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News and Commentary

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Regulatory updates: Maine Public Utilities Commission

Ralph Townsend

The Maine Public Utilities Commission seems in transition in the regulatory cycle. In both telecommunications and electricity, the Commission has recently completed an imposing schedule of regulatory cases. In those cases the Commission largely endorsed Maine's traditional policies for rate-setting, with only minor accommodations for new competitive forces. Now the Commission has committed itself to a thorough analysis of alternative ratemaking approaches for both electricity and telecommunications.

In both telecommunications and electricity, virtually identical dynamics propel utility regulation. Technology is introducing competition in some market segments, and especially for large businesses. In electricity, this competition is in the form of self-generation, alternative fuels and wheeling of power from other power producers. In telecommunications, this competition is from proprietary customer networks and a growing array of alternative providers of telecommunication services and equipment. If large customers leave the regulated public utility (or substantially reduce purchases), rates for the remaining "captive customers" must go up in the long run to cover fixed costs of the utility. But if rates for large customers are reduced to retain them as customers, the remaining customers will still see rate increases to offset those revenue losses. In either case of the social objectives often embedded in public utility regulation are seriously threatened.

The Commission and some other regulatory participants may hope that alternative forms of regulation whether in the form of price caps or incentive regulation, may allow a way out of this conundrum. Specifically if the utilities are given incentives to cut costs and to expand sales, then perhaps the resulting financial benefits can be used in part to reduce prices to retain large business customers, without the need for raising prices to residential and small business customers. But expanding sales in electricity is inconsistent with long-standing Commission policy to reduce electric usage. And expanded sales in telecommunications will be very difficult as new providers rapidly enter the telecommunications market with a broad array of services and products that displace the regulated services. While alternative regulation may ease the pressures on rates of captive customers, it seems unlikely that alternative regulation will be a panacea. Many analysts suggest that alternative regulation will be essentially a transition to much greater reliance on competition in these markets in the future.

On electric issues, the Commission has largely completed an ambitious regulatory schedule to which committed itself following the "CMP consumer complaint case" in 1992. In late 1993, a revenue requirements case for CMP that imposed relatively harsh terms was completed. In the aftermath, CMP has taken cost reductions steps that include a reduction of its work force by

approximately 225 employees. A relatively uncontentious rate case was concluded for Bangor Hydro early this year. A rate design case for CMP (but which had implications for rate design for other electric utilities) left the basis for determining rates largely unchanged. The utilities were allowed somewhat greater flexibility through special contracts to meet competition or to increase sales during the next several years of projected surplus electric generation capacity.

“Non-utility generators” (NUGS) have been most visible regulatory issue in the past six months. NUGs are the woodchip plants, paper mill co-generators, small hydro producers, and trash-to-energy plants that now supply a large fraction of Maine's electric generation. Because of favorable regulatory treatment in their early development NUG's typically receive prices that well above today's wholesale electric prices. CMP has moved aggressively to try to reduce the impacts of NUG power upon its costs, which CMP has argued are primarily responsible for its recent rate increases. Also, investment rating agencies have recently moved to interpret the NUG contracts as long-term debt, which creates very unfavorable debt/equity ratios for companies with significant NUG commitments. In the recent revenue requirements commission imposed a penalty on CMP for its handling of some NUG contracts. This opened the possibility that the company's stockholders could absorb very serious losses if the Commission at some future date found that more of the NUG contracts were imprudent. Financial markets substantially downgraded CMP's investment potential as a result of these forces.

In the last session of the legislature, CMP proposed a bill to tax the "excess profits" of the NUGs and to use the proceeds to reduce electric bills. An eventual compromise allocated up to \$100 million of low-interest loans to finance buy-outs or restructuring of expensive NUG contracts. This legislation may be more important as a symbolic statement of the Legislature's concern than as an action that will directly lower NUG costs. In an action not unrelated to the Legislative compromise, the Commission also accepted a compromise stipulation that substantially limited CMP's future exposure to penalties for past decisions with regard to NUGs in return for a CMP commitment to drop some pending legal challenges to penalties already imposed. This stipulation reduced an important element of uncertainty in CMP's future financial condition.

Telecommunication regulation is in a very similar position as electricity regulation in Maine. The rate design case for NYNEX has been closed, with no change in the allocation of costs between local service and intrastate toll. The case on the definition of local calling areas seems to be winding its way to some sort of closure. The issue of access charges for competitive providers of intrastate toll is being re-opened, and action on this issue seems to be on a tract parallel to the alternative regulation analysis.

