

REGIONAL REGULATION OF PUBLIC UTILITIES:  
ISSUES AND PROSPECTS

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DECEMBER 1980

## FOREWORD

This report was prepared by The National Regulatory Research Institute (NRRI) under Grant No. DE-FG-01-80RG10268 from the U.S. Department of Energy (DOE), Economic Regulatory Administration, Division of Regulatory Assistance. The opinions expressed herein are solely those of the authors and do not reflect the opinions nor the policies of either the NRRI or the DOE.

The NRRI is making this report available to those concerned with state utility regulatory issues since the subject matter presented here is believed to be of timely interest to regulatory agencies and to others concerned with utility regulation.

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Director

## EXECUTIVE SUMMARY

The idea of regional regulation of public utilities is not an entirely fresh one. There have been quite a number of experiments of this sort with varying degrees of formalism and varying degrees of success--some going on currently. While the idea of some form of subnational arrangement is particularly intriguing to political scientists and public administration professors, it is not ranked among the really high-priority items in a sitting commissioner's workday. However, the concept of regional regulation in some form is an idea worth revisiting. The occasion is here for reexamining it, and certain opportunities present themselves for some semblance of multistate regulation of the traditional public utilities, including transport.

While not common to this field, multijurisdictional regional organizations have been created in great numbers at every level to deal with various issues that transcended state boundaries. There are, for example, over one hundred and seventy interstate compacts to deal with specific regional problems. A large number of regions have been defined for special purposes--water resource planning, air quality control, and economic development among them. In short, the organization of government in the U.S. historically has made use of multistate groupings.

States have often voluntarily arranged themselves in groups in an effort to handle problems (or take advantage of opportunities) that are more than statewide in scope but less than national in character. Organizations like the Southern Growth Policies Board, the Western Governors Policy Office, the Coalition of Northeastern Governors, the Committee for Great Lakes Economic Action, the Appalachian Regional Commission, and the so-called Title V Regional Action Planning Commissions, reflecting sectional interests come to mind.

The fact that public regulation of utility and transportation companies has been administered less by multistate coordination and cooperation than many other regional issues may in part be explained by the general assumption of many regulators that multistate issues are best left to actions of federal regulatory bodies, for example, the Federal Energy Regulatory Commission, whereas similar issues at the state level are principally confined to the borders of one or another state. With this view, the need for multistate action is largely unnecessary.

By contrast, the traditional regulated industries, that is, electric, gas, telecommunications, and transportation have chosen often to organize regionally. There have existed for many years regional railroad and motor rate bureaus. Regional electric reliability councils were formed so that the participating utility companies could assure that sufficient supplies of electricity were available and that sensible grid systems were established.

Various pooling and intertie agreements among power companies with service territories in the same or adjoining state jurisdictions are other obvious examples of regional cooperation by the regulated sector. The occasion for such actions has generally been described as evolutionary, springing from the technological advances toward larger scale operations, the economic and financial advantages flowing therefrom, and the governmental encouragement toward the elaboration of utility and transport systems through favorable legislative enactments and judicial rulings.

In this context, it is perhaps somewhat unusual that joint state efforts at multistate regulation of utility companies with service territories in the several states have been so infrequent, tentative, and preliminary. The reason most often cited by state regulators (and perhaps the conventional wisdom of regulatory agencies) is that most states have either a constitutional prohibition or public laws that prevent those kinds of multistate regulatory arrangements.

A hypothesis for this report is that while most state statutes may not be particularly attuned to encouraging multistate public utility regulation, at least an equal explanation has more to do with custom and habit, inertia, state politics, and most important, the lack of widely perceived incentives of either economy or efficiency for cooperative regulation. Accordingly, the plan of this report is to (1) identify what seem to be some current forces that may make some form of multistate regulation in certain circumstances worth trying; (2) consider a number of examples of recent multistate efforts at regional regulation in various sections of the nation; and (3) review the concept of regional regulation in terms of its pitfalls and prospects for the states, both in the short run and for the long term.

If the idea of regionalism is so pervasive, why then has it come so hard in the field of public utility regulation? Legal and constitutional obstacles admittedly are important reasons. The difficulties have to do both with state-federal intergovernmental relations regarding potential intrusion on federal prerogatives and with interstate relations on matters of sovereignty and accountability. These are in addition to rules and procedures that may differ in kind and application.

On the first score, if there is no intrusion upon federal prerogatives, multistate agreements appear to be valid with no further legislative ratification needed on the part of Congress. Where a multistate agreement does intrude upon federal powers, only congressional approval may permit the operation of such an agreement. This is to say that where multistate agreements would have the legal effect of constituting a form of regulation not left to each state to effect separately, the agreements might run afoul of the U.S. Constitution (absent congressional approval).

However, in exercising its own sovereign powers, each state is free to choose the manner and the form of its own regulation. Moreover, there is nothing under the U.S. Constitution that forbids, by itself, the enactment by one state of a valid law providing for state regulation that is similar to, or identical to, the law of another state.

The lack of clear statutory authority for a state regulatory commission to engage in any degree of cooperative activity, on a formal basis, probably operates to prevent such activity. Although numerous opportunities may exist for informal exchanges, formal actions of state commissions likely require express statutory authority. A number of states have such authority in varying degrees.

Joint hearings and joint or concurrent orders with other state commissions are allowed by statutory provision in Delaware, The District of Columbia, Maryland, New Mexico, Missouri, and Pennsylvania, for example. Joint investigations are provided for in the statutes underpinning the PUCs in Pennsylvania, South Carolina, New Mexico, Missouri, Nevada, and Delaware. The North Carolina statute authorizes its PUC to "coordinate interstate and intrastate public utility service" with other states. However, for 10 other state codes examined, no provisions were found that specifically treated cooperative state commission activity.

In sum, while a need may exist in the area of utility regulation for multistate efforts, it appears that few states have adequate legal machinery in place to avail themselves of the opportunity. In addition, where states have adequate authorization, the lack of uniform state utility laws governing both the substance and the procedure of utility regulation serves to impede greater interest.

Still, the number of state PUC efforts at regional regulation in recent years is quite impressive. More than half of the states and the District of Columbia have either initiated or participated in multistate regulatory actions of one sort or another.

A finding here is that while legal issues of sovereignty, evidence, and procedures are obstacles to the most advanced level of PUC integration, they are surely less so at more modest levels of cooperative action and may be even less obstructive than the more subjective forces of habit, custom, familiarity, certainty, inertia, politics, and a lack of perceived advantage.

It is admitted that experiment and innovation cannot be expected to come readily from what might intuitively seem to be a sensible idea. The world of the sitting public utility commissioner is most often characterized by overwork and understaffing; by an understandable preoccupation with legislators, mayors, and a governor; by sometimes confrontational relations with intervenors; and by a constituency of rate-payers that at most may be statewide.

On the other hand, regional regulation need not be an all-or-nothing affair. Early steps could be modest and limited. The scope of activity could initially be small. Bilateral experiments involving relatively noncontroversial matters with multijurisdictional utilities could be a way to begin. Informal arrangements might be preferable to formal mechanisms in certain circumstances and in early efforts. Fancier, broader, more formal relationships could subsequently evolve, or the effort could retrench or be abandoned as experience dictated.

One candidate for multistate regulatory attention is the subject of interconnection, power pooling, and wheeling. This is not an easy topic for analysis and evaluation by state commissions acting alone because of the interstate character of much of the subject. On the other hand, state commissions are increasingly inquiring about whether all pooling and intertie possibilities have been exhausted before approving the construction of new generating capacity.

Another subject that would seem appropriate to the purview of several state utility commissions acting together is the question of planning for capacity expansion. At a time of presumed capital shortages and high-capital costs, it obviously makes more sense than usual to scrutinize utility company expansion plans carefully. It would seem that state commissions sitting jointly, or through some other congenial mechanism, could at least facilitate (if not prescribe) cooperation between utility systems and among regulatory bodies on the important matter of power planning for generation and transmission and hence size and distribution of rate base. Holding companies with operating subsidiaries in several states present a special case for such cooperative regulation.

Rate level disparities between customer classes in different states served by the same or similarly circumstanced utilities are of proper concern to regulators and public officials. Renewed interest in fairness considerations in ratemaking requires that there be a demonstration of just how these differentials occur and why they are justified.

For any of this to happen there must be found built-in incentives toward regional regulation as seen by state public utility commissioners for very much to happen. The three kinds of incentives that would best make the case are (1) economy, (2) efficiency, and (3) equity. The concept of regional regulation may fit fairly well with these tests.

The costly business of state public utility agency regulation of particular utilities could show notable savings if some of the duplicative actions, for example, initial filings, submitted testimony, summary positions of the parties, data requests, rate base and expense allocations, were taken jointly or cooperatively on a systemwide basis for the multijurisdictional utilities. While having no special legal standing, the concept of "primary jurisdiction" would seem to be a useful, informal, operational one where--as is often the case--a utility company's service area is mainly in one state and only incidentally crosses a border. On the other hand, where the extent of utility service territories are, say, proportional in two states, this could be an argument for truly joint regulation. Operating costs might be lessened (or better allocated), and ratepayer costs might also be reduced, since the cost of utility dealings with PUCs are a recoverable expense item. Additional travel by PUC commissioners or staff to neighboring states would, of course, have to be netted against the savings.

Regulatory efficiency might be improved if the result of such cooperation was the uncluttering of PUC docket calendars; the reducing of delay in the process itself; the avoiding of unnecessary repetition in the

building of a record both by the company and by PUC staff of companywide (as opposed to state-specific) issues; and the strengthening of ongoing commission activities such as auditing the company's performance and monitoring its claimed fuel expenses.

Equity might be enhanced by regional regulation where the result was a reconciling of needlessly divergent policy treatment of the same utility by adjoining states; a rationalizing of rate design and even earnings levels if costs and revenue requirements so demonstrated; and a more comprehensive vantage point on issues of the amount and location of capacity expansion.

Some organizational arrangements are discussed that might be candidates for carrying out some form of regional regulation. Several are identified with varying degrees of promise of success.

One form is interstate compacts. This approach was chosen by the states of Maryland and Virginia and the District of Columbia in creating the Washington Metropolitan Area Transit Authority that is the certifying and ratemaking body for privately owned surface transportation of the most formal approach that the advantage of overcoming most of the statutory obstacles to multistate regulation but at the same time yields the most sovereignty. Consideration might be given to assigning additional authority to existing compacts where multijurisdictional utilities were involved, and further regional regulation could be agreed to be tried.

A second device could be formal multilateral cooperative arrangements between (or among) states along the lines of the Maryland or New England initiatives.

A third approach could be informal but regularized cooperation among commissioners of a regional grouping following the pattern of the Washington, Oregon, Idaho commissioners.

A fourth approach, similar to the third, could be informal but regularized collective regional meetings of commission staff, as was intended in the abortive Iowa and Montana efforts at multistate regulation of multijurisdictional utilities.

It is concluded that the need for some level of regional regulation is not overwhelming but is substantial; that a rather surprising amount of de facto regional regulation on both a formal and informal basis is going on, that while pitfalls abound, so do the occasions and opportunities on both geographic and institutional grounds; and that existing traditional and inventive nontraditional organizational schemes are available in the political and public administration context of intergovernmental relations to accommodate multistate regulation.



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CHAPTER 1  
REGIONAL REGULATION: WHAT IT IS AND  
WHY CONSIDER THE ISSUE

Introduction

Many governmental problems do not conform to state and local boundaries. Multijurisdictional regional organizations have been created in great numbers at every level of government to deal with such problems. There are over one hundred and seventy interstate compacts to deal with specific regional problems. From a national perspective, the regions of the country can be considered in several different ways: 7 major physiographic provinces, or 4 Census Divisions and 9 Census regions, or 10 Federal Administrative Regions, or 12 regional action planning commissions. A large number of regions have been defined for special purposes such as water resource planning, air quality control, and economic development. In short, U.S. government organization historically has made use of multistate groupings and this usage is likely to grow.

States have often voluntarily arranged themselves in groups in an effort to handle problems (or take advantage of opportunities) that are more than statewide in scope but less than national in character. Organizations like the Southern Growth Policies Board, the Western Governors Policy Office, the Coalition of Northeastern Governors, and the Committee for Great Lakes Economic Action reflect sectional interests. Most frequently, the occasion for such groupings has been (as mentioned) economic and developmental, but in more recent decades environmental concerns have become candidates as well for multistate consideration. Relatively less attention and experimentation have been given to regional organization in the regulation of public utilities and transportation, though as we shall see, the landscape has not been entirely bare on this count.

While the proliferation of regional organizations has created some problems of intragovernmental and intergovernmental conflict, it is unlikely that the United States, for reasons of both geography and political traditions, will adopt the kind of unified, organizationally precise formal procedures for integrating national and regional decision making found in several countries. Rather, despite distinct efforts toward organizational consolidation and simplification and a steady movement toward accommodation to a national set of goals and programs, it is likely that regions will continue to be primarily defined in the U.S. by the problems being addressed. Experimentation with different approaches will continue--a reflection of U.S. pragmatism and pluralism.

However this may be, it should be clear at the outset just what the term regionalism means here. To the journalist, the public administrator, the political scientist, the economist, regionalism can mean many different things. As noted, the focus can be multinational on the one hand or multicounty on the other. For purposes of this report, the word regional means multistate: two or more states.

The fact that public regulation of utility and transportation companies has been administered less by multistate coordination and cooperation than many other regional issues may in part be explained by the general assumption of many regulators that multistate issues are best left to actions of federal regulatory bodies, for example, the Federal Energy Regulatory Commission, the Federal Communications Commission, the Interstate Commerce Commission, whereas regulatory issues at the state level are principally confined to the borders of one or another state. With this view, the need for multistate action is, of course, largely unnecessary.

By contrast, the traditional regulated industries, that is, electric, gas, telecommunications and transportation, have chosen often to organize regionally. There have existed for many years regional railroad and motor freight bureaus whose primary purpose has been to determine rates collectively. Regional electric reliability councils were formed so that the

participating utility companies could assure that sufficient supplies of electricity were available.

Various pooling and intertie agreements among power companies with service territories in the same or adjoining state jurisdictions are other examples of the regional cooperation of private organizations. The occasion for such actions has generally been described as evolutionary, springing from the technological advances toward larger scale operations, the economic and financial advantages flowing therefrom, and the governmental encouragement toward the elaboration of utility and transport systems through favorable legislative enactments and judicial rulings. In this context it is perhaps somewhat unusual that joint state efforts at multistate regulation of utility companies with service territories in the several states have been so infrequent, tentative, and preliminary. There have been few examples of such arrangements until quite recently. The reason most often cited by state regulators, and perhaps the conventional wisdom of regulatory agencies, is that most states have either a constitutional prohibition or public laws that prevent those kinds of multistate arrangements.

An hypothesis of this report is that while most state statutes may not be particularly attuned to encouraging multistate public utility regulation, a coequal explanation has to do with custom and habit, inertia, state politics, and the lack of widely perceived incentives of either economy or efficiency for cooperative regulation. Accordingly, the purpose of this report is to (1) identify what seem to be some current forces that may make a form of multistate regulation in some circumstances worth trying; (2) present a number of examples of recent multistate efforts at regional regulation in various sections of the nation; and (3) review the concept of regional regulation in terms of its usefulness, opportunities, pitfalls, and prospects for the states, both in the short run and for the long term.

The report should not be construed as a plea for adopting the regional approach in public utility regulation.<sup>1</sup>

### General Occasion

While many illustrations could be cited as to why it may now be propitious for state public utility agencies at least to rethink the question of multistate regulatory opportunities, three will be mentioned here as illustrative.

One of the recommendations of The National Power Grid Study by the U.S. Department of Energy is the following:

State regulatory agencies with adjoining jurisdictions which together can or do comprise a multistate power pool or region should initiate steps (including acquiring legislative authority where necessary) that would permit them to join together to address multistate issues and other matters of joint interest. State agencies should not confine their interest or scrutiny exclusively to the boundaries of their respective States. It is of substantial importance that each State recognize the essential interstate functions which utilities in its jurisdiction should perform and for which that State has some responsibility.<sup>2</sup>

The recommendation then adds ominously, "If Federal regulation is to be avoided, States must be responsive to tis important obligation."<sup>3</sup>

<sup>1</sup>Note that this introduction largely ignores the whole question of federal-state intergovernmental relations, that is, the state public utility commissions with the Federal Energy Regulatory Commission, the Federal Communications Commission, the Civil Aeronautics Board, and the Federal Maritime Commission and concentrates only on state-to-state horizontal relations.

<sup>2</sup>The National Power Grid Study, vol. I--Final Report (Washington: U.S. Department of Energy, Economic Regulatory Administration, 1980), p. 71.

<sup>3</sup>Ibid.

The study also suggests that states consider an "interstate compact" (which itself requires congressional approval) or less formal cooperative arrangements like the sharing of technical staff. Organizationally it suggests that groupings of states might parallel the National Electric Reliability Council hierarchy, though of course other less ambitious groupings could perhaps more easily be made.

A second and related line of argument (actually several lines) appears in the academic literature as, for example, a 1979 paper delivered to the National Conference of the American Society for Public Administration entitled, "State Utility Commissions as Vestigal Organs: The Regional Context of Electric Utility Regulation."<sup>4</sup> Though the author is a good deal less sure that state PUCs are indeed "vestigal" by the end of the paper, the gist of the argument throughout the presentation may be summarized as follows:

1. that public policy, for example, the Federal Power Act of 1935, authorized the (then) FPC to promote cooperation and coordination of services among fragmented electric utility systems
2. that the 1935 Public Utility Holding Company Act made an explicit exception for holding companies that operate integrated regional electric systems.
3. that transmission technology has allowed and induced increasingly larger service territories and increasingly integrated multistate utility systems

<sup>4</sup>George Lagassa, "State Commissions as Vestigal Organs: The Regional Context of Electric Utility Regulation," Kansas Law Review, 28, (Winter 1980): p. 29.

4. that while FPC Order 388-2 required nonvoting participation in regional reliability council meetings by appropriate state commission staff, their effective authority is weak and largely ancillary
5. that, on balance, the proliferation of energy-siting agencies at the state level complicates rather than assists multistate utility regulation.
6. that conflicting growth policies and widely varying rate relief practices serve to hinder regional regulation and give conflicting signals to utility companies that operate in several states
7. that in situations of power emergencies (for example, a coal strike), most multistate cooperation tends to fall apart as each state "sees to its own" with independent actions that may well exacerbate the general difficulty for the network.

The cited paper also expresses concern about the disinclination (and questions the ability) of state regulators to address regional policy issues but concludes that "...it is imperative that the states voluntarily cooperate in order to deal adequately with their common regional interests in reliable electric power."<sup>5</sup> The author then expresses the view (widely held by the Congress, the Carter administration, and many writers) that "If the states fail to act on their own, this increasing federalization of electric utility regulation can be expected to continue unabated...."<sup>6</sup> Finally, in defense of a continued strong state role in utility regulation, the illustrative article ends with this finding:

The fact remains that the states do have a legitimate interest in both the siting and ratemaking components of electric utility regulation; and they offer a perspective which is markedly different than that of the federal government. Where the federal government sees balance of payments, foreign relations and national security problems, the states see more localistic and immediately pragmatic concerns. Federal devolution of authority to federally defined regions may result in inadequate attention to these very real concerns.<sup>7</sup>

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

A third example of renewed interest in regional regulation is represented by the congressional hearing held May 19, 1979 by Congressman Michael Barnes (Maryland) through his membership on the House Judiciary Subcommittee on Administrative Law and Governmental Relations. While this hearing was called to focus on the immediate question of rate disparities between two states (Maryland and Virginia) and the District of Columbia encompassed in the Washington metropolitan area, one of the questions that witnesses were asked to treat was the following:

What means--legislative or otherwise--can be developed to effectively encourage the standardization of regulatory practices, and in turn, equity in utility practices, for regions of the country that are being serviced by multijurisdictional utility companies?<sup>8</sup>

In the course of the hearing, a U.S. Department of Energy official argued that while greater information sharing among public utility commissions (PUCs) that regulate multistate utilities was probably desirable, the Public Utility Regulatory Policies Act of 1978 (PURPA), if properly complied with, would go a long way in narrowing interstate differences; thus, no additional legislation for this purpose was needed.<sup>9</sup> An FERC witness testified that in addition to PURPA, the Uniform System of Accounts and the NARUC Electric Utility Cost Allocation Manual are effective efforts toward standardization of regulatory practices along with frequent informal coordination and cooperation among state commission staffs.<sup>10</sup> Accordingly, he did not see a serious need for additional federal action but did suggest that if the need in fact exists, one way to accomplish regional regulation would be through the establishment of area wide rates "developed by some

<sup>8</sup>U.S. House of Representatives, Hearings on Regional Cooperation in Utility Ratemaking conducted by Congressman Michael Barnes, Rayburn House Office Building, May 19, 1979.

<sup>9</sup>Ibid. Statement of Howard Perry, Director of Regulatory Assistance, Office of Utility Systems, Economic Regulatory Administration, U.S. Department of Energy, p. 10.

<sup>10</sup>Ibid. Statement of William W. Lindsay, Director, Office of Electric Power Regulation, Federal Energy Regulatory Commission, pp. 5-6.

sort of joint board made up of State Commissions having jurisdiction."<sup>11</sup>

Certain witnesses considered the question of whether the interstate compact mechanism that is currently used for transportation regulation in the District of Columbia-Virginia-Maryland metropolitan area might be as well applied to utility regulation; one spoke of adding utility regulatory authority to existing interstate compacts or of securing passage of a congressional resolution calling for the study of rate disparities in the 39 interstate Standard Metropolitan Statistical Areas;<sup>12</sup> another concluded that "regional regulation of the energy and telecommunications industries is not necessitated by principle or practice."<sup>13</sup>

The Maryland Public Utilities Commission witness spoke in favor of considering uniform standards for the processing of rate cases in adjoining jurisdictions adding that planning for future generating plants should be done regionally.<sup>14</sup> The District of Columbia Public Utilities Commission witness said that cooperation in many aspects of ratemaking "not impinging upon the legal right and obligation of each Commission to reach its own decision on just, reasonable, and non-discriminatory rates...." was desirable.<sup>15</sup> Finally, the New England experience<sup>16</sup> in regional regulation

<sup>11</sup>Ibid., pp. 7-8.

<sup>12</sup>Ibid. Statement of Walter A. Scheiber, Executive Director, Metropolitan Washington Council of Governments, p. 3.

