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Regulatory Updates

Public Utilities Commission

The PUC continues to wrestle with some fundamental issues in electric regulation. With its preliminary decision in the Central Maine Power (CMF) rate case, issued at the end of November, the PUC has clearly indicated its intent to move electric regulation in fundamentally different directions. Exactly what directions is less clear.

The commitment of Chairman Thomas Welch to meeting a firm regulation schedule is perhaps the clearest new direction. In the past, the PUC has frequently taken extended periods to resolve fundamental regulation issues, and especially issues like rate redesign. For example, in the last rate redesign case for CMP, the delays in deciding the case meant that much of the underlying data for the decision were three years old, and electric markets had changed dramatically in that period. Timely decisions may mean that regulation will more accurately reflect current **economic conditions**.

There is a consensus that the CMP rate decision, which granted only \$26 million of a rate request that initially exceeded \$80 million, was a harsh one. Whether this forebodes similarly harsh treatment **for other rate increase requests** is less clear. CMP had some unique liabilities in this case, including: a management audit that found the opportunity for significant savings;

a perception that CMP had been unfairly protected from the recession by the electric rate adjustment mechanism (ERAM); and its seeming mishandling of the Madison Electric bidding process. The Bangor Hydro rate case, which will be decided in early 1994, will perhaps indicate whether the **Commissioners' dissatisfaction** extends beyond CMF.

The PUC has directed the parties to the CMP rate case to examine price cap regulation, with the issue due back before the Commission in summer 1994. A price cap usually indexes utility prices (or revenues) to inflation. Price caps are typically in place for several years, with no rate cases during the duration of the price cap. The PUC specifically directed its staff to examine the legal issues involved in implementing a price cap mechanism if the utility were to object to such price caps. Nationally, price caps are relatively **common in telecommunications**, but much rarer in electric regulation. In virtually every jurisdiction where price caps have been implemented, the utility has been the primary promoter of price cap regulation, so the issue of forcing a utility to accept price cap regulation is new. CMF did suggest a price cap as one way to settle the just completed rate proceeding. But inasmuch as CMF must now almost certainly believe that the rates approved in that case are too low, the company would seem unlikely

to accept a price cap that uses those rates as its starting point. The company would probably be unwilling to forego the right to file a rate case if it believes that such a request may be justified during the period of a price cap.

The rate redesign case, which has implications for all three electric utilities, is scheduled for a preliminary decision by the end of 1993. In that case, the utilities are urging the PUC to redesign rates to **promote electric use (or at least to retain current uses) and to grant utilities the flexibility to meet competition.** Were the PUC to substantially grant those utility requests, CMP would have somewhat greater flexibility in responding to the impact of the rate case. A decision favorable to the utilities in rate redesign would probably improve the long-term financial prospects of the company, because its authority to respond to greater competitive pressures would be clearer. We will soon see if the PUC is in fact prepared to reverse some longstanding energy policies in Maine. If they are, the issue is almost certain to find its way to the Legislature.

-Ralph Townsend

Board of Environmental Protection

Basin Mills Controversy Continues

Opposition to Bangor Hydro-Electric Co.'s plan to build a new,

38-megawatt dam on the main stem of the Penobscot River dies hard, even in the face of a green light from the Board of Environmental Protection (BEP) in November.

The Washington-based Sierra Club Legal Defense Fund, the lead opposition voice, says it will build an appeal on what attorney Robert Dreher calls "the usurpation of power" by the Board and its Chair, Owen Stevens. Just like flipping the switch, Dreher says, the BEP took control over the fisheries in the Penobscot River when they voted 4-3 in favor of Bangor Hydro. Dreher says that when the Board sentenced the salmon run to a life of trapping and trucking and stocking, it defied the wisdom and the testimony of federal and state fish and wildlife experts, who claim long-term use of such methods is futile.

