

CONSCRIPTING STATE REGULATORY AUTHORITIES
IN A FEDERAL ELECTRIC RATE REGULATORY SCHEME:
A GOAL OF PURPA PARTIALLY REALIZED

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In enacting the Public Utility Regulatory Policies Act of 1978 ("PURPA")¹ Congress saw fit to impose on state public service commissions and nonregulated electric utilities² an obligation to consider twelve standards in assessing service conditions and retail electric rates³ for utilities with a retail market exceeding 500 million kilowatt-hours.⁴ The provisions did not apply to sales for resale.⁵

The purpose of this legislation was threefold: "(1) conservation of energy supplied by public utilities; (2) the optimization of the efficiency of use of facilities and resources of electric utilities; and (3) equitable rates to electric consumers."⁶

Six of the federal standards involved rate-making for regulated electric utilities: the use of (1) cost of service rates "to the maximum extent practicable"; (2) declining block rates only where cost justified; (3) time-of-day rates based on cost of service unless not cost-justified; (4) seasonal rates reflecting season cost variations; and (5) interruptible rates. In addition, electric consumers were to be offered practicable, cost-effective and reliable load management techniques which would afford the utility useful energy or capacity management advantages.⁷

Six of the standards involved the terms and conditions of electric service: (1) the elimination of master metering in new buildings; (2) the prohibition of rate increases through automatic adjustment clauses that are not periodically reviewed by authorities applying PURPA standards; (3) a requirement that rate schedule information be transmitted to consumers; (4) a requirement of notice of termination and restrictions on termination of service where danger to health is involved; (5) exclusion from cost of service of certain promotional and political advertising expenses;⁸ and (6) consideration of lifeline rates.⁹

PURPA required that consideration of the rate standards be initiated within two years of enactment of the statute and completed within three years, by November 9, 1981.¹⁰ If that was not done, consideration of the standards was to be effected in the first rate proceeding commenced after the third anniversary of the enactment of the statute.¹¹ Except for lifeline rates,¹² consideration of standards relating to terms and conditions of service was to be effected within two years of enactment of PURPA,¹³ or by November 9, 1980. No penalties were provided for failure to meet these deadlines.

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¹Pub. L. No. 95-617, 92 Stat. 3117.

²Defined as "any electric utility other than a State regulated utility." (Section 3(9), 16 U.S.C. § 2602(9)).

³Sections 111-115, 16 U.S.C. §§ 2621-2625. State regulatory authorities and nonregulated gas utilities had to consider procedures for termination of service and for advertising. (Sections 303-304, 15 U.S.C. §§ 3203-3204).

⁴Section 102(a), 16 U.S.C. § 2612(a). A current list of the covered utilities may be found at 48 F.R. 1654, January 13, 1983.

⁵Section 102(b), 16 U.S.C. § 2612(b).

⁶Section 101, 16 U.S.C. § 2611.

⁷Section 111(d), 16 U.S.C. § 2621(d).

⁸Sections 113(b) and 115, 16 U.S.C. §§ 2623(b), 2625.

⁹Sections 114, 16 U.S.C. § 2624.

¹⁰Section 112(b), 16 U.S.C. § 2622(b).

¹¹Section 112(c), 16 U.S.C. § 2622(c).

¹²The lifeline rate question did not have to be considered until after November 9, 1980. Section 114(b), 16 U.S.C. § 2624(b).

¹³Section 113(a), 16 U.S.C. § 2623(a).

Congress did not require the local authorities to adopt any of the federal standards. The authorities could decide that the standards were not appropriate.¹⁴ But what the authorities could not escape was the obligation to follow the procedures set forth in PURPA. There had to be notice, hearing, consideration and determination and, if it was decided not to adopt a standard, a written statement as to why the standard was not appropriate.¹⁵ Procedures were otherwise those established by local regulatory authorities.

