

Training Day – Opening Module

Independence and accountability of regulators: Best practices and challenges in the US

Ann Rendahl
Washington Utilities and Transportation Commission
NARUC

Important elements of regulatory independence

- Clear legal authority and process
- Transparency and accountability
- Independence in decision-making
- Appointment, term of office and removal process
- Financial and spending independence

US Federal Regulatory Independence

- US Federal regulatory agency (FERC, FCC) commissioners appointed by President
- Protected from removal after Senate confirmation
- US Supreme Court decision *Trump v. Slaughter* (2026) changed longstanding protection from at-will removal without cause
- Impacts still unfolding

Regulatory independence in US States: Current appointment frameworks

- Utility Commissions created by state constitution or legislative action
- Appointment:
 - By Governor, confirmation by senate in most states
 - Elected statewide or by district in 10 states
 - Elected by legislature in 2 states
- Number of commissioners, terms vary
- Removal process varies by state

Regulatory independence in US States: Current decision-making frameworks

- Decision-making as judicial process
- State administrative procedures, constitutional due process, and evidentiary basis
- Decisions subject to judicial review, appeal
- Limitations on communication with parties or others interested in the case (Ex parte)
- Limitations on communication between commissioners in decision-making (Open meetings)

Best practices and challenges: Appointment and Removal

- Increased focus on state commission decisions due to increased energy rates and data centers
- **Indiana Utility Regulatory Commission:**
 - Affordability key issue in election, with candidate stating interest in replacing commissioners
 - Governor appointed new commissioners, then demoted and fired new Chair for decision in rate case, replacing with “like-minded” commissioners
- **Montana Public Service Commission:**
 - Governor “suspended” elected commissioner for “just cause”

Current Challenges:

Decision-making – Executive branch

- **Key Issues: Energy affordability and data centers**
- **Federal: President and US DOE interest in organized markets and pricing**
- **States: Involvement of Governor**
 - Virginia – party status in merger case
 - Pennsylvania – creating role to oversee commission decisions
 - Indiana – replacing commissioners to impact a decision

Current Challenges:

Legislative action

- **Legislative interference:**
- **States:**
 - Alabama – increase in number, new oversight role
 - Kentucky – increase in number, method of appointment
 - Oregon – rate caps, ratemaking process
 - Pennsylvania – bills proposing caps on return, rates

Impacts of erosion of regulatory independence

- Erodes public trust in decision-making
- Reduces interest in and quality of commissioners due to risk of removal without just cause protection.
- Increases legal risk of appeals and reversal of decisions
- Reduces credit-ratings by financial community, increasing cost of capital to utilities and customers
- Reduction in investment by utilities in states in which environment is not credit constructive.



WFER IX



NARUC
National Association of Regulatory
Utility Commissioners

Ann.Rendahl@utc.wa.gov