"The effort to stop this project is only beginning," Dreher said after the vote. "This dam is a long way from being built." He said his clients, a host of environmental and **resource conservation groups in Maine,** will more than likely file an appeal to the decision by the December 10 deadline based on the very discrepancy between what the Board accepted and what fisheries experts said, under oath, they would not do: Namely, commit to long-term trapping of fish and trucking them upstream beyond dams into waters where they can spawn.

Board Chairman Owen Stevens who voted with the majority and **who is a retired veterinarian from**

Berwick, said human intervention has characterized the salmon restoration project since the turn of the century and would need monitoring and human intervention for years to come. He echoed statements in the staff report, which call into question the feasibility of a sustainable salmon run in the Penobscot River, with or without Basin Mills. Dana Murch, the Dams and Hydro supervisor for the Department of Environmental Protection (DEP), said any salmon currently in the Penobscot can thank human efforts since 1956, when the polluted Penobscot was devoid of fish. Murch authored the Board's decision.

Advocates of restoring the wild run of salmon say the Board has neither the authority nor the expertise to rule on such an issue. They point to similar decisions in the Northwest that have virtually eliminated various fish stocks, particularly salmon, in the Columbia and Snake Rivers where hundreds of power dams generate the cheapest electricity in the **nation.**

Bangor Hydro chairman Robert Briggs disagrees. He says the fish passage challenge in the northwest differs sharply from that of the northeast, where a dam amounts to nothing more than what he called "a speed bump in the river." He joins the chorus of Basin Mills supporters in saying the project will actually enhance the salmon **restoration process, rather than** impair it.

The utility, by virtue of the BEP approval, agrees to stock at least 30,000 salmon smolts annually into the Penobscot River for the duration of its yet-to-be-issued license from the Federal Energy Regulation Agency (FERC). It also agreed to provide the resources to the Maine Atlantic Sea Run Salmon Commission and the Maine Department of Marine Resources to trap and truck up to 12,000 salmon, 30,000 shad and 150,000 alewife to beyond the Milford Dam, about 15 miles upstream. Both fisheries groups testified against the measures and against the dam.

Dreher said the Board cannot force the fisheries agencies to act **against their own mission, anymore** than it could force, say, the Maine Turnpike Authority to reroute a piece of road to accommodate a factory looking to locate near it. "There's a pretty profound issue of usurpation of authority over the resources," he said. He said his organization, a non-profit group, speaks for the Natural Resources Council of Maine, Maine Audubon, Trout Unlimited, Atlantic Salmon Federation and the Sportsman's Alliance of Maine and other conservation groups.

Members voting against the proposal (three of 10 members abstained) wanted the utility to pursue **more** aggressively the option of purchasing the Great Works Dam, currently owned by the James River Corporation in Old Town. Attorneys for the utility dismissed the dam-for-a-dam mitigation plan. They argued that the paper

company dam is not for sale and, therefore, not an option.

But Bangor Hydro did offer to study the effects of removing the two-megawatt Howland Dam, located at the confluence of the Piscataquis and Penobscot Rivers. This dam comes up for renewal in 1998. The BEP holds the final word on whether this option is feasible and desirable. The impact of removing this dam on the salmon run in the Penobscot is unknown at this time. The BEP gave Bangor Hydro until September, 1998 to submit the results of a study of the Howland Dam removal, after construction on the Basin Mills project is expected to begin.

-Ruth Robinson

Environmental Priorities Project Reaches Out

Maine's Department of Environmental Protection is moving into the public domain with its effort to establish environmental priorities in the state.

A 37-member task force working with the Department recently selected a consulting firm from Scarborough to help it achieve that end. MaryEllen FitzGerald, the president of Critical Insights, will organize focus groups that will generate a statewide survey to identify the top environmental issues. Ms. FitzGerald, who earned a masters degree in psychology at Tufts University and an MBA from Johns Hopkins, said her firm specializes in consumer behavior and public opinion. "The critical

piece of this research process," she said, "is that everyone in the state has an equal probability of being tapped for their opinion. It's a very different approach to environmental policy-making."

