, record-supported decision-making
  - ▶ Except when closed deliberations are allowed (conditional)
- Rendering decisions in instances of conflict (recusal)
- Reliance on extra-record information without proper disclosure and notice
- Leaking or telegraphing information (e.g., press or financial analysts)
- Financial interest (stock investments) in regulated companies

Watchdog: Ex-Interior admin judge violated ethics rules

The judge participated in cases involving an energy company that he or she had a financial interest in, the Office of Inspector General found.



## Restrictions on behavior (continued)

- Employment of family members
- Employment after commission – usually one-year stay-out or cooling-off period
  - ▶ To address revolving-door problem
- Accepting gifts or “emoluments” of any value (including items, meals, tickets, travel, holidays, weddings, etc.) from parties of interest
- Ex-parte communications (with parties in cases) – may vary by type of case
- Other employment or income (possible exceptions for teaching, writing royalties)
- Compliance with financial disclosure requirements (self and spouse)
  - ▶ Some argue that disclosure deters “good people” from working in government
  - ▶ Would “good people” have a problem with disclosure?
- Restrictions on partisan political activity (as restricted by the Hatch Act)

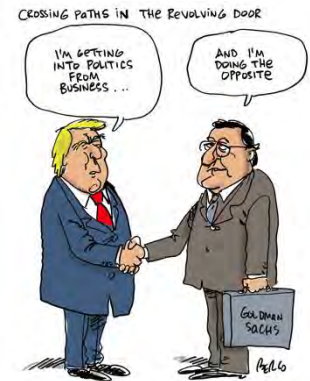
08/03 to 08/06/13	EPRI Advisory Council Meeting, Marina del Rey, California	Electric Power Research Institute (EPRI) 3420 Hillview Avenue, Palo Alto, California 94304	EPRI reimbursed \$1,393.56
09/13/13	Two (2) Tickets to Eagles vs. Chargers Football Game in Philadelphia, PA James Steffes, Sr. VP, NRG Energy	NRG Energy 211 Carnegie Center Princeton, NJ 08540-6213	Two (2) tickets @ \$105.00 each – Total - \$210.00 (no reimbursement)
09/19 to 09/20/13	Key Note Speaker Florida Natural Gas Association Summit in Orlando, FL	Fla. Natural Gas Association 215 S. Monroe St, Suite 601 Tallahassee, FL 32301	FNGA reimbursed \$837.98

## Poll E6: Revolving door

- **Should former regulators be allowed to work for utilities they used to regulate?**
  - A. Yes
  - B. No
  - C. Not sure

# The “revolving door”

- *"It is difficult to get a man to understand something, when his salary depends upon his not understanding it!" (Upton Sinclair)*
- “Revolving door” refers to regulators working for industry and vice versa
  - ▶ Infiltrator vs. tough regulator?
  - ▶ Examples from financial regulation (e.g., Goldman Sachs)
  - ▶ Many commissioners end up “in the lobby” (employment as agents)
  - ▶ Linked closely to the “capture theory” of regulation
  - ▶ Prospect of the regulator’s future employment (quid pro quo)
- Dilemmas
  - ▶ Demographic: Should all regulators be approaching retirement so this is their last job?
  - ▶ Economic: Do regulators gain valuable expertise that has limited transferability (i.e., limited employment opportunities)?
  - ▶ Freedom: Do individuals have a right to career choices, earn a living from expertise?
  - ▶ Many former commissioners and staff members move to the private sector

