

# THE CONSUMER STAKE IN PUBLIC UTILITY RATE REGULATION

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The picture, drawn by Mr. Nathan Paven, of the sad state of utility regulation is not pretty. Unfortunately, it is an accurate one.

It has been documented through the years. The famous Federal Trade Commission investigation of the late 1920's and early 1930's revealed the shortcomings and limitations of state regulation and abuses by utilities. That study led directly to enactment of the Public Utility Holding Company Act, and the Federal Power Act in 1935.

While those important federal laws outlawed many of the old shady practices of the nation's electric and gas utilities, and provided investors with much needed protection against 1920-style financial manipulations, state regulation continued, in general, to be quite inadequate.

Thus, a study of the electric power industry up to 1940 concluded that "many state-regulated electric utilities are earning profits which may be regarded as unreasonable." The study added that "control of utility costs by regulating commissions has been hampered chiefly by lack of funds and adequate personnel." (1)

A few years later, a study for the state of Connecticut noted: "The existence of the commission may lead the public to believe that it is being protected by a vigilant public utilities commission when in fact rates and services are being determined by a monopolistic industry which is subject to only perfunctory regulation." (2)

## LEARNED TO LIVE REGULATION

Many utilities originally opposed regulation. However, once regulation became an established fact, they learned how to live with it. Some utilities even went so far as to take the leadership in creating state regulatory bodies when it was to their advantage to do so. They shaped the philosophy and powers of the regulators. A recent biography of Sam Insull recounted how he created and controlled the first regulatory commission in Illinois — and then helped kill it and create another commission when it served his purposes. (3)

A utility consultant declared recently that "the conclusion is inescapable that, with a few notable exceptions, effective state regulation of utility rates is clearly a fiction." He wondered if utility commissions "regulate or merely vegetate." He estimated that utilities take at least one billion dollars a year from consumers in "unwarranted revenue" as a result of "torpid regulation of rates by state commissions." (4)

I want to interject here that the California commission is one of the few in the nation which enjoys a good reputation.

Another impartial observer concluded that there has been a "decline and fall" and "deterioration of regulation." (5)

Another consultant warned that utility earnings are too high. He cautioned a private utility audience that their high earnings "pose a real threat to the continuation of private ownership of our public utilities" and urged "a good hard look at the level of utility earnings." (6)

From across the country, an award-winning journalist in Florida reported recently:

"The state's rate fixing agency has nothing in its records to refute or support claims of an outside expert that Florida's two biggest utilities are overcharging customers. The near empty files of the Florida Public Utilities Commission offered little except the suspicion that it is regulating the utilities by ear. Or at best, by scratch pad." (7)

After a series of articles exposing this mess, the Miami Herald concluded editorially: "It is clear that the railroad and utility companies (in Florida) can do as they please because the state agency has fallen down on the job. At best, it is incompetence. At worst, it demands an immediate investigation by the governor's office." (8)

## STAFF INADEQUATE TO CHECK BOOKS

In the state of Maryland, the chairman of the Public Service Commission declared the public interest is suffering because his regulatory agency is inadequately staffed. He said his agency could not check utility books properly because it did not have the staff to do so. "We have to accept the figures given to us by the utilities," he confessed. (9)

Much more documentation can be supplied. Last month, in the District of Columbia, it was revealed that the D. C. commission had not determined in more than 10 years what constitutes a fair rate of return for the largest utility serving in and around Washington. That kind of investigation would require money and staff which the D. C. commission does not have. So, instead of a thorough study, the D. C. commission "negotiates" rate adjustments with utilities.

It is incorrect to conclude from these examples that regulation has failed only on the state level. The largest single utility in the world is American Tel.

and Tel. However, never in history has the Federal Communications Commission thoroughly studied AT&T's rate structure. No one really knows if telephone rates are too high or too low. The chairman of the FCC conceded as much just a little more than a year ago. (10)

The only bright spot on the regulatory scene is the reawakening of the Federal Power Commission. Since Joseph Swidler became chairman in 1961, the FPC has embarked on the dangerous path of exercising regulatory authority which it has had, but has hardly used, since 1935.