Ms. FitzGerald, a six-year Maine resident and a former partner of Portland-based Pan Atlantic Consultants, said her team will launch a series of eight focus groups, with members from various sectors, including tourism, manufacturing, fishing, and forestry, to determine what environmental issues they consider to be important. She said that phase of the research was to be completed by December 15.

The survey by Critical Insights will consume about 20 percent of the Environmental Priorities Project group's projected \$400,000, two-year budget. The Environmental Protection Agency has committed \$100,000 to the effort, leaving the balance of fundraising up to the chief orchestrator of the process, Ted Koffman (College of Atlantic in Bar Harbor) who heads ECO/ECO, the volunteer group that started this process. Koffman said he has already secured at least \$55,000 from foundations and will explore further that sector as well as the business and the private sector for the balance.

"It's quite a commitment," he said, "but this is all about trying to target our investment in human health and the environment." Koffman said, during the three-year life of the group, health has emerged as a priority among

the steering committee members themselves. "It's a natural relationship," he said.

Meanwhile, the DEP is looking for volunteers to staff its technical analysis committees, which will analyze the risk of those pnormes as they are established. DEP staff member Cindy Bertocci said the technical analysis will coincide with the public input, so that the risk analysis phase will be complete by this time next year.

The group is still working towards a final report by January of 1995.

- R. R.

The Land Use Regulation Commission

LURC Struggles to Stay Ahead of Economic Change

Back in the early 1970s when the Land Use Regulation Commission (LURE) was in its infancy, the notion of a ridgeline dotted with windmills was the last thing on any regulator's mind. But that image is dead ahead of the commission this year. U.S. Windpower, a subsidiary of publicly-held Kenetech Corporation of San Francisco, CA, has filed an application to use 900 acres above 2,700 feet, a high mountain protection area involving three townships. LURC finds itself with no policy to guide a decision on the first-ever proposal to construct hundreds of wind towers on an area with current zoning of "no

development". "There's no existing policy that gives them clear direction " said Christian Herter of U.S. Windpower. He said the challenge for LURC will be to adapt their existing policy to allow the project.

LURC's chairman, Steve White of Newry, said commission members are struggling with the whole issue of how and for whom to regulate the North Woods. He said the question has not been answered for today's economy.

Originally, the LURC charge for regulating over one million acres in the unorganized townships was simple: Keep the forests producing trees for the paper industry, the largest employers in the state and the largest private holders of land under LURC jurisdiction. But the paper industry is evolving to meet cash flow demands and to enhance shareholder value. Some companies, like Scott Paper and James River Company, are selling tracts to timber investment companies who look for timber as well as real estate value in their assets. Others, like the three involved in the U.S. Windpower project, are granting uses for compensation but without relinquishing ownership. According to Chris Herter, Scott Paper, BOlse Cascade and International Paper will give wind easements to U.S. Windpower, which will generate a cash flow for the grantors on the basis of how many kilowatts of electricity the windmills generate.

New pressures from real estate and now power generators are forcing regulators to break new

ground. Fred Todd of the LURC staff says the commission has in the past granted conditional permits to paper companies for timber harvesting in the high mountain area. But timber harvesting does not permanently alter the landscape. Trees are cut but then regenerate and logging roads are temporary. "But you're talking about permanent changes in the landscape (with this project)," Todd said, such as access and service roads as well as the structures themselves. He said concerns about erosion and traffic bring the debate into the realm of the unknown. "It would be nice if we could have the policy issues in place before the application is in hand."

Todd said the commission is still in a reactionary mode while it **works to revise its comprehensive plan**. LURC had hoped to complete such a revision by the end of 1992. Todd is orchestrating the review and says he now hopes to have a draft version ready by summer or fall of 1994. He said the object is to provide a degree of predictability to zoning issues.

But Herter said he will submit to the commission by mid-December final details of the 250-megawatt project, which will complete the company's application. Without specific guidelines in place, commission members will be pressed to determine whether or not the proposal inflicts any adverse **impact on the environment**.

"It moves us into pioneer territory," Chairman White said. "It will be a tough decision."

·R.R.