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Building Effective Regulatory Agencies: Lessons Learned

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What is NARUC?

- The National Association of Regulatory Utility Commissioners (NARUC) is a quasi-governmental non-profit organization founded in 1889. www.naruc.org
- Our Members include the state Commissions (government agencies) engaged in the regulation of American utilities and carriers in the 50+ states & territories. The Federal Energy Regulatory Commission and the Federal Communications Commission are also members. NARUC has Associate Members in over 20 other countries.
- NARUC member agencies regulate electricity, natural gas, telecommunications, and water utilities.
- We provide forums for the exchange of experience/policy, legal support, lobbying, and other forms of regulatory support.

What Do the State Regulatory Commissions Do?

- **Traditional Role** -- Regulate the Rates, Terms and Conditions of Service of “Fixed Utilities” – Electricity, Natural Gas, Telecommunications, and Water
- **New Role** -- Manage the Development of Competitive Markets for Energy and Telecommunications Services; Monitor Market Performance
- **Even Newer Role** -- Help Ensure Safety, Reliability and Security of Utility-based Critical Infrastructure Facilities; Factor Environmental Factors into Utility Planning and Operation
- Coordinate State Policies and Procedures with Federal Counterparts – FERC and the FCC

NARUC/USAID Cooperative Agreements

1. Regional Energy Regulatory Program for Central/Eastern Europe & Eurasia (USAID/E&E + 15 Mission buy-ins); Oct. 1998 – Sept. 2008
2. Global Regulatory Network Program (USAID/EGAT + 6 Missions buy-ins); Sept. 2002 – Sept. 2009
3. Energy Regulatory & Security Program in Europe & Eurasia (USAID/E&E + 5 Mission buy-ins); Oct. 2007 – Sept. 2010
4. Enhancing Sustainable Utility Regulation (USAID/EGAT + 1 Mission buy-in); July 2009 – July 2012

NARUC's Commitment

“Providing information to our international colleagues allows us [U.S. regulators] to really examine our practices and assess whether we should make improvements in our own regulatory policies. These exchanges are truly two-way learning experiences.”

- Hon. Frederick F. Butler, NARUC President (2008-09)

NARUC Commissioners and Commission Staff volunteer their time to share experiences and expertise. In-kind contributions:

1. Europe/Eurasia agreement - \$1,547,843
2. GRN agreement - \$585,068

USAID Development Assistance Methods for Regulators

1. Regional regulatory networking and information exchange organized by NARUC.
2. Partnerships for access to U.S. regulatory practices implemented by NARUC.
3. Long-term/short-term technical assistance managed by USAID Missions in-country (ex. NARUC's GRN Program in Bangladesh).

Benefits of E&E Bureau's Regional Approach

- a) USAID economies and efficiencies not achievable by a single USAID Mission. (For example, ERRA regional training program displaced need for multiple USAID Missions financing numerous consultants' development of tariff training courses for national regulators.)
- b) Mechanism for the exchange of experience on common issues that could not be achieved by bilateral programs.
- c) Lessons learned in countries transferred so that USAID Missions and regulatory bodies did not have to reinvent the wheel when designing regulatory policies and procedures.

NARUC's International Experience – Issues for Consideration

Power Sector Reform – Stages

- Legal and Regulatory Framework
- Separate Regulatory Body
- Utility Restructuring
- Electricity Market Development
- Privatization

Reasons for Reform

- Government or Donor requirements
- Development of new energy policy priorities

Consequences of Reform

- Goal to enhance competition
- Allows for consumer protection
- Creates independent regulator



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Basis and Goals of Competition

(Adapted from Pierce Atwood law firm presentation)

System where market forces make economic decisions,
instead of regulators or central planners

- Attract Private Investment
- Increase Economic Efficiency
- Improve Service & Reliability
- Lower Prices
- Promote Customer Choice



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Expectations of Strategic Investors

(Adapted from Pierce Atwood law firm presentation)

