

THE STATE OF REGULATION: A PREVIEW OF KEY ISSUES FACING COMMISSIONS IN 2005

Proceedings of the Commissioners-Only Summit, New Orleans, Louisiana, Jan. 16-18, 2005

The National Regulatory Research Institute

John D. Wilhelm, Editor
Senior Institute Engineer

EXECUTIVE SUMMARY

Fifty-five state regulatory commissioners from 30 commissions gathered in New Orleans, Louisiana, for the Commissioners-Only Summit Jan. 16-18, 2005, to discuss the major regulatory issues facing state commissions in the coming 12 to 18 months. Again this year, the Summit provided the participants with an unparalleled opportunity to interface exclusively with their colleagues from other state commissions and with selected guests.

This year's New Orleans Summit continued the tradition of *leaders talking to leaders* both at the state level and through its ongoing forum for the advancement of the federal-state dialogue on key regulatory policies and topics. The Summit attendees heard from FERC Commissioner Joseph Kelliher and Jessica Rosenworcel of the FCC. The federal speakers provided considerable information to the group and participated in insightful discussions on many of the important issues raised during their presentations.

Substantively, the commissioners identified and discussed many challenging issues they felt would affect states in the coming months. The issues they chose to examine in detail in workshops were:

1. the future of nuclear power and waste disposal
2. fuel diversity for electricity generation
3. the future of state telecommunications regulation
4. issues affecting the regulated water industry.

Commissioners attending the Summit participated in workshop sessions where they discussed each issue, focused and framed the key aspects of the issue and identified any actions that might be appropriate. The full report includes summaries of the workshop sessions and identifies other issues articulated by the attendees.

February
2005

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State Public Utility Commissioners – Class of 2005

Bob Anthony, Oklahoma	Edward Hurley, Illinois
E. Shirley Baca, New Mexico	Valencio Jackson, US Virgin Islands
Daryl Bassett, Arkansas	Dustin Johnson, South Dakota
Jay Blossman, Louisiana	Mark Johnson, Alaska
Denise Bode, Oklahoma	Judy Jones, Ohio
Lambert C. Bossiere, III, Louisiana	Ron Jones, Tennessee
Ted Boyer, Utah	W. Robert Keating, Massachusetts
Burneatta Bridge, Wisconsin	LeRoy Koppendrayner, Minnesota
Geoffrey Brown, California	William McCarty, Indiana
John Burke, Vermont	Arnetta McRae, Delaware
Fred Butler, New Jersey	Mark Meyer, Wisconsin
Randy Bynum, Arkansas	Randy Mitchell, South Carolina
Michael Callahan, Mississippi	Brian Moline, Kansas
Foster Campbell, Louisiana	Richard Morgan, District of Columbia
Yvette Canegata-Jones, US Virgin Islands	C. Robert Moseley, South Carolina
Robert Clayton, Missouri	Diane Munns, Iowa
Greg Coker, Kentucky	Bob Nelson, Michigan
Richard Conder, North Carolina	Robert Owens, North Carolina
Verne David, US Virgin Islands	Michael Peevey, California
Jeff Davis, Missouri	Anthony Rachal, District of Columbia
Jimmy Field, Louisiana	Bob Sahr, South Dakota
Robert Garvin, Wisconsin	Marilyn Showalter, Washington
Elia Germani, Rhode Island	Alric Simmonds, US Virgin Islands
Mark David Goss, Kentucky	Jim Strandberg, Alaska
G. O'Neal Hamilton, South Carolina	Deborah Tate, Tennessee
Gary Hanson, South Dakota	Ellen Williams, Kentucky
Robert Holbrook, Rhode Island	David Wright, South Carolina
John Howard, South Carolina	

Honored Speakers and Guests

Joseph Kelliher, Commissioner, Federal Energy Regulatory Commission (FERC)	Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps, Federal Communications Commission (FCC)
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NRRI and NARUC Facilitators

Charles Gray, NARUC	Kelly Robinson, NRRI
Ray Lawton, NRRI	Janie Marr Werum, NRRI
R. Scott Potter, NRRI	John D. Wilhelm, NRRI
James Bradford Ramsay, NARUC	Vivian Witkind Davis, NRRI

This report was prepared by the National Regulatory Research Institute (NRRI) with funding provided by the member commissions of the National Association of Regulatory Utility Commissioners (NARUC). The views and opinions of the authors do not necessarily express or reflect the views, opinions or policies of the NRRI, NARUC, NARUC member commissions, or any individual commissioner.