<sup>13</sup>Ibid. Statement of William R. Stratton, Chairman, Washington Metropolitan Area Transit Commission, p. 3.

<sup>14</sup>Ibid. Statement of Commissioner Lila K. Schifter, Public Service Commission of Maryland, p. 14.

<sup>15</sup>Ibid. Statement of Elizabeth H. Patterson, Chairman, Public Service Commission of the District of Columbia, p. 3.

<sup>16</sup>Ibid. Statement of Andrew L. Niven, Secretary and Staff Director, New England Conference of Public Utilities Commissioners, Inc.

was testified to, as was the emerging seven state emerging Maryland experiment (see below).<sup>17</sup>

Congressman Barnes, a former public utility commissioner, having spoken on the subject on the House floor on February 8, 1979,<sup>18</sup> and having held the above-mentioned hearing on May 1979, introduced legislation on June 28, 1979 "to amend the PURPA to provide for a study concerning cooperation among state agencies involved in retail electric utility ratemaking." This became H.R. 4652, a copy of which appears as appendix A.

A number of other examples could, of course, be cited in support of the thesis that this is a proper time for realistic reappraisal of what usefully might be done in regional regulation, but those presented may provide sufficient support for the thesis. The next chapter considers more specifically regionalism as a concept in government, in the utility industry, and in regulatory organizations.

<sup>17</sup>Ibid. Schifter, p. 15.

<sup>18</sup>Congressional Record--House, February 8, 1979, pp. H534-35.



## CHAPTER 2 REGIONALISM

### Introduction

The purpose of this chapter is to describe more fully some of the concepts of regionalism found in government and the utility industry. Federal and state approaches to regionalism are sketched; interstate compacts are described in some detail from the political science vantage point; and regional organizations of utility companies are described.

### Regionalism in Federal Government

There are two general approaches to regionalism in government. The first is based upon a federal belief that national programs may be more easily administered through a regional rather than an exclusively national perspective. An example of this recognition was the establishment by the federal government of 10 Federal Administrative Regions (figure 1). Many federal governmental agencies, especially in the 1950s and 1960s as federal programs expanded, found it difficult to administer their programs centrally. More and more agencies had established field offices and began to coordinate those office activities by establishing a middle managerial regional office. Programs and projects of one agency had begun to overlap or conflict with those of other agencies as the functional responsibilities for federal programs became more murky while the scope and number of agency activities increased. Problems of regional coordination of projects in support of federal programs were observed in education, housing, transportation, and public welfare, to name a few. In order to prevent additional chaos and to deliver the federal programs to the state and urban area citizenry more effectively, the 10 federal administrative districts were delineated with regional councils as a promising mechanism for resolving interagency issues at a regional level.

Figure 1

# U.S. FEDERAL ADMINISTRATIVE REGIONS



SOURCE: U.S. Bureau of the Census

A second kind of federal regionalism is occasioned by special economic problems. Most specifically, federal concern for areas of the nation that were persistently lagging in economic development led Congress and the to establish the Appalachian Regional Commission and the Public Works and Economic Development Regions (figures 2 and 3 respectively). The acts creating these regions were similar in nature and were based on the conclusion that certain conditions existed in these regions that caused severe economic decline, and that these conditions were susceptible to regional policy treatment.

In finding that other federal programs acting separately were ineffective or ill suited for solving the particular problems of the regions in question, the enabling legislation authorized funds specifically to support economic development and growth projects for each region. The federal cochairman and the governors of the participating states formed a regional action planning council, and the costs of administering the initial two years of operation were federally funded. The secretary of the U.S. Department of Commerce is the federal administrator of each one except the Appalachian Regional Commission, which has a separate administrator.

Thus, in order to improve both the planning and implementing of federal programs and to assure as much efficiency as possible, the federal government has engaged in at least two types of regionalism, one unilaterally and the other in participating fashion. In the first type (for example, the establishment of Federal Regional Councils), the initiative and authority are clearly federal and the emphasis is interagency and hierarchical. The second type of federal participation in regionalism, some balance exists between the federal and state participants, the sources of funds, and concurrence in the uses of the program dollars, and the emphasis is intergovernmental.

Figure 2

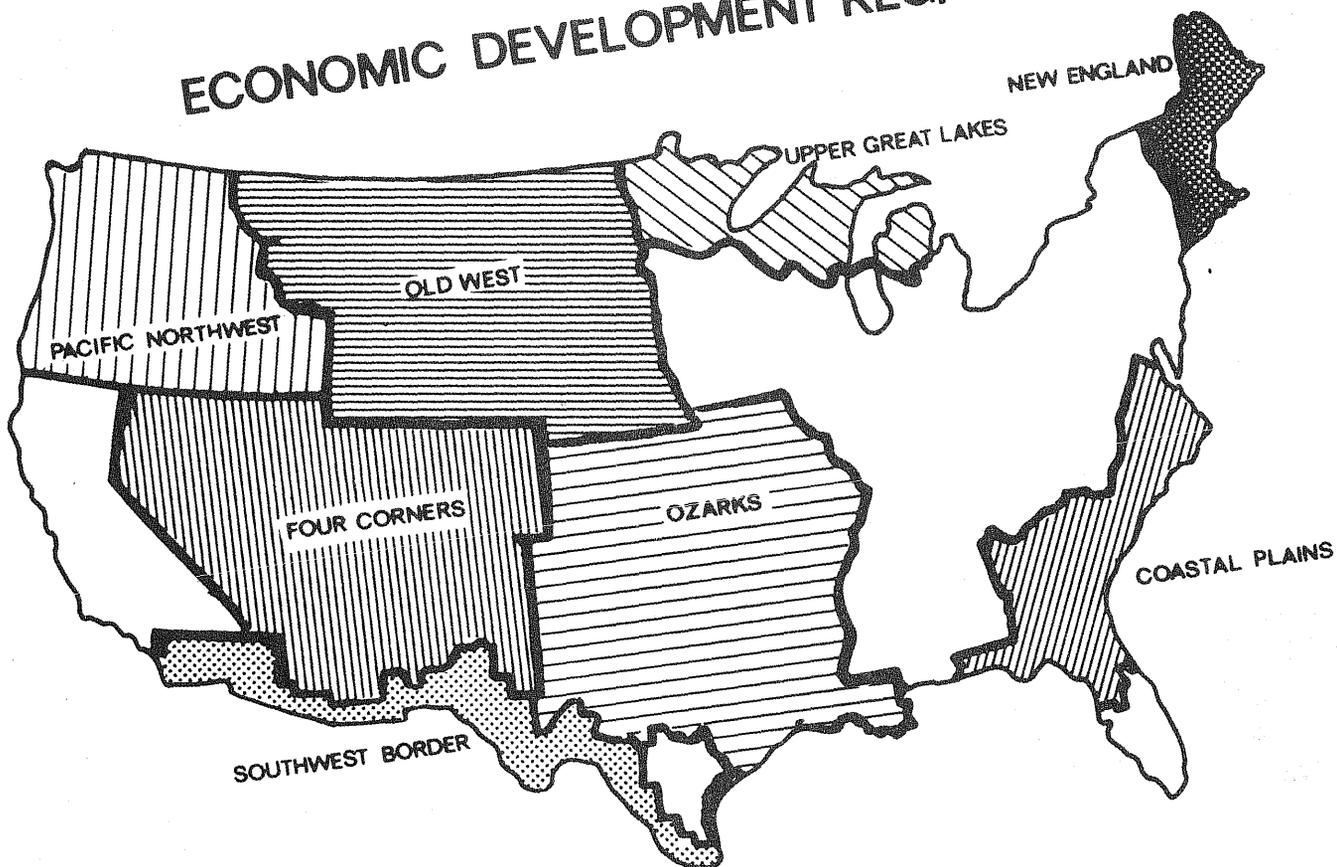
# THE APPALACHIAN REGION



SOURCE: The Appalachian Regional Commission

Figure 3

# ECONOMIC DEVELOPMENT REGIONS



Note: On January 9, 1979, three additional regions were "designated" but are not yet operational.

Source: U.S. Department of Commerce, Office of Regional Development.

## Interstate Compacts<sup>1</sup>

The U.S. Constitution defines and outlines the authority of the federal government and state governments to act on a multistate basis. While the federal government clearly has the major authority to act on interstate matters, the individual states also possess the authority under the U.S. Constitution to cooperate on a multistate basis. The authority for interstate compacts is contained in the "compact clause" of the United States Constitution (Article I, Section 10, paragraph 3):

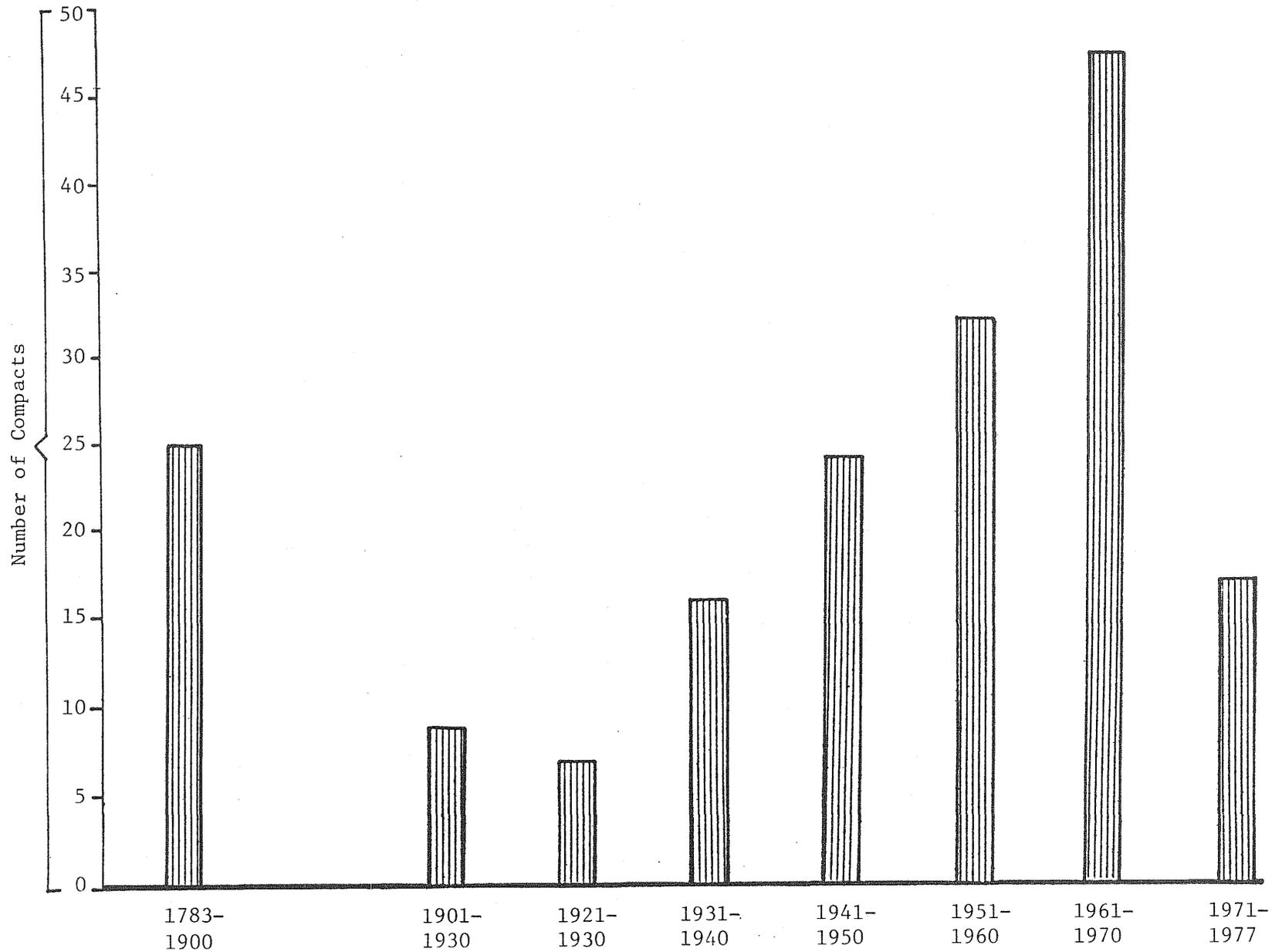
No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay. (Emphasis added.)

The founders intended this clause as a measure to aid in keeping a unified nation, but it has been used to enable states to act jointly. The compact method has been used to bring about the cooperative development of the port of metropolitan New York and New Jersey and has provided for the allocation between states of common river systems. Compacts have also been used to abate water pollution, protect fisheries, improve education, encourage forest fire protection, conserve interstate parks, regulate oil and gas, provide for civil defense needs, reduce crime, and construct bridges, highways, and airports.

As shown in Table 1, the growth of interstate compacts has had a sudden and sustained upsurge in the twentieth century. In the first 123 year period only twenty-five compacts were adopted. Most of these dealt primarily with the adjustment of boundaries between states. The twentieth century saw a steady increase in the use of compacts, and more interstate compacts occurred since 1950 decades than during the entire preceding time span. The reason for this abrupt change for the growth of interstate

<sup>1</sup>For a legal discussion of interstate compacts and how they might bear in regional regulation, see chapter 3, p.37

# GROWTH OF INTERSTATE COMPACTS 1783-1977



Source: Council of State Government, Interstate Compacts 1783-1977, Washington, D.C., 1977.

compacts is widely reputed to be the growing complexity of our society, rapid industrialization, and growing urbanization. According to information provided by the Council of State Governments, 178 interstate compacts were in effect in 1977. Of this number, 100 were bilateral, 48 were multistate, and 30 were nationwide. Some 33 other compacts were initiated by states but are now dormant or defunct.<sup>2</sup>

In relation to modern problems, there have been several landmarks in the use of interstate compacts. In 1921, the New York Port Authority (now known as the Port Authority of New York and New Jersey) became the first major intergovernmental agency acting on behalf of two states. The Colorado River Compact (1929), embracing seven states with a wide geographical area, was the first attempt to use a compact for resolution of regional water problems. This compact was followed by a number of additional water allocation compacts in the West.

During the 1930s, several significant developments occurred in this field. State officials worked with officials from other states concerning particular items of common interest. The initial compact of this type, the Interstate Compact to Conserve Oil and Gas, was functional rather than regional, since it was open to all oil-producing states. The first compact of total national scope, the Interstate Compact for Supervision of Parolees and Probationers, was also established during the 1930s. In the same period, a beginning was made in the use of compacts to establish joint regulatory machinery (although of a limited character) in the field of pollution abatement. New Jersey and New York adopted the Tri-State Sanitation Compact in 1935 and 1936 respectively, joined by Connecticut in 1941. The Ohio Valley Sanitation Compact was also initiated by the states of that river basin.

<sup>2</sup> This occurs because of failure to achieve the requisite number of ratifications, failure to receive the consent of Congress, repeal of previous ratification legislation, transformation into a successor compact, lack of effective implementation, or federal government preemption of the subject.

Since the close of World War II, five major trends are revealed in the development of interstate compacts. First, the proportion of regional and national compacts in relation to bistate agreements has increased greatly. The Great Lakes Basin Compact, Southern Regional Education Compact, Northeastern Interstate Forest Fire Protection Compact, Pacific and Gulf States Marine Fisheries Compacts, and the Western Interstate Energy Compact, are all illustrative of this trend.

Second, there has been a rapid growth in the use of the compact device itself. Compacts have been fully accepted as effective instruments of interstate cooperation, as evidenced by the cited graph.

Third, the interstate compact increasingly is utilized as a method of securing intergovernmental cooperation in a large number of functional areas such as corrections, education, forest fire protection, health, motor vehicles, nuclear energy, pest control, planning and development, public works, recreational parks, transportation, and welfare.

Fourth, there has been a trend toward creating facilitative compacts to provide legal channels for interstate or intergovernmental action without creating intergovernmental agencies. Compacts dealing with civil defense and disaster, detainers, driver licensing, juveniles, libraries, mental health, mentally ill offenders, and the placement of children illustrate this trend.

Fifth, interstate compacts have been used as a mechanism to unite the constitutional powers of both levels of government while creating a regulatory agency of all party jurisdictions. Two compacts now in effect, the Delaware River Basin and the Susquehanna River Basin, exemplify this approach.<sup>3</sup>

<sup>3</sup>The Council of State Governments, Interstate Compacts 1783-1977, Lexington, Kentucky, 1978, p. xii.

Basically, there are two ways that compacts can evolve: (1) through reciprocal legislation by the involved states, and (2) through the contract system. In the first type, states with a common problem consent to form an agreement (for example, the particular basis for the compact) and pass similar legislation. Usually a ratification procedure is undertaken by all states to approve the final agreement. Then it is approved by Congress, at which time it becomes a binding compact. The second type (the contract system) is slightly different and involves a five-step process. First, Congress authorizes the negotiation of the compact in stating its purpose(s). Second, the affected state's legislature authorizes commissioners representing the state to meet with commissioners appointed from other states to negotiate a compact. Third, the commissioners meet (with a Federal representative as cochairman) and fourth, sign the compact. Finally, Congress ratifies the compact. Enforcement of interstate compacts is exercised in the federal courts through the mechanism of an interstate suit.

The most visible interstate compacts to date, and probably the most successful, have been those creating or strengthening regional agencies or authorities. Five of these are briefly described below, along with a brief overview of "other subjects" covered by interstate compacts.<sup>4</sup>

1. Tri-State Transportation Commission. The commission was created by interstate compact among three states (New York, New Jersey, and Connecticut) in 1965. Its primary role was in planning transportation and land use. Since its creation, its functions have expanded to provide information to other regional agencies, administer transportation demonstration projects, conduct special studies on request, and act as a clearinghouse for local proposals for federal programs in different functional fields.

<sup>4</sup>Ibid.

2. Port Authority for New York and New Jersey. The Port Authority was created in 1921 and was the result of a compact between New York and New Jersey with the consent of Congress. Its mission is to provide transportation, terminal, and other facilities of commerce within the metropolitan district covering New York and New Jersey. Thus, it is a "metropolitan district compact" involving parts of states as opposed to whole states.

The executive director of the port is responsible to 12 commissioners (6 from each state) who are appointed by the respective governors with the approval of the U.S. Senate. In addition, the actions they take at authority meetings are subject to gubernatorial veto.

The founders of the Port Authority were primarily the business and commercial interests that desired to promote unified economic and transport developments. The Port Authority of New York and New Jersey has been involved in many activities, including the construction and operation of tunnels, the building of the World Trade Center, and the development of waterfront and terminal (bus and trucking) facilities.

3. The Delaware River Port Authority. This authority was modeled after the New York compact. Like New York's, Delaware's port was created by business, commercial, and labor groups who favored a compact. The major difference between the two authorities is in the area of mass transit. Although granted similar power under the compact, this authority does not have the financial base to support a mass transit system like that of New York.

4. Bi-State Development Agency. This authority is also a metropolitan authority created by interstate compact. However, this compact, designed to help economic growth in the St. Louis area, was not granted sufficiently broad enough power to develop the metropolitan transportation network such as that possessed by New York and New Jersey.

5. River Basin Administration. Several compacts have been established on this basis, including the Colorado River Compact, Delaware River Basin Commission, New England Flood Control Compact, and the Wabash Valley Interstate Commission. The most important role that these bodies have is to administer waterways in their region such that the flow of water is allocated in a mutually agreeable manner.

6. Other Subjects Covered by Compacts. The most well known interstate compacts have been noted above, but there are also other important interstate compacts. As mentioned, the subjects covered include education, crime control, and health, and welfare. These interstate compacts are not as specific in their directives as those described previously. Examples include the Southern Regional Educational Compact designed to improve opportunities for higher education in the South and the Interstate Commission on Crime, under whose auspices was drafted the Interstate Compact for the Supervision of Parolees and Probationers. All states are now members of this compact to help reduce the crime problem.

As can be seen by the above, nonfederal multistate arrangements abound in areas of state jurisdiction when it is necessary for two or more states mutually to support each other in fulfilling their individual responsibilities. Whether by reciprocal legislation among the involved states or by contract, both supported by a congressional act, the states have established the means to achieve a specific goal mutually satisfactory to the participating states.

If such formal actions are authorized in creating regional agencies or authorities to plan, operate, and manage physical programs such as in transportation and land use, then the question of whether regulatory bodies of various states may do something similar is, in part, answered. The mechanism exists but requires sufficient extension, legal and institutional, to establish its efficacy for multistate regulation.

## NARUC and Regional Conferences

The National Association of Regulatory Utility Commissioners (NARUC) is an association of governmental regulatory agencies. It was formed in 1889 as a nonprofit organization to serve public utility regulation in the nation. Its membership includes the governmental agencies of the 50 states, Guam, Puerto Rico, and the Virgin Islands, and the District of Columbia.

The objectives of NARUC, as contained in its constitution, are the advancement of commission regulation through the study and discussion of subjects concerning the operation and supervision of public utilities and carriers, the promotion of uniformity of regulation of public utilities and carriers by the the several commissions, the promotion of coordinated action by the commissions of the several states to protect the common interests of the people with respect to the regulation of public utilities and carriers, and the promotion of cooperation of the commissions of the several states with each other and with the federal commissions represented in the Association.<sup>5</sup>

Thus the primary mission is to serve the public interest by improving public utility regulation through joint action as a key instrumentality in developing and maintaining strong federal-state cooperation in regulating utilities and carriers.<sup>6</sup>

<sup>5</sup>Constitution of The National Association of Regulatory Utility Commissioners (as amended November 16, 1978). Although federal agencies have long held membership, the association is uniformly recognized as representing the state viewpoint in its advocacy before the Congress and the judiciary.

<sup>6</sup>Paul Rodgers, The NARUC Was There: A History of the National Association of Regulatory Utility Commissioners (Washington, D.C., 1979), p. 54. (The material that follows is excerpted in part from the text, especially chapter VI.)

Accordingly, NARUC has developed model procedures and codes in the interest of uniform regulation at the state level. Probably one of the most widely implemented models was the Standard Filing Requirements--Uniform System of Accounts, developed by the NARUC Standing Committee of Accounts. This model for electricians has been implemented in some form by most.