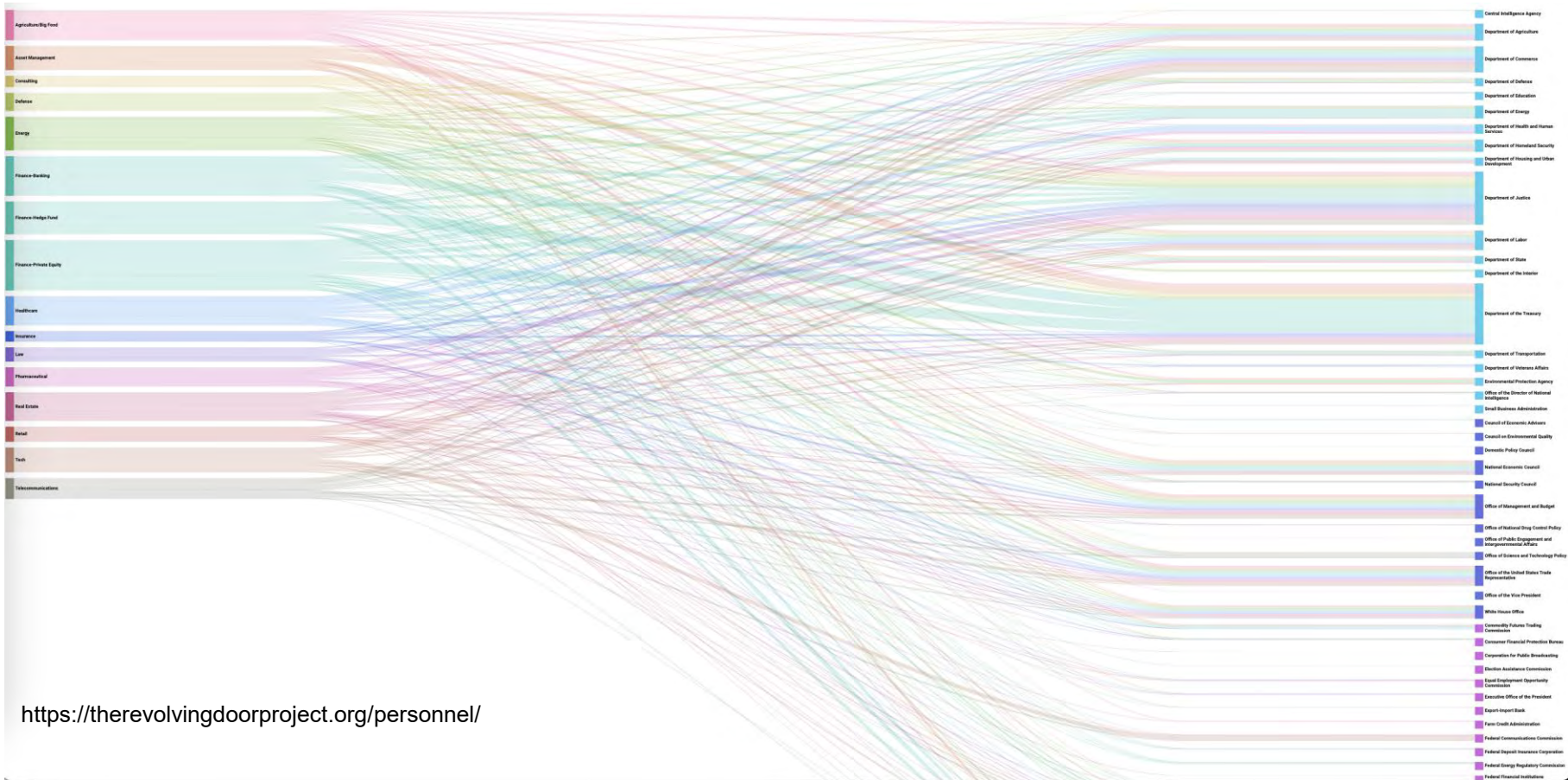


PUBLIC SERVICE COMMISSION | FORMER REGULATOR

## Former Wisconsin regulator sought job as utility CEO months after voting to approve its projects

Chris Hubbuch | Wisconsin State Journal | 17 hrs ago

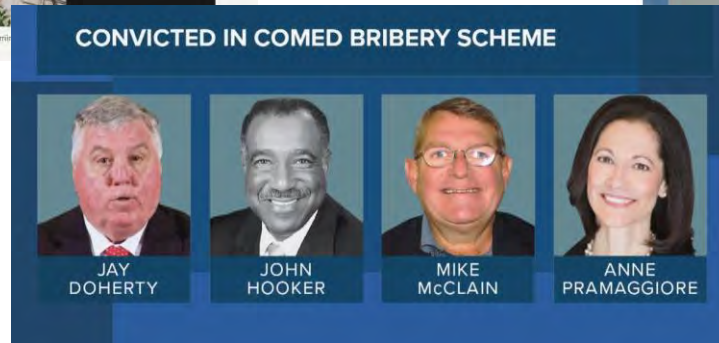
# Mapping the revolving door (CEPR - hyperlinked)



<https://therevolvingdoorproject.org/personnel/>

# Unethical behavior: individual consequences

- Loss of current employment (“for cause”) and sacrifice of political future
- Loss of personal freedom (“perp walk,” jail time, criminal record)
- Legal expenses, fines, and penalties
- Embarrassment to family, friends, and colleagues
- Loss of personal and professional reputation and credibility (toxic resume)