DEP's Office of Pollution Prevention Ruth Robinson

For much of the McKernan Administration, the Department of Environmental Protection was criticized for its adversarial stance towards permit applicants and its slow processing of those permits. But Acting Commissioner Deb Richard now talks enthusiastically about "the new DEP" and the role of "total quality management"(TQM) in the transformation of the agency. To her, TQM means customer service dressed in courteous behavior, with staff working in teams with industry to solve problems.

Perhaps the most visible evidence of this change has been the successes in the Office of Pollution Prevention. Pollution prevention, called "P2" by the participants, is being promoted as a win-win alternative to traditional adversarial regulation.

"The business community is coming around quickly," said Ron Dyer who directs the Office of Pollution Prevention at the DEP. "They have put everything back on the table." Dyer can hardly contain himself as he elaborates the successes scored by the program that started barely two years ago and that focuses on building partnerships between business and the bureaucracy. "And they're going way beyond compliance," he says. He rattles off the names of Maine's largest polluters and rather than snarling over a laundry list of permit violations, he glows over their rates of reductions for solvents and other toxics. "Permit limits lead to mediocrity," Dyer says. "TQM leads to continuous improvement." He said he sees no end in sight.

Cases in point

DEP officials point to a breakthrough workout between the department and International Paper (IP) that set the partnership theory in motion. At issue was the amount of biochemical oxygen demand (BOD) posed by effluent from the paper mill's wastewater treatment plant. Since it operated consistently close to its permitted levels, and sometimes over them, IP officials and DEP engineers collaborated to change the way the treatment plant operated.

Steve Groves, who formerly headed the DEP's Water Quality division, joined IP's pollution prevention team earlier this year, one month after retiring from the department. Groves said IP cut their rate of BOD per day from a permit limit of 10,800 pounds to a consistent 3,000 to 4,000 per day in less than one year. He said it was an example of DEP engineers doing what they do best.

Ron Dyer said passage of Maine's Toxic Use Reduction Act in 1990 brought hazardous emission levels to the attention of industry. The law set deadlines for gradually reducing these levels: A 10 percent reduction in total toxic waste by 1993; another 10 percent reduction by 1996; and by 1998, polluters must report having reduced toxic flows by 30 percent from 1990 levels. At the same time, companies began investigating cost-cutting measures to trim operating budgets. Hazardous waste disposal is no small item on any given polluter's budget, with costs ranging from \$150 to \$800 per barrel, depending on the substance and the disposal point.

CMP initiated a TQM program in the late 1980s, said spokesman Mark Ishkanian. Employees in the fleet maintenance department formed a "Garage Team" and identified problems with contaminated waste oil and hazardous waste solvents in both the Augusta and Portland fleet garages. By improving handling methods and replacing toxic solvents with non-hazardous substance, the company says hazardous waste generation for fleet maintenance dropped by 30,000 pounds and reduced costs by \$34,000.

At the Wyman oil-fired power station in Yarmouth, another team focused on minimizing the environmental impact of that operation. In three areas involving the use and storage of hazardous materials, the team was able to reduce hazardous waste generation by 38 percent. The reduction sent at least \$15,000 per year to CMP's bottom-line.

A five-year project at GNP, a subsidiary of Bowater, Inc., to eliminate PCBs took its cue from a series of spills and leaking transformers that presented potential environmental liabilities for the company. Gordon Manuel of GNP said the company made a conscious decision to shed all traces of the hazard, rather than to remain in a perpetual clean-up mode. He estimated the cost of the program at \$14 million, which included shipping the hazardous material to a designated disposal site.

“As far as we know, we're PCB-clean," Manuel said. Although he would not put a price tag on the potential health benefits and reduced environmental liability that resulted from the project, Manuel said it is safe to say these hidden costs drove the decision to eliminate all PCBs.

At Pratt & Whitney in North Berwick, a subsidiary of United Technologies, management phased in a formal pollution prevention program in 1990. Site Manager Ralph Rakich said it was part of a corporate strategy to go beyond compliance. He said joint training sessions between DEP and his P2, which began last year, help both sides grasp the complicated world of environmental regulations and how they apply to the workplace.

Through reduction, substitution and recycling measures company-wide, Pratt & Whitney has already exceeded the 1998 goals of the Toxic Use Reduction Act. For example, environmental engineer David Garriepy said a proprietary, in-house process for removing wax from plates virtually eliminated the use of one toxic degreaser, perchloroethylene. By switching from solvent-based to water-based paints, and in some cases, he said, eliminating painting altogether, the company reduced air emissions by an average of 87 percent.