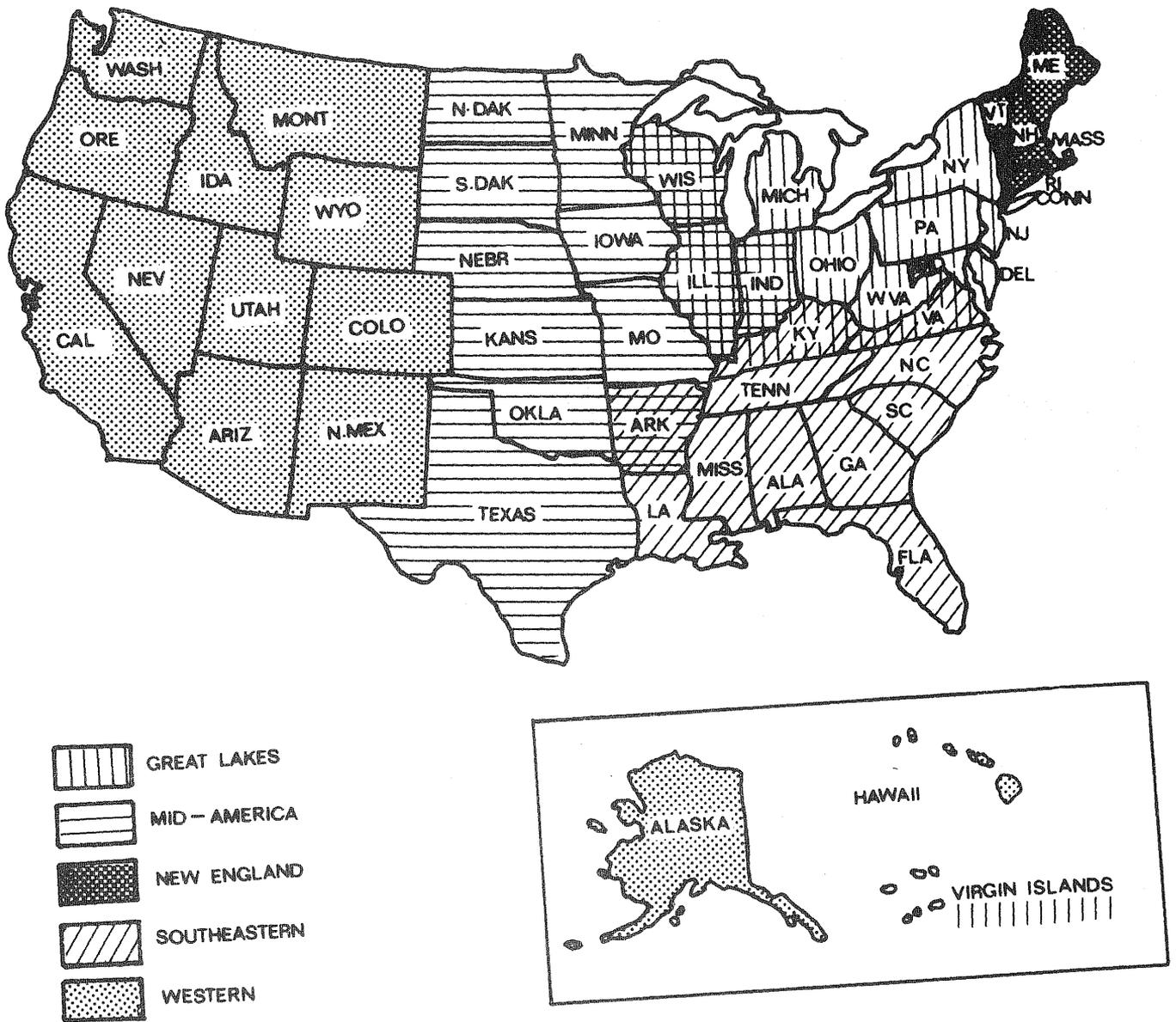
NARUC has encouraged the formation of regional conferences as NARUC affiliates. There are now five such groups (identified in Figure 4). They are as follows:

1. The Southeastern Association of Regulatory Utility Commissioners, which was formed in 1917, comprises 11 states. Those states are Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, Mississippi, South Carolina, Tennessee, and Virginia.
2. The Western Conference of Public Service Commissions, formed in 1941, includes 13 states. Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
3. The New England conference of Public Utility Commissioners, in existence from 1946, was incorporated in 1976 and was established as a working regional support function to the 6 New England state public utility commissions. The states are Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.
4. The Great Lakes Conference of Public Utilities Commission is the largest regional conference. It is comprised of 13 states, the District of Columbia, and the Virgin Islands. The states are Delaware, Illinois, Indiana, Maryland, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin. The conference was formed in 1956.
5. The Mid-America Regulatory Commissioners, also formed in 1956, includes 13 states: Arkansas, Iowa, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

Six states are in more than one regional conference. Thus, Virginia is in both the Mid-America and the Southeastern conferences. Illinois,

Figure 4

# REGIONAL REGULATORY CONFERENCES (NARUC AFFILIATES)



SOURCE: National Association Regulatory Utility Commissions, 1980

Indiana, Minnesota, and Wisconsin are members of the Mid-America and the Great Lakes Conference. Finally, Arkansas holds memberships in both the Southeastern and Mid-America conferences.

Probably the most active regional conference is the New England Conference of Regulatory Utility Commissioners. For this reason, a somewhat detailed exposition of its activities is included in chapter 4.

### Regionalism and the Utility Industry

The National Electric Reliability Council (NERC) was established by the electric utility industry in 1968 and incorporated in 1975. Its purpose is further to "...augment the reliability and adequacy of bulk power supply in the electric utility systems of North America."<sup>7</sup> NERC is structurally composed of nine regional councils whose memberships include nearly all major electric utility systems in the United States and portions of Canada.<sup>8</sup>

NERC is governed by a board of trustees, consisting of two representatives from each regional council, plus such additional members as necessary to assure at least two representatives from each segment of the electric utility industry.<sup>9</sup> Meetings of the board of trustees are attended by observers designated by the secretary of the U.S. Department of Energy, the Edison Electric Institute (EEI), the American Public Power Association (APPA), and the National Rural Electric Cooperative Association (NRECA). NERC is, in short, an organization representing electric utilities from nearly all of the United States.

<sup>7</sup>79 Annual Report (Princeton, N.J.: National Reliability Council, 1980).

<sup>8</sup>For the purposes of this report, our focus is upon NERC as it affects state commission regulation in the United States. While membership of NERC is predominantly composed of investor-owned utilities, a large number of rural electric cooperatives and municipal and federal public power utilities are also members.

<sup>9</sup>Included in this category are investor-owned, federal, rural electric cooperatives, and municipal/state.

While state and federal regulatory activities regarding electric utility systems have been bounded by various legislative and judicial rulings, the electric utility industry as a whole has acted in a fairly cohesive manner in creating a national organization to address certain specific goals.

As can be seen in figure 5, NERC not only includes all of the continental states but is also international in scope. Further, the territory included in seven of the nine reliability councils dissects portions of states in twenty-eight instances.<sup>10</sup>

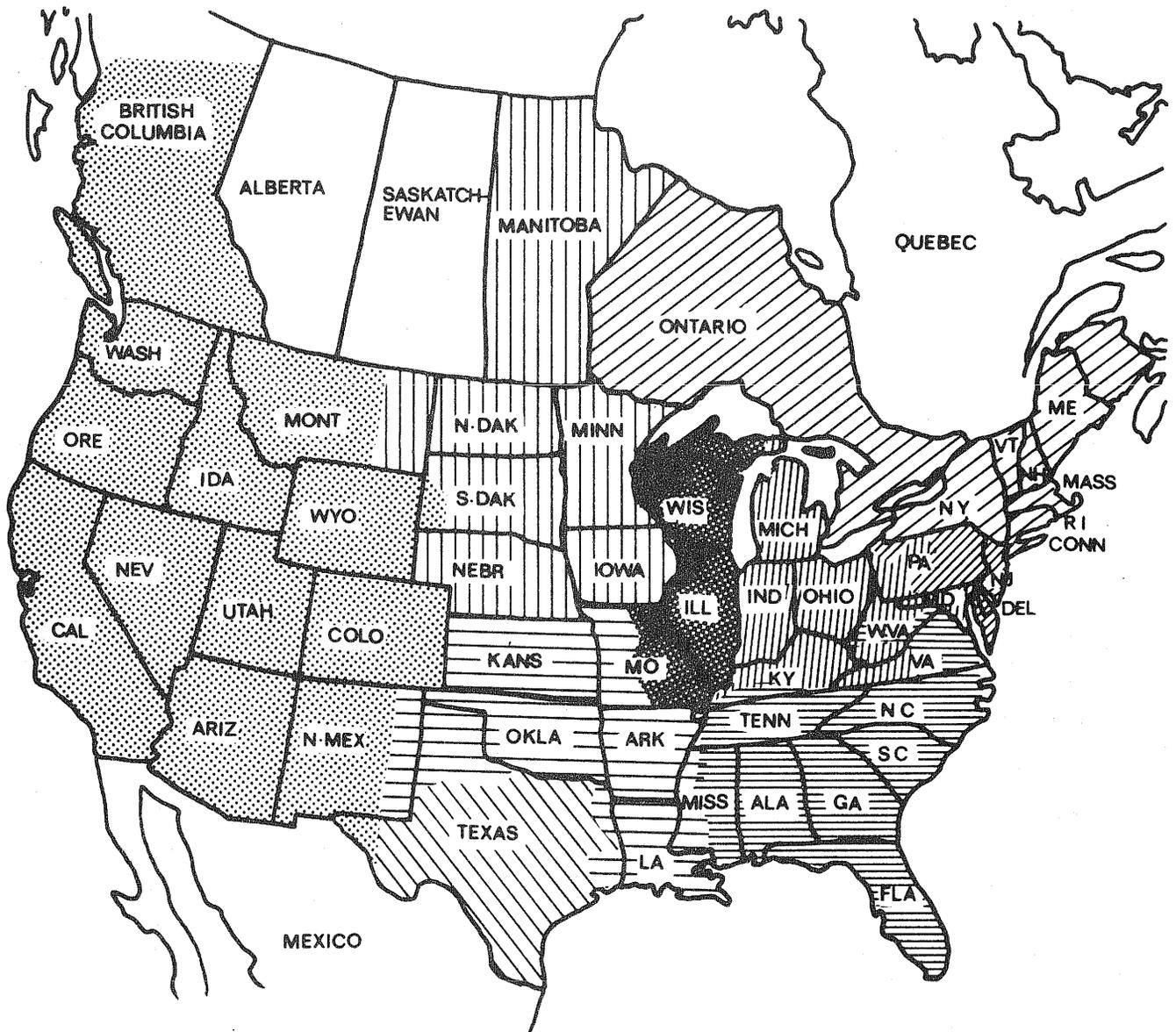
NERC, the nine reliability councils, and the individual member electric utilities reflect the economies of scale that presently exist in the production, transmission, and distribution of electricity. These economies of scale often transcend state borders and permit integrated or coordinated activity between adjacent reliability councils, adjacent utilities across state borders, and adjacent service territories in different states of a single utility. It is obvious but important to note that the pervasiveness and extent of these formal and informal activities of the electric utility industry far exceed those conducted to date by adjacent state regulatory commissions. The joint planning or costsharing of new generating plant and interconnection facilities by individual utilities and reliability councils, the development of NERC's Multiregional Modeling Group to develop computer-simulated demand for various network configurations, and the extensive sharing of staff of individual electric utilities with their own reliability council or with NERC are concrete instances of the extent and pervasiveness of utility industry cooperation.

Interestingly, NERC's 1978 and 1979 annual reports show no state regulatory commissioners or staff listed as observers or as members of the 17 committees or task forces operating under NERC's authority. Several representatives of the U.S. Department of Energy are, however, either

<sup>10</sup>See appendix B for a complete listing.

Figure 5

# NATIONAL ELECTRIC RELIABILITY COUNCIL



	<b>ECAR</b> East Central Area Reliability Coordination Agreement		<b>MAIN</b> Mid-America Interpool Network		<b>SERC</b> Southeastern Electric Reliability Council
	<b>ERCOT</b> Electric Reliability Council of Texas		<b>MARCA</b> Mid-Continent Area Reliability Coordination Agreement		<b>SPP</b> Southwest Power Pool
	<b>MAAC</b> Mid-Atlantic Area Council		<b>NPCC</b> Northeast Power Coordinating Council		<b>WSCC</b> Western Systems Coordinating Council

SOURCE: National Electric Reliability Council, Annual Report, 1979

members or observers.<sup>11</sup> Given the otherwise broad representation of important regulatory and energy management agencies in NERC's operations, the absence of state regulatory agency representatives is curious. Particularly where (as was mentioned) there are many instances in which reliability councils split a state into two or more parts, it would seem useful to have state agencies with regulatory, siting, and environmental authorities (so integral to new plant construction or the siting of new bulk transmission facilities) somehow involved.

The NERC also appears to have multiple and rather unrestricted opportunities for interregional communication. Interregional communication, cooperation, and coordination are possible through (1) the reliability councils' several operating committees, (2) the boards of the reliability councils, (3) the professional staff and manager of the reliability council, and (4) direct contacts from one utility to another. The interregional activities include both formal and informal actions, where data might be exchanged or agreements reached on issues such as plant-siting plans.

#### Regionalism and Utility Companies

Today, nearly all the major electric utility systems in the United States are interconnected. There has been a steady growth in the past 80 years from isolated systems generating sufficient power to service local areas to the current grouping of large interdependent generating systems. This growth reflects the recognition by electric utility management that interconnection and coordination of operations lead to significant economies of scale, cost minimization and improved service reliability. In its 1970 National Power Survey the Federal Power Commission noted the following:

...There are thousands of arrangements among systems from all segments of the industry providing for various degrees and methods of electrical coordination. These variations reflect differences in load density, characteristics of generating resources, geography, and climate. They are also a product of

<sup>11</sup>See appendix C for a listing of the NERC Board of Trustees, committees, and observers and the task forces of the electric reliability councils.

managerial view with respect to planning, marketing, competition, and retention of prerogatives. Because of these differences, no single definition of coordination has been established by the electric utility industry....Coordination is joint planning and operation of bulk power facilities by two or more electric systems for improved reliability and increased efficiency which would not be attainable if each system acted independently. Full coordination involves coordination of all systems within an area, to the extent technologically and economically feasible to permit the serving of their combined loads with a minimum of resources and to exploit opportunities for coordination with adjacent areas.<sup>12</sup>

A wide variety of formal and informal coordinating arrangements has developed since the 1920s and 1930s when the fundamental technical problems of interconnected operations were solved. Probably the single most dramatic event that caused a national awareness of the need for electric power coordination was the Northeast power failure of November 1965. Concern for the reliability of bulk power supply continued as other system disturbances occurred subsequently.<sup>13</sup> These power failures demonstrated the need for broad geographic areawide planning and coordination of operations. The utilities responded by (among other things) forming coordinating organizations. The 1970 National Power Survey noted that these informal arrangements are a means to exchange information regarding system management, reliability and increased economies.<sup>14</sup>

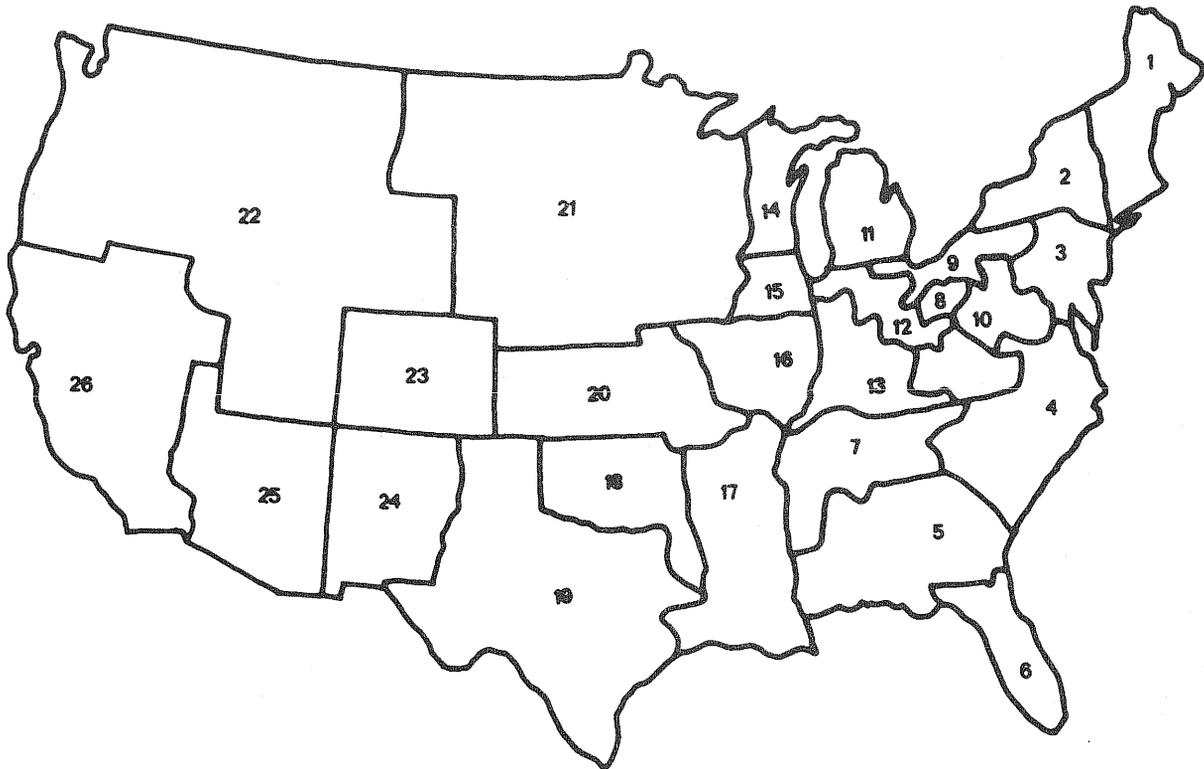
The pooling arrangements shown in figure 6, were established because economy, reliability or security may thereby be achieved by pool participants. The degrees of joint planning and operations for generation, transmission, or distribution by the participating companies can range from very loose agreements for energy transfer to coordination of planning and operations, or to completely integrated operations. On this point, the U.S. Department of Energy reports the following:

<sup>12</sup>Federal Power Commission, National Power Survey, Washington D.C., U.S. Government Printing Office, 1970, vol. II, chapter 17, p. 1.

<sup>13</sup>Details of these major electric system disturbances are evaluated in Federal Power Commissions, Prevention of Power Failures, 3 vols. (Washington D.C.: U.S. Government Printing Office, 1967.

<sup>14</sup>1970 National Power Survey, op., pp. 1-17-2 - 1-17-35.

# POWER SUPPLY REGION (POWER POOL SYSTEMS)



- |  |   |
|--|---|
| <p><b>1 New England Power Pool</b></p> <p><b>2 New York Power Pool</b></p> <p><b>3 Pennsylvania-New Jersey-Maryland Interconnection</b></p> <p><b>4 Virginia-Carolinas Reliability Group</b></p> <p><b>5 Southern Company and Other Systems</b></p> <p><b>6 Florida Electric Power Coordinating Group and Other Systems</b></p> <p><b>7 Tennessee Valley Authority and Other Systems</b></p> <p><b>8 American Electric Power Company, Northern Indiana Public Service Company and Other Systems</b></p> <p><b>9 Central Area Power Coordination Group</b></p> <p><b>10 Allegheny Power System</b></p> <p><b>11 Michigan Electric Coordinated Systems and Other Systems</b></p> <p><b>12 Cincinnati, Columbus, Dayton Coordinating Group</b></p> <p><b>13 Kentucky-Indiana Power Coordination Group</b></p> <p><b>14 Wisconsin Power Pool</b></p> <p><b>15 Commonwealth Edison Company</b></p> <p><b>16 Illinois-Missouri Pool</b></p> <p><b>17 Middle South Utilities Company, Gulf States Company and Other Systems</b></p> | <p><b>18 Oklahoma</b></p> <p><b>19 Texas</b></p> <p><b>20 Missouri Kansas Pool</b></p> <p><b>21 Mid-Continent Area Power Pool</b></p> <p><b>22 Northwest Power Pool</b></p> <p><b>23 Inland Power Pool</b></p> <p><b>24 New Mexico Power Pool</b></p> <p><b>25 Arizona</b></p> <p><b>26 California Power Pool and Other Systems</b></p> |
|--|---|

**SOURCE:** "Pool Power Procedures and Key Issues", Booz, Allen, & Hamilton, Inc. January 27, 1978.

...there are no simple, standardized pooling arrangements. Each pooling arrangement is unique due to the different needs and system design of the individual member utilities which comprise the pool. Sources vary as to the number of existing pools. The difficulty in identifying some power pools is that many are informal, i.e., no contractual obligation is undertaken and rarely is there any physical plant or equipment that requires joint ownership agreements.<sup>15</sup>

By contrast a formal power pool means that two or more utilities contractually have agreed to coordinate, plan, and/or operate their bulk power facilities so as to gain greater economy and reliability. The agreement clearly specifies each utility's responsibilities. In a fully integrated power pool, the exchange of energy is usually achieved most economically through centralized dispatching so that almost all of the resources required to generate and transmit power are managed at the lowest possible cost. The combined system acts as though it were a single entity. Currently, it is estimated that there are 30 formal power pools with generating capacity of more than 60 percent of the national total.<sup>16</sup> These estimates compare with 1960 calculations of only 9 pools with 23 percent of the generating capacity.

We find then that regionalism is well established in government and in industry in general; that in particular utility companies and regulatory associations have adopted this organizational practice; and that the reasons for doing so hinge on efficiency and economy. The next two chapters considers the legal abstracts to applying regionalism to state public utility regulation along with illustrative experiments in practice.

<sup>15</sup>U.S. Department of Energy, National Power Grid Study (Washington D.C.: U.S. Government Printing Office, 1979) vol. II, p. 21.

<sup>16</sup>Ibid., vol. II p. 22 and National Power Survey, op. cit., p. 1-17-2.

CHAPTER 3  
SOME CONSTITUTIONAL AND LEGAL ISSUES\*

Introduction

An evaluation of the possibilities for regional utility regulation raises a number of important legal issues. It is the purpose of this chapter briefly to discuss several of those legal issues and to reach some conclusions that may assist in focusing the further discussions of regional utility regulation. Accordingly, this chapter will address the concept of state sovereignty, of interstate compacts, the matter of uniform state laws, and the delegation of federal powers.

It should be observed throughout this legal analysis that the concept of "regional regulation" may embrace a range of vastly different approaches --each with attendant legal distinctions. What is meant by "regional regulation" may include merely state consultations with another state, it may include the creation of suprastate authority; or it may involve a multitude of alternatives between the two.

