

BOOK REVIEW

ELECTRIC POWER: AN INDUSTRY AT A CROSSROADS by Milton A. Chase, Praeger Publishers, 1988.

*Reviewed By Frank P. Darr**

As its title suggests, *Electric Power: An Industry at a Crossroads* by Milton Chase, deals with the often discussed topic of the demise of the electric utility industry and the directions the industry might take in dealing with the uncertainties of the future. After a tour of the industry's history and a discussion of its demise,¹ the author extensively reviews the various positions that have arisen in the 1980s about the need for continued construction and the alternatives.² Although the book was completed prior to the issuance of various Notices of Proposed Rulemaking on competitive bidding, avoided costs, and independent power producers,³ the author anticipated the basic positions held by the Commission and its participants concerning the use of competitive forces to set the generation mix in the future.⁴ Finally, the author offers his own solution in the form of increased pooling and coordination activities for construction and load management and suggests the New England Energy Pool as a model.⁵

For the reader versed in electric utility matters, there are no breakthroughs in this book, but as Chase indicates in his preface, the book was not meant to be a scholarly work. Rather, it was designed to bring together the literature for a more complete picture of the business and its direction.⁶ In that regard, the book is a useful discussion of various parties' positions. The discussion ranges from the need for additional generation and load management to the role of cogeneration and PURPA machines in the future generation mix. While this general discussion is useful, Chase's informal approach presents some problems for the reader interested in further investigation.⁷

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1. M. Chase, *ELECTRIC POWER: AN INDUSTRY AT A CROSSROADS* 21-77 (1988).

2. *Id.* at 78-123.

3. Notice of Proposed Rulemaking, *Administrative Determination of Full Avoided Costs, Sales to Power Qualifying Facilities, and Interconnection Facilities*, IV F.E.R.C. Stats. & Regs. 32,457, 53 Fed. Reg. 9331 (1988); Notice of Proposed Rulemaking, *Regulations Governing Independent Power Producers*, IV F.E.R.C. Stats. & Regs. 32,456, 53 Fed. Reg. 9327 (1988); Notice of Proposed Rulemaking, *Regulating Government Bidding Programs*, IV F.E.R.C. Stats. & Regs. 32,445, 53 Fed. Reg. 9324 (1988). For a discussion of the various proposals, see Griggs, *Competitive Bidding and Independent Power Producers: Is Deregulation Coming to the Electric Utility Industry?* 9 ENERGY L.J. 415 (1988).

4. M. Chase, *supra* note 1, at 110-15 (Congressional testimony of Chairman Hesse and Commissioners Stalon and Trabrandt before the Sharp committee).

5. *Id.* at 151-69.

6. *Id.* at viii.

7. Also disconcerting is the presentation of the book. The text is flawed with numerous typographical errors and an inaccurate date in at least one place. (The publication date for *Silent Spring* is

Namely, the author does not reference his sources consistently, and the bibliography appears incomplete.⁸

Two sections of the text are of special interest. The first section details the various approaches suggested to deal with the need for new generation. Entitled "A World of Differences," the chapter details the many approaches suggested by the industry, consumers, and regulators to the question of what is needed in the coming decade to assure reliable and affordable energy. As with so much of the energy debate, the groups cannot agree on whether additional load is needed and how to meet what load does appear (construction versus load management or conservation). Nor can they agree on the regulatory environment in which those changes should take place. This diversity of opinion leads Chase to the obvious problem in his discussion of potential solutions: "It is difficult to answer the question, 'Where do we go from here?' when we cannot clearly describe where we are now."⁹

Chase highlights the economic determinism that particularly seems to infect federal regulatory thinking. He notes with some care the views of Phillip O'Connor concerning the complicated and extensive process necessary to deregulate large portions of the generation of power.¹⁰ This detailed discussion contrasted the piecemeal method suggested by FERC commissioners and the limited regulatory goals of economic efficiency some used to justify that approach.¹¹ One is reminded that there are other outcomes besides Pareto optimal results and voided or marginal costing, which would result in a substantial windfall due to currently increasing marginal costs. These outcomes include system reliability, equitable pricing and political realities that must be placed in the mix.¹² As also reflected in the pages of the *Energy Law Journal*,¹³ these changes challenge fundamental notions of utility responsibility to its consumers at many levels, which require careful thought before experimentation generates new problems.¹⁴

The second area of interest is the author's discussion of the present system's failure as revealed by several utility companies. Chase's discussion of five systems¹⁵ that struggle with the current system suggests the very limitations that have sparked the current transition and debate.¹⁶ Each of the systems briefly described by Chase face or faced potential failure or frustration, as

1962. The date is correctly noted at page 55 and incorrectly stated at page 63. A second incorrect implication based on a later date of publication is contained at page 65). These editorial mistakes detract from the author's efforts.

