

PROCEEDINGS OF THE SECOND NARUC/NRRI COMMISSIONERS SUMMIT

Entitled

***“ENSURING THE RELEVANCE OF COMMISSIONS AT 2003:
A SUMMIT MEETING OF STATE PUBLIC UTILITY COMMISSIONERS”***

Denver, Colorado
April 20-21, 1998

Assembled by

The Staff of the National Regulatory Research Institute

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This project was designed and conducted the National Regulatory Research Institute (NRRI) with funding provided by participating member commissions of the National Association of Regulatory Utility Commissioners (NARUC).

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PREFACE

These proceedings reflect the results of what came from a two-day, highly productive, meeting of public utility commissioners from 28 states held April 20-21, 1998 in Denver, Colorado. With NRRRI facilitating, only commissioners were present. The subject was ensuring the relevance of public utility commissions looking out five years. Candor was the rule, and commissioners participated insightfully and with considerable imagination. I commend the results of those discussions to your attention.

Douglas N. Jones
Director
May 1998

INTRODUCTION

On April 20 and 21, 1998, the National Regulatory Research Institute (NRRI) and the National Association of Regulatory Utility Commissioners (NARUC) assembled 41 U.S. state public utility commissioners representing 28 states and one Canadian provincial regulator in Denver, Colorado, for a commissioners-only summit titled *Ensuring the Relevance of Commissions at 2003: A Summit Meeting of State Public Utility Commissioners* (hereafter referred to as the Summit). This Summit followed and built on a similar, highly-regarded event held three years ago, and like the first Summit, this one allowed commissioners the opportunity to engage in a dialogue about necessary changes in commission regulation and provided a framework for the crystallization of their thinking. Appendix 1 lists participating commissioners.

The Summit was divided into three sessions--the first to identify the likely missions and roles of state commissions at 2003, the second to identify what needs to change in order for commissions to remain relevant in the new environment, and the third to develop strategies and implementation steps for making the necessary changes. For small group sessions, commissioners were divided into four groups of ten or eleven persons each; these groups were kept intact for all three Summit sessions. Pairs of co-facilitators were assigned to each group, and they, too, remained with the same small group throughout to enhance continuity and build on the social dynamics that developed within the groups. Groups were designated by color--blue, red, green, and yellow.

In the course of group discussions in each session, attempts were made to reach some degree of consensus. Each small group did, in fact, report back to the plenary sessions with a consensus positions for each session. The lead facilitator also attempted to reach consensus following Session 1 at the plenary session and on the most important issues to be addressed at the close of the second session. The small group consensus positions for Sessions 1 and 2 are recorded in Appendices 2 and 3 of

this report. The small group results for Session 3 are printed in the text.¹ The plenary group consensus position for Session 1 are also reported in full in the text.

¹ For the sake of readability, some minor changes were made in the small group reports included herein.

SESSION 1: IDENTIFICATION OF LIKELY COMMISSION MISSIONS AND ROLES AT 2003

In Session 1, participants were asked to identify the likely missions and roles for commissions at 2003. For the sake of discussion, some of the facilitators asked participants to identify roles with regard to core customers, competitive services, utility managers and shareholders, social goals, and entirely new requirements. As a result, some groups framed their responses around these issues.

Eventually, all participants reached consensus on a synthesized statement of missions and roles.² That statement was:

Missions/Roles for State Public Utility Commissions (PUCs) in 2003:

PUCs should:

- 1. Provide leadership, expertise, and guidance to the state for managing the introduction and spread of competitive market forces, where appropriate, into the monopoly utility settings.*
- 2. Strive for low-cost, high-quality, universally-available, non-discriminatory utility service.*
- 3. Ensure the safety, reliability, and integrity of the network.*
- 4. Continue to protect customers without choice and ensure fair delivery of monopoly services.*

² For consensus to be reached, all participants (1) responded with an “unqualified yes,” (2) found the decision “perfectly acceptable,” (3) determined that they could “live with the decision,” or (4) choose not to block the decision and stood aside.

