



Democracy and Energy Regulation

Jerrold Oppenheim & Theo MacGregor
Democracy And Regulation

Institut du Développement durable et des Relations
Internationales (IDDRI)

Paris

26 September 2007



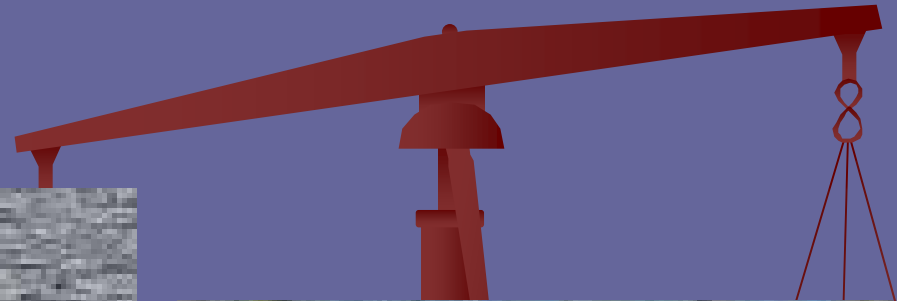
What Can Happen Without Democratic Regulation

- **Yorkshire Water Company, Leeds**
- **Rio Light goes Dark**
- **World Bank and IMF**
- **Dabhol, India**
- **Nordic Countries**
- **Cochabamba, Bolivia**





What Can Happen Without Democratic Regulation





Democratic Regulation

- Transparency
- Public participation
 - Mechanisms
 - Process rights
 - Appeal
 - Funding
- Rules
 - E.g., Just and Reasonable
 - No arbitrary or capricious decisions
- Balance interests
- Protect investments



Democratic Energy



Theo MacGregor &
Jerrold Oppenheim

DemocracyAndRegulation.com



Environmental objectives with or without liberalisation

“Keep Your Eye on the Prize”

- Feed in tariffs/net metering
- Portfolio standards/requirements
- Per-kWh assessment (“System Benefit Charge”)
- Open access to transmission
- Integrated Resource Planning/Least-cost
- Appliance Standards
- Building Codes

