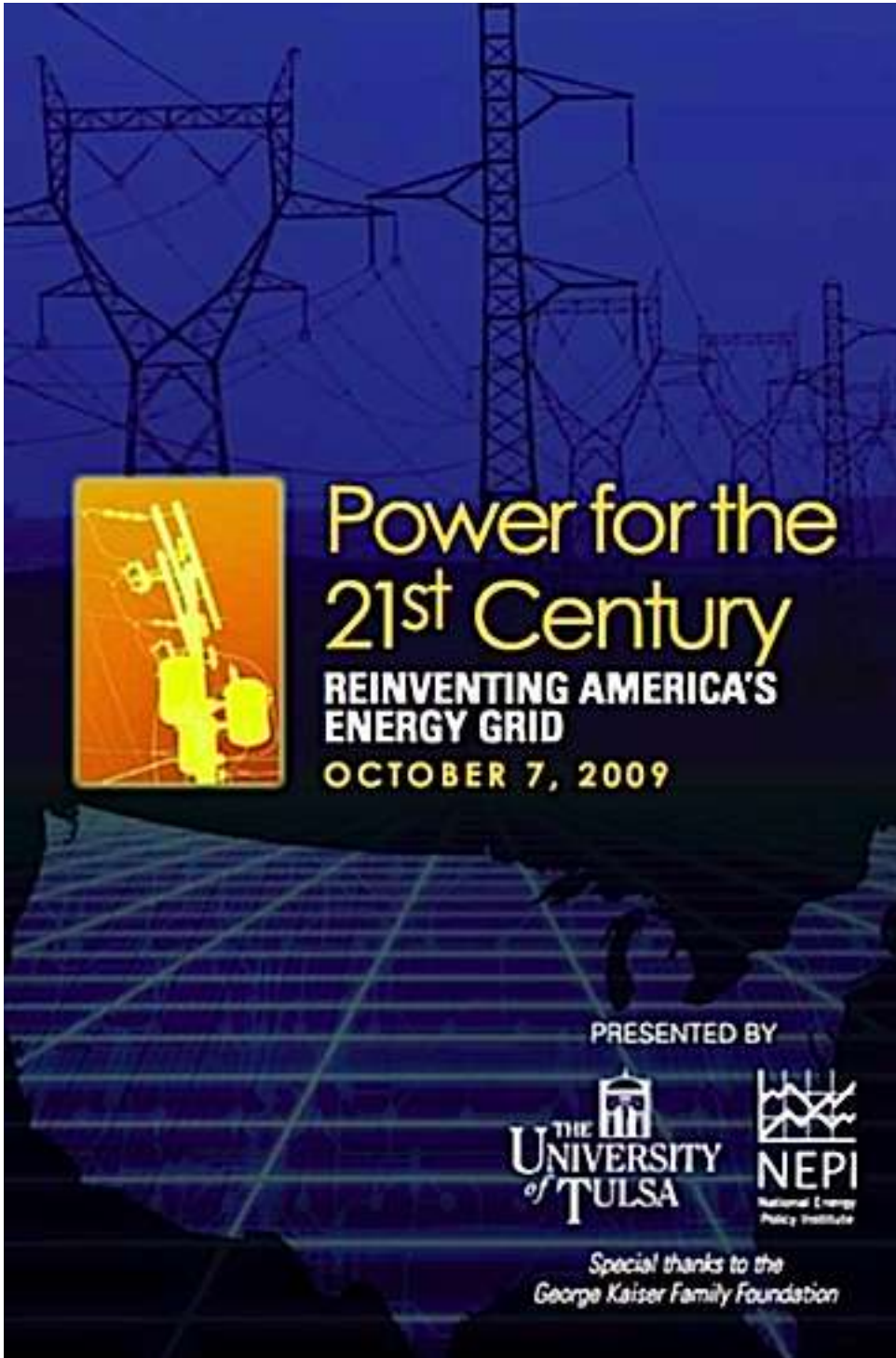


## REGULATION PANEL



**Power for the  
21<sup>st</sup> Century**  
**REINVENTING AMERICA'S  
ENERGY GRID**  
**OCTOBER 7, 2009**

PRESENTED BY

**THE UNIVERSITY  
of TULSA**

**NEPI**  
National Energy  
Policy Institute

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## **REGULATION: REGULATORY HURDLES – A NEW OLYMPIC**

**SPORT?** Regulation and a changing regulatory environment are an ever-present reality for America's electricity sector. This panel focused on the role of regulation in implementing public policy, and how it can help or hinder the broadening of America's energy options.