5. *Continue to implement designated social goals by working with policy makers to identify ends, means, implementation, and funding mechanisms. Social goals should be implemented to the extent possible in a competitively neutral manner.*
6. *Adopt roles that include:*
 - Monitoring/oversight of markets ensuring that competitive markets continue to be workable;*
 - Creating a level playing field for market participants;*
 - Educating and informing the public and other entities;*
 - Collaborating with other agencies and organizations;*
 - Resolving disputes;*
 - Evaluating alternative regulation that has been put in place;*
 - Measuring and reporting quality-of-service.*
7. *Recognize areas where regulation can be phased out and have an “exit plan.”*

**SESSION 2: IDENTIFICATION OF WHAT NEEDS TO CHANGE
IN ORDER FOR COMMISSIONS TO REMAIN RELEVANT
IN THE NEW ENVIRONMENT**

In Session 2, participants were asked to identify what needs to change in order for commissions to remain relevant in the new environment. Put another way, commissioners were asked what needs to be changed in order for commissions to effectively assume the new missions and roles identified in Session 1. At the close of the Session, there was agreement that the identified areas for change could be broken into four principal categories that represent the most important areas for change. Those four categories of necessary change are listed below with some of the more specific areas for change within those categories that were identified by participants. The full reports of each of the small groups are detailed in Appendix 3.

A. Commission Organization and Structure:

- Redefine the role of the staff
- Upgrade technology
- Ensure reliable funding
- Create the right structure to match the decision-making process
- Reexamine structure for appropriate flexibility on staff participation

B. Commission Process--Including Gathering and Using Information and Making Policy

- Provide more decision support for commissioners
- Reconsider sunshine laws and *ex parte* processes
- Develop a new balance between policy making and implementation
- Develop alternatives to litigation
- Coordinate better with other agencies
- Develop a research orientation among commissioners
- Develop quality-of-service standards with possible liability exposure for utilities
- Develop a more thorough understanding of consumers
- Consider the costs versus the benefits of information
- Improve efficiency and speed
- Become more forward-looking

- Make collaboration an effective part of the regulatory process
- Engage in more dialogue with key stakeholders
- Assume a stronger state role in federal legislation and policy making
- Define the public's access to regulatory information

C. External Relations--Including Interactions with Consumers

- Redefine the public interest
- Develop a better ability to handle consumer complaints
- Improve the commission image
- Cooperate/collaborate with federal and state agencies
- Shift more resources toward interaction with legislatures
- Provide more education and information, including speakers' bureaus, media outreach, electronic communications, brochures, billing inserts, public service announcements, surveys and focus groups

D. Development of Commissioners' and Staff Skills

- Do a better job of attracting, retaining, and maintaining staff
- Change staff and commissioner skill sets
- Change staff culture
- Improve skills in economics, antitrust, dispute resolution, consumer education, geographic information systems, market monitoring, public information
- Consider outsourcing and retraining staff

In addition, a number of suggestions were made about how to change the role of commissions as discussed in Session 1. Some of those specific suggestions for change in commission roles put forward in Session 2 included:

- Be an agent of balance between competition and social goals
- Reduce barriers to entry
- Measure market power
- Develop and enforce codes of conduct
- Find the balance between competition and universal service and between competition and regulation

SESSION 3: DEVELOPMENT OF STRATEGIES AND IMPLEMENTATION STEPS

In Session 3, each small group was given one of the areas identified in Session 2 as being in need of change and was tasked to develop strategies or implementation steps to create that change. At the close of the Session, each group presented its strategies with no attempt to reach plenary consensus. The identified problem areas and the strategies identified for impacting them are listed below:

A. Commission Organization and Structure

Statement of the problem: Existing commission structure should evolve to fit the emerging regulatory paradigm. That evolving paradigm includes developing markets and traditional regulatory approaches for regulated markets.

Strategies

Involve staff in defining goals and involve them in collaborative process for determining structure.

Analyze what's wrong and right with structure. Set priorities.

Educate staff as to need for changing structure.

Task staff to provide commissioners with information and analytic support necessary to make policy decisions.

Acknowledge that reasons for separation being reduced include:

- A focus on filling out record

- Reduced staff advocacy role

- The need to give commissioners strong advisory support

Provide more opportunity for commissioners and staff to discuss policy issues outside specific cases

Change staff mindset

Accept change/innovation

Consider more dispute resolution

Encourage open-mindedness

Provide opportunities for more innovative staff to contribute

Elevate consumer services to a higher level.

Evaluate cost-effectiveness of marketing programs.

Make sure staff understand the need to work with other agencies

Restructure staff to strengthen support for new roles of commissions such as consumer protection and maintaining of competitive markets

Make sure rule-makings address consumer concerns.

Ensure that commission structure is not a barrier to competition
Ensure that ease of entry is not unduly restricted by commission
Allow appropriate enforcement
Make timely decisions/use uniform criteria
Continue to monitor competitive markets, rates, reliability, and availability
Identify new measures of commission performance and accountability
Create commission structures that allow pursuit of alternative ways of settling disputes
Recognize that sunshine/*ex parte* regulation and commission rules have potential to interfere
Include other stakeholders (including industry) in consideration of changes in structure.