State Sovereignty

At the outset, it is appropriate to consider briefly the concept of state sovereignty. It will be recalled that under our federal system, those powers not vested with the federal government and not denied to the states, are deemed to have been reserved to the states and their citizens.<sup>1</sup> While the federal concept imposed certain reciprocal obligations upon the 4

\*This chapter was prepared by Robert D. Poling, public utility attorney. Mr. Poling is also a member of the bar of the state of Ohio and the District of Columbia and is an Institute Associate with NRRI.

<sup>1</sup>See, the Tenth Amendment of the U.S. Constitution.

states to give full faith and credit to the laws of other states,<sup>2</sup> each state was deemed able to carry on its own government as its citizens provided for in its state constitution.

Typically, the concept of sovereign state powers is not expressly stated in state constitutions but flows from the functional division of powers among the branches of state government. Thus, the exclusive powers to legislate are vested under state constitutions with the legislature, judicial powers with a judiciary, and executive powers with the governor and other officers established by law. The underlying implication is that these constitutional powers vest authority, comprising the sovereign power of the state, in officials designated under the law of that state. Although it is only by implication in most cases, this concept of sovereignty operates to prevent the constitutional vestiture of legislative powers, for example, with persons not subject to the control of the state.

Thus, the irrevocable delegation of law-making powers to persons who are not chosen, not removable, and not subject to state laws may intrude upon the constitutional prerogatives of the people of the state.

It is this legal concept of sovereign power that poses difficulties in connection with proposals for regional regulation. The submission by a state of law-making functions through the delegation, or otherwise, to a superior multistate entity may not be permissible within most state constitutional limits, for such an action would vest authority beyond the control of a state's citizenry and obligate them to comply with law-making decisions they had not themselves approved.

This is not to say, however, that states could not vest authority for state legislatures to undertake the vesting of state sovereign powers with a regional authority, where constitutional authorization so permitted. But, it seems clear that in most cases such constitutional authority does not exist, and that legislative delegation has not occurred.

<sup>2</sup>See, Article IV, Section 1 of the U.S. Constitution.

However, with regard to the operations of multistate activities that assure the retention of state powers, the sovereignty of a state is not intruded upon. The voluntary cooperation with another state, the consideration of another state's action, the coordinated but separate actions of states, the utilization of advisory views for separate but compatible joint state efforts, all involve the retention of each state's sovereignty.

Thus, it would appear that a variety of alternatives exist for state cooperation, short of any state constitutional authorization for regional utility regulation.

### Interstate Compact Law

An important aspect of joint state activities and multistate relations is the Compact Clause of the U.S. Constitution that provides that "no State shall, without the Consent of Congress...enter into any Agreement of Compact with another State."<sup>3</sup>

On its face the Compact Clause appears to prohibit agreements between one state and another without congressional approval. But the interpretation that has been historically given to the Compact Clause has not applied its requirements to all forms of agreements between states. In the landmark decision of Virginia v. Tennessee<sup>4</sup> in 1893, the U.S. Supreme Court acknowledged that the Compact Clause could not have been intended to reach every possible interstate agreement. Instead, the Court construed its purpose as protecting against state encroachment upon federal powers.<sup>5</sup>

<sup>3</sup>Article I, Section 10, Clause 3 of the U.S. Constitution.

<sup>4</sup>148 U.S. 503 (1893).

<sup>5</sup>Justice Field observed: "The terms 'agreement' or 'compact' taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any

Thus, the construction of the Compact Clause was determined to require the consideration of the object of the particular agreement in question.

Since Virginia v. Tennessee, supra, the Supreme Court of the United States has upheld a number of interstate agreements, and entered into without the consent of Congress, which were effected through reciprocal legislation.<sup>6</sup> In New York v. O'Neill<sup>7</sup>, for example, the Supreme Court upheld a Uniform Law to Secure the Attendance of Witnesses from within or without the State in Criminal Proceedings that had been adopted by state legislative enactment in 41 states and Puerto Rico. The uniform statute allowed a judge in an enacting state to invoke process of the courts of an enacting, sister state for the purpose of compelling attendance of witnesses. While these uniform state law cases did not address the Virginia v. Tennessee rule, the Supreme Court has recently had occasion more comprehensively to address the matters of interstate compacts and the decisional rationale that have historically developed.

In 1976, in the case New Hampshire v. Maine<sup>8</sup> the Supreme Court applied the Virginia v. Tennessee test and held that an interstate agreement resolving an ancient boundary dispute did not require the consent of the Congress under the Compact Clause.

interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control." 148 U.S., at 517-518. Field further observed, "Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formaion of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States." Ibid., at 519.

<sup>6</sup>See, for example, St. Louis & F.F.R. Co., v. James, 161 U.S. 545 (1896); Hendrick vs. Maryland, 235 U.S. 610 (1915); Bode v. Barrett, 344 U.S. 583 (1953); and New York v. O'Neill, 359 U.S. 1 (1959).

<sup>7</sup>359 U.S. 1 (1959).

<sup>8</sup>425 U.S. 363 (1976).

More recently, In United States Steel Corporation v. Multistate Tax Commission<sup>9</sup>, the Supreme Court upheld the so-called "Multistate Tax Compact" as valid despite congressional refusal to consent. In reconciling the rule under Virginia v. Tennessee with the later reciprocal legislation cases, the Court found no conflict. In its inquiry to determine the impact of the Multistate Tax Commission upon the federal structure, the Court made this important finding:

...the test is whether the Compact enhances state power quoad the National Government. This pact does not purport to authorize the member States to exercise any powers they could not exercise in its absence. Nor is there any delegation of Sovereign power to the (Multistate Tax) Commission; each State retains complete freedom to adopt or reject the rules and regulation of the Commission. Moreover...each State is free to withdraw at any time.<sup>10</sup>

The Supreme Court further found that the object of the commission to promote uniformity in the application of state-taxing principles would not run afoul of the supremacy of the federal government.

One further observation about the Court's opinion in U.S. Steel, supra, deserves attention. The Court, in its review of historical practice under the Compact Clause, noted that even though most multilateral compacts have been submitted for congressional approval, perhaps out of caution and convenience of the submitting states, this historical practice is not constitutionally controlling.<sup>11</sup> Indeed, the critical test continues to be whether the agreement encroaches upon federal supremacy.

While the interpretation of the Compact Clause by the Supreme Court has indeed established broad rules permitting certain multistate activities without congressional approval where there is no infringement upon federal prerogatives, a precise delineation between agreements requiring

<sup>9</sup>434 U.S. 452 (1978).

<sup>10</sup>Ibid., at 473.

<sup>11</sup>Ibid., at 471.

congressional approval and agreements that are valid without such approval continues to be troublesome.<sup>12</sup> But clearly, the federal government makes the interpretation of the application of the Compact Clause.<sup>13</sup>

Several observations about the reach of the Compact Clause may be made for the purposes of considering its impact in connection with regional regulation.

The sovereignty of each state that has been retained and assured under the reserved powers concept of the Tenth Amendment of the U.S. Constitution, clearly permits states to regulate activities within their jurisdiction, insofar as state regulation does not intrude upon federal powers. For example, in carrying on regulation of commercial activities, states cannot regulate in such a manner as to intrude upon the powers of the federal government under the Commerce Clause.<sup>14</sup> In exercising its own sovereign powers, each state is free to choose the manner and the form of its own regulation. There is, however, nothing under the U.S. Constitution that forbids, by itself, the enactment by one state of a valid law providing for state regulation that is similar to, or identical to, the law of another state. Where, for example, states simply undertake to enact uniform utility laws, without special reciprocal provisions, such laws appear to be the singular and separate acts of each state sovereign, even though they are similar laws and involve no Compact Clause issue.

Where state law undertakes to provide reciprocal benefits or obligations to other states enacting similar laws, the Compact Clause requires the examination of whether those reciprocal enactments have the

<sup>12</sup>See, D. E. Engdahl, "Characterization of Interstate Arrangements: When Is a Compact Not a Compact?" 64 Michigan Law Review 63 (1965).

<sup>13</sup>See, for example, D. E. Engdahl, "Construction of Interstate Compacts" A Questionable Federal Question," 51 Virginia Law Review 987 (1965); Note, "Federal Question Jurisdiction to Interpret Interstate Compacts," 64 Georgetown Law Journal 87 (1975); Note, W. M. Reisman, "Interstate Agreements in the American Federal System," 27 Rutgers Law Review 27 (1973); and, Note, "Congressional Supervision of Interstate Compacts," 75 Yale Law Journal 1416 (1966).

<sup>14</sup>See, for example, Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945); Kansas City Southern Ry. v. Kaw Valley District, 233 U.S. 75 (1914); and Kelly v. Washington, 302 U.S. 1 (1937).

legal effect of enhancing state powers beyond what could have been accomplished separately. If there is no intrusion upon federal prerogatives, multistate agreements appear to be valid with no further legislative ratification needed on the part of Congress. Where a multistate agreement does intrude upon federal powers, only congressional approval may permit the operation of such an agreement.

However, where multistate agreements would have the legal effect of constituting a form of regulation, not left to each state to effect separately, the agreements might run afoul of the Compact Clause without congressional approval. For example, the creation of a regional utility commission, whose powers vested by separate states permit it final regulatory jurisdiction over rates and other regulation of utility operation in each of the participating states, might be such as to intrude on Federal prerogatives.

First, matters involving intrastate commerce are reachable by federal regulation on the notion that purely local matters that affect interstate commerce are within the scope of the Commerce Clause of the Constitution.<sup>15</sup> Second, the creation of a regional utility commission to regulate what is, by its constitutional nature, interstate activity may go to the very heart of the Commerce Clause. Clearly, the federal powers are such as to provide for a federal forum for matters beyond the reach of individual states. Thus, to the extent that such regional regulation undertook to regulate interstate activities between one state and another, it would directly intrude upon the Commerce Clause.

However, where regional regulation undertakes to regulate purely intra- state matters, without intruding on the Commerce Clause, in a joint fashion over each state's jurisdiction, perhaps the Compact Clause does not require congressional approval. The difficulty with this latter type of regional regulation is that it involves uncharted waters. No clear pronouncement has so interpreted the Compact Clause, and the expansive nature of the Commerce Clause has brought much of local and state regulation within its potential reach.

<sup>15</sup>See, Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); and Wickard v. Filburn, 317 U.S. 111 (1942).

## State Laws

Perhaps one of the most significant legal obstacles to more effective cooperation among states is the lack of uniform laws relating to public utilities.

The disparities of both substantive and procedural law applicable to utility regulation are both significant and well documented.<sup>16</sup> Although it is not the purpose of this report to fully analyze the differences among the states with respect to utility laws, it can be generally observed that there are numerous substantive differences between, and among, states with regard to such matters as (1) the definition of a regulated utility, (2) the authority granted state regulatory bodies, (3) the methods of fixing rates, (4) the legal obligations imposed upon utilities, and (5) the regulation of municipally owned utilities.

These general differences may be refined even more extensively when the narrower matter of ratemaking is considered. Property lawfully allowed into the rate base, the rate of return itself, and such matters as fuel-adjustment provisions and accounting practices vary significantly from state to state. In a substantive way, these differences in regulation account for only one aspect of the lack of uniform state laws.

Another area of significant difference is the procedure utilized in administrative and judicial proceedings to make regulatory decisions relating to utilities. Procedural differences broadly include such matters as (1) filing and reporting requirements, (2) rules of evidence in administrative proceedings, (3) powers of presiding administrative officials, and (4) procedures for the judicial review of regulatory decisions.

<sup>16</sup>See, for example, Federal and State Commission Jurisdiction and Regulation--Electric, Gas and Telephone Utilities. Federal Power Commission (1973).

Although uniform state laws have been enacted on a variety of matters of common interest to states,<sup>17</sup> little success in the enactment of uniform laws relating to utility regulation has been achieved.

Various versions of a uniform act for state administrative procedures have been proposed.<sup>18</sup> A model act has been designed to provide uniform state procedures before state regulatory agencies, and like the Federal Administrative Procedure Act,<sup>19</sup> addresses such broad procedural matters as rulemaking, adjudications, rules of evidence, ex parte communications, licensing procedures, and judicial review.

With respect to state commissions, the National Association of Regulatory Utility Commissioners (NARUC) has prepared and recommended for adoption by the states "Model Rules of Procedure"<sup>20</sup> for the conduct of proceedings by state utility regulatory commissions. These extensive rules detail more specifically than the Uniform Law matters relating to pleadings, rate applications, complaints, interventions, discovery, conduct of hearings, rules of evidence, and other matters. While these efforts to codify uniform procedural laws and rules of practice have been undertaken, the states have responded with something less than enthusiasm.

The development and adoption of uniform state laws governing the procedure and substance of state utility law may be the first important step toward more extensive state cooperation. Uniform laws could provide a basis to alleviate the burdensome duplication of regulation of a single utility by more than one state. For example, it appears that the disparities in state law, principally in the area of procedural law,

<sup>17</sup>Uniform state laws have been enacted on such matters as partnership law, commercial law, traffic regulation, and a myriad of other subjects.

<sup>18</sup>See, Appendix B at p. 371 of Administrative Law and Government by Kenneth Culp Davis (West Publishing Co. 1975), entitled "Uniform Law Commissioners' Revised Model State Administrative Procedure Act, 1970 Version."

<sup>19</sup>U.S. Code Section 551 et seq.

<sup>20</sup>See, Proceedings of the 88th NARUC Annual Convention (1976), at 478.

between Montana and South Dakota have been significant in preventing the adoption of rules permitting joint hearings on regulatory matters before the commissions of those two states.<sup>21</sup>

While the adoption of uniform utility laws (both substantive and procedural) would not in itself assure cooperation among states or lead to regional regulation, it could serve as a basis for better coordination and exchanges of comparable information. Clearly, the experiences of states operating under similar laws with respect to similar questions obviate the need for each state to start from scratch on every issue confronting it. Analogous consideration of similar problems, or the same problems, by one state could be used in another. The opportunity for shared, and more efficient efforts, could thus be enhanced.

However, even with uniform laws, each state would retain its own authority to administer those laws. State commissions would have no authority to abdicate the responsibilities assigned to them by law and simply to act in concert with, or follow the actions of, other states.<sup>22</sup> Still, the opportunity to engage in joint activities, without the intrusions upon each separate state's sovereignty, would appear to be greatly facilitated through the enactment of uniform laws.

#### Federal Delegation

One of the possible means of providing for at least some forms of regional regulation of utilities is through the delegation of federal powers to regional regulatory bodies.

<sup>21</sup>See Memorandum to the Montana Public Service Commission entitled "Comparison of Montana and South Dakota Administrative Procedure Acts" (August 31, 1976). Discussion of this attempt at regional regulation appears in chapter 4, *infra*, p. 69.

<sup>22</sup>The Illinois Supreme Court recently ruled in Union Electric Co. v. Illinois Commerce Commission, 77 Ill. 2d 364 (1979), that the Illinois Commerce Commission cannot defer to a commission of another state in establishing rates for Illinois customers of a multistate utility, although it may consider in its decision rates established by the commission of the other state.

The broad nature of federal powers over interstate commerce under the Commerce Clause of the U.S. Constitution<sup>23</sup> is such as to reach a variety of regulatory activities presently under state jurisdiction because of the effect of these intrastate activities on interstate commerce. A federal enactment, either wholly or partially preempting state law, could provide a vehicle for the delegation of federal powers to regional regulatory bodies. Such a federal enactment would displace present state utility commission authority and replace it with the authority of a regional body.

The principal impediment that creates doubt as to the legality of this approach relates to the problems under Buckley v. Valeo<sup>24</sup>, in which the Supreme Court of the United States suggested that where persons exercise substantial governmental functions vested by federal law, such persons must be "Officers of the United States," appointed in accordance with the U.S. Constitution.<sup>25</sup> Thus, Buckley indirectly raised the question of whether the delegation of authority to nonfederal officials (state or regional) is constitutionally permissible. Buckley suggests that the delegation of federal authority to persons requires that they be federally appointed.

The delegation of regulatory functions to states does have some precedent.<sup>26</sup> In the area of natural gas regulation, Congress chose to delegate the initial determination of natural gas categories to state regulatory commissions, subject to possible review by the Federal Energy Regulatory Commission.<sup>27</sup> The determination of a gas category by the state commissions would have the effect of determining ceiling prices set in accordance with federal regulations. Although, in the case of the natural gas regulations, the final regulatory action is reserved to the Federal Energy Regulatory Commission, thereby perhaps avoiding a Buckley issue, these examples of delegations evidence some willingness on the part of

<sup>23</sup>Article I, Section 8, Clause 3 of the U.S. Constitution.

<sup>24</sup>424 U.S. 1 (1976).

<sup>25</sup>See, Article II, Section 2 of the U.S. Constitution.

<sup>26</sup>See, for example, United States v. Sharpnack, 355 U.S. 286 (1958); and see, Kauper, "Utilization of State Commissioners in the Administration of the Federal Motor Carrier Act," 34 Michigan Law Review 37 (1935).

<sup>27</sup>Sections 501 (c) and 503 of the Natural Gas Policy Act of 1978, Public Law 95-621, 93 Stat, 3350 (1978). See, Interim Regulations of FERC, 43 F.R. 56448, at 56604 (December 1, 1978).

Congress to defer to states in assisting in the exercise of federal powers.

Thus, at least some regional activities under federal powers may be permissible. Clearly, Congress could avoid the Buckley problem, if indeed it exists, and create regional bodies with members who are federally appointed. Regional bodies created under federal law could be given very broad powers, including many of those presently permitted to utility commissions under state law, and could be designed to carry on the type of state utility regulations now accomplished by each state separately on a regional basis. Of course, the implementation of this type of regional regulatory scheme necessarily restricts individual state regulation of utilities by totally preempting state law.

However, less intrusive alternatives may also be feasible. Federal legislation could authorize more limited regional regulation, or simply authorize the creation of regional study or advisory bodies, whose purpose would be to provide information and assistance to state regulatory bodies. An effort toward the latter approach has been recently initiated by Congressman Barnes, through the introduction of the "Regional Utility Rate Act of 1979," mentioned earlier and presented in appendix A. Although no action has occurred on the legislation, it would, if enacted, require that the U.S. Department of Energy undertake a study of the need for increased cooperation among state agencies involved in retail electric ratemaking and report its findings to the Congress.

Another notable federal legislative effort to provide for greater regional regulation of electric utilities has been initiated with regard to electric power in the Pacific Northwest. During the 96th Congress, the Senate Energy Committee reported<sup>28</sup> the "Pacific Northwest Power Planning and Conservation Act,"<sup>29</sup> and the bill was passed by the Senate.<sup>30</sup> Among other things, this bill would establish a planning council, whose members

<sup>28</sup>See, Senate Report 96-272, 96th Cong., 1st Sess. (1979).

<sup>29</sup>Senate Bill S. 885, 96th Cong., 1st Sess. (1979).

<sup>30</sup>See, Senate floor debates 125 Cong. Rec. S 11585-S 11708 (daily ed. August 3, 1979).

would be appointed by the governors of various states in the region. The council would have the authority to adopt a regional electric power plan. Earlier attempts at a similar effort were unsuccessful,<sup>31</sup> and final congressional action has not been taken on this legislation. One federal enactment that may create the opportunity for cooperative efforts on the part of state utility commissions is the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>32</sup> Among other things, the act imposes various obligations on each state regulatory commission to "consider various Federal ratemaking standards and to determine whether such standards should be implemented."<sup>33</sup>

While it is clear from both the language of PURPA and its legislative history<sup>34</sup> that the act imposes the obligation on each state commission to conduct the required hearings and to consider the required matters, cooperative efforts such as the sharing of information, research, and analysis of the federal standards in general is surely not precluded by the legislation. The development of commission analysis for the record of required hearings could easily be done prior to the actual conduct of the hearing in cooperation with other states. Since the matters to be addressed by each state are the same, obvious efficiencies are suggested by joint state cooperation.

#### State Statutory Provisions

Generally, the powers of most state regulatory commissions are required to be express and may not be implied. The lack of clear statutory authority for a state regulatory commission to engage in any degree of cooperative activity, on a formal basis, probably operates to prevent such activity. Although numerous opportunities undoubtedly exist for the

<sup>31</sup>See, House Bill H.R. 13931, 9th Cong., 2d Sess. (1978); and see, "Pacific Northwest Power Supply and Conservation," Hearings before the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs, 95th Cong., 1st Sess. (1977).

<sup>32</sup>Public Law 95-617, 92 Stat. 3117 (1978).

<sup>33</sup>See, Section 111-112 of PURPA, supra.

<sup>34</sup>See, House Conference Report 95-1750, 95th Cong., 2d Sess. (1978) at 70-75.

informal exchange of information, staff consultations, and other activities in the absence of clear statutory authority, formal actions of state commissions likely require express statutory authority.

For the purpose of briefly assessing the possibilities of cooperative or joint state regulatory commission activities, selected state utility law has been surveyed briefly to ascertain the existence of statutory authority.

The following state provisions were identified:

The Delaware statutory provision permits the state commission to make joint investigations, hold joint hearings, and issue joint or concurrent orders with other state commissions. See, 26 Delaware Code Annotated Section 140.

The District of Columbia provision permits the commission to act jointly or concurrently with the commissions of the United States or of any state. See, 43 D.C. Code Section 207.

The Maryland statute permits the commission to act jointly or concurrently with any U.S. commission or any state or District of Columbia commission. See, Annotated Code of Maryland, Art. 78, Section 59.

The Missouri statute provides that the commission may confer with state and U.S. commissions, that the commission may enter into cooperative agreements or contracts with U.S. or state commissions, and may hold hearings and issue joint and concurrent orders with the commissions of other states. See Vernon's Annotated Missouri Statutes Section 386.210.

The Nevada statute permits the commission to cooperate with the federal government, to confer with other state's regulatory agencies, and to use the services, records, and facilities of federal and state agencies. In addition, the commission may hold joint hearings and participate in joint conferences. See Nevada Revised Statutes Section 703.310.

The New Mexico statute permits the commission to make joint investigations, hold joint hearings, and issue joint or concurrent orders with U.S. or state commissions. In addition, the commission is authorized to negotiate or to enter into agreements or compacts with the agencies of other states, pursuant to the consent of Congress, for certain cooperative efforts under the state law. See, New Mexico Statutes Annotated Section 62-4-1.

The North Carolina statute authorizes the state commission to cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply. See, General Statutes of North Carolina Section 62-2(8).

