

## Scott Hempling, Attorney at Law

Scott Hempling is an attorney, expert witness, author and teacher. As an attorney, he has assisted clients from all industry sectors—regulators, utilities, consumer organizations, independent competitors and environmental organizations. As an expert witness, he has testified numerous times before state commissions and before committees of the United States Congress and the legislatures of Arkansas, California, Maryland, Minnesota, Nevada, North Carolina, South Carolina, Vermont, and Virginia. As a teacher and seminar presenter, he has taught public utility law and policy to a generation of regulators and practitioners, appearing throughout the United States and in Australia, Belgium, Canada, Central America, England, Germany, India, Italy, Jamaica, Mexico, New Zealand, Nigeria, Norway, Peru and Vanuatu. He is currently an arbitrator in an electric rate case in Vanuatu.

Hempling's legal treatise, *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction*, was published by the American Bar Association in 2013. It has been described as a "comprehensive regulatory treatise [that] warrants comparison with Kahn and Phillips." A second edition will be published by Fall 2021. His book *Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* was published by Edward Elgar Publishing in Fall 2020. His book of essays, *Preside or Lead? The Attributes and Actions of Effective Regulators*, has been described as "matchless" and "timeless"; a Spanish translation has circulated throughout Latin America, through the auspices of the Asociación Iberoamericana de Entidades Reguladoras de la Energía, REGULATEL (an association of telecommunications regulators from Europe and Latin America) and the World Energy Forum. The essays continue monthly at [www.scotthemplinglaw.com](http://www.scotthemplinglaw.com).

His articles have appeared in the *Energy Bar Journal*, the *Electricity Journal*, *Energy Regulation Quarterly*, *Public Utilities Fortnightly*, *ElectricityPolicy.com*, publications of the American Bar Association, and other professional publications. These articles cover such topics as mergers and acquisitions, the introduction of competition into formerly monopolistic markets, corporate restructuring, ratemaking, utility investments in nonutility businesses, transmission planning, renewable energy and state–federal jurisdictional issues. From 2006 to 2011, he was the Executive Director of the National Regulatory Research Institute.

Hempling is an adjunct professor at the Georgetown University Law Center, where he teaches public utility law and has taught regulatory litigation. He received a B.A. *cum laude* in (1) Economics and Political Science and (2) Music from Yale University, where he was awarded a Continental Grain Fellowship and a Patterson research grant. He received a J.D. *magna cum laude* from Georgetown University Law Center, where he was the recipient of an *American Jurisprudence* award for Constitutional Law. He is a member of the District of Columbia and Maryland Bars. More detail is available at [www.scotthemplinglaw.com](http://www.scotthemplinglaw.com).

## **Education**

B.A. *cum laude*, Yale University. 1978. Two majors: Economics and Political Science, Music. Recipient of a Continental Grain Fellowship and a Patterson Research grant.

J.D. *magna cum laude*, Georgetown University Law Center, 1984. Recipient of *American Jurisprudence* award for Constitutional Law; editor of *Law and Policy in International Business*; instructor, legal research and writing.

## **Professional Experience**

President, Scott Hempling, Attorney at Law LLC (2011–present).

Adjunct Professor, Georgetown University Law Center (2011–present).

Executive Director, National Regulatory Research Institute (2006–2011).

Founder and President, Law Offices of Scott Hempling, P.C. (1990–2006).

Attorney, Environmental Action Foundation (1987–1990).

Associate, Spiegel and McDiarmid (1984–1987).

## **Past Clients**

### **Independent Power Producers and Marketers**

California Wind Energy Association, Cannon Power Company, Electric Power Supply Association, EnerTran Technology Company, National Independent Power Producers, SmartEnergy.com, U.S. Wind Force.

### **Investor-Owned Utilities**

Madison Gas & Electric, Oklahoma Gas & Electric.

### **Legislative Bodies and Executive Departments**

South Carolina Department of Administration, South Carolina Senate, Vermont Legislature.

### **Municipalities and Counties**

American Public Power Association; Connecticut Municipal Electric Energy Cooperative; Iowa Association of Municipal Utilities; City of Jacksonville, Florida; Montgomery County, Maryland; Texas Cities; City of Winter Park, Florida.

## **Public Interest Organizations**

Alliance for Affordable Energy, American Association of Retired Persons, Consumer Federation of America, D.C. Consumer Utility Board, Energy Foundation, Environmental Action Foundation, Environmental Defense Fund, GRID2.0 (Washington, D.C.), Illinois Citizens Utility Board, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists.