FOREWORD

The 2005 Commissioners-Only Summit reached a new high water mark and was energized by an exciting array of important regulatory topics and a large, dynamic group of participants. The Summit has been designed to be a unique forum for state commissioners to discuss and work on pressing issues facing each of our states in the coming year. Once again, it also provided us with the opportunity to have an intimate conversation with members of the FERC and FCC on key initiatives and policy issues from the federal perspective.

Many individuals contributed to the success of this year's Summit. Commissioner Jay Blossman of the Louisiana Public Service Commission served as honorary Chair of the 2005 Summit. Jay's hard work and the efforts of his colleagues and their staffs were evident at this year's event. Once again, the NRRI and NARUC team did an outstanding job of facilitating this event and creating a forum for discussing and advancing important regulatory issues.

The 2005 Summit provided the participants with a few pleasant surprises on the slate of key issues and helped set the tone for an exciting year to come. As amazing as it may seem, the next Summit is already in the works, and I am pleased to report that over 25 Commissioners have already registered for what will be another important retreat in San Antonio, Texas in January, 2006.

W. Robert Keating
Commissioner
Massachusetts Department of Telecommunications and Energy
and
Board Chair
The National Regulatory Research Institute

INTRODUCTION AND OVERVIEW

Fifty-five state regulatory commissioners from 30 commissions gathered in New Orleans for the Commissioners-Only Summit, Jan. 16-18, 2005, to discuss the major regulatory issues facing state commissions in the coming 12 to 18 months. The Summit provided the participants with an unparalleled opportunity to interface exclusively with their counterparts from other state commissions and with selected colleagues and decision makers from federal regulatory agencies.

The Summit was held at Le Pavillon Hotel in the New Orleans business district. The event was facilitated by the National Regulatory Research Institute (NRRI), and co-sponsored by the Louisiana Public Service Commission and the National Association of Regulatory Utility Commissioners (NARUC). The list of attendees is on page ii (cover) of this report. The listing of a commissioner's name does not necessarily imply the endorsement in whole or in part of the Summit results contained herein; nor does it imply the endorsement of

NARUC, NRRI or any state or federal commission.

An important goal for the Summit each year is to provide a forum for increasing the federal-state dialogue on key issues as well as promoting and facilitating opportunities for all participants to affect the public good on regulatory matters. The commissioners heard from FERC Commissioner Joseph Kelliher and Jessica Rosenworcel, Legal Advisor for FCC Commissioner Michael Copps. Both federal speakers discussed issues and priorities from the federal perspective, and engaged in a healthy discussion with their state colleagues on many important, and often contentious, topics. As with previous Summits, the annual insight into important federal perspectives provided valuable information that benefited the participants throughout the remainder of the retreat.

After the informative sessions with their federal guests, the commissioners conducted a roundtable discussion of key regulatory issues facing their states in the next 12 to 18 months. The attendees participated in the identification, discussion and selection of the four most significant issues that they would like to explore in further

2005 Key Issues

1. **The future of nuclear power and waste disposal**
2. **Fuel diversity for electricity generation**
3. **The future of state telecommunications regulation**
4. **Issues affecting the regulated water industry.**

detail. The commissioners exercised their voting privileges and selected the following issues, shown above, for the subsequent workshop sessions. By comparison, commissioners at the previous Summit in 2004 held in San Diego selected the issues shown below.

While some of the 2004 issues remained on the table in some form or other in 2005, it is evident that the slate of key issues is constantly refreshing itself. This is an important facet of the Summit. Key issues are not prescribed or dictated in advance; they emerge directly from the actual participants when they are, hopefully, most timely.

Purpose of Summit

This year's Commissioners-Only Summit continued to build on the success of the five previous ones that were conducted in 1995,¹ 1998,² 2002,³ 2003,⁴ and 2004.⁵ The two initial conferences took a long view of commission regulation, planning for three to five years out. The Summits were strikingly successful – some of the ideas that have become centerpieces of commission regulation and change were first raised at the 1995 and 1998 Summits, including consumer education, market monitoring and commission transformation. The format of the 2002 Summit was modified in response to feedback from commissioners

Key Issues from Last Year (2004)

- **Telecommunications policy, especially Voice over the Internet Protocol (VoIP) and other advanced services**
- **The combination of increased volatility of natural gas prices and increasing dependence on natural gas for electricity generation**
- **Electricity transmission and distribution**
- **Regional organization of electricity markets**
- **Accountability and authority of state commissions in today's utility markets.**

from around the country. The first change was to tighten the scope from a strategic perspective to one that focused on issues likely to affect state commissions in the next 12 to 18 months. The second innovation was to invite key federal voices to participate in the “commissioner-only” format in order to promote strong federal-state interaction on important issues. The third was to identify avenues for collaborative action in response to the significant issues identified by the participants, and the fourth is to constantly seek improvement from participants’ feedback and steering committees so that the Summit is truly a unique event *for commissioners, by commissioners*.

