The Funding of Independent Regulatory Agencies

A Special Report to the

Public Utilities Commission of Anguilla

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Executive Summary

The funding of independent regulatory agencies varies from jurisdiction to jurisdiction, but there are three basic methodologies. The issue, however, is inextricably linked to the quality of regulation, since adequacy of resources, both human and technical is the *sine qua non* of quality regulation. Moreover, in most, although not all, jurisdictions, and Anguilla appears to be in the mainstream in this regard, the overall level of funding is derived from determining the agency’s revenue requirement for the fiscal year and then either backing out the formula (e.g. a % of regulated revenues) for obtaining the funds, or a precise amount to be levied.

The most common method for funding regulation, and perhaps the most logical, is by assessing the costs of regulation to the regulated companies, and then allowing them to simply pass those costs directly on to the consumers. It is logical because it internalizes regulatory costs to the regulated sector, treats regulatory assessments as fees for service rather than taxes, is a stable, reliable source of funds, is easy to administer, is consistent with regulatory independence, and is transparent on its face. The second most utilized method is through an appropriation from general tax revenues. That methodology is less common because it facilitates, even though it does not always attract, political interference in the operation of the agency, may not be as reliable or stable as assessments, and does not internalize regulatory costs into the sector. The third, and least common methodology, is specific fees for services/activities. While fees, as a basic method for funding regulation have the advantage of sending the most accurate price signals, and is perhaps most protective of agency independence, the methodology has the highest transaction costs, and may yield less stability and reliability in a revenue stream. Fees, however, can be a very useful mechanism for providing supplemental funds for agencies when required for specific purposes.

While the fees methodology, by its very nature, allocates costs specifically to the companies causing the costs to be incurred, and the general tax revenue, by its very nature, obviates the need to allocate costs among users, the assessment methodology does require the adoption of cost allocation principles. The options for allocating is to apply assessments universally to all companies in the sector or defined sub-sector, to apply assessments only to bottleneck facilities in the sector, or to do so consistent with cost causation. The first method, while commonly applied, appears facially non-discriminatory, but in reality may have consequences in terms of inadvertently impacting competition and may not send accurate price signals as regarding the actual costs of regulation. Imposing regulatory assessments only on bottleneck facilities is easy to administer and may or may not be by-passable, but also tends to distort price signals by cost socialization. The third option, specific allocation of costs on companies causing the work to be done is, of course, the fees methodology of raising revenues.

While regulatory agency independence is a critically important element of effective regulation, it is largely a concept that applies to the substance of regulation. The issues involving financial operations of agencies, however, are generally subject to normal governmental controls and oversight related to overall levels of spending, fiscal controls, and operating efficiencies. Assuring proper use of funds, appropriate accounting, prudent management of resources, auditing activities, and the like are perfectly legitimate, and commonly accepted forms of governmental oversight of regulatory agencies. On the other hand, use of such oversight to punish or reward agencies for their
substantive decisions would be improper. Similarly, a governmental use of regulatory agency powers or funding to meet general obligations of the government would be similarly inappropriate.

Finally, in general, regulatory agencies, with the exception of those funded through general tax revenues, are generally funded through revolving accounts in which surpluses at the end of fiscal cycles are either returned to those who paid money in, or held in escrow for their future use. Even in those jurisdictions where surplus funds are returned to the treasury, governments generally do not rely on such windfalls and certainly do not plan on receiving them. Moreover, because the regulatory agencies do not have any liabilities that are demonstrably greater than other organs of the state, and because they often possess or can obtain special assessment powers for unforeseen, but perhaps, costly special projects, surplus funds or special contingency accounts are not typically part of regulatory agency budgets.
A. Introduction

This report was commissioned by the Public Utilities Commission of Anguilla as a part of a dialogue with the Government over the best way to finance and manage the budget of the agency. It is part of an effort by both the Commission and the Government of Anguilla to approach these questions in a thoughtful and informed way, as well as to assure that whatever decisions taken are consistent with best international standards and practice.

The report is not designed to be an exhaustive survey of the international experience to date of regulatory agency funding and budgeting, but rather to be a representative sampling of the issues encountered in financing regulatory agencies. It purports to offer a sampling, through analysis, statutes, and anecdotal case experiences, of the options available to the Government as well as the policy questions that ought to be fully considered in deciding how best to approach agency funding questions. The report is designed to assist the agency and the Government to have a highly informed dialogue on the finance and budget questions before them.

B. General Policy Considerations

The funding and budgeting of independent regulatory agencies raise policy questions that are somewhat different from those governing the funding of line government functions. To be sure, some of the issues are the same, for example: prioritizing missions, assuring adequacy of resources for performing responsibilities, maintaining budget accountability and oversight, managing resources efficiently, and adhering to strong ethical standards in regard to the stewardship of public resources. Unlike other government departments, however, regulatory agencies, because of their independence and high technical requirements, have characteristics unique to them for budget and finance purposes.

While these unique policy considerations will be more fully discussed in the following four sections of the report, it is worth highlighting the issues of independence and high technical requirements. Because the economic sectors overseen by regulatory agencies require a large infusion of capital, and the investors who might provide that capital are highly sensitive to the investment environment, it is essential that the regulation be administered by highly competent professionals in ways which are reasonable, transparent, and pursuant to known, recognized, and reasonably predictable principles and rules. For most investors, that means that decisions are made on a substantive merit basis and not based on short term political consideration. In order to provide that assurance, regulatory agencies are typically given a degree of independence in carrying out their responsibilities that other organs of the government do not enjoy. While the question of independence and its full meaning is a complicated subject on which much has been written, for purposes of this report, it is sufficient to note that the methods and practices employed in the financing of, and budgeting for, the agency should be mindful of the importance of the agency’s independence and avoiding signals to investors or consumers of anything to the contrary. As will be noted below, the financial independence of regulatory agencies is a widespread, although by no means universal, practice.
In specific regard to the high technical requirements, regulatory agencies have to compete in the same labor pool from which the private, regulated companies draw their talent. They also have to be able to procure and operate very sophisticated equipment and programs that allow them to keep pace with the companies they regulate. Any inability to recruit and retain highly qualified personnel, or to use required equipment, is highly likely to have adverse effects on the quality of consumer protection and effectiveness of regulation in general. Thus, in looking at finance and budget matters, it is essential to be mindful of the need for the agency to achieve and consistently maintain the requisite level of professional competence and technical capability.

C. Sources of Revenue / Allocation of Revenue Responsibility

1. Revenue Sources

The range of possible sources of revenue for regulatory agencies is essentially defined by the three options set forth below, although it should be noted that many agencies are funded by various blends of these options. The three basic options are as follows:
   a. Assessments on Regulated Companies
   b. Appropriations from General Treasury
   c. Fees for Special Services/Activities

   a. Assessments on Regulated Companies

Assessments on regulated companies are the most common method for obtaining the money necessary for the functioning of regulatory agencies. The reasons why it is the most common method for raising funds are rooted in both economic and political/juridical theory, and on practical grounds as well.

The economic basis is simply that the cost of regulation should be borne by the users of regulatory services, namely the consumers of the regulated product. Regulation is simply another cost component of providing service in a regulated sector of the economy, and should, for purposes of pricing the services provided, be treated no differently than any other cost thereof.

The political/juridical basis is that independent agencies should have their own independent source of revenue, removed from the general budget process. If the regulatory agency depended on general appropriations from the treasury then it could be subjected to “political retaliation” for its decisions, a circumstance that could severely constrain the agency’s independence. Succinctly stated, regulatory independence requires financial independence. Finally, reliance on appropriations from the general treasury would make the agency’s financial viability subject to the year to year vicissitudes of the tax collections, a result that could well destabilize the ability of the agency to keep pace technologically and professionally. That would be particularly problematic in an industry

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1 For purposes of this paper, the word, “assessment” is used to describe funds required to be paid by regulated entities. In many places, the term used for such payments is often “license fees.” Also in this paper, the term “assessment” is used to denote payments of a general nature, while the term, “fee” is used to denote a required payment for a specific activity. The assessment or fee based system for obtaining funds is sometimes called “program revenue” to distinguish such financing regimes from “tax revenue” funding.
such as telecommunications where technology is changing rapidly and where keeping pace with that change is a *sine qua non* for regulators.

The practical reasons advanced for using assessments are essentially twofold. The first is simply that an assessment avoids the need for any additional taxes to be levied or for any need to increase the burden on the general treasury. The second practical reason is that it provides a clear rationale for recognizing that the labor market within which regulatory agencies compete for talent is quite different than that confronting most government departments. While civil servants, as a general rule, are not as well compensated as equivalently situated employees of private companies, that is not terribly problematic, as the labor market in general is quite broad and while some people might seek out more lucrative employment, many people are quite happy to obtain lower paying jobs if employment is more secure and the overall benefits are attractive. In the regulatory world, however, the labor market is far narrower and the skillset required more rigorous than in the market as a whole, so there is often a need for regulatory agencies to offer more lucrative compensation packages than other government agencies to its personnel in order to recruit and perhaps, more significantly, to retain qualified and experienced people. A source of revenue separate from general tax revenue makes it politically easier to do so.

There are two basic approaches to the assessment methodology. The first, in use in many jurisdictions, is simply to set in law a constant fixed percent of revenues, often called license fees, to be collected in the regulated sector. In the Brazilian power sector, for example, the assessment is quite simple. By law, .5% of the revenues collected for electricity are allocated to ANEEL, the nation’s electricity regulator. In some countries the amount of the assessment is, by law, capped at a stated level, but the agency, or in most cases the Government, can set the percent of revenues at a lower level. In Zambia, for example, the assessment for the Energy Regulatory Board is capped at .5% of revenues, but the regulatory agency can, and often does, opt for a lower number.

In many jurisdictions where assessments are used, however, the level of the assessment is not a constant fixed number. They employ the second approach, where, instead of a statutory fixed number, the percent collected is varied depending on the overall budget level that is approved. Most European Union countries, which have separate regulatory agency budgets, operate on such a budget derived percentage basis in which the overall budget level is established, and then a percent of revenue number calculated to derive sufficient revenue to cover the overall budget figure is set.

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While the formula in law is quite simple, as will be noted below, in practice, matters are considerably more complicated.

The practice of the Board in Zambia was, for many years, to assess .49% of revenues, barely below the cap. When the formula was being considered at least one regulated company with self interest clearly in mind cleverly proposed that the percent not be linked to total revenues but rather to the profits of regulated companies. That proposed formulation was rejected for the very obvious reason that it created a blatant conflict of interest for the regulator, whose financial status would then be tied directly to the profits derived from the tariffs they set. The case study discussion of Zambia, below, provides some insight into the perils inherent in both assessment and reliance on government budgets.

In regard to electricity regulatory agencies, the EU countries which utilize assessments on regulated companies to finance regulation are: Austria, Belgium, Cyprus, Denmark, Finland, Great Britain, Greece, Hungary, Italy, Latvia, Malta, Netherlands, Portugal, Slovenia, Spain, Sweden, and Luxembourg. Bulgaria also uses assessments on regulated companies, but simply merges those funds into the state budget, of which the regulatory agency’s budget is a part. Sections from the 2006 Council of European Energy Regulators’ (CEER) Regulatory Benchmark Report of 2005 related to agency finances provide more detail and are attached hereto as Appendix H. Turkey, while not a member of the EU, uses a mix of assessments and other fees to cover agency expenses.
Similarly, most state regulatory agencies in the United States are funded by assessments based on a percent of revenue, the precise percentage number being derived from calculations driven by the overall budget amount approved by the state (i.e. legislature and Governor). The same conceptual model is very similar to the current legislation in Anguilla, which reads as follows:

**s.21(2) of the PUC Act**

(2) The industry levy for a financial year shall equal the net estimated expenditure of the Commission for that financial year, as set out in the estimates approved by the Governor-in-Council, adjusted by—

(a) the addition of the deficit, if any, shown in the audited accounts for the previous financial year; or

(b) the subtraction of the surplus, if any, shown in the audited accounts for the previous financial year.

The similarity between the practice in Anguilla and the most commonly utilized methodology is simply that the agency’s revenue requirement is identified and then the overall assessment level is backed out of that.

There are benefits and detriments to each approach, as well as variations of each (see English Case Study below). A statutory fixed assessment has the advantage of being less, although not completely, free of political manipulation either by the lobbying of regulated companies, or by politicians angered by decisions taken by regulators.

Two key features of the assessment methodology are that the assessment is mandatory on the companies upon whom it is levied, and that the amount assessed is automatically passed through to consumers. The mandatory nature of the assessment is designed, of course, to make certain that the payments are forthcoming. It is, however, also necessary to avoid any appearance of impropriety that might be alleged if regulatory agencies are receiving money from regulated entities. The fact that the payment is legally mandated rather than discretionary removes any possibility of impropriety in the payment of money from the regulated to the regulator. The second feature, the pass through nature of the assessment is also designed to eliminate any appearance of impropriety.

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5 For specific statutory language setting forth these arrangements see Appendices A through F setting out relevant sections of the Statutory Codes of Ohio, California, Florida, Texas, Colorado, and Wisconsin.

6 The treatment of surplus funds in Anguilla, namely by subtracting them from the revenue requirement for the subsequent year, is very similar to the treatment of surplus funds in a number of other jurisdictions. The Portuguese case study, below, is illustrative.

7 An excellent example of this occurred in the United Kingdom when Ofwat, the U.K. water regulator, decided to raise its assessment (called license fees in the U.K.) in order to delve into competition issues. The proposed increase in the assessment was strongly opposed by the water companies they regulated who were opposed to a sudden and dramatic increase in the level of assessments. Nonetheless, some observers were convinced that the real motivation for the companies’ opposition to the increase was substance, namely antagonism to what the regulator proposed to do with the additional revenues. In short, it provides a useful example of where the politics of regulatory budgets are often not about budgets at all, but, rather, are about policy.

8 Obviously, a fixed percentage number set in law can be altered by changing the law, but that is likely to require more effort and be more transparent to the public than merely changing a budget figure.
because the regulated entity is effectively a conduit for the money rather than the payer. The company simply collects the money and passes it on. The cost of regulation is thus borne by the consumer, just as other elements of the cost of providing the regulated service. In effect, the assessment is, in reality, a fee charged to the consumer for regulatory services.

b. Appropriations from General Treasury (Tax Funding)

Despite the advantages noted above for assessments on regulated companies as a source of revenue for regulatory agencies, a number of countries forego that method of obtaining funds and simply fund regulators out of general tax revenues. The effect of using tax revenues to support regulation has the virtue of simplicity and, at least in some cases, treating regulatory agencies just like any other bureau of the government, but does not provide the level of financial independence that provides for some degree of regulatory insulation from politics, and, of course, fails to recognize regulatory costs for what they actually are, namely a cost of doing business. Some contend that funding agencies out of general revenues is also more transparent than using assessments because the taxes are open and not hidden. While it can certainly be argued that regulatory assessments are not and should not be seen as taxes, the Case Study below on Brazil suggests that the subtlety of the distinction is sometimes lost on governments with serious fiscal constraints and does imply that taxes, in some cases, are more transparent. On the other hand, it can also be contended that an assessment or fee based system is more transparent because it attaches the costs directly to their causation, namely the need to regulate certain sectors of the economy. In addition, funding regulation through tax revenues, as a general proposition, constitutes a subsidy to the sector being regulated and is counter productive in terms of price signals, and is, therefore, arguably less efficient than an assessment or fee based system. Some contend that since the transaction costs involved in allocating and administering assessments are higher than a tax based system, they therefore make it more efficient.

The dichotomy between using assessments or fees and using taxes to fund regulatory agencies is not necessarily an either/or proposition. In the U.S. State of Ohio, for example, while the bulk of the agency’s funding comes from assessments on regulated companies, there is a part of the agency’s budget that is derived from general revenues of the State or even a grant from the federal government. Functions such as transportation safety and gas pipeline safety are often funded in that way. In some regulatory agencies, governments may assign particular functions, such as planning or carrying out special studies for which the government provides funds out of its general revenue. In that fashion many agencies which are described as being financed by assessments are, in fact, at least partially or supplementally funded through tax revenues as well. It should be pointed out, however, that such supplemental funding is often work specific in nature, so that even though the funds being used are obtained through taxes, the overall structure of the arrangements may perhaps more resemble fee-based rather than tax-based mechanisms of finance.

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9 Jurisdictions which fund regulatory agencies from general tax revenues include Israel, Czech Republic, Estonia, France, Germany (which is currently contemplating a switch to assessments), Lithuania, Norway, Poland, Slovakia, India, and Ghana.
**ISRAEL: A Case Study of General Appropriation Funding**

The Israel Electric Public Utilities Authority (IPUA) is fully funded by an appropriation from general revenues. While it does, at least in the opinion of some experts, have the power to assess fees to reflect the costs of providing specified services, it has, with the single exception of responding to Freedom of Information Act requests, has thus far chosen not to do so. Unlike many regulatory agencies in other jurisdictions that are funded by general appropriations rather than assessments, as a subsidiary of another governmental institution (e.g. a Ministry), by law, the IPUA must have its budget approved independent of any other organ of the government (including especially the Ministry of National Infrastructures which has jurisdiction over the power sector in general, but not over the IPUA), although the process for approving the agency's budget is identical to that of other parts of the government. Historically, although the Ministry of Finance, and, ultimately, the Knesset (Parliament) have to approve the budget, the IPUA has suffered little interference in obtaining approval for adequate resources, although it has, in some instances, been denied budget increases it requested.

c. Fee for Special Services/Activities

In addition to funding by assessment or through tax revenues, it is not at all unusual for regulatory agencies to be asked, or even compelled, to take on activities which were not, and often could not have been anticipated at the time when the regular budget cycle activities were occurring. Even if a special activity was anticipated at the time the regular budget process was occurring, for a variety of reasons, there may be circumstances where regulators and/or budget officials of the government do not wish to treat a particular work item as an ongoing activity, and prefer, for budget purposes, to treat a particular project or endeavor as a separate matter. Examples of such matters would be special studies for the government, license applications, special investigations, litigation, company specific activities, or other such matters which are not necessarily regarded as routine regulatory matters. In such cases, the Commission might be authorized to levy special fees or, in cases where it is the government asking the regulators to carry out a project for its benefit, obtain a supplemental or activity specific appropriation of funds from the government (and/or Parliament) in order to carry out the work.