**MODERATOR - JEFF CLOUD, Commissioner, Oklahoma Corporation Commission**

Jeff Cloud was elected statewide to a six-year term on the Oklahoma Corporation Commission on November 5, 2002, and assumed the chairmanship of the commission in June of 2005. Cloud, who is a member of the Electricity Committee for the National Association of Regulatory Utility Commissioners (NARUC) and Federal Energy Regulatory Commission (FERC) Joint Boards on Security Constrained Economic Dispatch, sits on the advisory boards for the Center for Public Utilities at New Mexico State University and Oklahoma Water Resources Institute-Water Research. Cloud is also a member of the Legal and Regulatory Committee of the Interstate Oil and Gas Compact Commission (IOGCC) and serves on Oklahoma Employees Retirement System Board of Trustees. The Aspen Institute recently honored Cloud as one of the top young elected officials by naming him as a fellow for the Aspen Institute-Rodel Fellowship, which brings together "the nation's emerging leaders" to discuss broad issues of democratic governance and effective public service. Born in Tulsa and raised in Oklahoma City, Cloud earned a degree in petroleum and management from the University of Oklahoma and a juris doctorate from the Oklahoma City University School of Law.

## **PANELISTS**



**JASON MARKS, Commissioner, New Mexico Public Regulation Commission**

Prior to being elected to the New Mexico Public Regulation Commission, Jason Marks had an extensive career in healthcare finance and rate setting. After serving as hospital programs manager for Oregon Medicaid, he joined Myers and Stauffer LC, a mid-sized accounting firm, where he became a principal and led a national consulting practice extending to 20 states and the federal government. Marks was first elected to the PRC by the voters in his Albuquerque-area district in November 2004. He was reelected by a large margin in 2008. Marks served as PRC vice chair for 2005 through 2007, and as Commission chair for 2008. Marks was the drafter and sponsor for Qwest's AFOR II regulatory order, which includes a three-year rate freeze and elimination of "trouble isolation charges." He was a strong advocate for ensuring that Qwest was held accountable for its AFOR I investment shortfall, and insisted that customer credits (ultimately totaling over \$30 per line) were part of the resolution of the AFOR I enforcement case. In 2008, Marks voted against the PNM emergency fuel adjustment clause because he believed it was inappropriate to transfer 100% of fuel and purchased power risk from the company to its customers. Although a Commission majority approved the fuel clause, Marks was successful in offering amendments to the surcharge that reduced the customer impact by over \$10 million. During the 2009 Legislative Session, Marks successfully fought to bring competition to title insurance rates and against Qwest's deregulation bill. Marks believes that the PRC has an

important role to play in the transition from fossil-fuel dependency to energy supplies that are environmentally and financially sustainable. In 2007, he sponsored and passed renewable energy rules at the Commission that create diversity targets for solar energy and distributed generation. In 2006, he brought an order to the Commission that requires utilities to use standardized prices for carbon dioxide emissions in their long-range resource planning, and he joined with Com. Lujan in initiating a rulemaking that resulted in the highest net metering limit in the nation, and in sponsoring the PRC's entry into the Western PUC Commissioner's Joint Action Framework to Address Climate Change. Marks has a bachelor's degree from Reed College and a law degree from the University of New Mexico. He is a member of the New Mexico bar and serves on the governing board for the Western Renewable Energy Generation Information System, the Steering Committee for the Western Renewable Energy Zones Project, and the Advisory Committee for New Mexico State University's Center for Public Utilities

### ***Presentation Summary***

Jason Marks noted that wind energy leads the renewables. Independent producers began the use of wind, but now utilities are increasing ownership. A utility buys power through a power purchase agreement and that gets passed on to the customer at cost. A utility makes money on capital investments and a return on its shareholder's capital.

Regulations have facilitated wind energy. Currently, 29 states have an RPS requirement, meaning that the states set a requirement that all utilities have to meet.

New Mexico's renewable plan now has a goal of 20% by 2030. We want to push this, but we don't want it to become so expensive that we lose public support. We are currently at 7%.

Wind has great advantages with great economics, but it is intermittent. We have an abundant solar resource that we are beginning to utilize. Our utilities have responded with customer incentive programs. We have put in incentives to make it feasible if you want to invest in your own PV system. We have 500 grid tied PV systems and we have a solar plant contracted in southern New Mexico that's producing 90 MWs. New Mexico is a 3,000 MW state, which is big for us.

But for the fact that we did a command and control type approach, we wouldn't be seeing anywhere near the penetration of renewables that we have today.

We ask our utilities to deliver 1% reduction of demand a year through efficiency measures. As renewables and efficiencies move into the mainstream we need to assure our customers that we're only doing things that are cost effective.

Fixed cost issues are a concern because it is contrary to the nature of New Mexico. We want to put the private sector and the markets to work doing what we need to do socially. We're looking at decoupling, although it isn't popular.

We want to assure customers that we're only doing things that are cost effective and we should get all the savings we can by getting our efficiency incentives right.