B. Commission Process--Including Gathering and Using Information and Making Policy

Changes within the utility industries are influencing commission processes by:
dramatically changing the roles of commissions, commissioners, staff and stakeholders;
changing the nature of commission decision making;
necessitating different types of and better information gathering and synthesis;
impacting the speed of handling matters; and
stretching commission resources.

C. External Relations--Including Interactions with Consumers

1. Targets:

Residential customers: urban, suburban, rural
Business customers: small business, large business
Government: state legislature, federal agencies, Congress, local
Industrials
Utilities
Associations: consumer groups, AARP, neighborhood associations
Labor
Other PUCs, NARUC
Regional structures

2. Methods:

Conduct internal agency workshop on external relations, including consumer relations

- Conduct public hearings to receive public input: target especially for residential customers
- Conduct roundtables with stakeholders
- Hold routine meetings with editorial boards
- Develop proactive role in providing information about the changes
- Use of sophisticated public opinion tools (e.g. consumer preference polling, surveys, focus groups, deliberative polling)
- Communicate definition of universal service and other key concepts
- Promote user-friendly policies regarding competitive choices
- Define which services receive subsidies and how to pay for them
- Develop collaborative approaches with legislative community
- Hold individual meetings with utilities, without discussing cases
- Develop criteria for electric supply information disclosure, probably on a regional basis
- Provide public with basic information about the PUC and the states' utilities
- Expand staff expertise
- Improve commission web sites
- Supply customers with information about the registered providers, but the extent of the information developed needs to be carefully considered
- Conduct commissioner training sessions on how best to work with state legislators (NARUC and NCSL)
- Communicate closer with, and increase relations with local, state, and federal government officials

D. Development of Commissioners' and Staff Skills

- Establish a program to attract and retain competent and diverse staff without creating staleness
- On-going training should support expertise while providing flexibility
- Training in communications, customer relations skills is necessary
- Commissioners should set policy with input from staff trained to provide policy guidance, including use of strategic planning
- Mediation/ADR skills are increasingly important — will require specialized training
- Commissioners need continuing education and training focused on commissioners' new needs
- Commissioners need to acquire skills and resources to address expeditiously, special needs on one-time and continuing basis — consider employee exchange between PUCs

CONCLUSIONS

Though it is risky to try to paraphrase the efforts of 42 persons arrayed across two days of thoughtful dialogue, several conclusions can be fairly drawn. First, those commissioners who participated in the Summit are committed to extensive change in the way commissions perform their missions. Second, commissioners are strongly committed to ensuring that the public is protected and striving for low-cost, high quality, universally-available, non-discriminatory utility service. Third, commissioners are committed to removing barriers to competition. Fourth, commissioners believe that changes need to be made in commission processes to allow less formal methods of decision making. And lastly, commissioners envision a more proactive role, which includes more interaction with legislatures, other state agencies, federal policy-makers, and outreach to consumers and the public at large.

APPENDIX 1

COMMISSIONERS SUMMIT PARTICIPANTS

Brent Alderfer	Colorado Public Utilities Commission
Bob Anthony	Oklahoma Corporation Commission
Ed Apple	Oklahoma Corporation Commission
Dave Baker	Georgia Public Service Commission
Robert Bloom	Pennsylvania Public Utility Commission
Sam Bratton, Jr.	Arkansas Public Service Commission
Jim Burg	South Dakota Public Utilities Commission
Jolynn Butler	Ohio Public Utilities Commission
Susan Clark	Florida Public Service Commission
Cynthia Claus	Kansas Corporation Commission
David Coen	Vermont Public Service Board
J. Richard Conder	North Carolina Utilities Commission
Sam Cotten	Alaska Public Utilities Commission
J. Terry Deason	Florida Public Service Commission
Paula Dierenfeld	Iowa Utilities Board
Bruce Ellsworth	New Hampshire Public Utilities Commission
Gerry Forrest	Manitoba Public Utilities Board
Steve Furtney	Wyoming Public Service Commission
Edward Garvey	Minnesota Public Utilities Commission
Gary Gillis	Kentucky Public Service Commission
Bruce Hagen	North Dakota Public Service Commission
B.J. Helton	Kentucky Public Service Commission
Richard Hemstad	Washington Utilities & Transportation Commission
Robert Hix	Colorado Public Utilities Commission
Ed Holmes	Kentucky Public Service Commission
James Irvin	Arizona Corporation Commission
Judy Jones	Ohio Public Utilities Commission
LeRoy Koppendrayner	Minnesota Public Utilities Commission
Charlotte Lane	West Virginia Public Service Commission
James Malachowski	Rhode Island Public Utilities Commission
William McCarty	Indiana Utility Regulatory Commission
Irma Muse-Dixon	Louisiana Public Service Commission
Pam Nelson	South Dakota Public Utilities Commission
Robert Owens	North Carolina Utilities Commission
Bob Rowe	Montana Public Service Commission
Robert Schwartz	New Mexico Public Utility Commission
Susan Seltsam	Kansas Corporation Commission