Occasionally, a particular piece of equipment or software, or the services of a consultant or consultants, might be required and that, as well, would be accorded similar financial treatment (see Ohio Case below). In such circumstances, the fees might be either allocated specifically to the regulated companies affected or who caused the expenditure to be incurred, as in the case of license application fees or management investigations/audits, or, where the additional expense being incurred was not assignable to any specific cost causer, the fees might be assessed more broadly (e.g. to all regulated companies or perhaps limited to only those regulated companies in the specific industry for which the costs are being incurred.)
OHIO: The Case of Unanticipated Projects Outside the Ordinary Budget Cycle

In the 1980’s the Public Utilities Commission of Ohio found it necessary to conduct a series of major investigations that it did not anticipate when it had submitted its annual budget proposals. These included detailed studies of the prudence of construction cost overruns at two nuclear power plants, natural gas purchases at higher than market prices by a distribution company from an affiliate pipeline supplier for resale to monopoly customers, and a management audit of a telephone company with unsatisfactory quality of service. Given that these undertakings were both expensive and unanticipated, the Commission had to figure out how to fund the projects. One obvious solution was simply to order the companies involved to pay for the engagement of consultants to undertake the work.

The solution was not as simple as it might appear to be on the surface because the Commission had to exercise control over the consultants. If the companies supervised the work of the consultants, the credibility and objectivity of their work would be open to very serious doubt. If, however, the Commission exercised that control, then it could be deemed an unauthorized expenditure by the Commission, which would be prohibited by law. There were two possible solutions, one of which, requesting a special authorization from the Legislature seem politically inadvisable, for fear that the investigation would become a “political football,” or that the bill authorizing additional funds would become a “Christmas Tree” for other special appropriations outside of the ordinary budget process. The other course was to appeal to a special board within the state’s government, known as the Controlling Board. That body had the authority to approve special contracts of the type envisioned by the Commission without having to go back for full legislative authorization. However, because the Controlling Board is composed of public officials, including legislators, it is subject to lobbying by interests directly affected by the work for which financing is being sought. While that led to some give and take between the Commission and various interested parties, the result was that through the Controlling Board mechanism, the Commission was effectively able to conduct the special investigations without having to seek enhanced budget authorization.

2. Allocation of Revenue Responsibility

As is typically the case setting regulated tariffs, the financing of regulatory agencies involves two critical questions related to obtaining the requisite level of revenue: How much is to be paid? And who will pay what portion of it? While the preceding sections of this report discussed the question of how revenues, in the aggregate, will be produced, this section will focus on the second question, namely, who pays? Given that two of the funding regimes, tax and special fees, are self-defining in terms of who pays, the discussion in this section is really only applicable to an assessment regime. There are three basic approaches to the question of allocating costs in an assessment based regime. They are as follows:
a. Applying Assessments Uniformly To All Companies in Sector or Defined Part of Sector  
b. Applying Assessments Only to Bottleneck Facilities in Sector  
c. Applying Assessments Consistent With Cost Causation

There are a number of criteria for deciding which methodology to utilize. They include ease of collection, overall transaction costs in collecting the revenues and administering the system, impact on competition within the regulated sector, effectiveness and meaningfulness of any price signals generated, scale of regulatory burden emanating from different assessable actors in the sector, and whether or not there are bottlenecks in the system, and if so, whether, and at what point, they can be bypassed. Additionally, care needs to be taken to assure that the revenue and cash flow requirements of the regulatory agency are met. In that contest, each of these approaches merits attention in regard to the pros and cons of employing each.

a. Applying Assessments Uniformly To All Companies in Sector or Defined Part of Sector

The uniform application of assessments to all companies in the sector, presumably on some volumetric basis (e.g. kWhs in electricity) in order to spread the cost burden commensurate with size of enterprise, has considerable surface appeal because it is relatively straightforward, generally easy to collect and non-discriminatory on its face. Since the assessment is applied to all actors in the sector, and is not a bypassable cost (because it is uniformly applied) some might contend that it should have little impact on the competitive balance in the sector. As noted in the British Case Study, however, where there is competition, especially in electricity and telecommunications, regulatory assessments on new entrants can serve as something of a barrier to entry simply because the market may not permit the same cost to pass through to consumers that monopoly providers and even many competitive market incumbents possess. As also noted in the British Case Study, uniform assessments do not send efficient price signals regarding the costs of regulation, although it is theoretically possible to improve on the price signals by allocating costs to identified sub-sectors of the market to reflect the level of regulatory costs that sector causes to be incurred, and imposing uniform assessments on actors in that particular sub-sector of the regulated market.

b. Applying Assessments Only to Bottleneck Facilities in Sector

Applying assessments only to bottleneck facilities may be the easiest assessment to collect, and perhaps the lowest transaction costs. Because it is a cost imposed only on monopolies, it has minimal effect, if any, on the competitive balance in the market. Because the costs can readily be passed on to captive customers, it also tends to attract the least complaints from the regulated industry. Those advantages of extracting regulatory costs from bottleneck facilities need to be

10 The uniform assessment could be applied across the entire sector, or as pointed out in the British Case Study, could be applied uniformly within clearly defined sub-sectors, such as generation, transmission, distribution, and retail supply in electricity, with a cost allocation to the sub-sector as a whole and individual company payments being derived from that allocation.  
11 The Zambian Case Study points out that uniform assessments may not always be easy to collect.  
12 The notion of least complaints is not the same as no complaints. It is not unusual for even monopoly bottleneck service providers to complain about the regulatory costs they are compelled to bear, even though they are able to pass those costs onto their customers directly.
weighed against the disadvantages. There are two basic downsides to the bottleneck methodology. The first is that it effectively socializes regulatory costs across all users of the bottleneck facility independent of any particular burden imposed by specific market participants or subset of participants. Thus, the price signals generated are of little or no value and those who impose little regulatory burden are compelled to subsidize those who do. Finally, successfully imposing and collecting an assessment on a bottleneck facility pre-supposes that the bottleneck cannot be bypassed. As has been discovered in many areas, perhaps telecommunications most obviously, bottlenecks are not always impregnably so. At some point, economics and/or technology can be such that bypass of what had heretofore been a monopoly bottleneck is entirely possible. To the extent that costs are imposed on a bottleneck facility, the impregnability of the monopoly becomes less certain. In fact, regulatory costs, if substantial, can contribute to uneconomic costs. While the costs of regulation alone are almost never of sufficient magnitude to drive uneconomic bypass, they can be a contributing factor to inducing it.

c. Applying Assessments Consistent With Cost Causation

Applying assessments consistent with cost causation provides the best price signals to regulated entities. Perhaps the best example of it in application is in the U.S. State of Wisconsin, where regulated companies are actually directly billed for the time spent and expenses incurred by regulators when working on matters specifically related to them.\(^\text{13}\) The downside of such a program, of course, is that the transaction and accounting costs are high relative to the alternative models. Given the level of detail involved in direct billing, it is also the system most likely to produce disputes about the costs companies are being asked to pay. Although Wisconsin requires advance payments as credit against future billings, in order to avoid uncertainty in the cash flow and revenue stream to regulators, a pure billing scheme provides considerably more uncertainty that the revenue and cash flow requirements of the regulators will be satisfied than is provided by the other two models.

\(^{13}\) For a fuller description of the Wisconsin model, see its statutory framework in Appendix F and read page 5 of Energy Working Notes attached as Appendix G.
UNITED KINGDOM: Allocating Regulatory Costs in the Power Sector

When the Ofgem\textsuperscript{14} was established, many decisions had to be taken. One of the early decisions in the initial creation of the agency was to rely upon license fees as the mechanism for obtaining the revenues required to carry out regulation. The obvious and critical follow on to that decision was to determine how to allocate costs through the license fees market participants would be obliged to pay. In short, the question was who would bear what percent of the costs of regulation.

The decision was not taken lightly. There was considerable debate over how to allocate those costs. Some argued that the license fees ought to be reflective of the level of regulatory costs each activity in the sector actually caused to be incurred. They argued that such a system would send accurate and needed price signals. Others contended that such a system would lead to endless haggling over who caused what costs, a contentiousness which would lead to a great deal of uncertainty about charges payable by each licensee. Moreover, it was contended that infighting over license fees would tend to work against the interests of the smaller new market entrants who were less able to defend their interests if, indeed, they were able to gain entry into the market at all, and as strong incumbents were almost certain to contend, had caused a disproportionate amount of regulatory costs. The outcome of the debate was to split total regulatory costs into quarters and charge each quadrant (generation transmission, distribution, and retail supply) of the sector 25\% of the total cost, allocated in proportion to kilowatt hours throughput of each licensee. The fees were based on previous year's costs and throughputs. The scheme, its designers believed, by allowing for greater certainty about future fee obligations would provide a level of protection for new entrants (who would presumably be growing but only paying license fees at a lower level based on the previous year's throughput), and would provide benefits that exceeded the advantages of more precise signaling of regulatory costs.

Concerns about the methodology were expressed. One company in particular, the monopoly transmission operator, after a period of silence on the question, started to voice objections to the percent of regulatory costs being allocated to them, arguing that while its share of the business was only about 10\% of the value chain in electricity, it was being called upon to bear 25\% of the license fees assessed. The motivation for the company's ceasing to be silent of the cost allocation was the sense that while license fees had initially been included in the price controlled revenue stream, regulatory costs, hence license fees, had increased over time to a level in excess of what was actually being recovered under price controls. There were also concerns from other quarters about a need to simplify the cost allocation methodology. It became apparent to the regulators that allocating costs, both from a conceptual and political point of view, was going to be a source of unproductive squabbles about how costs were targeted and recovered. Moreover, those disputes were taking place in the context of Ofgem incurring very significant cost increases because of market reforms (the agency’s budget actually trebled over a two to three year period). Companies

\textsuperscript{14} The original acronym for the regulatory agency in the English power sector was Offer. Later, when responsibility for regulating the electric and natural gas markets was consolidated in a single agency, the acronym was changed to Ofgem in order to reflect the broader scope of authority. For purposes of this paper, in order to avoid possible confusion, only the acronym Ofgem will be used, even though some of the circumstances described preceded the name change.
in the competitive parts of the sector contended that they were simply not able to absorb those kinds of cost increases into their business planning and was, therefore, adversely impacting their profitability. Thus, after several years, the allocation methodology was fundamentally changed. Instead of allocating regulatory costs equally between four quarters of the industry, the decision was taken to recover all regulatory costs exclusively from the network monopolies, who, in turn, are permitted to pass on those costs on a straight pass through basis in their price controls. Ironically, the new methodology, ended up imposing a larger proportion of regulatory costs on the transmission operator than that about which they had been complaining, although perhaps the tariffs were adjusted to make it more probable that those additional costs would be recovered through the controlled revenue stream.

D. Adequacy of Resources

First, in regard to high technical requirements, regulatory agencies are charged with overseeing highly sophisticated, technologically driven industries. To do so effectively, they have to compete for personnel and resources in the same market as the companies they regulate. This is a circumstance that is often not appreciated by the budgetary authorities in many governments. The result is that regulatory agencies often have to compete for professional skills burdened by procurement rules, and pay scales and civil service rules that are often counterproductive. While the specifics of the burdens placed on regulatory agencies in competing for talent and resources vary widely from jurisdiction to jurisdiction, and can only be dealt with in generalities, when one looks at the issue broadly it is an issue that each jurisdiction should examine carefully.

The procurement rules, both in terms of restrictions on how to purchase and prices permitted to be paid, are often a barrier to obtaining highly specialized equipment such as software, and in regard to procuring the services of highly specialized consultants. While the rules were designed with good intentions of promoting competitive procurement, increasing transparency, and preventing corruption, they were not designed to permit the flexibility required for highly specialized types of procurement that regulatory agencies often have to undertake. Moreover, limits on expenditures,

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15 In the United Kingdom, there is an anomalous situation where two of the regulatory agencies, Ofcom (telecommunications) and the FSA (financial services) have a different legal status than their sister agencies, Postcomm (postal services), Ofwat (water), ORR (railroads), and Ofgem (gas and electricity). The two agencies are, in fact, companies guaranteed by the state, while the other four are non-ministerial government departments. One of the consequences of the different legal statuses is that FSA and Ofcom, because they are not bound by Civil Service compensation requirements, can outbid the other four regulatory agency for staff with similar skillsets and professional standing. Thus, U.K. regulators not only have to worry about competition in the labor market from the regulated companies, but from other regulatory agencies as well. A recent Select Committee Report suggested that the Government address this anomaly, but nothing has yet been done about it.

16 In many jurisdictions they are also designed to promote the interests of local providers over those from another state or country. This parochialism has often proven to be problematic for regulators trying to procure specialized products or services that might only be locally provided at levels inferior to those available elsewhere.

17 An excellent example of the problem is where there is a need to retain an expert with highly specialized expertise in a field where there are few such people, and many who do possess the required knowledge and/or skills have conflicts of interest that preclude them from being retained. In such circumstances, it is difficult, if not impossible to engage in
particularly in regard to consultants, can have the unintended consequence of effectively denying regulators the services personnel with the expertise required to perform the work. It is, therefore, vital that budgetary and audit authorities recognize that the highly specialized needs of regulatory agencies may require more flexibility in terms of both methods and amounts of payment for highly specialized products and services.

The same degree of flexibility is required in order to permit regulatory agencies to hire and retain personnel with the requisite levels of knowledge, training, and experience to effectively carry out the specialized work of the agency. The simple, unalterable fact is that regulatory agencies, unlike most other government departments, must compete to recruit and retain staff in the very same labor market as do regulated companies who are not bound by restrictive civil service requirements. The rules that apply to the civil service in general are often too restrictive for regulatory agencies. Two examples illustrate the problem. In many jurisdictions, civil service salaries are often more driven by how many persons are supervised by a staff member than they are by the level of training and expertise. For regulatory agencies, which, as a general rule, tend to be leaner than line departments of government, links between compensation and numbers of people supervised are simply counterproductive. Another example is that while entry level positions in the civil service are typically competitive in terms of compensation with similar positions in the private sector, senior level positions are not. As a result, there is often an exodus of mid-level and senior personnel from regulatory agencies to go to work for regulated companies which offer more attractive compensation. In some agencies, the exodus is at alarming levels. As pointed out in the Brazilian case study, the attrition of mid and senior level officials at ANEEL, the electricity regulator typically runs at 20 to 25% levels per year. The rate of attrition at the Russian electricity regulatory agency is comparable for the same reasons. Most of the departing staff move to regulated companies who have similar personnel needs to the agency, but who can afford to offer more lucrative career opportunities.

The loss of staff is troubling for a variety of reasons, some obvious, and some, perhaps less so. The obvious reasons are that the regulatory agencies tend, as a general rule, to be staffed by more junior personnel than comparable staff at the regulated companies. Thus, the public interest is being protected by people with less experience than those looking after private interests. In the same obvious vein, regulatory agencies are investing in the training and development of junior personnel and then losing the value of that investment at the very time that the dividends derived from the investment should be payable. Bluntly stated, high levels of attrition are indicative of a situation where the consumers make the investment, but the regulated companies reap the rewards of the investment. It is fundamentally asymmetrical, but also quite predictable when salaries are set at non-competitive levels. In effect, regulatory agencies (or, perhaps more accurately stated, the consumers who pay for regulation) are subsidizing staff development for regulated companies.

competitive procurement processes or take a tough negotiating position in regard to compensation without running the serious risk of having to forego the required services.

18 The Brazilian example is particularly instructive because in that country it is possible to compare trends at regulatory agencies subject to civil service requirements with one which is not so bound. ANEEL, the national electric regulatory agency is subject to civil service rules, but AGERGS, the independent regulatory agency in the southern state of Rio Grande do Sul, is not bound by similar rules and offers its staff more attractive compensation packages. Not surprisingly, AGERGS experience significantly less staff turnover than does ANEEL. As noted in Footnote 14, above, there is a comparable situation in the U.K. where regulatory agencies subject to civil service rules are at a disadvantage in competing for staff with regulatory agencies which are not encumbered by the same rule.
Finally, and less obvious, is the ethical problem associated with staff departing the regulatory agency to work for regulated companies. There is a term for this phenomenon, the "revolving door." The ethical issue inherent in the "revolving door" is twofold. The first is that staff members contemplating a career move from being the regulator to being the regulated will be perceived as being, and arguably unavoidably, conflicted between his/her personal ambitions and public responsibilities. Secondly, a staff member who moves from the regulatory agency to a regulated company brings with him/her a great deal of inside knowledge and perhaps even confidential information that can compromise the integrity of the regulatory process.\textsuperscript{19}

The critical issue for budget authorities, legislators, and regulators is the necessity of recognizing that in approaching budget levels and restrictive civil service and procurement rules that are broadly applicable across government, it must be recognized that regulatory agencies are unique institutions which often require more flexibility than might ordinarily be accorded. The perverse incentives that entice personnel to not seek employment as regulators or to prematurely leave regulation, or which preclude regulatory agencies from engaging the best consultants or obtaining needed tools, must be mitigated in order to avoid adverse consequences.