The North Dakota statute permits the commission to cooperate with, and receive technical and financial assistance from, the United States and any state agency, for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities. The commission is authorized to file reports, hold hearings, and promulgate regulations for such purposes. See, North Dakota Century Code Section 49-02-02(8).

The Pennsylvania statute authorizes the commission to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction or concurrence with a U.S. or state agency. See, 66 Purdon's Consolidated Statutes Annotated Section 314.

The South Carolina Code permits the commission to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction or concurrence with any state or the United States. See Code of Laws of South Carolina Section 58-27-170.

Beyond the states mentioned above, several other (though not all) state codes were consulted, and no provisions authorizing cooperative state commission activities were located. This latter group of states includes Arizona, California, Montana, New Jersey, New York, Ohio, South Dakota, Virginia, and Wisconsin.

From this survey of state law, it appears that there are a number of states that have not authorized cooperative activities on the part of their state utility commissions; and that where there is authority, it varies from state to state and at most appears to authorize joint investigations and hearings. Each state, under the identified provisions, has retained its own sovereignty, and thereby its ability to act independently on the basis of the cooperative proceedings that are authorized. Not surprisingly, no state appears to have legally bound itself to compliance with decisions made by multistate bodies.

In sum, while a need may exist in the area of utility regulation for greater multistate efforts, it appears that few states have adequate legal machinery in place to avail themselves of the opportunity. The lack of uniform state utility laws, governing both the substance and the procedure of utility regulation, may not only impede greater cooperative efforts, but may also create disincentives for such efforts; and even where states have authorized utility commissions to engage in joint activities, the lack of uniform substantive laws may reduce mutual areas of interest.<sup>35</sup> To be truly useful, any experimentation with regional regulation must obviously avoid an outcome that merely bifurcates a proceeding, rendering it little more than the concurrent consideration of similar issues at a single site. More must be expected.

<sup>35</sup>For example, the conduct of a single joint rate proceeding over a single utility by two states raises enormous difficulties. First, the question is raised as to what procedural law should apply in case of differences. The right to intervene and cross-examine witnesses could not, for example, be denied by the joint body without potentially jeopardizing the legal efficacy of the proceeding. At the same time, testimony and evidence relevant to one state's rate structure might be irrelevant, and excludable, under another state's law.

CHAPTER 4  
ILLUSTRATIVE STATE EXPERIENCES  
WITH REGIONAL REGULATION

Introduction

In this chapter, some examples of efforts at multistate public utility regulation are presented. The purpose here is to describe certain state actions, show degrees of actual and attempted cooperation in the regulatory field, and identify some characteristics common to the approaches. These descriptions are presented as examples rather than as a chronology, and they are not intended to be all-inclusive. As probably the best known of regional experiments, the New England experience is recited first.

The New England Conference of Public Utilities Commissioners

The New England Conference of Public Utilities Commissioners, Inc., (the conference), is the formal regional association of the six New England state public utility regulatory bodies. These are the Connecticut Public Utilities Control Authority, the Maine Public Utilities Commission, the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission, the Rhode Island Public Utilities Commission, and the Vermont Public Service Board. The conference has been formally organized since 1976 as a regulatory and assistance program. With its five-person staff it (1) provides information, analysis, and interventions, (2) serves as an informal liaison among the six state utility commissions, (3) maintains master files of federal agency proceedings, for example, Federal Energy Regulatory Commission, Economic Regulatory Administration, Nuclear Regulatory Commission, Federal Communications Commissions, and (4) acts as an investigatory resource for the state commissions, especially for topics that might be duplicated by the six states individually.

The conference's current (1979-80) specific agenda includes (1) assessing NEPOOL's long range electric demand forecasting model, (2) developing a plan for uniform regional mandatory demand curtailment, and (3) initiating where feasible a regional hearing for concurrent state tariff filings.

Each of the six member state commissions is charged by statute with regulating intrastate public utilities in the fields of telecommunications, electric power, natural gas, water, and transportation. Because these states often regulate the same multistate utilities, it became increasingly obvious to each state commission that effective and efficient performance of its duties often requires coordination with its counterparts throughout New England. However, such cooperation was difficult to initiate and maintain without some regional mechanism established for that purpose. The conference has shown in the instances to be described that it is an appropriate structure to foster such regional cooperation. The conference staff, funded by the New England Regional Action Planning Commission, is now giving the state commissions the resource center they need to develop useful ways of sharing knowledge and resources, of pooling efforts, and of otherwise working together.

These goals are pursued through at least four functions mentioned above and summarized in the conference's current grant proposal to NERCOM<sup>1</sup> as follows:

- (1) Information. There is a great deal of important utility regulatory information, especially from Washington, D.C., that the smaller state commissions in particular are not well equipped to absorb. The screening, analysis, organization, and dissemination of material from federal

<sup>1</sup>New England Regional Commission, Application for Assistance by New England Conference of Public Utilities Commissioners, Inc. Fiscal Year--1981, Pt III: Program Narrative Statement, pp. 2-3.

regulatory agencies and other sources provides an important service to the state commissions. The Conference's master files of Federal Energy Regulatory Commission, Economic Regulatory Administration, U.S. Nuclear Regulatory Commission, and Federal Communications Commission proceedings, developed and maintained under the program, constitute a valuable and readily accessible resource for the state commissions. In addition, files are maintained of dockets in each of the six New England States, thus providing a regional monitoring capability to assist the commissions in coordinating the handling of similar issues. The Conference hopes that this informational capability would be maintained, refined and expanded.

(2) Analysis. Study of selected regional topics provides the commissions with analysis and information on important regulatory matters. Such studies can address issues expeditiously and avoid unnecessary duplication of effort. Research in significant areas of concern to each commission, which individually it may not have the resources to address, can be performed by a regional staff. In the energy area, for instance, an assessment has been provided of the New England Power Pool's Model for Long Range Forecasting of Electric Energy and Demand. The proposed program would continue to supply the capability to undertake special studies and conduct research and analysis on such topics.

(3) Intervention. Through joint interventions at the FERC on behalf of the six commissions, New England's positions on many important energy issues have been represented, and the PUCs and Energy Offices have in turn received analyses and updates on the federal proceedings. Through the Conference staff, the state commissions have been parties to about twenty electric, natural gas, and telecommunications proceedings in which they probably would not have participated individually. Several of these previous interventions have been quite extensive, involving the presentation of expert witnesses and the taking of appeals to the federal courts. This important intervention capability is intended to continue with the provision of resources to develop necessary background information and supporting data.

(4) Liaison. The Conference has provided coordination and liaison among the state commissions and between them and other organizations both public and private, including the

U.S. Department of Energy, State Energy Offices, the New England Power Pool, and the New England Telephone and Telegraph Company. Through participation in various regional meetings and workshops, the Conference staff provides a representation and reporting function for each of the state commissions. Meetings held under the auspices of the New England Conference allow state commissioners to exchange information and ideas on important regional regulatory issues. The Conference has a board of directors and by-laws governing its functions, regular meetings, and staff activities.

In 1978, the conference conducted joint hearings in an early attempt at regional regulation in the telephone sector. Those proceedings were considered successful in that the participating states held joint public hearings and were able to review simultaneously a series of utility tariff filings. The filings made by New England Telephone and Telegraph Company to the several states in the fall of 1977 were for separate rates and rate changes applicable to a variety of telephone receivers, data jacks, residence service packages, and extension service/credit allowances. In this instance, the involved states were Massachusetts, Rhode Island, Vermont, and Maine.

The joint public hearings were held in Boston, Massachusetts, Montpelier, Vermont, and Providence, Rhode Island. Commissioners of the involved states and staff of the conference conducted and staffed the hearings for the public agencies at the hearings held in May, June, and July during 1978. A sample commission order (Rhode Island) is incorporated in appendix D.

In a more recent instance of regional regulatory activity, the states of Massachusetts and Rhode Island were petitioned by Massachusetts Electric Company and the Narragansett Electric Company to authorize the companies to undertake joint load research programs.<sup>12</sup> These are required under Federal Energy Regulatory Commission regulations implementing section

<sup>2</sup>See appendix E for the May 1980 Petition

133 of PURPA. The regulations require a statement of state regulatory agency concurrence with the joint utility company application (18 C.F.R. 295.601(a)(4)).

Joint hearings were held by the Massachusetts and Rhode Island commissions in Boston and in Providence. Evidence presented at the hearing by the companies was intended to show the efficacy of a systems wide joint study.

The lines of reasoning were that, as between the two companies, (1) there were no significant differences in patterns of monthly usage for each customer class, (2) load characteristics were not statistically different (3) saturation levels of significant electrical appliances were comparable, (4) there might be significant study cost savings (at least no added cost) and (5) there would be significant savings to ratepayers because of the more efficient study design and joint use of collected data.

The hearings resulted in the two commissions agreeing to authorize a joint utility load management study.<sup>3</sup>

Finally, the conference is currently providing technical assistance to the six New England states in the ongoing PURPA program.

#### New Mexico<sup>4</sup>

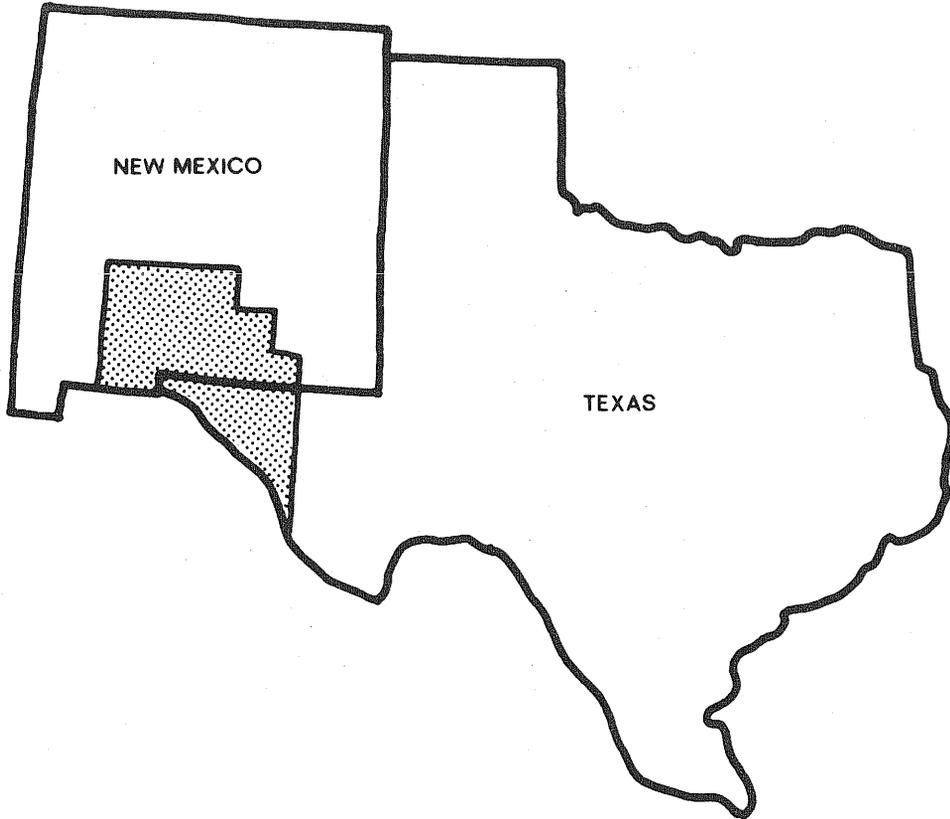
New Mexico is a southwestern state with the occasion for multistate regulation--with both Texas and Arizona. El Paso Electric Company, headquartered in Texas, has a significant number of its customers in New Mexico (figure 7). Southwestern Public Service Company also has customers in both states. The New Mexico PSC has acted to certify the participation of both companies in the construction of new generating plants

<sup>3</sup>See appendix F for the Rhode Island decision and order and the Massachusetts concurrence.

<sup>4</sup>Interview with New Mexico Public Service Commission staff, September 3, 1980, Columbus, Ohio.

Figure 7

APPROXIMATE SERVICE TERRITORY OF  
EL PASO ELECTRIC COMPANY



Note: This map is derived from the cited source, but is intended only to depict the relative service territories in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 697.

outside of New Mexico because of the effect of that proposed participation on rates to New Mexico ratepayers. In addition, the New Mexico PUC exercised jurisdiction over Public Service Company of New Mexico's (10 percent) participation in an Arizona nuclear generating plant. More recently, the New Mexico and Arizona commissions have had preliminary discussions about jointly regulating certain REA cooperatives on the borders of both states and having customers in each. The idea is to perhaps adopt an informal procedure for "primary jurisdiction" to prevail in accordance with the proportion of service in each instance. As mentioned supra, (Chapter 3), the New Mexico 1977 statute providing for joint hearings and joint orders probably goes the furthest of any state toward encouraging multistate activity. Note that it not only authorizes joint investigation but allows it outside the state; it also provides for the issuance of joint or concurrent orders with other states and even gives the PUC the lead in moving toward interstate agreements or compacts (see appendix G for the statute.)

#### Nevada<sup>5</sup>

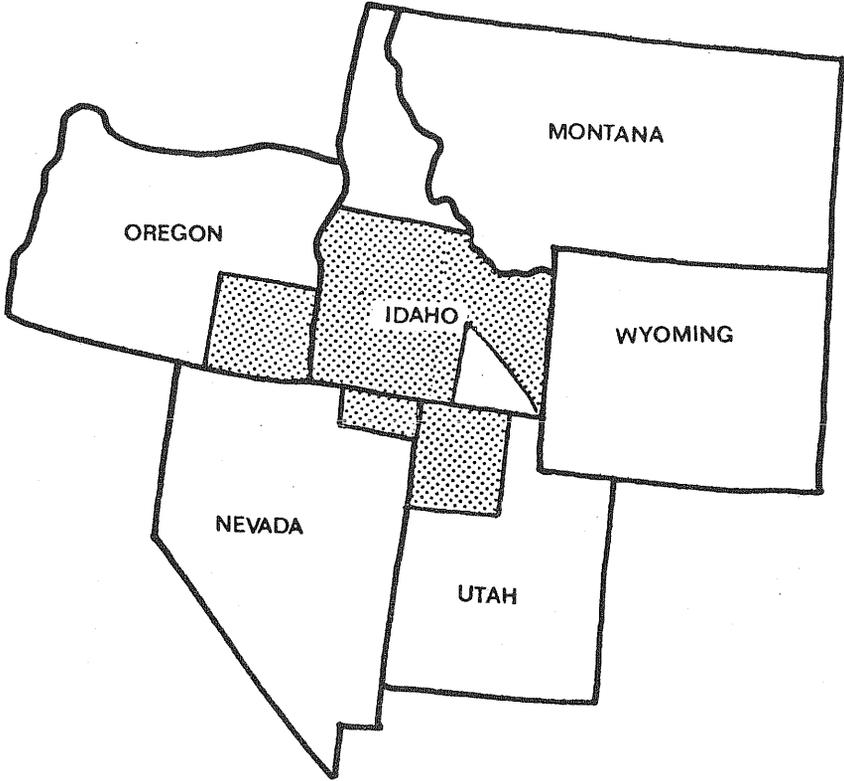
The Nevada statutes go some distance in authorizing multistate regulatory activity for the commission. In addition to providing for state-federal cooperation, NRS 703.230 reads that the Nevada PSC may "...confer with the regulatory agencies of other states on matters of mutual concern and benefit to persons served by the public utilities and motor carriers..." and also may use the services, records, facilities, and cooperation of federal and state agencies, and hold joint hearings and participate in joint conferences to reach decisions in matters that require cooperation.

The Nevada commission cites a number of examples of such cooperation. Idaho Power Company (figure 8) has a tiny fraction of its service area in Nevada. There have been occasions where the Nevada PSC has been requested to bring Idaho Power Company's rates in this small territory to the level of the company's rates in Idaho, and Nevada has chosen to follow the Idaho commission's lead in this matter. Preliminary discussions have been held

<sup>5</sup>Interview with Nevada PSC chairman, September 3, 1980, Columbus, Ohio.

APPROXIMATE SERVICE TERRITORY

OF THE IDAHO POWER COMPANY



Note: This map is derived from the cited source, but is intended only to depict the relative service territories in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 923.

with the California PUC on whether there might be some usefulness to holding joint hearings on the request by Nevada Power Company and Southern California Edison Company to construct a coal generation plant in Nevada. The fact that the Sierra Pacific Power Company serves both states but has about 90 percent of its customers in Nevada (Figure 9) would seem to make it another candidate for some cooperative regulating. In certain circumstances, the Nevada PSC has avoided the need for cooperative or joint regulatory action by encouraging a telephone company to alter its service area to coincide with the state's boundaries.

### Ohio<sup>6</sup>

The Public Utilities Commission of Ohio (PUCO) has some history in interstate regulatory cooperation with a number of states--not all of them contiguous to Ohio. With Michigan, the PUCO has routinely adopted whatever rates the Michigan PUC has set for a small telephone company in northern Ohio that has most of its service territory in Michigan.<sup>7</sup> A water company headquartered in Pennsylvania serves some 300 customers within Ohio's border. In this case, the PUCO is coordinating its regulation of wholesale pass-through issues and final water rates with the Pennsylvania Public Utilities Commission.

Ohio Edison Company has as a subsidiary the Pennsylvania Power Company. The PUCO has taken steps with the Pennsylvania PUC to assure that rate base allocations of the two companies are properly arrived at by exchanging commission orders. In another example of bistate coordination, the PUCO has adopted the West Virginia PUC's prescribed disconnect practices and billing format in the case of Monongahela Power Company whose territory is mainly in West Virginia but partly in Ohio.

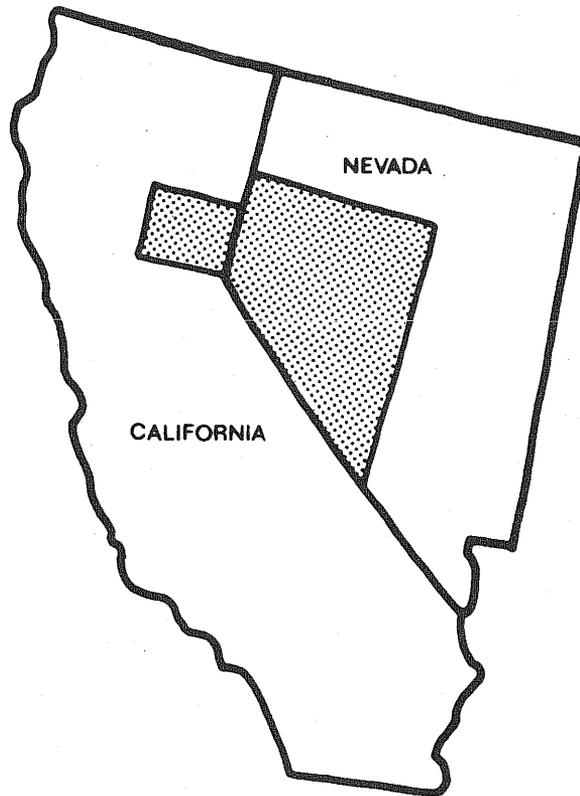
Finally, the PUCO has occasionally loaned staff to other commissions, for example, to the Connecticut Public Utility Control Authority, for helping that commission in designing and implementing standard

<sup>6</sup>Interview with PUCO staff, September 10, 1980, Columbus, Ohio.

<sup>7</sup>Morency Home Telephone Company has one exchange in Ohio with about 300 subscribers.

Figure 9

APPROXIMATE SERVICE TERRITORY OF  
SIERRA PACIFIC POWER COMPANY



Note: This map is derived from the cited source, but is intended only to depict the relative service territories in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 1743.

filing requirements. The PUCO has also been the recipient of assistance from other commission staffs; for example, New York Department of Public Service shared with PUCO its expertise in the analysis and presentation of gas rate issues before FERC.

Not surprisingly, of course, efforts at multistate regulation have not always been consummated. The Columbia Gas System which has headquarters in Ohio, has a distribution company in neighboring Pennsylvania. In 1979, the Pennsylvania PUC initiated a commission-ordered management audit and invited the PUCO to participate in the conduct of the audit. The PUCO declined the invitation.

#### Iowa<sup>8</sup>

Perhaps one of the most comprehensive--but ill-starred--attempts at multistate regulation was that embarked upon by the Iowa State Commerce Commission in 1977. At the NARUC annual convention in the fall of 1976, Commissioner Maurice Van Nostrand of Iowa sponsored the following quoted resolution:

#### RESOLUTION RE COOPERATION IN RATE INVESTIGATIONS

WHEREAS, Many of the member commissions of this Association have jurisdiction of the rates of utilities which provide service in several States; and

WHEREAS, It would be in their interest to reduce the time, effort and expenditures which would be incurred by the several States conducting independent staff investigations of rate applications; and

WHEREAS, it is believed that cooperation among the State commissions in staff investigations, in exchanges of data, in the interchange of employees or the joint exercise of governmental powers, where authorized, would achieve the desired reduction in time, effort and expenditures associated with contested rate proceedings; now, be it;

<sup>8</sup>Interview with Iowa State Commerce Commission staff, August 25, 1980, and letter of September 4, 1980.

RESOLVED, That the National Association of Regulatory Utility Commissioners, assembled in its Eighty-eighth Annual Convention in Honolulu, Hawaii, hereby authorizes the creation of an adhoc committee to explore the problem of cooperation among members and the level of cooperation within the membership and to make its recommendations at the next Annual Convention of the Association.

Subsequently, in the spring of 1977, the Iowa commission took the lead in organizing a practical step forward in implementation. A meeting of commission staff members from five states--Iowa, Minnesota, Nebraska, North Dakota, and South Dakota was scheduled and held in Sioux City, Iowa, on May 11, 1977. This was to be the initial meeting pursuant to the cited NARUC resolution with the purpose being to explore the extent to which cooperation in rate case proceedings and other regulatory matters, including the sharing of personnel, would be possible.<sup>9</sup>

The discussion agenda focused on regulation of the telephone companies whose service territories crossed state boundaries in the area and included issues of valuation methods, interrogatories, cost and depreciation studies, compliance with the Uniform System of Accounts, auditing techniques, rate design, revenue levels, rates of return, and reporting requirements. This comprehensive agenda also included the subjects of personnel sharing and possible future meetings.

A summary of the actions taken at this innovative five-state meeting of commission staff indicates substantial cooperative progress was made.<sup>10</sup> The list of positive steps follows:

1. Exchange of copies of laws and rules under which each commission operates.

<sup>9</sup>Reportedly, the Iowa State Commerce Commission counsel had prepared an informal memorandum that found authority for such a meeting well within the Iowa state statutes.