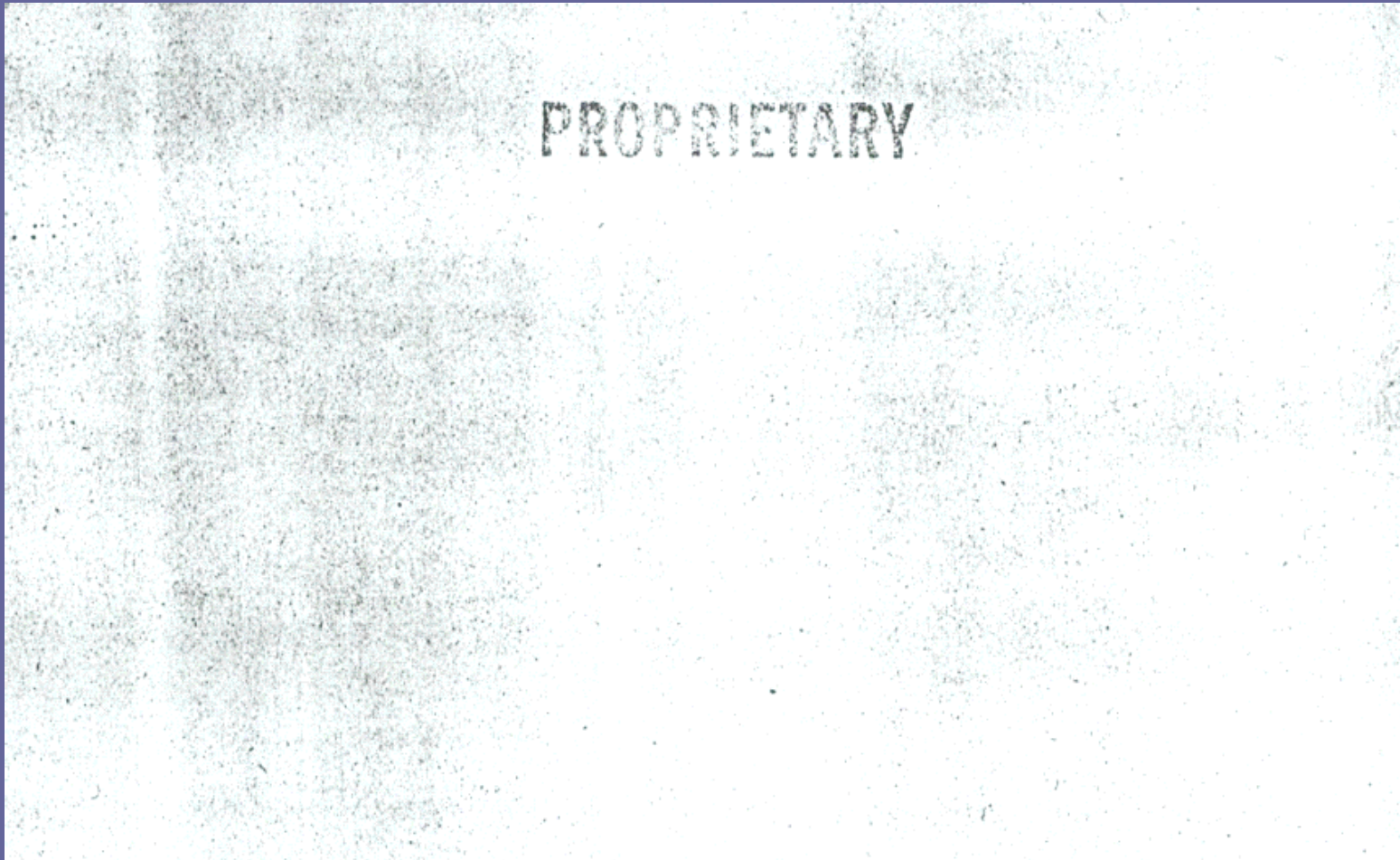


Transparency

- ALL information is available
- Periodic detailed reports
- Open Meetings?



Secrecy





Transparency

62 Democracy and Regulation

- amount invested in the utility, by category of investment (generating plant, transmission lines, supplies, etc.);
- profits;
- amount of pollution emitted, by pollutant; and
- hours of labor lost due to injury.

Additional public information is available from the files of public agencies under state and federal Freedom of Information Acts (FOIA).

After several months of poring over the utility's testimony, data tables and answers, intervening members of the public may file their own proposals for what utility prices and practices should be. These proposals can include expert testimony, analyses and supporting tables and studies. The utility is then given time to ask discovery questions of the intervenors regarding their proposals.

BRIDGE STREET, NEW YORK RFO 8823 A			
Invoice #	Scrap Vendor Truck	Amount	
63720	Charged 47,750# X 7.25 CWT Correct to 47,750# X 6.50 CWT Check # 128522 dtd 5/1/89	\$3,461.87 3,103.25	Credit 358.12
63772	Charged 25,640# X 7.25 Correct to 25,640# X 6.50 Check # 128522 dtd 5/1/89 *Minimum charge 30,000	\$2,175.00 1,950.00	Credit 225.00
63689	Charged 44,810# X 7.25 Correct to 44,810# X 6.50 Check # 128522 dtd 5/1/89	\$3,248.72 2,912.65	Credit 336.07
63787	Charged 38,100 X 7.25 Correct to 38,100 X 6.50 Check # 128109 dtd 4/26/89	\$2,762.25 2,476.50	Credit 285.75
63261	Charged 30,000 X 7.25 CWT Correct to 30,000 X 6.50 CWT Check # 125021 dtd 3/17/89 *Minimum charge 30,000	\$2,175.00 1,950.00	Credit 225.00

Figure 6 Discovery Response by NYNEX Public Disclosure of Commercially Confidential Information