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\textbf{ZAMBIA: The Case of the Authorized but Illusory Resources}

When the Energy Regulation Board (ERB) was established, it was, by law, to be funded by an assessment of up to .5% of the revenues collected in the regulated sectors, namely electricity and oil. In addition, it was to receive revenues for a special fund whose proceeds were to be utilized to expand rural electrification. The reality turned out to be something quite different.

The rural electrification funds were collected by the government but simply disappeared, presumably into the government's coffers, before they ever arrived at the ERB. While that shortfall had little effect on the ERB's ability to perform its other functions, it did mean that the agency was left incapable of meeting one of its important statutory obligations: the expansion of electric service in rural parts of the country.

Unfortunately for the ERB, the failure to receive the rural electrification funds was only part of the revenue shortfall they endured. While the oil companies, for the most part, paid their assessments as required, the same did not hold true for the power sector. There were two electric companies, the privately owned Copper Belt Energy Company, a wires only transmission and distribution company in the north of the country, and the state owned vertically integrated utility, ZESCO, which provided virtually all of the generation in the nation and provided transmission and distribution services outside of the areas served by ZESCO. For a variety of reasons, some financial, and others perhaps more political, ZESCO simply refused to pay its assessment. The ERB was virtually powerless to enforce its right to the revenues. While the stalemate was ultimately
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\textsuperscript{19} There have been innumerable "scandals" involving the "revolving door" between being the regulator and the regulated. In recent years, such "scandals" have received wide attention in the U.S. states of Florida, Minnesota, Massachusetts, Pennsylvania, and in the Brazilian state of Sao Paulo. While none of these situations, with the exception of Minnesota, resulted in legal action being taken, the controversies surrounding the events certainly did not reflect well on regulation and certainly aroused a great deal of cynical public reaction.
resolved and ZESCO commenced making payments, the ERB was left to perform its mission in its earliest years of existence with only a portion of the funds to which it was legally entitled. That not only yielded less than adequate resources for the fulfillment of its mission, but also led to quite understandable complaints from oil companies that they were being unfairly required to subsidize electricity regulation.

E. Accountability and Financial Management

Despite their independence in substantive matters, regulatory agencies are like any other governmental body in regard to their obligations to be good stewards of public resources entrusted to them, to be accountable for their actions, and to operate on a reasonably efficient basis. In regard to finance and budget, there are essentially two processes by which regulators are held to account for their performance. They are the budget approval process and audit oversight. It is useful to examine them individually.

1. Budget Approval Process

The budgets of regulatory agencies are subject to approval processes that vary from jurisdiction to jurisdiction. In the U.S., typically, the agencies are required to submit their proposed budgets to the executive branch budget agency (Office of Management and Budget in the Federal Government) with overall budget responsibility. That agency, after reviewing the proposal and perhaps after consulting with the agency, determines what it will submit to the legislative branch (Congress in the Federal Government), which has the final say, subject only to the veto powers of the Chief Executive (President in the Federal Government, Governors at the state level). Legislators, before passing on the budget proposal before them, often hold public hearings on the agency's budget in which they frequently engage in extensive questioning of agency personnel over budget priorities and expenditures.

In Brazil, in so far as electricity regulation is concerned, as noted in the Case Study, there is a two step process in the budget. The first step is set out in the law creating ANEEL, namely the authority to collect an assessment of .5% of all revenues in the power sector. The second step is to obtain authority to spend the money collected. The difficulties associated with that process are set out in the Brazil Case Study herein.

In the European Union, the budget process varies from country to country, but an outline of the details in each of the member countries can be found in Appendix H to this report, which is

20 In most jurisdictions in the U.S., the budget for the regulatory agency is, as in the Israeli case study, free standing, in that it is not subsidiary to the budget of any Department of government. There are some exceptions. The FERC (Federal Energy Regulatory Commission) budget, for example, is technically a part of the Department of Energy (DOE) budget, but DOE exercises no real authority over the agency's budget. In the State of Massachusetts, the regulatory agency has historically had its budget contained in the budget of an Executive Department, but is one of the few, and perhaps only, state regulatory bodies to have such an arrangement.
extracted from the CEER Regulatory Benchmark Report of 2005. Despite the country by country variations in the budget approval process, there is a common theme to the process that is not unlike that in the U.S., namely that there is administrative and/or legislative approval required before expenditures are authorized.

One jurisdiction which is taking a slightly varied approach is the U.K., where the budget of Ofgem requires the approval of the internal Audit Committee (the majority of whose members are non executive) and then approval of the Treasury Parliament. As noted elsewhere in the report, Ofgem operates on a five year budget plan, subject to an RPI-X cost control mechanism which is designed to provide the agency with incentives for the efficient conduct of its business.21

2. Audit Oversight

As noted in the statutes and reports attached as Appendices to this report, all regulatory agencies surveyed are subject to rigorous audit requirements. The key principle is that independence of regulatory institutions does not suggest that the agencies are any less accountable for their stewardship of public resources than any other organ of government.

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21 One other anomaly of the British system is that two of the country's regulatory agencies, as noted in footnote 14, are state guaranteed corporations and not treated as governmental bodies at all. Nonetheless they are still subject to their own budget and audit processes.
PORTUGAL: The Case of Shifting Financial Oversight

In the initial period after the creation of ERSE (the Portuguese energy regulatory agency), the budget was prepared by the Agency’s Board of Directors and submitted, together with the work program, to the Consultative Council (CC), an internal body of the agency composed of representatives from consumers, electricity undertakings and some Ministries (Economic Affairs, Environment, Consumer Protection). Although it never did so, the CC was empowered to reject the proposed budget and ERSE would not change it. The CC decision was binding. If CC would have rejected the budget, ERSE would have reverted to the previous year’s budget with an adjustment for inflation.

Financial supervision was assured by a supervisory board of three persons appointed by the government and including a registered “técnico oficial de contas” (technical official of accounts). Moreover, ERSE accounts could be controlled at any time by the “Tribunal de Contas”, an independent body in charge of supervising all public expenditures (from municipalities to government, parliament, and all other public institutions, including regulators).

At the end of 2001, in order to ensure more transparency of public expenditure, the budgets of regulatory agencies were included in the State budget. Since that change, the ERSE Board of Directors has prepared the budget, together with the work program, and submitted it to the CC for their non-binding opinion. Once the opinion is written, both the budget and CC opinion are sent to the Government. The Government then incorporates the budget in the State budget and that is sent to the Parliament for approval. Now the budget is formally approved by the Parliament. In theory, the Government could, if it chose to do so, modify ERSE’s budget, but it has never actually done so.

What has happened several times, however, is that due to high public deficits all ministries are asked by the Minister of Finance, in charge of the State budget, to cut their proposed budgets. In those cases, ERSE was asked to cut its budget as well. Such required cutbacks in the ERSE budget are more symbolic than meaningful, since ERSE is entirely funded by assessments on tariffs, not by taxes, so the net effect of cutting ERSE’s budget on a fiscal deficit is nothing.

In addition to the 2001 changes above, the supervisory board was reduced to the “técnico oficial de contas” and the “Tribunal de Contas” remains as a third line of budgetary control in addition to the government and parliament.

Finally, in the event of a budget surplus at the end of a fiscal year, the remaining funds are simply carried over to the next year’s budget, thus reducing the amount of money collected from consumers through network tariffs in that next year.
F. Special Budget Considerations

1. Budget Surplus

Regulatory Agencies may, from time to time, have a surplus in their budget at the end of a fiscal year. These surpluses are treated differently in different jurisdictions. Conceptually, however, there are essentially three different options, some of them perhaps reflective of the nature of the funding regime. They are as follows:

a. Return the surplus to the treasury. This option is perhaps most logically tied to regulatory agencies whose funding is provided by the national treasury, but may be the practice even in jurisdictions using fees or assessments (e.g. Ohio. As noted in the Brazilian case study below, the Government does not even wait for the end of the fiscal year before effectively declaring the existence of a surplus, and seizing regulatory funds for the treasury.)

b. Return the surplus to those that paid the funds. (In the case of ERSE in Portugal, any end of year surplus is used to offset obligations to pay regulatory assessments or fees for the subsequent fiscal year, which perhaps makes the practice effectively a blend of options b and c.)

c. Allow the agency to retain the funds for its use. (e.g. In the case of Ofgem in the U.K., where the agency and the Treasury agree on a five year spending plan indexed to the rate of inflation less than 3% per year, the agency is allowed to bank any annual surplus for its use in a subsequent year during the five year cycle. Any surplus at the end of the cycle is returned to the treasury. To make the scheme more fully symmetrical, Ofgem is also authorized to request more funds during the five year cycle if it is approved by the agency's Audit Committee and the Treasury).

From a policy perspective, as opposed to the practical politics of dealing with budgetary authorities, there are some important considerations. The first is that whether regulators obtain their funds from assessments or fees, as opposed to taxes, any reversion of surplus funds to the treasury is contrary to the nature of the financing regime. The assessments or fees paid are by design for specified services, and, unlike general tax revenues, not for the discretionary use of the government. Indeed, governments act inappropriately when they attempt to impose “hidden taxes” through ad hoc appropriation of regulatory assessments. Logic and sound public policy, therefore, would suggest that any excess funds collected should either be returned to the payers, or, alternatively, kept in trust for future use on their behalf. Doing otherwise could pose a moral hazard, not unlike that inherent in the Brazil case study below where the Government precludes the use of some portion of the revenue collected in order to divert it to other uses of its choosing. It also runs contrary to such important and highly relevant principles of providing the agency with incentives for efficient stewardship of its resources, sending proper price signals regarding the costs of regulation, of transparency in taxation, and of regulatory independence.
2. Political Interference

It would be quite satisfactory if budget matters were solely questions of balancing needs with resources and efficient use of the latter. Unfortunately, it would also be naïve to believe that such is the case. As was pointed out in a earlier footnote, Ofwat's budget in the U.K. was disputed for policy reasons, as much, if not more, because of policy objectives rather than pure expenditure questions. In Ohio one year, the displeasure of a powerful legislator with the staff member of the Public Utilities Commission in charge of the licensing of new energy facilities (e.g. power plants and transmission lines), arranged to zero out the appropriation for that person's position, effectively firing that individual. In the Brazilian case study below, the political interference was motivated not by policy concerns related to anything within the regulatory arena at all, but, rather, to the Government's overall fiscal circumstances and policy. In other places, there have been efforts to use budget debates for a variety of punitive or policy purposes. Such occurrences are hardly surprising and there is certainly no magic prophylactic to prevent politics from entering into the budget process.

There are, however, some things that regulators have done to try to insulate themselves from politically driven budget manipulation. One is to make a powerful and professional case for the expenditures which they seek to make. Another is to make budget matters as transparent as possible in order to expose manipulation to the light of day. One way to increase transparency is to make certain that parties who might be adversely affected by budget maneuvers are aware of what is occurring and are in a position to weigh in with countervailing appeals. Another way is to simply lay out the consequences of various budget formulations (i.e. what work cannot be performed, or what can only be done on a less than optimal basis and why, as well as the consequences thereof). Where budget objections by particular parties are motivated by policy issues, setting out the consequences of inadequate funding can often serve to make those motivations quite clear. Sometimes regulators, in response to budget concerns, have chosen to highlight what activities will be curtailed or cut back, and constituents for those activities mobilize in order to protect what they believe to be desirable programs or efforts. As noted, there is no magic formula for protecting regulatory budgets from politics, and it can certainly be, and has frequently been, argued that in the interests of assuring accountability, there should not be. It is simply a risk of which regulators must always been aware and prepared to handle.

3. Macro Economic Impact

While it certainly can be argued that, from a policy perspective, regulatory expenses are a constant regardless of macro economic circumstances, those arguments, more often than not, succumb to the political reality that in times of economic hardship, where the rest of government and perhaps society as a whole is suffering cutbacks and hardships of one sort or another, regulatory agencies should expect to suffer their share of the pain.22 The symbolism of the cutbacks is often quite

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22 In an assessment or fee based system where approved regulatory expenditure levels drive the amount of revenue collected, or where protections are in place to avoid diversion of funds collected for regulation, of course, cutbacks in regulatory agency spending is a zero sum game for government since spending reductions automatically cause correlated reduction in revenue collection. In those circumstances, therefore, such cutbacks, as a practical matter, have
powerful and can often override other concerns. What is important, however, is that adverse macro economic or government fiscal circumstances not be used to justify or mask punitive measures taken against regulatory agencies. Simply stated, regulatory bodies should not be subjected to more adverse treatment than other government departments in order to avoid subterfuges for undermining principles of regulatory independence as well as to avoid undue disruptions in the performance of the agency's work.

BRAZIL: The Case of the Pre-Declared Budgetary Surplus /Shrunken Budget

By law, ANEEL, the nation’s electricity regulatory agency, is entitled to collect .5% of all revenues collected in the electricity market. When the law was written, it was anticipated that the amount paid to the agency would allow it not only to support its own activities, but also to fund academic research and training on regulation, finance consumer councils, and provide funds to regulatory agencies in individual states who would assume some delegated regulatory responsibilities. Those plans, however, have been derailed by the budget authorities. The last two governments have imposed strict limits on public expenditures in an effort to reduce the fiscal deficit. As part of the effort to enforce fiscal discipline, the Ministry of Finance, in its role of overseeing the national budget, has chosen to treat the regulatory fees collected from consumers as if they were indistinguishable from other government revenues, in effect, a hidden tax. The result is that the actual budgets of the nation’s independent regulatory agencies have all been cut back from that which is statutorily authorized. In the case of ANEEL, the budget cut has actually been on the order of 50%, so the .5% of revenues which is called for in law is reduced in actual practice to approximately .25%, an amount which has made agency functioning less than optimal, and has rendered the grander plans originally considered beyond reach. The Government has treated the nation’s other regulatory agencies similarly, although for reasons that are not entirely clear, the percentages vary from agency to agency.

The practice of confiscating agency funds has, not surprisingly, caused turmoil on the staff, whose senior levels have witnessed 20-25% attrition in some years, largely due to inadequate compensation and frustration over having to do their work with inadequate resources at their disposal. Many observers, including many active participants in the regulatory process, have complained publicly that the shortage of resources has adversely affected the quality of work of the agency. While that opinion is, on its face, subjective in nature, it is nonetheless a view that is fairly widespread among people who are familiar with electric regulation in the country. In short, the budget process has, to a very serious degree, undermined the effectiveness of the regulatory regime. In addition, while there is no evidence in Brazil that the Ministry’s motivation for budget slashing was anything other than fiscal, as opposed to retaliation for any decisions regulators had made, it is very easy to see how budget arrangements that effectively override laws regarding the funding of regulatory agencies can be used to compromise not only the effectiveness, but also the independence of regulatory agencies.

no effect on the government's balance sheet, and, from that perspective make absolutely no sense at all. That reality, however, more often than not, has succumbed to the symbolic value of not appearing to give regulatory agencies more favorable budget treatment than other agencies of government.
G. Liability

The liability of regulatory agencies for their actions should be considered in two separate categories of exposure to liability risks, the first being liability for official action, namely liability for the effect of substantive decisions, and the second relating to the ordinary business of the agency. The second category relates not to substantive decisions but to such matters as employment, negligence, and other general types of liabilities associated with any governmental department going about its ordinary course of business. Given the fact that legal systems vary widely from jurisdiction to jurisdiction, the question can only be addressed in generalities and international, particularly U.S. experience, rather than the specifics of law applicable to Anguilla. Some focus on the U.S. experience is probably appropriate for three reasons: the fact that the U.S. is arguably one of, if not the, most litigious of societies; the fact that the U.S. has had more experience with independent regulatory agencies than most other countries; and, quite frankly, because the author is a U.S. trained lawyer, more familiar with liability issues in his own country than elsewhere.

In regard to liability for substantive decisions, there should be relatively little risk for monetary liability, either personal to agency personnel who participated in the decisions, or to the agency itself, as long as the decision was reasonable (i.e. not necessarily correct) and taken in good faith. There are solid policy reasons for the limited nature of liability for decisions taken in good faith. They are that good people would refuse to take positions where they were exposed to liability for making decisions they made in good faith; that it is an inherent nature of regulatory decision making that some interests will gain and others will lose in most regulatory decisions and no liability should flow from such a course of events; and finally, that regulators should not be given incentives to make decisions based on reducing the risk of liability as opposed to serving the long term public interest. In specific regard to regulatory agencies, it is sometimes argued that regulators should be liable for egregious conduct of regulated companies because of an alleged failure to control a company subject to their jurisdiction. While there may be isolated cases where a regulatory agency knew of a company's problematic behavior and willfully failed to act, the question of regulators assuming secondary liability for failure to control the company with primary liability is a difficult one because of the complicated nature of the relationship between the regulator and the regulated, the processes which, by law, regulators are compelled to respect, and the difficulties of defining the precise level of knowledge and control a regulator is charged with having. It is the difficulty in resolving these types of questions which provides a rationale for insulating regulators from those types of liability. There is, of course, always the risk that the reviewing appellate body, such as a Court, will find that the decision was contrary to law, but that is not a matter related to either agency or personal liability.

There are two major exceptions to the lack of monetary liability, and both tend to go toward personal liability of the regulators rather than agency liability. The first is in the area of good faith. If the regulators are found to have been acting in bad faith they can, and in some cases have, been found to be personally liable to parties who can demonstrate that they were harmed by the questionable actions. There was a recent case in Arizona, where one or more of the Commissioners was found to have acted in bad faith in regard to a proposed merger and were found personally liable to the party who alleged that he was harmed by their behavior. The behavior alleged, however, went far beyond official decision making, but to the general bias and hostility the
Commissioner had allegedly demonstrated. Interestingly, the liability was exclusively personal to the offending official and not to the agency itself.