Congress was not sufficiently persuaded that the standards were sound and in the public interest to *require* their adoption. The legislation did not finance the regulatory cost being imposed on local authorities. Left to their own devices, consideration by local authorities could be of the most cursory sort. Congress sought to avoid that result by detailing the procedures to be followed. Consideration of the standards was to follow hearing. Determination, at least in the case of the rate standards, was to be in writing, based upon findings included in the determination, and upon evidence presented at the hearing.¹⁶ Congress intended that consideration "focus on how implementation of each standard would affect each utility and its consumers in terms of the three purposes" of the standards, and that the local authority "make a specific determination whether implementation of the standard is appropriate to carry out the purposes" of that part of PURPA.¹⁷

Congress knew from experience with earlier legislation that the obligation to "consider" facts or standards could be very burdensome to the authorities upon which the duty was imposed. Federal courts had construed similar obligations under the Administrative Procedure Act ("APA")¹⁸ and the National Environmental Policy Act ("NEPA").¹⁹

Section 4(c) of the APA provides that in an informal rulemaking, after notice and opportunity for comment, there shall be "consideration of the relevant matter presented" before the rule is published.²⁰ When a rule is challenged, it is not enough that the agency acted within its statutory authority. The APA "requires that the actual choice made was not 'arbitrary, capricious, abuse of discretion, or otherwise not in accordance with the law.' . . . To make this finding the Court must consider whether the [agency] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."²¹

NEPA, like PURPA, contains "action-forcing" provisions.²² Every agency is required, to "the fullest extent possible," to prepare an environmental impact statement as part of every recommendation or report on proposals for legislation and other major federal action significantly affecting the quality of the human environment.²³ The purpose of this statutory obligation is to insure that all federal agencies *consider* the environmental impact of their action in decision making and to assure that the same consideration goes into the evaluation of proposals submitted

¹⁴Section 111(e), 16 U.S.C. § 2621(c); Section 133(a), 16 U.S.C. § 2623(a).

¹⁵Section 111(a), 16 U.S.C. § 2621(a); Section 113(a), 16 U.S.C. § 2623(a).

¹⁶Section 111(b), 16 U.S.C. § 2621(b).

¹⁷Conference Report to accompany H.R. 4018, Public Utility Regulatory Policies Act, 95th Cong., 2d Sess., H.Rep. No. 95-1750 (1978), p. 70.

¹⁸5 U.S.C. §§ 551 et seq.

¹⁹42 U.S.C. §§ 4321, et seq.

²⁰5 U.S.C. § 553(c). Rulemaking is rulemaking within the meaning of the APA.

²¹1Citizens to Preserve Overton Park, Inc. v. Volpe, 402 U.S. 402, 416 (1971).

²²Calvert Cliffs' Coordinating Committee, Inc. v. AEC, 146 U.S. App. D. C. 33, 449 F.2d 1109, 1112 (1971).

²³42 U.S.C. § 4332(2)(c).

by private parties.²⁴ Consideration involves a “hard look at environmental consequences,”²⁵ and an examination of alternatives.²⁶ This requires the full disclosure compilation of an environmental record from which a reviewing court can determine whether the agency has made a good faith effort to consider any environmental values. That a final decision in the case may be delayed, with an increase in the costs of the project, does not warrant non-compliance.²⁷ Good faith compliance with the statute is established by a demonstration of a careful weighing of the environmental factors.²⁸

The short time frame within which consideration of the federal standards was to be effected under PURPA no doubt reflected the concern of Congress that if anything could be done to relieve the energy supply/demand tensions by application of those standards it be done quickly. But those same time parameters made an attractive target for court challenge.

The provisions of PURPA which we are considering were challenged by the State of Mississippi on the grounds that they infringed upon the reserved powers of the states.²⁹ In 1981, the United States District Court for the Southern District of Mississippi held the relevant parts of PURPA an unconstitutional violation of the Tenth Amendment of the United States Constitution.³⁰ The judgment was reversed by the Supreme Court on June 1, 1982. *FERC v. Mississippi*, U.S. , 102 S. Ct. 2126 (1982).

The Supreme Court found no difficulty in recognizing electric energy as a basic element of interstate commerce. “No state relies solely on its own resources in this respect.”³¹ The majority reasoned that even if the Nation’s energy situation was not significantly improved by the PURPA requirements, the means chosen are “reasonably adapted to the end permitted by the Constitution.”³² The means might not be the wisest choice, but Congress was not irrational in choosing them.³³

Justice O’Connor, joined by the Chief Justice and Justice Rehnquist, found it improper to “conscript state utility commissions in the national bureaucratic army.”³⁴ Justice Powell reached the same end by finding that the federal standard requirements of PURPA “intrude upon — in effect preempt — core areas of a State’s administrative and judicial procedure.”³⁵

The majority admitted that the Supreme Court “never has sanctioned explicitly a command to the States to promulgate and enforce laws and regulations.”³⁶ But in this case it was not necessary “to make a definitive choice between competing views of federal power to compel state regulatory activity.”³⁷ The challenged provisions of PURPA “require only *consideration* of federal standards. And if a State has no utilities

²⁴Kleppe v. Sierra Club, 427 U.S. 390 (1976).