- Commercial Infrastructure (economic, regulatory, financial, legal)
- Predictable Rules
- Open & Transparent Decision-Making by Regulator (independence, public participation, objective, written decisions, appeal process)
- Non-Discrimination (Liability, Taxes, Profit Repatriation)
- Absence of Corruption or other Market Distortions
- Free Capital Flows
- Rules of Law/Justice System
- Adequate and Predictable Risk Management



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Regulatory Competencies

(Adapted from Pierce Atwood law firm presentation)

Competition changes *nature* of regulation, but does not eliminate *need* for regulation

- Traditional structure (monopoly) emphasizes price setting, rate design, engineering, resource planning
- Competition focuses on market oversight, level playing field, market power, information
- Coordination among national regulators and/or anti-monopoly offices critical to avoid anti-competitive behavior



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Benefits of Cross-border & International Trade

(Adapted from Pierce Atwood law firm presentation)

- Improved efficiencies
- Fuel diversity
- Non-coincident peaks
- Greater system stability

Types of NARUC/USAID Activities

I. Regional Regulatory Association Development

- Technical training courses (classroom & online)
- Issue Papers (68+ ERRA)
- Committee meetings
- Investment Conferences
- Annual Business Meetings
- Topical Workshops
- Association Management
- Financial Sustainability
- Websites, newsletters

Recent/Ongoing Relationships:

- ERRA (Eastern Europe & Eurasia)
- OOCUR (Caribbean)
- RERA (Southern Africa)
- ACERCA (Central America)
- AFUR (Africa)

Types of NARUC/USAID Activities (cont.)

II. National Regulatory Agency Development

www.narucpartnerships.org

Current & Future Partnerships

- Armenia – TBD
- Georgia – Vermont/TBD
- Jordan – Colorado
- Kosovo – Illinois
- Moldova – TBD
- Nigeria – Michigan
- Serbia – Pennsylvania
- Ukraine – TBD

Past Partnerships

- Albania – Indiana
- Bulgaria – New Jersey
- Croatia – New York
- Ghana – Ohio
- Kyrgyz Republic – Washington
- Macedonia – Vermont
- Moldova – Iowa
- Nicaragua – Texas
- Rwanda – Missouri
- Zambia – Pennsylvania

Capacity Building

- Azerbaijan
- Bangladesh
- Kosovo



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The AAAAs....

“The objective is to create a regulatory body that has substantial **autonomy** from short-term political and other interventions; adequate **authority** to establish sound regulatory practices (e.g., tariffs, licenses, an monitoring); clear **accountability** to assure transparency and creditability, and; **ability** to carry out the regulatory functions. A sound, transparent, and stable regulatory body and process is important for the government, consumers, and investors alike.”

- *Robert Archer, Senior Energy Advisory, USAID/E&I/E&E*

Key Characteristics of Regulatory Commissions (1)

Autonomy

- I. Appointment of Commissioners
 - Staggered terms
 - Quality criteria
 - Who makes appointments
- II. Exemption from civil service/government salary rules
- III. Financing Commission
 - License fees
 - Budget approval
- IV. Removal from office – for cause only

Key Characteristics of Regulatory Commissions (2)

Authority

- I. Full Tariff Authority
- II. License Issuance
- III. Market (design)
- IV. Information Collection, Monitoring, Enforcement



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Key Characteristics of Regulatory Commissions (3)

Accountability

- I. Public Participation & Transparency
- II. Annual Report & Audit
- III. Appeal of Decisions to Courts Only or International Arbitration
- IV. Budget Review
- V. Code of Ethics
- VI. Removal from Office – for cause only

Key Characteristics of Regulatory Commissions (4)

Ability/Capacity

- I. Capable Trained Staff
- II. Procedures & Management
- III. Sound Tariff Methodologies & Prices
- IV. Licensing Practices
- V. Monitoring & Enforcement

Impact of NARUC/ERRA Programs

1. Implementation of Cost-based Tariff Methodologies
 - a) 10 years ago = non-payment and high cross-subsidization across customer classes
 - b) E&E regulators adopted cost-based and incentive regulation to eliminate cross-subsidies and support efficiency increases of license holders.
 - c) Tariff procedures evolved through privatization & unbundling processes.
 - d) Address treatment of ancillary services; now looking at renewables.

