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Brigham A. McCown

When Is Enforcement Effective?

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On a January day when freezing temperatures outside did nothing to cool the heated rhetoric of Congress, a group of former regulators gathered on Capitol Hill for a pragmatic, nonpartisan discussion of how to best enforce the vast array of government laws and regulations. The timely event, moderated by former Arkansas Senator Blanche Lincoln, was aptly titled, "Enforcing Regulations: Sending the Right Message, Getting the Right Results."

With the political culture in the United States reaching new lows in partisan acrimony, finding common ground on public polity can be challenging. There are, however, some overarching themes Washington officials and state and local government all agree upon. In the world of regulations, that overarching goal is the importance of safety.

No one disagrees that when our government officials responsibly enforce compliance for safety, our society benefits. The trick, as the panel members discussed, is to achieve the correct balance between punishment for those who break the rules and incentives to bring about desired behavior and outcomes. The number one goal a regulator faces is how best to ensure voluntary compliance with the rules. That, in a nutshell, is the regulators' core mission and fundamental challenge.

Government regulation is particularly important when it comes to our energy industry. Nearly every sector of the economy relies on energy to power its facilities, transport its goods, and manufacture numerous consumer products. And yet, the production and transportation of energy involves a myriad of safety issues.

A case in point touched on during the panel's discussion was the 2010 accident in San Bruno, California, where a natural gas pipeline release claimed the lives of eight people and destroyed 38 homes. Afterward, the California Public Utilities Commission (CPUC) launched an investigation that eventually determined that the pipeline's owner, Pacific Gas and Electric Company (PG&E), had made a number of mistakes that contributed to the accident.

For its part, PG&E, California's largest utility company, acknowledged its responsibility for the blast. It initiated changes to its management and since then has spent $2 billion on upgrades, improvements and safety enhancements to its pipeline system. Meanwhile, many voices have weighed in urging the CPUC to levy heavy sanctions against PG&E, and the Commission has been contemplating further enforcement actions against the company. Last year, its staff recommended imposing an additional $2.25 billion in penalties against PG&E, which would bring the total penalties and fines to more than an astounding $4 billion.

That figure - 30 times the size of any penalty ever imposed in connection with a pipeline accident - far surpasses PG&E's yearly net income, and could very well produce unintended negative consequences. Higher costs of capital ultimately would boost energy prices and hurt consumers. Just as important, it also could reduce PG&E's ability to make the kind of investments in upgraded infrastructure that state utility regulators should be trying to encourage.

This example shows that when regulators deviate from their core mission, the regulatory and enforcement process can actually undermine the public's safety. When processes take on a life of their own, where regulators seem intent on dispensing justice, often the goals of a safety regulator get lost in the shuffle. Enforcement policy shouldn't be driven by emotion or an ideological agenda. It should be guided by a

carefully considered approach that may include financial sanctions, but whose main goal is to reform behavior or practices of the regulated entity.
If the goal is to change behavior, PG&E may have already gotten the message when it restructured its management and invested the initial $2 billion before there was any enforcement action.

Beyond imposing a historically large penalty, the CPUC staff proposal would bar PG&E from passing on any of its costs to ratepayers. This course of action would send the wrong message to every utility: wait, don't address safety matters until forced to do so by the regulator.

Tossing around big-number fines is easy; effective oversight is, however, a long-term proposition, and one that can only be accomplished through diligence and attentiveness. Did PG&E mess up? Absolutely. But let's keep in mind that these situations rarely are the fault of any one party. The regulator must remain diligent, and state and local officials and their respective planning and zoning boards must also keep infrastructure in mind as they approve development.

Safety is a shared responsibility, and it is time to end the blame game and instead move forward with a balanced enforcement and oversight program. Let's just hope the regulators remain focused on placing energy reliability ahead of lawyers and politicians.

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