The 2005 Summit was designed to give attendees:

- An executive retreat open only to commissioners
- Facilitated workshops on key regulatory issues
- An annual forecast of federal regulatory priorities
- Substantive collaborations and networking opportunities with colleagues
- Tools to plan, prioritize and organize for 2005.

This year’s Summit sought to improve the involvement that all participants had in all of the key sessions and workshops. We moved away from breakout sessions and focused more on a large-group, small-group dynamic that would facilitate both a breadth and depth of involvement for each participant on each issue.

Our feedback forms indicate that the environment we strove to create was successful and that the goals were achieved. We do have some valuable new suggestions from the 2005 alumni that we are currently planning to use to improve the 2006 retreat.

The View from Washington

A robust federal-state dialogue is an important ingredient of the Summit. Representatives of the Federal Energy Regulatory Commission and the Federal Communications Commission addressed this year’s Summit gathering on issues and priorities from their perspectives and engaged in lively discussion with the Summiteers. State commissioners commented afterwards on the high substantive content of both presentations and the great value of the ensuing dialogue.

In his opening remarks, FERC Commissioner Joseph Kelliher commented that all markets are subject to both competition and regulation. “There is no stark choice,” he said. He reviewed FERC policies and actions in three areas. (1) market-based rate authority, (2) open access and (3) regional transmission organizations (RTOs). In summary, he said:

- FERC has initiated more robust regulatory measures to control generation market power with a rulemaking that will set the bar higher on market power tests.
- There is a clear relationship between open access and competition. FERC may initiate a rulemaking to make “discreet changes” in open access rules.
- RTOs are not the goal, but the means to competition in wholesale markets. RTOs may expand, but not necessarily to all regions. Standard accounting rules are needed for RTOs.

Commissioner Kelliher closed by reminding the state regulators that tension always exists between states and the federal government, and that the state role in electricity regulation is robust.

Jessica Rosenworcel, Legal Advisor to FCC Commissioner Copps, said that despite “fierce talk” in Washington about revising the Telecommunications Act of 1996, the wheels to grind out new legislation will turn slowly. She predicted a resolution to the continuing uncertainty on unbundling requirements of the FCC’s Triennial Review Order in the next few weeks. The intercarrier compensation regime in telecommunications is “Byzantine and broken,” she said, and a federal notice of proposed rulemaking is coming soon. On Voice over the Internet (VoIP), Ms. Rosenworcel said FCC decisions have so far been incremental, but the Commission needs to develop a coherent, consistent policy. She warned that arguments for preemption have traction on Capitol Hill and advised the state commissions to be proactive and propose a regulatory regime that promotes innovation and competition.

Taken together, these presentations and discussions provided the commissioners with an intimate perspective on key drivers, policy initiatives and activities likely to emerge in the coming months.

Key Issues Roundtables and Workshops

During the Monday morning key issues roundtable, each commissioner had the opportunity to identify and briefly discuss a critical issue likely to affect his or her state in the coming year. Many commissioners also offered observations regarding issues raised by their colleagues. The issues identified in the roundtable process are overviewed in the “significant issues” section of this report. After the roundtable session, the commissioners voted to select the key issues they wanted to focus on during the upcoming workshops. The votes were counted and reported by the NRRI facilitators.

For the remainder of the day on Monday, and throughout the entire retreat on Tuesday, the commissioners participated in large group and small group workshop sessions on each of these four topics. Each workshop was kicked off by an introduction of the topic that highlighted key aspects and considerations associated with that issue.

