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James Jr. Noble

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# CONSERVATION, LIFELINE RATES AND PUBLIC UTILITY REGULATORY COMMISSIONS

## PUBLIC UTILITIES—PUBLIC SERVICE COMMISSIONS' JURISDICTION AND POWERS APPLIED TO RATE STRUCTURES:

Public Service Commissions are limited to cost of service analysis in prescribing appropriate rate structures for public utilities. Environmental considerations and income redistribution may only be considered within the confines of this analysis.

## INTRODUCTION

Utility rate structures have come under increasingly close scrutiny as utility costs continue to rise. Utility customers are seeing a greater portion of their budgets going to pay utility bills and their complaints are being heard by utility companies, utility regulatory commissions and state legislators with increasing frequency. Political groups have joined the bandwagon by proposing partial solutions which address their particular goals.

Probably the most common political proposal involves so-called "lifeline rates." Lifeline rates may be described generally as attempts to redistribute income among all of the users of a utility. A basic belief of proponents of this goal is that certain classes of customers should receive gas, electricity, and perhaps other "basic" commodities at a low price. There are many variations of this philosophy. For instance the favored class of customers might be the elderly, the poor, or all residential customers. Likewise, the quantity of services to which any particular group should be entitled at a reduced rate might vary. And, since someone must pay higher rates in order to give another lower rates, the goal of any such proposal is ultimately to take from the rich and give to the poor. Naturally, there is some disagreement as to which rich customers should help pay the costs of service for the poor customers.

Environmental concerns have also become closely entwined with utility rate structures. Such concerns may or may not be considered political, depending upon the degree to which the human environment is affected by any particular enterprise a utility undertakes. The more any enterprise affects the human environment, the less political and the more related to health and welfare it becomes.

As a result of these kinds of pressures, many states have begun to

re-examine traditional rate structures of state-regulated utilities. The primary scope of this Note is to examine the legal ramifications of any attempts to change traditional utility rate structures.

#### FEDERAL AND STATE LIMITS ON THE POWERS OF UTILITY REGULATORY COMMISSIONS

A state legislature may not delegate to an administrative agency any powers which the legislature itself does not possess. In a United States Constitutional context, any action taken by a state legislature is valid unless *prohibited*, explicitly or implicitly, by the Constitution.<sup>1</sup> In a state constitutional context, state legislatures are prohibited from exercising powers properly belonging to the executive or judicial departments.<sup>2</sup> A state legislature is further prohibited from denying the federal or state constitutional rights of the people. These constitutional limitations vis-a-vis the rights of citizens generally take the form of due process and equal protection limitations.<sup>3</sup> The general principle of law which is embodied in these federal and state constitutional provisions is that whenever a particular governmental action is applied to a person or class of persons, the action must not abrogate certain judicially ascertained rights.<sup>4</sup>

Applied specifically to utility regulation, the classification of customers is a fundamental part of a rate structure. Traditionally, such classifications have been cost-of-service related. If the objective of a utility rate structure is not to assess each customer class according to the cost of service for that class, but is instead to promote conservation or assist low-income individuals, the rate classifications should be related to these purposes, rather than to costs. Thus, if a poverty-level user pays for electricity at a lower rate than other customers using the same amount of electricity at the same cost to the utility, this lower rate must be reasonably related to the purpose of the statute. It may be quite difficult to draft such a statute within constitutional limitations because of the difficulty of applying it equally among the poor. Likewise, if the object of the rate structure is to promote conservation, and it does so by charging low-volume users

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1. See U.S. CONST., amend. X; for an explanation of this, see *TRIBE, AMERICAN CONSTITUTIONAL LAW*, at 225.

2. See, e.g., N.M. CONST. art. II, § 1.

3. See, e.g., N.M. CONST. art. II; U.S. CONST., amend. XIV; and *Pavone v. Louisiana State Board of Barber Examiners*, 364 F. Supp. 961 (N.D. La., 1973) provides an analysis of these rights. The State purpose must also be permissible. See, e.g., *Board of Regents v. Bakke*, 98 S.Ct. 2733 (1978).

4. See *DAVIS, ADMINISTRATIVE LAW TEXT*, 26, 27 (3d ed. 1972), for a historical review of federal delegation law.

less per unit of service, it must be able to show that the high-volume users are in a better position to conserve than low-volume users; otherwise the higher rates will not result in conservation. Finally, any such statute must not deprive any customer of property rights without due process. If these limitations cannot be met, the rate design will be struck down as violating either the state or federal constitution, or both.

