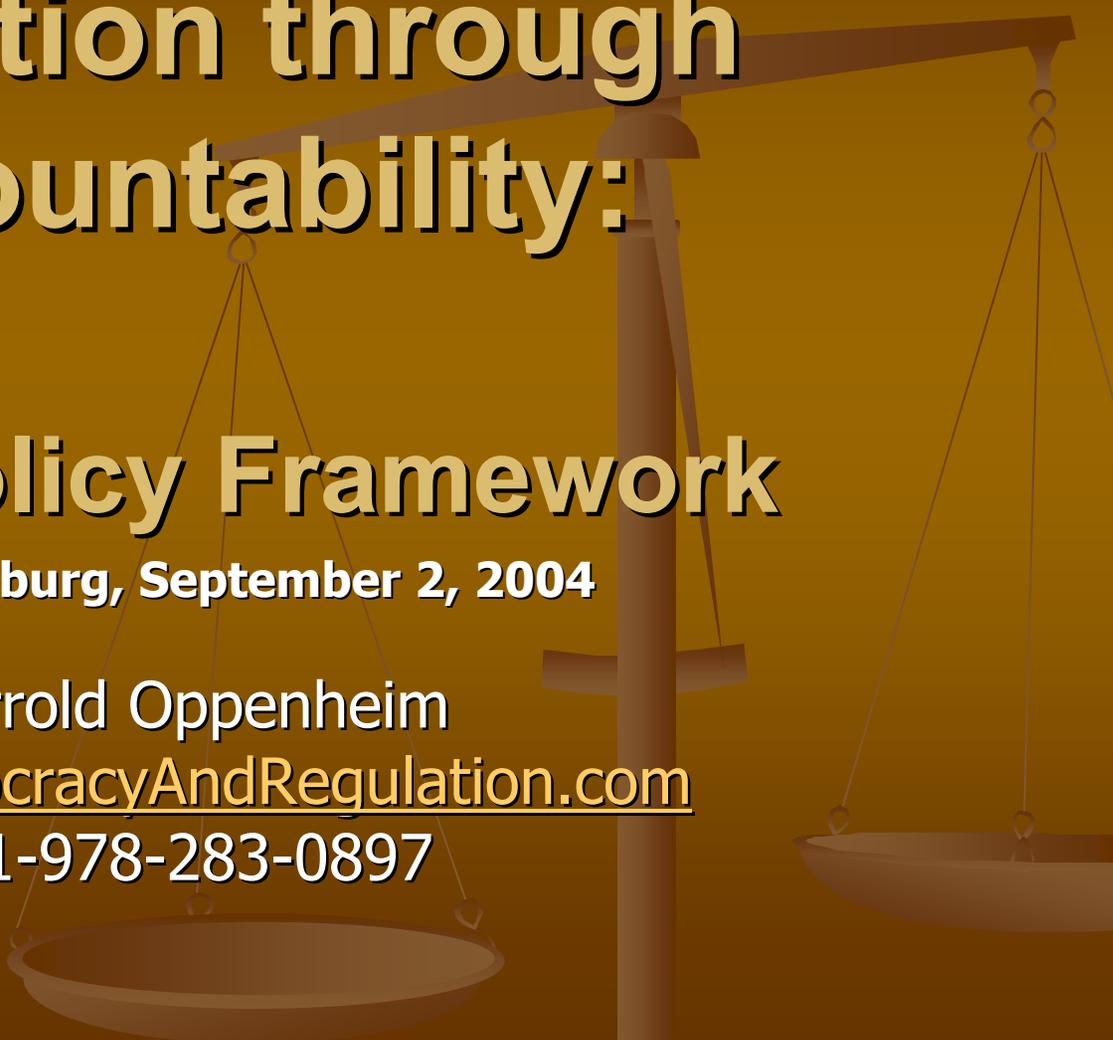


# Public Service Regulation: Achieving Poverty Reduction through Accountability:



## Legal Policy Framework

Johannesburg, September 2, 2004

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# UNIVERSAL ACCESS PUBLIC ACCOUNTABILITY