## **Regulatory Commissions and Consumer Agencies**

Arkansas Attorney General, Arkansas Public Service Commission, Arizona Corporation Commission, Australia Energy Regulator, British Columbia Office of the Auditor General, British Columbia Utility Commission, California Public Advocates Office, Connecticut Department of Public Utility Control, Connecticut Office of Consumer Counsel, Delaware Public Service Commission, Hawai'i Public Utilities Commission, Hawai'i Office of Planning, Indiana Utility Regulatory Commission, Kansas Corporation Commission, State of Maryland, Maryland Energy Administration, Maryland Attorney General, Maryland Office of People's Counsel, Massachusetts Attorney General, Massachusetts Department of Public Utilities, Mexico's Comisión Reguladora de Energía, Minnesota Public Utilities Commission, Mississippi Public Service Commission, Mississippi Public Utilities Staff, Missouri Public Service Commission, Montana Public Service Commission, National Association of Regulatory Utility Commissioners, Nevada Consumer Advocate, Nevada Public Service Commission, New Hampshire Public Utilities Commission, New Jersey Division of Ratepayer Advocate, North Carolina Utilities Commission, Ohio Public Utilities Commission, Oklahoma Corporation Commission, Pennsylvania Office of Consumer Advocate, Puerto Rico Energy Commission, South Carolina Department of Administration, South Carolina Department of Consumer Affairs, South Carolina Public Service Commission, Texas Office of Public Utility Counsel, Vermont Department of Public Service, Virginia State Corporation Commission, Wisconsin Attorney General.

## **Testimony Before Legislative Bodies**

### **United States Senate**

Committee on Energy and Natural Resources, May 2008 (addressing the adequacy of state and federal regulation of electric utility holding company structures).

Committee on Energy and Natural Resources, Feb. 2002 (analyzing bill to amend the Public Utility Holding Company Act) (PUHCA).

Committee on Energy and Natural Resources, May 1993 (analyzing bill to transfer PUHCA functions from SEC to FERC).

Committee on Banking and Urban Affairs, Sept. 1991 (analyzing proposed amendment to PUHCA).

Committee on Energy and Natural Resources, March 1991 (analyzing proposed amendment to PUHCA).

Committee on Energy and Natural Resources, Nov. 1989 (analyzing proposed amendment to PUHCA).

### **United States House of Representatives**

Subcommittees on Energy and Power and Telecommunications and Finance, Commerce Committee, Oct. 1995 (regulation of public utility holding companies).

Subcommittee on Energy and Power, Energy and Commerce Committee, July 1994 (analyzing future of the electric industry).

Subcommittee on Energy and Power, Energy and Commerce Committee, May 1991 (analyzing proposed amendment to PUHCA).

Subcommittee on Environment, Energy and Natural Resources, Government Operations Committee, Oct. 1990 (assessing electric utility policies of FERC).

Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, Apr. 1989 (discussing proposals to increase staff administering PUHCA).

Subcommittee on Energy and Power, Sept. 1988 (discussing "independent power producers" and PUHCA).

### **State Legislatures**

Judiciary Committee, South Carolina Senate (2000) (discussing options for introducing retail electricity competition).

Commerce Committee, Arkansas General Assembly (1999) (discussing legislation to introduce retail electricity competition).

Health Access Oversight Committee, Vermont General Assembly (1999) (discussing options for state regulation of prescription drug pricing).

Electricity Restructuring Task Force, Virginia General Assembly (1999) (discussing options for introducing retail electricity competition).

Study Committee, North Carolina Legislature (1999) (discussing legislation to introduce retail electricity competition).

Committees on General Affairs, Finance, Vermont Senate (February-March 1997) (discussing options for structuring the electric industry).

Task Force to Study Retail Electric Competition, Maryland General Assembly (1997) (discussing options for introducing retail electricity competition).

Interim Committee on Electric Restructuring, Nevada Legislature (1995-97) (discussing options for structuring the electric industry).

Committee on Energy and Public Utilities, California Senate (December 1989) (discussing relationships between electric utilities and their non-regulated affiliates).

## **Testimony before Commissions, Courts and Arbitration Panels**

South Carolina Public Service Commission: Principles relating to prudence and to executives' incentive competition (2020).

Wisconsin Public Service Commission: Principles relating to prudence and used-and-usefulness in the context of possible coal plant closures (2019).