²⁵New York v. Kleppe, 429 U.S. 1307 (1976).

²⁶Greene County Planning Board v. FPC, 559 F.2d 1227 (2d Cir. 1976, on rehearing en banc 1977), cert. denied 434 U.S. 1086 (1978).

²⁷Sierra Club v. Froehlke, 359 F.Supp. 1289 (D. Texas 1973).

²⁸Appalachian Mountain Club v. Brinegar, 394 F.Supp. 105 (D.N.H. 1975).

²⁹Titles I and III of PURPA, relating to electric and gas utilities here discussed, and Section 210 of Title 11, requiring local authorities to implement federal rules designed to encourage cogeneration, were attacked.

³⁰Mississippi v. Federal Energy Regulatory Commission, 38 PUR 4th 284 (D. Miss. 1981).

³¹102 S. Ct. at 2136.

³²*Ibid.*, quoting from Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 262 (1964).

³³102 U.S. at 2136.

³⁴*Id.* at 2145-6.

³⁵*Id.* at 2144.

³⁶*Id.* at 2138.

³⁷*Id.* at 2140.

commission, or simply stops regulating in the field, it need not even entertain the federal proposals."³⁸ Congress could have preempted the field as far as regulating the private utilities is concerned. PURPA is not less valid because "Congress adopted a less intrusive scheme and allowed the States to continue regulating in the area on the condition that they *consider* the suggested federal standards."³⁹

PURPA allowed the States to continue regulating in the area on condition that they *consider* the suggested federal standards. But no State stopped regulating utilities in order to evade PURPA.⁴⁰ Some did await the outcome of Mississippi's challenge (June 1, 1982) before taking up obligations which were supposed to be performed by November 9, 1981 (within three years of statutory enactment).

PURPA provided for oversight of application of the federal standards on both a state and federal level. The statute enabled "any person" to bring an action in state court to enforce the obligation of the local authority to hold hearings and make determinations.⁴¹ The Supreme Court found that this placed no particularly onerous burden on the State.⁴² State law "governed on such matters as burden of proof, standard for review in state courts, and in any other matters not inconsistent with the requirements" of PURPA.⁴³ There have not been many appellate decisions by state courts involving the manner in which local agencies considered and determined the application of the federal standards.⁴⁴

Federal oversight was effected through participation in local proceedings and by the review and evaluation of annual reports by local authorities. The Secretary of the Department of Energy was allowed by PURPA to intervene in local proceedings involving an electric utility.⁴⁵ Under this authority, the Secretary intervened in 1980 in proceedings in eleven states.⁴⁶ DOE also encouraged consideration of the standards by providing financial assistance,⁴⁷ and technical support to local authorities.⁴⁸ As a participant in local proceedings, the Secretary could obtain review in a state court of any determination made with respect to the adoption of the federal design standards.⁴⁹ There is no evidence that this review power was exercised.

PURPA also required each local authority to report to the Secretary annually for ten years, with respect to its consideration of the federal standards. Reports were to include a summary of the determinations made and actions taken with respect to

³⁸*Ibid.*

³⁹*Ibid.*

⁴⁰There are no electric and gas utilities in the State of Nebraska which are covered by PURPA and which are subject to regulation by the Nebraska Public Service Commission.

⁴¹Section 123(c)(1), 16 U.S.C. § 2633(c).

⁴²FERC v. Mississippi, *supra*, 102 S. Ct. at 2143.

⁴³Conference Report, *supra*, pp. 71-72.

⁴⁴See Metropolitan Washington Board of Trade v. Public Service Commission of the District of Columbia, 432 A.2d 343 (D.C. Ct. of Appl. 1981); Appeal of Concord Natural Gas Corp., 433 A.2d 1291 (N.H. Sup. Ct. 1981).

⁴⁵Section 121(a), 16 U.S.C. § 2631(a).