The second exception to lack of monetary liability relates to violations of specific provisions of law which cause monetary damages to an identifiable party. Many jurisdictions, for example, prohibit premature or inappropriate disclosure of information that would affect the price of securities. An example of that would be the disclosure of elements of a forthcoming decision by the agency before the decision is formally taken and put on the public record that adversely affect the price of a company's stock. While laws vary considerably as to what types of actions might be specifically prohibited, suffice it to note that violations of those provisions can lead to liability. In many cases the liability is personal to the offending official, but may also, in some cases, become the agency's liability as well. The laws whose violation might give rise to monetary liability are likely to vary from jurisdiction to jurisdiction, so it is difficult to enumerate the types of circumstance that might pose liability risks. It is sufficient to note that if there are specific provisions of law, the violation of which could reasonably do harm to an adversely affected party, the risk of liability, both personal and agency, is very real.

The second category of liability is how the agency, and/or its officials, carry out business as opposed to the decisions it makes. If, for example, an agency employee is negligently operating an automobile on agency business and causes an accident, both the agency and the driver might incur liability. In recent years there have been cases where regulatory agency personnel in some U.S. states have alleged that they were discriminated against or harassed because of race or gender. Where those charges are proven to be true, regulatory agencies, like all other branches of government, or even private companies, have very real liability. Unlike in the decision-making area, where there are strong policy reasons to insulate regulatory agencies and personnel from liability, it is difficult to make the same policy arguments to insulate regulators from general business risks.

There are other issues which relate to the liability that merit some attention, such as whether the doctrine of sovereign immunity, namely that the state cannot be sued or which limits the liability of the state in some fashion, applies. To the extent that that doctrine still exists in law, and in the U.S. it has been weakened considerably over time, it might shield regulatory agencies, or even regulatory personnel, from liability. Another question is if liability is established, who pays? Is the agency liable or is the government itself liable? The answer to that is largely dependent on the nature of the agency's legal status. In the U.S. for example, the regulatory agencies are, for legal purposes, considered to have a separate legal identity, in which case any liability is uniquely the agency's and not that of the state. There are, however, jurisdictions where the circumstances might be different. It should be noted that even where the agency's liability is indistinguishable from that of the state, budget officials are always capable of assigning liability by how they choose to allocate budget responsibility for making the required payments.

Finally there is the question of boundaries between agency liability and the liability of agency personnel, as well as the related question of indemnification of agency personnel for any liabilities

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23 There were recent cases in two U.S. states where male Commissioners were alleged to have sexually harassed female members of the agency staff. In neither case, was there any immunity for either the regulators or the agency. The matters were left to be resolved on the facts alone.
they may incur. While the answers to these questions may well vary from jurisdiction to jurisdiction, a general rule is that if the officials are acting in their official capacity, or in ways that reasonably appear to be official, then the agency is liable for their actions, although it may well be that both the agency and the personnel are liable. If, on the other hand, agency officials are acting outside of their official duties and it would not be reasonable to construe their actions otherwise, then the liability may not accrue to the agency. Like all general rules, however, there may be many exceptions, the most notable of which would be if a jurisdiction had a specific statute governing the situation.

It may well be that the government or agency believes it is best to purchase insurance (if it is available) to cover agency liability or to indemnify agency officials in the event that they incur liability. To the extent that indemnification is provided, it needs to be very carefully defined so that all parties know what actions are covered, and which are not. There is also a public policy issue regarding whether officials should be indemnified for unlawful or egregious conduct (i.e. are there actions which are so unacceptable that there can be no alternative to personal responsibility?). The benefits of insurance or indemnification, of course, is that it substantially reduces the uncertainties regarding liability, but is not cost free in terms of both economics and public policy considerations.
Appendix A: Extracted from the Public Utilities Code of Ohio

4905.10 Assessment for expenses.

(A) For the sole purpose of maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of this state, an amount equivalent to the appropriation from the public utilities fund created under division (B) of this section to the public utilities commission for railroad and public utilities regulation in each fiscal year shall be apportioned among and assessed against each railroad and public utility within this state by the commission by first computing an assessment as though it were to be made in proportion to the intrastate gross earnings or receipts, excluding earnings or receipts from sales to other public utilities for resale, of the railroad or public utility for the calendar year next preceding that in which the assessment is made. The commission may include in that first computation any amount of a railroad’s or public utility’s intrastate gross earnings or receipts that were underreported in a prior year. In addition to whatever penalties apply under the Revised Code to such underreporting, the commission shall assess the railroad or public utility interest at the rate stated in division (A) of section 1343.01 of the Revised Code. The commission shall deposit any interest so collected into the public utilities fund. The commission may exclude from that first computation any such amounts that were over reported in a prior year.

The final computation of the assessment shall consist of imposing upon each railroad and public utility whose assessment under the first computation would have been one hundred dollars or less an assessment of one hundred dollars and recomputing the assessments of the remaining railroads and public utilities by apportioning an amount equal to the appropriation to the public utilities commission for administration of the utilities division in each fiscal year less the total amount to be recovered from those paying the minimum assessment, in proportion to the intrastate gross earnings or receipts of the remaining railroads and public utilities for the calendar year next preceding that in which the assessments are made.

In the case of an assessment based on intrastate gross receipts under this section against a public utility that is an electric utility as defined in section 4928.01 of the Revised Code, or an electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, such receipts shall be those specified in the utility’s, company’s, cooperative’s, or aggregator’s most recent report of intrastate gross receipts and sales of kilowatt hours of electricity, filed with the commission pursuant to division (F) of section 4928.06 of the Revised Code, and verified by the commission.

In the case of an assessment based on intrastate gross receipts under this section against a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, such receipts shall be those specified in the supplier’s or aggregator’s most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the commission pursuant to division (B) of section 4929.23 of the Revised Code, and verified by the commission. However, no such retail natural gas supplier or such governmental aggregator serving or proposing to serve customers of a particular natural gas company, as defined in section 4929.01 of the Revised Code, shall be assessed under this section until after the commission, pursuant to section 4905.26 or 4909.18 of the Revised Code, has removed from the base rates of the natural gas
company the amount of assessment under this section that is attributable to the value of commodity sales service, as defined in section 4929.01 of the Revised Code, in the base rates paid by those customers of the company that do not purchase that service from the natural gas company.

(B) Through calendar year 2005, on or before the first day of October in each year, the commission shall notify each such railroad and public utility of the sum assessed against it, whereupon payment shall be made to the commission, which shall deposit it into the state treasury to the credit of the public utilities fund, which is hereby created. Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the commission shall notify each railroad and public utility that had a sum assessed against it for the current fiscal year of more than one thousand dollars that fifty per cent of that amount shall be paid to the commission by the twentieth day of June of that year as an initial payment of the assessment against the company for the next fiscal year. On or before the first day of October in each year, the commission shall make a final determination of the sum of the assessment against each railroad and public utility and shall notify each railroad and public utility of the sum assessed against it. The commission shall deduct from the assessment for each railroad or public utility any initial payment received. Payment of the assessment shall be made to the commission by the first day of November of that year. The commission shall deposit the payments received into the state treasury to the credit of the public utilities fund. Any such amounts paid into the fund but not expended by the commission shall be credited ratably, after first deducting any deficits accumulated from prior years, by the commission to railroads and public utilities that pay more than the minimum assessment, according to the respective portions of such sum assessable against them for the ensuing fiscal year. The assessments for such fiscal year shall be reduced correspondingly.

(C) Within five days after the beginning of each fiscal year through fiscal year 2006, the director of budget and management shall transfer from the general revenue fund to the public utilities fund an amount sufficient for maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state during the first four months of the fiscal year. The director shall transfer the same amount back to the general revenue fund from the public utilities fund at such time as the director determines that the balance of the public utilities fund is sufficient to support the appropriations from the fund for the fiscal year. The director may transfer less than that amount if the director determines that the revenues of the public utilities fund during the fiscal year will be insufficient to support the appropriations from the fund for the fiscal year, in which case the amount not paid back to the general revenue fund shall be payable to the general revenue fund in future fiscal years.

(D) For the purpose of this section only, “public utility” includes:

(1) In addition to an electric utility as defined in section 4928.01 of the Revised Code, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of the company’s, cooperative’s, or aggregator’s engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified;

(2) In addition to a natural gas company as defined in section 4929.01 of the Revised Code, a retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code, to the extent of the supplier’s or aggregator’s engagement in the
business of supplying or arranging for the supply in this state of any competitive retail natural gas service for which it must be certified.

(E) Each public utilities commissioner shall receive a salary fixed at the level set by pay range 49 under schedule E-2 of section 124.152 of the Revised Code. Effective Date: 06-26-2001; 06-30-2005
Appendix B: Extracted from the Public Utilities Code of California

PUBLIC UTILITIES CODE
SECTION 401-410

401. (a) The Legislature finds and declares that the public interest is best served by a commission that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it. The Legislature further finds and declares that funding the commission by means of a reasonable fee imposed upon each common carrier and business related thereto, each public utility that the commission regulates, and each applicant for, or holder of, a state franchise pursuant to Division 2.5 (commencing with Section 5800), helps to achieve those goals and is, therefore, in the public interest.

(b) The Legislature intends, in enacting this chapter, that the fees levied and collected pursuant thereto produce enough, and only enough, revenues to fund the commission with (1) its authorized expenditures for each fiscal year to regulate common carriers and businesses related thereto, public utilities, and applicants and holders of a state franchise to be a video service provider, less the amount to be paid from special accounts except those established by this article, reimbursements, federal funds, and the unencumbered balance from the preceding year; (2) an appropriate reserve; and (3) any adjustment appropriated by the Legislature.

(c) For purposes of this chapter, an "appropriate reserve" means a reserve in addition to the commission's total authorized annual budget to regulate common carriers and related businesses, public utilities, and applicants and holders of a state franchise to be a video service provider, to be determined by the commission based on its past and projected operating experience.

402. The Public Utilities Commission Utilities Reimbursement Account is hereby continued in existence. All fees collected by the commission pursuant to Section 431 shall be transmitted to the Treasurer at least quarterly for deposit in the account.

403. There is hereby created the Public Utilities Commission Transportation Reimbursement Account in the General Fund. All fees collected by the commission pursuant to Section 421 shall be transmitted to the Treasurer at least quarterly for deposit in the account.

404. (a) All fees paid pursuant to this chapter, exclusive of any penalties for delinquency, shall be allowed by the commission in a separate order as an ordinary operating expense for purposes of establishing rates or charges. The commission shall authorize each person or corporation subject to Section 421 or 431 to annually adjust its rates or charges for intrastate services so as to collect from its customers and subscribers an amount sufficient to pay the amount of the fee required by Section 421 or 431 together with the costs of collecting the fee from each customer or subscriber.

(b) The commission shall adopt rules to determine the appropriate level of fees for carriers that provide transportation services incidental to commercial balloon operations, commercial river rafting, or skiing.
(c) Each person or corporation subject to Section 421 or 431 may identify separately, on the bill of each customer or subscriber, the amount to be paid by each customer or subscriber for purposes of funding the commission pursuant to this chapter.

(d) Persons or corporations subject to Section 421 or 431 shall pay the fee in accordance with Section 423 or 433 after collection from their customers or subscribers.

405. If any person or corporation subject to this chapter is in default of the preparation and submission of any report or the payment of any fee required by this chapter for a period of 30 days or more, the commission may suspend or revoke the certificate of public convenience and necessity, permit, or other operating authority of the person or corporation or order the person or corporation to cease and desist from conducting all operations subject to the jurisdiction of the commission, and the commission may estimate from all available information the appropriate fee and may add to the amount of that estimated fee a penalty not to exceed 25 percent of the amount on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the person or corporation shall be stopped to complain of the amount of the commission's estimate.

Upon payment of the fee so estimated and penalty, if applicable, the certificate, permit, or other operating authority of the person or corporation suspended in accordance with this section shall be reinstated or the order to cease and desist revoked. The commission may grant a reasonable extension of the 30-day period to any person or corporation upon written application and a showing of the necessity of the extension.

Upon revocation of any certificate, permit, or other operating authority or issuance of an order to cease and desist pursuant to this section, all fees in default shall become due and payable immediately.

406. The commission may bring an action, in its own name or in the name of the people of the state, in any court of competent jurisdiction, for the collection of delinquent fees estimated under Section 405, or for an amount due, owing, and unpaid to it, as shown by report filed by the commission, together with a penalty of 25 percent for the delinquency.

407. The commission shall authorize refunds of the fees provided for in this chapter when the fees were collected in error.

408. Notwithstanding any other provision of law, all fees and charges collected by the commission pursuant to this code from each common carrier and related business subject to Section 421 and from interstate or foreign highway carriers registered pursuant to the Interstate and Foreign Highway Carriers' Registration Act (Chapter 2 (commencing with Section 3901) of Division 2), shall be deposited in the Public Utilities Commission Transportation Reimbursement Account, in addition to the fee authorized by Section 421.

409. (a) Notwithstanding any other provision of law, all fees and charges collected pursuant to this code by the commission from each public utility subject to Section 431, with the exception of any penalty collected pursuant to Section 405 or 406, shall be deposited in the Public Utilities Commission Utilities Reimbursement Account, in addition to the fee authorized by Section 431.
(b) A penalty collected pursuant to Section 405 or 406 shall be deposited in the General Fund.

409.5. The commission shall maintain those records as are necessary to account separately for all fees and charges, including the fees authorized by Section 431, received from each class of utility subject to Article 3 (commencing with Section 431) and remitted pursuant to Section 409.

410. The commission may establish rules and regulations that it deems necessary to carry out the provisions of this chapter.
Appendix C: Extracted from the Florida Public Utilities Code

350.113 Florida Public Service Regulatory Trust Fund; moneys to be deposited therein.--

(1) There is hereby created in the State Treasury a special fund to be designated as the "Florida Public Service Regulatory Trust Fund" which shall be used in the operation of the commission in the performance of the various functions and duties required of it by law.

(2) All fees, licenses, and other charges collected by the commission shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used in the operation of the commission as authorized by the Legislature; however, penalties and interest assessed and collected by the commission shall not be deposited in the trust fund but shall be deposited in the General Revenue Fund. The Florida Public Service Regulatory Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) Each regulated company under the jurisdiction of the commission, which company was in operation for the preceding 6-month period, shall pay to the commission within 30 days following the end of each 6-month period, commencing June 30, 1977, a fee based upon the gross operating revenues for such period. The fee shall, to the extent practicable, be related to the cost of regulating such type of regulated company. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon notification by the commission, be immediately paid or refunded. Each regulated company which is subject to the jurisdiction of the commission, but which did not operate under the commission's jurisdiction during the entire preceding 6-month period, shall, within 30 days after the close of the first 6-month period during which it commenced operations under, or became subject to, the jurisdiction of the commission, pay to the commission the prescribed fee based upon its gross operating revenues derived from intrastate business during those months or parts of months in which the regulated company did operate during such 6-month period. In no event shall payments under this section be less than $25 annually.

(4) The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent. The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company. However, no penalty shall be added to the fee if a return is made and the fee is paid before the date fixed in the notice given by the commission.

(5) The commission, for good cause shown by written request, may extend for a period not to exceed 30 days the time for paying any fee or for filing any report related thereto. If an extension is granted, there shall be collected a charge of 0.75 percent of the fee to be remitted for an extension of 15 days or less, or a charge of 1.5 percent of the fee for an extension of more than 15 days. No other penalty or interest shall be collected if such fee is remitted within the extension time granted. In lieu of paying the interest charge imposed by this subsection, a
regulated company may remit an estimated amount of fee by the 30th day following a 6-month period. Any regulated company which remits an estimated fee payment by such date shall be granted a 30-day extension period in which to file and remit the actual fee due without the interest charge provided hereunder being imposed, unless the estimated fee payment remitted is less than 90 percent of the actual fee due for such period.

(6) All moneys in the Florida Public Service Regulatory Trust Fund shall be for the use of the commission in the performance of its functions and duties as provided by law, subject to the fiscal and budgetary provisions of general law.

(7) Notwithstanding the provisions of s. 350.111, as used in this section only, the term "regulated company" includes any rural electric cooperative or municipal electric utility.

History.--ss. 3, 6, ch. 80-289; ss. 2, 3, ch. 81-318; s. 15, ch. 83-339; s. 6, ch. 87-50; s. 45, ch
Appendix D: Extracted from the Public Utilities Code of Texas

CHAPTER 16. COMMISSION FINANCING

SUBCHAPTER A. ASSESSMENT ON PUBLIC UTILITIES

§ 16.001. ASSESSMENT ON PUBLIC UTILITIES.
    (a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each public utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.
    (b) An assessment under this section is equal to one-sixth of one percent of the public utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.
    (c) An interexchange telecommunications carrier that does not provide local exchange telephone service may collect the fee imposed under this section as an additional item separately stated on the customer bill as "utility gross receipts assessment."


§ 16.002. PAYMENT DATES.
    (a) The assessment is due August 15.
    (b) A public utility may instead make quarterly payments due August 15, November 15, February 15, and May 15.


§ 16.003. LATE PAYMENT PENALTY.
    (a) An additional fee equal to 10 percent of the amount due shall be assessed for any late payment of an assessment required under this subchapter.
    (b) An assessment delinquent for more than 30 days accrues interest at an annual rate of 12 percent on the amount of the assessment and penalty due.