Oklahoma Corporation Commission: Principles relating to prudence and used-and-usefulness in the context of a scrubber investment (2019).

Louisiana Public Service Commission: Utility holding company's acquisition of merchant generation company (2018).

District of Columbia Public Service Commission: Canadian holding company acquisition of retail natural gas company (2017).

Maryland Public Service Commission: Canadian holding company acquisition of retail natural gas company (2017).

Kansas Corporation Commission: Utility holding company acquisition of utility holding company (2016-2017).

U.S. District Court for Middle District of Florida: Effect of disaffiliation, mandated by Public Utility Holding Company Act, on corporation's liability under the Comprehensive Environmental Response, Compensation, and Liability Act (2016).

New Jersey Board of Public Utilities: Transfer of utility transmission assets to holding company affiliate (2015-2016) (application withdrawn).

Hawaii Public Utilities Commission: Holding company acquisition of utility holding company (2015-2016).

Louisiana Public Service Commission: Holding company acquisition of utility holding company (2015).

Connecticut Public Utilities Regulatory Authority: Holding company acquisition of utility holding company (2015).

District of Columbia Public Service Commission: Holding company acquisition of utility holding company (2014-15).

Maryland Public Service Commission: Holding company acquisition of utility holding company (2014-15).

Mississippi Public Service Commission: Utility holding company's divestiture of its utility subsidiaries' transmission assets to an independent transmission company (2013).

U.S. District Court for Minnesota: Effects of Minnesota statute limiting reliance on fossil fuels (2013).

Tobacco Arbitration Panel: Principles for regulating cigarette manufacturers (on behalf of State of Maryland) (2012).

Illinois Commerce Commission: Performance-based ratemaking (2012).

Maryland Public Service Commission: Holding company acquisition of utility holding company (2011).

California Public Utilities Commission: Performance-based ratemaking (2011).

Superior Court of Justice, Ontario, Canada: Renewable energy contractual relations under the Public Utility Regulatory Policies Act (2007).

Florida arbitration panel: Financial responsibility for stranded investment arising from municipalization (2003).

Minnesota Public Utilities Commission: Transmission expansion for renewable power producers (2002).

U.S. District Court for Wisconsin: State corporate structure regulation in relation to the Commerce Clause of the U.S. Constitution (2002).

New Jersey Board of Public Utilities: Conditions for provider of last resort service (2001).

Indiana Utility Regulatory Commission: Risks of overcharging ratepayers using "fair value" rate base (2001).

North Carolina Utilities Commission: Effect of merger on state regulatory powers (2000).

Wisconsin Public Service Commission: Effect of merger on state regulatory powers (2000).

New Jersey Board of Public Utilities: Affiliate relations in telecommunications sector (1999).

Illinois Commerce Commission: Affiliate relations and mixing of utility and non-utility businesses (1998).

Texas Public Utilities Commission: "Incentive" ratemaking, introduction of competition (1996).

Vermont Public Service Board: Cost allocation and interaffiliate pricing between service company and utility affiliates (1990).

## **Publications**

### **Books**

*Regulating Mergers and Acquisitions of U.S. Electric Utilities: Industry Concentration and Corporate Complication* (Edward Elgar Publishing 2020).

*Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction* (American Bar Association 2013).

*Preside or Lead? The Attributes and Actions of Effective Regulators* (2d edition 2013).

### **Articles, Papers and Book Chapters**

"Electricity Formula Rate Plans and Multi-year Rate Plans: Can They Serve the Public Interest, and How?" in Hunter, Herrera Anchustegui, Crossley, and Álvarez, *Routledge Handbook of Energy Law* (2020).

"Inconsistent with the Public Interest: FERC's Three Decades of Deference to Electricity Consolidation," *Energy Law Journal* (Fall 2018), available at [https://www.ebanet.org/assets/1/6/15-233-312-Hempling\\_\[FINAL\]1.pdf](https://www.ebanet.org/assets/1/6/15-233-312-Hempling_[FINAL]1.pdf).

"Maryland's Supreme Court Loss: A Win for Consumers, Competition and States," *ElectricityPolicy.com* (June 2016).

"Certifying Regulatory Professionals: Why Not?", *ElectricityPolicy.com* (June 2015).

"Litigation Adversaries and Public Interest Partners: Practice Principles for New Regulatory Lawyers," *Energy Law Journal* (Spring 2015), available at <http://www.felj.org/sites/default/files/docs/elj361/14-1-Hempling-Final-4.27.pdf>.

