Dereg puts nuclear utilities at risk

The plan to deregulate electric utilities has already threatened to send one nuclear utility into bankruptcy. Marsha Freeman reports.

On January 28, 1988 Public Service of New Hampshire (PSNH) became the first investor-owned utility since the Great Depression to file for protection under Chapter 11 of the U.S. Bankruptcy Code. The utility had no way of knowing, back in 1976, when it began construction of the Seabrook nuclear power plant, that over the intervening years, well-financed anti-nuclear protesters and their allies in the New Hampshire and neighboring states' political bodies would use the incident at Three Mile Island in 1979, and the blowup of the Soviet reactor Chernobyl, Ukraine in 1986 to cause delays, ultimately more than quadrupling the plant's cost, and undermining the very existence of the utility.

On Feb. 28, 1997, the Public Utilities Commission of New Hampshire announced a restructuring plan for the state's five utilities, which would, once again, throw Public Service (PSNH) into bankruptcy court.

New England and California, all states with very high electric rates, have been vying with each other to implement "competition" in the generating segment of the electrical industry, to give individual customers the "freedom to choose" which company will provide their electric power. Such competition, it has been advertised, will lower rates to customers by as much as 43%.

Although promoters of deregulation make vague statements that such rate reductions will come from new technology, or economies thanks to consolidation, the action of the New Hampshire regulators sheds a light on where such "economies" will really come from. In the case of Public Service, the PUC has proposed that the rate reductions be paid for by not allowing the company to recover all of its costs, which regulators had heretofore allowed them to recover. These costs, which then become "stranded," because utilities cannot pass them on to customers, include the construction debt of "high-cost," capital-intensive nuclear plants, and programs to provide electricity to the indigent and elderly, and high-cost power from non-utility renewable plants.

The fight to save Public Service of New Hampshire is the first volley in a war which could throw dozens of utility companies into financial insolvency, and the electric grid system into chaos.

How the regulatory compact worked

Since the 1930s, when the investor-owned electric utility companies were regulated, there has been what is known as a "regulatory compact" between the utility and the government. In exchange for the exclusive franchise to service customers in a city or area, the state regulatory body set the rates a utility could charge its customers, as well as the profit its stockholders would make on their investments. In addition, the utility was required to provide what was called universal service, supplying electricity to any customer, regardless of the cost to the utility.

Under the regulatory compact, the regulatory body would determine the rates a utility could charge its customers, based on the cost of producing, transmitting, and distributing electricity, and on what the regulators determined would be a fair return on investment for the company's stockholders. While typically the return on utility stocks is lower than other commercial paper, the stocks are largely held by older and retired citizens, more interested in a lower-risk, long-term investment than high return. This system produced reliable and reasonably priced electricity-generating and delivery service, for more than 60 years.

On Feb. 28, the New Hampshire PUC announced that, in order to meet the requirement set by the State Legislature in May 1996, for there to be statewide electric utility restructuring to implement retail choice for all customers by Jan. 1, 1998, the Legislature was abandoning setting rates for customers based on the utility's ability to recover the cost of providing service; instead, it would now set rates based on regional averages. The PUC ruled that Public Service of New Hampshire would have to institute a *19% rate decrease,* to bring it into line with the average rates for New England.

What this would mean for the utility had been made perfectly clear to the PUC during testimony on Jan. 17, by Public Service Company's Executive Vice President and Chief Financial Officer John Forsgren, who told the commission that should the utility lower rates on such a scale, it would be forced to write off about $434 million in regulatory assets, which is income it expected from its customers through previously approved rates by the PUC. Forsgren explained that PSNH has $686 million of outstanding debt, which would be in default in this scenario of high rate cuts. "Each of our creditors would be in a position to accelerate its debt," he told the PUC. "If any single significant creditor demanded immediate payment, as is their right, all of the others would immediately follow. A bankruptcy filing for PSNH would

Eco-terrorists mobilize to stop construction of New Hampshire's Seabrook nuclear plant in 1980. What they left undone, New Hampshire state regulators are trying to finish.

then be inevitable." Even in the unlikely event that no one demanded immediate payment, "in May 1988, PSNH is obligated to repay $170 million of first mortgage bonds, which it would be unable to refinance, and that event would trigger certain bankruptcy." Refinancing seems unlikely, since PSNH's bond ratings have already fallen from BBB– to "what amounts to junk bond ratings," Forsgren stated.