⁴⁶Economic Regulatory Administration, Report to Congress, May 1981, DOE/RG-0034/2, Vol. 1, p. 26.

⁴⁷A total of \$29.4 million was distributed in the form of basic grants, consumer grants and innovative grants. See note 52, below at 20.

⁴⁸Technical support included "publishing voluntary final PURPA-related guidelines on automatic adjustment clauses and solar energy and renewable resources; explaining the requirements of PURPA and discussing useful analytical techniques and approaches through the National Regulatory Research Institute (NRRI); conducting a gas rate design study, which addressed existing state and federal ratemaking policies and suggested that rates be designed to encourage optimum use of natural gas; and initiating a study of least-cost energy services strategies to promote efficiency and conservation." 1981 PURPA Report at 2.

⁴⁹Section 123(c)(1), 16 U.S.C. § 2633(c). The Secretary could not seek review of local decisions regarding Title III standards applicable to gas utilities. Participation by the DOE did not assure adoption of the federal standards. See Gulf States Utilities Co., 40 PUR 4th 593 (La. PSC 1980); Cincinnati Gas and Electric Co., 42 PUR 4th 252 (Ohio PUC 1981).

each standard on a utility-by-utility basis.⁵⁰ The Secretary was obliged, in turn, to report to the President and Congress not later than eighteen months after enactment of PURPA, and annually thereafter for ten years, a summary of the reports from the local authorities, his analysis of the reports and recommendations.⁵¹

Three reports have been submitted by the Secretary.⁵² The last report, dated September 1982, completed the coverage through the time within which the PURPA standards were supposed to have been considered.⁵³

The National Association of Regulatory Utility Commissioners ("NARUC") became dissatisfied with the questionnaire sent out by DOE to local authorities to assess performance under PURPA,⁵⁴ and with the tardy reports to Congress.⁵⁵ In an effort to improve the process, NARUC's Ad Hoc Committee on the National Energy Act prepared and sent out its own questionnaire. Two reports were compiled from the responses: one, under date of December 1, 1980, covers the period through November 1980; the second, under date of October 20, 1982, covers the period through January-May 1982.⁵⁶ As of May 31, 1982, 41 of the 54 member commissions or agencies which regulate the rates and services of utilities had responded to the NARUC survey.⁵⁷

The NARUC 1982 Report indicated that the vast majority of local authorities had complied with the procedural and timing requirements of PURPA. As of the early summer of 1982, a few states had PURPA decisions under consideration, delays largely due to litigation in the federal courts.⁵⁸

The 1982 PURPA Report of DOE sought to summarize the extent to which the PURPA standards had been considered and effected by the local authorities during the time span allotted by Congress.

By November 1981, the consideration process had not begun for less than 2% of the utilities surveyed.⁵⁹ Final action had been taken on a greater percentage of the cases for regulatory policy standards than for ratemaking standards. This was

⁵⁰Section 116(a), 16 U.S.C. § 2626(a).

⁵¹Section 116(b), 16 U.S.C. § 2626(b).

⁵²The first report covered the first eight months of the PURPA consideration process (November 9, 1978 through June 30, 1979). The second covered the period July 1, 1979 through June 30, 1980. The third covered the period June 1, 1980 through November 9, 1981.

⁵³See Public Utility Regulatory Policies Act of 1978, Annual Report to Congress, DOE/RG-0034/3, September 1982 (hereafter "1982 PURPA Report").

⁵⁴The latest text of the questionnaire (ERA-166 (11-82)) may be found at 48 F.R. 1607, January 13, 1983.

⁵⁵The purposes of the NARUC survey were "(1) to provide the NARUC with current information concerning State commission progress under PURPA in the event representatives of the Association are requested to testify before Congressional oversight committees; (2) to provide current reliable information concerning state commission activities in carrying out the PURPA mandate in response to the information collected by the Department of Energy, Economic Regulatory Administration, through the Department of Energy, Economic Regulatory Administration, through the use of Form ERA-166, and submitted to Congress in the annual report required by Section 116 of PURPA; and (3) to provide the public at large with an understanding of the progress the State commissions have made in carrying out the statute as well as the great diversity that exists between the states in the regulation of public utilities." NARUC Ad Hoc Committee on the National Energy Act, "State Commission progress under the Public Utility Regulatory Policies Act of 1978," December 1, 1980, p. 2.