Individual issues were addressed in more detail by the commissioners using a four-step process developed specifically for this Summit based

on our 2004 feedback. The first step involved conducting a detailed discussion of the issue and defining what the issue or problem really was. The second step asked the groups to focus their thoughts on what the key aspects of the issue or problem were and to begin framing the discussion as best as possible. In the third step, the commissioners identified the things they might do to affect the issue and made recommendations towards resolving or advancing it. The fourth, and final, step involved each group sharing their work with the larger group so that all participants could benefit from the breadth and depth of discussion and expertise that their colleagues brought to the table on each topic.

As previously noted, this report includes summaries of the 2005 key issue workshop sessions and also identifies the other issues articulated by the attendees during the initial roundtable. Additional workshop notes and materials are available on the NRRI website at <http://www.nrri.ohio-state.edu/summit/>.

Evaluations and Feedback

The NRRI solicited written evaluations from commissioners attending this Summit so that we can continue

our commitment to keep the event as beneficial as possible. The evaluations were uniform in their praise for the event. The respondents reported that they placed a high value on the dialogue with their federal counterparts, substantive interactions and networking opportunities with their state colleagues, on getting organized and focused for the year ahead. And they especially valued the “commissioners-only” retreat format.

The feedback was also unanimous in its praise for New Orleans as a location for the Summit and most attendees appreciated the availability of the travel stipend. Suggestions for locations for future Summits tended to gravitate towards warm locations along with keeping the Summit in its January timeslot.

The suggestions for improvement included having more time with federal counterparts and effectively clustering similar topics for the selection of key workshop topics. There were also a few notes that suggested ways to improve the large group – small group dynamic for the workshops, and some requests for another commissioner’s roundtable to close the Summit. Based upon this, it has tentatively been decided

that an additional *state issues roundtable* at the end of the retreat would potentially achieve the goal of addressing those topics that did not make the short list of key issues for the workshop sessions. Again this year, we did receive a few requests to expand the length of the retreat from a day and a half to two full days.

Plans for Future Summits

The NRRI and NARUC are already planning to conduct another Commissioners-Only Summit in 2006. We are also collaborating with the Mid-America Regulatory Conference (MARC) commissioners to jointly convene back-to-back retreats in early January 2006 at La Mansion Hotel in San Antonio, Texas. Both groups are hopeful that this will be a very attractive option for MARC commissioners, who often face tough choices because of the proximity of the two events on their January calendars. The Summit sponsors are encouraged by the opportunity to have more MARC commissioners attend the national retreat immediately following their own.

Registration for the 2006 Commissioners-Only Summit in San Antonio has begun and a good number of the 2005 alumni

have already registered to attend. As always, there is no charge for registration, and commissioners are encouraged to register early to maximize the value of the travel stipend. Registration forms can be found and submitted electronically at <http://www.nrri.ohio-state.edu/summit/>.

Summary

It is with great pleasure, based on our written and verbal feedback, that we can report that the 2005 Commissioners-Only Summit was an unqualified success. Fifty-five commissioners with different backgrounds and perspectives came together for two days to talk about important policy issues, to help each other find ways of framing and addressing these issues, and to improve the efficacy of regulation in their states and across the nation. Some of these suggestions and ideas have invariably made their way onto the NARUC and states' agendas for action in the coming year. The federal dialogue improved the likelihood that important state policy issues and positions will be known by the FERC and FCC, and gave the state commissioners a clearer understanding of federal positions. The NRRI will once again provide

research and support to NARUC and the states as needed on these issues, and its research agenda is informed by the valuable input generated at the Summit.

The next section of this report includes descriptions of the four key issues that the participants selected for further discussion in their workshops. Each workshop group⁶ also generated Key Issue Workshop Sheets as a result of their efforts. These worksheets are informative and are available on the NRRI website at <http://www.nrri.ohio-state.edu/summit/>.

Again, a list of attendees at the 2005 Commissioners-Only Summit in New Orleans can be found in the front of this report. The sponsors and participants of this year's retreat hope that you find these proceedings to be a valuable primer on regulatory affairs for 2005.

IMPORTANT ISSUES FOR 2005

The following material is a synthesis of the materials and comments generated by the commissioners during the key issues workshops. Each workshop lasted approximately 90 minutes and consisted of the four steps shown below.

[Step 1: Discussing the Issue](#)

[Step 2: Focusing on Key Aspects](#)

[Step 3: Doing Something About It](#)

[Step 4: Sharing the Groups' Work](#)

Accordingly, the write-ups for the workshops are organized around these steps (Discussion, Key Aspects, Things to Do), with the exception that the comments shared in Step 4 are integrated into each summary.