It is a "dangerous" path because as a result of this audacity by the FPC, the private power industry is now out to destroy the FPC or to make it so weak that it might as well be destroyed.

#### COULD SAVE USERS \$11 BILLION A YEAR

The National Power Survey recently estimated that existing technology can save the nation's electric consumers 11 billion dollars a year by the year 1980. This can come to pass because the costs of generating and transmitting electricity can be reduced — and consumers' electric bills can thus be reduced — by greater interstate, regional and national co-operation and co-ordination. This means more interstate and regional movement of power.

Too many private power companies, the national association of state regulators, and some state commissions, now want to strip the FPC of its power to regulate interstate wholesale sales of electricity. They want to throw interstate wholesale electric regulation back to the state commissions which do not have the funds, do not have the staff, and in too many cases, do not even have the authority to regulate interstate sales of electricity — to say nothing of the desire.

Facts clearly show that if it were not for the existence of the federal power program and non-profit consumer-owned utilities, private power electricity bills would be even higher than they are and utility regulation would be even weaker than it is.

To give consumers the benefits of publicly-generated low-cost power, and to create a non-profit yardstick by which electric rates and service could be measured, a law was enacted more than 50 years ago requiring that consumer-owned, non-profit electric systems be given first chance to buy federally-generated electricity.

This consumer protection provision has been etched into the nation's federal power and resource development program through the years. An impartial expert explained it this way:

One of the fundamentals of federal power policy is "the concept of using federally produced hydro-

electric power to provide competition to the private power industry and thus stimulate lower rates and higher standards of service. In spite of all the heat that has been generated over this concept," he continued, "and all the complex factors that must be weighed in its fair appraisal, I believe that history has demonstrated the validity of this concept and that in areas where there has been public competition, lower rates and improved service has resulted." (11)

In short, the yardstick works. Studies of electric bills across the nation prove it. Private power companies serving areas close to federal power facilities and consumer-owned electric systems invariably charge consumers less for electricity than do private power companies farther removed.

#### REGULATION ALONE CANNOT CUT BILLS

History makes it abundantly clear that regulation alone has not and cannot bring electric bills down to their proper levels. Savings from technological progress and tax reductions have too often been wholly or partly retained by utilities, over and above the legal and proper reasonable rate of return to which they are entitled.

The FPC has been publishing an annual document on the revenues, profits, dividends, etc., of private power companies for 27 consecutive years. For the first time, this year's report contains the rates of return of the major power companies.

The FPC report (12) discloses that in 1963:

- Of the 188 power companies studied, only 46 (or 24%) had a rate of return of less than 6.5%
- 142 power companies — 76% — had a rate of return of 6.5% or higher.
- 111 power companies — 59% — had a rate of return of 7% or higher.
- 54 power companies — 29% — had a rate of return of 8% or higher.
- 20 power companies — 11% — had a rate of return of 9% or higher.

In electric bills alone, the stake is tremendous. Consumers now spend about 14 billion dollars a year for electricity. Consumers now use about 886 billion kilowatt-hours of electricity a year. The total grows each year.

Every reduction in the unit cost of electricity means lower light bills for consumers. A one-tenth of a cent reduction in the cost per kilowatt-hour is a seemingly small reduction. But last year a one-tenth of a cent reduction in the cost per kilowatt-hour would have saved consumers 886 million dollars.

It was noted earlier that the National Power Survey estimated consumers could save 11 billion dollars a year by the year 1980. That savings, however, will not

come easily. Power companies might well realize an 11-billion-a-year savings, but it will be passed on to consumers only if federal regulation is continued and strengthened and only if the yardstick of federal regulation is continued and strengthened and only if the yardstick of federal and consumer-owned electric systems is continued and strengthened.