- RIGHT TO PARTICIPATE
- TRANSPARENCY
- RESOURCES FOR PARTICIPANTS

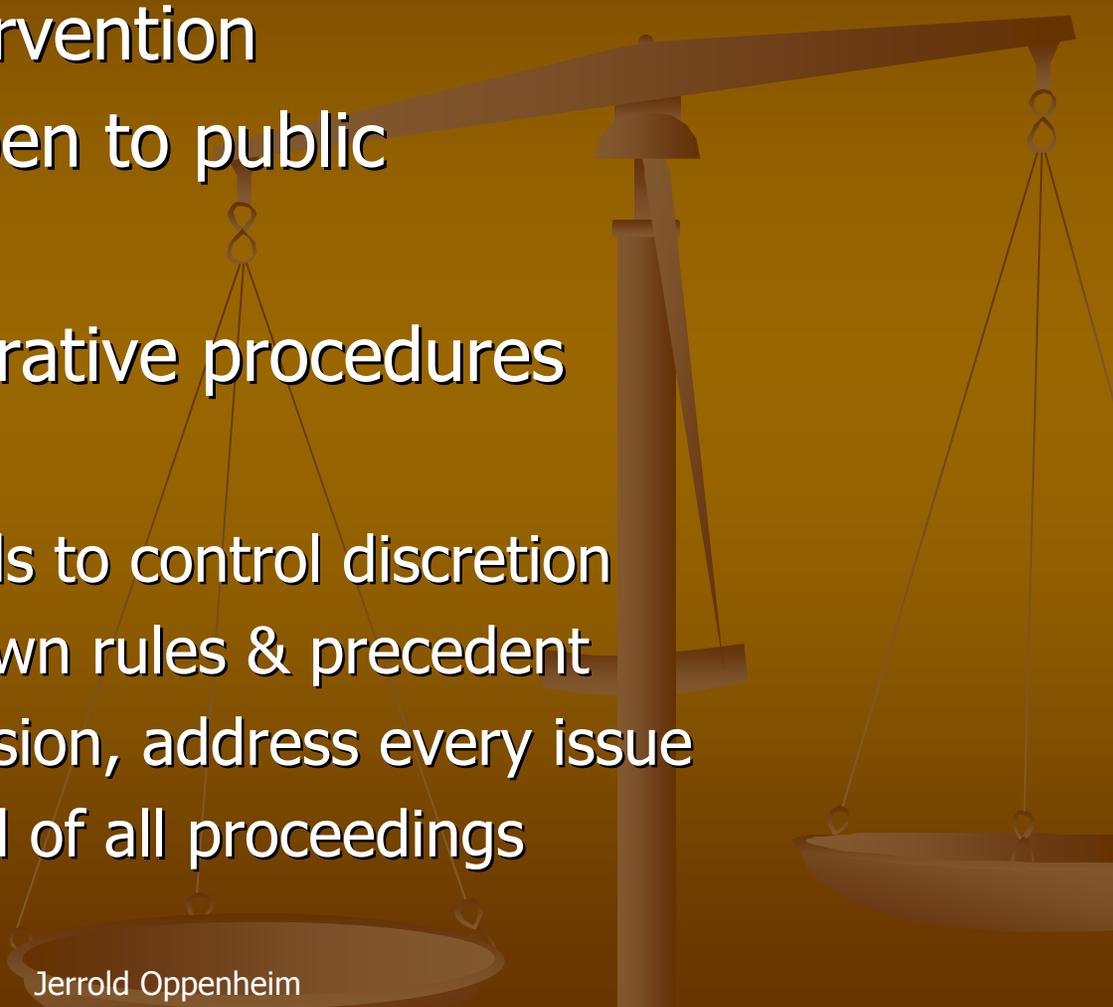
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# RIGHT TO PARTICIPATE