§ 16.004. COLLECTION BY COMPTROLLER. The comptroller shall collect the assessment and any penalty or interest due under this subchapter.

SUBCHAPTER B. GRANTS AND OTHER FINANCIAL ASSISTANCE

§ 16.021. GRANTS OF FEDERAL FUNDS.
(a) The commission may apply to an appropriate agency or officer of the United States to receive and spend federal funds available by grant or other similar form of financial assistance.
(b) This section does not impair the ability of the commission to contract with or receive assistance from a state, local, or other authorized source of funds.


SUBCHAPTER C. MONEY DISPOSITION, ACCOUNTING, AND BUDGET

§ 16.041. APPLICATION OF STATE FUNDS REFORM ACT. Money paid to the commission or to the office under this title is subject to Subchapter F, Chapter 404, Government Code.


§ 16.042. ACCOUNTING RECORDS. The commission shall keep the accounting records required by the comptroller.


§ 16.043. AUDIT. The financial transactions of the commission are subject to audit by the state auditor under Chapter 321, Government Code.


§ 16.044. APPROVAL OF BUDGET. The commission budget is subject to legislative approval as part of the General Appropriations Act.

Appendix E: Excerpted from the Public Utilities Code of Colorado

SECTION 4. 40-2-114, Colorado Revised Statutes, is amended to read:

40-2-114. Disposition of fees collected. All fees collected under section 40-2-113 by the department of revenue shall be remitted to the state treasurer and credited by him as follows: Three percent to the general fund and ninety-seven percent to the public utilities commission fixed utility fund, which fund is hereby created and shall be expended only to defray the full amount determined by the general assembly for the administrative expenses of the commission for the supervision and regulation of the public utilities paying such fees and for the financing of the office of consumer counsel created in article 6.5 of this title. Any unexpended balance remaining in said fund at the end of any fiscal year shall be retained by the state treasurer to defray such administrative expenses of the commission during subsequent fiscal years, and the executive director of the department of revenue shall take any such unexpended balance into account when computing the percentage upon which fees for the ensuing fiscal year shall be based.

SECTION 4. 40-2-114, Colorado Revised Statutes, is amended to read:

40-2-114. Disposition of fees collected. All fees collected under section 40-2-113 by the department of revenue shall be remitted to the state treasurer and credited by him as follows: Three percent to the general fund and ninety-seven percent to the public utilities commission fixed utility fund, which fund is hereby created and shall be expended only to defray the full amount determined by the general assembly for the administrative expenses of the commission for the supervision and regulation of the public utilities paying such fees and for the financing of the office of consumer counsel created in article 6.5 of this title. Any unexpended balance remaining in said fund at the end of any fiscal year shall be retained by the state treasurer to defray such administrative expenses of the commission during subsequent fiscal years, and the executive director of the department of revenue shall take any such unexpended balance into account when computing the percentage upon which fees for the ensuing fiscal year shall be based.


(1) On or before June 1 of each year, the executive director of the department of revenue shall ascertain the aggregate amount of gross operating revenues of all public utilities filing returns as provided in section 40-2-111. The executive director shall then compute the percentage which the full amount determined by the general assembly for administrative expenses of the public utilities commission for the supervision and regulation of such public utilities is of the aggregate amount of gross operating revenues of such public utilities derived from intrastate utility business transacted during the preceding calendar year, and the percentage so computed shall be the basis upon which fees for the ensuing year shall be fixed.

(2) In recognition of the fact that nonprofit generation and transmission electric corporations or associations may be subject to less regulation and to no rate regulation by the commission, the executive director of the department of revenue shall disregard any revenues reported by such entities in making the computations required under subsection (1) of this section. In addition, the executive director of the department of revenue shall, in consultation with the director of the commission, enter into an agreement with each nonprofit generation and transmission electric corporation or association whereby such entity agrees to pay an amount equal to the
administrative expenses reasonably anticipated to be incurred by the commission for the regulation of such entity. Said agreement shall be made by May 1 of the year in which it is to become effective and shall remain effective for not less than two and not more than five years. In the event that the anticipated amount set forth in the agreement proves to be substantially higher or lower than the commission's actual expenses incurred, the agreement for the next following year or years shall be adjusted so as to take such fact into account. If no such agreement is made as provided in this subsection (2), the commission, on its own motion or upon application by the executive director of the department of revenue or by such entity, shall set the matter for hearing and determine the amount to be paid by the entity. Amounts paid under agreements as contemplated by this subsection (2) or by order of the commission shall be used to reduce amounts paid by other utilities under subsection (1) of this section.


ANNOTATION

On or before June 15 of each year, the department of revenue shall notify each public utility subject to the provisions of this article of the amount of its fee for the ensuing fiscal year beginning July 1, computed by multiplying its gross intrastate utility operating revenues for the preceding calendar year, as set forth in its return filed for such purpose, by the percentage determined in accordance with section 40-2-112; but no public utility shall be required to pay a fee in excess of one-fifth of one percent of its gross intrastate utility operating revenues for the preceding calendar year. Such fee shall be paid to the department of revenue in equal quarterly installments on or before July 15, October 15, January 15, and April 15 in each fiscal year. If payment is not made on or before said dates, there shall be added as a penalty ten percent of the installment due, together with interest at the rate of one percent per month on the amount of the unpaid installment until such time as the full amount of the installment, penalty, and interest has been paid. Upon failure, refusal, or neglect of any public utility to pay such fee, or any penalty or interest, the attorney general shall bring suit in the name of the state to collect the same.

**Appendix F: Excerpted from the Public Utilities Code of Wisconsin**

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Note: Chapter PSC 5 as it existed on August 31, 1982 was repealed and a new chapter PSC 5 was created effective September 1, 1982.

**PSC 5.01 Scope.** The public service commission is authorized by s. 196.85, Stats., to charge any public utility, power district, or sewerage system the expenses attributable to the performance of the commission's duties. The purpose of this chapter is to implement s. 196.85, Stats., authorizing the commission to assess these costs.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.02 Definitions.** (1) "Advance assessment" means a bill for the estimated remainder assessment for the current fiscal year, calculated by adding 10% to the remainder assessment for the prior fiscal year.

(2) "Direct assessment" means a bill for costs incurred by the public service commission during the course of an investigation (including the costs of litigation), appraisal or the rendering of requested services, which costs are directly attributable to the utility, power district or sewerage system to which the bill is rendered.

(3) "Remainder assessment" means a pro rate share of the commission's annual expenses for regulation not directly attributable to a specific utility, power district or sewerage system. The remainder assessment for each entity subject to assessment shall be calculated by apportioning the total commission expenses not directly attributable to a specific utility, power district or sewerage system in proportion to gross interstate operating revenues derived from regulated services during the preceding calendar year.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.03 Occasion for direct assessment of expenses.** Direct assessments are made for the costs of:

(1) Investigations instituted by the commission on its own motion, or complaint, or on application made to it; or

(2) The rendering of any engineering or accounting services upon request of a public utility, power district or sewerage system.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.04 Entities subject to assessment.** Direct or remainder assessments shall be made against:

(1) Public utilities, as defined in s. 196.01 (5), Stats.,

(2) Electric utilities, as defined in s. 196.491 (1) (d), Stats. (for direct assessments only).

(3) Power districts, as defined in s. 198.01 (1) and (3), Stats.

(4) Sewerage systems, as governed by ss. 66.0821 and 200.59, Stats.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82; corrections in (1) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register April 2007 No. 616.

**PSC 5.05 Other types of assessment.** (1) **Costs of municipal acquisition.** A municipality seeking to acquire the property of a public utility under the provisions of ch. 196, Stats., shall be assessed the costs of the commission's expenses in making any required appraisal or investigation of utility property.

(2) **Costs of security issuance.** A public service corporation seeking to issue securities under the provisions of ch. 201, Stats., shall be assessed the costs of the commission's expenses in making any required investigation of its books, accounts and practices or appraisal of its property.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register April 2007 No. 616.

**PSC 5.06 Direct and remainder assessment; types of expenses.** (1) The following types of expenses attributable to performance of the commission's regulatory duties shall be included in direct assessment:

(a) Salary, including fringe benefits.

(b) Travel expenses.

(c) Any other directly attributable expenses deemed appropriate.

(2) Overhead expenses shall be included in the remainder assessment.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.07 Chargeable personnel time; direct and remainder assessments.** (1) The time of the following commission personnel shall be directly assessed:

(a) All employees -- except those specified in sub. (2) — engaged directly on a specific investigation, appraisal or rendering of requested services. This time shall include, but not be limited to travel, testimony and attendance at hearings, preparation of audits, summaries and exhibits, and writing and typing reports.

(b) Department heads, when engaged directly on an investigation, appraisal or rendering of requested services rather than in a general supervisory capacity.

(c) Consultants working on a specific proceeding. (2) The time of the following personnel shall be included in remainder assessments:

(a) Department heads acting in a general supervisory capacity.

(b) Hearing examiners.

(c) Reporters, stenographers and clerks in preparation of transcripts, docketing, or filing.

(d) Commissioners.

**PSC 5.08 Direct charges; supporting records.** (1) **TIME RECORDS.** Charges made to the direct assessment for the time of commission staff members shall be supported by weekly time sheets which record activities performed each day according to docket numbers.

(2) **TRAVEL EXPENSE RECORDS.** Travel expense charges to direct assessment shall be supported by records of the travel expense accounts of commission staff members.

**PSC 5.09 Direct assessments; procedure for billing and collection.** (1) **NOTICE OF FINDING OF NECESSITY FOR INVESTIGATION AND INTENTION TO ASSESS COSTS.** (a) Prior to mak-
(b) Notice of the commission's finding of necessity, its intention to assess costs, and the duty to pay "the expenses reasonably attributable" to the scheduled investigation or appraisal shall be served on the affected utility, power district or sewerage system.

(2) **BILLING.**

(a) The commission shall determine the expenses reasonably attributable to the specific investigation, appraisal, or rendition of services and mail a bill to the public utility, power district or sewerage system. The bill may be mailed during the progress of the investigation, appraisal, or rendition of services or at its conclusion and shall constitute notice of the assessment and demand for its payment.

(b) The commission shall render monthly statements to utilities, power districts, and sewerage systems itemizing the names of commission employees engaged in billable work, the hours expended, the hourly rates and the total amount of charges.

(3) **DIVISION OF EXPENSES IN JOINT PROCEEDINGS.** In a joint investigation or where the charges in one investigation are to be divided between two or more public utilities, power districts or sewerage systems, the charges shall be assessed, unless otherwise ordered, in proportion to their respective gross intrastate operating revenues for the preceding calendar year.

(4) **LIMIT TO DIRECT CHARGES.**

(a) Charges directly assessed to a public utility, power district or sewerage system under ss. 196.85 (1) and 184.10 (3), Stats., shall not exceed four-fifths of one per cent of its gross operating revenues derived from intrastate operations in the last preceding calendar year.

(b) The limitation of par. (a) may not include or apply to charges against municipalities under s. 196.855, Stats. (5) **PERIOD FOR PAYMENT.** Direct assessments shall be paid within 30 days after the bill is mailed to each public utility, power district or sewerage system.

(6) **COLLECTION PROCEDURE.** Direct assessments not paid within 30 days after mailing shall be collected according to the provisions of s. 196.85 (3), Stats. Objection to an assessment shall be made within 30 days after mailing according to the provisions of s. 196.85 (4) (a), Stats.

**PSC 5.10 Remainder and advance assessments; procedure for billing and collection.**

(1) **BILLING.** Within 90 days of the beginning of each fiscal year, the commission shall render an advance assessment to each public utility, power district or sewerage system.

(2) **PERIOD FOR PAYMENT.** Advance assessments shall be paid within 30 days after they are mailed.

(3) **COLLECTION PROCEDURE.** Advance assessments not paid within 30 days after mailing shall be collected according to the provisions of s. 196.85 (4) (a), Stats.

(4) **RECONCILIATION.** When an advance assessment is paid, the commission shall either credit or charge the utility, power district or sewerage system for the difference between the prior fiscal year's remainder assessment and the prior fiscal year's advance assessment.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82. Amd. (4) (a), Register, September, 1983, No. 333, eff. 10-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1997, No. 501.

**PSC 5.11 Accounting records.** The commission's accounting system shall include all functions and activities and account for all receipts and expenditures. The commission's accounts shall be open for inspection by the public.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.
PSC 5.01 Scope. The public service commission is authorized by s. 196.85, Stats., to charge any public utility, power district, or sewerage system the expenses attributable to the performance of the commission's duties. The purpose of this chapter is to implement s. 196.85, Stats., authorizing the commission to assess these costs.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.02 Definitions. (1) "Advance assessment" means a bill for the estimated remainder assessment for the current fiscal year, calculated by adding 10% to the remainder assessment for the prior fiscal year.

(2) "Direct assessment" means a bill for costs incurred by the public service commission during the course of an investigation (including the costs of litigation), appraisal or the rendering of requested services, which costs are directly attributable to the utility, power district or sewerage system to which the bill is requested services, which costs are directly attributable to the utility, power district or sewerage system to which the bill is rendered.

(3) "Remainder assessment" means a pro rata share of the commission's annual expenses for regulation not directly attributable to a specific utility, power district or sewerage system. The remainder assessment for each entity subject to assessment shall be calculated by apportioning the total commission expenses not directly attributable to a specific utility, power district or sewerage system in proportion to gross intrastate operating revenues derived from regulated services during the preceding calendar year.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.03 Occasion for direct assessment of expenses. Direct assessments are made for the costs of:

(1) Investigations instituted by the commission on its own motion, or complaint, or on application made to it; or

(2) The rendering of any engineering or accounting services upon request of a public utility, power district or sewerage system.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.04 Entities subject to assessment. Direct or remainder assessments shall be made against:

(1) Electric utilities, as defined in s. 196.491 (1) (d), Stats. (for direct assessments only).

(2) Power districts, as defined in s. 198.01 (1) and (3), Stats.

(3) Sewerage systems, as governed by ss. 66.0821 and 200.59, Stats.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82; corrections in (1) and (4) made under s. 13.93 (2)(m) (b), Stats., Register April 2007 No. 616.

PSC 5.05 Other types of assessment. (1) Costs of MUNICIPAL ACQUISITION. A municipality seeking to acquire the property of a public utility under the provisions of ch. 196, Stats., shall be assessed the costs of the commission's expenses in making any required appraisal or investigation of utility property.

(2) COSTS OF SECURITY ISSUANCE. A public service corporation seeking to issue securities under the provisions of ch. 201, Stats., shall be assessed the costs of the commission's expenses in making any required investigation of its books, accounts and practices or appraisal of its property.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82; correction in (2) made under s. 13.93 (2)(m) (b), Stats., Register April 2007 No. 616.

PSC 5.06 Direct and remainder assessment; types of expenses. (1) The following types of expenses attributable to performance of the commission's regulatory duties shall be included in direct assessment:

(a) Salary, including fringe benefits.

(b) Travel expenses.

(c) Any other directly attributable expenses deemed appropriate.

(2) Overhead expenses shall be included in the remainder assessment.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.07 Chargeable personnel time; direct and remainder assessments. (1) The time of the following personnel shall be included in remainder assessments:

(a) Department heads acting in a general supervisory capacity.

(b) Hearing examiners.

(c) Reporters, stenographers and clerks in preparation of transcripts, docketing, or filing.

(d) Commissioners.

PSC 5.08 Direct charges; supporting records. (1) TIME RECORDS. Charges made to the direct assessment for the time of commission staff members shall be supported by weekly time sheets which record activities performed each day according to docket numbers.

(2) TRAVEL EXPENSE RECORDS. Travel expense charges to direct assessment shall be supported by records of the travel expense accounts of commission staff members.

(3) OTHER EXPENSES. Any other directly attributable expenses directly assessed shall be supported by cost records.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.09 Direct assessments; procedure for billing and collection. (1) NOTICE OF FINDING OF NECESSITY FOR INVESTIGATION AND INTENTION TO ASSSS COSTS. (a) Prior to mak-
§ 5.09

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

The commission shall make an express finding of necessity of the investigation or appraisal and of its intention to assess the costs of the proceeding.

(b) Notice of the commission’s finding of necessity, its intention to assess costs, and the duty to pay “the expenses reasonably attributable” to the scheduled investigation or appraisal shall be served on the affected utility, power district or sewerage system.

(2) BILLING. (a) The commission shall determine the expenses reasonably attributable to the specific investigation, appraisal, or rendition of services and mail a bill to the public utility, power district or sewerage system. The bill may be mailed during the progress of the investigation, appraisal, or rendition of services or at its conclusion and shall constitute notice of the assessment and demand for its payment.

(b) The commission shall render monthly statements to utilities, power districts, and sewerage systems itemizing the names of commission employees engaged in billable work, the hours expended, the hourly rates and the total amount of charges.

(4) LIMIT TO DIRECT CHARGES. (a) Charges directly assessed to a public utility, power district or sewerage system under s. 196.85 (1) and 184.10 (3), Stats., shall not exceed four-fifths of one per cent of its gross operating revenues derived from intrastate operations in the last preceding calendar year.

(b) The limitation of par. (a) may not include or apply to charges against municipalities under s. 196.855, Stats.

§ 5.10

Remainder and advance assessments; procedure for billing and collection. (1) BILLING. Within 90 days of the beginning of each fiscal year, the commission shall render an advance assessment to each public utility, power district or sewerage system.

(2) PERIOD FOR PAYMENT. Advance assessments shall be paid within 30 days after they are mailed.

(3) COLLECTION PROCEDURE. Advance assessments not paid within 30 days after mailing shall be collected according to the provisions of s. 196.85 (4) (a), Stats.

