



Best Practices of a Regulatory Utility Commissioner

Presentation to ACERCA/NARUC

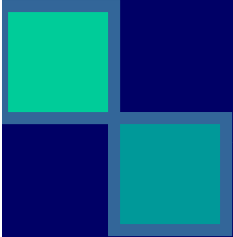


Antigua, Guatemala

Kevin D. Gunn
Missouri Public Service Commission
February 4, 2010




Disclaimer



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Further, nothing in this presentation should be attributed to any case or matter before the Commission, to any member of the Staff of the Commission, other Commissioners or the Commission.



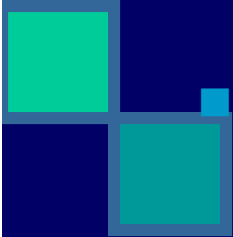

Commissioner Kevin Gunn



- Lawyer in private practice
- Chief of Staff for Rep. Richard Gephardt
- Missouri Public Service Commissioner
- 2009 Eisenhower Fellow
- NARUC Board of Directors
- NARUC Water Committee
- Co-Chair NARUC Washington Action Committee

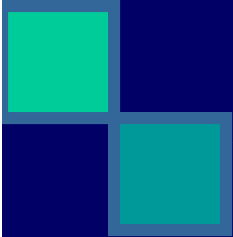



PSC – What we do

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- Regulate investor-owned electric, steam, natural gas, water and sewer and telephone companies.
 - Also regulate manufacturers of and retail dealers who sell new and used manufactured homes and modular units.
 - Mission is to ensure Missouri consumers have access to safe, reliable and reasonably priced utility service while allowing those utility companies under our jurisdiction an opportunity to earn a reasonable return on their investment.
 - Established in 1913.
 - Comprised of five commissioners.
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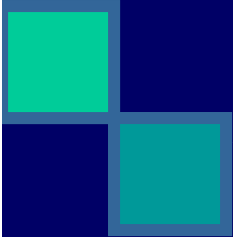


Commissioners


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- Appointed by the Governor
 - Confirmed by the Senate
 - 6-year staggered terms
 - All currently lawyers, although not a requirement
 - Traditionally politically balanced
 - Removal by Governor or 2/3 of Legislature for "inefficiency, neglect of duty, or misconduct in office"
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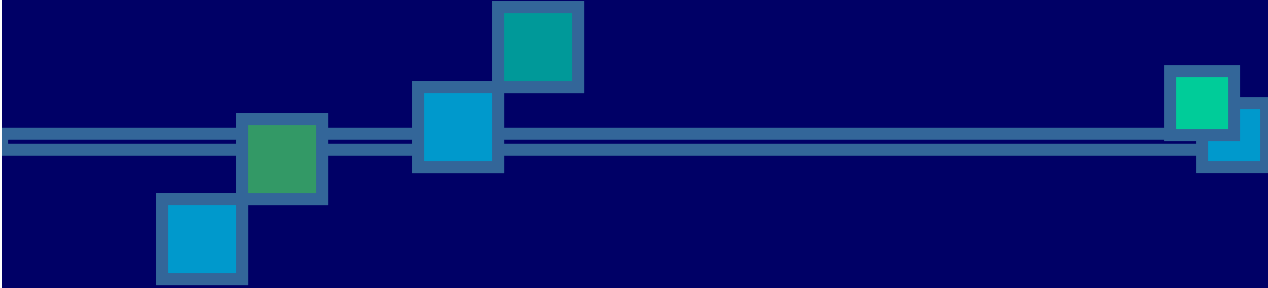


Regulatory Process




The fundamental principle must be that the regulatory process is actually FAIR but almost as important is that it must be perceived by the parties as being fair.






Statutes, Rules and Regulations make
a process fair. Communication
ensures the public perception of
fairness.





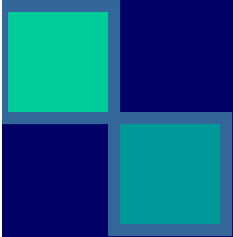

Statutes, Rules and Regulations

- Focus on two parties:
 - Regulatory body
 - Those appearing before the regulatory body
 - Rules of Professional Conduct/Canons of Ethics cover lawyers and judges, but are not strictly applied to regulators
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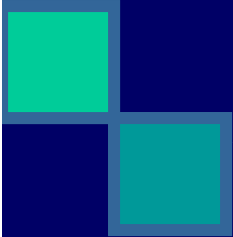

Statutes, Rules and Regulations

Regulatory Body

- 
- Conflict of Interest
 - Government Property and Procurement
 - Limits on Employment
 - Use of Official Position
 - Impartiality in Duties
 - Gifts and Travel
- 




Conflict of Interest

- 
- Should not attempt to influence any decision or participate, even indirectly, in a decision that could result in direct financial gain to self, spouse, child or business
 - Cannot participate if any relation is involved (including ex's)
 - Cannot engage in business with the state
 - Cannot hold financial interest in those you regulate (relatives as well)
 - Cannot engage in outside employment inconsistent with performance of official duties
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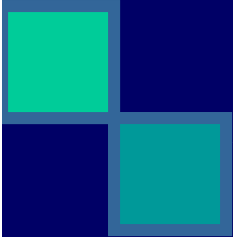



Government Property and Procurement

- Cannot sell or rent property to state agency that employs you
 - Bid process should be as independent as possible
 - Bid process must be competitive
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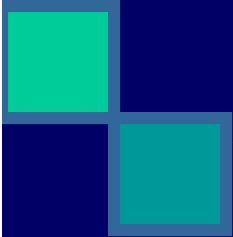