<sup>10</sup>Letter to participants from Raymond K. Vawter, Jr., Administrator, Public Utilities Divisions, Iowa State Commerce Commission, June 3, 1977.

2. Exchange of commission decisions.
3. Exchange of information concerning personnel to promote the use of expertise in one state to the benefit of the other.
4. Exchange of information concerning reports received from the Bell companies.
5. Identification of all companies common to two or more states.
6. Each state that proposed to initiate a compliance audit on a multistate company should give notice to the other state commissions of its intended action so as to provide for multi-state participation in the audit. Further, upon completion of such an audit, the results of same should be made available to the other states affected regardless of their participation or lack of participation.
7. It was agreed that each state appoint a staff member to serve on a five-state subcommittee to discuss the allocation method that utilized by the common companies of each state. It was concluded even if agreement could not be reached on a common method, there could still be benefits derived from knowledge of what methods the other states were using.
8. Each commission felt a great deal of benefit could be derived from cooperation by the sharing of information about the topic of depreciation. It was further agreed that depending on the activity of the NARUC Staff Subcommittee on Depreciation, each state appoint a staff member to serve on a five-state subcommittee to discuss and develop a greater expertise on the issue of depreciation.
9. Joint participation before federal agencies in matters that affected the five-state area and on which a common position could be developed was another area from which all states could benefit by the development of a cooperative committee.
10. The potential effect that the unbundling of telephone rates could have on the states as a result of Order 19528 by the FCC was considered to be an area in which benefit could be developed by a five-state committee. Much interest was indicated in the matter of Toll Separations and Settlements. Recognizing that NARUC has a Staff Subcommittee, it appeared to the five states that the cooperative development of more information on how these agreements are administered would be of benefit.

At the conclusion of the day, all staff members present considered that the short time spent exchanging ideas had been beneficial and that such meetings should be continued on a quarterly basis to continue the exchange of information that had been initiated at the May 11 meeting. It was further agreed that a NARUC Ad Hoc Committee to explore, on a national basis, the matter of cooperation among members should be initiated. However, the five states considered that the establishment of a NARUC subcommittee would not preclude the need to continue the five-state meetings.

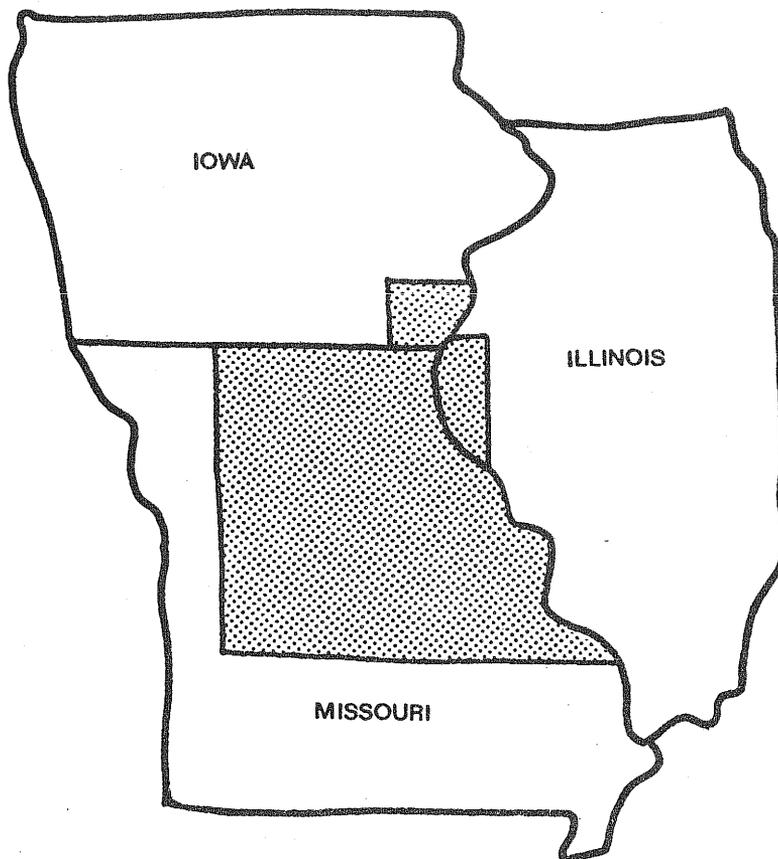
The utility industry for its part was a good deal less pleased with this move toward multistate regulation. Information on the specific content and details of the meeting somehow became public immediately and it was generally felt that the purposes of the meetings were thereby defeated. A utility company complained to the commissions; certain commissions pulled back; and the Iowa commission decided to terminate its leadership efforts and indeed withdrew the NARUC resolution that inspired the attempt in the first place.<sup>11</sup>

Still, at an earlier time, the Iowa commission had good experiences in certain joint efforts with neighboring commissions. Regulating (along with Illinois) the Iowa-Illinois Gas & Electric Company with respect to both rate base and expense allocations is one example. Another, with Nebraska, is an instance where Iowa waived its rules and accepted a tariff format prescribed by Nebraska for Lincoln Telephone and Telegraph. Further, cooperative efforts have taken place between the Iowa staff and the Missouri and South Dakota staffs. In 1969 and 1970, Iowa Docket U-280 (Union Electric, figure 10), the staff of the Iowa commission worked with the staff of the Missouri commission in preparation of the rate case. The Iowa staff had three members working in conjunction with five members of the Missouri staff. The work product of the Iowa staff was incorporated in the testimony and exhibits of the Missouri staff in the case before the Missouri commissions.

<sup>11</sup>Iowa commission staff interview, op. cit.

Figure 10

APPROXIMATE SERVICE TERRITORY OF  
UNION ELECTRIC COMPANY AND SUBSIDIARIES



Note: This map is derived from the cited source, but is intended only to depict the relative service territory in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 1026.

Exchange and cooperation of staff personnel during late 1975 and early 1976 with South Dakota was successful. Here, South Dakota furnished one staff member to the Iowa staff for the investigation phase of an Iowa Public Service Company rate proceeding.

Idaho, Washington, and Oregon<sup>12</sup>

Another group of states where the PUCs have had a history of cooperation and joint informal meetings is comprised of Washington, Idaho, and Oregon. For a number of years (and until recently), the commissioners of these three states met three times annually, once a year in each state. Meetings were always informal, off the record, and centered on exchanging orders and information; shared approaches to common problems; and a prospective look to what might be coming up, rather than on contested existing cases.

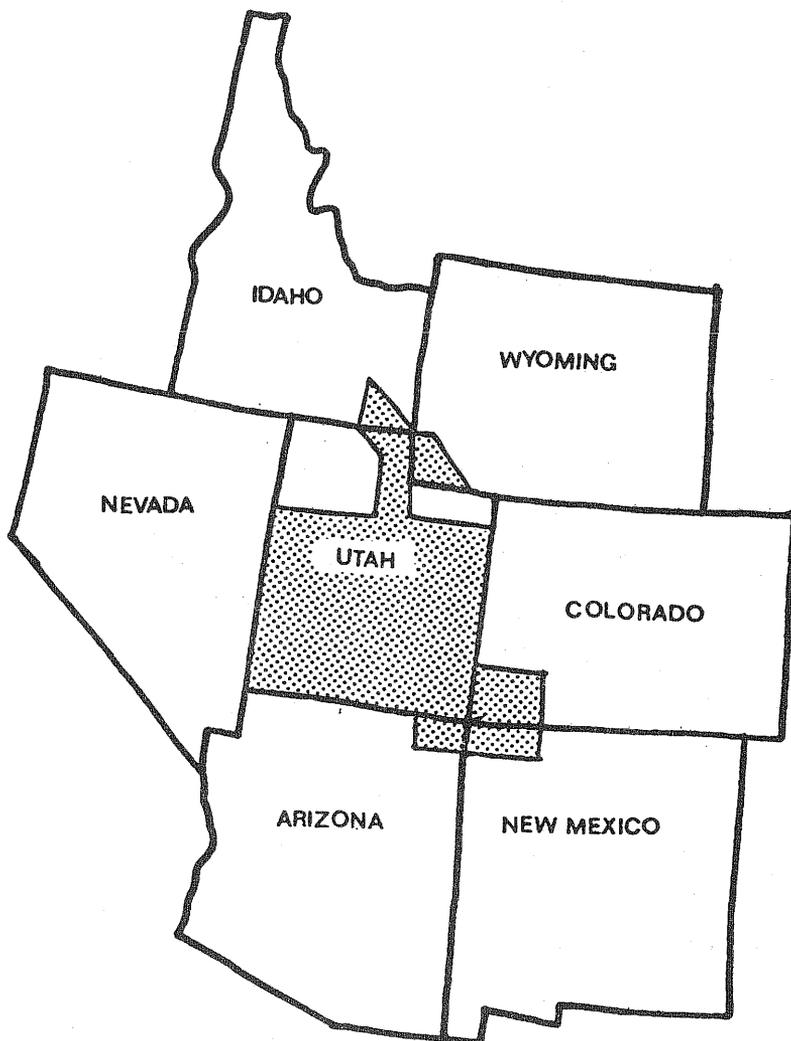
Commissioners viewed such a regular arrangement as "natural" in that Idaho Power Company serves about 89 percent in Idaho and 10 percent in Oregon (and 1 percent in Nevada); Washington Water Power operates 70 percent in Washington and 30 percent in Idaho; and Pacific Northwest Bell serves both Oregon and Washington. This Columbia Basin tie also has its offshoots in other directions. Utah Power & Light Company (Figure 11) has 80 percent of its customers in Utah and 15 percent in Idaho: the PUCs of the two states have joined in developing an interstate allocation of the company's rate base with Idaho commission staff traveling to Utah. On other occasions, the Idaho staff has consulted in California with the PUC staff.

These regularized exchange visits have always been budgeted as part of the planned travel expenses in the case of the Idaho PUC, and no utility objections to the practice have been recorded. Reportedly, this practice has fallen into some disuse more recently. Operating at its best, the three-state arrangement was premised on looking to leadership from "the state of primary jurisdiction," while still honoring the differing regulatory philosophies of commission members.

<sup>12</sup>Interview with Idaho and Washington PUC commissioners, August 25, 1980.

Figure 11

APPROXIMATE SERVICE TERRITORY OF  
UTAH POWER & LIGHT COMPANY



Note: This map is derived from the cited source, but is intended only to depict the relative service territory in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 2086.

## Virginia, Maryland, and The District of Columbia<sup>13</sup>

Another triad of regulatory commissions that would seem to be a candidate for multistate actions of one kind or another is comprised of the public utility commissions of Virginia, Maryland, and the District of Columbia.<sup>14</sup> The Chesapeake & Potomac Company serves Washington, D.C., Virginia, and Maryland. Potomac Electric Power Company and Washington Gas Light serve both Washington, D.C. and Maryland. Potomac Edison Company operates in Maryland and Virginia.

Reportedly, the idea of bilateral cooperative informal regulation has come up occasionally with Maryland and Virginia. One such small effort involved A & N Electric Company, which has a service area that includes customers on one island belonging to Virginia and one belonging to Maryland. The latter state's commission recently reviewed a request of A & N to relinquish jurisdiction to the Virginia commission, but the Maryland commission, after careful consideration, determined that it was bound by statute to exercise jurisdiction over A & N and had no authority to waive such a statutory provision.

## Montana and South Dakota

In 1976, Montana and South Dakota attempted to establish a joint hearing and decision procedure applicable to gas, electric, and telephone utility rate cases when the involved utility served both states. The chairmen, commissioners, and staff of both states were involved. The

<sup>13</sup>Interview with Maryland commission staff, August 26, 1980.

<sup>14</sup>Chapter 1, supra, includes a discussion of the initiative by the Maryland General Assembly toward multistate public utility regulation. The resolution itself is reproduced as appendix H. As mentioned elsewhere (supra, p. 8), an interstate compact already exists for three-way regulation of metropolitan mass transit in the D.C. area.

focus of this approach was based on separate but simultaneous rate increase requests made by Montana-Dakota Utilities Company (figure 12) to each state.

An initial organization meeting was to take place to determine the persons to be involved and the subject matter to be presented at subsequent hearings. The chairmen of both commissions were to have been in attendance as well as commission attorneys and economists. The regional FPC representative and staff members of two consulting firms were also included in the proposed meeting. The agenda for the organizational meeting included (1) plan and schedule of activities, (2) data requirements, (3) financial data evaluation model, (4) revenue requirements and analysis techniques, (5) performance evaluation methodology, and (5) hearing format.

The work program was expected to be completed within 45 days. It is presumed that the actual hearings would have occurred subsequent to that period. It remained for each commission counsel to advise on the legal and constitutional problems that might arise.

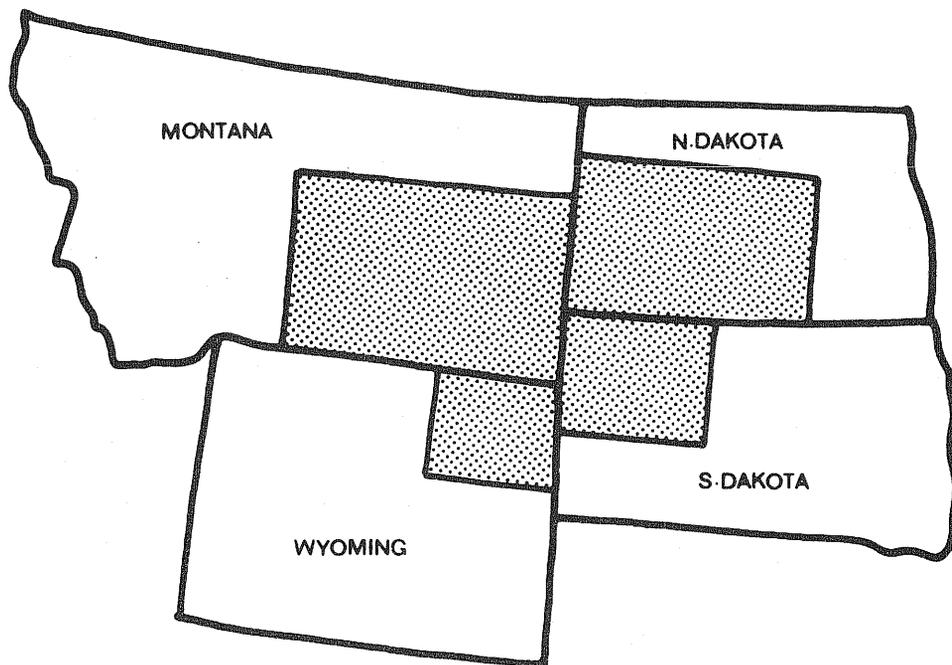
In a memorandum to the commission, the Montana PSC attorney reviewed the relevant Montana and South Dakota administrative procedures. The states had many similarities in procedure. However, Montana found significant differences in evidentiary rules, ex parte consultation provisions, and semantic differences with regard to transcription of evidence. Minor differences were found in eight other administrative areas in the states' administrative procedures acts.

The Montana PSC attorney reviewed briefly the NARUC model rule on joint hearings that was proposed for adoption in Montana on August 19, 1976. At the time, there were pending objections. They concerned the statutory authority to adopt out-of-state rules; the place of hearing as it affects public participation and the constitutionality of the proposed rule relating to due process and self-government.

Nevertheless, the attorney recommended that Montana continue to work informally with South Dakota while holding hearings on the joint

Figure 12

APPROXIMATE SERVICE TERRITORY OF  
MONTANA-DAKOTA UTILITIES COMPANY



Note: This map is derived from the cited source, but is intended only to depict the relative service territories in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, p. 1194.

hearing rule itself so as to resolve the issue prior to any joint hearing in the specific pending rate case.

At the same time as the Montana internal review of the rules, the South Dakota PUC received a letter from the Montana-Dakota Utilities Company. The utility objected to the holding of formal joint hearings on several grounds. First, the utility had another rate case pending in Montana on gas increases that it felt would be unfairly prejudiced by the multistate electric rate case. Second, the company's legal counsel raised the questions of substantive law and procedural due process alluded to by the Montana PSC attorney relative to joint hearings. Finally, there was a question of shareholder action should the management abrogate the company rights under the existing laws of each of the states.

Thus it was that the states mutually agreed to cease actions toward formal joint rate case hearings. The planned organizational meeting did not take place because of the unresolved legal issues. Although the matter is dormant at present, it appears that there still is a desire on the part of at least Montana to continue to explore the administrative processes so as to develop a final joint rate case hearing procedure.

#### North and South Carolina

For several years the North and South Carolina regulatory commissions have cooperated a number of times on issues of importance to both states. The impetus here has often been the possibility of efficiencies (and hence, cost savings) or the need to share an existing data base. Two such instances are described here.

#### The Development of a Joint Electricity Demand Forecasting Model

The Public Staff of the North Carolina Utilities Commission was established by the North Carolina General Assembly in 1975. Among its responsibilities, as established by statute in June 1977, is the annual filing of 15-year energy and peak demand forecasts for each of the state's utilities. The primary purpose of these forecasts is to serve as an

independently derived check on the load forecasts that support expansion plans filed by the electric utilities. Building upon earlier work of the North Carolina Commission staff, the first such independent forecast was presented in December 1977.

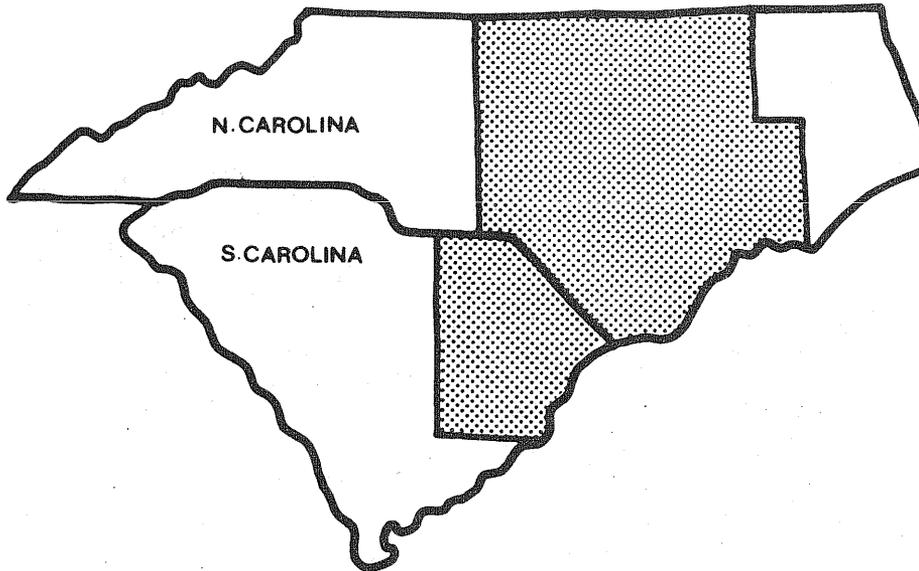
A U.S. DOE-funded technical assistance project was jointly requested of NRRI by the Public Staff of North Carolina and the staff of the South Carolina Public Service Commission. While the South Carolina PSC did not have a statutory obligation to provide independent load forecasts, such forecasts were routinely requested as an internal matter. The NRRI agreed to provide the assistance requested for the following reasons. First, the two staffs expressed an active interest in the joint estimation and use of forecasting models. Since the two largest utilities in North Carolina (Carolina Power and Light Company and Duke Power Company, see Figures 13 and 14) are also the two largest South Carolina utilities, there appeared to be substantial cost savings to cooperative forecasting. Second, while neither staff had a great deal of experience in forecasting, both were able to make substantial commitments of high-quality staff for a three-month period. Hence, it was reasonable to expect that substantial progress could be made on model development and staff training during a brief but intense period.

The staffs from the Carolinas jointly assisted in the identification of existing data needs, the selection among alternative modeling strategies and associated data requirements. Several full-day joint meetings were held with the staff from both commissions, and numerous phone calls were exchanged between the staffs.

The general pattern of the several sessions was that the Carolina staffs would present results that had been obtained since the previous session. These would be reviewed, and suggestions would be made concerning respecifications that might improve the results. In some cases, these suggestions would require redoing previously acceptable portions of the model. In other cases, they required collection of additional data. The new specifications would then be tried. This process was iterated until satisfactory results were obtained. Primary results achieved were as follows:

Figure 13

APPROXIMATE SERVICE TERRITORY OF  
CAROLINA POWER AND LIGHT COMPANY

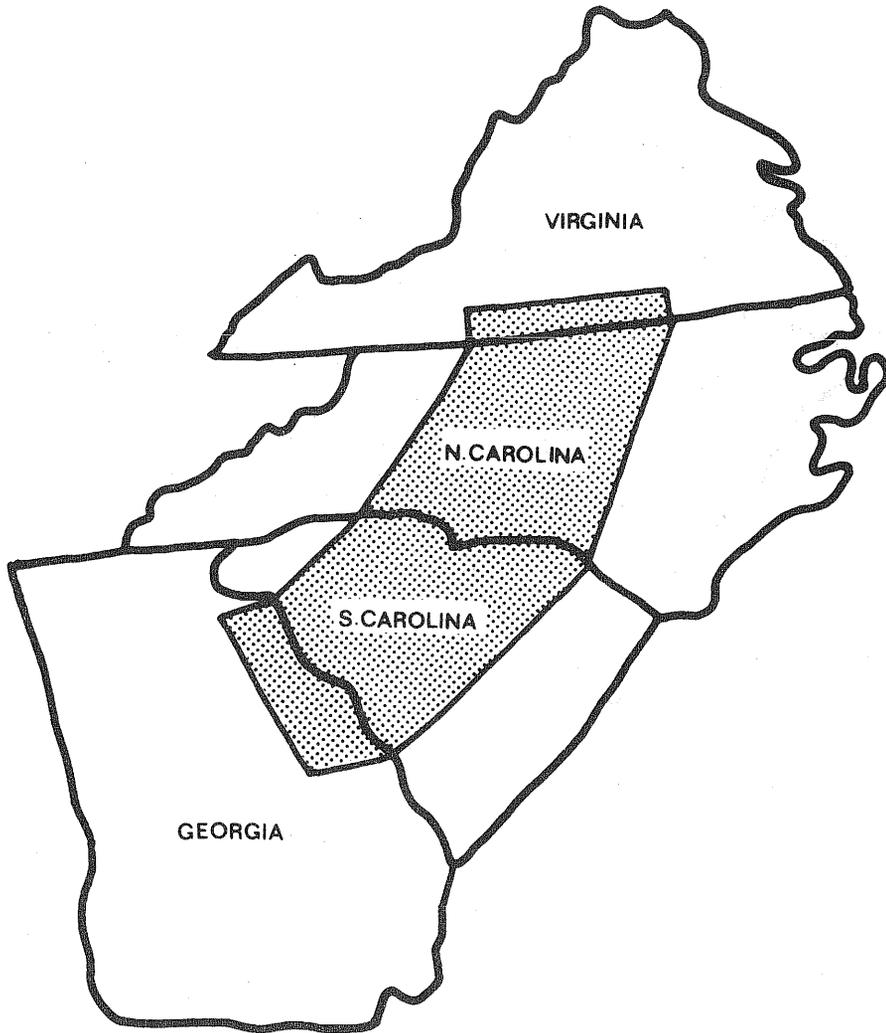


Note: This map is derived from the cited source, but is intended only to depict the relative service territories in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 325.

