

Reset for Regulation and Utilities

Regulatory Renaissance?

This article describes a process for a reset of regulation and utilities in today's environment of constant change.

"Reset" – as used in this context – means to develop fresh perspectives and knowledge about the future, all the while holding in trust the wisdom of the past. The article examines three juxtapositions:

1. Focus on next practices, not best practices;
2. Emphasize learning the 'why' of how things work and not just the 'what'; and
3. Provide leadership rather than try to lead.

There are no easy answers for today's utilities and their regulators. Climate change policy for the United States is uncertain now, but the financial risks continue to loom large for utilities that fail in their political forecasts.

Regulators, policy makers, and utilities are all trying to anticipate the future of the Smart Grid, but that future depends upon the policies and regulations themselves, upon consumer response, and upon future technologies – a future that is still very much in the making.

Introduction

Politics, customer responses and technologies are impossible to anticipate with much certainty, but getting them right is crucial: Recall how Western Union famously dismissed the telephones as mere toys? And the once dominant Microsoft has been seriously wounded because it wasn't ready for the Internet and cloud computing.

New policy initiatives, changing technologies, blurring boundaries, and volatile economics and markets hold the potential to drive fundamental changes in the utility industry and its regulation. Much seems to be up for grabs: determinants of profit, regulatory independence, and system control to name a few. Are the examples of the Maryland legislature disbanding the Public Service

Commission, or a former Florida governor announcing that commission rate decisions will determine his commissioner appointments anomalies or indicators of things to come?

With this much turmoil, how should the industry and its regulators think about their futures? When the future is unknown our natural tendency is to look for fixes or for someone who has the answer. That is why there are some who claim to have the answers. That is also why people focus on statements from political leaders, business leaders, and expert consultants for guidance.

But what if the best among us don't have the answers, even if they think they do? Or, maybe they don't even know the right questions? How can we reset expectations and help our own organizations see how context is changing and that the strategies that made us successful in the past could be largely irrelevant for the future? How can a system tightly controlled by laws, precedence, sunk investments, regulatory processes and traditions be flexible enough to step back and learn?

In uncertain times it is more important to ask the right questions (and risk getting wrong answers) than to get the right answers to the wrong questions. Rather than ask, "*Is this investment prudent?*" we should ask, "*Does this investment teach us something that we need to know?*" Rather than ask, "*Does this regulatory decision favor consumers or investors?*" we should ask, "*What options for the future does this decision create or foreclose?*"

This article explores three juxtapositions to describe how to engage for the future:

1. Next Practices, Not Best Practices: Best practice is about imitation and is important for following in someone else's footsteps. A focus on next practice is needed when we are going into areas where no one has gone before.

2. Not What? but Why?: The second juxtaposition contrasts the questions of "What?" and "Why?" When we ask ourselves "What should we do?" we emphasize practice. But the practice needs a foundation, so we should ask ourselves "Why have certain practices been successful or unsuccessful?" so that we engage in an analysis of our priorities and context.



3. Not Leading, but Leadership: The third juxtaposition is between leading and leadership. A leader provides direction, which is proper when the right direction is known with a high probability. In contrast leadership mobilizes people to tackle difficult and often ambiguous problems and circumstances.

Next Practice, Not Best Practice

Utility regulation is probably the most technically complex function of government, involving the interdisciplinary efforts of finance, accounting, law, engineering, economics, public relations, and administration. This technical work is the bread and butter of regulation. In performing their work, regulatory agencies often imitate the practices of other agencies in addition to following expert analysis. Imitation is legitimate when we are in circumstances familiar to others, but can hurt us in novel situations.

Situations that are familiar present what are called technical challenges, which are problems where there is general agreement on the existence and nature of the problem, the alternative solutions are clear, and work can be done by subject matter experts, such as regulatory economists, lawyers, and accountants. In contrast, novel experiences present adaptive challenges, which are those that arise when fundamental changes in a group's (or an individual's) environment call for rethinking basic goals and strategies.

How can we tell when circumstances are familiar or when they are novel? This is difficult and the tendency is to misidentify novel experiences as familiar ones. But there are signals that alert us. One signal is stakeholders disagreeing on whether there is a problem or on the nature of the problem. Other signals include stakeholders embracing policy options that align with long held beliefs and biases rather than with the problem at hand, and refusing to change behavior and implement policies that have been agreed upon.

In the United States, discussions of aging workforce for utilities often focus on transferring knowledge and preserving traditions and values. In contrast, one forward looking utility treated the imminent surge in retirements as an opportunity to engage in a difficult conversation about long-established beliefs and behaviors that should retire as well.

