

BOOK REVIEW

THE REGULATION OF PUBLIC UTILITIES by Charles F. Phillips, Jr.
(Public Utilities Reports, Inc., 1992, 1025 pages).

Reviewed by *William A. Mogel**

In a 1985 review published in these pages, the second edition of Professor Phillips' "The Regulation of Public Utilities," was praised as follows:

"The Regulation of Public Utilities" in short, is likely to prove to be at least as valuable to individual utility lawyers and firms with regulatory practices as was its widely-used predecessor. While another period of intense change could make the shelf-life of the new work a good deal shorter . . . Professor Phillips' treatise has enough undoubted staying power to be a welcome addition to the regulatory lawyer's library.¹

This conclusion is equally applicable to the third edition.

The current edition is divided into 17 chapters which provide a historical analysis of the economic and legal concepts of public utility regulation, rate of return, rate base, operating expenses, rate structure, the electric power and natural gas industries, as well as the telecommunications, and water industries. Professor Phillips concludes with a thought provoking chapter entitled "Appraisal," which accurately observes (p. 898):

What is required, in the future is far more cooperation between the regulator and the regulated — and far more understanding of the basic issues by interested parties — if the public utility sector . . . is to reach its maximum potential.²

Some chapters are of particular interest. For example, Chapter 3, "Legal Concepts of Public Utility Regulation" provides, from the perspective of a non-lawyer, a good background that should be required reading for anyone entering the field. Similarly, Chapter 5, "The Goals, Procedures, and Theories of Public Utility Regulation" is an academic analysis of four theories of regulation: "public interest," "capture," "interest group," and "equity-stability". However, Chapter 5's discussion of rulemaking and adjudication is more for the layman than a lawyer. In contrast, Chapter 6 "Accounting and Financing" is a discussion of public utility accounting which should be informative for most lawyers. This also is true for Chapter 8, "The Rate Base" and Chapter 9, "The Rate of Return," which provide a readable analysis of the discounted cash flow method, capital asset pricing

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1. 6 Energy L.J. 73, 75 (1985).

2. Early on, Professor Phillips states (p. 25): "One of the greatest challenges confronting regulation today is to know when *not* to regulate" (*italics in original*).

model, and the comparable earnings standard. Chapter 10, "The Rate Structure," provides a helpful discussion of marginal cost pricing.

On balance, change has limited the value of the third edition. Although Order No. 636 is discussed, it is relegated to less than two pages. (Order No. 436 is consigned to two paragraphs). Professor Phillips' treatment of the Energy Policy Act of 1992 in Chapter 13, is set forth in five pages, but offers little insight. Regrettably, such current topics as cogeneration, independent power production and the sea-change in oil pipeline regulation are not discussed.

Professor Phillips' stout volume is a worthy addition to your library. Whether it should be added if you have the edition reviewed nine years ago is a harder call. Much of the authority relied on in the voluminous footnotes that follow each chapter have not been updated to include the most recent writings in the field. Some text is dated. For example, a discussion of the FERC Settlement process ends at 1980. Similarly, Chapter 7 as discussion of "current" depreciation problems relies on information which is at least ten years old.

In sum, "The Regulation of Public Utilities" is a good read that provides a comprehensive historical background for the profession that has earned our dedication.