The future

According to Ron Dyer, the Office of Pollution Prevention receives no funding from the State's General Fund, but rather from a three-year, \$200,000 pilot program from the U.S. Environmental Protection Agency's (EPA) pollution prevention incentive program. The legislature has reduced allocations to the DEP in the last five years, from \$5.94 million to \$3.8 million. The DEP has placed Pollution Prevention at the top of its "to do" list for the latest two consecutive years. With this the last year of federal funding, lawmakers will have to decide if this will be a future priority.

Land Use Regulatory Commission Ruth Robinson

Land use and management in the unorganized territories of Maine continues to attract attention.

Since the Northern Forest Lands Council (NFLC) issued its preliminary report last fall, which recommended 33 ways to sustain some 26 million acres in the four-state region as a working forest, many eyes have turned to the north country. Citizens with varying motives appeared at public hearings throughout New England on the topic to voice both approval of and opposition to the Council's plan. Public comment period closes May 16 and a final report is due this summer.

Noticeably absent from the dialogue has been the Land Use Regulatory Commission (LURC), whose mission is to regulate development activity within the more than 10 million acres of unorganized territory. LURC officials were not the only players to avoid the scrutiny of public hearing and testimony. Major land owners, including some paper companies, preferred other means of communication. LURC's executive director, David Boulter, said his staff is preparing written comments on the findings, but stopped short of elaborating on what those comments may include. "We're participating as a member of the public," Boulter said, "and we're very interested."

Boulter did comment on how LURC viewed a legislative attempt during the last session to ban clearcutting. An Act to Preserve Productive Forest, L.D.1764, failed in its original form, but an amended version authorizing a study of current clear cutting practices and their effects did pass. "The bill went too far," Boulter said. "It did not allow enough flexibility."

Boulter said the Commission has focused lately on responding to what he called "unplanned, scattered development" that has occurred during the last two decades within the LURC jurisdiction. He said the group engaged a consultant, Land and Water Associates, of Hallowell, to study the issue. LURC finds itself sandwiched between an already-delayed deadline to complete a comprehensive, five-year plan, creeping development pressures, and a new set of directives proposed by NFLC.

"The challenge for LURC is to get a handle on scattered development," Boulter said. "The conversion rate (in the unorganized territory) is the highest conversion rate in Maine." He said the consultant's study shows a dramatic surge between 1971 and 1991 in the number of land parcels under 500 acres and in the number of dwelling units, particularly in the western mountain area. See Figures [1](#) and [2](#) page 76.)

Boulter said the Commission sees that development is the semi-wilderness and some of Maine's best lakes. He said LURC needs to assess development as part of a total, broad context and as it pertains to the value of the resource. "If it proceeds in a way that is unplanned, it could end up destroying the very resource that attracted people to it," he said.

Boulter said he wants to see LURC reassess what is happening in the unorganized territory, which includes the northern forest area, and to identify what tools it needs to allow growth while protecting the resource. Tools such as zoning, he said, may find an appropriate application beyond the sheltered area where it currently stops. For example, he said the Attean development in Jackman utilized clustered housing, rather than traditional per lot development, as a way of minimizing development impact on the lake resource.

Alec Giffen of Land & Water Associates said his work for LURC on recapturing permit data needed to tell a story about development trends in the territory. What he found was that individuals, mostly from Maine and living within the unorganized territory, are attracted primarily to class A1 lakes in the western mountain region for residential purposes. (See Figures [3](#) and [4](#) page 77.) He said more than 200,000 acres, or about two percent, of LURC's jurisdiction have been developed since 1971.

"And that's a conservative figure," he said. Since LURC did not require permits for certain types of subdivisions, Giffen said numerous gaps exist between what actually developed and what LURC recorded by permit. Broadening the permit process could prevent such gaps from occurring in the future.

The final version of LURC's comprehensive plan is due September 1994. If C. Edwin Meadows, both a member of the Northern Forests Land Council and the Commissioner of the Department of Conservation, has any influence, LURC will consider the forest study as it refines its comprehensive plan.

"LURC has an outstanding opportunity to reinvent new approaches to governing," he said. While legislation exists in Maine to counteract conversion trends, the Commissioner said the Council proved the effectiveness of consensus-based approach to policy making in natural resource areas. It proved that diverse factions could come together, take inventory of a situation and work out a framework of how to arrive at different goals without confrontation and hostility. Through incentive and partnerships, he said, the Council took a new approach to land conservation.

