



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation

Minutes

May 31, 2011

Members Attending

H. Russell Frisby, Jr. (Chair)	Susan E. Dudley	Edward P. Lazarus
Robert A. Anthony (phone)	Philip K. Howard (phone)	David W. Ogden (phone)
Jonathan Rose (phone)	Peter L. Strauss (phone)	James Ming Chen (phone)
Patti Goldman (phone)		

ACUS Staff Attending

Jonathan R. Siegel	Scott Rafferty	Reeve T. Bull
<i>Director of Research & Policy</i>	<i>Deputy Director of Research & Policy</i>	<i>Staff Counsel</i>

Andrea Green
Intern

Invited Guests Attending

Wendy E. Wagner (Consultant)	Peter Robbins (Commerce)	John Katz (FERC) (phone)
Brian Ochs (SEC) (phone)	Mitchell Plave (Comptroller of the Currency) (phone)	

Committee Chair Russell Frisby called the meeting to order at 2:35 p.m. The Committee approved the minutes from its April 25, 2011 meeting (which dealt with its previous project on rulemaking comments). Director of Research & Policy Jonathan Siegel noted that the meeting was intended to allow Committee members to offer feedback prior to the consultant's beginning research in earnest so as to promote greater committee member input in shaping the project.

Mr. Frisby invited the project consultant, Professor Wendy Wagner, to offer a brief overview of her proposed research. Ms. Wagner stated that the focus of the project extended only to *internal* agency controls on the use of science rather than *external* checks. Her research will consist of a brief overview of the literature and "reconnaissance" interviews with contacts at five agencies designed to uncover the major issues with agencies' use of science. In addition, she will contact the Office of Management and Budget and the Office of Science and Technology Policy. Ms. Wagner also gave a section-by-section summary of her proposed outline.

Mr. Frisby noted that agencies' use of science is a very important and controversial issue. Ms. Dudley expressed concern that Ms. Wagner's proposed research was overly broad and



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shallow. She suggested that the research address certain issues raised by the Bipartisan Policy Center's 2009 report titled "Improving the Use of Science in Regulatory Policy." In particular, the research should consider how best to separate scientific facts from policy considerations in the administrative process. She also suggested that Ms. Wagner compare how different agencies handle this problem.

Mr. Lazarus expressed concern that the agencies Ms. Wagner proposes to contact may not provide a comprehensive picture of the major issues in the use of science. For instance, the Federal Communications Commission is not on the list, yet it frequently encounters many "high tech" issues related to rapid technological change. He also noted that agencies frequently encounter issues in hiring scientists. Mr. Rose proposed that Ms. Wagner's report include case studies illustrating particularly effective and ineffective uses of science. Mr. Strauss expressed doubt that the proposed research could be conducted by one consultant. He also suggested that the research focus more on agencies' experience than on the findings of the existing literature. He noted that Ms. Wagner should speak with at least one independent agency in addition to the agencies she proposed to contact. Finally, he stated that the research might usefully address internal management issues connected with agencies' use of science and the use of science panels.

Ms. Wagner agreed that her proposed research outline was quite broad and that the primary focus of the study should be on contacting agency representatives with experience in the use of science. If nothing else, interviewing such agency individuals would give a clearer picture of the primary issues in agencies' use of science, and it might identify certain "low hanging fruit" reforms that agencies could easily implement. Ms. Wagner expressed some doubt that the study could successfully address the separation of scientific issues from policy questions, which has proved to be a very difficult issue.

Mr. Siegel noted that the project is not necessarily intended to be a comprehensive and definitive study on agencies' use of science. The Conference anticipates that future studies in the area of agencies' use of science may arise, and this project would be quite beneficial if it identified many of the major issues and offered solutions to at least some of them. Ms. Goldman suggested that the study might focus on the politicization of agency science.

Public attendee Francesca Grifo (Union of Concerned Scientists) offered a number of suggestions for shaping the research. She mentioned the blurring between science and policy, agency data gathering, budgetary concerns, non-enforcement of existing policies, review of agency actions by the Office of Management and Budget, and agency training and leadership as areas for possible study. Public attendee Jamie Conrad (Conrad Law & Policy) suggested that the project examine how agencies identify the "best available science" and consider the interactivity of the peer review process.



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Mr. Frisby suggested that the current project should be treated as “phase one” in an ongoing process of studying agencies’ use of science. Ms. Dudley suggested that the present study might fruitfully focus on risk assessment and the politicization of science (which would require clarifying the distinction between “science” and “policy”). Mr. Frisby and Ms. Wagner expressed some concern with focusing the project on risk assessment. Public attendee Kevin Bromberg (Small Business Administration) noted that, based on his agency’s experience, studying even risk assessment alone would constitute a tremendous undertaking.

Mr. Anthony proposed that the project might be narrowed by focusing intensively on one agency. Ms. Wagner expressed some reluctance to generalize from the experience of one agency.

Mr. Siegel asked whether the Committee agreed that the project should be narrowed from Ms. Wagner’s proposed research, to which the Committee members assented. Ms. Wagner proposed conducting “reconnaissance” by speaking with agency representatives, identifying the issues they deem important, and then convening another Committee meeting in August to discuss which of those issues may be worthy of further study. Mr. Ogden expressed support for Ms. Wagner’s proposed approach. Messrs. Strauss and Anthony proposed that, as part of this approach, Ms. Wagner could identify 2 agencies (including 1 independent agency), interview both scientists and other employees of those agencies, and determine what issues appear to be most significant. Ms. Wagner proposed initially examining 2 such agencies fairly intensively to identify the primary issues and then expanding the focus to include other agencies. Mr. Anthony expressed support for Ms. Wagner’s proposed plan.

Mr. Tozzi suggested that Ms. Wagner speak with representatives at the oversight agencies, non-governmental organizations, and companies to determine who the “key players” are in the agencies that rely heavily upon science and then interview those individuals.

Mr. Siegel proposed that, over the next two months, Ms. Wagner would conduct “reconnaissance” with agencies to identify the important issues and that the Committee would likely convene thereafter to discuss which topics will be addressed in a narrowed study. Mr. Frisby agreed with this approach and concluded the meeting.