As stated above, a state legislature may delegate practically any authority within its control, subject to judicial review.<sup>5</sup> The degree to which a state legislature may delegate its authority varies, of course, from state to state. Often, a state decision will declare that "there is no doubt that a legislative body may *not* delegate to another its law-making powers (emphasis added)."<sup>6</sup> This rule is so frequently excepted that the exceptions seem to swallow up the rule.<sup>7</sup> It still lingers, however, and state courts will still use this rule to overcome a legislative delegation of authority.<sup>8</sup>

It is within these parameters that an administrative agency's rules and regulations may be challenged. Perhaps the most fertile area for controversy is found in the area of authority *implicitly* delegated. If an administrative agency undertakes an action beyond that which is necessarily implied in the legislature's express grant of authority, the agency has exceeded its delegated authority.<sup>9</sup>

### CHANGING THE RATE STRUCTURE

Many state utility regulatory commissions, while faced with these legal limitations, have begun to address lifeline rates and conservation by placing constraints on traditional utility pricing mechanisms.<sup>10</sup> Historically, pricing mechanisms had followed economic considerations. The rates generally followed had been termed "declining block" rates which allowed utility customers to pay less for each additional block of service required. The justification for such a

5. See, e.g., *Osius v. City of St. Clair Showers*, 344 Mich. 693, 75 N.W. 2d 25, 27 (1956); *Cincinnati W. & Z. R. v. Clinton*, 1 Ohio St. 77, 88 (1852), quoted with approval in *Field v. Clark*, 143 U.S. 649 (1892).

6. See, e.g., *State v. Traffic Tel. Workers' Federation of N.J.*, 2 N.J. 335, 66 A.2d 616 (1949); and *City of Saginaw v. Budd*, 381 Mich. 173, 178, 160 N.W. 2d 906, 908 (1968).

7. See, e.g., *Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass.*, 564 P.2d 751 (Utah, 1977).

8. See, e.g., *New Mexico Electric Service Co. v. N.M. Public Service Comm'n*, 81 N.M. 683, 472 P.2d 648, 649 (1970).

9. *Id.* See also, *Winston v. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969) and *Vermejo Club v. French*, 43 N.M. 45, 85 P.2d 90 (1938).

10. A few such states include Colorado, Maine, New Jersey, New Mexico, Texas, and Utah.

structure was that one large utility consumer required less outlay by the utility for a specified amount of service than did several small customers for the same total amount of service. Thus, an industrial customer required only one service line for 10,000 kwh of electricity, while 10 residential customers consuming a total of 10,000 kwh required 10 lines. Furthermore, as technology had developed, utilities had been able to use larger machines and more sophisticated delivery techniques to supply increasing demands without greatly increasing their capital outlay requirements. Finally, production of the energy source had become cheaper in larger quantities, so utilities could actually receive their energy source at lower prices if they used larger amounts of that energy source. The result was that each additional unit of service provided by the utility actually cost the utility less to provide than the average cost of previous units. This was called a decreasing marginal cost situation by economists.

All of these economic principles have become somewhat less applicable.<sup>11</sup> With decreasing energy reserves, it is certain that the use of large amounts of energy is becoming more expensive, rather than cheaper. Rising labor costs, material costs and inflation are all taking their toll. Thus, the costs for producing additional units of service may be increasing average costs for some utilities in what may be called an increasing marginal cost situation. In such a situation, declining block rates are no longer cost related.

As a result, several proposals for reforming rate structures have been offered, most of which aim at encouraging conservation by charging either flat rates or even increased rates for increased consumption of the utility's service.<sup>12</sup> Thus far, none of the proposals offer a perfect solution primarily because it is so difficult to accurately reflect a utility's cost of service to each type of customer served.<sup>13</sup> This problem is compounded because utilities are not in a free market situation. They are regulated monopolies. This makes it difficult to determine the degree of distortion caused by the regulations imposed on the utility by the state. Furthermore, since utilities do not operate in a free marketplace, we are unsure whether they themselves are operating at optimal efficiency. Even if they were, the regulated prices of alternate energy sources make it difficult to deter-

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11. See, e.g., *Reform of Electricity Pricing in the United States*, 25 BUFFALO L. REV. 183 (1975).

12. See, e.g., Newburger, *Reforming Electric Utility Rate Regulation Reform: Peak-Load Prices Without Long-Run Incremental Cost Analysis*, 28 CASE W. RES. L. REV. 558 (1978).

