

New Thinking in Regulation

guest opinion

By Sam J. Ervin, IV

THE ROLE OF state regulatory agencies in the electric arena remained relatively constant for much of the last century. In essence, state regulators were called upon to set rates for regulated entities, evaluate the quality of service provided by such entities, decide whether to certify proposed generating facilities, resolve territorial disputes, examine the occasional merger or similar business combination transaction, and resolve complaints between utilities and their customers. Although the exact nature of the issues in dispute in such proceedings evolved over time, the basic content of the tasks performed by state regulators with respect to the electric industry remained relatively constant until the last couple of decades. Since that time, however, the role played by state regulators has changed significantly.

First, the scope of the issues confronted by state regulators in both restructured and traditionally regulated states has expanded significantly. Although the structure of retail service varies from state to state, all state regulators are necessarily having to spend more time examining and resolving competition-related issues. The importance of competition-related issues to regulators serving in restructured states hardly needs discussion, since those regulators depend on the competitive process to ensure just and reasonable rates for end-user customers.

Such issues can also arise in traditionally regulated states. For example, they can arise in transfer proceedings such as merger proposals or proposals to allow utilities to participate in regional transmission organizations. Under the traditional "public convenience and necessity" standard, such transfers might not pass regulatory muster if they subject customers to the rate or service quality impact of insufficiently competitive wholesale markets. Secondly, given the increasing reliance of certain utilities on wholesale markets, it is important for state regulators in traditionally regulated states to ensure that the purchases of capacity and energy made by their utilities are not adversely affected by inadequately mitigated market power. Thus, state regulators in both environments have little choice except to deal with competition-related issues.

Furthermore, the role of state regulators is no longer limited to simply hearing and deciding cases. Instead, state regulators devote ever-increasing


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NORTH DAKOTA CITY VOTES

Fargo, N.D. voters will decide in November whether to boost renewable production to 20 percent of needed power by 2020. The percentage would climb to 30 percent by 2030, according to a report by the *Associated Press*.

Xcel Energy, which serves the city, could hit the 20 percent mark with 43 wind turbines, each generating 1.5 megawatts, according to a spokesman.

DETROIT EDISON FINED

Detroit Edison was fined \$105,000 by the Michigan Public Service Commission for electric service restoration shortcomings.

The problems occurred between Oct. 28 and March 14. According to Detroit Edison, about 350 restorations were delayed in that period.

amounts of time to participating in litigation before the Federal Energy Regulatory Commission (FERC) and engaging in other advocacy activities. Although the FERC has always played a significant role in regulating the electric power industry, its importance has increased dramatically with the rise of regional transmission organizations, the development of organized electric markets in some areas, and the increased reliance of even traditionally regulated electric utilities outside organized markets upon wholesale transactions. As a result, FERC's influence has extended from the municipal and cooperative wholesale customers that it traditionally protected from unjust and unreasonable rates to the entire body of end-user customers.

Although the percentage of power procured on wholesale markets subject to FERC regulation varies dramatically from place to place, that percentage has undoubtedly increased in the past 20 years. For that reason, state regulators have necessarily become active participants in FERC proceedings on a regular basis. In recent years, state commissions across the country have devoted substantial time and effort to such FERC proceedings as the cases arising from the western electricity crisis, the numerous FERC proceedings attempting to implement the provisions of the Energy Policy Act of 2005, and the LICAP and RPM proceedings. Similarly, those state commissions in areas served by multi-state RTOs have been required to devote considerable time and attention to interaction with these organizations in an attempt to influence their decisions in a consumer-friendly direction.



The roles played by state regulators will continue to evolve and become more demanding in the future.

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The creation of an Electric Reliability Organization with the authority to issue binding rules governing the operation of the transmission system is forcing state regulators to pay more attention to the NERC standards-development and enforcement process than has been the case in the past. Thus, in addition to carrying out their traditional decisional roles, state regulators must now spend considerable time and effort serving as advocates for consumers at the national and regional levels.

Finally, state regulators must now work with each other across state lines in new and different ways. Although state regulators have always used organizations such as the National Association of Regulatory Utility

Commissioners (NARUC) and its various regional affiliates as a way to remain familiar with various industry trends and issues, the same factors that have combined to create a need for state regulators to function in an advocacy role have forced them to act in a concerted manner to improve their effectiveness in the federal and regional arena.

Although NARUC and its regional affiliates continue to provide the principal vehicle for concerted action by state regulators, state regulators have found other ways to work together as well. For example, ad hoc groups of state regulators acted together to influence various federal regulatory decisions such as those made in the FERC cases that addressed the Alliance RTO proposal. More recently, formal regional state committees have developed across the country to focus on the operations of specific RTOs. At this point, regional state committees have been proposed or are operating effectively in the areas served by the Midwest ISO, the New England ISO, PJM, and the Southwest Power Pool. Effective participation in such groups requires state commissions to spend considerable time and effort evaluating the impact of regional conditions on the citizens of their own states and attempting to develop collaborative approaches that serve the interests of a large group of very different states.

The need for state regulators to develop these new skills and areas of expertise does not obviate the need for them to continue to handle issues within their traditional areas of jurisdiction. After

an interval during which the traditional electric agenda faced by state regulators was relatively limited, there has been a resurgence of electric-related regulatory litigation in recent years. For example, many state commissions are beginning to handle an increasing number of rate cases (be they for traditionally vertically integrated utilities or for restructured utilities seeking increases in distribution rates). The prospects for new baseload generating plant construction, the arguments for expansion of the transmission system, and the renewed interest in energy efficiency and demand response efforts has tended to give new life to the integrated resource planning and siting processes in many states. In addition, the repeal of the Public Utility Holding Company Act of 1935 may result in more numerous and increasingly more complex transfer proceedings.

Finally, with the increasing importance of providing interruption-free service to customers, the extent to which state commissions devote themselves to service quality issues will undoubtedly increase as well. These new developments in the duties performed and skills needed by state regulators supplement the tasks traditionally performed by state commissioners. Thus, their responsibilities have become even more difficult and time-consuming.

Although state regulators generally remain relatively anonymous, they will continue to be of considerable importance in the lives of Americans and will have significant impact on all segments of the industry. The roles played by state regulators will continue to evolve and become more demanding in the future. As a result, state regulation will remain an important component of the electric industry for the foreseeable future.

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TXU DONATIONS TO GOVERNOR

TXU donated \$5,000 in support of Gov. Rick Perry's election campaign in November, shortly after the governor ordered an acceleration of state permitting for power plants.

Former TXU chairman Erle Nye donated \$2,000 the day the order was signed and \$25,000 in April, according to the *Associated Press*. Nye has given Perry \$148,000 since Perry took office.

Chris Bell, a Democrat hoping to unseat Perry, said the governor was influenced by "polluters who write big campaign checks."

A Perry spokesman said, "He's not an environmental extremist like Bell and his followers."



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4 | FERC Natural Gas 101
Chicago **QL:** E14479

4 ~ 5 | FERC Electricity 101
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4 ~ 6 | The Transmission Project Development Renaissance
Washington **QL:** E14380

8 ~ 11 | APPA 2006 Legal Seminar
Cambridge, Mass. **QL:** E13967

11 ~ 13 | Fundamentals and Analyses of LMP-based Markets
Schenectady, N.Y. **QL:** E13207

16 ~ 17 | 2nd Annual European Energy Policy
Brussels, Belgium **QL:** E14060

16 ~ 18 | Federal Offshore Oil and Gas Leasing & Development
Houston **QL:** E14127

18 ~ 19 | 2nd Annual California Power Markets Forum
San Francisco **QL:** E14325