⁵⁶See note 54, *supra*, for NARUC 1980 Report. The "Second Report on State Commission Progress under the Public Utility Regulatory Policies Act of 1978" is dated October 20, 1982.

⁵⁷This includes the fifty state commissions, the District of Columbia Commission, the Tennessee Valley Authority, the Texas Railroad Commission, and the Power Authority of the State of New York.

⁵⁸Georgia and Mississippi awaited the outcome of the constitutional challenge. Alaska (in part), Kansas, Tennessee and Montana did not report a completion date for consideration of regulatory standards. Alaska, Arizona, Kansas, Maryland, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Rhode Island and Virginia did not meet a November, 1981 deadline for consideration of the ratemaking standards.

⁵⁹1982 PURPA Report at 7.

attributed to the earlier statutory deadline and the lesser burden of evaluation.⁶⁰ The regulatory policy standards could be handled more readily on a generic basis than could the ratemaking standards.⁶¹ Ratemaking was slowed down by the need to consider cost of service.

As to the regulatory standards, 81% had adopted master metering regulation, 62% the automatic adjustment standard, 64% the information to consumer standard, 86% the termination of service standard and 79% the advertising standard.⁶²

Thirteen states refused to adopt PURPA's approach to automatic adjustments, usually because prohibited by law. Three states could not accept PURPA views on information for consumers. Two rejected the standard on termination of service. Three did not adopt the advertising standard.

Turning to the ratemaking standards, 66% adopted a cost of service standard, 67% adopted the declining block rates standard, 50% adopted the time of day rates standard, 53% adopted the seasonal rates standard, 49% the interruptible rates standard and 59% the load management techniques standard.⁶³

Consideration of the cost of service standard was facilitated by the FERC requirement that electric utilities collect data which that Commission deemed necessary to determine costs associated with electric service. Such information was available to local regulatory authorities and to the public.⁶⁴

There is no doubt that marginal cost pricing was given a boost by PURPA. In the case of 24 covered utilities the use of marginal cost data was required.⁶⁵ In 61 other instances it was a method allowed. But marginal cost pricing was found troublesome by most; as raising more questions than it answered. The Minnesota Commission found:

"Economic theory states that resources will be optimally allocated when all prices reflect marginal costs. If economic efficiency is the primary goal, then marginal cost-based electricity rates are the theoretically correct prices.

While these two sentences seem to imply there is one simple, correct action available to it, the commission finds this implication erroneous for a number of reasons."⁶⁶

The reasons included (1) the near impossibility of examining the pricing of substitutes and complements of electricity and of goods produced with electricity; (2) unresolved problems as to how to measure marginal costs and to translate them into rates;⁶⁷ (3) the failure to explore the option of dynamic long-run marginal costs which take into account not only the existing capacity of the utility but also its actual expansion plans; (4) the reliance of economic theory on assumptions such as perfect competition in all markets and perfect knowledge of prices and product quality which are not characteristics of the real world markets and consumers; (5) the assumption of the customers' constant awareness of the cost consequences of his

⁶⁰*Id.* at 7-8.

⁶¹"The commission has determined it is appropriate to consider those [rate-making] standards on a utility-by-utility basis. The differing load characteristics of the eight covered utilities and the relative size of each indicates that cost-benefits for the various standards may be markedly dissimilar if one were to apply a single determination uniformly across all utilities." *Re Proceedings to Consider Electric Rate-Making Standards*, 35 PUR 4th 339, 344 (Mich. PSC 1980).

⁶²1982 PURPA Report at 5-6.

⁶³*Id.* at 3-4.

⁶⁴See Section 133, 16 U.S.C. § 2643.

⁶⁵1982 PURPA Report at 15. See *Re Union Electric Co.*, 41 PUR 4th 665 (Ill. Com. Comm. 1981).

⁶⁶*Re Department of Public Service*, 37 PUR 4th 497, 508 (Minn. PSC 1980).