Workshop 1:

The Future of Nuclear Power and Waste Disposal

by R. Scott Potter, NRRI

Scott Potter of the NRRI provided the assembled commissioners with an overview of important considerations

in the nuclear energy arena and highlighted the key thoughts that occurred during the roundtable earlier that morning.

Discussion

It was no surprise that the issue of nuclear energy was among the many issues brought to the floor by a commissioner during the key issues development roundtable at the 2005 Summit. What was perhaps surprising was that after the commissioners voted for which of the many issues on which they would each most like to focus, nuclear came out on top. Of the 30 states (including the District of Columbia and the U.S. Virgin Islands) represented, commissioners from 14 of those states voted for the nuclear issue.

During the large group presentation of issues, the topic of nuclear energy was initially divided into two specific areas for discussion: nuclear waste disposal and the future of nuclear powered electricity generation. In the small group workshops that followed, the commissioners identified a number of specific problems or issues which they believed had to be addressed. Each workshop made the point that resolution of the nuclear waste disposal dilemma was an

immediate necessity whether or not there is going to be any new nuclear generation built in the future. Each of the small group workshops also concluded that current public and political perceptions were a significant obstacle which had to be overcome in order to address waste disposal and new generation.

One small group workshop did conclude that given current costs and problems associated with nuclear power, it is just not “practical right now” to proceed with considering future nuclear power generation. However, there were no chants of “No nukes” or the like. Not one of the workshops suggested that nuclear powered generation should be barred from consideration. Most of the workshops actually focused on resolution and movement of obstacles to nuclear generation. The Summit may have been an indicator of a slow but definite change in the way this country perceives nuclear power.

Other issues or problems identified by the commissioners attending the Summit included:

1. *Politics*: Most workshops decided that while there may be some technical issues, most of the problems with the nuclear waste

program were political in nature, including the current funding concerns of the nuclear waste program.

2. *Costs*: Several commissioners raised and discussed the concern that the current costs associated with construction and operation of nuclear power generation plants is prohibitively high, making it nearly impossible for private entities to develop viable business plans to build such units. The added political, siting and regulatory costs of nuclear generation units have kept nuclear units from being considered.
3. *Regulatory uncertainty*: One workshop noted that the general regulatory uncertainty of sufficient cost recovery and return on investments has led to the delay or cancellation of many baseload generation units.
4. *Lack of federal action*: A lack of a federally standardized or endorsed construction design has exacerbated uncertainties and been a significant obstacle to progress in the field of nuclear power generation.

5. *State siting of nuclear units:*

Some commissioners noted that the existence of actual or *de facto* state moratoriums on building new nuclear units (since Three Mile Island) must be addressed before there can be any significant planning for new nuclear generation units.

6. *Security:* Concerns related to the security of nuclear generation units as well as the storage and transport of nuclear fuel and waste in a post-September 11th environment has become a very significant issue.

Key Aspects

After the specific issues and/or problems noted above were identified, each small workshop group then focused on what they believed were the key aspects of the issue(s). One thematic key aspect mentioned by all the small group workshops was the issue of the public and political fears and negative perception and the need for concerted lobbying and education efforts to address those perceptions. The commissioners had significant consensus on the need to resolve the permanent waste disposal impediments, including transportation and storage. Each of the small group

workshops listed this as a top priority. It was suggested that NARUC should engage in a strong lobbying and education effort to push resolution of the central repository issue.

Other key aspects mentioned by more than one of the workshop groups included:

1. *Environmental benefits:* Several commissioners noted and discussed the “clean fuel” positive environmental (e.g. low-to-no emissions levels) aspects of nuclear powered generation.

2. *Central waste repository:* Some commissioners suggested that the delay in development of the Yucca Mountain facility is more political than technical. Most small group workshops concluded or, at least, discussed that a unified and audible voice from the states/NARUC was necessary to federal authorities (including Congress, DOE, EPA, and NRC) to take decisive and forward moving action.

3. *Fuel diversity benefits:* The groups of commissioners said that using nuclear fuel to generate electricity must be considered in light of the pending crisis with

increasing natural gas prices, an overall diminishing supply of fossil fuels worldwide, environmental emissions issues, and the limitations of generation using renewable energy sources such as solar and wind. One small group workshop also discussed the role that nuclear power generation could play in reducing the United States dependence on foreign oil and liquefied natural gas.

