

# **Current U.S. Regulation Issues**

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# Topics

- **Introduction to how regulation in US works**
  - Process potentially quite different from here
  - Detailed application in net neutrality talk
- **Explosion of interest in electricity distribution**
  - Both distributor to and from homes
  - Response to falling demand
  - Distortions from pricing structure
  - Should utilities expand operations?
- **The role of consumer error**
  - Policy driver, especially but not only in energy
  - What happens to benefit-cost analysis?
  - How far should consumer mistakes take policy?

# A good weekly source of US regulation news

- [regulatorystudies.columbian.gwu.edu/regulation-digest](http://regulatorystudies.columbian.gwu.edu/regulation-digest)

The image shows a screenshot of the Regulation Digest website. The header is dark blue with white text. On the left, it says 'Regulatory Studies Center' and 'THE GEORGE WASHINGTON UNIVERSITY'. On the right, it says 'Regulation Digest', 'July 1, 2015', 'Vol. 4 No. 24', and social media links for Twitter and Facebook. Below the header, there are three main sections: 'Marketplace of Ideas', 'Feature Story', and 'Rulemaking'. Each section has a title and a list of articles with blue hyperlinks.

**Regulatory Studies Center**  
THE GEORGE WASHINGTON UNIVERSITY

**Regulation Digest**  
July 1, 2015  
Vol. 4 No. 24  
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**Marketplace of Ideas**

**American Action Forum**

- [Why Critics of a Regulatory Budget Have it Wrong](#), Sam Batkins
- [500 Major Regulations](#), Sam Batkins

**Center for Effective Government**

- [Does EPA's New Finding on Airplane Emissions Clear the United States for Takeoff on Climate Change Standards?](#)

**Feature Story**

[DOL releases proposal to expand overtime pay eligibility](#)  
DOL published a pre-publication copy of its proposed rule expanding the definition of employees who are eligible for overtime pay, pursuant to the Fair Labor Standards Act (FLSA). The new definition would include executive, administrative, professional, outside sales, and computer employees making less than \$931/week, or \$47,892/year. After publication in the Federal Register, the public will have 60 days to submit comments.

**Rulemaking**

[CFPB expands authority to regulate car financing market](#)  
CFPB finalized a rule amending the definition of 'larger participants of certain consumer financial product and service markets' to include

## The US process: Judicial review as key

- Subject to review by federal courts on multiple grounds
  - Regulations not implicit parliamentary legislation
- Constitutional
  - Regulatory takings
  - “Non-delegation” (more commentary than actual)
- Administrative Procedure Act:
  - “In excess of statutory jurisdiction, authority, or limitations...”
  - “Arbitrary, capricious, an abuse of discretion”
  - “Unsupported by substantial evidence ... on the record”
- The “*Chevron*” doctrine: Courts defer to regulators
  - Agency’s construction “permissible” if Congress not specific
- Covered more in “net neutrality” talk later

## **Next: Challenges facing electricity distribution**

- **(Expect to be discussed further tomorrow morning)**
- **Business model threatened by distributed generation**
  - **On-site solar**
  - **Perhaps wind in remote areas**
  - **Microgrids**
- **In addition, mandates to reduce demand for electricity**
  - **Environmental**
  - **Response to mispricing**
  - **Energy efficiency in general [consumer error considered later]**
- **Impetus for diversification – good idea or not?**
- **State rather than federal: current jurisdictional divide**

# New York: “Reforming the Energy Vision” (REV)

- **Changes to the paradigm**
  - Consumer role in supplying electricity, managing use
  - Decentralized generation cost-effective
- **Utility as Distribution System Platform Provider (DSPP)**
  - Manage “Distributed Energy Resources” (DER)
  - DER = DG + demand response + storage + energy efficiency
  - Responsible for “monetizing value”; energy price risk hedging
  - Likely to be incumbents, but now also “transaction platform”
  - “Smart grid” deployment
- **Facilitate “consumer engagement” to “manage use”**
  - Better price signals, “access to data; build “awareness”
  - “Non-price factors” [more below]