Limits on Employment

- 
- Prohibition on participating in cases you were involved in – “directly concerned or personally participated”
 - After term ends, some reasonable time before you may appear before regulatory body – usually one year
 - Upon leaving the Commission, some restriction on staff employment
 - No outside work during work hours
 - Conflict of interest rules should apply
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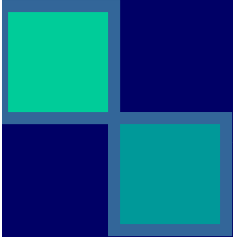



Use of Official Position

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- May not use position to solicit employment for themselves or others
 - Should not suggest, request or recommend directly or indirectly someone for employment at a utility or corporation you regulate
- 



Impartiality in Duties


- 
- Conflict of Interest Rules Apply
 - Procedure is important, must be lawful and fair
 - Always err on the side of more process rather than less
 - If a party wants a hearing, give it to them
 - Unless clearly an attempt to derail the process
- 



Gifts and Travel



■ THEORIES



- Prohibition
 - Accept and Disclose
 - Hybrid
 - Prohibit from those you regulate
 - Accept and disclose from non-regulated entities
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****Be Careful of Public Perception of taking gifts from Industry Groups**




Statutes, Rules and Regulations

Parties Appearing before Regulatory Body

- 
- Ex Parte and Other Communications
 - Rules of Professional Conduct
 - Gifts and Travel
 - Consequences of Violations
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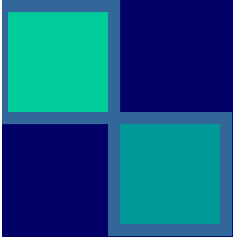



Ex Parte and Other Communications

- Avoid Ex Parte Contacts
 - If inadvertent, disclose immediately
 - Parties are responsible and consequences are theirs
 - Report other contacts to maintain transparency
 - Any substantive extra record contact
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Gifts and Travel

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- Utilities cannot offer gifts or subsidized travel
 - Trade Associations and other non-regulated parties can offer travel subsidies
 - Any acceptance should be disclosed
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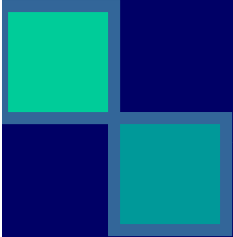


Consequences of Violations


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- Criminal Penalties may apply
 - In Missouri, up to \$20,000 fine per violation for utility
 - Criminal misdemeanor for individual
 - \$1000 fine, 1 year in jail or both
 - May cause complaint filed with legal regulatory body
 - State Supreme Court
 - May cause consequences in regulatory proceeding
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Public Perception of Process

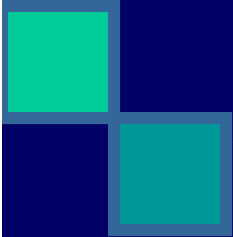



For the public to have confidence in the process, they must believe and perceive the process as fair and transparent.





Keys to Public Perception


- 
- Adhering to statutes, rules and regulations
 - Providing coherent consistent messages which educate the public
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****Constantly battle perception that Commissioners are “in the pocket” of utilities**




Public Perception



- Written reports and orders that are clear and written in the least technical language possible
 - Single message with allowable dissent
 - Open Meetings and Records Policy
 - Deal with press openly and honestly
- 



Open Meetings

- Most States have “Sunshine” Laws
 - “Sunshine is the best disinfectant” – U.S. Supreme Court Justice Lewis Brandeis
 - Requires Notice of Meetings
 - Usually 24 hours
 - Requires public discussion from Regulatory Body
 - If a quorum, must be open
 - Allows private one on one discussion
 - Requires open records
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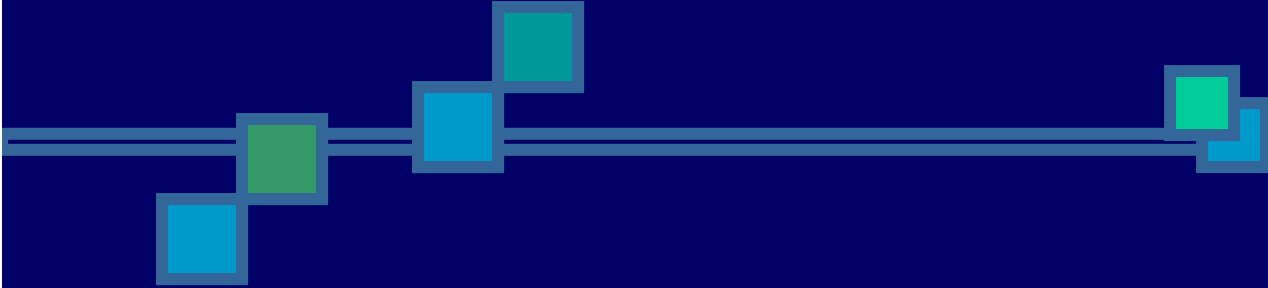
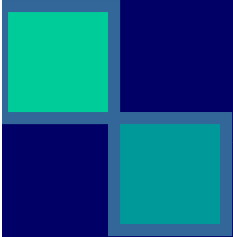

Open Records

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- Allows inspection of records (anything official)
 - Records include electronic communications
 - Allows copying of records at reasonable cost
 - Actual cost
 - Some records closed by statute
 - Personally identifiable information
 - Proprietary information
 - Should have retention policy
 - Some records preserved forever
 - 3 years standard time



Press Strategy

- Most reporters do not have a technical background
 - Most reporters like easy stories
 - You do not have to answer their questions (but there are consequences)
 - You do not have to answer their questions right away
 - Ask for the questions
 - Take time to think
 - Cultivate relationships with reporters and editorial boards
 - Give information on background
 - Give heads-up on stories
 - Meet when nothing is going on
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- Public Confidence is key to effective regulation. It avoids legislative and judicial interference and allows for positive outcomes.
 - Regulators are responsible for public confidence.

Questions?



Thank You