- 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

# TRANSPARENCY

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

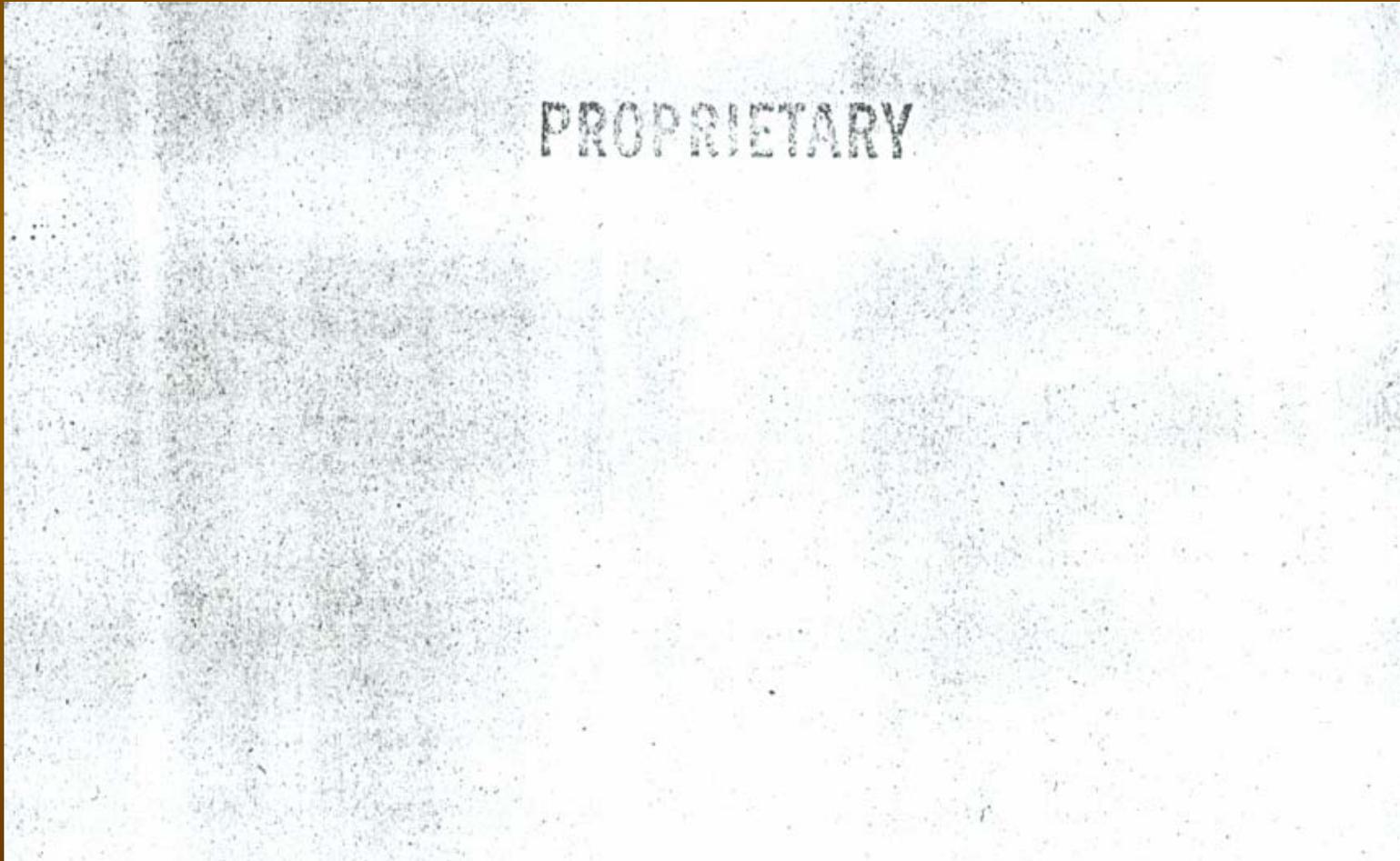
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# SECRECY



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# TRANSPARENCY

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- 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		RFQ 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 Credit	\$3,461.87 3,103.75 358.12
63772	Charged 25,640# X 7.25 Correct to 25,640# X 6.50 Check # 128522 dtd 5/1/89 *Minimum charge 30,000 Credit	\$2,175.00 1,950.00 225.00
63689	Charged 44,810# X 7.25 Correct to 44,810# X 6.50 Check # 128522 dtd 5/1/89 Credit	\$3,248.72 2,912.65 336.07
63787	Charged 38,100 X 7.25 Correct to 38,100 X 6.50 Check # 128109 dtd 4/26/89 Credit	\$2,762.25 2,476.50 285.75
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 Credit	\$2,175.00 1,950.00 225.00

