
THE COURSE OF FEDERAL REGULATION

I confess trepidation about coming to Florida to talk with you, my unease being illustrated perhaps by the March 21 issue of Business Week. On page 26, one article describes how advertisers are planning to take full advantage of the influx of a couple of hundred thousand students to this area this week. On page 28, under the heading "A Power Play Over Pollution" is a description of a few problems being experienced by one of your host members with various components of the United States Government about getting new facilities on the line in time to meet Miami's burgeoning power needs.

And on the next page, headed "Students Call it Dirty Business" I read about a big "happening" a week or so ago at the University of Michigan about the environment, which attracted such diverse personalities as UAW President Walter Reuther, Con Ed Chairman Charles Luce, and Dow Chemical President Herbert Doan. I include this last reference, not because it particularly involves Florida or the utility industry, but because I found in it two new terms which we are all going to hear more of--zero population growth, or ZPG, and zero economic growth, presumably ZEG.

My topic is "The Course of Federal Regulation." If I were to ask each utility executive here to make a list of the five most pressing matters facing his industry, I imagine there would be so much agreement among you that the total list would probably not be longer than ten. I can also guess that any composite catalog of current problems would include one called "regulation" near the top. I would also guess that each of the specific problems other than regulation which you collectively would identify would have some aspect of regulation about it. And finally, I can surmise that a question directed to each of you to explain your own idea about what regulation means would yield quite a narrow spread of answers--the term "regulation" as applied to electric utilities is ordinarily taken to mean federal regulation by the FPC, state regulation by utility commissions and federal regulation by AEC.

Perhaps some of you would include the SEC in a definition of those who "regulate" you, particularly if a merger or bond issue is what you are interested in at the moment. Once you start to expand the list, however, it is hard to stop. The Antitrust Division of Justice is a federal regulatory agency, as some of you know from experience. Florida Power and Light would be able to supply some brand-new entrants for the federal regulatory directory, including the Land and Resources Division of the Justice Department, more than a corporal's guard of Interior Department agencies, and even the venerable old U. S. Corps of Army Engineers. HEW wouldn't be overlooked by some of you involved with air pollution controversies.
If you open this small intellectual exercise to your principal legal officers, the role of the courts themselves as regulators will be seen to be of growing significance.

In other words, a matching of your current problems with governmental actions or reactions designed and undertaken, each in its own way, to protect the public interest, illustrates the pervasiveness of the interaction of your industry with government, and demonstrates that classic concepts of public utility regulation are inadequate to measure or describe the impact of governmental activity.

For me to take the traditional view that when we say regulation we mean regulation by the Federal Power Commission or a state public utilities commission would be slightly arrogant, and greatly unrealistic. More importantly, for you to take the view that regulation is exclusively concerned with the economic end result of a just and reasonable rate for utility services would be myopic.

I doubt that we are prepared to devise a new definition of regulation, in order to give full rein to all the factors and all the public policy influences that make up the climate within which your industry is operating. But it is incumbent upon me, to see clearly that ratemaking, policing of discrimination charges, and the endless controversies as to cost of service, rate of return, and other traditional functions of utility regulation, are sterile and artificial if not executed with sound understanding of the external forces that condition business operations today.

The electric utility industry understands what "pluralism" means. The basic structure of the industry in the United States is marked by this characteristic, distinguished from that in any other developed country. Historically, I think we can generalize that a long enduring centripetal trend has now been reversed, and that centrifugal forces are presently in the ascendancy. For a long time, the major changes were in the direction of centralizing the federal impact on the electric utility industry in the structure created by the Federal Power Act. A few years ago one could well have said that that Act was a unified and comprehensive statutory scheme, and that the really important issues of utility regulation were most likely to be before the FPC.

This is no longer the case. Today the critical aspects of utility operation are at least as likely to be the subject of proceedings before the SEC, or AEC, or Interior, or Justice, or HEW, or some component thereof, as before the FPC.

These symptoms of the diversity and diffusion that characterize the trend of federal impact on the electric power industry today are known to you each in a different way. Whether the development of this trend is perceived as being indicative of the dynamics of the
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These symptoms of the diversity and diffusion that characterize trend of federal impact on the electric power industry today are a to you each in a different way. Whether the development of trend is perceived as being indicative of the dynamics of the time in which we live may be more questionable. If regulation is tentatively defined as broadly as I have suggested, then its course can be considered to be coextensive with the rapidly changing, kaleidoscopic panorama of public events, emphasis and concerns. Many of these are viscerally disturbing. The framework of regulation in its totality is being modified and adjusted by the problems and issues which confront our maturing society and particularly by the energy industry's place in it.

This requires us to examine, at least in general terms, the major factors that seem to be molding the future with respect to electric energy production and distribution.

