Why Political Spending by Regulated Utilities Can Impede the Transition to Cleaner Energy Sources

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Many nuts-and-bolts decisions about energy and electrical power in the United States come from a little-known institution called the public utilities commission. Individual U.S. states have their own commissions that oversee the production, transmission, and distribution of energy in urban areas, where consumers purchase power by the kilowatt per hour from a private, investor-owned utility corporation. Although public utilities commissions are small and largely unacknowledged government bodies, they play an important role in the energy sector, and their decisions can have a sizable impact on the transition to renewable energy.

The U.S. federal government has repeatedly failed to address the realities of climate change through large-scale energy policy reform. In the face of federal inaction, individual states have taken up the mantle of climate mitigation. Public utility commissions can provide an important vehicle for state action by requiring utility companies to invest in renewable energy, promote energy efficiency, make critical investments in infrastructure, and promote smarter pricing mechanisms. Unfortunately, however, politically motivated commissions can impede much-needed progress on climate change if they wield their regulatory power to serve the interests of investors in private utility companies, rather than ordinary citizens.

When Regulators Protect the Industry, Not Consumers

Power utilities often operate as monopolies, making them the sole provider of electrical power in a particular geographic area. These are legal monopolies, regulated by state public utility commissions that review and approve any one-time, fixed costs like those for new equipment or construction, or rate increases that would make buying electricity more costly for consumers. Without regulatory review, the monopoly's captive consumers could be subject to exploitative pricing – where providers charge customers extraordinary amounts because they know they have nowhere else to turn.

Simply put, the business model of the regulated monopoly makes a profit through the sale of power. Although utilities are generally compliant with policies that mandate energy efficiency – including the transition away from fossil fuels – at the end of the day they are still beholden to their bottom line. Low-carbon and carbon-neutral energy that has a reduced impact on the environment can come in many forms, and utility companies have a strong incentive to invest in versions that further their traditional business model, such as nuclear power, rather than risk profits falling due to the deployment of renewable technologies that give consumers greater control. For this reason, investor-owned utilities may have a financial interest in resisting shifts to renewable energy, in order to keep profit flowing to shareholders.

When the interests of the regulated monopoly diverge from the social need for cleaner energy sources, state regulators have been known to promote the interests of the lucrative energy industry – a situation known as "regulatory capture." Scandals have happened in some states due to ethics violations and close collusion between regulators and industry executives. To ward off such impropriety, some states have changed the structures of their public utilities commissions to make it more difficult for regulators to serve corporate interests at public expense. One of the more popular fixes calls for the direct election rather than political appointment of public utilities commissioners. Generally, elected commissioners have been more likely to support consumer protections.

How Unfettered Political Spending Impedes Effective Regulation

The 2010 Supreme Court decision in *Citizens United v. FEC* opened the floodgates to big money flowing into politics – sometimes from undisclosed sources – and this change has important implications for public utilities regulation. If investor-owned utility companies can spend however much they want to back the campaigns of industry-friendly politicians, then the regulatory power of commissioners appointed by those politicians may be hamstrung.

When appointed commissioners make decisions that favor the interests of the industry over those of consumers, the public is quick to condemn large campaign donations made by investor-owned utilities. But in a comparative case study of four similar state public utility commissions, I found that limitations on political contributions from regulated monopolies may be even more important for ensuring fair play than direct elections that allow voters the opportunity to choose commissioners. The Arizona Corporations Commission is an elected board of regulators that became mired in a “dark money” scandal that tainted the independence of its regulators. Prior to the *Citizens United* ruling, only two states had laws that specifically limited political spending by regulated monopolies in order to protect the independence of utility regulators. One of those two commissions, in Georgia, took a more aggressive stance against the industry on issues of solar and nuclear power than did its neighbors in similar states, without undercutting industry profitability.

Regulatory independence tends to be protected, in short, when regulated monopolies are forbidden from making political donations. A truly independent public utility commission can play an important role in promoting a transition to clean energy sources, helping different parties navigate toward an altered business model and a more reliable power infrastructure. The temptation for powerful stakeholders to use financial resources to influence decisions in their favor is omnipresent, so eliminating the temptation is paramount.

Unfortunately, some of the most effective ways to insulate regulators are not compatible with the legal precedent set by the U.S. Supreme Court. When money becomes synonymous with speech, a country with significant wealth inequality suffers democratic inequality as well. In addition to this overarching problem, the *Citizens United* decision has also increased the risk of regulatory collusion with industry, even in small state-level utilities commissions. In the absence of effective national action, such commissions currently represent the best hope for climate reforms in the United States, the world’s largest per capita carbon emitter. So the consequences of failing to protect the regulatory independence of state commissions may be dire for the entire globe.

Read more in Kate Pride Brown, “In the Pocket: Regulatory Commissions, Industry Capture, and Campaign Spending.” *Sustainability: Science, Practice and Policy* 12, no. 2 (2017).