# Unethical behavior: organizational consequences

- Demoralization and sense of guilt and responsibility by association (see MSU)
- Disruption of processes and proceedings
- General uncertainty and instability for all constituents
- Regulatory uncertainty and related economic costs
- Focus of everyone's attention on "nonissues"
- Triggering of broad or disruptive investigations
- Loss of discretion in decision-making and use of agency resources
- Imposition of well-intended but possibly cumbersome rules
- Legal expenses, culpability, and liability (deep pockets = steep fines)
- Political consequences for political party or administration

BRIEF

**Ohio political scandal nicks AEP stock price, FirstEnergy CEO clarifies defense as shares languish**



**Legal costs top \$800K for former Wisconsin utility regulator in power line bias case**

# Unethical behavior: institutional consequences

- Ethical breaches are a form of institutional or regulatory failure
  - ▶ Contributes to poor perceptions of government and officials
  - ▶ Harmful consequence for victims and society
- Breaks the covenant of independent regulation, including the promise of justice under the social compact
  - ▶ Undermines the institutional integrity and credibility of regulation by the corruption of process, output, and outcome
  - ▶ Loss of faith and confidence by stakeholders and the public
- Implications for long-term institutional sustainability
  - ▶ The efficacy and social value of regulation eventually are weighed against the alternatives, including its potential demise as a policy instrument
  - ▶ To deregulate for reasons of perceived regulatory failure, rather than proven market success, would be manifestly imprudent

## To keep franchise, ComEd must reform, Lightfoot warns

The mayor delivers an ultimatum to the utility's CEO, but her leverage may be limited.  
By David Roeder and Fran Spielman | Jul 27, 2020, 7:05pm CDT

f t SHARE



**BRIEF**

## Ohio governor says nuclear bailout bill 'tainted' by alleged bribery, calls for repeal

### Ohio Bribery Scandal Hits Home in Md. – and Utility Customers May Be Footing the Bill

BY: JOSH KURTZ - APRIL 22, 2022 3:35 AM

# Personal responsibility for ethics

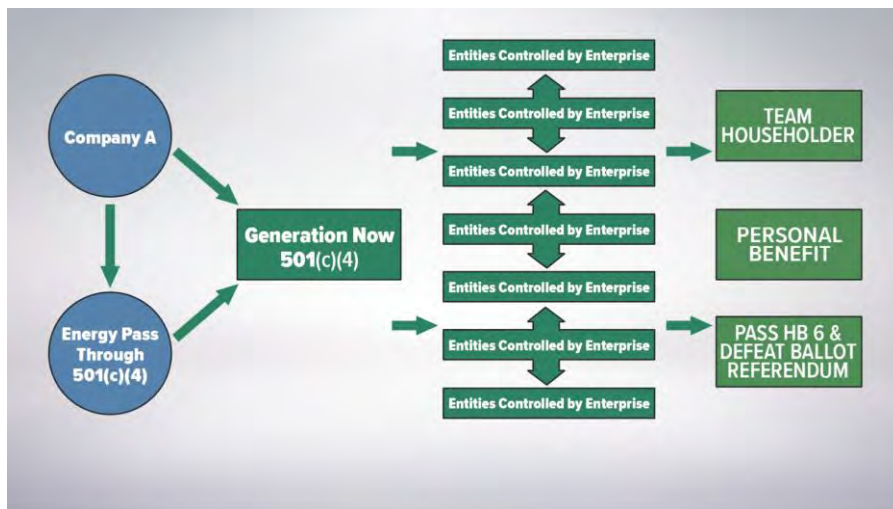
- Institutions are only as good as the people entrusted to serve them
  - ▶ Personal ethical choices matter and have consequences
  - ▶ Individuals set the policy and expectations for the office
- Ethical challenges are inherent, inevitable, unavoidable, and affect everyone in the regulatory process
  - ▶ Rules apply to and benefit all parties, stakeholders, and interests
- Codes of ethics and methods of accountability are necessary but not sufficient and they do not substitute for personal responsibility (e.g., Enron had a lengthy code of ethics highlighting “moral and honest” conduct)
  - ▶ Behavior should be governed by commitment to compliance vs. fear of noncompliance (being “scared straight”)
- Professional and personal price of scandal can be high and long lasting
- Although defining the line may be difficult, most people with a working moral compass know when it is crossed



