Two Regulatory Perspectives

- Sector Regulator
- Interest of State
  - My Perspective is that of Regulator
3 Categories of Regulatory Significance

1. Inherent and Necessary
2. Legitimate but Not Inherent
3. Non-Inherent
Inherent and Necessary

1. Market Entry
2. Pricing and Ratemaking
3. Service Quality
4. Risk / Cost Allocation
5. Transparency
6. Dispute Resolution / ISDS
Legitimate/Not Inherent

1. Financial / Capital Structure
2. Ownership
3. Affiliate Transactions / Procurement
Non-Inherent for Sector Regulator

1. Supplier Choice
2. Management / Capacity Building
3. Universal Access
Inherent and Necessary:

Market Entry

- Criteria Depend on Role of Entrant
  - High for Monopoly / Essential
  - Reduced for Non-Essential
- Minimum Include:
  - Financial Capability
  - Technical Competence
  - Performance History
- Conform to Market Structure
Inherent and Necessary (cont.):

Pricing and Ratemaking

- Jurisdictional Appropriateness
  - Signals to Customers
  - Performance Incentives
  - Promote Efficiency / Productivity
  - Internalizing Social Objectives
- Investors Should Buy In or Not but Not Seek Trade Rules to Distort Prices
Inherent and Necessary (cont.):

Service Quality
1. Jurisdictionally Appropriate
2. Essential for Regulatory Credibility
3. Investors Buy In or Not
Inherent and Necessary (cont.):

Risk / Cost Allocation

1. Jurisdictionally Appropriate
   a. Local Sensitivities
   b. Financial Sophistication
   c. Who Causes Costs to Be Incurred

2. Investors Buy In or Not
Inherent and Necessary (cont.):

Transparency
1. Necessary for Regulatory Credibility
2. Investors Buy In or Not
3. Open Books and Records
4. Auditing
Inherent and Necessary (cont.):

**Dispute Resolution / ISDS**

1. At Heart of Regulatory Legitimacy
2. Effect on Capacity Building / Incentives for Regulators
Legitimate—Not Critical:

**Financial / Capital Structure**
1. Capability / Depth of Pockets
2. “Skin in the Game” (Debt/Equity Ratio)

**Ownership**
1. Interest in Qualification Only
   a. Financial
   b. Technical
   c. Performance History
Legitimate—Not Critical:

Procurement / Affiliate Transactions
1. Enforcement of “Arms Length” Requirements
2. Protect Consumers
3. Audit Function / Not Micromanagement
Non-Critical:

Supplier Choice

- Hands off if “Arms Length” and Reflective of Market
Non-Critical:

Management / Capacity Building

1. Regulation ≠ Micro-Management
2. Capacity Building May Be a Strong Interest of State but Not Inherent to Sector Regulator
3. Regulators Are Tools / Policy Is for State
Non-Critical:

Universal Access

1. Key Interest of State but Not Inherent to Regulatory Oversight
2. Regulators Can Assist but State Needs to Articulate Policy