## On the regulatory side

- **Utility ownership of DER needs to be considered**
  - Vertical rules only “rebuttable presumption”
  - Small user markets haven’t developed
- **Incentive regulation**
  - Not just cost minimization, but reward performance
  - Revenue decoupling to encourage efficiency deployment
- **Other design issues**
  - Base rates on “customer value” rather than input use
  - Appeal to UK “RIIO” model: “Regulation set to deliver strong Incentives, Innovation and Outputs”
  - Time-varying prices
  - Standby rates for DER (DG) users
  - Multiple DSPP services require multiple prices

# Falling demand issues

- **Falling demand need not eliminate market power**
  - **Gross vs. marginal substitutes: Does relative price matter?**
  - **Is elasticity of demand of remaining customers lower?**
- **Falling demand could justify rate adjustment**
  - **Reduced ability to cover fixed costs at lower prices**
  - **Depends primarily on elasticity of average cost**
  - **- F/TC simply: Not that hard to come up with**
  - **Demand elasticity also plays role**
  - **Could adjust price upward**
- **Will demand fall? The growth of electric cars**
  - **Peter-Fox Penner: State utility regulators might have to cope with 70% of energy use, instead of 40%**

# Inefficient price structures as drivers

- **Too much use (especially on peak)**
  - Absence of real-time pricing
  - Usage-driven blackout externalities
  - Unpriced or poorly priced environmental externalities
- **Volumetric charges: too much DG**
  - “Free” and unlimited storage capacity
  - Net metering distortions
- **Research and policy questions**
  - How much of the distribution grid is fixed?
  - Will/should the transmission nodal pricing model apply to distribution charges?
- **In any event, fix the prices first!**

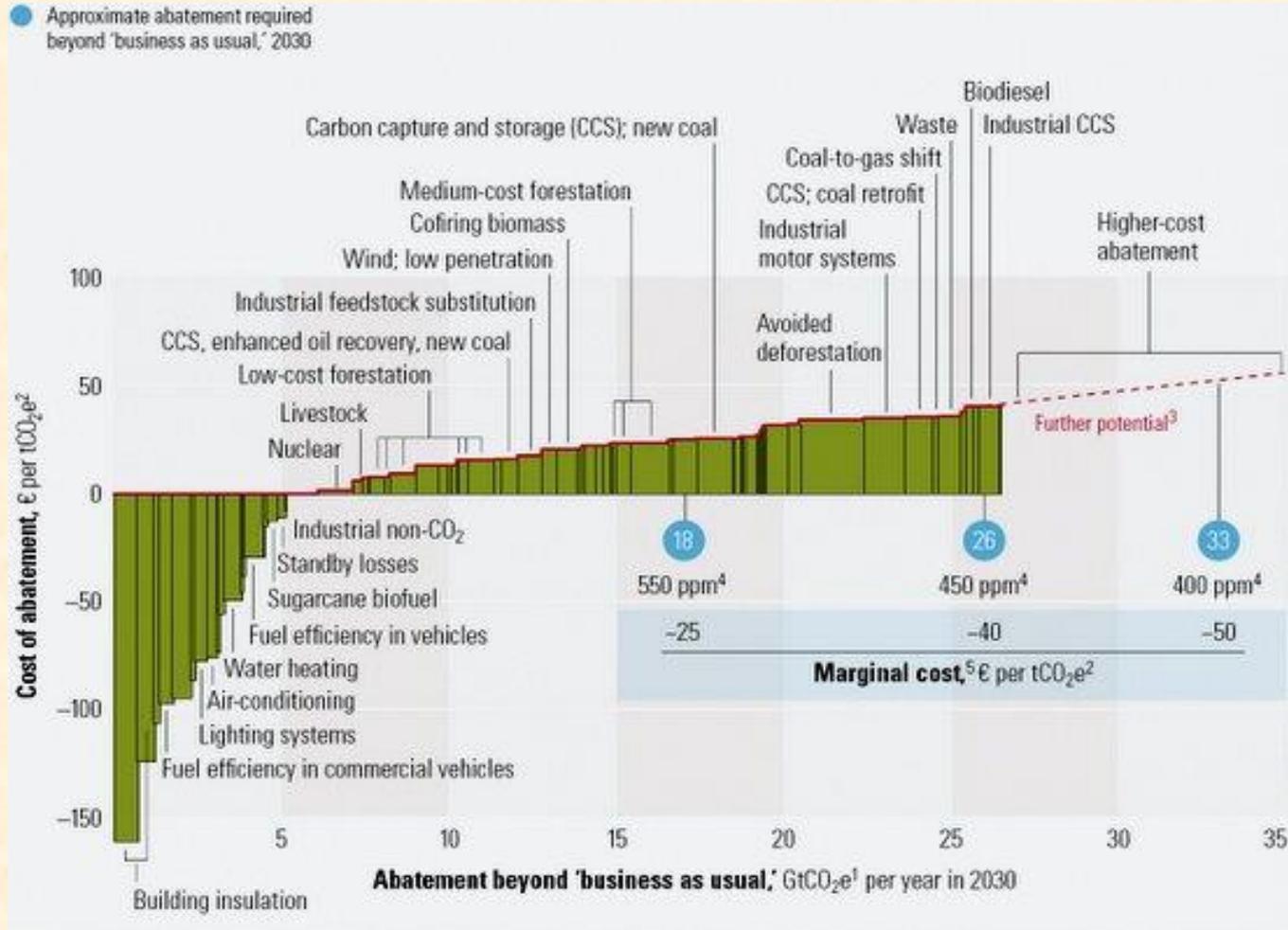
# Should utilities diversify?