## DOJ principles for holding individuals accountable

- To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.
- Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
- Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.
- Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.
- Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.
- Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

# Investigation and prosecution



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
v. ) No. )  
COMMONWEALTH EDISON ) Hon. )  
COMPANY )

**DEFERRED PROSECUTION AGREEMENT**

This Deferred Prosecution Agreement between the United States Attorney for the Northern District of Illinois, JOHN R. LAUSCH, JR. (the "government"), and defendant COMMONWEALTH EDISON COMPANY ("ComEd"), by its undersigned representative and attorneys, pursuant to authority granted by the Board of Directors of Exelon Corporation ("Exelon"), is made pursuant to the terms and conditions set forth below.

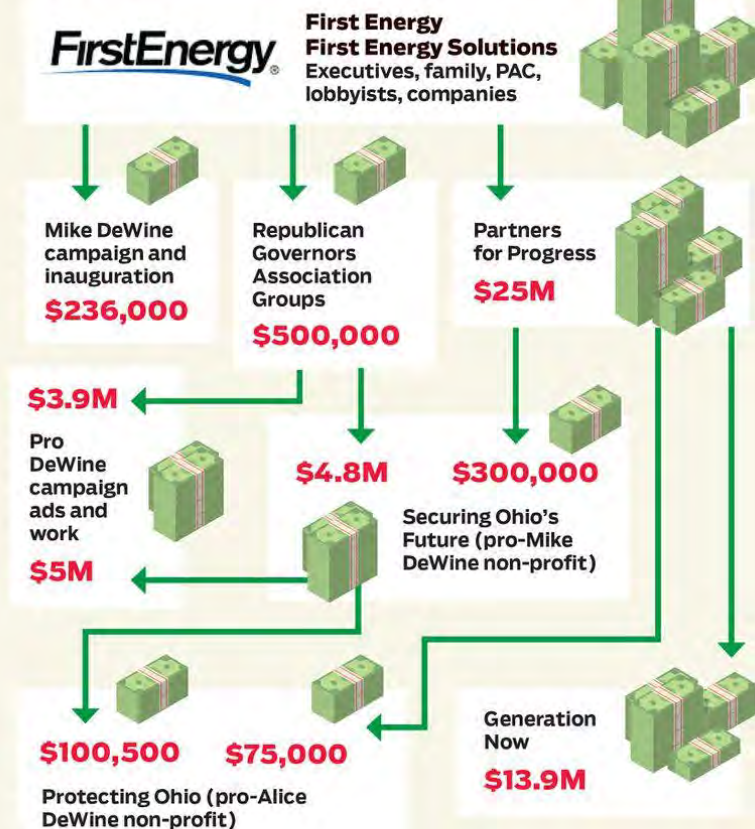
**Criminal Information and Acceptance of Responsibility**

1. ComEd acknowledges and agrees that the government will file the accompanying Information in the United States District Court for the Northern District of Illinois charging ComEd with bribery in violation of Title 18, United States Code, Section 666(a)(2). ComEd knowingly waives any right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b).

2. ComEd admits, accepts, and acknowledges that it is responsible under United States law for the acts of its current and former officers, employees, and agents

## Following the money: FirstEnergy

Akron-based FirstEnergy and FirstEnergy Solutions gave more than \$1 million to the Republican Governors Association, Securing Ohio's Future, Protecting Ohio and Mike DeWine's gubernatorial campaign, according to campaign finance and IRS records analyzed by the Dayton Daily News.



Source: U.S. Department of Justice, Dayton Daily News reporting

ALEXIS LARSEN / CONTRIBUTING ARTIST

# Fines and penalties

## Judge: California utility held improper nuclear plant talks

Associated Press | Aug 06, 2015

Share / Save 



LOS ANGELES - A judge has ruled that Southern California Edison executives engaged in improper private talks with California utility regulators related to the now-closed San Onofre nuclear power plant and could face millions of dollars in potential penalties.

The findings by California Public Utilities Commission Administrative Law Judge Melanie Darling comes as the latest development tied to a long-running dispute over a nearly \$5 billion settlement that divided costs from the defunct nuclear plant.

The judge on Wednesday concluded that Edison executives or attorneys engaged in 10 unreported, improper communications with one or more agency commissioners or their advisers between March 26, 2013, and June 17, 2014.

A commission statement said the company could face fines of up to \$50,000 a day for each offense. Under an estimate from one party in the case, the total penalties could be in excess of \$34 million, the statement said.