#### FEDERAL PROGRAM USERS' BEST HOPE

Mr. Paven had several proposals for improving state regulation. However, history still teaches that a federal power program, even though it makes up only 13% of the nation's total generating capacity, plus strong federal regulation, is really the consumer's best hope.

Mr. Paven also contends that "the consumer must make his voice heard at the legislative level." This is true whether the discussion concerns packaging or interest rates. It is doubly true when the talk is about utilities.

A distinguished Republican, Sen. George Aiken of Vermont, summed it up well. He said, "The light and power industry has been so successful in the political field that in most states it has no fear whatever of the quasi-judicial bodies which are set up to regulate it." He also added: "In the federal government it has been so successful that the benefits it has received in the form of tax privileges and in other ways far exceed any real or imagined subsidy which the REA has ever received or ever will receive."

Another senator delivered one of the frankest confessions ever made about power industry lobbying a few years ago, when he told an industry convention that the private power companies in his state do a thorough and effective job of lobbying. The following is an excerpt from his talk: "One or another of them keeps a chair warm in my office most of the time . . . They have a way of weaving a lot of information into a friendly chat." (13)

It was no accident that this senator was one of the sponsors of this year's power industry's bill to weaken the FPC's regulatory authority over power companies.

It is wise to reiterate Mr. Paven's closing warning. He said the consumer's stake "is much more than the size of his monthly bill."

#### UTILITY CONSUMERS SERVED BY MONOPOLY

If a person does not like the prices or the service at the local department store or hardware store, he can usually shop elsewhere. He *might* find a choice. With

rare exceptions, the nation's utility consumers have no choice. They are served by monopolies. The cost of duplicating utility services would be prohibitive, as well as unwise. It takes constant vigilance to assure that the regulators of these monopolies are protecting the public interest.

It might well be more comfortable to avoid controversy, to avoid getting involved. However, consumers ought to become involved, for their own self-interest, for their own protection.

Many power companies contribute regularly to organizations which advocate abolition of the United Nations and the income tax, organizations which seek to deny equal rights to some Americans. Some power company executives serve as executives of right wing organizations which spout this pap, which seek to repeal "the twentieth century." All too often, these power companies help finance these radical right groups with money paid by consumers in their electric bills, supposedly designed to cover only legitimate operating expenses plus a reasonable return. This, too, is an area which too many state commissions have ignored.

In light of the above, the consumer's stake is indeed far larger than the size of his monthly bill for electricity.

#### FOOTNOTES

- (1) "Electric Power and Government Policy," published by the 20th Century Fund, New York, 1948.
- (2) "Regulatory Agencies, Report of Survey Unit No. 9 to the Commission on State Government Organization," Nov. 21, 1949, Hartford, Conn. By George A. Graham, Marver H. Bernstein and D. G. MacDonald.
- (3) "Insull," by Forrest McDonald, University of Chicago Press, 1962.
- (4) Arnold Hirsch, in article in Public Power magazine, May, 1962.
- (5) Prof. Douglas N. Jones, in "New Concepts and Current Issues in Public Utility Regulation," published by Mountain States Telephone and Telegraph Co., 1963, Denver, Colo.
- (6) David A. Kosh, in Public Utilities Fortnightly, Sept. 26, 1963.
- (7) Juanita Greene in Miami Herald story, Nov. 15, 1964.
- (8) Miami Herald editorial, Nov. 17, 1964.
- (9) Chairman Solomon Liss, Maryland Public Service Commission, as reported by Washington Star, Dec. 28, 1964.
- (10) FCC Chairman E. William Henry, on Meet The Press, Dec. 8, 1963.
- (11) Irving Fox, vice president, Resources for the Future, in speech in Chicago, Ill., Dec. 5, 1960.
- (12) FPC publication, "Statistics of Electric Utilities, Privately Owned, 1963."
- (13) Sen. George Smathers of Florida, speech to Edison Electric Institute convention, Atlantic City, N. J., June 5, 1962.