Figure 14

APPROXIMATE SERVICE TERRITORY  
OF DUKE POWER COMPANY



Note: This map is derived from the cited source, but is intended to depict the relative service territory in each state rather than to indicate the precise service locations.

Source: Moody's Public Utility Manual, 1979, p. 642.

1. A complete econometric model estimation data base specific to the Duke Power Company service territory was completed.

2. Strategies for forecasting the model's explanatory variables were identified.

3. A residential model was developed. Subsequent to the project, satisfactory preliminary results have been obtained by agency staff in the development of a similar model for the Carolina Power and Light Company service area.

4. A commercial sales model was satisfactorily estimated. The model is more highly aggregated than the residential and industrial model.

5. A two-sector industrial model was developed that treats textiles separately from other industries.

6. A fully operational system peakload model was not developed by the project's conclusion. However, the project developed a preliminary model, and agency staffs were advised on several model development strategies to follow. They have subsequently estimated a peakload model that reflects those strategies and is consistent with the above energy sales models.

7. Most important, the project experience materially enhanced the agency staffs' knowledge and capability in load forecasting. Moreover, the commissions now possess a much more highly structured and accurate set of econometric energy sales and peak demand forecasting procedures than was previously the case.

Coordination of effort with the two states was not a problem. Key reasons for this success were the strong common purpose of modeling the same utilities, the desire of the two state staffs to act cooperatively, the mutual dependence implied by the need for data from both states, professional respect among individuals on the staffs, and the lack of conflicting model requirements. The nearly full-time dedication of the staffs and the relative absence of competing activities were instrumental in the successful completion of this joint undertaking.<sup>15</sup>

<sup>15</sup>A more complete description of this activity can be found in the NRRI report, Development of a Joint North and South Carolina Electricity Demand Forecasting Model (Columbus, Ohio: NRRI, 1978).

## Joint Workshop on Electric Utility Pricing

In a second technical assistance effort, the NRRI provided assistance to both states in the form of a workshop on electric utility pricing. The process followed here differed somewhat from that described for the development of the joint forecasting model.

The South Carolina Public Service Commission requested and was granted assistance by the NRRI for a workshop on utility pricing that would permit its staff to evaluate and apply marginal-cost-pricing principles. The NRRI selected two consultants to design a workshop agenda (subject to the approval of South Carolina) and to conduct a two-day workshop in Columbia, South Carolina. As part of the workshop, a case study on marginal-cost pricing using data from Duke Power Company was prepared.

Because of its history of close state staff cooperation and because of the use of Duke Power Company, the South Carolina PSC invited two staff members from the North Carolina Commission Public Staff to attend. The invitation was accepted, and the benefit of the workshop was shared by the staffs of the adjacent state commissions.

In both instances, a pragmatic type of cooperation and sharing were evident. Acting at the staff level, with the appropriate endorsement from their respective commissions, both states were able to enjoy cost savings, to develop a common computer method and data set, and to increase staff training.

### Illinois<sup>16</sup>

The Illinois Commerce Commission has been from time to time participated in some semblances of multistate regulations with Wisconsin

<sup>16</sup>Interview with a commissioner of the Illinois Commerce Commission, August 8, 1980; and correspondence with commission staff dated September 26, 1980.

in the case of a South Beloit utility, with Missouri in the case of Union Electric Company, and with the Iowa State Commerce Commission in the instance of Iowa-Illinois Gas & Electric Company. In this last connection, under the FERC regulations implementing PURPA Section 133, Iowa-Illinois must report load data by regulatory jurisdiction for any rate class to which ten percent or more of the system kilowatt-hour sales at retail are made during any month of the reporting period. The company has five classes which appear to be covered by the PURPA criterion.

Iowa-Illinois Gas & Electric Company submitted a request for a waiver of certain of the Section 133 reporting requirements on grounds that if load data are gathered on a continuous basis, statistical sampling techniques indicate that approximately twice as many meters would be required to sample each jurisdiction as are required to sample on a system-wide basis. The total annual cost would be increased by between \$100,000 to \$200,000 per year.

The company, after discussions with commission staff, submitted a plan that would provide the necessary accuracy for determining jurisdictional loads while not incurring the increased metering costs. The staff reviewed the company's plan, found it acceptable, and recommended that the commission grant Iowa-Illinois' request for a waiver of the separate reporting requirements for the Illinois jurisdiction.

The illustrative examples sketched in this chapter indicate that half of the states have attempted to engage in some form of multistate cooperative arrangements in public utility regulation and with varying degrees of success. As noted, constitutional or statutory prohibitions and limitations against regional regulatory arrangements sometimes get in the way, and the politics of the matter can be delicate. Nevertheless, these examples show the breadth of, and inclination toward, coordination among states where such joint action seems to make sense. Where regional regulation has appeared it has been entirely pragmatic in origin, rather than the result of any political or philosophical commitment to replace existing state regulatory commissions or fend off federal ones.



CHAPTER 5  
SUMMARY OF OPPORTUNITIES, PITFALLS, AND PROSPECTS

Opportunities

The question of opportunities for possible multistate "regional regulation" in the public utility field has received relatively little systematic attention to date, though this may be changing. This is quite unlike all sorts of other subjects of possible regional cooperation that have occupied planners and government officials--perhaps the oldest and most widely considered being regional economic development and perhaps the most recent being environmental concerns. For that reason alone, it would seem worthwhile at least to explore seriously some of the directions that might be pursued toward some semblance of regional regulation in the public utility and transport fields. This is attempted in this report against the backdrop of an assessment of the emerging efforts (like the New England, North Central, and Mid-Atlantic states) that are under way or have recently been tried.

For purposes of this study, the term "regional" has meant multistate but not a collection of all states. It can mean as few as two states--but not necessarily all of both states. Obviously, other definitions are possible for other purposes and indeed are often used--river basin boundaries, mountain regions, Standard Metropolitan Statistical Areas, multicounty areas, city districts, and economically lagging areas. However, from the point of view of public utility regulation, the only new mechanism that comes readily to mind between individual state commission regulation on the one hand and federal commission regulation (for example, FERC) on the other is some kind of aggregation or amalgamation of several state commissions for certain and for particular lengths of time--in short, something more than a state and less than a nation. Even here there are, of course, other organizational possibilities such as an elaboration

of relations between, say, FERC and one or more state commissions where the subject matter would dictate and jurisdictional considerations would allow.

### Pitfalls

In noting a general reticence for any course of action, it is often useful to ask why more has not been done. In the case of regional regulation, the conventional wisdom has it that the legal obstacles--state constitutions, state statutes, and commission mandates--are nearly insurmountable. The finding here is that while legal issues of sovereignty, evidence, and procedures are obstacles to the most advanced level of PUC integration, they are less so at more modest levels of cooperative action and may be even less obstructive than the more subjective forces of habit, custom, familiarity, certainty, inertia, politics, and a lack of perceived advantage.

Realistically, experiment and innovation cannot be expected to come readily from what might intuitively seem to be a sensible idea. The world of the sitting public utility commissioner is most often characterized by overwork and understaffing; by an understandable preoccupation with the immediate and the manageable; by lateral dealings with legislators, mayors, and a governor; by sometimes confrontation with intervenors; by a constituency of ratepayers that at most may be statewide.<sup>1</sup> In this circumstance, it is difficult in the extreme to find time and inclination for the real or apparent "luxury" of multistate, wider ranging consideration. Add to this the utility companies' general hostility toward the amassing of larger commission staff resources and broader commission purview "on the other side of the table," and the pitfalls for regional regulation seem large indeed.

<sup>1</sup>In addition, where commissioners are elected from districts within a state, e.g., Montana, even a statewide vantage point may be elusive.

## Prospects

Regional regulation need not be an all-or-nothing affair<sup>2</sup>. As indicated, early steps could be modest and limited. The scope of activity could initially be small. Bilateral experiments involving relatively noncontroversial matters with multijurisdictional utilities could be a way to begin. Informal arrangements might be preferable to formal mechanisms in certain circumstances and in early efforts. Fancier, broader, more formal relationships could subsequently evolve, or the effort could be retrenched or abandoned as experience dictated.

For our purposes here, it might be pointed out that while the National Energy Act of 1978 was basically silent on matters of interstate relations (though the quest for uniformity in standard setting and depth of consideration in electric and gas regulation has some implications for regionalism), the legislative history of the act and the act itself very clearly represent an advance in federal assertion of authority in this field vis-a-vis the states. Further, there is a good bit of evidence that much of the Congress (and certainly the relevant congressional staff) are closely watching state public utility commission implementation of the NEA with the expectation that there is some probability that many of the states will more or less fail. Such an outcome would almost inevitably add to pressures for still greater federal preemption of the field. One need not be an alarmist on the subject to conclude that it is very much in the states' interest thoroughly and imaginatively to carry out their classical regulatory roles with traditional and perhaps nontraditional mechanisms

<sup>2</sup>There is indication that in the ebb and flow of federal-state relations the timing may be ripe for searching out some new form of government organization. In episodic fashion, federal-state relations seem to alternate between moves toward centralization of power and decentralization. Such was the case of programmatic funding and control with, say, revenue sharing for the period before the mid-1960s and to the mid-1970s and perhaps the recent period where program control has been generally reasserted in the federal government at the expense of state and local governments. It is the well-known division described in the two opposing cliches, "leave it to the states" and "the feds know best."

and procedures in order to retain their jurisdiction and enhance their vitality.

One such pursuit would seem to include a critical but fair-minded revisiting of the idea of some form of multistate regulation as opportunities arise.

Whatever the force of tactical, "territorial," federal-state elements, there must be found built-in incentives toward regional regulation as seen by state public utility commissioners for very much to happen. The three kinds of incentives that would best make the case are (1) economy, (2) efficiency, and (3) equity. The concept of regional regulation may fit fairly well with these tests. The costly business of state public utility agency regulation of particular utilities could show notable savings if some of the duplicative actions, for example, initial filings, submitted testimony, summary positions of the parties, data requests, rate base and expense allocations were taken jointly or cooperatively on a systemwide basis for the multijurisdictional utilities.<sup>3</sup> Operating costs might be lessened (or better allocated), and ratepayer costs might also be reduced, since the cost of utility dealings with PUCs are a recoverable expense item. Additional travel by PUC commissioners or staff to neighboring states would, of course, have to be netted against the savings if incurred.

Regulatory efficiency might be improved if the result of such cooperation was the uncluttering of PUC docket calendars, the reducing of delay in the process itself, the avoiding of unnecessary repetition in the building of a record both by the company and by PUC staff on companywide (as opposed to state-specific) issues, and the strengthening of ongoing commission activities such as auditing the company's performance and monitoring its claimed fuel expenses.

<sup>3</sup>While having no special legal standing, the concept of "primary jurisdiction" would seem to be a useful informal operational one where--as is often the case--a utility company's service area is mainly in one state and only incidentally crosses a border. On the other hand, where the extent of utility service territories is, say, nearly equal in two states, this could be an occasion for truly joint regulation.

Equity might be enhanced by regional regulation where the result was a reconciling of needlessly divergent policy treatment of the same utility by adjoining states; a rationalizing of rate design and even earnings levels if costs and revenue requirements so demonstrated; and a more comprehensive vantage point on issues of the amount and location of capacity expansion.

In the course of this report, various subject matters that could be likely candidates for regional regulatory treatment of one kind or another have been discussed. Additions to these possible opportunities should be mentioned for consideration.

One candidate for multistate regulatory attention is the subject of interconnection, power pooling, and wheeling. This is not an easy topic for analysis and evaluation by state commissions acting alone because of the interstate character of much of the subject. On the other hand, state commissions are increasingly inquiring about whether all pooling and intertie possibilities have been exhausted before blessing the construction of new generating capacity. Relatedly, there is the question of how interchange agreements really work and the basis for pricing that accompanies them. At least one commission (District of Columbia) has wondered how a single commission can influence the behavior of the multistate, multiutility Electric Reliability Council whose territory includes its jurisdiction. Clearly, the recent study of a possible national power grid system raises again a lot of these intergovernmental regulatory issues.

A subject that would seem appropriate to the purview of several state utility commissions acting together is the question of planning for capacity expansion. At a time of presumed capital shortages and high-capital costs, it obviously makes more sense than usual to scrutinize carefully utility company expansion plans. Perhaps something analogous to the Nuclear Regulatory Commission's Section 105(c) might be helpful here. Recall that this provision states that no license can be granted for a nuclear facility if its power is not generally available to all electric power systems in the vicinity of the applicant. States might make the same

requirement for fossil fuel plants. It would seem that state commissions sitting jointly, or through some other congenial mechanism, could at least facilitate (if not prescribe) cooperation between utility systems and among regulatory bodies on the important matter of power planning for generation and transmission and hence the size and distribution of rate base between (or among) states.

Rate level disparities between customer classes in different states served by the same or similarly circumstanced utilities are of proper concern to regulators and public officials. Renewed interest in fairness considerations in ratemaking requires that there be a demonstration of just how those differentials occur and why they are justified. Closely related to this is the new emphasis on making sure that "rates track costs." This emphasis is increasingly revealed in state utility commission proceedings. It is central to the provisions of the National Energy Act relating to ratemaking in the power field.

The major point here is that there may be significant rate design differences resulting from differences in production, transmission, and distribution costs even in neighboring jurisdictions. These differences in rates may be associated with variations in customer mix, service areas, and operating characteristics. If the price differences are all explained by these cost differences, then this line of inquiry might be at an end. If, however, variances in regulatory attention and treatment among states accounts for the major differences in prices, then the case would seem to be made that some formal or informal way might be found to reconcile all this.

Existing practice does allow some such inquiry if state commissions want to exercise it. There is no prohibition (though there may well be some encumbrances) to a sitting commissioner in one state, in the course of a rate hearing, asking a utility company for an explanation of the differences in rate levels in that and an adjoining state served by the same company. Or for that matter by different companies, though this last still further complicates comparative analysis.

It should be mentioned too that the rate design guidelines required to be considered under PURPA were in good measure motivated by the Congress' interest in standardization among the states. Those guidelines go chiefly to the structure of rates, for example, declining block, time of use, seasonal, interruptible; and some treat fuel adjustment clauses, advertising, cost-of-service methodology, and lifeline devices. Obviously, if neighboring commissions come out differently on these matters - not to mention the whole range of traditional rate base, rate-of-return, and accounting issues--the rate levels will reflect those differences.

It should not be thought, of course, that utility companies are necessarily pleased with significant state-to-state differences in ratemaking and other regulatory practices. Often their activities are substantially complicated by those differences, especially where the utility serves several jurisdictions. One of the more important recent examples of this is their problem of responding in power shortage emergencies when operating in adjoining states with different rules for curtailment, contingency plans, service termination, power sharing, and the like.<sup>4</sup>

At a still more specific level, the idea of some kind of cooperative regional regulation is attractive where the result can be a pooling of commission staff resources and skills for more comprehensive analysis and "a better match" for the regulated companies in major cases. This is not to cast regulation as uniformly adversarial, but rather to make the point that the regulatory process works best and the outcome is improved where there is a full and fair consideration of all the issues. This is more likely to happen in states with greater staff resources than those with lesser ones; and it is more likely if a systemwide view is taken by the review process rather than only a statewide one. The complex subjects of demand forecasting, intertie arrangements, company audits, rate base allocations, and cost verification and surveillance might be cases in point.

<sup>4</sup>Reference is made here to the natural gas and coal shortages in the winters of 1977 and 1978.

As has been consistently noted throughout this report, regionalism has a lot to do with geography--or at least the demarcation of borders. Accordingly, several possible arrangements present themselves as ways of determining which and how many state public utility commissions might be involved in a particular experiment in multistate regulation.<sup>5</sup> Some are more readily attainable than others, and some are more likely of success than others; little attempt is made here to identify those distinctions--rather to cast up an array of at least logical possibilities.

1. Regional regulation might be made coincident with the nine Electric Reliability Councils' boundaries.
2. Regional regulation might follow the boundaries of utility system service areas where these are multistate.
3. Regional regulation might duplicate the states participating in NARUC Conferences.
4. Regional regulation might adopt the boundaries of one or another of the federal regions, for example, the Federal Regional Councils, the so-called Title V Regional Action Planning Commissions, the Standard Metropolitan Statistical Areas, the Federal Reserve System Districts.
5. Regional regulation of utilities might follow the groupings of states in the motor rate bureaus or rail rate bureaus traditional to the transport field.
6. Regional regulation might assemble those states that have a history of cooperation and commonality of interest in other fields as most conducive to experimentation in the regulatory field, for example, New England, mid-Atlantic, and Northwestern states.
7. Regional regulation might follow the boundaries of power pools in which electricity is centrally dispatched or capacity jointly planned.

Finally, it remains to highlight the organizational arrangements that might be candidates for carrying out some form of regional regulation. Several can be identified--again with varying degrees of promise of accomplishment or success.

<sup>5</sup>Of course, an approach that would merely fit utility service territories to state boundaries, selling off to adjacent states any overlap, would by definition preclude the multijurisdictional problem.

One form is interstate compacts. In addition to other compacts cited in chapter 3, this approach was chosen by the states of Maryland and Virginia and the District of Columbia in creating the Washington Metropolitan Area Transit Authority, the certificating and ratemaking body for privately owned surface transportation of passengers in the Washington metropolitan region. An interstate compact is the most formal approach; it has the advantage of circumventing most of the statutory obstacles to multistate regulation but at the same time yields the most sovereignty. Consideration might be given to assigning additional authority to existing compacts where multijurisdictional utilities are involved and further regional regulation could be agreed to be tried.

A second device would be formal multilateral cooperative arrangements between (or among) states, say, along the lines of the Maryland or New England initiatives. While the former is to be advisory in character and perhaps preliminary to a compact, this particular effort contemplated governors' offices making the decision to participate rather than state legislatures. The New England case, of course, is an example of a continuous six-state effort embracing the structure of the New England Conference of Public Utility Commissioners.

A third approach would be informal but regularized cooperation among commissioners of a regional grouping, say, following the earlier pattern of the Washington, Oregon, Idaho commissioners.

A fourth approach, similar to the third, would be informal but regularized collective regional meetings of primarily commission staff, as was intended in the abortive Iowa effort at multistate regulation of multijurisdictional utilities.

From all this it can be seen that the need for some level of regional regulation is not overwhelming but is substantial; that while pitfalls abound, so do the occasions and opportunities on both geographic and institutional grounds; and that existing traditional and inventive

nontraditional organizational schemes are available in the political and public administration context of intergovernmental relations to accommodate multistate regulation.

Regional public utility regulation--full blown--may not yet be "an idea whose time has come," but its serious revisiting is surely appropriate. For as the poet, Goethe, wrote, "Daring ideas are like chessmen moved forward - they may be beaten, but they may start a winning game."

APPENDIX A

H.R. 4652, A BILL:  
TO AMEND THE PUBLIC UTILITY REGULATORY  
POLICIES ACT OF 1978 TO PROVIDE FOR A STUDY  
CONCERNING COOPERATION AMONG STATE AGENCIES  
INVOLVED IN RETAIL ELECTRIC UTILITY RATEMAKING.

96TH CONGRESS  
1ST SESSION

# H. R. 4652

To amend the Public Utility Regulatory Policies Act of 1978 to provide for a study concerning cooperation among State agencies involved in retail electric utility ratemaking.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1979

Mr. BARNES introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

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## A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to provide for a study concerning cooperation among State agencies involved in retail electric utility ratemaking.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Regional Utility Rate Act  
4       of 1979".

5       SEC. 2. (a) Title II of the Public Utility Regulatory  
6       Policies Act of 1978 is amended by inserting the following  
7       new section after section 213 and by redesignating section  
8       214 as section 215:

1 "SEC. 214. STUDY CONCERNING COOPERATION AMONG STATE  
2 AGENCIES INVOLVED IN RETAIL ELECTRIC  
3 UTILITY RATEMAKING.

4 "(a) STUDY.—The Secretary, in consultation with the  
5 Commission, State regulatory authorities, and other appro-  
6 priate State agencies, shall conduct a study of the need for  
7 increased cooperation among State agencies involved in retail  
8 electric ratemaking in order to attain the purposes of this  
9 Act. The study shall take into account the following factors:

10 "(1) electric utilities that serve consumers in more  
11 than one State;

12 "(2) interstate power pools that may, from both  
13 economic and engineering perspectives, function as in-  
14 tegrated utility systems;

15 "(3) regional electric supply emergencies that may  
16 require interstate regulatory cooperation in temporary  
17 demand reduction; and

18 "(4) the roles of separate State agencies, within a  
19 State, that have jurisdiction over one or more elements  
20 of retail electric ratemaking.

21 "(b) REPORT AND PROPOSALS.—The Secretary shall,  
22 no later than September 1, 1980, report to the Congress on  
23 the study conducted under this section, including an assess-  
24 ment of the impact of existing regulatory arrangements on  
25 the purposes of this Act, and further including any legislative

1 proposals necessary to ensure coordination of information and  
2 decisionmaking.”.

3 (b) The table of contents for such Act is amended by  
4 redesignating the item relating to section 214 as 215 and by  
5 inserting the following new items after the item relating to  
6 section 213:

“Sec. 214. Study concerning cooperation among State agencies involved in electric  
utility ratemaking.”.