## Arizona Solar-Power Fraud Leads to \$3-Million Award in Federal Lawsuit

Mar 15 - Phoenix New Times (AR)

Share / Save   

Mar 15 - Phoenix New Times (AR)

The scamsters behind a sophisticated solar-power fraud scheme exposed by Phoenix New Times finally have been held accountable in a U.S. court.

Last month, Arizona U.S. District Judge David Bury handed down a \$3.1 million judgment against the men behind Matinee Energy - a group of swindlers who include a former Clinton administration official.

## PG&E to Pay \$86.5 Million for Backdoor Lobbying of Regulators

The settlement – which has to be approved by the commission – is the final chapter in the email scandal that broke back in 2014.

By Jaxon Van Derbeken

Published at 5:35 PM PDT on Mar 28, 2017 | Updated at 6:39 PM PDT on Mar 28, 2017

## Poll E7: Penalties for violations

- **Are steeper penalties needed to enforce codes of conduct?**
  - A. Yes
  - B. No
  - c. Not sure

# Ongoing ethical considerations

- Political charged regulatory environment and intensified external scrutiny
- External ratings of “regulatory climate” (e.g., S&P)
- Commissioner removal for unpopular decisions by political means vs. “for cause”
- Politically motivated agency restructuring and appointment to “serve at the pleasure”
- Social media – blogging, Facebook, email, texts, etc. (ex parte, bias)
- Ease of discovery and limits to attorney-client privilege (e.g., email vs. verbal com.)
- Short tenure of commissioners and post-service employment
- Demanding role of executives as ethics officers and agency “conscience”
- Need for refinement of rules for different types of deliberations (e.g., policymaking)
- Interaction of various stakeholders and parties at various forums and electronically
- Participation of regulators on special-interest advisory boards
- State travel restrictions & unintended consequences (e.g., seeking external funds)
- Application of rules of conduct to “nonparticipant” special interests (e.g., vendors)
- Heightened auditor awareness and concerns about fraud (Sarbanes Oxley)
- Ensuring and enforcing both governmental and corporate accountability

# Does regulation fail or do we fail regulation? (Beecher, 2019)

**Table 1.** How regulation is failed.

---

Failures of culture	1. Regulators may underappreciate the public interest, the social compact, or their institutional obligation.
	2. Regulation can be uninformed, uncritical, or unintelligent in approach or method.
	3. Regulators may be unable or unwilling to make difficult or unpopular decisions.
Failures of capacity	4. Regulatory agencies may have inadequate jurisdiction, authority, or discretion.
	5. Regulatory agencies may have insufficient resources, technical capacities, and academic insight.
	6. Regulators may not deploy their authorities, resources, and capacities effectively.
Failures of climate	7. Regulation can incur procedural and decision-making inefficiencies.
	8. Regulation may be uncoordinated, resulting in inconsistent performance incentives.
	9. Regulatory climates may be perceived as overly uncertain and risky.
Failures of coercion	10. Regulation can become prone to ideology, partisanship, and power politics.
	11. Regulation can be susceptible to influence, bias, and capture by affected interests.
	12. Regulators may encounter waning political support or succumb to interference and lose their independence.

---

# Ethics reforms: is more attention needed?



**GOVERNING**  
THE STATES AND LOCALITIES  
FINANCE | HEALTH | INFRASTRUCTURE | MANAGEMENT | ELECTIONS | POLITICS | PUBLIC SAFETY | URBAN | EDUCATION

**POLITICS**

**Ohio's New Ethics Strategy: Public Shaming Politicians**

To deter questionable (but not necessarily illegal) conduct, the state plans to publicize when officials abuse their power.

BY MIKE MACIAG | SEPTEMBER 2015

Ohio State Auditor Dave Yost (The Columbus Dispatch)

**NEWS**

## Reforms Advance for California Public Utilities Commission

BY TRIBUNE NEWS SERVICE | JUNE 28, 2016



The California Public Utilities Commission in San Francisco / Flickr/CC - Sharon Hahn Darlin

By Jeff McDonald, The San Diego Union-Tribune

Gov. Jerry Brown has agreed to significant reforms at the California Public Utilities Commission, which has been under criminal investigation over the shuttered San Onofre nuclear power plant and finds itself in the middle of several other controversies.

The deal was announced Monday by Brown and lawmakers after a series of utility failures resulted in an explosion that killed eight people in the Bay Area, a massive gas leak in Los Angeles and the premature shutdown of the nuclear power plant in San Diego.