13. *Id.*

mine whether a utility is in an increasing marginal cost situation, and if it is, what type of rate structure would accurately reflect costs.

Many of the proposals for rate reform recognize that in some situations, users of small amounts of the service will have to pay greater prices for the service than they are now paying. Inflation increases this impact. This problem has generated a greater interest in lifeline rates, though it will be shown that lifeline rates are not an economic consideration, and in fact, imposition of them would negate any rate structure designed to promote conservation.

#### STATUTORY CONSTRAINTS UPON RATE-SETTING BY UTILITY REGULATORY COMMISSIONS

While some public utility regulatory commissions have received a legislative mandate to promote conservation or impose lifeline rates, others have not. Those commissions which have not are exceeding their statutory authority unless they can show that this authority was implicitly given to them. It is hard to show this in most states, because a strict test of implied authority must be met.<sup>14</sup> For instance, the New Mexico Supreme Court in *New Mexico Electric Service Co. v. New Mexico Public Service Comm'n*<sup>15</sup> was faced with the question of whether the Public Service Commission could require the Electric Service Company to pay refund money, received from its wholesale power supplier, to the Company's customers. While the Commission had no express authority for ordering the refund to customers, it based its authority on its implied power to regulate the utility. N.M. Stat. Ann. § 62-3-2 (1978 comp.) states, in part:

A. The following are hereby declared to be the objects and purposes of this . . . act:

\* \* \*

(3) . . . to establish a system which will more adequately provide for the development and extension of reasonable and proper utility services at fair, just and reasonable rates . . .

B. This . . . act shall be liberally construed to carry out its purposes.

Though this statute was declared inapplicable because it was en-

14. See, e.g., *Pittsburgh v. Pennsylvania Public Utility Comm'n* 157 Pa. Super. 596, 43 A.2d 348 (1945); *State ex rel. Public Utility Dist. v. Dept. of Public Service*, 21 Wash. 2d 201, 150 P.2d 709 (1944); *Cole v. Washington Utilities & Trans. Comm'n*, 79 Wash. 2d 302, 485 P.2d 71 (1971); and *New York Interurban Water Co. v. Mt. Vernon*, 180 N.Y.S. 304, 110 Misc. 281 (1920). But see, *Hotel Pfister v. Wisconsin Tel. Co.*, 203 Wis. 20, 233 N.W. 617, 73 ALR 1190 (1930).

15. *New Mexico Electric Service Co. v. N.M. Public Service Comm'n*, 81 N.M. 683, 472 P.2d 648 (1970).

acted after the transaction occurred, the court stated that the statute would not give the commission authority anyway, because it was "primarily a statement of policy and not a grant of power."<sup>16</sup> Further, the Court held that the commission did not have any authority to change rates charged by the utility unless the utility invoked the commission's jurisdiction by requesting a rate change.<sup>17</sup>

The Public Utility Act of New Mexico<sup>18</sup> is fairly representative of the statutes found in many states, and is especially appropriate for discussion because the New Mexico Public Service Commission has mandated a study of methods to force energy conservation.<sup>19</sup> Yet, in doing so, they may have exceeded their statutory authority, since N.M. Stat. Ann. § 62-6-4 specifically limits the jurisdiction of the regulatory powers of the commission:

to the extent necessary to enable the commission to determine that the cost to the utility of such gas, water or electricity at the place where the major distribution to the public begins shall be reasonable and that the methods of delivery thereof shall be adequate . . ."<sup>20</sup>

Once any jurisdictional question is overcome, courts have historically found that utility regulatory commissions have necessarily implied authority to regulate rates along economic guidelines.<sup>21</sup> This

16. *Id.*, at 685.

17. *Id.* See also, *Phillips Petroleum Co. v. Public Service Comm'n*, 545 P.2d 1167, 1170 (Wyo., 1976), wherein the court found that a commission could *not* invoke jurisdiction for the purpose of accomplishing environmental regulation.