As LURC tackles its own future, Commissioner Meadows said he hopes the group will look at current programs that are in place for the forest, such as the Forest Practices Act and the Rivers Protection Act as well as its own mission, to find ways to encourage a working forest, biodiversity, and special values enhancement. This is especially important, he said, since LURC has a mission to balance both economic and resource considerations.

On another development issue, Boulter said LURC filed written comments with the Department of Human Services (DHS), the agency revising the rules governing septic system placement, urging caution in easing up on rules on depth of soil to groundwater, which have a major impact on the development LURC manages. He said LURC would like DHS to use a comprehensive approach to the septic issue so as not to send "mixed signals" to developers who may be eyeing what he called marginal land in sensitive areas.

But development advocates like the Maine Alliance bristle at the prospect of more restrictive regulations. Greg Nadeau, who directs governmental affairs for the group, says the more local control over what happens to the land, the more effective the decision. His group backs the DHS plan to reduce the depth of soil to groundwater for septic systems, based on improvements in the technology during recent years. Recognizing that unorganized territories rely primarily on LURC for permitting purposes, Nadeau said he hoped the forthcoming comprehensive plan for the area would not impose unnecessary development constraints.

The Maine Alliance, whose 400 members include the former Maine Real Estate Development Association, has promoted what Nadeau called a single natural resources permit in an effort to minimize development red tape. To that end, he said legislation passed during the last session, the Land Use Reform Bill (L.D. 1487) encourages coordination among various state agencies and offers incentives to communities to develop comprehensive plans.

"We'll be anxious to see how LURC's comprehensive plan integrates with our Reform Bill," Nadeau said. The bill raises the Land and Water Resources Council from obscurity, he said, and

charges it to report by January, 1995 to the legislature on the benefits of a single permitting system. Members of the Council include representatives of various permitting agencies, including LURC.

Full site: Colgan, Charles S.. May 1994. **Electricity costs and the Maine economy: Review and prospects.** Vol. 3(1): 61-68.

