

State, federal role in electric utilities' labor issues should be reexamined, study says

November 6 2014

Power outages have never been more costly. Electricity is critical to communication, transportation, commerce and national security systems, and wide-spread or prolonged outages have the potential to threaten public safety and cause millions, even billions, of dollars in damages.

"It doesn't seem that dire until a storm hits, or somebody makes a mistake, and then you are risking a blackout," said Inara Scott, an assistant professor in the College of Business at Oregon State University.

"You have to consider the magnitude of the potential harm to the public. Without power, you can't pump gas. Cell phones may not work. Water systems are threatened. These are big problems."

That's why it may be time to re-examine the role of public utility commissions and the effect of the National Labor Relations Act in [labor](#) disputes regarding electric utilities, Scott suggests in a new study.

Public utility commissions have more authority than some existing court decisions suggest, but they tend to take a conservative approach and there is a strong presumption that they can't get involved, Scott said. Modifying the NLRA to more clearly define the states' powers might be needed to change that mindset, she said. The changes would affect both sides – labor and management – equally, she said.

"The current law does not reflect the times," Scott said. "The courts need to look at these cases differently, because the role of electricity in our

lives has changed."

Many public utility commissions have concluded, based largely on court decisions under the NLRA, that they're prohibited from intervening in labor disputes even when public safety is threatened, Scott said. PUCs are the state agencies that regulate public utilities.

That interpretation of the federal law does not reflect the critical role electricity plays in people's lives and livelihoods today, said Scott, whose study of the issue was published this week in the *Energy Law Journal*.

"If workers strike or are locked out of their jobs during a labor dispute, a utility might operate just fine, or there could be a major problem," said Scott, an attorney who spent 10 years practicing energy and regulatory law before joining the OSU faculty.

"The problems caused by an electrical outage are not easy to predict and the consequences can be severe," said Scott, whose research focuses on the transformation of utility systems, clean energy, energy efficiency and utility regulation.

Scott began studying the National Labor Relations Act and the role of public utility commissions in labor disputes involving electric utilities after following a 2012 labor dispute involving Consolidated Edison of New York.

Con Edison management locked out more than 8,000 employees after labor negotiations broke down. Union members warned the move would leave the utility with inadequate safety monitoring, deferred maintenance and threats of unsafe conditions.

But the state's public utility commission, the only regulatory agency with authority to oversee the safety and operation of Con Edison's system,

announced that it lacked jurisdiction to end the lockout or get involved in the negotiations. As the lockout wore on and severe summer weather threatened the power grid, Gov. Andrew M. Cuomo urged the New York Public Service Commission to get more involved.

The dispute was ultimately settled but the case underscored the high stakes of labor disputes involving [electric utilities](#), as well as the potential danger to [public safety](#) and the need for clarification of the authority of state public utility commissions, Scott said.

More information: *Energy Law Journal*, [www.felj.org/sites/default/files/... Scott-final-11.1.pdf](http://www.felj.org/sites/default/files/2014-11/Scott-final-11.1.pdf)

Provided by Oregon State University

Citation: State, federal role in electric utilities' labor issues should be reexamined, study says (2014, November 6) retrieved 24 April 2024 from <https://phys.org/news/2014-11-state-federal-role-electric-labor.html>

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