4. *Investment issues:* The groups of commissioners discussed the costs and regulatory uncertainty concerns, as noted above, and how those issues made it difficult to impossible for private entities to develop feasible business plans to build nuclear generators. Some commissioners noted that a key aspect of this dilemma may be one of scale, in which no private entity wants to build the first new nuclear unit, but that an entity or a group of private companies might be able to justify the investment if it included multiple units in multiple jurisdictions at or near the same time.

Another interesting discussion briefly focused on the idea that, given the regulatory obstacles and costs associated with building

new nuclear generation, and given the national benefits that nuclear power generation could present, perhaps it would be appropriate for the federal government to undertake the siting, construction and operation of the first round of the next new nuclear generation facilities. A national policy to federally build nuclear powered generation could address national security concerns, siting issues and the regulatory uncertainty that inhibits private investment. As an alternative to the federal government actually building the units, the commissioners' workshop also noted the idea that the federal government could provide the assurance of cost recovery and liability protection to private entities that constructed nuclear generation facilities

Things to Do

1. *Education/lobbying lawmakers:* There was unanimous consensus among the workshops that strong orchestrated education and lobbying efforts were urgently needed to drive resolution of the nuclear waste funding and repository issues. There were specific recommendations for state commissioners to discuss

the issue with their Congressional delegations and to use the industry as a resource for education.

Four of the six workshops specifically suggested that NARUC should take this proactive role to lobby Congress and the federal agencies. One workshop suggested in further detail that NARUC should include regional groups to focus the issues for more effective lobbying and that NARUC should call for a cost-benefit analysis that accurately assesses all costs and benefits of nuclear generations.

It was noted by two of the small group workshops that in order to successfully carry the message to lawmakers, the state regulators need to be well versed and fully understand the issues. It is necessary that state regulators are able to articulate specific needs to Congressional delegations to resolve the waste issue and to get uniform plant design standards from the federal government.

Two of the workshops stated that commissioners should specifically support efforts to move the Yucca Mountain project forward. One of those workshops went on to

recommend that commissioners lobby Congress to immediately reclassify the nuclear waste funding (paid by ratepayers) to pass through Congress directly to the Yucca Mountain development program.

2. *Research and development:* Commissioners also discussed several technical issues related to nuclear waste and nuclear power generation. Two workshops recommended that lawmakers and scientists should look again at the issue of reprocessing spent nuclear fuel to reduce waste and increase amount of energy extracted from each unit of nuclear fuel.

One workshop discussed the importance of not limiting the debate to only nuclear or only generation. Research and development of all potential alternatives fuels for generation should be promoted including nuclear, clean coal, carbon sequestration, wind and even ocean tides. Additionally, they stressed the need to advance the development and deployment of more energy-efficient appliances and better demand-side conservation improvements.

3. *Public outreach/education:* Most of the small group workshops called for education or outreach campaigns to inform the public about the need for nuclear power generation, its actual safety statistics, and the benefits of nuclear power generation (both economic and environmental). There was much discussion within the workshops on how to address and perhaps overcome the public fear of nuclear energy. Some commissioners noted that in their particular states they already sensed a waning of historic public nuclear fears.

Workshop 2:

Fuel Diversity for Electricity Generation

by Ray Lawton, NRRI

Commissioner Robert Keating of Massachusetts, and former Chair of the NARUC Gas Committee, provided the participants with an overview of his thoughts on this workshop topic before the groups began their discussions.

Discussion

“Bang the drum loudly” for fuel diversity, may best sum up the

view of many commissioners at the Summit. The core thought expressed was that by reducing dependency on any single fuel source, electric utilities can manage the risk of price spikes, volatility and other undesirable effects. In recent years, new generation has relied extensively on natural gas, but recent hikes and fluctuations in gas prices have regulators looking at how to encourage more diverse portfolios of fuel. Commissioners observed that the key issue was the lack of a comprehensive and balanced approach to addressing current fuel diversity issues and related price volatility.

Summit discussants noted that while everyone is “for” fuel diversity in electric generation, differences exist on how to achieve it. A state with significant hydro-based generation, for instance, may have different issues than one with a heavy reliance on natural-gas-fired electricity generators. The goal of fuel diversity is to ensure price stability and fuel availability by reducing reliance on a single, or a small number, of fuel sources. Fuel diversity may result in initial higher prices in some instances and lower prices in other situations. No consensus existed about whether fuel diversity should be voluntary or mandatory. Energy efficiency and

conservation were recognized as important policy options.