Addressing adaptive challenges requires experimentation and an active engagement in surfacing conflicts and gaps between the beliefs and

priorities people hold on the one hand, and the realities they face on the other. The number of hurricanes in 2004 and 2005 in Florida triggered cries for increased undergrounding of lines, more aggressive rules for maintenance and system recovery, and the like. But rather than jumping into sweeping policy changes, the Florida Public Service Commission, the utilities, and PURC engaged in a dialogue about what really happened during the hurricanes.

This led to a research program that created new modeling capabilities and new methods for learning from severe weather events so that stakeholders could engage in thoughtful discussions about their issues and decisions could be fact-based. This experience illustrates the importance of adaptive learning, which is the learning that takes place when new experiences help us close the gap between what we believe is true and what is actually true: regulators, industry representatives, and academics all contributed, and stakeholders could actively engage.

Deliberate effort is required to move forward and keep from becoming stuck. In the early 1980s Chile accepted the reality that state-owned monopolies were not going to provide the power the country needed and led the world in electricity reforms. The United States learned as well, but as evidenced by the California electricity crisis, did not learn well enough and created a new set of mistakes that others were subsequently able to observe and learn from.

Not What, but Why?

Emphasizing next practice over best practice is important in times of change because the practices that made regulatory agencies successful in the past may work against them for the future because the context has changed. To make sure that we understand the essential characteristics and features of our institutions and practices, we must be students of our work.

Small differences can make all the difference because the process of adaptation is at least as much a process of conservation as it is of reinvention. What do we need to conserve? Modern utility regulation is about controlling market power, providing stability and continuity, and protecting investment from opportunism, but these might not be the essential DNA. Controlling market power is really about ensuring wide spread service availability and affordability because utility services are considered to be affected with the public interest.

Stability and continuity are about controlling risk, as

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is containing opportunism. Are all aspects of utility services affected with the public interest? Because the expectation of profit is a key driver of innovation, and innovation is an essential element of adaptation, is controlling market power still the appropriate regulatory mechanism, or can we perhaps obtain service availability and affordability in another way?

Not Leading, but Leadership: “The Sweet Spot”

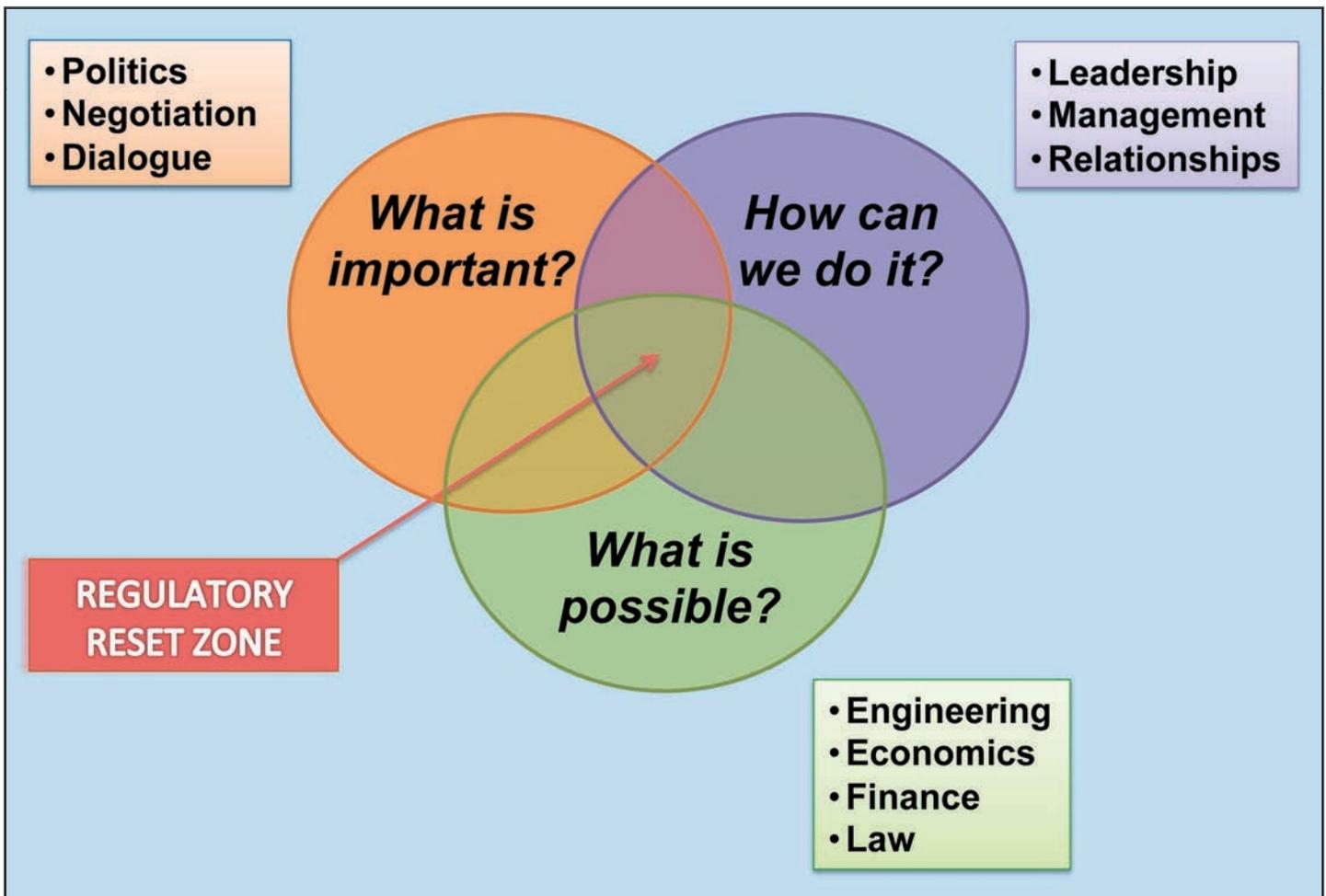
Ensuring that we intelligently move from best practices to next practices, in part by continually investigating the “Why” question and not just the “What” question, takes us to the third juxtaposition, namely that we should focus not on leading but on leadership.

