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The 'public interest' in public regulation

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The public advocate and the emperor's clothes

by Stephen Ward, Public Advocate, State of Maine

The Public Advocate's Office is a very small operation, with five attorneys, including myself. In our filings at the PUC, at the Federal Energy Regulatory Commission (FERC) in Washington, and in the courts, we regularly claim to represent the public interest. Being small, our view of the public interest is personalized and some would say idiosyncratic. So it is surprising that in ten years, almost no one has ever asked us how we know what the public interest is. Just how do we know when we are really representing the public interest effectively? Apparently, many people assume that we must know the answer to this question. In any event, people do not ask.

I should, at the outset, acknowledge a qualm, and confess to a certain lingering feeling, that like the emperor who was not wearing clothes, someone sooner or later will stand up and say the public advocate does not really know what he is representing. That's a good place to start.

There is considerable confusion about just what the public interest is. It is a very flexible term. We are all accustomed to hearing editorial writers, politicians, citizen activists, legislators, judges, and lobbyists sprinkle the term "public interest" into their discussions of issues of the moment. At times, each of those groups can do something that moves forward the public's interest in formulating good public policy in Maine. The real problem is that, in public life today, there are *many publics* that comprise the public interest. In the case of utility regulation, which is the area on which we concentrate, here are some examples of these numerous publics: Grassroots groups who oppose transmission lines or nuclear power; business and industry representatives who need competitively priced supplies of energy or telecommunication services for economic growth; health activists concerned about air pollution or electromagnetic field effects; advocates for low income people; environmentalists concerned with global climate changes and air and water quality issues; and proponents of fair and open access in public decision making. Each of those interests represents a particular view of how the public is best served or how public welfare is most urgently threatened. Each of these groups represents a different public in my opinion. Where does this leave the Public Advocate's Office?

In our view of the public interest, the Public Advocate's Office tends to be more inclusive and less doctrinaire in advocating a specific set of principles. We are generally concerned with the openness of the decision-making process at the PUC and before the legislature. In general, we have had no trouble in letting well-organized groups make their *own* presentations to the PUC of what they believe the public interest to be, and we have not felt obliged to adopt their agendas. However, over the past ten years, we have formed close associations with local groups when

they otherwise seemed unlikely to be able to make an effective case at the PUC or at the legislature.

For example, we worked closely with hearing-impaired citizens who sought equal access from the telecommunication system through a voice relay service. In another example, we assisted residents of a Penobscot Bay island in their effort to receive, for the first time, a telephone link to the mainland. In a third example, we helped low-income groups who have been concerned about their inability to keep up with rising costs of electricity in Maine. In a fourth example, we helped Washington County ratepayers who faced real difficulties in influencing energy planning decisions made by a Rural Electric Administration (REA) electric co-operative in that part of the state. And a final example, we assisted small business people affected by a rate redesign by Central Maine Power that drove up their electric bills, despite their relatively high load factor. In each of these examples, we have advocated for particular concerns chiefly because the affected groups were unfamiliar with PUC processes and, in our opinion, were unlikely to get very far on their own.

So let me confess to a real subjectivism in our treatment of the public interest. Our bias is to assume that full participation by many affected groups is itself an important ingredient in good public policy making. For that reason, we regularly pick and choose among causes and viewpoints presented to the PUC or to the legislature and have a particular tendency to align ourselves with those viewpoints that otherwise would not be heard.

Thus, my first principle for the identification of the public interest is to look for ways to enlarge participation and to promote access in the decisionmaking process. This principle, in my opinion, ties back to the origins of the public advocate entity itself. There are now public advocate offices in 38 states. They are institutional outgrowths of the consumer movement, which I suppose you could trace back to Ralph Nader's book, *Unsafe At Any Speed*. That consumer movement sought to change the decision-making process of the country's biggest corporations and to make those corporations more responsive to consumer concerns. In a similar, more limited manner, our office has tried to bring into PUC proceedings viewpoints and concerns from people who are directly affected by PUC decisions - consumers.