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

# TRANSPARENCY

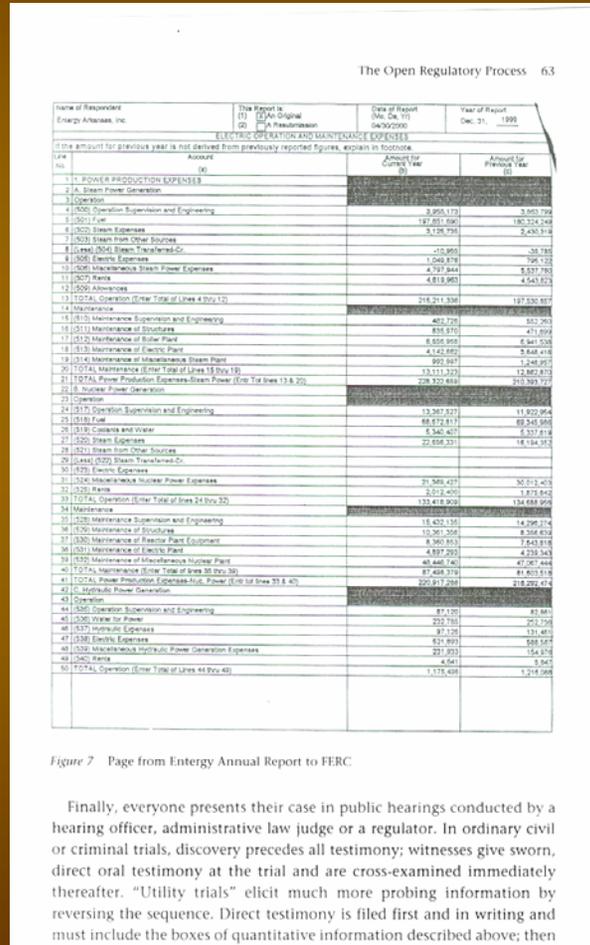


Figure 7 Page from Entergy Annual Report to FERC

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

# PARTICIPANT RESOURCES

- Democratic process requires participation
- Avoid advocate capture
- Training

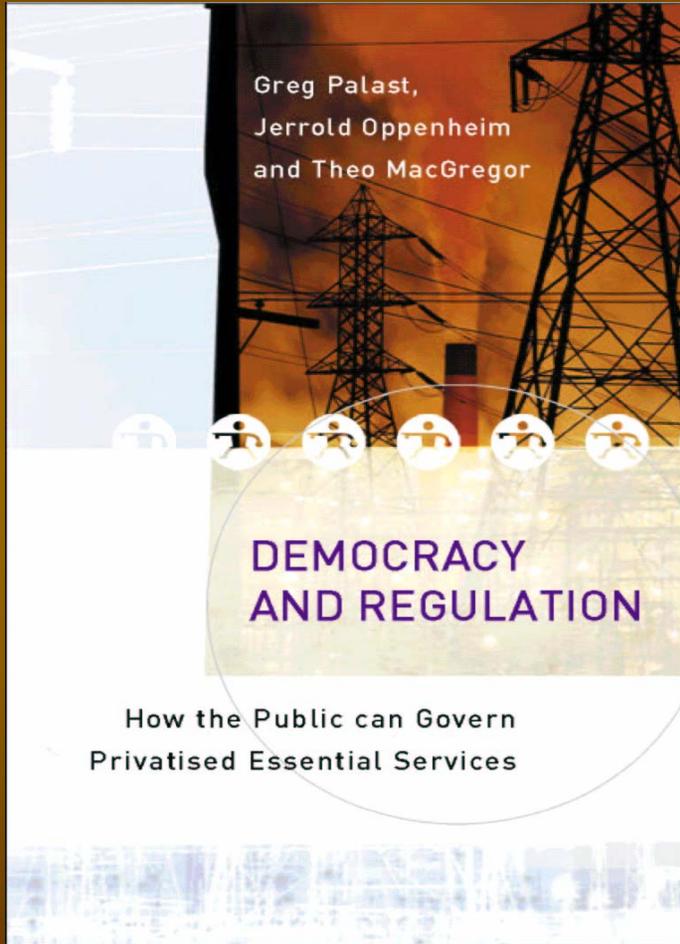
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## Monitoring and Contract Analysis