	<b>Discrimination</b>	<b>Cross-subsidization</b>
<b>Essence of practice</b>	Tying competitive to regulated service through non-price service delay or degradation	Misallocating costs of providing competitive service to regulated revenue requirement, directly or by artificial “common costs”
<b>Required regulation</b>	Price ceiling below monopoly level	Price below monopoly level set based on nominal average cost of service
<b>Related markets</b>	Vertical, complement markets that use regulated service	Business that use the same types of inputs as the regulated service, especially borrowed capital
<b>Harms</b>	Higher prices in related markets, displacement of more efficient entrants	Higher prices for regulated service, displacement of efficient entrants in competitive market, credible predatory threat

## On the other hand ...

- **Economies of scope?**
  - Cost, coordination savings in utility diversifying
  - Energy services, retailing, DG itself
  - Coordination not severe in telecom
  - More of a problem in transmission planning
- **Regulatory oversight?**
  - Can regulators stop discrimination and cross-subsidization?
  - Discrimination implies market knows of advantage, but regulator can't detect (unlikely) or attribute (more likely)
  - Although cross-subsidization requires diligent connection of price to cost, regulators may have difficulty attributing costs
  - Especially second-guessing common for specific substitution

# Consumer error



## Benefit-cost analysis when consumers err

- **BCA measures actual preference by revealed preference**
- **If consumers make mistakes or act inconsistently:**
  - Choices don't reflect value; revealed WTP isn't "real" WTP
  - Not just inaccuracy, but sensitivity to framing: WTP vs. WTA
- **Centralizing the measurement of benefits, costs**
  - Who decides there is or isn't underlying cause for "anomaly"?
  - Who adjusts for error? Who decides the "right" preferences?
- **Practical effect: Treating "private benefits" as benefits**
  - Savings from energy conservation, not just environmental
  - But consumers revealed that these benefits aren't worth costs
  - Not just information or a "nudge"

# Limiting principle in setting policy?