The second principle that guides our identification of the public interest has been money - the dollars requested for rate increases and the dollars paid by customers in monthly bills. We accept the commonplace view that very few people welcome increases in utility bills. Increasingly, over ten years, customers have come to rely on our office to oppose, to moderate or to seek a decrease in utility rate requests or rate levels. Most of this kind of work occurs at hearings, meetings, and negotiation sessions at the PUC. It rarely involves collaborative alliances with community groups, with grassroots organizations, or with unpaid volunteer ratepayer advocates.

It is perhaps a little ironic that ten years ago, prior to the creation of the Public Advocate's Office, there were at least two organizations that regularly intervened in PUC proceedings. Who here remembers Northeast Combat of Bangor? Or the Maine Citizens Committee for Utility Rate Reform - Bruce Reeve's organization? Both of these groups were quite active in PUC cases prior to the creation of the Public Advocate's Office and have, to a very real extent, disappeared from the regulatory landscape. There is, of course, a reason for their disappearance. The business of

opposing utility rate increases is expensive, it is tedious, and it requires professional representation and expert witnesses. In a typical case at the PUC, we may spend \$30,000 to \$50,000 on expert witnesses alone. That kind of money is not generally available to a volunteer grassroots group.

We estimate that, on average over the past ten years, utilities rates have been set \$4 million to \$8 million lower each year due to the PUC's adoption of arguments that we, and we alone, made in PUC cases. It is possible to quantify success or failure in promoting one aspect of the public interest when you look at rate increase requests and the final outcomes. You either have an effect on the cost of electricity, gas, water, and telephone or you don't. For us, the dollar saved is the best indicator of whether or not we have made a dent on behalf of the public.

There are, however, much more nebulous issues with which we are concerned that involve the public interest. For example, the introduction of natural gas supplies to Maine should make energy prices more competitive and should diversify the energy supply in this state. Our office has been active in Ottawa, in Washington, D.C., and in Augusta to support efforts to expand pipeline capacity to Maine and to increase supplies. Second, Caller-ID technology raises important questions about blocking services for customers who cannot risk having their telephone numbers disclosed. We have negotiated with New England Telephone, and we have appeared before the legislature on behalf of battered-women's shelters and other people who are concerned with loss of privacy. Third, back in 1985, our office strongly pushed a proposal to merge Maine Public Service into Central Maine Power to enable Maine Public Service to avoid bankruptcy and to deal with a very large Seabrook-related problem.

This last example brings me to my final point about identifying the public interest: You may sometimes be wrong. In retrospect, it is not clear to me that Maine Public Service ratepayers would have been better off if they were today paying their electric bills to CMP. Maine Public Service today has turned out to be a well-managed utility with the lowest electric rates of the three major electric utilities in the state. It is not easy to identify the course of action that best serves the public interest. It certainly is not easy to be sure that you are right. If you acknowledge that you have been wrong in the past, you are more apt to accept the possibility of error in the future. In this uncertain environment, the public interest is best served when opponents respect each others' viewpoints, respect each others' disagreements and deal with each other honestly.

From time to time, the emperor does have no clothes. Frequently customers call me up, perhaps twenty phone calls a week now, to complain about prices. In many cases, they tell us exactly what we have done wrong on their behalf over the last ten years. While it is nice to get phone calls from friends who are more positive, it is nonetheless useful to get these more critical calls. We are accountable to the consumers whom we represent. Our choice among policy options is not determined by those phone calls, but it certainly influences us.

I want to end now with a very general observation. It is an open question, but I think it is an interesting one. The most important contributions made by our office to the public interest have been based on a long-term view of what the public interest is: The importance of conservation programs for electric utilities with paybacks for customers in five to ten years; the value of natural gas for Maine; and the termination of Maine's Seabrook commitments. All of those

initiatives are justified over a long-term time horizon. The bill reductions from conservation are not overnight. At the same time, the concerns of the customers are always, "Rates are too high, we need relief now." In short, a short-term point of view. The conflict between that short-term view of the public's interest (held by the public itself in many cases) and the long-term planning context of utility decisionmaking is a real dilemma for our office. It has led, from time to time, to the Public Advocate's Office explicitly taking a position that opposes the viewpoint of a local community group that is critical of initiatives for conservation, for example. Conservation justifies itself over the long term, despite rates that may go up three percent or more in the short term. The answer to this dilemma is to find a balance between the long-term perspective and a short-term perspective on the public interest. Whether or not we find the right balance is a matter that can only be determined after the fact.

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