

Public Service Commission of the District of Columbia

450 5TH STREET, N.W.
WASHINGTON, D.C. 20001
(202) 626-5100



IN REPLY REFER TO.

September 16, 1991

HAND DELIVERED

Cheryl Romo, Editor
Public Utilities Fortnightly
2111 Wilson Boulevard
Suite 200
Arlington, VA 22201

Re: State Regulators' Forum

Dear Ms. Romo:

Thank you very much for inviting me to participate in the State Regulators' Forum. I appreciate the opportunity to be able to share my views, as well as the views of the Public Service Commission of the District of Columbia with others in the utility regulatory area. Please find enclosed my responses to the four questions that have been selected for the forum, along with a recent photograph of me.

If I can be of any further assistance, please let me know.

Sincerely,

Howard C. Davenport
Howard C. Davenport
Chairman

Enclosures

**PUBLIC UTILITIES FORTNIGHTLY
1991 UTILITY REGULATORS' FORUM**

QUESTION ONE: REGIONAL REGULATION

Do you think the regulatory structure in the United States will evolve eventually from state-by-state regulation to regional regulation? Why or why not?

Although the framework and structure of utility corporations are changing, I do not believe that utility regulation will evolve from state-by-state regulation to regional regulation. I do believe, however, that in the future there will be more regional compacts because the scope of state regulatory authority is constantly in dispute as the definitions of interstate and intrastate transactions change.

The increasing need for regional compacts is brought about because of (1) changes in the jurisdictional boundaries of the federal agencies that have oversight of interstate and wholesale activities and (2) changes in the framework and structure of utility corporations. In the past few years, we have witnessed the Federal Energy Regulatory Commission (FERC) take over areas of regulation that were once the domain of the states. For example, since the deregulation of gas prices at the well-head, state commissions in many instances are unable to do anything more than accept the rates established by FERC for local distribution companies (LDCs). This occurs because FERC as the regulator of pipelines, establishes the prices that the pipelines charge the LDCs. Because state commissions under the preemption doctrine are required to allow a full and immediate pass-through of wholesale rates, state commissions can do nothing more than pass through FERC charges to the LDCs.

Similarly, in the electric industry, the restructuring that we are witnessing with electric utility corporations, which is occurring at FERC's direction, is resulting in more and more producers and wholesalers (i.e. independent power producers, power pools and holding companies) of electricity that are not within the purview of state regulation. Because of the expense and siting problems involved in the building of new plant, state regulated utilities have chosen to purchase some of their generating capacity from these non-state regulated entities as opposed to building new facilities. State regulators have no authority in regulating the transmission rates used by these entities, FERC does. State commissions have authority over transmission siting and planning, and to a certain degree access. This split on jurisdiction has created a void in the regulation of electric utilities. As the issue of transmission becomes increasingly important in the development of a competitive electric industry, the need for regional regulation increases. Regional regulation would provide the filler for the gap between state and federal regulation of

transmission. Regional regulation could provide uniform treatment of charges for transmission of imported energy, regional planning for electric generation, and regional consideration of environmental issues and pollution controls.

Presently, there is a bill before the United States House of Representatives' Committee on Energy and Commerce to amend the Federal Power Act. The proposed legislation, H.R. 2224, would provide more equitable access to electric transmission services by giving FERC authority to order wheeling in certain circumstances. The bill would increase FERC's authority over transmission issues. Although the bill would encourage state and federal cooperation in transmission planning, it would in effect reduce the states' authority in this area.

There has not been any formal regional regulation within the United States. Nevertheless, there have been several voluntary alliances by several states to form oversight committees in various regions to track the activities of Bell Holding Companies. For example, the Western Conference of Public Utility Commissioners meets regularly to oversee the activities of U.S. West. Similarly, the states in the Ameritech region have gotten together to oversee the activities of Ameritech. In fact, the states in which Ameritech operates have submitted to the Federal Communications Commission an Open Network Architecture plan for the handling of rates associated with this issue in their region. This Commission has attempted to get the state commissions in this area that are in Bell Atlantic's region to form a voluntary regional oversight committee.