"Pricing in Organized Wholesale Electricity Markets: Can We Make the Bright Line any Brighter?", *Infrastructure* (American Bar Association, Spring 2015).

"From Streetcars to Solar Panels: Stranded Investment Law and Policy in the United States," *Energy Regulation Quarterly* (Vol. 3, Issue 3 2015).

"Regulatory Capture: Sources and Solutions," *Emory Corporate Governance and Accountability Review* Vol. 1, Issue 1 (August 2014), available at <http://law.emory.edu/ecgar/content/volume-1/issue-1/essays/regulatory-capture.html>.

"When Technology Gives Customers Choices, What Happens to Traditional Monopolies?" *Trends* (American Bar Association, Section of Environment, Energy and Resources July/August 2014).

"Democratizing Demand and Diversifying Supply: Legal and Economic Principles for the Microgrid Era," *ElectricityPolicy.com* (March 2014).

"Non-Transmission Alternatives: FERC's 'Comparable Consideration' Needs Correction," *ElectricityPolicy.com* (June 2013).

"Broadband's Role in Smart Grid's Success," in Noam, Pupillo, and Kranz, *Broadband Networks, Smart Grids and Climate Change* (Springer 2013).

"How Order 1000's Regional Transmission Planning Can Accommodate State Policies and Planning," *ElectricityPolicy.com* (September 2012).

"Renewable Energy: Can States Influence Federal Power Act Prices Without Being Preempted?" *Energy and Natural Resources Market Regulation Committee Newsletter* (American Bar Association, June 2012).

"Can We Make Order 1000's Transmission Providers' Obligations Effective and Enforceable?" *ElectricityPolicy.com* (May 2012).

"Riders, Trackers, Surcharges, Pre-Approvals, and Decoupling: How Do They Affect the Cost of Equity?" *ElectricityPolicy.com* (March 2012).

"Regulatory Support for Renewable Energy and Carbon Reduction: Can We Resolve the Tensions Among Our Overlapping Policies and Roles?" (National Regulatory Research Institute 2011).

"Infrastructure, Market Structure, and Utility Performance: Is the Law of Regulation Ready?" (National Regulatory Research Institute 2011).

"Cost-Effective Demand Response Requires Coordinated State-Federal Actions" (National Regulatory Research Institute 2011).

"Effective Regulation: Do Today's Regulators Have What It Takes?" in Kaiser and Heggie, *Energy Law and Policy* (Carswell 2011).

*Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions* (lead author, with C. Elefant, K. Cory, and K. Porter), Technical Report NREL//TP-6A2-47408 (January 2010).



*Pre-Approval Commitments: When and Under What Conditions Should Regulators Commit Ratepayer Dollars to Utility-Proposed Capital Projects?* (National Regulatory Research Institute 2008) (with Scott Strauss).

"Joint Demonstration Projects: Options for Regulatory Treatment," *The Electricity Journal* (June 2008).

"Corporate Structure Events Involving Regulated Utilities: The Need for a Multidisciplinary, Multijurisdictional Approach," *The Electricity Journal* (Aug./Sept. 2006).

"Reassessing Retail Competition: A Chance to Modify the Mix" *The Electricity Journal* (Jan./Feb. 2002).

*The Renewables Portfolio Standard: A Practical Guide* (National Association of Regulatory Utility Commissioners, Feb. 2001 (with N. Rader).

*Promoting Competitive Electricity Markets Through Community Purchasing: The Role of Municipal Aggregation* (American Public Power Association, Jan. 2000 (with N. Rader).

"Electric Utility Holding Companies: The New Regulatory Challenges," *Land Economics*, Vol. 71, No. 3 (Aug. 1995).

*Is Competition Here? An Evaluation of Defects in the Market for Generation* (National Independent Energy Producers 1995) (co-author).

*The Regulatory Treatment of Embedded Costs Exceeding Market Prices: Transition to a Competitive Electric Generation Market* (1994) (with Ken Rose and Robert Burns).

"Depolarizing the Debate: Can Retail Wheeling Coexist with Integrated Resource Planning?" *The Electricity Journal* (Apr. 1994).

*Reducing Ratepayer Risk: State Regulation of Electric Utility Expansion*. (American Association of Retired Persons 1993).

"'Incentives' for Purchased Power: Compensation for Risk or Reward for Inefficiency?" *The Electricity Journal* (Sept. 1993).

"Making Competition Work," *The Electricity Journal* (June 1993).