The move also comes after the Assembly overwhelmingly passed

legislation to take away virtually all of the commission's authority and split up its duties among other state agencies.

## Independent View: Ethics law will restore trust in government

Story Comments

Print Font Size

Recommend Tweet G+ U Share

Posted: Thursday, June 23, 2016 10:00 am

By Sen. James Sheehan | 0 comments

Last week the General Assembly finally passed legislation to give the state Ethics Commission jurisdiction over the General Assembly.

That means, come Nov. 8, when you go to vote, there will be a question on your ballot asking you if you want to amend the state constitution to hold your legislators fully accountable to the state code of ethics.

Ethics reform was not just a bill, but a journey. While it has taken us six long and arduous years to get ethics reform written into law, I am very pleased that the day has finally arrived.

In a 2009 Supreme Court decision, members of the General Assembly were effectively rendered immune to Ethics Commission jurisdiction and the state code of ethics for conduct within their core legislative duties. At that time, the court decided that the Ethics Commission passage was in contradiction to a clause in the constitution guaranteeing legislators free "speech in debate."

So, the constitution had to be changed.

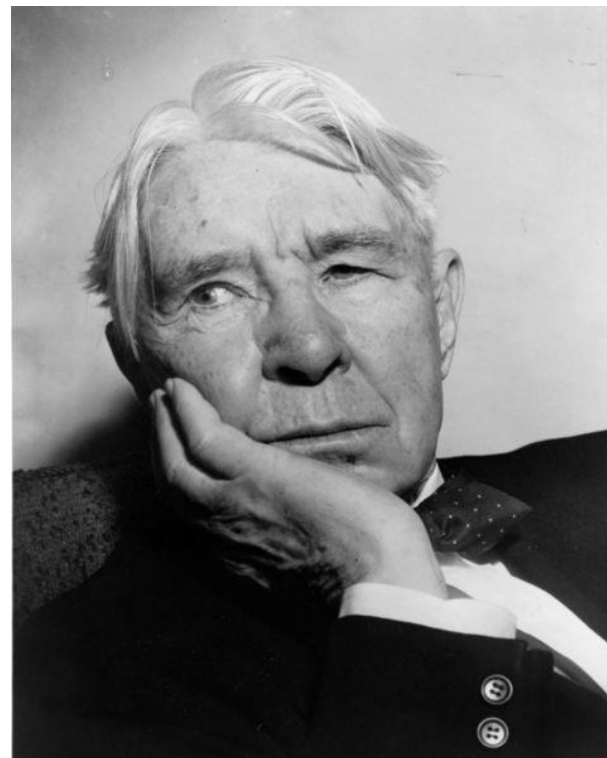
# Conclusion

- *“I had taken a course in Ethics. I read a thick textbook, heard the class discussion and came out of it saying I hadn't learned a thing I didn't know before about morals and what is right or wrong in human conduct” (Carl Sandburg)*



Name:

Date:





# Ethics resources

- Office of Government Ethics Web Site
  - ▶ This web site will help you understand the executive branch ethics program and contains ethics information of interest to both Government employees and the general public. [\[link\]](#)
- Standards of Ethical Conduct for Employees of the Executive Branch:
  - ▶ This covers the standards of ethical conduct for Government employees (which cover, with exceptions, SGEs. [\[link\]](#)
- To Serve with Honor
  - ▶ A guide on the ethics rules that apply to advisory committee members serving as Special Government Employees. [\[link\]](#)

# Appendix: The Prudent Regulator (Energy Law Journal, 2008)

## I. The Good Regulator

## II. Regulatory Politics

- A. Politics of Partisanship
- B. Contemporary Regulatory Politics

## III. Regulatory Independence

- A. Bounded Independence
- B. Interests and Influence
- C. The Independent Commission
- D. The Judicial Form
- E. Role Models for Regulators
- F. The Independent Staff
- G. Independence vs. Indifference
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## IV. Regulatory Ethics

- A. Imbuing Ethical Behavior
- B. The Open Process
- C. Codes of Conduct
- D. Personal Responsibility
- E. Consequences of Unethical Behavior

## V. Epilogue: Practical Ethics for the Prudent Regulator

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**THE PRUDENT REGULATOR:  
POLITICS, INDEPENDENCE, ETHICS, AND THE  
PUBLIC INTEREST**