Impact of NARUC/ERRA Programs

2. Development of Regional Electricity Markets

- a) Promotion of sub-regional markets
 - i. Southeast Europe - market monitoring
http://www.naruc.org/see_monitoring
 - ii. Southeast Europe - uniform system of accounts
<http://www.narucpartnerships.org/partnership.cfm?PID=16>
- b) ERRA Licensing/Competition Committee – voluntary harmonized licensing procedures of wholesale traders
- c) Other ERRA focuses: cross-border capacity allocation, congestion management, market rules, monitoring/enforcement.



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Impact of NARUC/ERRA Programs

3. Increased Public Involvement in Energy Regulation
 - a) Public hearing procedures (esp. through partnerships)
 - b) PR staff at regulatory agencies
 - c) Customer service programs/departments
 - d) Proactive relationships with media, parliament, NGOs/consumer groups, other stakeholders



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Lessons Learned: Association Development (10 Year Program for ERRA)

- Institutional Development Takes Time
- Institutions Must be Demand-Driven and Responsive
- Members Must Make Voluntary Commitment of Time
- Institutional Development Must Account for Specific Circumstances
- An Effective Secretariat Staff is Critical
- Face-to-Face Interaction Essential
- On-going Self-Evaluation & Dissemination Needed

Regulatory Partnerships: Lessons Learned

- Partnerships are needs-driven and respond to particular set of regulatory circumstances
- Partnerships provide a unique testing ground for exploring practical solutions for day-to-day regulatory operations.
- “Core” team of US experts is integral to developing meaningful and lasting relationships
- Partnerships have increased the visibility, and expert standing of the international regulators, and have equipped them with relevant skills and practices to argue for greater autonomy.
- Partnerships have strengthened the institutional arrangements and management practices of the nascent regulatory bodies through more streamlined decision-making, expanded technical staff resources, institutionalized practices, and increased understanding of the comparative (US) regulatory environment.
- While significant results were achieved in the partnership and regulatory capacity-building programs, various degrees of political interference in the reform and regulatory process was an issue that went beyond the scope of the partnerships. In some cases (Kyrgyz Republic, Azerbaijan), the regulator faced considerable government interference and control in its decision-making authority.

Benefits to National Regulators – Partnership Successes (I)

- **Albania – Indiana**

Public hearings on price and quality of service issues; streamlined decision-making process; agency reorganization.

- **Bulgaria – New Jersey**

Improved relations with customers and consumer advocacy groups.

- **Croatia – New York**

Implementation of electric tariff methodologies for restructured markets, incentive regulation, methodologies for natural gas storage.



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Benefits to National Regulators – Partnership Successes (II)

- **Georgia – Vermont**

Focus on clean energy: cap-and-trade systems, methane recapture, and energy efficiency

- **Jordan – Colorado**

Regulatory incentives for DSM and renewable energy, improved public hearing processes and customer service.

- **Kyrgyz Republic – Washington**

New legal practices based on administrative law judge functions.

Benefits to National Regulators – Partnership Successes (III)

- **Macedonia – Vermont**
Public hearings, examined energy efficiency & demand-side management programs.
- **Moldova – Iowa**
Improved consumer education and public involvement.
- **Nicaragua – Texas**
Improvements in market monitoring and customer service.
- **Serbia – Pennsylvania**
Role of regulator in addressing fuel poverty.

Current NARUC/USAID Projects

- **EGAT**
 - International Handbook on Regulatory Treatment of Renewables & Energy Efficiency; Implementation/Training Workshops
 - Best Practices in Association Management (ACERCA, RERA, AFUR, OOCUR, NARUC & ERRA)
 - NARUC transfer of experience through committee meetings, workshops & training courses (ACERCA, RERA)
 - Bilateral partnerships: Jordan, Nigeria
- **Europe & Eurasia**
 - Black Sea Regulatory Initiative (regional market, transmission, harmonization issues)
 - Bilateral partnerships/other: Albania (gas), Armenia, Georgia, Kosovo, Moldova, Serbia, Ukraine
 - NARUC transfer of experience through committee meetings, workshops & training courses