For over a century, the law of public utility regulation has supported and disciplined the nation’s infrastructural industries: rail, trucking, electricity, gas, telecommunications and water. Regardless of industry or era, utility law has shared five features: its mission (to align private utility behavior with the public interest); its diversity (from state grants of exclusive franchises to federal constitutional protection of shareholder investment); its integration of multiple professional fields (accounting, economics, engineering and finance); its sources (constitutions, statutes, rules, adjudications, judicial review); and its flexibility (accommodating multiple market structures and public purposes). Using these features, utility law helps make trillions of dollars flow annually from consumers to utilities.

New political challenges are causing policymakers and practitioners to stretch regulation’s principles and processes. Facing climate change, they ask: Should utilities and their customers become responsible for “greening” energy production and consumption? Debating universal service, they ask: Should we bring broadband to every home, and at what cost and whose cost? Concerned about privacy, they ask: Should consumers’ private consumption of data be available to profit-seekers? These questions, and many others, expose two tensions: ideological (e.g., private vs. public ownership, government intervention vs. “free market”); and federal–state (e.g., Which aspects of utility service are “national,” requiring uniform regulation, and which are “local,” warranting state experimentation?).

With so many dollars and values at stake, this work seeks to provide readers with a common grasp of the powers, responsibilities and rights of all those who make or live with these trillion-dollar decisions: legislators and regulators, utilities and competitors, investors and consumers, workers and environmentalists, states and localities. To serve this educational purpose, I have organized the polyglot of legal sources from regulatory statutes, constitutional law, antitrust law, contract law and tort law, into four major areas:

- **Market structure**: Which entities are authorized to sell what products? What is the appropriate mix of monopoly and competitive markets?
• *Pricing:* What standards ensure that sellers are fairly compensated and customers not exploited?

• *Jurisdiction:* Given the multistate makeup of today’s infrastructures, markets and providers, how do federal and state commissions interact when regulating the same utilities and the same transactions? How do commissions apply their 1930s-era statutes to modern challenges?

• *Corporate structure, mergers and acquisitions:* What business activities, conducted through what types of transactions, should exist within a utility’s corporate family? How do mergers and acquisitions affect a utility’s accountability to the public?

The present book addresses the first three areas: market structure, pricing and jurisdiction. A companion volume will address corporate structure, mergers and acquisitions.¹

With the mastery made possible by this material, I hope the work can achieve three other goals.

*Enable practitioners and decisionmakers to act effectively in all regulated industries.* The physical, transactional and statutory specifics of a single utility industry can take years to master. As a result, many regulatory practitioners, both lawyers and non-lawyers, burrow into a single industry, even into sub-specialties like gas purchasing, electric transmission pricing or telecommunications mergers. But policymakers—legislators, commissioners and their staff—must address all industries and all specialties. While this work is not a substitute for in-depth works on specific industries (examples of which are cited throughout), its illustrations from multiple industries can help readers spread the successes and quarantine the failures.

*Help non-lawyers become conversant with law.* Every regulatory decision is a legal decision. It establishes powers, responsibilities or rights. It must account for precedents—the statutory and constitutional boundaries established by our predecessors—especially when seeking to stretch or change those boundaries. It must be built on facts and logic, arranged to satisfy the standards imposed by law. Anyone intending to make, influence, explain or defend a regulatory decision—any expert witness, advocate, commissioner, legislator—needs to know the law. For forty years, Alfred Kahn’s great treatise, *The Economics of Regulation: Principles and Institutions*, has made lawyers literate in that foundational field. While the present work cannot claim to achieve Kahn’s quality, it aspires to replicate its purpose: to bring legal literacy to non-lawyers.

*Help prepare policymakers to adjust the law to accommodate technological change.* By mastering regulatory law, we can spot its mismatches with our economic and social goals. A monopoly held for a century casts a long shadow into the next. Those working

¹. Utilities can be owned by private investors; by government bodies at the local, state or federal level; or by consumer cooperatives. While many of the legal principles in this book can apply to all three categories, the focus is on the regulation of investor-owned utilities.
to introduce competition for broadband and smart grid, in electricity storage and energy conservation, in markets where the incumbent still controls the bottlenecks, need to understand the legal basis for that control and the appropriate ways to loosen it. Those who want to head the other way, toward a return to traditional monopoly regulation and away from the risks of competition, also need to know which principles to retain and which to amend.

In short, my purpose is to present the legal fundamentals that practitioners need to make public-spirited proposals and utility regulators need to make public-spirited decisions. The purpose here is neither to support nor to critique those decisions, but instead to describe breadth of and boundaries on regulators’ discretion to make them. While the book aims for neutrality, it is shaped by this perspective: The purpose of regulation is to regulate—to (a) define standards of performance, (b) hold utilities accountable for their performance, and (c) compensate them consistent with their performance. And because law both authorizes and restricts, this book describes both the legal means by which regulators can act and the legal limits on their actions.

My book of essays, *Preside or Lead: The Attributes and Actions of Effective Regulators*, describes the personal qualities, institutional structures and political forces that support, and undermine, regulation’s public interest mission. That book’s premise is clear from its title: the public interest is best served by those who lead. For readers who accept that role, I hope the present work supports their leadership with substantive muscle.