18. N.M. STAT. ANN. § 62-3-1, *et. seq.* (1978).

19. See New Mexico Public Service Commission Proposed General Order 33, Case 1394 (Nov. 8, 1977).

20. See also, § 62-6-19, Standard of Service to be "reasonable and adequate"; § 62-8-3, schedules of rates shall be filed with the commission; § 62-8-7, the commission may void and determine its own rates for a utility if it finds the proposed rates of any utility to be unjust, unreasonable, or in any wise in violation of law; and § 62-8-6, which prohibits any unreasonable preferences in rates. New Mexico case law also limits any implied authority. See, e.g., *Ferguson-Steere Motor Co. v. State Corporation Comm'n.*, 63 N.M. 137, 314 P.2d 894 (1957), wherein the New Mexico Supreme Court stated that in issuing a certificate of public convenience and necessity, the Commission must consider whether: 1) there is a present or reasonably anticipated future need of the public for service, and that present facilities are inadequate to meet this need; and 2) the public may be more efficiently served at lower cost than would be the case in the absence of such regulation. These are clearly purely economic considerations. See also, *New Mexico Electric Service Co. v. N.M. Public Service Comm'n*, 81 N.M. 683, 472 P.2d 648 (1970), wherein the court stated: "Appellant is an administrative body created by statute and must therefore find its authority and jurisdiction conferred upon it either expressly or by necessary implication from the same statutory authority. Finally, see *Potash Co. of America v. New Mexico Public Service Comm'n.*, 62 N.M. 1, 303 P.2d 908 (1956), wherein the court stated that under the New Mexico statutes, there could be no "unreasonable preference or advantage to any corporation or person as to rates or services."

21. See, e.g., *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79 (1901); and *Union Dry Goods Co. v. Georgia Public Service Corp.*, 83 S.E. 946 (1914).

type of regulation may be specifically identified as the cost of providing the service to a particular type of customer together with the needs for service and a reasonable rate of return for the utility.<sup>22</sup> The three traditional classes of customers are residential, commercial, and industrial. These classifications have been held reasonable because they are based on economic considerations of type and cost of service provided to the members of each class.<sup>23</sup> Thus, any classification or grouping of customers along these economic lines are within the implicit, if not express, powers of a public utility commission.

However, the courts of several jurisdictions have recognized a distinction between the use of traditional economic regulations of public utilities and the creation of social policy.<sup>24</sup> For example, in *Idaho Power Co. v. Thompson*,<sup>25</sup> the U.S. District Court for the southern District of Idaho reversed an order of the Idaho Public Utility Commission establishing a discounted rate for electricity sold to certain charitable institutions, stating:

Within constitutional limits, it is for the legislature to declare the general policies of the state and for the commission to give them effect. The commission cannot initiate public policies on its own . . . (t)he Legislature has declared that rates shall be reasonable, just and non-discriminatory (language found in the statutes of many states); and has clothed the commission with full power to see that such policy is carried into effect. In determining whether a schedule conforms to these requirements, it must act upon the facts and be governed by considerations intrinsic to the service, and cannot act out of respect for public policies, however wise they may seem to be, which the legislature has not prescribed . . .

Such a distinction would seem to seriously undermine any contention by public service commissions that may *sua sponte* require utilities to consider conservation or income redistribution in designing rates for their customers. This limitation is, of course, tempered by the economic considerations mentioned above.

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22. *Id. See also*, *Western Union Telegraph Co. v. Call Publishing Co.*, 44 Neb. 326, 62 N.W. 506, 510 (1895); and *Philadelphia Suburban Transportation Co. v. Pennsylvania Public Utilities Comm'n.*, 3 Pa. Commw. 184, 281 A.2d 179, 186 (1971). In *American Toll Bridge Co. v. Railroad Comm'n* 307 U.S. 486 (1939), the Court held it unconstitutional to deprive a utility of a fair rate of return. *Accord*, *City of Pittsburgh v. Pennsylvania Public Utilities Comm'n.*, 182 Pa. Super. 376, 126 A.2d 777, 786 (1956). North Carolina ex rel. North Carolina Utilities Comm'n v. Municipal Corporations, 243 N.C. 193, 90 S.E. 2d 519, 527-8 (1955) and *Seward v. Denver & R.G.R. Co.*, 17 N.M. 557, 131 P. 980 (1913), support the proposition that the consumer is entitled to a reasonable price for the service.

23. *See* *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1934).

24. *See, e.g.*, *Southern Pacific Co. v. I.C.C.*, 219 U.S. 433 (1911); and *Telluride Power Co. v. Public Utilities Comm'n.*, 8 F. Supp. 341 (1934).

25. 19 F.2d 547, 580 (1927).