Just because it's 'green' we shouldn't say thumbs up all the time.



**JOSH SVATY, Kansas Acting Secretary of Agriculture**

Joshua Svaty is acting secretary of agriculture for the state of Kansas. He was named by Governor Mark Parkinson in July of 2009 and is awaiting Senate confirmation in January. Prior to his service at the Department of Agriculture, Svaty served seven years in the Kansas Legislature. He was first elected at the age of 22 in 2002, and was successfully reelected three times. During his tenure in the Legislature, Svaty served on the House Energy and Utilities Committee and was the ranking member on the House Agriculture and Natural Resources Committee. Svaty was also a gubernatorial appointee on the Kansas Energy Council, a public/private group of citizens charged with developing long-term energy policy for the state of Kansas.

### ***Presentation Summary***

Josh Svaty spent 7 years in the Kansas legislature. He said, "We were dealing with the same issues at the end of my time there as at the beginning." The most significant issue was about Sunflower Cooperative building a coal fired plant. Previously air permits had been granted pretty easily by the Department of Health and Environment. However, the Secretary of the Kansas Department of Health and Environment denied the permit. It showed how much authority we have at the administrative level.

There is great energy potential, but it requires a cautious approach to tap into it. You need a strong relationship with the Governor and the staff. The pace of progress depends upon how well you work with them.

Energy has become a greater part of the conversation at the state and federal levels. In Kansas there is a lot of discussion regarding wind policy and transmission lines. Many groups are now involved, such as environmental groups like Wildlife and Parks who care about the prairie chicken when it comes to transmission line paths.

Svaty concluded, "The regulatory environment is very exciting. It's where decisions move your particular interest forward. It's an exciting time to be in Energy, but to be successful. I cannot stress enough the importance of long term relationships and open lines of communication with regulatory agencies, legislators and all levels of administration."



**CHERYL VAUGHT, Attorney, Vaught & Conner**

Cheryl Vaught is an attorney with and manager of Vaught & Conner, located in Oklahoma City, Oklahoma. Primarily, Vaught concentrates her practice on energy and public utility law. In addition, she has represented clients in both state and federal courts. Her practice also includes broad-ranging services for nonprofit organizations and human resources law. Representing clients in all stages of the permitting, regulatory and litigation process, Vaught has represented a variety of energy clients, including independent power producers, wind developers, cogeneration

facilities, and independent transmission companies. She has extensive experience with transactions with utilities, including rate cases, power purchase agreements, contract negotiations, settlement proceedings, resource planning, and interconnection agreements. Vaught, a graduate of the University of Oklahoma College of Law, has served her community through the Oklahoma City National Memorial and the National Memorial Institute for Prevention of Terrorism, the Oklahoma City Community Foundation, the OKC Public Schools Foundation, Public Private Partnership for Juvenile Justice, and Literacy Coalition of Oklahoma County. Currently Vaught serves on the board of directors of the Federation of State Medical Boards, The State of Oklahoma Board of Osteopathic Examiners, Leadership Oklahoma City, Arts Council of Oklahoma City, MAP International (as well as serving as the External Relations Committee chairman), and is a founding board member and vice president of development of the Oklahoma Humane Society. Her special interests are related to animal welfare, community leadership development, arts and relief work. Vaught resides in Oklahoma City.

### ***Presentation Summary***

Cheryl Vaught was positive about the progress made since efforts to use renewables began and optimistic about the future of energy in Oklahoma. She pointed out that back in the days of ERPA (Emissions Reduction Purchase Agreement) things were really difficult and many felt that they would not be around for the long term. The process was burdensome on the Corporation Commissions and cost hundreds of millions of dollars in litigation within this state and nationwide.

Recently, Oklahoma issued competitive bidding rules, meaning that both electric utilities in Oklahoma had to purchase power at the lowest reasonable cost. It had to be viable and deliverable. This was a huge change for Oklahoma. Some states make it difficult to compete for bids with things like very stringent credit requirements.

ITC Great Plains made the first request to the Oklahoma Corporation Commission. They were awarded independent transmission utility status, which means that when utilities need to push the resources and assets on the generation side, ITC Great Plains, or someone like them can step in.

We have a lot more work to do and we have to do it in tandem for the long term. How do we make the landscape more competitive? What's the next step on competitive bidding? How do we get renewable power inserted into every logical place?

We must balance the market forces and motivate the utilities. Bottom line, if we don't think about our customers we won't get anywhere.



