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News and Commentary

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Regulatory Updates: At the Public Utilities Commission

The Maine Public Utilities Commission is poised to undertake cost-of-service studies for its two largest utilities, Central Maine Power (CMP) and New England Telephone (NET). These studies have potentially broad implications for the regulation of the electric and telephone industries, respectively. If past experience is an indication, these two studies will dominate the Commission's agenda for the next two to three years.

As we went to press, Governor McKernan's office had just announced Thomas L Welch, a Pennsylvania deputy attorney general and former Bell Atlantic lawyer, as his nominee for the vacant position of chair of the Commission. If confirmed by the Legislature, Welch's assumption of the chair duties will have a major influence on the agenda of the Commission.

On the electric side, the three large electrical utilities, Central Maine Power, Bangor Hydro-Electric, and Maine Public Service, have initiated a major, coordinated effort to shift the direction of electric regulation. They have introduced legislation, L. D. 940, that would essentially resolve the "prices versus total bill" debate in favor of lower prices. The bill would also authorize "incremental" rates by the Commission either to maintain existing load or to attract new load in order to use the existing surplus generating capacity. There is also some discussion in the Legislature of ways to reduce the financial burden of qualifying facilities (QFs) on rates. The costs of QFs are specified in private contracts with suppliers, so how such contracts could be amended by legislation is quite unclear.

The three utilities expect that the CMP cost study will prove that the capacity cost assumptions of current rate structures are seriously flawed in two ways. (Although the case is technically a CMP case, both Bangor Hydro and Maine Public Service plan to participate as intervenors, and it is clear that they expect the CMP decision to set the pattern for Maine.) First, they argue that poor load-factor customers are probably paying too large a penalty. This, for example, would mean that the current on-peak/off-peak differential is too high. Second, they argue that new capacity will be available for the indefinite future at prices well below current embedded costs. That means that increased electric generation and consumption in Maine will lower rates, which is exactly the opposite of the assumptions built into current electric rate policy. Thus, the utilities are urging a consideration of a return to declining block structures and similar policies to promote electric use.

Precisely because the utilities are arguing for a fundamental shift in regulatory policy at both the Legislature and the Commission, this is likely to be a protracted battle in both arenas.

Also in the electric area, the Commission voted to suspend the "electric rate adjustment mechanism" (ERAM) experiment for CMP. Largely because of the recession, ERAM was creating a very large deferred expense account (some projections of the deferred expense exceeded \$100 million).

A new public interest group, the Commercial Customers Utility Coalition, has recently been created to advocate for the interests of commercial customers in electric cases.

Two major issues loom in telecommunications. The first is extended area of service (EAS), which is the perennial issue of how to define local calling areas. The Commission would like to resolve this politically sensitive issue separately from an overall consideration of costs and rates. But this will be very difficult to do. If some customers are given larger local calling areas, then intrastate long distance revenues will fall. This revenue short-fall must be offset by revenue increases elsewhere. The option of reducing some local calling areas (and thereby increasing the toll revenues from that group) would seem to be politically difficult. But increases in other rates without a cost-of-service study is also problematic. [Other states occasionally resolve this dilemma by some type of local measured service, but that option is foreclosed by Maine's referendum that severely restricted local measured service.]

The "cost of service" for New England Telephone, and especially the relative costs of local service, intrastate long distance, and enhanced services, is the other key issue. The problems of "allocating" joint costs without reference to demand for the products are economically unresolvable. The same equipment provides multiple services, and there is no economic basis for "allocating" costs between uses. (By analogy, the costs of producing leather and beef cannot be separated without reference to the demand for beef and leather.) Without any real economic principle to guide "allocation of costs," the prejudices of all parties can be defended by some legal interpretation. At least one group, the Maine Telecommunications Users Group, has tried to argue that investing enormous energy into yet another cost-of-service study will be a fruitless enterprise. NET and the Commission staff, however, both seem on course for a marathon cost-of-service study.

With fundamental policy issues at stake in both telecommunications and electricity, the adequacy of Commission staff resources is a serious question. Staff resources are being drained by several other activities. To reduce the increasing demands to review water rates, the Commission has proposed to the Legislature that public (as opposed to investor-owned) water districts be removed from its jurisdiction. The public water districts are divided on this question. Some districts like the ability to send a dispute between a local city or town council and a local water board to the Commission for resolution. The Legislative outcome appears uncertain at this time. A rather thorough investigation of Hampden Telephone Company's accounts is reported to involve as many as ten of the Commission staff. And the effects of the state furlough days on the availability of staff, and perhaps more importantly on staff morale, are not inconsequential.

The settlement of one or more of the major cases before the Commission via negotiation looks increasingly unlikely at this point. Thus, the combination of heavy workloads and fundamental philosophical policy clashes is likely to create an increasingly contentious atmosphere in public utility regulation in Maine over the next two to three years.

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