(4) RECONCILIATION. When an advance assessment is paid, the commission shall either credit or charge the utility, power district or sewerage system for the difference between the prior fiscal year’s remainder assessment and the prior fiscal year’s advance assessment.

History: Cr. Register, August, 1982, No. 320, eff. 4-1-82.

§ 5.11

Accounting records. The commission’s accounting system shall include all functions and activities and account for all receipts and expenditures. The commission’s accounts shall be open for inspection by the public.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.


Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

**Chapter PSC 5**

**ASSESSMENT OF COSTS**

**PSC 5.01 Scope.** The public service commission is authorized by s. 196.85, Stats., to charge any public utility, power district, or sewerage system the expenses attributable to the performance of the commission's duties. The purpose of this chapter is to implement s. 196.85, Stats., authorizing the commission to assess these costs.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.02 Definitions.** (1) "Advance assessment" means a bill for the estimated remainder assessment for the current fiscal year, calculated by adding 10% to the remainder assessment for the prior fiscal year.

(2) "Direct assessment" means a bill for costs incurred by the public service commission during the course of an investigation (including the costs of litigation), appraisal or the rendering of requested services, which costs are directly attributable to the utility, power district or sewerage system to which the bill is rendered.

(3) "Remainder assessment" means a pro rata share of the commission's annual expenses for regulation not directly attributable to a specific utility, power district or sewerage system. The remainder assessment for each entity subject to assessment shall be calculated by apportioning the total commission expenses not directly attributable to a specific utility, power district or sewerage system derived from regulated services during the preceding calendar year.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.03 Occasion for direct assessment of expenses.** Direct assessments are made for the costs of:

(1) Investigations instituted by the commission on its own motion, or on application made to it; or

(2) The rendering of any engineering or accounting services upon request of a public utility, power district or sewerage system.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.04 Entities subject to assessment.** Direct or remainder assessments shall be made against:

(1) Public utilities, as defined in s. 196.01 (5), Stats.

(2) Electric utilities, as defined in s. 196.491 (1) (d), Stats. (for direct assessments only).

(3) Power districts, as defined in s. 198.01 (1) and (3), Stats.

(4) Sewerage systems, as governed by ss. 66.0821 and 200.59, Stats.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.05 Other types of assessment.** (1) Costs of municipal acquisition. A municipality seeking to acquire the property of a public utility under the provisions of ch. 196, Stats., shall be assessed the costs of the commission's expenses in making any required appraisal or investigation of utility property.

(2) Costs of security issuance. A public service corporation seeking to issue securities under the provisions of chs. 201 and 204, Stats., shall be assessed the costs of the commission's expenses in making any required investigation of its books, accounts and practices or appraisal of its property.

*History:* Cr. Register, August 1982, No. 320, eff. 9-1-82; correction in (2) made under x.13.93 (2m) (b) 7., Stats., Register April 2007 No. 616.

**PSC 5.06 Direct and remainder assessment; types of expenses.** (1) The following types of expenses attributable to performance of the commission's regulatory duties shall be included in direct assessment:

(a) Salary, including fringe benefits.

(b) Travel expenses.

(c) Any other directly attributable expenses deemed appropriate.

(2) Overhead expenses shall be included in the remainder assessment.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.07 Chargeable personnel time; direct and remainder assessments.** (1) The time of the following commission personnel shall be directly assessed:

(a) All employees -- except those specified in sub. (2) -- engaged directly on a specific investigation, appraisal or rendering of requested services. This time shall include, but not be limited to travel, testimony and attendance at hearings, preparation of transcripts, docketing, or filing.

(b) Department heads, when engaged directly on an investigation, appraisal or rendering of requested services rather than in a general supervisory capacity.

(c) Consultants working on a specific proceeding.

(2) The time of the following personnel shall be included in remainder assessments:

(a) Department heads acting in a general supervisory capacity.

(b) Hearing examiners.

(c) Reporters, stenographers and clerks in preparation of transcripts, docketing, or filing.

(d) Commissioners.

**PSC 5.08 Direct charges; supporting records.** (1) Time records. Charges made to the direct assessment for the time of commission staff members shall be supported by weekly time sheets which record activities performed each day according to docket numbers.

(2) Travel expense records. Travel expense charges to direct assessment shall be supported by records of the travel expense accounts of commission staff members.

(3) Other expenses. Any other directly attributable expenses directly assessed shall be supported by cost records.

*History:* Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**PSC 5.09 Direct assessments; procedure for billing and collection.** (1) Notice of finding of necessity for investigation and intent to assess costs. (a) Prior to mak-
ing any assessment of costs under s. 196.85 (1), Stats., arising out of any investigation of the books, accounts, practices and activities or appraisal of the property of a public utility, power district or sewerage system, the commission shall make an express finding of necessity of the investigation or appraisal and of its intention to assess the costs of the proceeding.

(b) Notice of the commission’s finding of necessity, its intention to assess costs, and the duty to pay "the expenses reasonably attributable" to the scheduled investigation or appraisal shall be served on the affected utility, power district or sewerage system.

(2) BILLING. (a) The commission shall determine the expenses reasonably attributable to the specific investigation, appraisal, or rendition of services and mail a bill to the public utility, power district or sewerage system. The bill may be mailed during the progress of the investigation, appraisal, or rendition of services or at its conclusion and shall constitute notice of the assessment and demand for its payment.

(b) The commission shall render monthly statements to utilities, power districts, and sewerage systems itemizing the names of commission employees engaged in billable work, the hours expended, the hourly rates and the total amount of charges.

(3) DIVISION OF EXPENSES IN JOINT PROCEEDINGS. In a joint investigation or where the charges in one investigation are to be divided between two or more public utilities; power districts or sewerage systems, the charges shall be assessed, unless otherwise ordered, in proportion to their respective gross intrastate operating revenues for the preceding calendar year.

(4) LIMIT TO DIRECT CHARGES. (a) Charges directly assessed to a public utility, power district or sewerage system under ss. 196.85 (1) and 184.10 (3), Stats., shall not exceed four-fifths of one cent of its gross operating revenues derived from intrastate operations in the last preceding calendar year.

(b) The limitation of par. (a) may not include or apply to

(5) PERIOD FOR PAYMENT. Direct assessments shall be paid within 30 days after the bill is mailed to each public utility, power district or sewerage system.

(6) COLLECTION PROCEDURE. Direct assessments not paid within 30 days after mailing shall be collected according to the provisions of s. 196.85 (3), Stats. Objection to an assessment shall be made within 30 days after mailing according to the provisions of s. 196.85 (4) (a), Stats.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82; am. (1) at Register, September, 1983, No. 333, eff. 10-1-83; correction made under s. 13.93 (2m) (b) 7., Stats. Register, September, 1997, No. 501.

PSC 5.10 Remainder and advance assessments; procedure for billing and collection. (1) BILLING. Within 90 days of the beginning of each fiscal year, the commission shall render an advance assessment to each public utility, power district or sewerage system.

(2) PERIOD FOR PAYMENT. Advance assessments shall be paid within 30 days after they are mailed.

(3) COLLECTION PROCEDURE. Advance assessments not paid within 30 days after mailing shall be collected according to the provisions of s. 196.85 (4) (a), Stats.

(4) RECONCILIATION. When an advance assessment is paid, the commission shall either credit or charge the utility, power district or sewerage system for the difference between the prior fiscal year's remainder assessment and the prior fiscal year's advance assessment.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

PSC 5.11 Accounting records. The commission's accounting system shall include all functions and activities and account for all receipts and expenditures. The commission's accounts shall be open for inspection by the public.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.
Appendix G: Excerpt from Energy Working Notes

Funding of Energy Regulatory Commissions

Elizabeth Kelley and Bernard Tenenbaum

INTRODUCTION
In the last 10 years more than 200 infrastructure regulators have been established around the world. Generally, the new regulators were created to encourage private investment in infrastructure sectors that previously were almost entirely state-owned. In almost every instance, the stated goal was to create a new regulatory entity that was independent and accountable and which regulated in a way that was transparent both to the enterprises that were being regulated and to their customers. It was hoped that new regulatory entities with these characteristics would lead to a "depoliticized" regulatory system—one that would give confidence to investors while providing protection to consumers. With the benefit of 20-20 hindsight, it has become clear that creating new regulatory institutions with these institutional and political characteristics is easier said than done.

Consider, for example, the concept of independence. Independence does not mean that the regulator is created outside the government. Instead, it implies independent decision making. An independent regulator is a regulator that can make tariff and other regulatory decisions under specified legal standards without getting the prior approval of a minister or prime minister. If independence is the desired output, then the usually recommended inputs are:

- A clear legal mandate excluding ministerial discretion.
- Appointments to the regulatory body on the basis of professional criteria with restrictions on conflicts of interest.
- Protections from arbitrary removal during fixed terms.
- Staggered terms that do not coincide with the election cycle.
- Ability to hire staff at above civil service salaries.
- Earmarked and secure funding.

1 Bakovic, Tenenbaum and Wooff (2003) argue that these "institutional characteristics" are necessary but not sufficient for getting good sector outcomes (encouraging good commercial performance by regulated enterprises while protecting consumers from monopoly abuses) in many developing and transition economies. In countries with new commissions and difficult starting conditions (high losses, tariffs that do not cover costs, a corrupt or inexperienced judiciary), they recommend that the new regulatory entity be backed up with a "regulatory contract" that specifies the tariff setting system and effectively limits the regulator and government's discretion during the early years following a privatization.

2 Regulatory commissions are not the only governmental entities that are given decision making independence. In many countries, election commissions and central banks are often granted some degree of independent decision making authority. See Stern (2004).

3 See Smith (1997).
In these working notes, we take a closer look at the last element: the funding of the regulatory commission. Several recent surveys have been published that describe, among other things, how regulatory commissions are financed in developed and developing countries. In general, the surveys focus on whether the regulatory commission is funded from the government's general budget or from earmarked fees or taxes. While these surveys are helpful in providing the “big picture,” they often do not go deep enough and therefore can lead to faulty assessments. Even if a commission’s funding comes from sources outside the government’s general budget, its funding cannot be viewed as secure if the government also has the legal right to divert some or all of the outside funds for other government needs. One needs to take a close look at the budget approval and disbursement processes in addition to the sources of funding to make an accurate assessment of whether the commission’s financing supports independent decision making.

In these notes, we have attempted to “drill down” deeper in analyzing the financing of regulatory commission. Specifically, we tried to assess how funding, budget approval and disbursement practices might affect regulatory independence. Our goal was to go beyond producing another cross-country comparison of regulatory practices. In particular, we wanted to see whether it might be possible to produce a checklist of recommended funding practices to achieve both independence and accountability and whether these practices could then be used to produce ratings of commission funding procedures.

We used a three step process:

1. **A Mini-Survey.** We picked a sample of 8 energy regulatory commissions around the world. This was not meant to be a representative sample. These were commissions where we happened to have one or more contacts. We called the commissions and spoke at length to various staff members and other individuals to obtain detailed information on how the commission is funded both in law and in practice.

2. **Recommended Practices.** Based on a review of funding practices for these 8 commissions and our own experiences, we then developed a list of recommended practices. The list is inevitably subjective and we would welcome comments on whether some practices should be eliminated or modified and whether others should be added.

3. **Scoring.** We assigned point values to each of the recommended practices based on our assessment of their relative importance. We used these point values to score the funding practices of the energy regulatory commissions in California and Bulgaria.

The recommended practices are intended to be “best practices” for the financing of regulatory commissions. We think that it should be possible to develop similar lists of best practices for other regulatory practices such as appointments, hiring and transparency. And then once these best practices are defined, it should be feasible to develop a system of overall rankings of the institutional design of regulatory commissions.

These notes are a "status report" on our current thinking. Therefore, they should be viewed as a "work in progress." We would welcome comments and criticisms from colleagues within the World Bank and from interested individuals around the world.
### How Do Energy Regulatory Commissions Get Funded?

**Funding Models in the U.S. and in Emerging Markets**

<table>
<thead>
<tr>
<th>U.S. STATES</th>
<th>FUNDING SOURCES</th>
<th>BUDGET APPROVAL</th>
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<tbody>
<tr>
<td>CALIFORNIA</td>
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<tr>
<td>California Public Utilities Commission (CPU)</td>
<td>The basic programs of the Commission and most of its staff are funded through a surcharge on electricity consumption. State law directs electric utility companies to gather a state energy surcharge of two-tenths of one mil ($0.0002) per kilowatthour (kWh) of electricity consumed by all electrical customers. These funds are segregated in the state treasury as the Energy Resources Program Account (ERPA). For an average household that consumes 600 kWh of electricity per month, the contribution to ERPA is about 12 cents per month or $1.44 per year.</td>
<td>The state legislature has the authority to approve the Commission’s budget each year as part of the state budget process; the governor’s approval is also required for the approved budget to become effective. Due to recent budget crises, some of the excess funds from the ERPA account (those funds in excess of the Commission’s budget) have been rolled over to the state treasury for general government use. This extraordinary transfer of excess monies from state funds, all of which are deemed fungible, has occurred only in times of financial crises. The most recent instance of such a transfer, in 2001, was attributed to the severe fiscal problems faced by the state, and is not a regular occurrence. Such a transfer of funds last occurred in the early 1990s, during a similar fiscal crisis.</td>
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<tr>
<td>California Energy commission</td>
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<tr>
<td>Budget</td>
<td>The state Board of Equalization, the taxing authority, is responsible for collecting the ERPA funds and auditing utilities. The funds collected from ratepayers go into the ERPA account, but the Commission is able to withdraw only the amount of funds approved by the legislature. Excess funds (beyond the amount approved for the Commission’s budget) remain in the ERPA account and earn interest; however, on average, only about 1% of the total budget amount remains in the account from year to year (the rest being spent during the budget year), and this excess has no impact on the surcharge assessed on ratepayers.</td>
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The California Public Utilities Commission regulates privately owned electric, telecommunications, natural gas, water and transportation companies, while the California Energy Commission is the state’s primary energy policy and planning agency. The Energy Commission’s responsibilities include forecasting future energy needs and keeping historical energy data, licensing thermal power plants 50 megawatts or larger, promoting energy efficiency through appliance and building standards, developing energy technologies and supporting renewable energy, and planning for and directing state response to energy emergencies.
# How Do Energy Regulatory Commissions Get Funded?
## Funding Models in the U.S. and In Emerging Markets

<table>
<thead>
<tr>
<th>U.S. States</th>
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<th>Budget Approval</th>
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<tbody>
<tr>
<td><strong>FERC (Federal)</strong></td>
<td>FERC regulates only interstate wholesale power sales and transmission service. It does not regulate sales to end use customers.</td>
<td>Budgets are submitted first to the Office of Management and Budget (OMB is part of the executive branch), which has the authority to cut the budget. Congress then has the power to approve or reject the final budget as part of the overall government budget process. FERC has generally received full funding of the amounts submitted to Congress in recent years. However, in 1999, the budget was cut by approximately $2.5 million, or 1.4%.</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>The Commission’s regulations provide for payment of annual charges by public utilities; the amount of these annual charges is intended to cover the program costs for that fiscal year, with no remaining funds. These charges are adjusted accordingly each year to reflect actual costs incurred.</td>
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<tr>
<td><strong>Budget:</strong> FY03: $192 million</td>
<td>For the electricity industry, the total related program costs are assessed proportionally among public utilities that provide transmission service. Annual charges are calculated based on the proportion of the MWH of electricity transmitted in interstate commerce by each public utility to the sum of MWH of electricity transmitted in interstate commerce by all public utilities being assessed annual charges. Similar formulas are used to determine the annual charges assessed to regulated entities in the hydropower, gas, and oil sectors.</td>
<td>The annual (barges are collected directly by FERC, which then turns over the funds to the U.S. Treasury Department. The Treasury in turn allot the total budgeted funds (equal, in theory, to the amount of funds collected from annual charges) to FERC. Any excess funds beyond the budgeted amount are rolled over to the FERC budget for the following year.</td>
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<td>Regulated entities are permitted by FERC to recoup the costs of the annual (barges through the rates charged to distribution companies and electric utilities that they serve. The formula for calculating this rate increase must be approved by FERC to ensure that the increase covers only the cost of the annual charge.</td>
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<td>The formula for calculating this rate increase must be approved by FERC to ensure that the increase covers only the cost of the annual charge.</td>
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<td>Previously, FERC was funded through user fees, charged for filings submitted by regulated companies — e.g. an application for a rate increase incurred a fee of $55,000. Under this funding scheme, hundreds of types of user fees were levied on regulated entities. There are now only six types of users fees, which together represent less than 5% of FERC's total budget.</td>
<td>Previously, FERC was funded through user fees, charged for filings submitted by regulated companies — e.g. an application for a rate increase incurred a fee of $55,000. Under this funding scheme, hundreds of types of user fees were levied on regulated entities. There are now only six types of users fees, which together represent less than 5% of FERC's total budget.</td>
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<td>The previous funding mechanism also included a charge on wholesale power sales. Original sales as well as resale sales were subject to these charges, so double charging of wholesalers was an issue.</td>
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## Political Issues and Funding
Although FERC is a program revenue agency that does not rely on tax dollars, its budget remains subject to approval by both the executive and legislative branches — OMB and Congress. The Congressional approval process renders FERC susceptible to political considerations, as policy prescriptions can be added to the budget bill, or approval of FERC's funding can be used as a bargaining chip to achieve political objectives. One example of this is the issue of Standard Market Design for wholesale electricity markets, a policy strongly opposed by some states. The 2003 energy bill would prohibit FERC from implementing its proposed Standard Market Design until 2007.

