Energy in Nebraska:
The Dual Role of Public Power Boards

University of Nebraska at Omaha
For NPPD, OPPD, and LES

Ken Colburn
Principal and US Program Director

Nancy Seidman
Senior Advisor

The Regulatory Assistance Project (RAP)®
The Evolving Utility

**YESTERDAY**
- SAFE
- RELIABLE
- AFFORDABLE

**TODAY**
- SAFE & SECURE
- RELIABLE & RESILIENT
- AFFORDABLE
- CUSTOMER-FOCUSED
- INCREASINGLY CLEAN

**TOMORROW**
- SAFE & SECURE
- RELIABLE & RESILIENT
- AFFORDABLE & EQUITABLE
- CUSTOMER-FOCUSED & INTERACTIVE
- CARBON FREE
- SERVICE PLATFORM
- PLATFORM FOR OTHER INFRASTRUCTURE
The Dual Role of Public Power Boards

• Entities are generally governed by boards of directors
  - Each director owes it a fiduciary duty
• Utilities are generally overseen by regulators
• In public power entities, governance and oversight responsibilities fall to the same individuals
What’s a fiduciary duty?

• An obligation to act in the best interest of another
• Requires a special trust, confidence, and reliance
• Law forbids actions adverse or contrary to the interests of the client, or for one’s own benefit
• Held to high standards of honesty and disclosure
What are a director’s responsibilities?

A director shall undertake a fiduciary:

- **Duty of Care**
  - Act as a reasonably prudent person would

- **Duty of Loyalty**
  - Act in the best interests of the corporation, not self

- **Duty of Obedience**
  - Stay true to the mission, remain faithful to goals

- **“Duty of Good Faith”** (growing, and now in some states)
What are a regulator’s responsibilities? (1)

Utility regulators must:

• Balance the **public interest** (government), the interests of electricity **suppliers**, and those of the **ratepayers**…

• …Through rates and other charges that:
  - Are **just and reasonable**
  - Reflect **no undue discrimination**
  - Compensate suppliers for **used and useful** assets and services
What are a regulator’s responsibilities? (2)

Public power “regulators” also:

- Typically have **one** employee – the CEO
- Often face **capital credits** or other “return of capital” issues
- Face **varying** degrees of state regulatory oversight
- **Are** typically subject to federal requirements (e.g., **PURPA**)
Public Utility Regulatory Policy Act of 1978 (PURPA)

- Applies to >500 million kWh sales per year
- Amended by:
  - Energy Independence and Security Act of 2007 (EISA)

STATE: NEBRASKA
Regulatory Authority: Nebraska Public Service Commission

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The Nebraska Public Service Commission does not have ratemaking authority over the following covered electric utilities:

Municipals:
  - Grand Island City of Lincoln Electric System

Political Subdivisions:
  - Loup River Public Power Dist
  - Nebraska Public Power District
  - Norris Public Power District
  - Omaha Public Power District
  - Southern Public Power District
PURPA Requirements

PURPA set “states must consider” requirements:

• States must decide whether to adopt – or not – for their regulated utilities

• PURPA requires the same steps of the governing boards of “non-state jurisdictional utilities” (i.e., public power & co-ops)
PURPA “States Must Consider” Examples

EPACT 2005:
- Net metering
- Fuel sources
- Fossil fuel generation efficiency
- Time-based metering and communications
- Interconnection

EISA 2007:
- Integrated resource planning (IRP)
- Rate design modifications to promote energy efficiency investments
- Consideration of smart grid investments
- Smart grid information
One More Thing: Who represents consumers?

- Most states have an official “Consumer Advocate” role
  - Office of Consumer Advocate (or Public Counsel, etc.), administratively attached but separate from the PUC
  - Unit of the Attorney General’s Office
  - Citizens’ Utility Board (“CUB”), sometimes private
  - National organization: NASUCA

- Who represents your consumers?
  - “I do; that’s who elected me!”
  - But you’re already “director” and “regulator”…
  - An open, and troubling, question
## Squaring Fiduciary Duties with Power Sector Trends

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Changing Customer Desires</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Falling Costs of RE &amp; Storage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental &amp; Health Drivers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electrification</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impacts of DERs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulk Power Market Changes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory Approaches &amp; Business Models</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Consider:
- Risk avoidance / minimization?
- Cost avoidance / minimization?
- Stranded cost avoidance?
- In the best interest of whom?
- Long-term viability?
- Public health and safety?
- Equity and vulnerable populations?
- Jobs and economic wellbeing?
- Consumers’ interests
- Other factors?
About RAP

The Regulatory Assistance Project (RAP)® is an independent, non-partisan, non-governmental organization dedicated to accelerating the transition to a clean, reliable, and efficient energy future.

Learn more about our work at raponline.org

Ken Colburn
Principal & US Director
The Regulatory Assistance Project®
kcolburn@raponline.org

Nancy Seidman
Senior Advisor
The Regulatory Assistance Project®
nseidman@raponline.org