Restraining order sought

Following the PUC ruling, Public Service of New Hampshire went into U.S. District Court on March 3 to request a temporary restraining order on the section of the Public Utilities Commission ruling that attempted to change the rate setting methodology from cost of service to average regional cost, which would require them to write off regulatory assets.

In its brief to the court, the utility states that the Public Utilities Commission's attempt to rewrite the rules is "preempted by the Federal Power Act, the Public Utility Holding Company Act, and the Public Utility Regulatory Policies Act of 1978." The plaintiffs also maintain that the ruling violates the court's own confirmation of the 1990 bankruptcy reorganization plan for the utility, and the Fifth and Fourteenth Amendments and the Contract Clauses of the U.S. Constitution.

On March 10, the court granted the temporary restraining order and set a March 20 hearing date for a preliminary injunction. This is now the second time there has been an attempt to change the rules of the game at half-time, sending the utility into bankruptcy.

One of the most widespread myths perpetrated by the radical free marketeers promoting deregulation, is that utilities with nuclear plants that today are deep in debt, made "imprudent" investments for baseload capacity that was too expensive and unnecessary, and that their financial plight is their own fault.

The history of PSNH's nuclear plant at Seabrook is a case study showing what kind of lie this is. In 1972, Public Service of New Hampshire decided to build the Seabrook Station, which was to consist of two power plants, with a completion date in 1979, at a cost of $1.3 billion. PSNH was to own 50%, with neighboring utilities splitting the remaining half of the cost and the electric power. The PUC approved the plan. At the time, PSNH was importing electricity from other utilities to try to meet load growth.

In 1976, the utility was awarded a construction permit, and the same year protests began at the planned site. In 1978, the utility received approval from the PUC to begin charging customers for the carrying cost for the money it was borrowing to build the power plant, which was typical throughout the industry. But one year later, New Hampshire's political order changed, and the new Democratic Gov. Hugh Gallen, keeping a campaign promise, signed a law prohibiting PSNH from charging customers for the cost of the plant until it was providing electricity. In the meantime, costs were escalating as the protesters and public "intervenors," running amok, held up construction. Costs rose further and faster when, over Columbus Day weekend in 1979, Federal Reserve Chairman Paul Volcker raised interest rates into the double digits.

After the incident at Three Mile Island in March 1979, the Nuclear Regulatory Commission in Washington changed its regulations, and now required companies to have plans in place to evacuate millions of people from the environs of nuclear plants, before they could obtain an operating license. In 1986, after the Chernobyl fire in Ukraine, Massachusetts Gov. Michael Dukakis, backed by his anti-nuclear supporters, refused to cooperate with the nearby utility to draft an evacuation plan.

Without rate increases during construction to help cover work-in-progress, and with costs piling up from each delay, PSNH reached the end of its ability to borrow for construction and to service existing debt. After the PUC and the courts refused to provide emergency rate increase relief, Public Service of New Hampshire filed for bankruptcy in January 1988.

One Seabrook nuclear unit was completed in July 1986, seven years late, at a cost of $4.5 billion. The second unit had been cancelled. However, PSNH was not able to obtain an operating license from the Nuclear Regulatory Commission for another four years, because there was no evacuation plan for the ten-mile radius around the plant. The final cost for one Seabrook unit was $6.6 billion, with PSNH's share at $2.9 billion, for 36% of the plant.

