

# Maine Policy Review

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Volume 4 | Issue 1

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1995

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### Recommended Citation

Townsend, Ralph E. . "Regulatory Updates: Maine Public Utilities Commission." *Maine Policy Review* 4.1 (1995) : 55 -57, <https://digitalcommons.library.umaine.edu/mpr/vol4/iss1/11>.

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# News and Commentary

Maine Policy Review (1995). Volume 4, Number 1

## Regulatory updates: Maine Public Utilities Commission

*Ralph E. Townsend*

Public Utilities Commission (PUC) Chair Thomas Welch has shown an extraordinary ability to re-shape Maine's regulatory landscape. He has shown understanding of both the legal and the public policy dimensions of the regulatory process. As a result, the process of regulation in Maine has become much more expeditious. I think that most participants would also say that the process has become more civil and less confrontational. On the substantive policy side, Welch has guided Maine away from traditional rate-base regulation towards a system with more market-oriented flexibility.

It is quite possible that all four major Maine utilities will be subject to price cap regulation (or some close variant thereof) by the end of this year. Under price cap regulation, utility prices are tied to some kind of formula that allows automatic rate adjustments. Typically, such a formula allows rates to increase at the rate of inflation less an offset for productivity. Price caps are usually set for a predetermined number of years, with no rate cases filed by either side during the period of the cap. Central Maine Power (CMP) has previously agreed to a stipulation that implemented a five year "alternate rate plan" (ARP) that was essentially price cap regulation. The Commission has orally outlined a price cap regulation plan for NYNEX. The price cap docket for Bangor Hydro Electric Company is scheduled to be resolved in early summer. Maine Public Service is due to submit a proposal for alternative regulation.

Maine's statutes specifically authorize alternative regulation, so the PUC can order implementation of price cap regulation even without agreement by the utility. This differs from most other states, where price caps have usually been the result of regulatory negotiation. In some states, utilities have an explicit choice between rate-base regulation and price cap regulation. In Vermont, for example, NYNEX declined a recent price cap plan. It is possible that one or more of the three utilities with pending price cap decisions will challenge Maine's statutes in court. Such a challenge would probably argue that a price cap formula did not provide an opportunity to earn just and reasonable returns on utility investments. The effect of such a legal challenge might be an extended period of regulatory uncertainty. Any such legal confrontations might also color the tenor of other regulatory proceedings.

Electric markets in Maine, as in the rest of the country, are undergoing wrenching changes. In part because of the changes in regulation of CMP and Bangor Hydro, these wrenching changes are not flooding the PUC with new dockets.

For example, the Maine Yankee shut-down (due to cracks in steam generator tubes) is likely to have much greater implications for stockholders than for ratepayers in Maine. The fuel clause (which had allowed automatic recovery of all fuel and electricity purchases) has been eliminated for both Central Maine Power and Bangor Hydro. Neither will be able to pass on automatically

the costs of purchasing replacement power during the shut-down. Although CMP has a "relief valve" provision in its price cap plan, the company has indicated that it does not expect at this point to use that relief valve in this instance. Bangor Hydro is in the midst of a docket that could move it to a price cap plan somewhat similar to CMP's. Whether the Maine Yankee costs might affect the decision to move to price cap regulation or alter the starting point of a price cap for Bangor Hydro is less clear. Only Maine Public Service still has a fuel clause, so its ratepayers may feel the direct consequences of the Maine Yankee shut-down. It has delayed submission of a proposal for alternative regulation that was expected in April. If the CMP and Bangor Hydro cases are a proper precedent, Maine Public Service could face loss of the fuel clause in such a proceeding. The delay in filing might suggest that Maine Public has reservations about fundamental changes in the regulatory structure at this time.

Maine utilities continue to work to get out of expensive electric supply contracts. Bangor Hydro now has regulatory authority to buy out the contracts for the Ultrapower wood chip plants in West Enfield and Jonesboro. Bangor Hydro has received legislative approval for the Finance Authority of Maine (FAME) to assist in financing a large share of that cost. The fuel costs for wood chip plants are non-competitive in the present environment of low wholesale prices for electricity. Co-generation plants at paper mills and waste wood plants seem less vulnerable. The process of buying out expensive energy supply contracts is pretty well along in Maine, but some additional purchases are quite possible.

An important detail of the transition to more market-oriented regulation, the role of integrated resource planning (IRP) and demand-side management (DSM), has yet to be addressed directly in Maine. There is wide agreement that competition in wholesale generation will require some changes in IRP and DSM requirements. No agreement exists on the direction of that change. Utilities nation-wide have argued for some time that competition in supply will turn IRP into a market function. Moreover, utilities argue that DSM requirements place them at a competitive disadvantage, because they must provide subsidies to some customers that other competitors do not provide. Environmentalists, on the other hand, tend to argue that IRP and DSM regulations need to be extended to new competitors so that an environmentally sound "level playing field" is created. Some parties in Maine may be prepared to open this issue for reconsideration. One possible forum for that debate is Central Maine Power's pending filing on DSM planning for 1996, which is required under its alternate rate plan. But because that filing must be acted upon in a relatively short time frame (prior to the end of 1995), another scenario might be a separate investigation on the broader issues.

The Maine PUC was let off the hook on "stranded investment" when the Federal Energy Regulatory Commission (FERC) recently announced that it would assume a broad role on that issue. Stranded investment is the term for the losses that utilities will suffer in the shift from regulated markets to competitive markets. These include both physical assets (like generating plants) and regulatory assets (like power contracts with independent power producers) that utilities will not be able to recover under competitive pricing. The broad assumption of responsibility by FERC was not generally expected, as it placed FERC in the middle of the most complicated regulatory issue in electricity today. The decision by FERC ended Maine's investigation into the same issue, which could have been an extremely contentious and divisive issue.

**Full cite:** Townsend, Ralph E. 1995. *Maine Public Utilities Commission*. Vol. 4(1): 55-57.