In addition, in the past few years the National Association of Regulatory Utility Commissioners (NARUC) has been moving toward favoring regional compacts on certain issues. NARUC has urged cooperation by its members and advocated, through the filing of amicus curiae briefs, utilization of joint boards to aid in resolving federal-state tensions.

As for state-by-state regulation, that will not be phased out for several reasons. First, state commissions possess greater expertise and sensitivity to uniquely local concerns, concerns which can be exacerbated because of changes in technology, market power, capital formation requirements, supply and demand responses, and societal values.

Second, the role of state commissions is unique. It is similar to the concept of representation of the people by the people. This localization of regulatory functions serves to prevent regulation by the fiat of the federal government.

Third, state regulation is necessary as long as there are captive customers without sufficient market power to exercise meaningful choices among the utilities and their service options.

Fourth, the interests of a regional regulatory body may not always coincide with the regulatory interests within a state.

Finally, state commissions are able to regulate and experiment with regulatory principles because they can take into account their specific conditions and most important goals in regulating activities within their realm. Regional regulation would not allow states to do this. Although the scope of state regulation is lessening, increasing the likelihood and need of regional regulation, the need for state-by-state regulation will remain.

**PUBLIC UTILITIES FORTNIGHTLY
1991 UTILITY REGULATORS' FORUM**

QUESTION TWO: FEDERAL/STATE RELATIONSHIP

How is your relationship with the federal government changing?

How does it affect your job as a state regulator?

I believe that in various areas of utility regulation, the relationship between federal and state regulators has become strained as the federal agencies assert more authority into areas that have been traditionally left to state regulation. There are also areas, however, in which the regulatory authority of both the federal government and of the states has been redefined.

The federal government has asserted authority over utilities in areas ordinarily left to the states because of the constantly changing framework and structure of utility corporations. For example, telecommunications utilities are being restructured to allow for the provision of new services. Local exchange carriers, over which the state commissions have jurisdiction, have been authorized through federal legislation and the federal judiciary to provide new services and to engage in activities previously prohibited. For example, as a result of the recent removal of the restriction on the provision of information services, the local exchange carriers may now provide information services to local customers. See, United States of America v. Western Electric Company, Inc., No. 82-0192, slip op. (D.D.C. July 25, 1991).

The Federal Communications Commission (FCC) has expanded its regulatory authority over the telephone utilities and has preempted state authority in areas once under the sole regulatory authority of the states. Recently, there has been a push by federal regulators to foster a competitive environment among utilities. Some federal regulations have been relaxed and definite areas of state regulatory purview have been preempted. The push to foster a competitive environment is exhibited by the FCC's decisions regarding price caps and enhanced services. In the case of price caps, which the FCC has implemented for both AT&T and the local exchange carriers, the cost of providing service would be determined by a cap or ceiling rather than by conventional rate of return regulation. Therefore, federal regulations regarding the pricing of services have been relaxed. However, state commissions are not required to use price caps and are free to continue the use of rate of return regulation. In the case of enhanced services, the FCC has preempted the states from imposing common carrier regulation and from adopting any measure inconsistent with the federal nonstructural safeguards. As a result, there has been a redefinition of interstate and intrastate regulatory purview and

new challenges to state regulation have arisen.

The expanded federal authority requires that state regulators keep abreast of the activities of the federal regulators and simultaneously discern which areas are left to state regulation, as exhibited by the FCC's decisions with regard to price caps. The future challenge for state regulators will be to fashion policies to protect the local ratepayers within a regulatory framework which is increasingly dominated and altered by federal regulators.

**PUBLIC UTILITIES FORTNIGHTLY
1991 UTILITY REGULATORS' FORUM**

QUESTION THREE: CONSERVATION

Do you think State Commissions should reward utility energy efficiency and demand-side management efforts? Are there other areas where you personally feel incentives might be applicable?

In Formal Case No. (F.C.) 834, the Commission's investigation of the least-cost planning activities of the Potomac Electric Power Company and District of Columbia Natural Gas, a division of Washington Gas Light Company, the parties have proposed the adoption of some sort of ratemaking incentive to facilitate each company's implementation of successful demand-side programs. We have in fact encouraged the parties to submit proposals for incentive mechanisms. To that end, the parties in F.C. 834 submitted proposals for several incentive mechanisms.