Lavenski Smith
Jim Sullivan
Gerald Thorpe
Susan Wefald
John Wine

Arkansas Public Service Commission
Alabama Public Service Commission
Maryland Public Service Commission
North Dakota Public Service Commission
Kansas Corporation Commission

APPENDIX 2

SMALL GROUP CONSENSUS POSITIONS FROM SESSION 1

Blue Group:

Goal of Session I: The goal of a state PUC/PSC in 2003 should be to strive for low-cost, high quality, universally-available, non-discriminatory utility service by:

- evaluating alternative regulation that has been put in place
- balancing popular politics and application
- overseeing intrastate USF — fair disb. (telecom, elec)
- educating consumer, legislatures, governors, et. al, incl about role of commissions
- stronger enforcement role re: bad actors; business trans (mergers, acq., divest)
- consumer protection
- protecting ratepayers from mgmt imprudence (e.g. foreign investments)
- taking a more active role in policing competitive service (becoming CSPs instead of PSCs) -- making sure competition works
- assuring equity for customers and companies
- ensuring service quality
- considering special programs (e.g., high cost funds, libraries, hosp, schools) to correct new reg structure
- communicating with other players in reg matters (legis, gov) – educate legislature – reverse trad role – educate court system
- regulating non-competitive markets / mix of mkts
- prosecuting rule violators (? will this remain a role) (may differ by state)
- undertaking long-term policy and planning (e.g. econ dev)
- identifying and reacting to anti-competitive behavior
- measuring and reporting quality-of-service
- continuing (where and when appropriate) to promote/enhance comp
- performing education, research, identification of regional nuances
- remaining cognizant of change -- self education
- rebalancing rates
- assuming a more proactive role
- doing more regional regulation
- ensuring safety

The big issues effecting commissions include:

- Universal service vs. competition
- Ex parte* constraints/process/forum

Relationships with other governmental agencies
Benefits of competition vs. costs
Commission flexibility/fit between new role and staff role/skills/attitude
Definition of competition
Definition of public interest
Determination of workable competition coping with oligopolistic markets
Transition phase
Regional vs. state regulation

Red Group

PUCs should provide leadership, expertise and guidance to the state for managing the introduction of competitive market forces into the monopoly utility settings.

Continue to protect core customers without choice. (Ensure fair delivery of monopoly services).

Continue to implement designated social goals compatible with competition.

New roles include:

- Monitoring/oversight of markets;
- Creation of a level playing field;
- Resolution of disputes.

Recognize when regulation can be phased out and have an exit plan.

Green Group

Commitment to safety, reliability, and integrity 9 votes

Provide access to all types of utility service 9 votes

Oversee the formation and development of markets, refereeing disputes among market participants, market power monitoring and mitigation, consumer protection 6 votes

Educate the public 6 votes

Maintain and adapt the enforcement of existing rules, including sanctions in the area of consumer protection and quality of service 3 votes

Monitor regional organizations

Yellow Group

1. Core customers/services
 - A. Education and information
 - B. Quality of service/ reliability/safety
 - C. Fair rates for regulated services
 - D. Take action against unfairness, including addressing consumer complaints for competitive services – fraud
 - E. Disclosure to consumers (e.g., labeling of electric service)

Competitive services

Ensure services are truly competitive
Ensure fairness to all competitors — entry barriers are not comp. problem
Address cost/risk shifting between competition and monopoly services should be willing to trust competition and know when to let go
Determine whether competition is appropriate for essential services
Encourage innovation
Network access assurances

Utility managers and shareholders

Less PUC responsibility for utilities' financial health-monitoring role may be questionable
Give greater flexibility in competitive services
Fair clear rules with rapid decision making
Arbitration mediation role

Social goals

Work with legislature to identify ends, means and implementation
Identify provider of last resort — but educate customers to reduce need

New requirements

Education role of PUC
Antitrust function with interagency and regional coordination
Policy development and analysis
Media and stakeholder outreach to leverage expertise
Technology development
Community development /economic development

APPENDIX 3
SMALL GROUP CONSENSUS FOR SESSION 2

Blue Group

1. Staff/Structure: Existing commission structure and statutory language should evolve to fit the emerging regulatory paradigm.