Key Aspects

Several aspects of fuel diversity were identified by the commissioners. These included investment strategies, portfolio approaches, price volatility and some general concerns. Investments in fuel diversification or different electricity generation technologies may be influenced by whether, in nonrestructured states, pre-approval is an option, and whether the investment is going to be allowed in the rate base. In restructured states and in wholesale markets, short-term market incentives may affect willingness to invest, particularly in long-range fuel diversity solutions such as renewables. Additionally, environmental regulations may influence investment decisions. Some observed that the investments needed to have a robust grid that handles the different types of generation needed to ensure fuel diversity may not occur due to a variety of risk factors.

From a portfolio perspective, fuel diversity was seen as an important factor in achieving energy independence. Regional differences exist, especially regarding availability and embedded generation mix. Said another way, electricity generators

use wind or coal or natural gas where it is economically advantageous and this may differ by region. Clean coal technologies were seen as a technology that may be helpful in meeting environmental standards but may cost more. Some also asked, "Should there be more off-shore drilling in order to promote fuel diversity?"

Price volatility was seen as an important issue. Concern about fuel diversity, it was observed, often seems crisis-driven. Price is an important factor in fuel diversity, especially price volatility. The cost of development and deployment of alternative fuel sources has an impact on ratepayer bills. Some price volatility is due to natural gas price increases.

Other more general concerns included the observation that in restructured states no locus of responsibility exists to ensure fuel diversity. When discussing the issue of mandatory versus voluntary approaches, a concern was expressed about the "law of unintended consequences." On the other hand, overreliance on one primary fuel, it was noted, has had a negative consequence on consumers. Diversification was also seen as a way to address critical infrastructure protection concerns.

Things to Do

The commissioners identified a number of possible actions that could be undertaken. A need was expressed for an educational module on the pros and cons of fuel diversity, impact on ratepayers and relevant energy externalities that was suitable for distribution to legislators and others. Some thought it was important to mandate, monitor and enforce a fuel diversity initiative. State regulators could require utilities to have a diverse fuel source portfolio, perhaps with some of the features of an integrated resources plan. This could include identification of fuel cost alternatives. Another important step expressed was the need to recognize conservation and efficiency as alternatives, particularly regarding energy appliances.

Some felt that a national energy policy is needed to promote fuel diversity approaches and provides incentives, including tax credits. Legislation could support the idea of national resource adequacy and increased R&D. A public/private partnership approach was identified as an important way to achieve fuel diversity.

Workshop 3:

The Future of State Telecommunications Regulation

by Vivian Witkind Davis, NRRI

To ground commissioners in the most current regulatory issues in telecommunications, Brad Ramsay of NARUC introduced the small group session. He used the Venn diagram on the following page to facilitate his discussion. The diagram shows jurisdiction, including the existing regime of interstate and intrastate revenue separations, at the center of three overlapping issue areas.