Of broadest general concern, affecting industry, consumers and regulators alike, is the sheer magnitude of projected demand estimates. Historical production records had given us some appreciation of this trend, but it was not until the National Power Survey was completed in 1964 that we had any comprehensive indication of what this meant in terms of future physical plant requirements. Through an effort which represented a significant milestone in industry-government cooperation, the Survey projected a 200 percent increase in electrical energy demand and a 250 percent rise in peak demand capacity by 1980 over a 1960 base on a national basis. Certain regions, including the Southeast, were forecast to exceed these growth rates by a substantial margin.

These 1964 forecasts resulted in an annual growth rate of 6.3 percent in electrical energy consumption, but that rate of expansion has been exceeded in each of the intervening years, reaching 9.3 percent in 1968 and a preliminary conclusion of 8.5 percent for 1969. In the face of these trends and the passage of some six years, the National Power Survey is being updated to revise the projections forward over the same period. Much of the detailed analysis on regional variations, energy sources, etc., remains to be done. But the summary data and projects therefrom permit certain conclusions to be drawn.

The growth curve through 1990 not only continues upward but at a more acute slope. Requirements for the year already started, for example, are now predicted to be two and one-half percent higher than forecast six years ago and the projections for 1980 now appear to have been understated by a full ten percent. Carried forward for the full twenty-year period, we foresee the need to add nearly 900 million kilowatts to the existing plant capacity--an increase which amounts to three times present capability.

To indulge in understatement, this is a most sobering prospect. It is brought into sharper focus by reference to recent experience. Between 1967 and 1968, electric energy production increased by 9.3 percent but installed capacity rose only 7.8 percent; in 1969, power production increased 8.5 percent, but only 7.4 percent of capacity was added. Each new year brings a new record high for
each category, but the current trend discloses a widening gap between demand and the capability to meet it, to say nothing of assuring safe margins of reserve.

What this forebodes represents one of the predictable concerns of the regulatory process for the indefinite future. Any failure to meet the indicated levels of electric energy production must inevitably have a serious impact on the national economy and the urban society that cheap electric power has made possible. Suggested reactions to this contingency are already being discussed in a variety of forums. They amount to the same thing: allocation of power to socially preferred uses (rationing) and/or freezing at present levels the per capita use of electric energy (a stabilized standard of living). Here I find the new term useful—zero economic growth.

The second phenomenon that is revolutionizing government's approach to utility regulation stems from heightened public concern over environmental decay. To be sure, this is no more confined to the electric utility industry than it is to steel production, oil refining, or chemical processing. But a regulated utility is more visible and a forum for registering complaints is available whether or not the regulatory jurisdiction actually runs to environmental considerations. Being subject to public regulation and control provides an entree for the exercise, actual or attempted, of regulatory powers in related areas.

It is in the field of environmental protection that the diffusion of federal regulatory functions has been most pronounced. Air and water pollution standards add a new dimension of time and cost in the construction and operation of new electric plant capacity; wilderness preservation, aesthetic considerations and recreation factors are now inserted in practically every hydro-electric development proposal. Thus, classical public utility regulation standards have to be applied in a manner that gives recognition and effect to the higher standards of environmental quality that are now embodied, beyond debate or recall, in our national policy.

This development has other direct meanings for all of us who are concerned with an adequate, reliable and economic supply of electrical energy for the near and long term future. We must learn some new lessons—and learn them soon and well.

There undoubtedly are and will be situations in which a particular approach to an energy supply problem will be totally incompatible with preservation of environmental values, where there can be no acceptable accommodation of both interests. When that happens, choices will have to be made in the public interest. Given the prevailing temperament, nationally and in most localities, I venture to say that it will take a massive demonstration that there is no possible alternative source of electric power if that value is
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But in most cases, the alternatives are not, or need not be, that absolute. The task confronting us is to provide the opportu­nity and the mechanism for discovery of solutions before the issues are hardened into confrontation terms. No forum of general jurisdiction now exists to such acceptable solutions on a timely basis. Thus resort is had to judicial or legislative bodies, already overburdened and ill-equipped to weigh complex technical issues and at a time when the positions of the parties have become unbending.

The National Environmental Policy Act of 1969 is now a part of national policy, establishing goals and providing a coordinating mechanism for their attainment. One may hope that an early under­taking of the Council on Environmental Quality, created by the Act, will be to evolve procedures and to recommend a structure within which all aspects of the broader federal regulatory jurisdiction affecting environmental questions may be speedily and rationally exercised.

I have dwelt at some length on two points of major concern which tend to dominate the current thrust of federal regulation as it affects electric utilities. There are, of course, a host of others: a resurgence of concern for the consumer and the need for independent public representation of consumer interests before regulatory bodies, including the FPC; the close scrutiny which is focused on mergers and cooperative or joint ventures from an anti­trust point of view; the influence of tax policies and governmental decisions affecting the cost and availability of borrowed capital--to cite but a few of the more significant.

These trends have much in common with the matters discussed earlier. Their initiative and their objectives lie outside the utility regulatory context as it has been traditionally applied. They reflect the pluralism that is coming to dominate in nearly all facets of national life. They present further complexities in a socio-economic endeavor whose intricacies already challenge our capacity to comprehend.