A Fourth Branch?

Are utility commissions a fourth branch of government, similar in standing to the executive, legislative, and judicial branches? Some people think so. One such person is Frank Vibert who in his book *The Rise of the Unelected* argues that expert agencies provide a new kind of check and balance, and so constitute a fourth branch of government.

What is this new check and balance? Vibert explains that expert agencies mobilize facts, knowledge, and analyses that the public and the three traditional branches of government rely upon for decision making. Keeping these governmental agencies independent of the other wheels of government, Vibert says, serves as a check on political decision making because the expert, empirical analyses are trusted and available for all to see.

Whether you agree or disagree that expert agencies constitute a fourth branch of government, Vibert has some points that are worth considering. One implication of his view is that utility commissions need intimate knowledge of utilities, markets, consumers, and politics while keeping all of these at arms length. Thoroughly knowing something that you purposefully hold at a distance is no simple task, but commissions can address this through systematic data gathering and reporting, staff research, and training. Commissions that focus on building strong organizations and knowledgeable staffs improve their abilities to deal effectively with both the technical and the political challenges of today’s regulatory climate.

As often happens with highly expert organizations, commissions might be tempted to become insular. After all, by definition no one knows the agency’s business as intimately as the agency. As the book, *Surfing the Edge of Chaos* by Pascale, Millem and Gioja points out, organizations that fail to engage with those who challenge their fundamental views become irrelevant when the world changes. I have seen numerous agencies combat this potential problem by regularly engaging outside experts in workshops, seminars, or rotating positions, such as chief economist (as with the U.S. Federal Communications Commission).

Another implication of commissions serving as checks on political decision making is that sometimes the political process will try to marginalize regulators. I think we have all witnessed that. Quite simply, situations arise where political decision makers prefer not to hear the commission’s inconvenient facts. To succeed when swimming against the tide of a policy change that has gained political momentum, but lacks substance, the agency must have already established itself as a legitimate and credible expert, prepared its relationships with the political authorities and stakeholders, and engaged the various
viewpoints in a substantive dialogue about the future. Without this foundation, it is unlikely that the expert agency will influence the political agenda.

Sometimes, of course, politicians become suspicious that an expert agency has a political agenda and might skew its information. Unfortunately, sometimes this view is exactly right. When a commission acts this way, it risks losing its legitimacy, thereby hindering good policy rather than promoting it.

Are expert agencies a fourth branch government? Maybe. However, being the source of expertise that helps some political agendas, while hindering others, is fraught with peril. As I have said before, utility regulation is dangerous work.