The converse of this political influence is the fact that, due to its small size and technical subject matter, FERC is rarely the object of Congressional scrutiny or concern. Further, because FERC is a program revenue agency, Congress has no incentive to reduce its budget.
How Do Energy Regulatory Commissions Get Funded?
Funding Models in the U.S. and in Emerging Markets* (continued)

<table>
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<td>WISCONSIN</td>
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<tr>
<td>Wisconsin Public Services Commission (WPSC)</td>
<td>Like FERC and the California Energy Commission, WPSC is a program revenue agency as opposed to a tax-revenue agency; the Commission assesses fees on regulated entities, and uses no tax dollars. The WPSC is funded through direct billing of regulated entities, plus a remainder assessment (to cover unbilled costs) based on the previous year’s gross revenues of the regulated entities. The relative percentages of the direct charges and the remainder assessment in the total budget are approximately 40/60. Any excess funds in the remainder assessment at the close of the fiscal year are rolled over to the next year’s account.</td>
<td></td>
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<tr>
<td>Budget.</td>
<td>$22.4 million (FY03)</td>
<td>The total state budget, which includes WPSC’s budget, is approved biannually by the state legislature. The remainder assessment is automatically set at 10% higher than the previous year’s level, as mandated by the state legislature. Due to state funding deficits, the budget has been reduced in recent years, by a total of about 5-10% over this period. The state has used a “cash lapse” mechanism for reducing the budget of program revenue agencies. This involves transferring a given sum from the Commission’s cash reserves to the state budget; the Commission then reduces its budget to compensate for this loss, and utilities (ratepayers) are not billed for this “lapped” amount.</td>
</tr>
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</table>

Staff time is billed directly to the case — and utility — in question. The hourly billing rate is calculated for each staff person based on salary, plus a current fringe rate of 35%, plus a weighted overhead rate of 75% of the salary (for an average hourly billing rate of $80 salary, $28 fringe, and $60 overhead, or $168 total). Staff time is billed on every case including construction cases, investigations and litigation of cases after commission decisions. The remainder assessment comprises the portion of the budget not collected on direct basis, but spent by the commission on other regulatory actions. These are expenses that are not covered in any discernable way — i.e. not directly billable to a specific case.

Cost recovery for utilities: The utilities are allowed to recover the costs of the PSC charges in rates. The recovery is monitored for the majority of large utilities as Part of the annual rate case process, which all major electric and gas utilities (covering 75-80% of the market) must submit. (Smaller utilities, such as municipal utilities, are required to submit rate cases only when requesting changes in their rates.)

Additional Funding: Some additional programs, such as research and programs to manage stray voltage (a major issue for farms, as it can have a significant affect on milk production) are funded by the five largest electric utilities. This arrangement was mandated by the state legislature, as most farms are bond in the service areas of the five largest electric utilities. Federal matching funds, for initiatives such as the gas pipeline safety program, also contribute to the total budget.

*Comment from the Budget and Intervenor Office. On the whole, the PSC, prior to the recent budget problems of the last two fiscal years, has been fairly insulated from budget reductions. In Wisconsin all agencies are subject to ‘chapter 20’ under which the legislature and governor establish the total allocation for each state agency regardless of funding source. These base budgets can only be modified by requesting emergency relief from the legislature’s Joint Finance Committee between biennial budget periods. In some states the PSC or PUC is not constrained by any set limit imposed by the legislature. These are, in effect, sum-sufficient operations that collect funds based on what the agency itself determines as the amount needed to operate each year. This type of model would not be acceptable in Wisconsin because the legislature would never relinquish oversight of operating budget limits.” [Note: We have not yet been able to track down examples of such states.]
### Funding Models in the U.S. and in Emerging Markets (continued)

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>FUNDING SOURCES</th>
<th>BUDGET APPROVAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TURKEY</strong></td>
<td>EMRA is financially and administratively independent. It has its own revenues and its own budget. Sources of funding include:</td>
<td>The budget is currently not subject to government approval. However, a new law under consideration would affect administrative and budget issues for oil regulatory agencies, and could require government approval of budgets. This draft law is currently being amended.</td>
</tr>
<tr>
<td>Turkish Energy Market Regulatory Authority (EMRA)</td>
<td>a) Fees collected for license applications, renewals, modifications, license copies and annual license fees.</td>
<td></td>
</tr>
<tr>
<td><strong>Budget:</strong> $4.7 million (2002)</td>
<td>b) Publications and other revenues.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c) Grants extended by international organizations and institutions to finance studies and projects relating to development of market, provided the details of such grants are made public.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) 25% of the administrative fines imposed by the Board.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>e) Transmission surcharges equal to one percent of the transmission tariff at most.</td>
<td></td>
</tr>
</tbody>
</table>

EMRA was established in 2001, and market opening (the beginning of the licensing process) was in September 2002. The review and evaluation process will take some time, and until it is completed, applicants only pay 1% of the license fees. A provision in the law stipulates that resources for EMRA's budget should be transferred from the general budget, and hence Treasury, until EMRA is able to support itself through revenues. For this reason, Treasury support currently accounts for 56% of the total budget. This picture is expected to change when the 2003 budget figures are published, as regulated entities began paying full licensing fees in 2003. All existing state-owned and private generation facilities applied for licenses in 2003. Several fees in relation to licenses also come into effect, namely, licensing fees (first-time licenses, based on installed capacity), annual license fees (based on kWh of electricity generated per annum), license renewal fees, license modification fees and license duplication fees; plus several license types (transmission, distribution, retail and wholesale).

Licensing fees are approved by the Energy Market Regulatory Board, as is the overall EMRA budget. Board members are selected and appointed by the Council of Ministers, and are responsible for oversight and enforcement of the EMRA law.
How Do Energy Regulatory Commissions Get Funded?
Funding Models in the U.S. and in Emerging Markets* (continued)

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>FUNDING SOURCES</th>
<th>BUDGET APPROVAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>BULGARIA</td>
<td>Although it collects licensing fees from regulated entities, SERC is officially funded through the state budget. That is, while its funding source is licensing fees, SERC’s budget is still considered part of the state budget, and it must be approved by both the Ministry of Finance and the Parliament. The Commission collects licensing fees and renders all excess income beyond the level of its budget to the state treasury, where it is used for general purposes. SERC’s budget is calculated based on salaries (from a fixed scale for civil servants), equipment, and overhead, with no provisions for international travel. In previous years, SERC has collected more than twice the amount of its budget in licensing fees, and the remainder was returned to the state treasury. Current law stipulates that in instances like these, when the difference in income and budget allocation is above a certain percentage, the Commission must propose changes to the licensing fees to reduce the difference. The state Council of Ministers serves as the approving body for all licensing fee proposals from the Commission. Licensing fees (initial and annual fees) are collected biannually from all regulated entities, and the fee amount is calculated according to installed capacity of the utility. Utilities recover the costs of these fees through the tariffs charged to consumers, and approved by SERC. While SERC’s funding is currently under consideration in the pending Energy Act, the draft law maintains the central features of the current funding mechanism. Licensing fees would remain the principal source of funding, and fees in excess of the budget would be rolled into the state budget, as under the current law.</td>
<td>The national Parliament has powers of approval over the state budget (including SERC’s budget) as proposed by the Ministry of Finance. Parliamentary approval of the budget has not, in recent years, been controversial. The president, who in this Parliamentary republic has little power, does not have authority to approve the budget. The Ministry of Finance can and does, however, amend the budget proposed by SERC, often resulting in a lower final budget. According to one source, the SERC is considered a state entity, as noted by both its title and its funding mechanism. It is thus not an independent body, according to the source. Other sources disagree and maintain that SERC does enjoy quasi-independence, despite its funding arrangements.</td>
</tr>
</tbody>
</table>
How Do Energy Regulatory Commissions Get Funded?  
Funding Models in the U.S. and in Emerging Markets* (continued)

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>FUNDING SOURCES</th>
<th>BUDGET APPROVAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>GHANA</td>
<td>Currently, virtually the entire Commission budget is financed through the central government budget with some donor assistance. Additional sources of funding include consultancy fees, fees for Commission publications e.g. rate setting guidelines, penalties for failure to meet operational benchmarks. Fines imposed as a result of prosecution of crimes by utilities are paid through the low courts into the consolidated fund and are not available to the Commission. Although PURC is operationally independent, it is administratively under the Office of the Chief of Staff within the Presidency. The Ministry of Finance usually sets a budget ceiling with respect to the Commission’s budget request. Parliament does not impose a budget ceiling, although it may debate the budget and request charges. There are currently no charges imposed on regulated entities. It has been widely acknowledged that the introduction of a regulatory charge would help to guarantee an independent and sustainable source of funding. The proposal was submitted to the government some time ago, but the necessary approval is yet to be granted for the implementation of the concept.</td>
<td>The Commission’s annual budget is submitted to Ministry of Finance through the Office of the Chief of Staff which approves/recommends it to Ministry of Finance. After Ministry of Finance approval, the Minister must obtain Parliamentary approval for his total budget of which the PURC budget forms a part. Thereafter, disbursement of the final figure approved by Parliament is effected through the central treasury. Once approved, the budget is generally secure and not usually cut. On rare occasions, the amount actually disbursed falls short of the approved amount. After the approvals, the Commission must apply to the Ministry of Finance periodically for disbursement of a range of budget items; some specific budget items must be approved on a case-by-case basis. The differential between approved and actual may be attributed to the overall Government budget/financial outlook rather than targeting of the Commission. Occasional increases in the budget have been allocated through Ministerial interventions as a supplementary vote.</td>
</tr>
<tr>
<td>BRAZIL</td>
<td>ANEEL is authorized to collect a fee of 0.5% of electricity revenues from regulated entities. In the past year, however, the government has siphoned off up to 50% of these funds for general use. This transfer of funds has been well-documented.</td>
<td></td>
</tr>
<tr>
<td>INDIA</td>
<td>The expenses of CERC including all salaries and allowances payable to, or in respect of, the Chairperson and the Member of the Central Commission are charged to the Consolidated Fund of India. CERC prepares its budget for each fiscal year, showing the estimated receipts and expenditure of the Commission, and submits it to the Central Government.</td>
<td>CERC is subject to periodic financial audits by the Auditor-General. It also prepares an annual report detailing its activities, and submits this report to the government.</td>
</tr>
</tbody>
</table>

The material presented here was collected from interviews with commission staff, commission websites, and laws pertaining to the structure of the particular commissions. The opinions expressed in this table are those of individuals within or associated with the commissions.

xxvi
RECOMMENDED PRACTICES FOR FUNDING ENERGY REGULATORY COMMISSIONS

Levels of Funding

1. The level of funding should be adequate to allow the Commission to perform its assigned tasks. There are no hard and fast rules for determining what constitutes an adequate level of funding.
   a. In general, the funding needed by a commission will depend on: the number of tasks it performs, the number of enterprises that it regulates, the number of customers that they serve, the frequency of tariff proceedings, the extent to which the details of the regulatory system have been pre-specified and the complexity of the sector structure.
   b. For example, most states in India currently establish retail tariffs on an annual basis. In contrast, the Chilean regulator resets retail tariffs every 5 years. As a consequence, the Chilean regulator will need a smaller staff than his Indian counterpart. Similarly, a regulator that is regulating a centralized market and an open access transmission regime will need more resources than a regulator that is responsible for setting the tariffs of a single vertically integrated company.

2. There are economies of scale in regulation. The regulatory issues that must be examined (e.g., allowed rate of return, tariff structure, establishment of performance targets) are largely the same regardless of whether the resulting tariff is for 100,000 or 1,000,000 customers. Therefore, small countries are at a regulatory cost disadvantage because the fixed costs of regulation must be spread across a fewer number of customers. One recent survey found that the average number of regulatory staff per million served customers was 59 in developing countries and 15 in developed countries (Domar, Pollitt and Stern, 2002).

Sources of Funding

1. The commission should receive its funding from fees, charges and utility specific taxes rather than from general government budget allocations.
   a. If there is a utility specific tax, it should be imposed on some measure of utility revenues rather than on profits. A utility specific tax is defined as a tax imposed by the government and with the collected revenues earmarked to support the regulatory commission.
   b. The commission may also fund its activities through fees and charges that it imposes on regulated enterprises. The commission should have the discretion to choose the mix of charges and fees that it will use to fund its budget. The charges can be for specific regulatory actions: the issuance and maintenance of licenses, the processing of tariff filing applications, etc. The fees can also be on some measure of enterprise size and energy sales measured on a total revenue or kWh sales basis.
   c. It may be necessary for a new regulatory commission to receive a portion of its budget from the national treasury during the first few years of existence. The law establishing the commission should limit the number of years during which national budget funding will be accepted, so that a transition to self-funding (from the sources listed above) will be achieved.

2. The fees, charges and utility specific taxes should be paid by the regulated energy enterprises or their customers.
   a. If the fees, charges and utility specific taxes are paid by the regulated energy enterprise,
then the enterprise should have the legal right to recover these regulatory costs in its tariffs.

3. The fees, charges and utility specific taxes should go directly to the commission or to a designated trust fund account rather than to a general government account with re-allocation to the commission.

4. If there is a surplus of funds resulting from the different funding sources, some portion of the surplus should be retained in a reserve account that can provide funding for the commission in future years. If the fund grows too large (e.g., equals more than 10% of the commission’s annual budget), then the surplus should be returned to the regulated enterprises or their customers. The surplus funds should not be transferred to the government’s general budget.

**Approval of Budgets and Fees**

1. The executive and legislative branches of the government must have the right to review the commission’s funding levels. However, the commission must be protected from budget cuts motivated by a political reaction to unpopular commission decisions.

2. The commission can be protected from politically motivated budget cuts in two ways:
   a. The law should specify that the commission’s budget must guarantee a minimum funding level. This funding floor could be based a specified charge per connected customer or per kWh sold. It would provide partial protection to the commission if it makes a politically unpopular decision.
   b. If the government or the legislature does not act on the requested budget by a specified date, then the commission’s budget allocation should automatically be set equal to the previous year’s budget or to another pre-specified minimum level.

3. Neither the executive nor the legislative branches of government should have the right to transfer funds earmarked for the commission to other government functions.

**Penalties**

1. The commission should have the legal right to impose penalties on regulated power enterprises.

2. The commission should not be allowed to use penalties to augment its own budget.

3. If a utility fails to meet a pre-specified performance standard relative to an individual customer, any associated penalty should go directly to the affected customer. If this is not feasible or the penalty is not associated with the utility’s performance relative to a specific customer, then the penalties should go into a fund that reduces tariffs for all customers, subsidizes the tariffs of poor customers or provides for other energy-related public benefits (e.g., subsidizing electrification or renewable energy).

4. In general, penalties should stay within the energy sector (though not for funding the commission’s budget) rather than going into a general government budget.
**Review of Expenditures and Performance**

1. In return for receiving more funding independence than a normal government agency, the commission must be held accountable for its expenditures and performance.

2. **Expenditures**—Like any government entity, the commission’s expenditures should be reviewed for prudence and efficiency. However, the commission must have the clear legal right to pay salaries above normal government salaries and to hire outside consultants to assist it in performing its regulatory functions. The audit should be performed by an independent and professional audit entity.