*Janice A. Beecher\**

**Synopsis:** *Prudence* is a principle central to the theory and practice of public utility regulation, a hallowed standard of review by which utility behaviors and decisions are judged. The concept of prudence might well be applied to the institution of regulation itself and those responsible for its endurance. By nature and necessity, regulation is a political process, but by design it works best with a substantial degree of independence and when regulators are deeply committed to the ethical performance of their charge. The prudent regulator considers their own behavior not in narrow terms of technical compliance with codes of conduct, but in broader terms of institutional sustainability. The price of imprudence is paid not only by those whose inpropriety betrays the public's trust, but by the very institutions they are entrusted to serve. Adopting an institutional perspective, this review idealizes the prudent regulator by examining the intricately related and largely inseparable constructs of politics, independence, and ethics, and the transcendent imperative of regulation in the public interest.

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# Practical ethics for the prudent regulator

- Think and talk about ethics, particularly before problems arise.
- Create and maintain an ethical environment; lead by example and command respect by maintaining boundaries, integrity, and demeanor.
- Attend ethics training and discussion forums.
- Complete the ethics and accountability statements and practice full disclosure (financial, information issues, gifts, etc.).
- Avoid conflicts of interest by limiting extra-commission activities and manage conflicts appropriately (disclosure, etc.).
- Adhere to campaign finance rules (elected commissioners).
- Know that responsibility for knowledge and compliance is yours alone and never rely on special interests to protect your interest.
- Do not compromise personal ethical values or become complacent.
- Respect the ethical choices of your colleagues and staff.
- Respect and follow the rules and procedures of your jurisdiction.
- Know your professional standards, applicable canons (e.g., bar, NARUC).
- Know how rules vary for different roles, venues, and events.
- Regard the written rules as minimal requirements and always errs on the cautious side.
- Sharpen and truss instincts about conflicts of interest, situations requiring judgment.
- Recognize the biases and interests of themselves and others.
- Do not prejudge issues, or make prejudicial statements or endorsements.

# Practical ethics for prudent regulators

- Do not act in an advisory capacity to regulated interests or other stakeholders.
- Be cautious about telegraphing policy preferences or decision intentions.
- Participate in open, inclusive, and balanced professional and educational forums.
- Be discerning about information, and its origins and intentions, and gives notice of pertinent extra-record information.
- Recognize when they are being lobbied, pressured, flattered, or bamboozled.
- Be cognizant of the interests of third parties and agents (attorneys, analysts, consultants).
- Keep in mind that the quid pro quo may not be entirely obvious.
- Learns when and how to say “no” to inappropriate overtures.
- Is accessible to all constituencies in accordance with applicable rules.
- Travel judiciously and responsibly, and complies with travel policies.
- Be knowledgeable about rules related to conference and event sponsorship. participation.
- Know who is picking up the tab and pays their own way whenever necessary.
- Reject and return gifts and gratuities and keeps records of doing so.
- Establish trust with oversight bodies (e.g., legislative committees).
- Plan and prepare for a career path that minimizes conflict.
- Be cautious, but open and responsive when interacting with the media, and consult with agency media experts.
- Be fair and open-minded, and welcomes diverse perspectives.
- Write emails as if they are public, publishable, discoverable, unprotected by a-c privilege.

# Practical ethics for prudent regulators

- Be aware of appointment and phone records of all types.
- Invite a witness to be present at meetings and keeps copious notes.
- Be cautious about industry friendships and favors.
- Remember the little stuff, but also complies with the “big stuff” (e.g., pays taxes, drives sober, does not harass, etc., etc., etc.).
- Do not rationalize borderline behaviors, even if occasional or seemingly minor.
- Do not practice denial, defensiveness, or indignation.
- Seek advice from the ethics officer; does not self-advise, interpret, or guess about rules.
- Come clean quickly, completely about accidental breaches; does not obfuscate or spin.
- Learn from their mistakes and those of others.
- Be aware that in public life perceptions and appearances matter
- Know that news, gossip, and innuendos tend to spread quickly in the relatively confined regulatory subculture of regulation, and are not confined to it.
- Consider the prospect of a sensational newspaper headline; can you live with it?
- Look in the mirror and strives to make their [parents, spouse, and/or children] proud.
- Take a long-term view – memories of scandal are long and stakes are high.
- Appreciate how ethics relate to institutional integrity and sustainability.
- Keep sight of their obligations to the public and the public interest at all times.