APPENDIX B

STATES DISECTED BY ELECTRIC REGIONAL COUNCILS

Appendix B: States Disected by Electric Regional Councils

ECAR: East Central Area Reliability Coordination Agreement	Pennsylvania, Maryland, Virginia, Tennessee, Kentucky, Michigan
ERCOT: Electric Reliability Council of Texas	None, but ERCOT does not include all of Texas
MAAC: Mid-Atlantic Area Council	Pennsylvania, Maryland
MAIN: Mid-America Interpool Network	Michigan, Wisconsin, Missouri
MARCA: Mid-Continent Area Reliability Coordination Agreement	Wisconsin, Montana, South Dakota
NPCC: Northeast Power Coordinating Council	No states directed
SERC: Southeastern Electric Reliability Council	Virginia, Tennessee, Mississippi, Kentucky
SPP: Southwestern Power Pool	Louisiana, Texas, Mississippi, Missouri, New Mexico
WSCC: Western Systems Coordinating Council	Texas, New Mexico, South Dakota, Montana

APPENDIX C

NERC MEMBERSHIPS: A LIST OF MEMBERS  
AND THEIR AFFILIATIONS ON THE NATIONAL  
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Bonneville Power Administration

**W. D. Brown**  
National Electric Reliability Council

**A. J. Harris**  
Ontario Hydro

**T. J. Nagel**  
American Electric Power Service Corp

**C. E. Winn**  
Tennessee Valley Authority

**Multiregional Modeling Group**

**W. F. Reinke** (Chairman)  
Duke Power Co

**J. J. Albert**  
ECAR Executive Offices

**R. G. Britigan**  
General Public Utilities Service Corp

**D. W. Bowen**  
MARCA

**\*M. Chau**  
American Electric Power Service Corp

**F. W. Curran**  
Wisconsin Electric Power Co

**J. H. Erickson**  
MAAP Coordination Center

**D. E. Eyre**  
Western Systems Coordinating Council

**K. Fong-Chil**  
American Electric Power Service Corp

**J. J. Marschewski, Jr.**  
Southwest Power Pool

**J. G. Mosler, Jr.**  
Northeast Power Coordinating Council

**P. R. Sims**  
Carolina Power & Light Co

**\*L. Vargas**  
American Electric Power Service Corp

**J. F. Watson**  
Union Electric Co

**GADS Joint Advisory Committee**

**M. H. Tanner, Jr.** (Chairman)  
Dallas Power and Light Co

**J. W. Barker, Jr.**  
Department of Energy

**\*C. A. Falcone**  
Department of Energy

**E. E. Haddad**  
Boston Edison Co

**R. L. Haueter**  
Consumers Power Co

**R. J. Niebo**  
National Electric Reliability Council

**D. N. Poole**  
Electric Power Research Institute

**J. A. Prestele**  
Electric Power Research Institute

**V. L. Pruett**  
Los Angeles Department of Water and Power

**\*J. W. Workman**  
Department of Energy

**EPRI Planning Study Liaison**

**D. E. Simmons** (Chairman)  
Houston Lighting & Power Co

**R. E. Charpentier**  
New England Power Co

**W. G. Michaelson**  
Public Service Electric & Gas Co

**W. D. Masters**  
The Cleveland Electric Illuminating Co

**E. N. Oatman**  
Electric Power Research Institute

**C. L. Rudasill**  
Virginia Electric & Power Co

APPENDIX D

TARIFF FILING MADE BY THE NEW ENGLAND TELEPHONE  
AND TELEGRAPH COMPANY ON NOVEMBER 1, 1977

APPENDIX D

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: TARIFF FILING MADE BY :  
THE NEW ENGLAND TELEPHONE AND : DOCKET NO. 1321  
TELEGRAPH COMPANY ON :  
NOVEMBER 1, 1977 :

WHEREAS, on October 31, 1977, the New England Telephone and Telegraph Company ("Company") filed various tariff changes involving Extension Service/Credit allowance, Service Charges, Touch-Tone R Service, Residence Service Package and Data Jacks with the Public Utilities Commission ("Commission") to become effective December 1, 1977; and

WHEREAS, joint public hearings were held on May 11 and 12, 1978 in Boston, Massachusetts and on June 19 and 20, 1978, in Montpelier, Vermont, in conjunction with the Vermont Public Service Board, the Maine Public Utilities Commission and the Public Utilities Commission of the State of Rhode Island; and

WHEREAS, a public hearing was held on July 19, 1978, at Providence, Rhode Island; and

WHEREAS, in response to Commission's Order (9593), the Company filed certain tariff revisions on August 3, 1978; and

WHEREAS, the revised tariff filed on August 3, 1978, in response to Commission's Order is consistent with the previous Order of this Commission;

Now, therefore, it is

(9608) ORDERED: That the tariff filed on August 3, 1978,  
is allowed and may become effective on September 2, 1978.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND THIS  
TWENTY-FOURTH DAY OF AUGUST, 1978.

PUBLIC UTILITIES COMMISSION

*Edward F. Bunker*

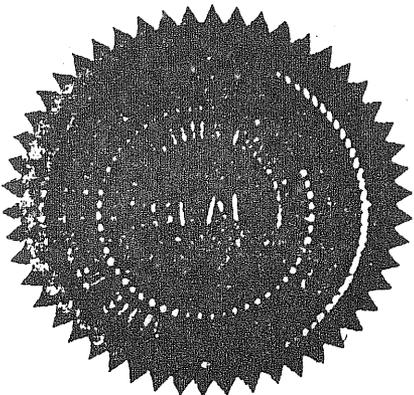
CHAIRMAN

*John N. Wrenn*

COMMISSIONER

*Robert J. Miller*

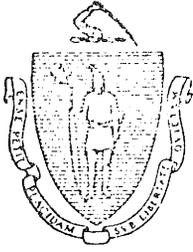
COMMISSIONER





APPENDIX E

PETITION OF MASSACHUSETTS ELECTRIC COMPANY  
TO CONDUCT ELECTRIC LOAD RESEARCH STUDIES



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

May 30, 1980

D.P.U. 235

Petition of Massachusetts Electric Company to conduct electric load research studies, as required by the Public Utility Regulatory Policy Act of 1978, jointly with Narragansett Electric Company of Rhode Island pursuant to 18 C.F.R. 290.405(b) (1979), 18 C.F.R. 290.601(a) (4) (1979) and 18 C.F.R. 290.601(b).

-----

The Narragansett Electric Company ("NECO") requested the Rhode Island Public Utilities Commission ("RIPUC") and the Massachusetts Electric Company ("MECO") requested the Department of Public Utilities ("Department") by letters dated April 16, and April 17, 1980, respectively, to hold a joint hearing on this request to engage in joint load research for a limited number of customer rate classes. Specifically, MECO and NECO seek to sample residential customers, residential customers with electric hot water, and small commercial customers on a consolidated basis.

Section 133 of the Public Utilities Regulatory Policy Act ("PURPA") requires utilities to undertake load research programs. Under the Federal Energy Regulatory Commission ("FERC") regulations which implement §133 of PURPA, permission from FERC is required to engage in joint load research which includes a filed statement of concurrence by the regulatory agencies of the applicant utility. (See 18 C.F.R. §290.601(a) (4)).

The Department and the RIPUC, after due notice, held a joint hearing on MECO's and NECO's joint load research request on May 22, 1980 at the Department's offices in Boston.<sup>1/</sup>

Evidence at this hearing was presented to show that there were no significant differences in the patterns of monthly total kilowatt hour usage (Company's exhibits 4,5,6) for each of the customer classes. The companies also represented that there were no significant statistical differences with respect to each of the load characteristics itemized on p.14 of Companies' exhibit 1 and that the saturation levels of significant electrical appliances in both service areas are comparable. The companies further represented that as early as two months after the joint load research program had been commenced, the companies could determine whether or not the two population segments were in fact equivalent. If not found comparable, the companies could adopt conforming procedures which would not incur any additional costs than would have been incurred had separate load research programs been commenced initially due to the fact that most of the savings were attributable to the metering system and not to computer processing or additional manpower, nor would PURPA deadlines be in danger of not being met.

On the basis of the evidence and testimony presented at the May 22, 1980 hearing, the Department finds that:

1. The joint load research program proposed by MECO and NECO appears to comply with the statistical standards set forth in 18 C.F.R. 290.403(b), and

---

<sup>1/</sup> RIPUC conducted a second hearing at its offices in Providence on May 23, 1980.

2. That the proposed joint load research program will result in savings to the ratepayers of both companies if carried out as outlined.

The Department, therefore, concurs with the joint load research proposal as outlined by the companies subject to the following conditions:

- a) The companies file with the Department on April 15, 1981, the statistical data compiled up to that date with respect to the comparability of the consolidated sampling plan segments.
- b) The companies submit bi-monthly progress reports on the load research results.
- c) The companies submit bi-monthly reports detailing the costs of the load research program during that two month period and to date, specifying how the costs are split between the two companies.
- d) The companies petition the Department for any further concurrence for future filings other than the 1982 filing.

Upon the foregoing, the Department is of the opinion that the proposed joint load research program should be approved by the FERC for the 1982 filing requirement.

By Order of the Department,

DORIS R. POTE

CHAIRMAN

APPENDIX F

APPLICATION BY THE NARRAGANSETT ELECTRIC COMPANY  
FOR PERMISSION TO CONDUCT JOINT LOAD RESEARCH

RECEIVED  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS OF  
PUBLIC UTILITIES COMMISSION PUBLIC UTILITIES

IN RE: APPLICATION BY THE NARRAGANSETT : 80 MAY 2 P 2: 43  
ELECTRIC COMPANY FOR PERMISSION TO : DOCKET NO. 1511  
CONDUCT JOINT LOAD RESEARCH :

DECISION AND ORDER

On April 18, 1980, The Narragansett Electric Company ("Narragansett" or "Company") filed with the Public Utilities Commission ("Commission") an application for permission to allow joint load research with its affiliate, Massachusetts Electric Company ("Massachusetts" or "Company"). At the same time, Massachusetts filed a similar application with the Massachusetts Department of Public Utilities ("Department"). Pursuant to a notice of hearing published in a newspaper of general circulation and mailed to parties known to be interested, the Commission held a joint public hearing with the Department at 10:00 a.m. on May 22, 1980, at the Department's offices, 100 Cambridge Street, Boston, Massachusetts. The following appearances of legal counsel were entered at the hearing:

FOR NARRAGANSETT AND MASSACHUSETTS:	Thomas G. Robinson, Esquire
FOR THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS:	Michael Postar, Esquire
FOR THE MASSACHUSETTS DEPARTMENT OF THE ATTORNEY GENERAL:	Estelle H. Wing, Esquire
FOR THE COLLEGE OF THE HOLY CROSS:	Andrew J. Newman, Esquire
FOR THE DEPARTMENT:	Jay Lupica, Esquire
FOR THE COMMISSION:	Lindsay Johnson, Esquire

Also pursuant to published notice, the Commission held a public hearing at 10:00 a.m. on May 23, 1980, at the Commission's offices at 100 Orange Street, Providence, Rhode Island, to give Narragansett customers and other interested parties an opportunity to comment locally. At the hearings nine Company exhibits were offered and admitted in full and two Company witnesses testified orally. No other party submitted exhibits or testimony.

As described by Company witness David Kennedy, Manager of the Load Research Department, the Company has developed a load research plan to gather actual electric power demand data from its customers in accordance with Section 133 of the Public Utility Regulatory Policies Act ("PURPA"). Preliminary studies indicated that the following three customer classes of Narragansett and Massachusetts are so similar that the load research can be consolidated without violating PURPA's statistical standards: Residential (general), Narragansett Rate A-10 and Massachusetts Rate A-22; Residential (with hot water), Rate A-11 and Rate J-03; and General Service (small commercial), Rates C-02 and C-22. The benefit of consolidation is that the estimated \$7,125,000 cost of the four-year study would be reduced by about \$725,000, or over 10%, due to the smaller samples required (Exh. Company 2,3). Further testimony in support of the comparability of these three classes was provided by Company witness John Forryan. The specific request of the Commission and of the Department by the Company is to approve the consolidated or joint aspect of the load research plan before the Company submits the

plan to the Federal Energy Regulatory Commission ("FERC") on June 1, 1980, for overall approval. No party to this proceeding opposes the Company's request, though during the course of hearings several concerns and questions were raised.

Of primary interest was whether the preliminary indications of comparability for the three customer classes would be borne out by the full load research study. Mr. Kennedy testified that the Company will find out early in the program, about March 1981, whether consolidation is in fact warranted by the actual data. At that point, if necessary, the Company could shift to the separate state research plan without either going over the \$7,125,000 cost level or missing PURPA deadlines. With these assurances, the Commission agrees that the consolidation should be attempted and the comparability of customer classes should be tested. The Commission instructs the Company, however, to submit a report in this docket no later than March 31, 1981, describing in full the status of the joint load research program. We defer approval of future joint applications under PURPA until we have completed review of the forthcoming status report.

A second area of great concern was whether Commission approval at this time in any way implies future acceptance of the results obtained by this methodology. On behalf of the Company, Mr. Robinson stated that no such advance concurrence is being sought here. In particular, the Commission points out that the use of non-Narragansett load research data to support Narragansett rate design must meet the two-part comparability test set out recently in Newport Electric Corp., Docket No. 1410, Order No. 10064, February 20, 1980, and Blackstone Valley Electric Co.,

Docket No. 1439, Order No. 10108, May 13, 1980. This Decision and Order does not in any way decide that question as it may arise in a subsequent proceeding.

The third point raised at the hearings which the Commission now addresses involves the scope of the instant proceeding. Based on the representations of Mr. Kennedy and Mr. Robinson, it is our understanding that we are being asked only to give our approval for the Company to proceed with the consolidated or joint aspect of the load research plan (See 18 C.F.R. §290.601(d)(4)). It is that limited request that we are now granting. All other aspects of the plan, apparently, are properly the subject of review by the FERC.

Accordingly, it is

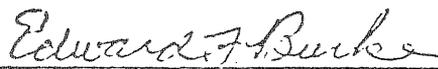
(10139) ORDERED:

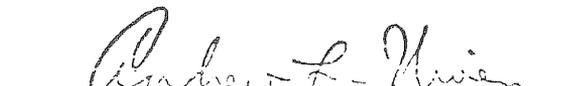
(1) That the Narragansett Electric Company is permitted to conduct a load research plan under Section 133 of the Public Utility Regulatory Policies Act jointly with the Massachusetts Electric Company as requested on April 18, 1980; and

(2) That the Narragansett Electric Company shall submit to the Commission in this docket no later than March 31, 1981, a report describing in full the status of the joint load research program.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND, THIS THIRTIETH DAY OF MAY, 1980.

PUBLIC UTILITIES COMMISSION

  
CHAIRMAN

  
COMMISSIONER

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

IN RE: APPLICATION BY THE MASSACHUSETTS )  
ELECTRIC COMPANY FOR PERMISSION TO CONDUCT ) DOCKET No. 235  
JOINT LOAD RESEARCH )

STATEMENT OF CONCURRENCE WITH  
MASSACHUSETTS ELECTRIC COMPANY'S  
JOINT LOAD RESEARCH PROPOSAL

On April 17, 1980, the Massachusetts Electric Company and The Narragansett Electric Company requested the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission to hold a joint hearing on their request to engage in joint load research for a limited number of customer rate classes. Specifically, Mass. Electric and Narragansett seek to sample residential customers, residential customers with electric hot water, and small commercial customers on a consolidated basis.

Section 133 of the Public Utilities Regulatory Policies Act requires utilities, including Mass. Electric and Narragansett, to undertake load research programs. Under the Federal Energy Regulatory Commission (FERC) regulations which implement § 133 of PURPA, permission from FERC is required to engage in joint load research. As part of this approval process, FERC requires a statement of concurrence by the regulatory agencies of the applicant utilities. See 18 C.F.R. §290.601(a)(4).

Thus, on May 22, 1980, pursuant to due notice, the Department and Commission held a joint hearing on Mass. Electric's and Narragansett's joint load research request. This hearing was held at the Department of Public Utilities offices, 100 Cambridge Street, Boston, Massachusetts.

Based on the testimony and evidence taken at these hearings the

Department finds that the joint load research program proposed by Mass. Electric and Narragansett Electric complies with the statistical standards set forth in 18 C.F.R. 290.403(b), and that the proposed joint load research program will result in savings to both companies. Moreover, the companies are both willing to add additional samples and pursue individual load research if the data produced from the consolidated sampling plan indicates a significant variance between the two companies.

Therefore, the Massachusetts Department of Public Utilities concurs with the joint load research proposal and recommends that the Federal Energy Regulatory Commission approve the petition and allow joint load research on the following rate classes.

<u>Massachusetts</u> <u>Electric Company</u>	<u>The Narragansett</u> <u>Electric Company</u>	
Rate A-22	Rate A-10	Residential
Rate J-03	Rate A-11	Residential with Electric Hot Water
Rate C-22	Rate C-02	Small Commercial

The Department also concurs with the proposal to make the exemption and permission applicable to the 1982 filing and all future filings.

DEPARTMENT OF PUBLIC UTILITIES

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner



APPENDIX G

JOINT HEARINGS AND ORDERS: NEW MEXICO

## ARTICLE 4

### Joint Hearings and Orders

**Sec.**

**62-4-1.** Joint hearings and orders.

#### **62-4-1. Joint hearings and orders.**

The public service commission, in the discharge of its duties under the Public Utility Act is authorized to make joint investigations, hold joint hearings within or without the state and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the commission may function under agreements or compacts between states to regulate interstate commerce. The commission, in the discharge of its duties under the Public Utility Act, is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certificating the construction, operation and maintenance of major utility facilities in accord with the purposes of the Public Utility Act and for the enforcement of the respective state laws regarding same.

**History:** 1953 Comp., § 68-8-2.1, enacted by Laws 1977, ch. 191, § 1.

**Public Utility Act.** — The provisions of the Public

Utility Act are compiled as 62-3-1 to 62-3-4, 62-5-1, 62-5-3 to 62-5-11, 62-6-1 to 62-6-24, 62-8-1 to 62-8-9, 62-9-1, 62-9-2, 62-9-4 to 62-9-6, 62-10-1 to 62-10-16,

APPENDIX H

MARYLAND HOUSE JOINT RESOLUTION NO. 23  
ON REGIONAL REGULATORY

APPENDIX H

91r0240 HOUSE JOINT RESOLUTION No. 23 3500-00000

-----  
 By: Delegates Taylor, Cumiskey, Byrnes, and Bolden 25  
 Introduced and read first time: February 5, 1979 27  
 Assigned to: Environmental Matters 29  
 ----- 31  
 Committee report: Favorable with amendments 32  
 House action: Adopted 33  
 Read second time: March 19, 1979 34  
 ----- 35

SIGNED

RESOLUTION NO. 11 APR 10 1979 38

HOUSE JOINT RESOLUTION 40  
 A House Joint Resolution concerning *By the President and the Speaker* 44  
Interstate Public Service-Commission Utility 47  
Advisory Committee Commission 48

FOR the purpose of requesting the establishment of an 52  
Interstate Public Service-Commission Utility Advisory 53  
Committee Commission with the responsibility of 54  
 determining whether there is a need and if it is 56  
 feasible to create an interstate utility regulatory  
 agency.

WHEREAS, There are several gas and electric companies 58  
 servicing Maryland and the surrounding states; and 60

WHEREAS, There is a growing public concern over gas and 62  
 electric rates; and

WHEREAS, The gas and electric companies servicing 64  
 surrounding states as well as Maryland are governed both by 65  
 the Public Service Commission in Maryland and the comparable 66  
 body in the other states that the company services; and 67

WHEREAS, The prices paid by utilities purchasing gas 69  
and electricity on a wholesale basis are regulated by the 70  
Federal Energy Regulatory Commission; and

WHEREAS, The gas and electric rates charged the 72  
 consumers in Maryland and the consumers in the adjoining 73  
 state serviced by the same utility are not the same; and 74

WHEREAS, There is a great concern being expressed by 76  
 the public and government over the efficient and economical 78  
 utilization of energy; and

-----  
 EXPLANATION:  
Underlining indicates amendments to bill.  
~~Strike-out~~ indicates matter stricken by amendment.

HOUSE JOINT RESOLUTION No. 23

WHEREAS, The impact of energy economics coupled with environmental concerns of the different jurisdictions is much greater in the case of utilities and a utility power pooling grid system servicing two or more jurisdictions; and

WHEREAS, Uniformity of regulations would insure tighter control and more equitable rates; and

WHEREAS, The energy crisis, economic issues, and environmental issues must be a priority for all states; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the President of the Senate and the Speaker of the House of Delegates are requested to initiate the establishment of an Interstate Public Service--Commission Utility Advisory Commission with the Federal Energy Regulatory Commission and the legislatures or governing bodies of the ~~adjacent~~ surrounding jurisdictions of Delaware, Pennsylvania, Virginia, West Virginia, Ohio, New Jersey, and the District of Columbia; and be it further

RESOLVED, That the Advisory Commission shall consist of ~~12~~ two members chosen from each state jurisdiction by the state's legislature or governing body and one chosen by the Federal Energy Regulatory Commission; and be it further

RESOLVED, That the purpose of the Advisory Commission is to study and make a recommendation to the participating state legislatures or governing bodies, by January 1, 1981, as to the need and feasibility of establishing means by which individual jurisdictions and the Federal Energy Regulatory Commission can coordinate the regulation of multijurisdictional utilities, including coordinating committees, joint regulatory proceedings, and an interstate compact creating one or more ~~multistate~~ multijurisdictional utility regulatory agencies; and be it further

RESOLVED, That copies of this Resolution be sent to the President of the Senate and the Speaker of the House of Delegates.

Approved:

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\_\_\_\_\_  
Speaker of the House of Delegates

---

\_\_\_\_\_  
President of the Senate



APPENDIX I

STATE COMMISSION PARTICIPANTS  
CONSULTED IN COURSE OF REPORT PREPARATION

APPENDIX I

STATE COMMISSION PARTICIPANTS  
CONSULTED IN COURSE OF REPORT PREPARATION

Raymond K. Vawter	Iowa State Commerce Commission
Ronald E. Hawkins	Maryland Public Service Commission
Heber P. Hardy	Nevada Public Service Commission
Andrew L. Niven	Rhode Island Public Utilities Commission
Ralph H. Wickberg	Idaho Public Service Commission
Leonard Hellman	New Mexico Public Service Commission
John D. Borrows	Ohio Public Utilities Commission
Robert L. Bailey	Washington Utilities and Transportation Commission
Gordon E. Bollinger	Montana Public Service Commission
Leigh H. Hammond	North Carolina Utilities Commission
Charles G. Stalon	Illinois Commerce Commission