⁶⁷See *Central Maine Power Co. v. Public Utilities Commission*, 405 A.2d 153 (Me. Sup. Ct. 1979).

electricity consumption; and (6) the assumption that economic efficiency is the sole goal of the regulator's efforts.⁶⁸ The Commission could not find that PURPA's cost of service standards were appropriate to carry out the purposes of that statute.⁶⁹

Congress may have contemplated that the records before the local authorities would be sufficiently complete to permit the assessment of every pricing option and the adoption of marginal cost pricing. Such was not always the case. The marginal cost principles might have been acceptable in theory but rejected in favor of embedded costs on the basis of the record made in the case.⁷⁰

The lack of cost-benefit studies, impact data, and experience with the federal standards caused some agencies to proceed with caution. The District of Columbia Commission found in the legislative history of PURPA a "broad discretion to defer implementation of a standard, or to implement it partially, or to phase in implementation in stages."⁷¹ It found the cost of service standard appropriate for deferred implementation.⁷²

The method required by the local authorities, where cost of service standards were adopted, varied widely: 84 required the identification of customer demand and energy-related cost of service; 27 required a standard reflecting the change in cost from adding capacity; 34 required a standard reflecting a change in costs with increased deliveries; 50 required the use of embedded cost data; and, as remarked earlier, in 24 instances the use of marginal cost data was required.⁷³

PURPA demonstrated that Congress can conscript local regulatory agencies into a federal scheme of regulation. But it could not compel a specific result without making the federal standard mandatory.⁷⁴

Congress successfully compelled the local authorities to adopt a procedure calling for notice, consideration of federal ratemaking and service standards, and the issuance of justifications when those standards were not adopted. But the local agencies exercised their own discretion in qualifying those standards, deferring their use or rejecting them altogether. There is indeed "clear evidence of the diversity that exists between the states with regard to the regulatory procedures, philosophies, and goals of their respective regulatory commissions."⁷⁵

DOE reported the large numbers of customers and gigawatt hours of electric sendout affected by the decisions of the local authorities adopting the proposed standards.⁷⁶ Compliance with the law has been measured. We are assured that

⁶⁸37 PUR 4th at 508-510.

⁶⁹Re Minnesota Power and Light Co., 41 PUR 4th 554, 611 (Minn. PUC 1981). Accord, *Ex parte Gulf States Utilities Co.*, 40 PUR 4th 593 (La. PSC 1980); *Re Public Utility Regulatory Policies Act Rate Design Standards*, 45 PUR 4th 24 (Ala. PUC 1981); *Re Cost-of-Service Rate-Making Standards*, 7 Tex. PUC Bull 250, 44 PUR 4th 33 (1981).

⁷⁰Re Northern Indiana Public Service Co., 43 PUR 4th 649 (Ind. PSC 1981). Time-of-day rates were rejected in the case of a hydroelectric utility because not shown that they provided a long-term benefit either for the utility or its customers. *Re Washington Water Power Co.*, 43 PUR 4th 697 (Idaho PUC 1981).

⁷¹Re Potomac Electric Power Co., 36 PUR 4th 139, 191 (D.C. PSC 1980).

⁷²*Id.* at 195.

⁷³1982 PURPA Report at 15.

⁷⁴Eighteen states reported to NARUC that they were prohibited by statute or court decision from adopting life line rates. Ten states reported that they were prohibited by law from adopting the automatic adjustment clauses suggested by PURPA. NARUC 1982 Report, pt. II. Twelve percent rejected time of day rates; 13% rejected the interruptible standard; 10% rejected master metering; 25% rejected the automatic adjustment clause standard; 17% rejected the information to consumers standard; 8% rejected the termination of service standard; and 11% rejected the advertising standard. As a large number of cases were undecided at the time of the last DOE data collection effort, these percentages might be higher. 1982 PURPA Report at 3-6.

⁷⁵NARUC 1982 Report, Pt. I, p. 1.

⁷⁶1982 PURPA Report, Appendix A.

Congress did succeed in harnessing the regulatory resources of the local authorities. But was it worthwhile? That question is neither asked nor answered.

The purposes of the legislation were conservation of energy, efficient use of utility resources, and equitable rates to consumers. Whether they were served in sufficient measure to warrant the delegated regulatory burdens remains a mystery. A better post mortem cost-benefit analysis is needed for future guidance. Apparently that task will not be undertaken voluntarily by the Secretary of the Department of Energy who reported to Congress that he had at this time "no recommendations for further federal actions nor any recommendations for legislation regarding retail electric rates and other practices."⁷⁷

⁷⁷*Id.* at 20.