

Embattled Competition

NEW YORK CONSIDERS RETRENCHING

BY RICHARD KORMAN

 WILL NEW YORK, A STATE KNOWN FOR ITS active retail electricity market and high rate of customer switching, become the next state to fall to the forces of re-regulation?

The issue is being contested by lobbyists for utilities and power distributors on one side and consumer advocates, public power authorities and some elected officials on the other. Armed with studies on electricity costs, both sides plan to make their case to the New York Public Service Commission, which has encouraged retail competition since 1996, and to state lawmakers.

Like other states, New York has frozen electrical rates while encouraging competition. In the wholesale market, a state independent system operator conducts auctions based on market clearing prices and on the retail side switching rates are among the highest in the country. Nevertheless, New Yorkers are using more electricity and seeing bigger bills.

"There's very solid evidence that states with regulated structures have kept rates lower," says Assemblyman Richard Brodsky, a Democrat from Westchester County who chairs a committee with authority over corporations. He plans to introduce a bill returning New York to regulation.

Adding to uncertainty is the fact that New York's Democratic governor, Eliot Spitzer, one year into his administration, has lost political capital and initiative after damaging

battles with his Republican rivals in Albany. Both Spitzer's nominee to chair the Public Service Commission and his top energy staff member bowed out during the tumult. A new PSC nominee awaits confirmation.

Few question Spitzer's emphasis on decreasing greenhouse gasses, encouraging conservation and building new power plants. Plans for capacity can't get financing, partly because utilities in New York City don't want to lock into long-term power purchase contracts with merchant power developers. But the political issue around which energy policy revolves is the cost of electricity.

Anticipating this, the Retail Energy Supply Association in May released a study showing that inflation-adjusted prices

per kilowatt-hour for electricity in New York have declined from a high of 18.44 cents in 1994, just prior to the start of deregulation, to 16.69 cents in 2006. Competition succeeded in slowing the overall increase in electricity prices during this period, according to the report. Despite nominal increases driven by demand and high fuel costs, deregulation kept money in consumer pockets, according to the report. "It's almost certain that adjusted for inflation the price of the commodity has not risen," says Patrick Curran, executive director of the Energy Association of New York, which lobbies on behalf of gas and electric utilities.

Public power authorities, consumer groups and some elected officials have produced reports of their own. One group that looked at New York electricity prices, Power in the Public Interest, pronounced New York State's competitive market experiment a costly flop and calls for a return to regulation-as-usual in a study released in October.

In general, says the study, consumers in deregulated states pay more than those in regulated states and in New York State the gap has been widening since 2000. In 2000, the study says, New Yorkers paid on average 10.6 cents per kilowatt-hour for electricity, while consumers in regulated states paid 6 cents per kilowatt-hour, or a difference of 4.6 cents. But from June 2006 to June 2007, the difference widened to 6.8 cents per kilowatt-hour, with New Yorkers shelling out \$10.4 billion more for electricity in that year than they may have under regulated rates, says the study.

James Denn, a spokesman for the PSC, said he could not comment on legislation but the PSC is reviewing the two studies. "My one observation is it is difficult to make comparisons across state boundaries, primarily because of the difference in energy supplies, or one state might use a fuel source that costs less than another, coal vs. natural gas vs. nuclear. That makes a cross-state comparison difficult."

Brodsky's draft legislation calls for overhauling most aspects of state energy policy. Industry groups doubt it will ever be adopted in its entirety. Curran of the Energy Association is diplomatic and says Brodsky's draft has some interesting ideas. Others view it as a time-consuming distraction and note that federal officials have authority over wholesale markets and that Brodsky is attacking via a statute state programs that have been enacted by the PSC as policy.

In its current version, Brodsky's bill calls for prohibition of market-clearing prices in wholesale auctions and replacing them with a pay-as-bid system. "A market-clearing price is logically absurd and has had bad results," Brodsky says.

On the retail rate side, Brodsky's draft bill tightens up significantly on the definition of just and reasonable rates and fair return on the utility's rate base. The draft bill specifically permits the PSC to use alternative forms of rate regulation, such as price regulation, ranges of authorized returns, categories of services and price indexing. In a section on reviewing rates, the draft bill specifically allows the PSC to apply performance-based ratemaking methods.

Finally, Brodsky's bill would require the Power Authority of New York State to build four new baseload generating facilities in the next 10 years and permit electrical utilities to re-enter the electric power generation market.

Says Brodsky: "So far we've been exporting piles of cash from New York, since rates have gone through the roof and there's been no reinvestment in new capacity."

New York Assemblyman Richard Brodsky
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