3. **Performance**—The performance of the commission should be reviewed every three to four years by a committee of the legislature. There should be a legal requirement to perform this assessment so that the regulator and ministers know that the design and implementation of the regulatory system will be assessed on a regular basis.
   
   a. The starting point for this assessment should be a written report of a panel of outside, independent experts.
   
   b. The mandate of the panel should be to review the functions and authorities of the commission in light of legislative and government energy policy goals, the division of responsibility with other government entities, transparency of the commission’s processes, adequacy of legal and other protections to ensure the commission’s independence, adequacy of measures to minimize corruption, clarity and specificity of the tariff setting system and predictability of commission decisions.

   c. The report of the panel should be made public when it is submitted to the legislature. To ensure that the assessment is genuinely impartial (i.e., is not biased in favor of the regulator or those who are opposed to the regulator), the panel should also include international regulatory experts from outside the country.
### Characteristics

<table>
<thead>
<tr>
<th><strong>Funding sources:</strong> Fees or charges imposed on the regulated entities or consumers constitute at least 50% (in developing countries) or 75% (in developed countries) of the commission's funding. (+1)</th>
<th>State law directs electric utility companies to gather a state energy surcharge of two-tenths of one mill ($0.0002) per kilowatt-hour (kWh) of electricity consumed by all electrical customers.</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>The commission has the discretion to choose the best mix of changes and fees to fund its budget. (+1)</td>
<td>This is determined by state law.</td>
<td>0</td>
</tr>
<tr>
<td>The fees or charges are paid directly to the commission or into a designated trust fund. (+2)</td>
<td>The state taxing authority collects and disburses the funds.</td>
<td>0</td>
</tr>
<tr>
<td>If the fees or charges are paid by regulated energy enterprises, these enterprises have the legal right to recover these costs in their tariffs. (+1)</td>
<td>N/A (Fees are charged directly to consumers).</td>
<td>0</td>
</tr>
<tr>
<td><strong>Transfer of funds:</strong> Neither the executive nor the legislative branches of government have the right to transfer funds earmarked for the commission to other government functions. (+3)</td>
<td>No. The legislature can, at its discretion, transfer excess funds from the ERCB account (those funds that are in excess of the budgeted amount) to the state budget. In recent years, this has happened only during budget crises.</td>
<td>0</td>
</tr>
</tbody>
</table>

### Budget Approval

<table>
<thead>
<tr>
<th><strong>Budget approval:</strong> The legislature and/or executive have the authority to approve the commission's operating budget. (+2)</th>
<th>Yes. The state legislature is the authority to approve the Commission's budget each year as part of the state budget process; the governor's approval is also required for the approved budget to become effective.</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Budget delay:</strong> If either the government or legislature do not act on the requested budget by a specified date, then the commission's budget allocation is automatically set at least equal to the previous year's budget, or to another pre-specified amount before the beginning of the fiscal year. (+2)</td>
<td>No.</td>
<td>0</td>
</tr>
<tr>
<td><strong>Funding floor:</strong> The law governing the commission's funding establishes a specified charge per connected customer, kWh sold, or gross revenues from activities regulated by the commission. This floor provides partial protection for the commission's budget should the commission make a politically unpopular decision. (+2)</td>
<td>Yes. The surcharge on consumer electricity bills is written in state law.</td>
<td>2</td>
</tr>
</tbody>
</table>

### Penalties

<table>
<thead>
<tr>
<th><strong>Penalties:</strong> The commission may not use penalties to augment its own budget. (+1)</th>
<th>No.</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalties are directed to affected consumers or to public goods programs for the energy sector. (+1)</td>
<td>Unclear.</td>
<td></td>
</tr>
</tbody>
</table>

### Performance Review

<table>
<thead>
<tr>
<th><strong>Performance Review:</strong> There is a legal requirement that the performance of the commission be reviewed every three to four years by a committee of the legislature. This review is based on a report by an independent panel, including international regulatory experts from outside the country. The final report is made public. (+3)</th>
<th>No and yes. Although there are performance reviews of individual programs run by the Commission, there is no provision for a comprehensive review of the Commission's performance.</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audits: The commission's expenditures are subject to regular audits (either scheduled or unscheduled) by external, independent experts from within or outside the government. (+2)</td>
<td>Yes.</td>
<td>2</td>
</tr>
<tr>
<td>The audit report is made public when it is submitted to the legislature. (+1)</td>
<td>Yes.</td>
<td>1</td>
</tr>
</tbody>
</table>

**Total Score:** 13 of 29
## Energy Regulatory Commission Funding: A Scorecard

**BULGARIA: Bulgarian State Energy Regulatory Commission (SERC)**

<table>
<thead>
<tr>
<th>CHARACTERISTICS</th>
<th>COMMENTS</th>
<th>SCORING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Funding Sources and Administration</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding sources: Fees or charges imposed on the regulated utilities or consumers constitute at least 50% (in developing countries) or 75% (in developed countries) of the commission’s funding. (+5)</td>
<td>SERC is funded 100% from the state budget.</td>
<td>0</td>
</tr>
<tr>
<td>The commission has discretion to choose the best mix of charges and fees to fund its budget. (+1)</td>
<td>No.</td>
<td>0</td>
</tr>
<tr>
<td>The fees or charges are paid directly to the commission or into a designated trust fund. (+2)</td>
<td>Licensing fees are paid directly to SERC, but excess funds are transferred to the government thereafter.</td>
<td>2</td>
</tr>
<tr>
<td>If the fees or charges are paid by regulated energy enterprises, these enterprises have the legal right to recover these costs in its tariffs. (+1)</td>
<td>Yes.</td>
<td>1</td>
</tr>
<tr>
<td>Transfer of funds: Neither the executive nor the legislative branches of government have the right to transfer funds earmarked for the commission to other government functions. (+3)</td>
<td>No. All excess funds (beyond the level of the commission’s budget) collected by SERC are transferred to the general budget.</td>
<td>0</td>
</tr>
<tr>
<td><strong>Budget Approval</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budget approval: The legislature and/or executive have the authority to approve the commission’s operating budget. (+7)</td>
<td>Yes. The national parliament has the authority to approve the Commission’s budget each year as part of the budget process; the president’s approval is not required for the approved budget to become effective.</td>
<td>2</td>
</tr>
<tr>
<td>Budget delays: If either the government or legislature do not act on the requested budget by a specified date, then the commission’s budget allocation is automatically set at least equal to the previous year’s budget, or to another pre-specified amount before the beginning of the fiscal year. (+2)</td>
<td>No.</td>
<td>0</td>
</tr>
<tr>
<td>Funding floor: The law governing the commission’s funding establishes a specified charge per connected customer, kWh sold, or gross revenues from tariffs regulated by the commission. This floor provides partial protective for the commission’s budget should the commission make a politically unpopular decision. (+3)</td>
<td>No. While SERC collects licensing fees directly, it can only use the budget amount allocated to it. The budgeted amount could thus be significantly lower than the collected fees.</td>
<td>0</td>
</tr>
<tr>
<td><strong>Penalties</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties: The commission may not use penalties to augment its own budget. (+1)</td>
<td>False. 20% of fees from penalties go to SERC’s budget, the remaining 80% go to the government budget.</td>
<td>0</td>
</tr>
<tr>
<td>Penalties are directed to affected consumers or to public goods programs for the energy sector. (+1)</td>
<td>No. The fees are not allocated to specific purposes or programs in the SERC or government budget.</td>
<td>0</td>
</tr>
<tr>
<td><strong>Performance Review</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Review: There is a legal requirement that the performance of the commission be reviewed every three to four years by a committee of the legislature. This review is based on a report by an independent panel, including international regulatory experts from outside the country. The final report is made public. (+3)</td>
<td>No. The Commission submits an annual report, prepared by staff and Commission, to Parliament. However, the report is not prepared by independent experts.</td>
<td>0</td>
</tr>
<tr>
<td>Audits: The commission’s expenditures are subject to regular audits (either scheduled or unscheduled) by external, independent experts from within or outside the government. (+2)</td>
<td>No audit of financial performance is required.</td>
<td>0</td>
</tr>
<tr>
<td>The audit report is made public when it is submitted to the legislature. (+1)</td>
<td>N/A.</td>
<td>0</td>
</tr>
</tbody>
</table>

**Total Score**: 5 of 20
SELECTED BIBLIOGRAPHY


National Regulatory Research Institute at the Ohio State University, "State Regulatory Commission Budget Reductions and Cost Containment: Results of a Survey." Revised February 2003.


"If you do not know where you are going, any road will take you there."

Professor William Hogan
Director, Harvard Electricity Policy Group
Statement at a public conference of the U.S. Federal Energy Regulatory Commission

Working Notes
The Working Notes series of the Energy and Mining Sector Board are intended to complement the Energy and Mining Sector Board Discussion Papers. Working Notes are lightly edited notes prepared by World Bank staff on topical issues in the energy sector. Working Notes are only available electronically at www.worldbank.org/energy. Comments should be emailed to the authors(s).

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### 2.6. NRA budget

<table>
<thead>
<tr>
<th>Country</th>
<th>NRA</th>
<th>Budget 2004 in euro</th>
<th>Budget 2005 in euro</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>E-Control</td>
<td>8.300.000</td>
<td>9.300.000 (planned)</td>
</tr>
<tr>
<td>Belgium</td>
<td>CREG</td>
<td>11 394.762</td>
<td>11 274.138</td>
</tr>
<tr>
<td></td>
<td>VREG</td>
<td>2.500.000</td>
<td>2.500.000</td>
</tr>
<tr>
<td></td>
<td>CWAPE</td>
<td>3.220.000</td>
<td>3.220.000</td>
</tr>
<tr>
<td></td>
<td>BIM</td>
<td>180.000</td>
<td>210.000</td>
</tr>
<tr>
<td>Cyprus</td>
<td>CERA</td>
<td>1.500.000</td>
<td>1.600.000</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>ERO</td>
<td>3.892.000</td>
<td>3.946.533</td>
</tr>
<tr>
<td>Denmark</td>
<td>DERA</td>
<td>3.400.000</td>
<td>4.000.000</td>
</tr>
<tr>
<td>Estonia</td>
<td>EMI</td>
<td>320.000</td>
<td>326.000</td>
</tr>
<tr>
<td>Finland</td>
<td>EMV</td>
<td>2.400.000</td>
<td>2.700.000</td>
</tr>
<tr>
<td>France</td>
<td>CRE</td>
<td>13 850.000</td>
<td>15 520.000</td>
</tr>
<tr>
<td>Germany</td>
<td>BNetzA</td>
<td>#N/A</td>
<td>#N/A</td>
</tr>
<tr>
<td>Great Britain</td>
<td>Ofgem</td>
<td>53.900.000</td>
<td>52.900.000</td>
</tr>
<tr>
<td>Greece</td>
<td>RAE</td>
<td>5.600.000</td>
<td>8.200.000</td>
</tr>
<tr>
<td>Hungary</td>
<td>HEO</td>
<td>6.600.000</td>
<td>6.700.000</td>
</tr>
<tr>
<td>Iceland</td>
<td>OS</td>
<td>550.000</td>
<td>550.000</td>
</tr>
<tr>
<td>Ireland</td>
<td>CER</td>
<td>9.200.000</td>
<td>12.000.000</td>
</tr>
<tr>
<td>Italy</td>
<td>AEEG</td>
<td>#N/A</td>
<td>25.000.000</td>
</tr>
<tr>
<td>Latvia</td>
<td>PUC</td>
<td>1.837.532</td>
<td>2.149.686</td>
</tr>
<tr>
<td>Lithuania</td>
<td>NCC</td>
<td>755.532</td>
<td>894.347</td>
</tr>
<tr>
<td>Malta</td>
<td>MRA</td>
<td>360.000</td>
<td>514.000</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Dte</td>
<td>8500.000</td>
<td>7.000.000</td>
</tr>
<tr>
<td>Norway</td>
<td>NVE</td>
<td>2.250.000</td>
<td>2.300.000</td>
</tr>
<tr>
<td>Poland</td>
<td>URE/ERO</td>
<td>8.500.000</td>
<td>8.500.000</td>
</tr>
<tr>
<td>Portugal</td>
<td>ERSE</td>
<td>7.202.000</td>
<td>7.764.000</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>URSO/ RONI</td>
<td>1.373.000</td>
<td>1.898.000</td>
</tr>
<tr>
<td>Slovenia</td>
<td>AGEN-RS</td>
<td>2.250.000</td>
<td>2.420.000</td>
</tr>
<tr>
<td>Spain</td>
<td>CNE</td>
<td>20.000.000</td>
<td>21.000.000</td>
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<tr>
<td>Sweden</td>
<td>STEM</td>
<td>3.533.179</td>
<td>7.607.730</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>ILR</td>
<td>477.770</td>
<td>#N/A</td>
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### NRA Budget Process

<table>
<thead>
<tr>
<th>Country</th>
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<th>Sector contributions</th>
<th>Annual audits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>E-Control</td>
<td>Yes. Established by federal statute (Sec. 6 of the Energy Regulatory Authorities Act). Budget is only subject to the approval of the Supervisory Board. Minister of Economics and Labour has a right of supervision.</td>
<td>Yes</td>
<td>Cost-oriented fees to be paid by operators of ultra-high voltage grids (electricity) and to the Control Area Managers (gas) in accordance with an ordinance of the Minister of Economics and Labour and after approval of the Supervisory Board.</td>
<td>Yes, in accordance with the Private Companies Act and the Commercial Law Statute, the Federal Financial Supervising Authority (Rechnungshof) may also perform audits.</td>
</tr>
<tr>
<td>Belgium</td>
<td>CREG</td>
<td>Yes, budget requires approval by government every year (semi-automatic indexation; full review every four years under zero base budgeting.)</td>
<td>Yes</td>
<td>Yes</td>
<td>Accounts supervised by external auditor; accounts must also be sent to government and Belgian Court of Auditors</td>
</tr>
<tr>
<td></td>
<td>VREG</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, Court of Auditors</td>
</tr>
<tr>
<td></td>
<td>CWAPE</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>BIM</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Cyprus</td>
<td>CERA</td>
<td>Yes, but subject of approval by the Council of Ministers and the House of Representatives</td>
<td>Yes, but subject of approval by the Council of Ministers and the House of Representatives CERA funds based on licensing fees set by Government Regulations requiring parliamentary approval). Initial financial assistance was provided by Government</td>
<td>CERA to prepare annual accounts according to State budget code; accounts audited by the Accountant General of the Republic.</td>
<td>CERA to prepare annual accounts according to State budget code; accounts audited by the Accountant General of the Republic.</td>
</tr>
</tbody>
</table>
## NRA BUDGET PROCESS

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<tbody>
<tr>
<td>Czech Republic</td>
<td>ERO</td>
<td>Yes, State Budget Act applies to ERO budget</td>
<td>No, the budget forms part of state budget (chapter no. 349)</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Denmark</td>
<td>DERA</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td>Fees to be paid by monitored and regulated entities (payment via national TSO) are set by Ministerial Order.</td>
<td>Yes</td>
</tr>
<tr>
<td>Estonia</td>
<td>EMI</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td>Supervision and licence fees to be paid by electricity and natural gas network operators and the emissions trading actors (majority of EMV funds) are set every year by a decree of the Ministry of Trade and Industry. The fees are based on the proposition made by EMV.</td>
<td>Yes</td>
</tr>
<tr>
<td>Finland</td>
<td>EMV</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>CRE</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>BNetzA</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td>Possible. Federal Government, in agreement with the Upper Chamber of Parliament (Bundesrat), may adopt an Ordinance on contributions by energy network operators. Total energy regulation-related expenditure of the BNetzA minus any administrative fees levied is the starting point for computing contributions. A certain retainer must be deducted</td>
<td>Yes</td>
</tr>
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<td>from that amount in order to reflect the authorities’ public interest functions, as opposed to activities that solely benefit energy network operators. As a consequence, contributions by energy network operators must not exceed 60% of expenditure.</td>
<td></td>
</tr>
<tr>
<td>Great Britain</td>
<td>Ofgem</td>
<td>Yes</td>
<td>Yes, Ofgem is a Government Department with its own Main Estimate which is approved by Parliament each year. Each year the budget and proposed work activities are consulted upon with the energy companies via an annual Corporate Planning exercise. Following this exercise, a budget is then agreed with HM Treasury and, as mentioned above, a Main Estimate is submitted to Parliament for approval.</td>
<td>Yes, Ofgem has issued a Licence Fee Principles document which sets out the methodology for recovering a relevant proportion of its costs from energy companies. The principles document is sent to the energy companies for consultation prior to the formal adoption of the document.</td>
<td>Yes</td>
</tr>
<tr>
<td>Greece</td>
<td>RAE</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes  Fees paid by undertakings of the energy sector (set by decision of the Minister of Development and the Minister of Economics, following opinion by</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
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<tr>
<td>Hungary</td>
<td>HEO</td>
<td>Yes</td>
<td>Yes</td>
<td>RAE) on the basis of sales of electricity, gas and oil products, as well as for the granting, modification and extension of licenses.</td>
<td>Yes</td>
</tr>
<tr>
<td>Iceland</td>
<td>OS</td>
<td>Yes</td>
<td>No</td>
<td>TSO and DSOs to cover the cost of regulatory monitoring (no link with NRA budget).</td>
<td>Yes</td>
</tr>
<tr>
<td>Ireland</td>
<td>CER</td>
<td>Yes</td>
<td>Yes, but CER must get the approval of both the Department of Finance and the DCMNR in order to increase staff numbers</td>
<td>Yes, levy on industry participants and licence application fee.</td>
<td>Yes</td>
</tr>
<tr>
<td>Italy</td>
<td>AEEG</td>
<td>Yes</td>
<td>Yes</td>
<td>Contributions currently must not exceed 0.1% of a licensee's income for preceding financial year. AEEG proposes the contribution rate on the basis of its approved budget. Ministry of economy and finance sets the contribution rate by Administrative Decree.</td>
<td>Yes</td>
</tr>
<tr>
<td>Latvia</td>
<td>PUC</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes PUC budget funded paid the state duty paid by the regulated enterprises.</td>
<td>Yes</td>
</tr>
<tr>
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</tr>
<tr>
<td>Lithuania</td>
<td>NCC</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Malta</td>
<td>MRA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (230.000 € electricity licence fee charged to Enemalta)</td>
<td>Yes</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Dte</td>
<td>Yes</td>
<td>Yes, part of the overall budget of the Netherlands Competition Authority</td>
<td>Yes. For specific tasks, the cost incurred by DTe is recovered from energy companies. Billing is done by DTe but funds go to the ministry of Economic Affairs. No</td>
<td>Yes</td>
</tr>
<tr>
<td>Norway</td>
<td>NVE</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Poland</td>
<td>URE/ERO</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Portugal</td>
<td>ERSE</td>
<td>Yes</td>
<td>Yes, budget is considered by Statutory Auditor as</td>
<td>No. Transmission System licence holders REN and Transgas fund</td>
<td>Yes</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>URSO/ RONI</td>
<td>Yes</td>
<td>No, forms part of state budget</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Slovenia</td>
<td>AGEN-RS</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes (contributions computed as a fraction of network charges, to be determined by the Government on an annual basis)</td>
<td>Yes</td>
</tr>
<tr>
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</tr>
<tr>
<td>Spain</td>
<td>CNE</td>
<td>Yes</td>
<td>Yes (Governmental bodies (e.g., Council of Ministers, Ministries, Parliament) do not directly have a say with respect to the manner in which these funds are used, although the CNE Annual Programme is drafted by the CNE and the Ministry of Industry. In addition, financial supervision of the CNE accounts by the State Controller Office or the National Auditing Office. CNE must seek approval for the budget only from the Parliament when attached to the State General Budget)</td>
<td>The fees actually have the consideration of a tax and have been defined by law by the General Administration.</td>
<td>Yes</td>
</tr>
<tr>
<td>Sweden</td>
<td>STEM</td>
<td>Yes</td>
<td>Yes (Government decides on budget size, but not on allocations)</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>ILR</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, levies on regulated companies set by Grand-Ducal decree</td>
<td>Yes</td>
</tr>
</tbody>
</table>