

FACING THE BUREAUCRACY — LIVING AND DYING IN A PUBLIC AGENCY by Gerald Garvey (Jossey-Bass Publishers, 1993).

Reviewed by *Isaac D. Benkin**

Gerald Garvey, a Princeton University professor, was employed by the Federal Energy Regulatory Commission (FERC or Commission) as a consultant during the early and mid-1980s. He has used his experience “on the inside” at the FERC in an effort to illuminate his thoughts about the theory of how bureaucracy functions in a Federal agency and his conclusions about the changes that must occur before our civil service can be an efficient and effective instrument for administering national affairs.

Garvey’s memoir of his tenure with the FERC is by far the most interesting feature of this book, which was written as a textbook on the subject of bureaucratic practice and organizational behavior. His observations are likely to be quite controversial.

Garvey’s self-proclaimed purpose in relating his experience at the FERC was “to give readers a feel for the texture of life in a public bureaucracy and thereby to both stimulate and satisfy curiosity about behavior in government agencies.”¹ The principal purpose of the book is to describe and analyze various theories about how public bureaucracies work. Garvey first describes the notions of the group of theorists, the Old Theorists, who had their heyday during the Progressive movement of the late 1800s and the first three decades of this century and taught that the civil service bureaucracy, selected and managed along scientific lines, could be a force for conducting the public’s business efficiently and effectively. He contrasts these views with those of the so-called New Theorists, who emphasize the effort to reduce transaction costs as the primary task of Government and see in bureaucracy simply another selfish interest group that is driven to maximize the benefits its members can receive from their chosen employment. The New Theorists, he says, “turn the progressive model upside down, for by way of their concept of asymmetric information, they make the expertise of career employees not a guarantee of competence and impartibility but an invitation to malingering or self-aggrandizement. . . .”²

Garvey also describes the rise of the “shadow bureaucracy,” the corps of government contractors sometimes referred to as “Beltway Bandits,” that has arisen to bring technical expertise to the tasks of government without the inefficiencies and classification schemes that membership in the formal bureaucracy entails. The interaction between these two groups takes place in “issue networks,” and it is in these issue networks where the real tasks of managing the government are done. Given Garvey’s orientation, it is not surprising to

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1. Gerald Garvey, *FACING THE BUREAUCRACY - LIVING AND DYING IN A PUBLIC AGENCY*, xii (1993).

2. *Id.* at 31.

find that he attributes great power and virtue to the non-government members of these issue networks and, at the same time, is disdainful of the workings of the classified civil service. A government bureau, Garvey says, will inevitably develop "pathologies of senescence."³ He devotes considerable attention to the value of the automation project in bringing the two groups together and motivating the tradition-bound rate staff to change. Yet for anyone familiar with the agency and its processes, it is clear that what Garvey perceived as bureaucratic stubbornness and self-protectiveness was actually a manifestation of expertise.

Garvey was brought into the FERC shortly after President Ronald Reagan's first appointed Chairman, C.M., "Mike" Butler, took office. According to Garvey, he was hired by William G. McDonald, the FERC's Executive Director and a man for whom Garvey had worked in the 1960s when McDonald, then an Air Force staff officer, and Garvey served at the Pentagon. Garvey's first project for FERC, called the "Are We In Trouble?" study by those in the know, was to analyze Butler's speeches and to determine whether his pro-deregulation rhetoric was inconsistent with the terms of the Natural Gas Policy Act of 1978 (NGPA). Butler was then under attack by John Dingell, Chairman of the House Committee on Energy and Commerce for allegedly attempting to destroy, by administrative fiat, the carefully balanced compromise between pro-regulation and anti-regulation interests that underpinned enactment of the NGPA.

Butler must have been pleased with the result, for he next gave Garvey a much larger project. Butler was concerned, according to Garvey, about the process by which the FERC regulated the rates of natural gas pipelines. Specifically, Butler was concerned about the inability of his staff to explain the pipeline rate regulation in terms of universal mathematical formulas that would serve to convert any pipeline's cost of service and other submissions into a just and reasonable rate without intervening bureaucratic discretion.

The staff's inability to reduce its work to a formula meant that the Commission had on its hands a violation of due process, or perhaps worse, Butler and Garvey thought. In Garvey's view, the application of different rules to different pipelines had a constitutional dimension: "Under the due process requirement of the Constitution, there is a presumption that rate-making procedures for ABC Company will be the same as those that are applied to XYZ Company and, indeed, to all other regulated pipeline companies in the nation."⁴

From Butler's point of view, the situation had a more ominous portent, opening the possibility of corrupt dealings between the Commission staff and the regulated industry. Garvey's own concern was more prosaic: because each staff member specialized in a few pipelines' affairs, Garvey says, "members of the FERC rate-making [*sic*] staff rarely developed a detailed appreciation of what was going on in companies other than the ones that defined their regular

3. *Id.* at 213.

4. *Id.* at 138-39.

'practices'."⁵

Thus began the "automation project" at the FERC. Garvey was placed in charge of a task force, consisting largely of members of the Commission's pipeline rate staff and other contract consultants in the data processing field. The objective was apparently to find the mathematical algorithms that Butler/Garvey found so appealing.