8. References to the numerous speeches and other materials described in the text are not contained in the bibliography.

9. M. Chase, *supra* note 1, at 151.

10. *Id.* at 96.

11. *Id.* at 98-116.

12. *Id.* at 116, 118.

13. See, e.g., Bouknight & Raskin, *Planning for Wholesale Customer Loads in a Competitive Environment: The Obligation to Provide Wholesale Service under the Federal Power Act*, 8 ENERGY L.J. 237 (1987); Pace, *Wheeling and the Obligation to Serve*, 8 ENERGY L.J. 265 (1987).

14. M. Chase, *supra* note 1, at 123.

15. Commonwealth Edison, Tennessee Valley Authority, General Public Utilities, Public Service of Indiana, Wabash Valley Power Association, and Potomac Electric Power Company.

16. M. Chase, *supra* note 1, at 125-50.

basic assumptions about the economics and technology of generation and sales changed, and regulators reacted to the inability of utility management to limit the exposure of their customers and investors to increased costs. Especially telling is the dilemma of Potomac Electric, a utility which serves two states and the District of Columbia. For example, Maryland may require construction while the District of Columbia may demand load management.¹⁷ Faced with demands to expand and restrain from different commissions and the public,¹⁸ the company is captured by uncertainty. One need not be particularly visionary to see that an impasse will result if players maintain their current positions.

Much less satisfying is the author's suggestion of how to begin digging out of the muddle. His basic solution is to create regional coordinating bodies modeled on the New England Pool and a similar national body made up of members of the regional bodies.¹⁹ The members of the regional councils would collectively determine needs for generation, provide dispatching and billing, and establish long term planning.²⁰ The starting point would be the existing reliability councils and would include all utility providers in an area, as well as regulators and consumer representatives, in policy making roles.²¹ While Chase recognizes that the development would be difficult, he suggests it can be successful "if the new atmosphere is properly developed."²²

After a lengthy discussion of why the system cannot currently make decisions, considering the intense disagreements about what current needs are and how to fulfill them, and the growing animosity among the primary players, the suggestion that coordinating councils will somehow be able to move above the fray seems almost utopian. While some regulators are arguing that the only purpose of regulation is economic efficiency, utility managers are arguing that other goals such as equity and reliability are also important. The newest cottage industry, the "lease cost planner," asserts the need to engage in thoughtful and expensive reviews of the current system and the notion that all can sit down together and agree on a ten or twenty year generation and transmission plan is not obvious. The author seems to concede as much when he notes the regulatory hurdles facing the members of the New England Pool.

Considering the fact that NEPOOL activities are carried on publicly and that representatives of state governments and commissions, as well as of public interest groups, are familiar with its operations, it might be expected that substantial consensus would develop. This does not seem to be the case. Not only are differences great regarding the operation of [nuclear plants in the region], but New England utilities and state commissions have similar differences regarding rates, prudence and 'used and useful' issues as do utilities elsewhere. Nor is there a

17. *Id.* at 150.

18. *Id.* at 143-50.

19. *Id.* at 167. Recently, Robert Marritz offered a similar suggestion based on his experience with the Northwest Power Planning Council. See Marritz, *A Safety Net for State Regulation—The Compact Clause of the Constitution*, 2 *ELECTRICITY J.* 26 (1989). Peter Huber suggested a coordinating agency at the national level to deal with safety and development issues. See Huber, *Electricity and Environment: In Search of Regulatory Authority*, 100 *HARV. L. REV.* 1002 (1987).

20. M. Chase, *supra* note 1, at 167.

21. *Id.* at 167-68.

22. *Id.* at 168.

dearth of investigations by state groups of utility operations.²³

One may legitimately ask where the balance is supposed to come from that will allow these antagonists to coexist peacefully and effectively on a regional council.

Moreover, one may question whether the consumer advocate or regulator is willing, or should be willing, to expose itself to the difficulties that utilities currently face. With their participation in lease cost planning and the regional councils, comes responsibility for the outcomes. While management may be concerned about the loss of control over long term decision making, that loss is accompanied by the apparent sanction of group decisions by the regulator. Whether a commission is willing to undertake that responsibility or whether current law would permit passing on currently disallowable costs are critical but unaddressed questions. One can only imagine the sort of second guessing by regulators and others that would result in a state commission's denial of costs after the regional council on which it participates has approved the construction or conservation measure that caused the costs. Moreover, the regulator and consumer advocate have an advantage in taking an adversarial role; as a political matter, it provides an outlet for the public's frustration with high costs and future uncertainty. If that adversarial role is compromised by participation in a regional council, the political costs may be heavy and unnecessary. Thus, neither the attitudes currently held by the parties nor the political realities bode well for Chase's solution to the planning problem.

While Chase's proposal is unsatisfying, much of the work is interesting. He has parsed through the volumes of material to present many of the viewpoints that currently define the debate. No small task, the book is a concise discussion of an important complicated matter.

23. *Id.* at 166.