PSNH was the only nuclear utility pushed into bankruptcy by political forces who opposed nuclear energy, but other utilties saw themselves as powerless to turn the irrational anti-nuclear, anti-growth tide.

Media lies to the contrary, the limits-to-growth movement did not target the nuclear utilities because of its expressed concerns about nuclear safety, especially in the wake of Three Mile Island. With the oil hoaxes of 1973-74, utilities' interest increasingly turned to nuclear power, after fossil fuel prices quadrupled. To counter the large-scale growth in this more technologically advanced energy source, Club of Rome- and World Wildlife Fund-sponsored "anti-nuclear activists" placed propositions on the ballots in six states in 1976 to stop the construction of nuclear plants. Although all of the ballot initiatives failed, the handwriting was on the wall, and neither the utilities nor the nuclear industry went on the offensive to stop this assault on technological progress.

Over the two decades since, more than 100 nuclear plants were cancelled, a handful of which were more than 50% complete.

Today, as states start to set dates for deregulation initiatives, and Congress threatens to enter the fray with federal legislation, many of the nation's already-operating nuclear power plants, which altogether provide more than 20% of the nation's electricity, are at risk.

The day that Public Service filed its lawsuit against the PUC, Moody's Investors Service announced that the PUC "decision has the potential to create default under various of PSNH's lending agreements," which could "ultimately force PSNH to declare bankruptcy for the second time in a decade." Moody's lowered the ratings of Public Service of New Hampshire, its parent company, Northeast Utilities, and two other subsidiaries. On March 1, 1996 Moody's had warned that a number of electric utilities in the Northeast would be "under pressure" if full competition is introduced, with the potential for $43 billion of stranded costs in that region alone.

In an August 1995 report, Moody's had warned that stranded costs could threaten the credit quality of utilities, estimating that these costs could range between $50 and $300 billion. Moody's analysts recognized that "it will be extremely difficult to reconcile full recovery of such costs with meaningful reductions of electric rates," and predicted that regulators, therefore, will not allow utilities to fully recover their costs.

The report concludes that "Moody's believes that there are at least 10 nuclear plants (out of 109 in the U.S.) that might be closed in the event of deregulation. And this number is likely to increase, if nuclear plants continue to require expensive capital additions to remain in operation."

Will sanity prevail?

Even though there has been wild euphoria among the most rabid free-marketeers in the House of Representatves over the prospect of federally mandating electric utility deregulation, reactions in the Senate to such proposals have been more measured.

(It is ironic that regulators in the home state of Virginia Republican Tom Bliley, who chairs the House Committee on Commerce and is a vocal proponent of radical restructuring of the electric utility industry, have turned their noses up at the deregulation carrot. The July 1996 "Staff Report on Restructuring of the Electric Industry," prepared for the Virginia State Corporation Commission, states that because the Commonwealth has relatively low electric rates, "there may be little to gain and much to lose by being on the leading edge of the restructuring movement." The report recommends "careful study" of the issues, which include the recovery of stranded costs, and the experience of other states, before retail wheeling is considered for Virginians.)

The Senate Committee on Energy and Natural Resources, chaired by Frank Murkowski (R-Alaska) is holding a series of workshops on electricity deregulation to educate members on this complex isssue. Opening the first workshop on March 13, Murkowski stated that he is willing to "move forward" on legislation for deregulation, "but *only* if it satisfies a number of public interests." In these, he included the lowering of prices for residential customers; the continuation of system reliability; the protection of investors and utility stockholders, individually and through pension funds; and, fair recovery of stranded costs.

Many members of the Senate Committee represent regions such as Idaho, Washington, North Dakota, Arkansas, and Wyoming where electric power is lower priced, and they are rightfully concerned that if every region competes for a limited amount of "cheaper" electricity, there will be a national leveling of cost, increasing prices for their constituencies. Sen. Craig Thomas (R-Wyo.) stated at the workshop, "I have a lot of rural areas. Some deregulation hasn't been particularly useful for rural areas, like airlines." Referencing the mergers and consolidation that have already taken place as the industry "prepares" for competition, Sen. Byron Dorgan (D-N.D.) joked that "without the Rural Electrification Administration, we'd still be watching TV by candlelight," but everyone got the point.