"Confusing 'Competitors' With 'Competition.'" *Public Utilities Fortnightly* (March 15, 1991).

"The Retail Ratepayer's Stake in Wholesale Transmission Access," *Public Utilities Fortnightly* (July 19, 1990).

"Preserving Fair Competition: The Case for the Public Utility Holding Company Act," *The Electricity Journal* (Jan./Feb. 1990).

"Opportunity Cost Pricing." *Wheeling and Transmission Monthly* (Oct. 1989).

"Corporate Restructuring and Consumer Risk: Is the SEC Enforcing the Public Utility Holding Company Act?" *The Electricity Journal* (July 1988).

"The Legal Standard of 'Prudent Utility Practices' in the Context of Joint Construction Projects," *NRECA/APPA Newsletter Legal Reporting Service* (Dec. 1984/Jan. 1985) (co-author).

## **Speaker and Lecturer**

**United States:** American Antitrust Institute; American Association of Retired Persons; American Bar Association; American Power Conference; American Public Power Association; American Wind Energy Association; Chicago Bar Association (Energy Section); Columbia University Institute for Tele-Information; Electric Cooperatives of South Carolina; Electric Power Research Institute; *Electric Utility Week*; Electricity Consumers Resource Council; Energy Bureau; *Energy Daily*; Executive Enterprises; Exnet; Federal Energy Bar Association; Harvard Electricity Policy Group; Indiana State Bar Association; Infocast; King Abdullah Petroleum Studies and Research Center; Louisiana Energy Bar; Management Exchange; Maryland Resiliency Through Microgrids Task Force; MIT Energy Initiative; Michigan State University Public Utilities Institute; Mid-America Association of Regulatory Commissioners; MidAtlantic Demand Resources Initiative; Mid-Atlantic Conference of Regulatory Utility Commissioners; National Association of Regulatory Utility Commissioners; National Association of State Utility Consumer Advocates; National Conference of Regulatory Attorneys; National Governors Association; National Independent Energy Producers; New England Conference of Public Utility Commissioners; New England Public Power Association; New Mexico State University Regulatory Studies Program; New York Bar Association (Energy Section); North Carolina Electric Membership Corporation; Pennsylvania Bar Institute; Puerto Rico Energy Center; Puerto Rico Institute of Public Policy; Regulatory Studies programs at Michigan State University, New Mexico State University and University of Idaho; Society of American Military Engineers; Society of Utility and Regulatory Financial Analysts; Southeastern Association of Regulatory Utility Commissioners; Universidad del Turabo (Puerto Rico); United Nations Association at Georgetown Law; U.S. Department of Energy Forum on Electricity Issues; U.S. Department of Energy Solar Energies Technology Office; U.S. Environmental Protection Agency; Western Interstate Energy Board; Wisconsin Public Utilities Institute; Wisconsin Bar-Public Utilities Section; Yale Alumni in Energy; Yale School of Forestry and Environmental Studies.

**International:** Australian Competition and Consumer Commission; Australian Energy Regulator; Bergen Center for Competition Law & Economics, University of Bergen (Norway); British Columbia Utilities Commission; Canadian Association of Members of Utility Tribunals; Canadian Energy Law Forum; Central Electric Regulatory Commission (India); Comisión Reguladora de Energía (Mexico); The Energy and Resources Institute (India); Government & Policy Think Tank, Sharif University Institute of Technology (Iran); Independent Power Producers Association of India; India Institute of Technology at Kanpur; Ludwig-Maximilians-Universität (Munich, Germany); Management Development Institute (Gurgaon, India); National Association of Water Utility Regulators (Rome, Italy); New Zealand Electricity Authority; New Zealand Commerce Commission; Nigeria Electric Regulatory Commission; Office of Utility Regulation of Jamaica; OSIPTEL (the Peruvian Telecom Regulator) Training

Program on Regulation for University Students; Petroleum and Natural Gas Regulatory Board (India); Regulatel (an international forum of telecommunications regulators); Regulatory Policy Institute (Cambridge, England); Utilities Regulatory Authority of Vanuatu; World Regulatory Forum.

### **Community Activities**

Member, PEPCO Work Group, appointed by County Executive of Montgomery County, Maryland (2010–2011).

Sunday School teacher, Temple Emanuel, Kensington, Maryland (2002–2006, 2008).

Board of Trustees, Temple Emanuel (2005–2006).

Musical performer (cello): Riderwood Village Retirement Community (2003-present); St. Paul Episcopal Church (Centreville, MD).