There is a further limitation imposed in many states upon the public utilities themselves preventing them from granting any unreasonable preference in rates or service to their customers. N.M. Stat. Ann. § 62-8-6 (1978) is representative:

No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Several courts have specifically held that an "unreasonable preference" may be defined as a difference in rates for the same service under the same circumstances.<sup>26</sup> Such a preference would be created if a utility were to charge certain customers a greater or lesser amount for the same service provided to like customers. Likewise, an unreasonable preference would be created if the amount of service provided to like customers were to vary. For instance, if a commission were to require an electric utility to charge higher rates to residential customers with all-electric homes purely in the name of conservation, an unreasonable preference would be created. Likewise, if a commission were to decide that certain industrial customers could not receive as many units of natural gas as other similar industrial customers, the preference created would be unreasonable.

By carefully tying any conservation requirements to cost of service, however, a commission probably would not create any unreasonable preference. Such a solution is not so readily available for lifeline rates or any form of income redistribution rates: income redistribution cannot be tied to any of the traditional economic considerations used by utilities in rate structure formation. For this reason, public utilities commissions in several states have specifically rejected proposals that they establish special utility rates based on age or income of the persons receiving the service.<sup>27</sup> For example,

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26. See, e.g., *State ex rel. Utilities Comm'n v. Edmiston*, 225 S.E. 2d 101, 109 (N.C. App. 1976); *Elk Hotel Co. v. United Fuel Gas Co.*, 75 W. Va. 200, 83 S.E. 922 (1914); *Baltimore & O.R. Co. v. Public Service Comm'n.*, 81 W. Va. 457, 94 S.E. 545 (1917); and *Town of Wickenburg v. Sabin*, 68 Ariz. 75, 200 P.2d 342 (1948).

27. See *Re Mountain States Telephone & Telegraph Co.*, 2 PUB. U. REP. 3d 123 (Utah P.S.C. 1954); *Re Public Service Co. of New Hampshire*, 95 PUB. U. REP. 3d 401 (N.H. P.S.C. 1976); *Pennsylvania Public Utilities Commission v. Philadelphia Electric Co.*, 91 PUB. U. REP. (Utah P.S.C. 1971); *Re Mountain States Telephone & Telegraph Co.*, 2 PUB. U. REP. 3d 123 (PUB. U. REP. 1954); *Re Southern Bell Telephone & Telegraph Co.*, 7 PUB. U. REP. 3d 55 (Ala. P.S.C. 1954); and *Washington Gas Light Co. Formal Case No. 567*, Order No. 5542, Oct. 26, 1972.

the Oregon Public Utility Commissioner in *Re Rate Concessions for Poor Persons and Senior Citizens*<sup>28</sup> rejected such a proposal, stating:

The commissioner began this investigation because he wanted to help the poor and aged who cannot easily afford essential utility services. However, the legislative assembly has not delegated to the Commissioner the power to impose discriminatory rates. Regardless of how desirable such rates might be as social policy, benefits to the poor and elderly which do not reflect the cost of service must come from the legislative assembly.

Some commissions, however, have articulated an opposite viewpoint. The Michigan Public Service Commission stated in 1974:

It is . . . a fundamental responsibility of this commission to look beyond the revenue-producing aspects of a rate structure if it also is to meet the requirements of sound public policy. Today, the rate structure must be designed to enhance basic public policy objectives in areas of consumerism, environmental protection, public health and safety and conservation of natural resources.<sup>29</sup>

It quickly limited this broad statement by adding: "(R)ates must be based upon reasonable cost responsibility and be designed to reflect current costs of providing service."<sup>30</sup> And in fact, there have been no attempts to apply such broad public policy statements as a basis for any rate structure, with one exception. In 1972, the Public Utilities Commission of Rhode Island directed New England Telephone and Telegraph Company to include in its new rates a \$1.00 per month discount for certain persons age 65 or over. The commission based its authority on a previously judicially recognized right of management to classify as an operating expense a gift in a modest amount to a certain type of charitable organization.<sup>31</sup> In the alternative, the Commission found its authority under R.I. Gen. Laws (1956 Comp.) §§ 39-2-2, 39-2-3, and 39-2-5, all of which include a provision that: "Nothing in . . . any . . . provision of the law shall be construed to prohibit the giving by any public utility, free or reduced rate service to an elderly person . . ." This assumption of implied authority, however, was expressly reversed by the Supreme Court of Rhode Island, which stated that the commission could not:

Invade management's province by directing a utility to make a

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28. 14 PUB. U. REP. 4th 87 (1976).