Federally mandated deregulation, which may have enthusiastic support in the House, is unlikely to be passed into law in this session, there or in the Senate. But individual states are now making their own evaluations of whether to go ahead with restructuring.

New Hampshire politicians and regulators have decided that they will legislate, not so-called competition, but what the *results* of competition are supposed to be, i.e., lower rates, for which they propose to rip up the decades-old agreements between the regulators and utilities, and ratepayers and investors, and let the chips fall where they may.

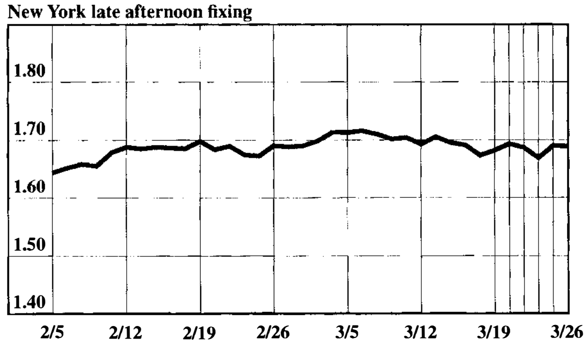
Recognizing that initiatives for deregulation could have a dramatic impact on the ability of this system to continue to deliver reliable electric power, in December, Department of Energy Secretary Hazel O'Leary established a Task Force on Electric System Reliability. At their first meeting on Jan. 16, Task Force members from the department and the utility industry expressed their concern that there may not be adequate "financial incentives" in a competitive industry to make the necessary investments to maintain reliability. The members of the task force will examine the technical, institutional, and policy questions surrounding reliability issues, and will make their recommendations available to the administration through the Energy Department Advisory Board.

Some in Congress have promoted federal legislation for electric utility deregulation in order to preempt states from enacting counterproductive local legislation. But it may be time for the federal government to act in its capacity as Constitutional guarantor of the general welfare, and to consider *superceding* destructive state legislation, especially when it could effect the welfare of citizens of neighboring states, as it would in the case of New Hampshire Public Service.

Currency Rates

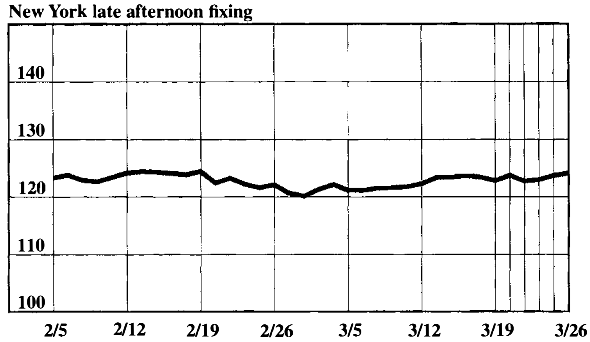
The dollar in deutschemarks

New York late afternoon fixing



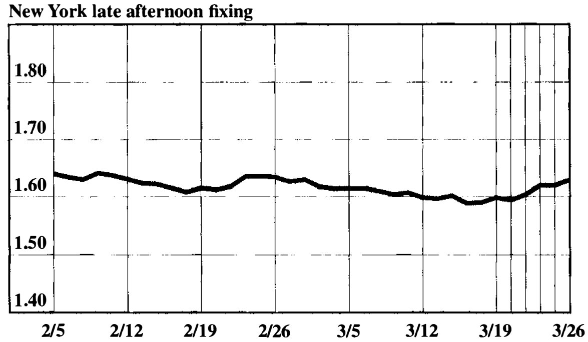
The dollar in yen

New York late afternoon fixing



The British pound in dollars

New York late afternoon fixing



The dollar in Swiss francs

New York late afternoon fixing