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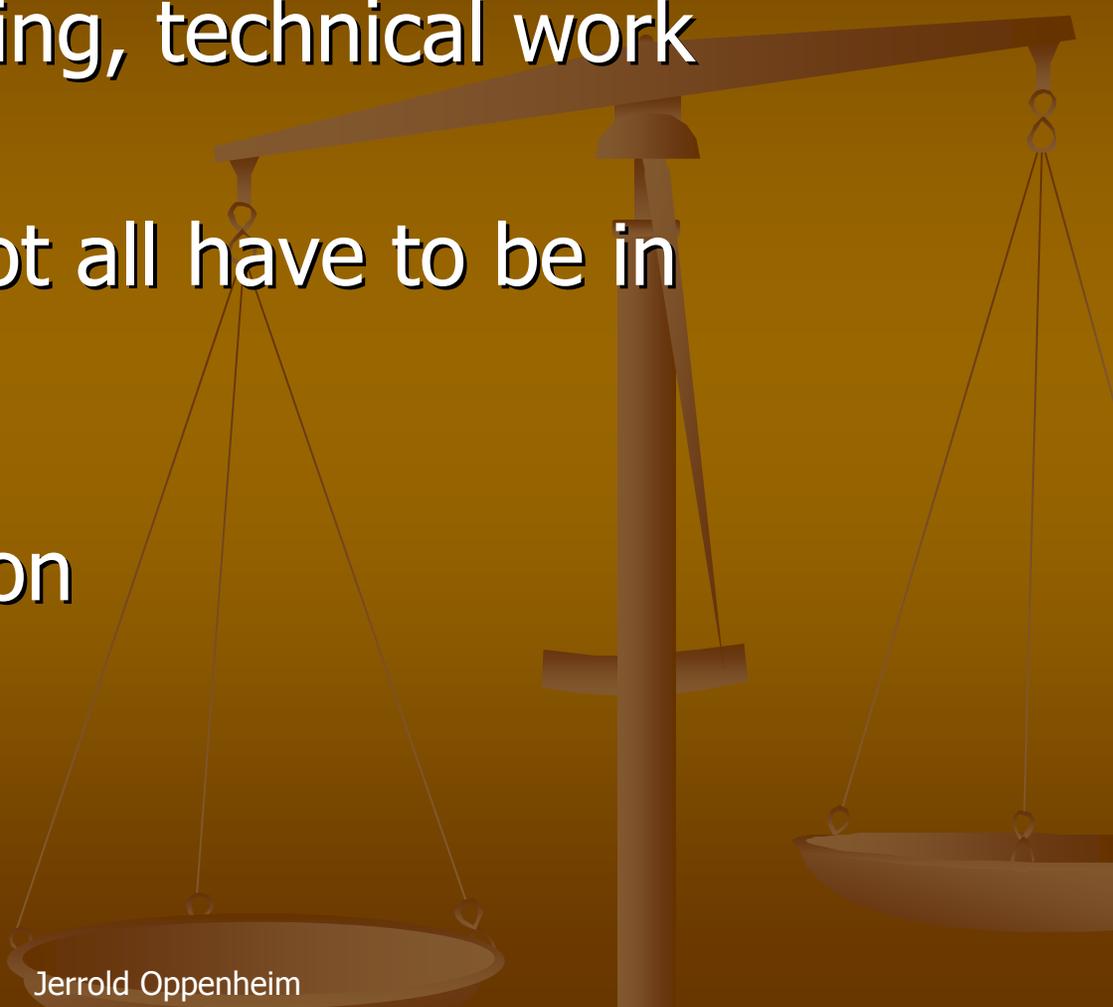
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# MONITORING: A PARTNERSHIP

- Can be demanding, technical work
- Resources do not all have to be in government
- Public information
- Resources



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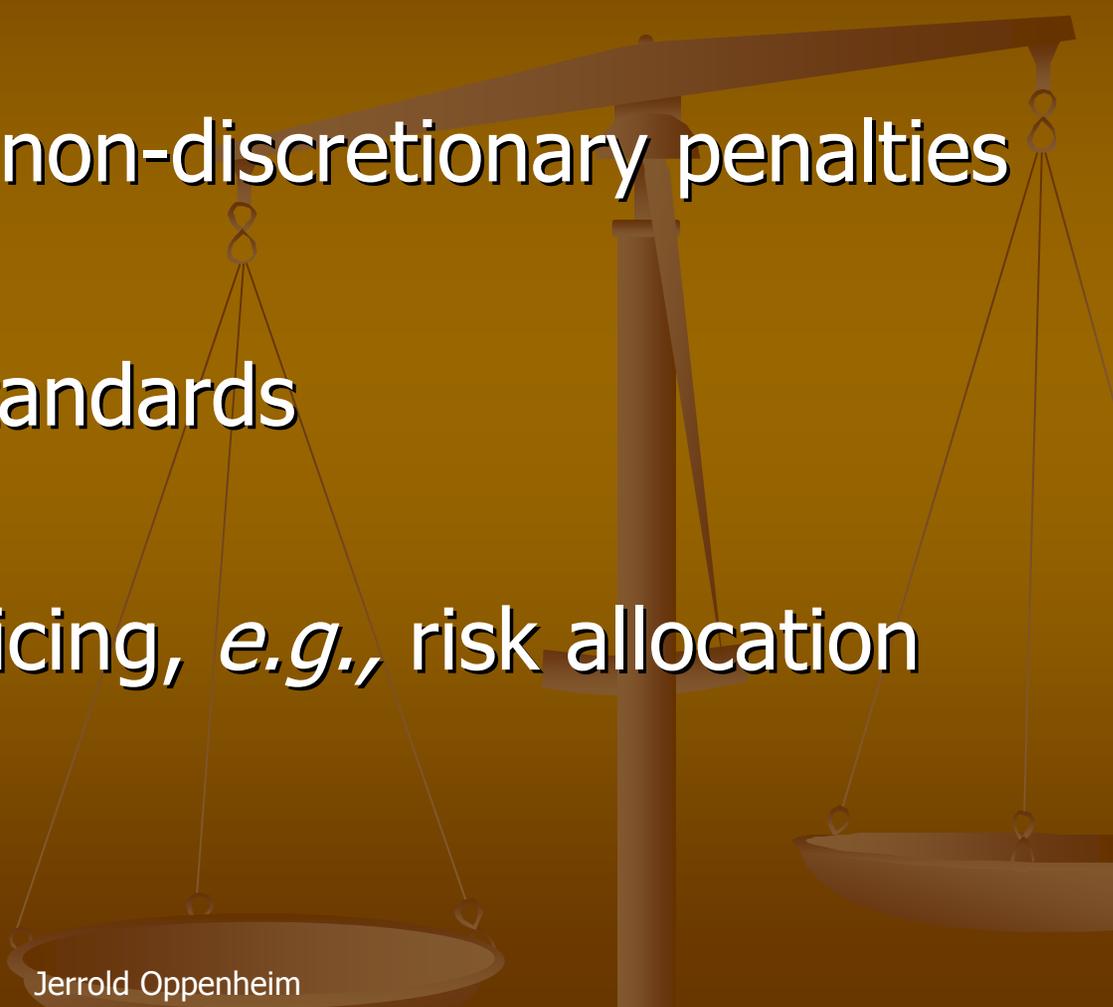
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# CONTRACT ANALYSIS