In reviewing the proposals, we found that even though the proposed incentive mechanisms had merit, there were several concerns which the mechanisms failed to address. We at the Commission believe that if an incentive mechanism is to be used to reward energy efficiency, it must address these concerns.

It has been urged on the Commission that any incentive mechanism must be symmetrical with the possibility of both bonuses and penalties. Second, any incentive mechanism that includes a cost recovery mechanism specifically designed to avoid the effect of regulatory lag by establishing a semi-annual interim cost recovery account should not violate the Commission's policy prohibiting limited issue rate proceedings and retroactive ratemaking. Limited issue rate proceedings are prohibited in the District of Columbia because they fail to account for the total impact of a particular increase in costs.

Third, any incentive mechanism that is to be adopted must, with respect to the costs that are to be recovered, explain how the costs were calculated, what costs were included, the method for verifying the costs and the method for implementation.

Without these concerns being addressed, we do not believe that it is possible to determine whether an incentive mechanism should be adopted. We have directed the parties to resubmit their proposals or submit new or similar proposals accompanied by a discussion addressing these stated concerns in the Commission's rate proceeding, F.C. 905. The Commission is currently deliberating the proposals submitted by the parties.

**PUBLIC UTILITIES FORTNIGHTLY
1991 UTILITY REGULATORS' FORUM**

QUESTION FOUR:

DO IT YOURSELF EDITORIAL

You are invited to comment on any other subject not mentioned above.

Privacy Issues and Caller ID

I believe that the privacy issues frequently raised regarding the provision of Caller ID may be effectively resolved through the offering of per-call blocking. Consumers are concerned that their privacy rights may be violated by the transmittal of their telephone numbers to Caller ID subscribers. However, there is a mechanism to protect the rights of the consumers and to avoid the transmittal of their telephone numbers to Caller ID subscribers through the use of per-call blocking.

The privacy issues related to Caller ID center around which party should have control of the telephone number that is transmitted over the telephone lines. The Caller ID subscriber has an interest in obtaining the information about the person who makes the call, while the calling party has an interest in controlling access to the number. In order to provide fair and nondiscriminatory regulation and to determine what is in the public interest, these competing interests must be balanced. Per-call blocking balances these competing concerns over the control of the telephone number. The Caller ID subscriber and the calling party both retain control over access to their telephone number, respectively. The Caller ID subscriber does not have to answer the telephone if the calling party chooses to invoke blocking and, alternatively, the calling party has the option of implementing per-call blocking to prevent the transmittal of the telephone number.

The United States House of Representatives and the United States Senate are considering bills which would amend the Communications Act of 1934 and title 18, section 3121 of the United States Code to allow the originator of telephone calls to implement blocking on a per-call basis. The House bill, H.R. 1305, the "Telephone Consumer Privacy Rights Act," would direct the Federal Communications Commission to conduct a rulemaking to prescribe regulations requiring any Caller ID service offered by a common carrier to allow free per-call blocking. H.R. 1305, 102d Cong., 1st Sess. (1991). The Senate bill, S. 652, the "Telephone Privacy Act of 1991," would require phone companies that offer Caller ID to also offer free blocking but does not state whether blocking should be on a per-call or per line basis. S. 652, 102d Cong., 1st Sess. (1991).

In the future, the privacy issues surrounding Caller ID will intensify as advancements in telecommunications technology allow

for the transmission of more personal information over the telephone lines, such as the call originator's name and address. Regulators interested in protecting the privacy interests of the call originator will be required to consider, not only the implications of the automatic transmission of information over the telephone lines, but also the personal nature of the information transmitted.

The privacy issues surrounding Caller ID are not so insurmountable that state utility commissions should refuse to allow the service in the interest of protecting the privacy rights of the ratepayers. Studies have shown that there is a sufficient demand for the service. Therefore, it is in the public interest to resolve the competing interests of privacy and access to information. Blocking offered on a per-call basis is a successful means for state regulators to balance these interests and to act in the public interest.