The Open Regulatory Process 63

Name of Respondent	This Report is (1) Original (2) A Recombination	Date of Report (Date on File)	Year of Report (Date on File)
Energy Atlantic, Inc.	(1) Original (2) A Recombination	04/09/2000	Dec. 31, 1999
ELECTRIC OPERATION AND MAINTENANCE EXPENSES			
The amount for previous year is not derived from previously reported figures, appears in footnotes			
Line No.	Account	Amount for Current Year (1)	Amount for Previous Year (2)
1	POWER PRODUCTION EXPENSES		
2	Steam Plant Operation	3,951,178	3,951,178
3	Operation		
4	1999 Operation Supervision and Engineering	187,891,834	187,514,244
5	1999 Steam Expenses	3,726,793	2,430,316
6	1999 Steam from Other Sources		
7	1999 Steam Transportation	110,985	110,985
8	1999 Steam Expenses	4,858,818	199,125
9	1999 Maintenance Steam Power Expenses	4,797,844	5,537,755
10	1999 Rents	4,813,953	4,543,822
11	1999 Expenses		
12	TOTAL Operation (Enter Total of Lines 4 thru 11)	215,211,534	187,535,887
13	Maintenance		
14	1999 Maintenance Supervision and Engineering	455,776	551,261
15	1999 Maintenance of Structures	893,370	471,459
16	1999 Maintenance of Electric Plant	5,555,893	6,341,538
17	1999 Maintenance of Electric Plant	4,142,952	5,444,416
18	1999 Maintenance of Miscellaneous Steam Plant	893,387	1,248,957
19	TOTAL Maintenance (Enter Total of Lines 14 thru 18)	11,141,378	13,058,631
20	TOTAL Power Production Expenses Steam Power (Enter Lines 12 & 19)	226,352,912	200,594,518
21	Nuclear Power Generation		
22	Operation		
23	1999 Operation Supervision and Engineering	13,367,837	11,892,854
24	1999 Fuel	88,872,817	88,343,365
25	1999 Costs and Other	3,346,402	3,317,818
26	1999 Steam Expenses	22,858,331	18,134,312
27	1999 Steam from Other Sources		
28	1999 Steam Transportation		
29	1999 Steam Expenses		
30	1999 Maintenance Steam Power Expenses	31,360,431	36,212,451
31	1999 Rents	2,512,450	2,475,562
32	TOTAL Operation (Enter Total of Lines 23 thru 31)	138,418,908	138,068,908
33	Maintenance		
34	1999 Maintenance Supervision and Engineering	11,452,133	14,296,274
35	1999 Maintenance of Structures	13,361,354	8,354,858
36	1999 Maintenance of Electric Plant Equipment	5,289,913	7,643,618
37	1999 Maintenance of Electric Plant	4,837,293	4,218,345
38	1999 Maintenance of Miscellaneous Steam Plant	48,488,747	47,367,444
39	TOTAL Maintenance (Enter Total of Lines 34 thru 38)	83,429,440	81,961,518
40	TOTAL Power Production Expenses Nuclear Power (Enter Lines 22 & 40)	220,817,298	214,292,414
41	Hydroelectric Power Generation		
42	Operation		
43	1999 Operation Supervision and Engineering	87,131	82,841
44	1999 Fuel for Power	223,785	223,785
45	1999 Costs and Other	87,136	133,481
46	1999 Steam Expenses	829,897	868,547
47	1999 Maintenance Steam Power Expenses	22,313	134,312
48	1999 Rents	4,841	4,841
49	TOTAL Operation (Enter Total of Lines 42 thru 48)	1,131,493	1,213,807

Figure 7 Page from Entergy Annual Report to FERC

Finally, everyone presents their case in public hearings conducted by a hearing officer, administrative law judge or a regulator. In ordinary civil or criminal trials, discovery precedes all testimony; witnesses give sworn, direct oral testimony at the trial and are cross-examined immediately thereafter. "Utility trials" elicit much more probing information by reversing the sequence. Direct testimony is filed first and in writing and must include the boxes of quantitative information described above; then



Public Participation - Process

- Procedure for intervention
- All proceedings open to public
- Liberal standing
- Standard administrative procedures
- Right to appeal
 - Statutory standards to control discretion
 - Must also follow own rules & precedent
 - Explain every decision, address every issue
 - Transcribed record of all proceedings