- Publicly arrived at standards
- Determined in advance



# DISCRETION



- Escalating and non-discretionary penalties
- Performance standards
- Principles of pricing, *e.g.*, risk allocation

# PETITION PROCESS

- Standing
- Participant resources
- Transparency
- Administrative procedure standards
- Public process
- Right to appeal

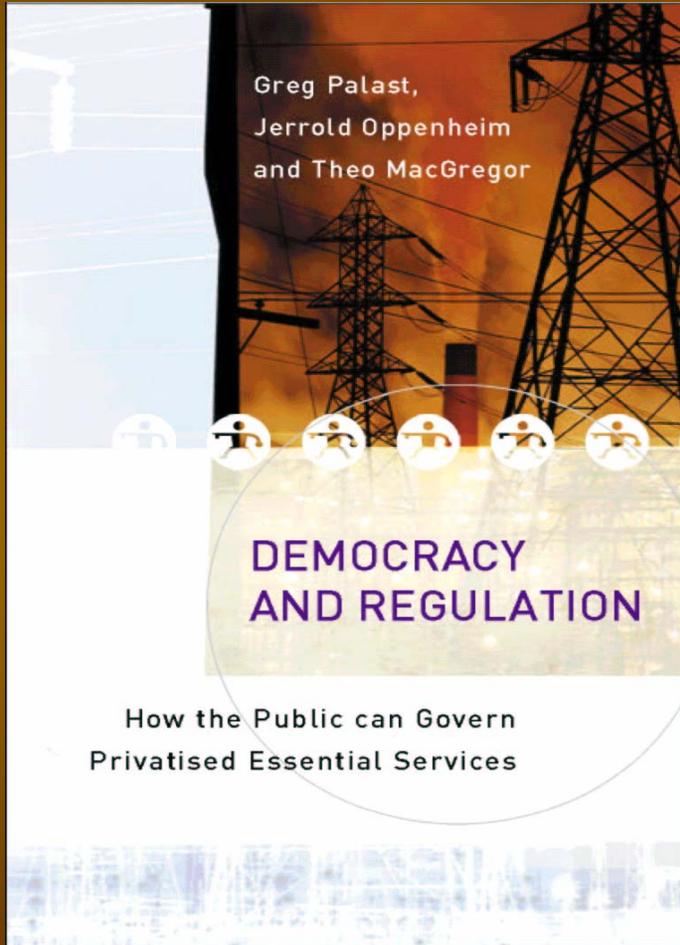
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# About the Speaker

**Jerrold Oppenheim** is an independent consultant and attorney who has advised and represented low-income and other utility consumer advocates, labor unions, government agencies, and utilities across the country for more than 30 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 and for Legal Services in Boston, Chicago and New York City. 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.

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