- Statutory changes
- Redefine role of staff
- Upgrade technology
- Need staff culture change
- Commissioners need more decision support
- Reliable funding with growth potential
- Develop means for regional regulation (caution)
- Create right structure for decision-making process

2. Process: The regulatory process should be efficient and promote flexibility.

- Reconsider ex parte process
- Reconsider sunshine laws
- Develop new balance between policy making and implementation
- Need alternatives to litigation
 - arbitration/mediation
- Need to develop flexibility to change
 - internal attitudes
 - external – need more latitude
- Commissioners need to be more proactive
- Better coordination with other agencies
- Develop means for regional regulation (caution)

3. Information: Enhanced information gathering, processing, and dissemination is critical to commission success.

- Upgrade technology
- Develop new forums for gathering information
- Commissioners need to be more research oriented
- Quality-of-service standards for comp. markets company to company stds
- No thorough understanding of customers (comm., and cos.)

More information
including international
Need different information
consider cost benefit of information

4. Consumer orientation: Commissions need better methods of communication with, knowledge of, and responsiveness to consumers.

New definition of public interest
Find balance between competition and universal service
Continue to strive to find appropriate balance between competition
and regulation
Need mechanisms to reach customers
Upgrade technology
No thorough understanding of customers (comm., and cos.)
Better ability to handle consumer complaints

Red Group

What needs to change?

Statutory changes:

Regulatory authority to de-regulate, re-regulate
Regulatory process (ex-parte, rules, etc.)

External relations:

Improving/creating image, communicating role of PUC
Cooperation/collaboration with federal agencies
Cooperation and less turf battles with other state agencies

PUC internal process:

Improve efficiency and speed
Forward-looking, just-in-time policy to meet needs of market

Staff and Commissioners:

Training and skill-mix
Culture and outlook
Reexamine structure for appropriate flexibility on staff participation

Green Group

1. Define and measure competition.
2. Collaboration needs to become an increasing part of the regulatory process.
3. More dialogue is needed with key stakeholders (Legislators, consumers, utility managers).
4. Cost recovery should not be guaranteed.
5. Resolve tension between Commissioners' public policy role and their reg. responsibilities.
6. Determine how to fund social goals in the infrastructure.
7. Stronger state roles are needed in federal legislative and policy-making.
8. Commissions should be change agents.
9. Define the public's access to regulatory information.
10. Do a better job of attracting, retaining, and maintaining staff.
11. Retain core customer protection rules.
12. Be an agent of balance between competition and social goals.
13. Shift more resources to interaction with legislature.
14. Share information across state boundaries about bad actors.
15. Be more creative.
16. Ensure that Commissions are competition-friendly.
17. Further development, enforcement of codes of conduct.
18. Impact on shareholder values.
19. Categorize investment in terms of recovery.
20. Redefine basic service.
21. Act more like the Federal Trade Commission in refereeing competitive market place.
22. Make decisions in a timely manner as they apply to both regulated and unreg. companies.
23. Need for comparable staffs.
24. Change Staff and Commissioners skill sets.

Yellow Group

Education and information:

- Create speakers' bureaus
- Media outreach
- Commissioner meetings
- Electronic communications – web pages
- Brochures/written material
- Serious marketing!!
- Billing inserts
- Public service announcements

Spend time with legislature – briefings, responsiveness
State c-span
Town hall information meetings
NARUC, regional, and federal interaction
Surveys and focus group
Community by-in
Utility responsibility to inform is truthful
Truth in information role
Coordination with other organizations as appropriate

Quality of service:

Performance standards with possible liability exposure for utilities
Developed by NARUC and/or regional organization
Licensing/certificate as means to enforce – but no barrier to entry
Use market incentives to support quality of service

Fair rates/prices:

Distinguish between monopoly (regulated) and competitive (market) services
In regulated services, may be deviations from cost of service regulation

Support for fair competition:

Reduce barriers to entry
“Carrots and sticks” (like 271)
Prevention of fraud
Remedial options – continuum codes of conduct ->affiliate-> structural (divestiture)
Measure of market power should be considered
Need to define/consider PUC role vis a vis other agencies with antitrust role
Assess need for confidentiality of competitive information

New skills needed by commissions:

“Spin doctors”
Education
Econ-antitrust expertise
Geographic information systems (gis)
Market monitoring-future
Political skills
Public info. Officers
Dispute resolution, ADR, arbitration, mediation
Consider outsourcing and retraining of staff