Public Participation - Issues

- Avoid advocate capture
- Training
- Participant Resources



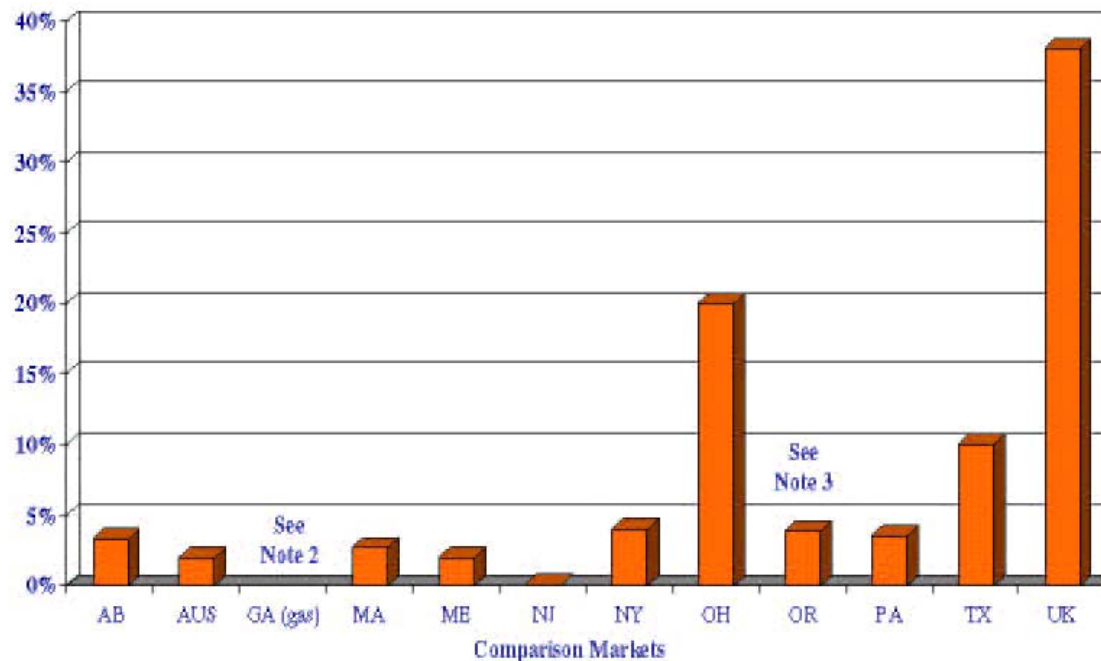
ISSUES

- Short-term vs. Long-term
- Economic interests vs. non-economic
- Global interests vs. local
- Solutions that calibrate intensity
- Markets vs. regulation



Most Choose Not to Choose

[Chart: Eric Cody, "Massachusetts Electric Restructuring: Beyond the Standard Offer" (Mass. DOER, 2003)]



Notes:

1. Data shown are for varying reporting periods between 6/03 and 10/03; data are for residential or small customers, depending upon market area.
2. GA gas market was forced to 100% level in 1989 via direct assignment of customers who had not made a choice.
3. Residential switching not permitted in OR – data represent % of customers selecting regulated portfolio options.