The figure below shows three foundational questions involved in utilities policy: 1) What is possible; 2) What is important; and 3) How can we do it?

experts tell us about cash flow requirements, costs of financing, legal rights and responsibilities, and what can and cannot be done with current technologies. This is also the bread and butter of regulatory work.

What is important? This is typically the realm of politics where through our elections and other political activities we establish visions and priorities for our nations and other levels of government. Research in this field is normative because it advocates goals, objectives, and instruments. The last basic question is: How can we do it? This question addresses many of the human processes that it takes to move from “What is possible?” and “What is important?” into accomplishment (“How can we do it?”). This work is the domain of disciplines such as management and administration, including the act of leading people to perform the work of an organization.

The overlap of the three questions implies that there is



What is possible? This is the realm of economics, engineering, law, and the like. Within these disciplines,

a core – or a sweet spot – where what we would like to achieve is technically feasible and can be worked



through the human processes. But what if this overlap does not exist or what if it is difficult to find?

A recent gathering of scientists and policy makers focused on how to improve the scientific basis for energy policy. One politician gave the disturbing answer that basing policy positions on scientific evidence is generally ineffective because scientific input is too complex to be communicated and made relevant in the few moments that policy makers have with their constituents. This may be a communication issue, but it may also reflect issues of prior beliefs, embedded values, and lack of trust: We are not caused by our history, but it forms the lens by which we view our future.

Whatever the reasons, if facts are left out of the policy process the resulting policies are little more than fantasies that lead to greater dysfunction, frustration, and conflict. Furthermore, the scientific work that is intended to influence policy occurs in a vacuum, resulting in research that is increasingly irrelevant to people's priorities and everyday lives, or worse yet that the scientific process becomes politicized. So instead of finding the sweet spot, we find ourselves with a major disconnect.

Leadership is needed to overcome the disconnect. In contrast to leading – which is about providing direction – leadership mobilizes people to identify disconnects, adapt to new situations, and identify possible directions. Oftentimes the person providing leadership is not in authority, which can be an advantage because s/he does not have the conflicting burden of trying to keep the organization calm and functioning while promoting disruptive work.

This has implications for regulators. Other stakeholders in the policy making process – politicians, businesses, consumer groups, and the like – have constituencies, to stay in the game, maintain a certain loyalty with those supporters. This is less true of independent

regulatory agencies because their independence means that their loyalties should be to the regulatory process. The independence gives the regulator greater latitude to raise issues that cause conflict, but also leaves the regulator more exposed to political attacks.

Conclusion

Adaptive learning focuses on next practices – not best practices – when faced with novel situations, studies why practices have been successful (or not), and focuses on leadership rather than leading.

The practice of leadership in the current environment can be described as stirring and steering. The context needs to be stirred to surface problems, contradictions, and opportunities. But the system also needs to be steered, not in the sense of leading a particular direction, but rather ensuring learning, providing opportunities for resolving conflict, and orchestrating experiments into next practices. **uhQ**

“...you have to be completely committed to what you are doing in order to step out there and take the risks, but at the same time, with equal persistence, you have to hang on to self-doubt, always keeping open the possibility that there is a better idea out there. Otherwise, how can you ever learn and grow? But, then again, I might be wrong about that.”

– Marty Linsky of Harvard University on the paradox of leadership for a reset

Author Profile

Dr. Mark A. Jamison is Director, Public Utility Research Center (PURC), University of Florida.

Araceli Castaneda is Director of Leadership Studies, Public Utility Research Center (PURC), University of Florida.

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