



AUTONOMY-AUTHORITY-ACCOUNTABILITY-ABILITY (AAAA)

KEY CHARACTERISTICS OF REGULATORY COMMISSIONS

The objective is to create a regulatory body that has substantial **autonomy** from short-term political and other interventions; adequate **authority** to establish sound regulatory practices (e.g., tariffs, licenses and monitoring); clear **accountability** to assure transparency and credibility, and; **ability** to carry out the regulatory functions. A sound, transparent and stable regulatory body and process is important for the government, consumers and investors alike.

I. CHARACTERISTICS OF AUTONOMY

Autonomy can be enhanced by the following measures that provide commissioners reasonable protection and allow economic decision-making and consideration of social issues. Autonomy is desirable to put some distance between the regulator and government, utility companies and the public.

1. Appointment of Commissioners

Staggered Terms: Commissioners can be appointed on staggered terms that cross election cycles. This allows for gradual change of regulatory policy when a new Government takes office. For example, five commissioners can initially be appointed for 1,2,3,4 and 5 years so that one appointment is made per year. This allows a new government to make 3 appointments (a majority) in 2 years and 1 day.

Quality Criteria: Initially it is useful to make professional appointments including people with background and training in economics, finance, law and engineering. To minimize the risk of being "captured" by the power industry, there may be some restrictions on the number of commissioners that have previously worked in the power industry which is being regulated.

Who Makes Appointments: A high level executive branch official can appoint, e.g., the President or Prime Minister. They have a broader view and responsibility. Approval by the Cabinet or Parliament has disadvantages and advantages.

2. Exemption from Civil Service/Government Salary Rules

The commission should have a salary scale separate from the civil service in order to attract skilled commissioners and staff who have significant responsibilities for tariff formulation, legal interpretations and sector monitoring. The scale should be competitive with the private sector and regulated companies.

3. Financing the Commission: License Fees and Budget Approval

License fees: License fees on the regulated companies provide a steady source of revenue for operation of the commission. Going through the standard government and parliamentary budgetary process subjects the commission to undue pressures and reduces the likelihood of sound regulatory decisions. A separate bank account outside the state budget provides autonomy.

Budget Approval: The review of the commission's annual budget can be done at a high level such as the Prime Minister or President rather than the ministry level or the parliament. With no

budgetary funds involved, the standard government or parliamentary budget review may not be necessary. (However, government and parliamentary oversight of operations and results is appropriate; see below under Accountability.)

4. *Removal from Office—for Cause Only*

To provide stability, predictability and consistency commissioners should only be removed for cause, e.g., criminal behavior, significant violation of code of ethics, or failure to participate in the majority of regulatory meetings. Laws on regulation should spell out the circumstances under which a commissioner can be removed and who has authority to do it. It is reasonable to have the same person carry out removal as did the appointment.

II. CHARACTERISTICS OF AUTHORITY

1. ***Full Tariff Authority:*** The commission should have full authority over tariff setting. Review and/or approval of tariffs by a government ministry subjects tariffs to short-term political influence that is undesirable based on experience in many countries. Government interests can be addressed through setting policy, the appointment process and through participation in commission public hearings.
2. ***License Issuance:*** The commission should have full authority to issue licenses for long terms. Long terms are essential for providing stability so investors can make necessary investments to upgrade operations and be reasonably assured they will have time to earn a profit on their investment.
3. ***Electricity Market:*** The commission could have a significant role in the strategy, design and oversight of electricity market reforms. The extent of authority can vary from holding hearings, publication of guidance, review of proposed market arrangements and actual drafting of proposed market structures.
4. ***Information Collection, Monitoring and Enforcement:*** The commission needs authority to monitor utility performance and enforce remedies such as penalties for non-compliance with license provisions. They need authority to monitor competitive electricity markets and electricity imports and exports. The commission's monitoring functions must be clearly defined as well as those of the anti-monopoly, environment and nuclear regulatory bodies. They should also have the authority to establish quality of service standards to be met by the utilities. A Uniform System of Accounts with wide data transparency is critical for the credibility of the regulator and the utilities.

III. CHARACTERISTICS OF ACCOUNTABILITY

1. ***Public Participation and Transparency:*** Procedures for public hearings, a public record of submissions and public access to written decisions are necessary. Through this process the views of government, utilities companies, citizens and citizen organizations can be expressed.
2. ***Annual Report and Audit:*** An annual report of activities including an international financial audit should be required. This will provide a high level of accountability and credibility to the domestic and international interests. This report can be accompanied by appearance before the appropriate parliamentary committees.
3. ***Appeal of Decisions to Courts Only or International Arbitration:*** Appeal of tariff and license decisions should only be to the courts and limited to cases based on errors of fact or procedure. Issues of market power may be shared or appealed to the anti-monopoly organization. For international investors, some issues may be made subject to international arbitration.

4. **Budget Review:** The review of the budget level (and license fees) by either the President or Prime Minister provides a check on the development of excessive budgets.
5. **Code of Ethics:** Commissions should develop a code of ethics governing commissioner and staff behavior. This provides a clear basis for action against improper behavior.
6. **Removal from Office—for Cause Only:** The inclusion in a regulatory law of clearly defined specific actions that can lead to removal makes commissioners and staff accountable for their behavior. This provides a sound basis for removal for specific causes and not political reasons.

IV. CHARACTERISTICS OF ABILITY (OR CAPACITY)

1. **Capable Trained Staff:** There should be a range of skills including economic, legal, financial, legal, accounting, engineering and management sufficient to carry out the regulatory activities. An effective human resources program is needed including on-going training, professional development, access to international practices with adequate budgetary support including salaries.
2. **Procedures and Management:** The Commission should have in place sound organizational and management practices including but not limited to timely workload management, transparency, public participation and fact- and reason-based decision making.
3. **Sound Tariff Methodologies and Prices:** The Commission should have in place sound tariff methodologies that reflect international practices and use them to establish economic pricing.
4. **Licensing Practices:** The Commission should have a licensing regime in place that authorizes utility operations and encourages good utility practices including Quality of Service Standards.
5. **Monitoring and Enforcement:** The Commission should have monitoring systems and capable staff in place including a Uniform System of Accounts for tariff purposes, license monitoring, quality of service and benchmarking. Where competitive markets or cross-border trade take place the Commission should monitor market and trade behavior in collaboration with regulators in neighboring countries.

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