Figure 2. Residential Customer Switching Rates (%) in 2003

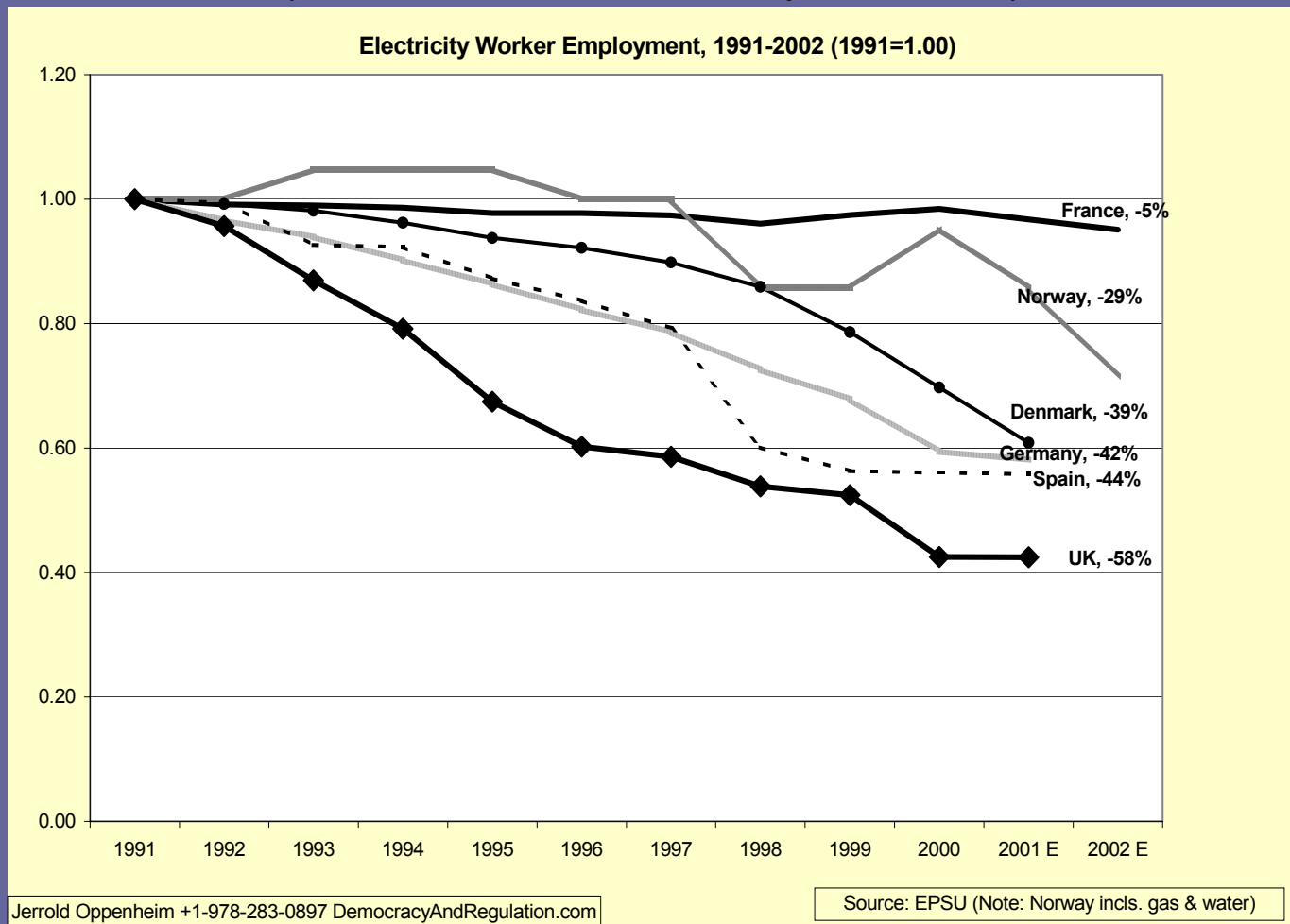


Do consumers *want* choice?

- Columbia/Stanford grocery store study: more choices, less buying
- Greenspan: variable rate mortgages cheaper
 - Homeowners: 75% choose fixed



“Depopulate. Get rid of people. They gum up the works.” Enron former CEO Jeff Skilling (*Journal of Commerce*, April 7, 1997)





Invoking democratic regulation

- Call your Legislators
- Democracy gives you tools to use
 - Being right is not enough!
- Be at the table; form coalitions
- Ask questions and get sworn answers
- Figure out what you need and demand it
 - Incremental progress is still progress
- Negotiate a settlement you can live with



CUBs: Citizens Utility Boards

CUBE: Conseil d'Usagers des Biens Energétiques



Illinois



Eugene, Oregon



California

Theo MacGregor &
Jerrold Oppenheim

turn.org - Google Image Search

TURN Consumer Advocates : Index

HOME ABOUT US GET INVOLVED ISSUES PRESS ROOM CONSUMER TOOLS ACTION!

Join TURN / DONATE

TURN in the news

File a complaint

TURN Founder Sylvia Siegel 1918 - 2007

TAKE ACTION!

Digital Voice: Whether You Want it or Not, Its Comcastic!

Consumers are up in arms about Comcast's latest innovation: Want It or Not Digital Voice. All Comcast phone customers will be forced to purchase this new, improved and more expensive service. [Read More](#)

WHAT'S NEW...

TURN FOUNDER SYLVIA SIEGEL DIES

Legendary consumer activist Sylvia Siegel died peacefully in her sleep today. As TURN's founder and executive director for 16 years, Siegel saved California consumers billions of dollars. [Read More](#)

Consumers Paying Higher Rates for the Same Substandard Service.

PG&E Can't Keep the Lights on. Watch the video. [Read More](#)

CONSUMER TOOLS

PG&E, You'd Never Lie to Me, But Just in Case ... Let Me Check with TURN [Learn More...](#)

ENERGY

Consumers Paying Higher Rates for the Same Substandard Service. [Learn More...](#)

TELECOMMUNICATIONS

Your paycheck. Delivered. [Learn More...](#)

GREEN MATTERS

Offsets and Credits: the Lingo of Fighting Climate Change [Learn More...](#)

ACTION CENTER

CPUC: PROTECT WORKING FAMILIES! Don't Trust US. Trust Our Rates!