LURC APPROVED SUBDIVISIONS, 1971 - 1991

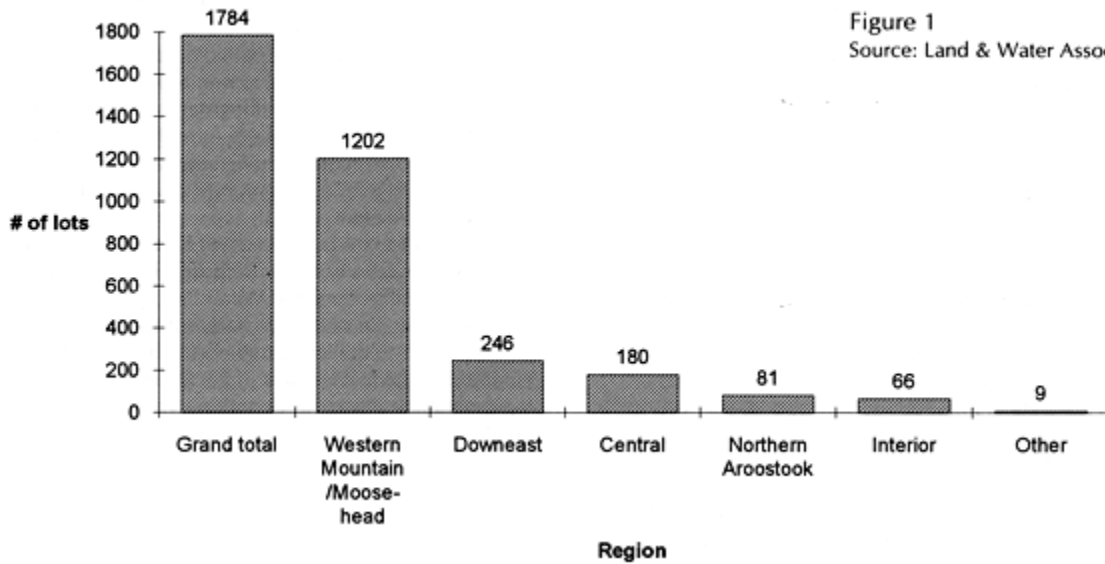


Figure 1
Source: Land & Water Associates

NUMBER OF NEW PERMANENT AND SEASONAL DWELLING UNITS IN THE UNORGANIZED TERRITORY, BY REGION

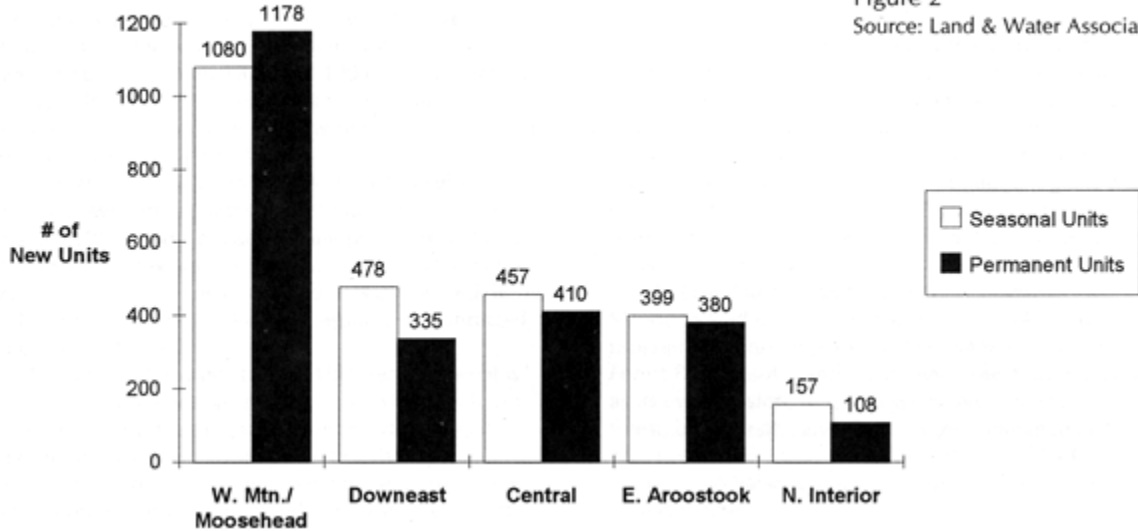


Figure 2
Source: Land & Water Associates

**DISTRIBUTION BY PRIMARY GEOGRAPHIC FEATURE:
NEW PERMANENT RESIDENTIAL DEVELOPMENT,
1971-1991**

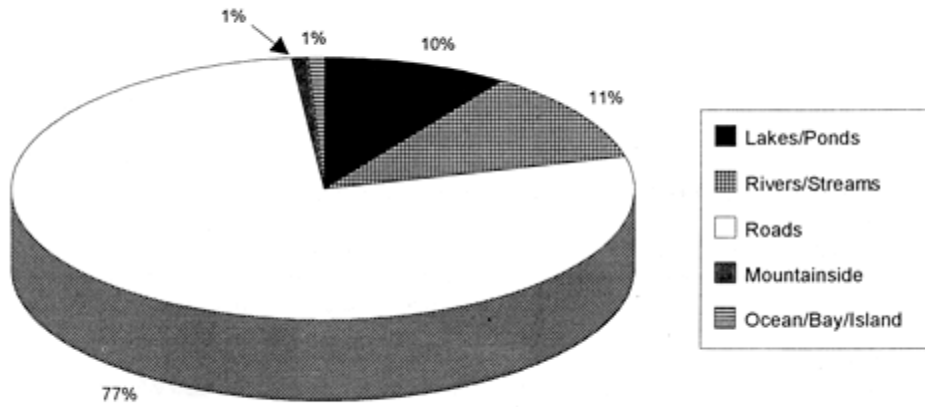


Figure 3
Source: Land & Water Associates

* includes only new structures from Building Permits and Development Permits

**DISTRIBUTION BY PRIMARY GEOGRAPHIC FEATURE:
NEW SEASONAL RESIDENTIAL DEVELOPMENT,
1971 - 1991:**

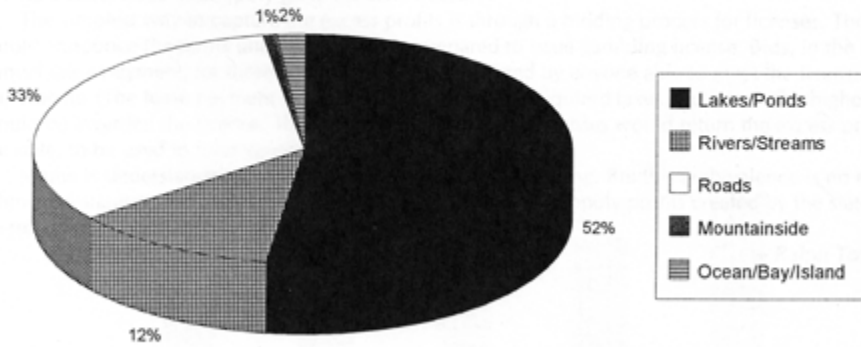


Figure 4
Source: Land & Water Associates

* includes only new structures from Building Permits