29. *Re The Detroit Edison Co.*, 3 PUB. U. REP. 4th 209, 249 (Mich. 1974). A favorable comment on this view is expressed in Comment, *Rate Structure and Energy Conservation in the 1977 New Mexico Legislative Session*, 8 N.M. L. REV. 99, 101 (1978).

30. *Re The Detroit Edison Co.*, 3 PUB. U. REP. 4th 209, 249 (Mich. P.S.C. 1974).

31. *Re New England Telephone & Telegraph Co.*, 94 PUB. U. REP. 3d 476 (R.I. P.S.C. 1972).

charitable contribution . . . (nor do the statutes relied upon) . . . carry with (them) the power to compel a utility to afford a reduced rate to senior citizens.<sup>32</sup>

Thus, to this writer's knowledge, there has not been one rate design based on considerations other than economic imposed upon a public utility absent express statutory authority to do so. And while express statutory authority has been given in some states, this authority may not withstand constitutional tests.

### CONCLUSION

As has been shown, legal constraints have been placed upon both utility regulatory commissions and state legislatures. Any rate structure imposed by a regulatory commission must be reasonably related to cost-of-service considerations, and this imposition can only take place when the commission has properly obtained jurisdiction to consider the rate structure. And no rate structure imposed by a state legislature may deny any customers of their state or federal constitutional rights.

In those states where new increments of service may be provided by a utility at a lower price than previous units of service, declining block rates are reasonably related to cost of service, and environmental controls will be difficult to impose within statutory and constitutional limits. This is because any environmental control directly tied to rate structures will probably impose an increasing cost burden upon large uses of service, even though such large uses may cause per unit costs of the service to actually decrease.

The imposition of marginal cost pricing in such a situation would probably make little difference to the utility customers, except that users of small amounts of service might be charged substantially more per unit of service than they are now. This result is of concern in those states where lifeline rates are viewed as favorable.

In those states where it can be shown that additional service may be provided to utility customers only at increasing marginal costs, flat rates and marginal cost pricing concepts will, in theory, relate directly to cost of service and promote conservation. This is because using fewer units of the service will cost the customer proportionately less than using more units. However, a customer who uses large amounts of a service, such as an industry requiring substantial amounts of electricity to create its products, may already be operating at optimum efficiency in its use of the electricity. Imposing

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32. *Rhode Island Consumer Council v. Smith*, 111 R.I. 271, 302 A.2d 757, 775 (1973).

higher proportionate prices for utility service on such a customer will not induce it to reduce electricity consumption, though it may induce it to go out of business or change its location to a state where electricity costs are not as high. Thus, flat rates or marginal cost pricing may not promote conservation in many situations.

Superficially, it would appear also that marginal cost pricing would automatically impose lifeline rates of a sort, since users of small amounts of the utility service would pay proportionately less for it. However, if the intent is to aid poor people, the intent may be frustrated because poor people do not necessarily use the smallest amounts of such service. Furthermore, any artificial, or non-cost-related attempt to impose lifeline rates appears to conflict with constitutional and statutory limitations.

In an increasing marginal cost situation, it would appear that if the workable rate structure can be found, it will also promote a public policy favoring conservation without violating legal constraints. However, lifeline rates will always risk legal sanction because they are not cost related. Actually, it makes far more sense to give direct assistance to low-income people. This type of assistance, such as winterizing homes, could be fashioned not only to help them economically, but also to help them conserve energy.<sup>33</sup>

Environmental considerations are best applied directly to utilities through environmental protection statutes. Income redistribution is best provided by direct governmental services to those groups the government wishes to aid. Clearly the most reasonable rates to impose upon utilities are cost-of-service rates. Following any other path creates constitutional, statutory, and public policy barriers which may be insurmountable.

JAMES NOBLE, JR.

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33. See, e.g., Memorandum of Joe Pace, National Economic Research Associations, Inc., April 1, 1975; J. WILSON & R. UHLER, *INVERTED ELECTRICAL UTILITIES RATE STRUCTURES: AN EMPIRICAL ANALYSIS*, at 153-180; Energy Conservation Statement by Investor Owned Electric Utility Group Before the New Mexico Public Service Commission, Case No. 1394; and PUBLIC UTILITY COMMISSION OF TEXAS, *INTERIM REPORT, RATE DESIGN STUDY*, Part 3 (1978). See generally, J. BONBRIGHT, *PRINCIPLES OF PUBLIC UTILITY RATES* (1961).