Stop Discrimination Against Limited English Customers [Learn More...](#)



Green EDF?

- Feed in tariffs/net metering?
- Portfolio standards?
- Per-kWh assessment?
- Open access to transmission?
- Integrated Least-cost Public Resource Planning?





Bread and Roses Strike (1912)



The Economics of Poverty:
How Investments to Eliminate Poverty
Benefit All Americans

Developed for Entergy by

Jerrold Oppenheim

Theo MacGregor



Free copies from:
Kay Kelley Arnold, Sr. V.P., External Affairs
Entergy Corp.
P.O. Box 3797
Little Rock, ARK 72203



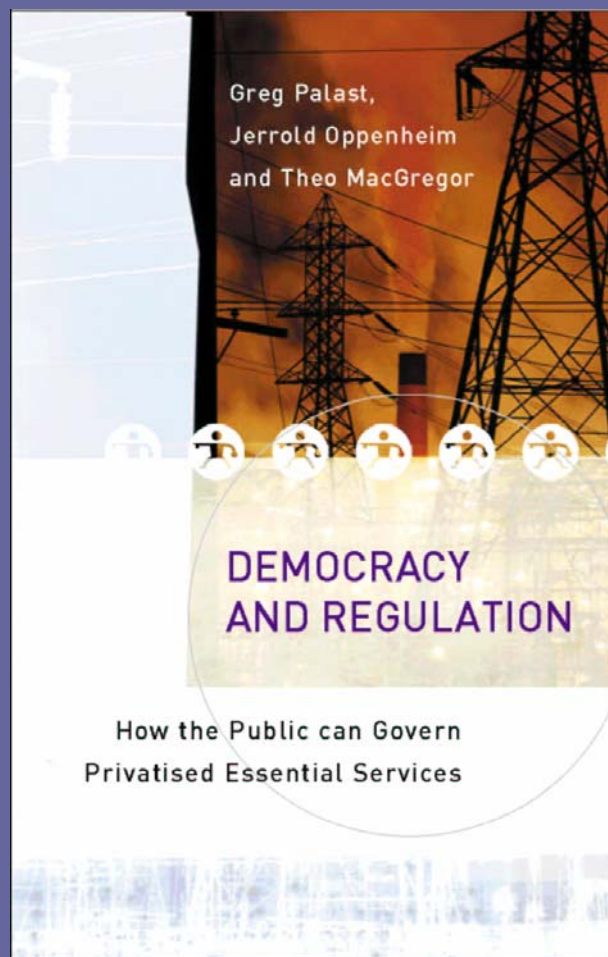
Theo MacGregor &
Jerrold Oppenheim

DemocracyAndRegulation.com





Meeting Price €20



Available from the authors here.
Or order for €30 at

[WWW.](http://WWW.DemocracyAndRegulation.com)

DemocracyAndRegulation.com

Or +1-978-283-0897

JerroldOpp@

DemocracyAndRegulation.com



About the Speakers

Jerrold Oppenheim is an independent consultant and attorney who has advised and represented low-income and other utility consumer advocates, government agencies, labor, and utilities across the country for more than 35 years. A graduate of Harvard College and Boston College Law School, he led utility litigation and argued precedent-setting cases for four Attorneys General in New York State and Massachusetts; for Legal Services in Boston, Chicago and New York City; and for the National Consumer Law Center. He founded the Renewable Energy Technology Analysis project at Pace University Law School and is now a member of the Center for Public Utilities Advisory Council, New Mexico State University. He has spoken and published on four continents, including *Democracy And Regulation* with Theo MacGregor and Greg Palast, published by Pluto Press (London) and winner of the ACLU Upton Sinclair Award.



About the Speakers

Theo MacGregor was director of the Electric Power Division of the Massachusetts Department of Public Utilities. She helped develop the rules and regulations by which electricity utilities operate in the market. She now runs MacGregor Energy Consultancy and provides expert analysis to state governments, attorneys general, utility companies, consumer advocates, and others. Ms. MacGregor has published and lectured on U.S. utility regulation both nationally and internationally, including *Democracy And Regulation* with Jerrold Oppenheim and Greg Palast, published by Pluto Press (London) and winner of the ACLU Upton Sinclair Award. She has an MBA from Simmons School of Management in Boston.