McDonald thought that all of the 135 or so interstate pipelines should be required to submit their rate requests [*sic*] in a standardized machine-readable form. A specially programmed computer could then speedily process each company's filing. One did not have to be a data processing whiz to know that a computer could check the millions of bits of accounting data in a big rate filing more reliably and quickly than civil servants cranking desk calculators could. FERC was infamous for "regulatory lag," but computerization could cut the red tape, thus saving consumers hundreds of millions of dollars every year by increasing the speed and accuracy of regulatory decision making.⁶

It was Garvey's belief, therefore, that the duties of the FERC's pipeline rates staff consisted essentially of checking accounting data in a rate filing. Here is how Garvey describes the way in which he launched the automation project:

McDonald told me to make a rapid study of the relevant portions of the *Code of Federal Regulations* and assorted FERC rate-making manuals. These documents specified a "uniform system of accounts" for use by pipeline company bookkeepers and purported to describe gas rate-making procedures as they were executed by the FERC analysts. I translated the bureaucratic gobbledygook as best I could into algebraic formulas, called algorithms. These algorithms summarized the mathematics of FERC's cost-of-service and rate design computations. Once algorithms have been written a software specialist can transform them into a language that a computer understands, that is, a program.⁷

According to Garvey, the major problem for those carrying on the automation project, was the "mismatch between the underlying theoretical assumptions of any automation project and the actualities of the regulatory process as it had evolved at FERC."⁸ This refers to the fact that the rate specialists on the task force insisted that the "seamless" algorithms must contain points at which rate analysts could exercise their judgment about issues raised by the pipeline rate filings. To those accustomed to a system in which the exercise of judgment is the essence of the FERC's regulatory task, this insistence on making room for administrative discretion seems rather inevitable and unremarkable. But to Garvey, who saw the rate-review process as essentially a formalistic enterprise that could be better handled by computers, the staff's insistence on what he called "trapdoors" in the computer program presented an exasperating problem.

In the end, the work of the automation task force produced some beneficial results by giving the FERC staff the tools to perform summary "top

5. *Id.* at 140. It is my own experience that staff members charged with oversight of specific pipelines thoroughly study Commission orders pertaining to other pipelines.

6. *Id.* at 167.

7. *Id.* at 117.

8. *Id.* at 135.

sheet" analyses of rate filings much more quickly than they could have done so before the project was begun. But "top sheets" are a far cry from the kind of detailed vetting of pipeline rate filings that Garvey, Butler, and McDonald had in mind when the project was begun. Garvey viewed the project as no less than a massive overhaul of bureaucratic practices and a vehicle for a corresponding attitudinal change. What appears to have been produced is a useful tool, no more.

Garvey was, in any event, not around to participate in the conclusion of the automation project task force's efforts. His position as a consultant was terminated as a by-product of the swirl of controversy that erupted at the FERC in 1986, after Butler's departure. It was one of those media-hyped Washington "scandals" that ultimately blows away, leaving little residue except tarnished reputations and ruined careers. As Garvey tells the sordid tale, the protagonist in the FERC's case was a special assistant to the General Counsel who, in retaliation for adverse personnel actions against him, accused the agency's managers of various defalcations, including failure to award consultants' contracts as Federal law required. The resultant publicity, or threat of publicity caused those involved to run for cover.

Thus Garvey's association with the FERC ended, not with a bang but with a whimper. To say that the denouement left Garvey with a bad taste in his mouth would be an understatement. The closure of his case study is a documentation of paralyzed, paranoid management. A reader of his book will find that he has little praise for the Commission's management or its mission. The FERC hearing process comes in for particular criticism. A FERC administrative law judge, says Garvey, "is . . . not a judge in the usual sense but just another bureaucrat serving in a judge-like role."⁹ The settlement process is said to be inherently incapable of affording participants due process,¹⁰ and, in any event, to poison the incentive to resolve issues during the rate-setting process.¹¹

Given his sour view of the agency in general and his perfect assurance that his automation effort held the key to streamlining the Commission's pipeline rate regulating processes (and, incidentally, to bringing "due process" back to the FERC's decisions), one would expect Garvey to manifest some expertise on the subject matter of his position as a consultant: How pipeline rates are analyzed and evaluated. Garvey's book demonstrates however quite the opposite. It soon becomes apparent to a knowledgeable reader that Garvey has a woefully inaccurate understanding of the process.

Describing the development of a cost of service, Garvey says that the cost of the pipeline's gas plant (whether before or after accumulated depreciation is unclear) is added to its other costs in order to arrive at the total cost of service.¹² To make it clear that this was no inadvertent misstatement, Garvey diagrams the same error to make sure he has conveyed the point.¹³

9. *Id.* at 149.

10. *Id.* at 151.

11. *Id.* at 153.

12. *Id.* at 95.

13. *Id.* at 96.

Given the times in which the FERC found itself, one cannot avoid the conclusion that the force that held things together and made the agency functional was the formal bureaucracy. In the long view, Ken Williams' rate specialists did the public's business well when they resisted that Garvey's efforts to turn FERC pipeline rate analysis into a mechanic process of applying a computer program to machine-readable input supplied by members of the regulated industry.