

Fairness and freedom are the keys to good regulation

By Roger Koopman

Early in my first term on the Public Service Commission, I was struck by how different the role of commissioner was, from that of a state legislator – a hat I had previously worn. Legislators, as law makers, are advocates for specific public policy. Their ideologies are obvious, and they get elected on that basis.

Commissioners, on the other hand, don't make law. They interpret and apply law, giving it form, shape and maximum public purpose, consistent with its original intent. Our role, in fact, is very similar to that of a federal or state judge. We apply the law to serve the public interest, while at the same time, respecting the rights of each party that comes before us. If we are doing our jobs right, we will often have individual interests unhappy with us, but we will have served the greater public good, which to me, means vigorously defending the often over-burdened Montana energy consumer.

The challenge, of course, is when commissioners know, empirically or intuitively, that existing public law is not serving the greater public good. Laws that drive up costs and burden consumers with unnecessarily high energy bills. Laws that subsidize some and penalize others, burdening taxpayers in a hundred hidden ways. Laws that block entrepreneurs from providing lower prices and consumer choice, by protecting existing operators from competition. Laws that kill jobs and cripple economies, to advance dubious ideological agendas.

Faced with this dilemma, testing one's conscience and sense of duty, the best approach is to recognize the dual responsibilities every commissioner carries: one as arbiter and regulator, the other as occasional spokesman on matters of public policy.

Because of the PSC's unique vantage point from which to judge the efficacy of energy and utility law, commissioner insight can greatly contribute to future policy formation. Like judges when away from their courtrooms, commissioners too, have appropriate opportunities to express their views and make thoughtful recommendations. Yet while this advisory role is important – and often called upon by the state legislature -- it makes up less than five percent of a commissioner's job description.

The regulator role is our overriding responsibility, and an incredibly important and far-reaching one. Here, with the able assistance of an amazing PSC staff, we exercise direct regulatory jurisdiction – including rate approval and design – over all private, investor-owned electric, gas and water utilities. The PSC also exerts varying degrees of regulatory authority in passenger service, garbage hauling, telecommunications and intrastate railroads.

As regulator, I function as the impartial and equitable judge, and at the same time, as the relentless pursuer of facts and truth. In this regard, I have developed a bit of a reputation on

the commission as one who asks particularly tough and penetrating questions of the regulated utility monopolies. I see this as my job, and my 36-year business background has helped in knowing precisely what to ask. With every question, discovering what is best for consumers and the future of our state is foremost in my mind.

To this fact-finding role I apply a standard of fairness and freedom. I never go into a session with my mind made up, but pay close attention to all arguments, including those of fellow commissioners, staff and the general public, and then carefully deliberate – not legislate – on the weighty matters before us. The freedom standard leads me to encourage the greatest degree of consumer-friendly competition, market efficiency, risk-sharing incentive and utility accountability as the law allows. The fairness standard demands that in all PSC decisions, I play by a consistent set of rules and principles that treat every party with the same degree of fairness and respect. Partisan agendas have no place in a regulator’s toolbox.

Taking this approach has, at times, produced surprise and disappointment among those who have followed my political career. There are some who feel I have been much too tough on the big utilities. Others complain that I am not doing enough to challenge renewable energy projects, and have shown too much consideration to green energy developers. Still others (including some fellow commissioners) think I should be more inclined to “protect” the interests of existing garbage collection and passenger service companies from new competition. It’s not surprising, then, that on an all-Republican commission, many important issues are decided by 3-2 votes.

This is a job where you never stop learning, so I’m always open to better ideas by which I may better serve. But following a standard of fairness and impartiality, and honoring existing law, no matter how flawed, until that law may change, is something that’s non-negotiable. In this job, and in every elected job, integrity matters and the consuming public comes first.

Roger Koopman was first elected to the Public Service Commission in 2012, representing the 14-county PSC District 3. Commissioner Koopman is a 39-year resident of Bozeman, a former state legislator and small businessman.