**RICHARD SMEAD, Director, Navigant Consulting**

Richard Smead is a director in Navigant Consultant's Energy practice, specializing in upstream and midstream natural gas issues. He has been responsible for multiple engagements involving potential acquisitions, policy analysis, litigation support, and strategic advice with respect to gas pipelines, potential supplies, and market initiatives. A significant concentration of his practice has involved the downstream market and infrastructure issues affecting liquefied natural gas (LNG) projects. Smead has more than 33 years of experience in the natural gas business, with a proven track record as a senior executive for several major natural gas pipeline companies and a leader across multiple industry sectors. He is known for a combination of hands-on, industry-recognized expertise in technical issues, effective management of both internal and external processes, and industry leadership on policy issues. Smead recently coauthored the comprehensive study, North

American Natural Gas Supply Assessment, which indicates the United States has 2,247 trillion cubic feet (Tcf) of natural gas reserves, which is enough to last more than 100 years.

### **Presentation Summary**

The 2006 Potential Gas Committee Report estimated US gas reserves of 1,530 Tcf, including 137 Tcf of shale gas. Based on the 2006 U.S. Production Rate, that reflects 82 years of gas supply.

In 2008, Navigant Consulting performed the North American Natural Gas Supply Assessment for the American Clean Skies Foundation. This study concentrated on shale gas evaluated according to producer reports. The resulting total supply estimate was 2,247 Tcf, including 842 Tcf of shale gas. This amounted to 118 years of production at 2007 levels.

By June 2008, the lower 48 state onshore production had reached the pre-Katrina level.

Gas shale production has experienced tremendous growth in recent years with Barnett Shale leading the way and signs of early followers.

- Barnett has grown from 94 MMcf/day production levels in 1998 to 3,014 MMcf/day in 2007; an increase of more than 3,000%.
- Fayetteville, Haynesville and Woodford are all showing similar signs of ramping up production. Marcellus will be next.
- Technology has allowed access to and economic production of a vastly greater resource base. Improved hydraulic fracturing techniques and greatly improved horizontal drilling have allowed tight, geographically diffuse reserves to be developed in large volumes.
- Producer estimates placed the “Big 6” plus Marcellus at 27 to 39 Bcfd upon full development.

The development of natural gas supplies does not take stimulus money. Unlike oil, it does not take expanded land or offshore access. All it takes is demand at a stable price, probably \$6-\$7 and a positive political environment.

The industry must quiet concerns about high-pressure fracturing that are causing legal and legislative uncertainty at both Federal and state levels. It requires a combination of effective communication and embracing the best practices.

Failure to recognize the abundance of supply is reflected in Secretary Chu’s reaction to CNG vehicles. The Secretary expressed concern over deliverability, intangible drilling cost and over-production, endangering future national security. EPA Administrator Jackson recently stated that expanding gas use would forego future feedstock use. These views are simply wrong and the industry must make that clear.

### **Q&A**

Q. I’d like to know about the cost issue for shale and the LNG trade?

A. In terms of total costs it’s about the same as LNG. The marginal production cost for LNG is very low; it’s all in the infrastructure. There’s nothing wrong with LNG, but we shouldn’t be dependent on it.

Q. Regarding decoupling, how should we accurately measure fixed costs and variable costs and assure only those things that vary by consumption are being billed that way? I don’t see decoupling discussed in those terms now.

A. Today they call that straight fixed variable, and the rule is that we don’t want to do that on small commercial and residential. There are policy reasons to put part of the fixed costs into the volumetric charges. It encourages conservation and increases the price signal. The average cost of electricity is less than the marginal cost. There is a concern that a high fixed charge will

make it difficult for the low income folks to bear, so this is a way to address those concerns without having a discriminatory subsidy.

A. In Oklahoma with our Request For Proposals procedure for competitive bidding, we have people submit what the costs are going to be. Originally there was uncertainty about who would bear what costs. Now the RFPs have gotten very simple. You ask a bidder to tell you what their total cost is going to be, period. The bidder must be accurate with what they're willing to be paid or they're at risk.

Q. Mr. Anthony and the National Association of Regulatory Utility Commissioners have led an effort to talk about hydraulic fracturing. I'd like to know if other states are doing as well as Oklahoma?

A. The natural gas industry is doing better than say in NY. You have competing dynamics with the state of the economic benefit releases, employment and all the stuff that goes with it. They are concerned with water, and an operation that they're not familiar with. Tensions resolve themselves differently state by state. The good cutting edge companies are out in front of the issue. They know they don't always have the high ground. It's evolving.

Q. The National Energy Modeling System doesn't seem to have as components the supply provisions and elasticity that you see with natural gas. When demand grows its modeling says the price goes up, which discourages its use, or the price will drop even though it may be below the lifting price of the gas. Is there an inherent problem with the NEMS system with a bias against natural gas and if so how do you fix it?

A. NEMS is an enormous model. It basically tries to model the activity of all fuels and all economic behavior and it takes a long time to load it. It's static and it's always wrong. The NEMS modeling system is too big and too slow and is not interactive enough.