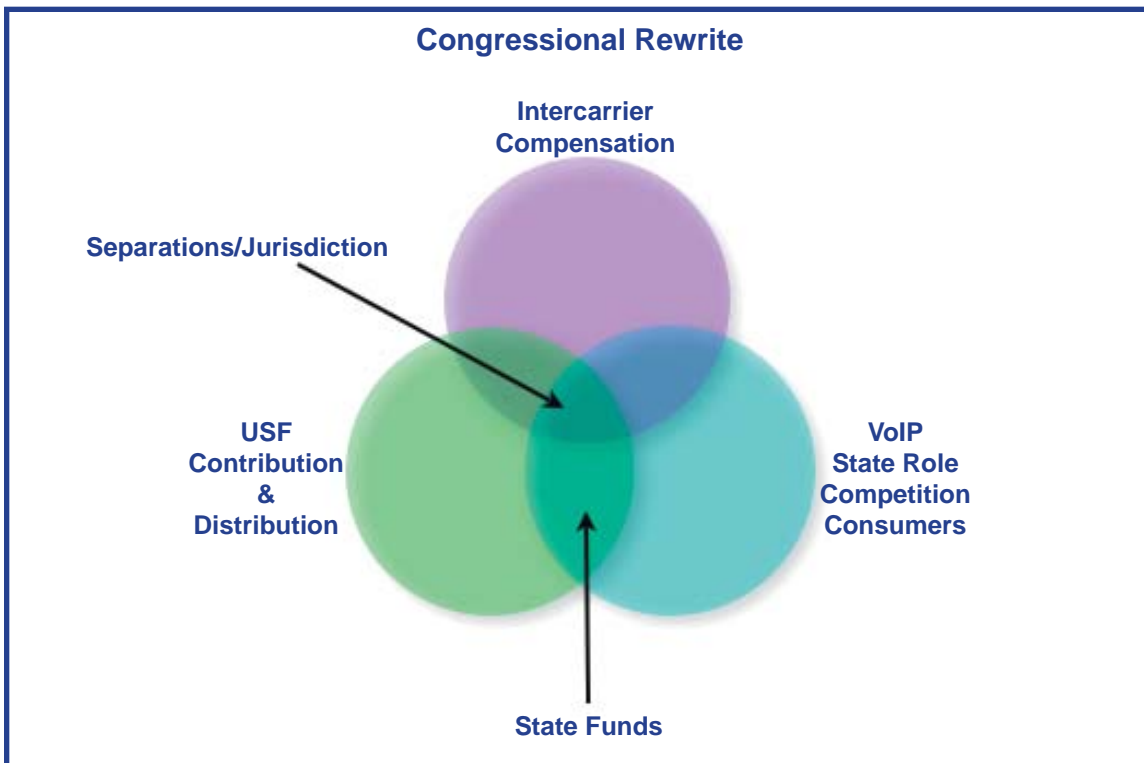
Discussion

The selection of nuclear energy among the key issues to discuss at the Summit may have been a surprise, but it probably shocked no one to find the interplay between thorny telecommunications issues at the top of the commissioners' discussion agenda. The unknown impact on state jurisdiction of tightly intertwined telecommunications policy problems that are all coming to a head was the third of the four issues selected for small group analysis.

The first facet of this issue area is intercarrier compensation, composed both of the fees that carriers pay each other for carrying each other's traffic and of access charges (fees interstate carriers pay to intrastate ones). A number of commissioners said they expected that the FCC would soon deliver a new notice of proposed rulemaking on intercarrier compensation reform. States are dedicated to the goal of developing retail competition in telecommunications. A new regime may well affect the level and pattern of competition among carriers. A new regime is also likely to have an impact on USF support. NARUC has

developed a "strawman" proposal to bring to the debate on a new, more consistent and equitable intercarrier compensation regime.

The second facet of this important issue is Voice over the Internet Protocol (VoIP), which is expected to grow substantially over the coming years. In the Vonage decision in the fall of 2004, the FCC ruled that it is impossible, or at least pointless, to make the effort to distinguish between interstate and intrastate VoIP traffic, and the huge majority is definitely interstate.



Source: Brad Ramsay, NARUC

The FCC has yet to officially decide whether VoIP is an information service or a telecommunications service. That will happen through another proceeding. There are many types of VoIP, so some distinctions are presumably yet to be made, but if VoIP is an interstate service, states will be largely preempted from regulating it. If it is an information service, states do not regulate it either. This could affect consumers, who rely on the state commissions to go to bat for them when there are problems of consumer protection and service quality. It may affect competition, since absent state regulation incumbents may be able to inhibit access to their facilities by competitors. And it may affect universal service fund (USF) contributions, which in turn has an impact on distribution of universal service support.

The consequences of intercarrier compensation reform and VoIP for universal service were the third major telecommunications topic identified for Summit discussion and planning. Today the major federal USF, developed and maintained to support affordable telephone rates in high-cost areas, is funded through a surcharge on interstate and international revenues, a major component of which are the access

charges. If the system is changed to be more true to underlying economics, access charges will go down and, absent a new funding system, so will the amount of money available to keep rates low in high-cost areas. Many states have their own USFs, some of which calculate contributions based on intrastate revenues, which include intrastate access charges. Those charges mirror federal access charges. Thus, the formula assures that if contributions go down at the federal level, they do so at the state level as well. If VoIP is ultimately ruled not only an interstate service but an information service, no mechanism currently exists requiring contributions to universal service. Services based on Internet Protocol are not required to contribute to the USF.

In the small group sessions, the commissioners decided that the unknown future of telecommunications, which may well include efforts that effectively remove states from telecommunications regulation, as the heart of the issue. Most agreed that the “chicken-and-egg” interplay between intercarrier compensation, VoIP and the USF requires that states examine the need to preserve jurisdiction to ensure affordable rates, consumer access to state-of-the-art telecommunications,

maintenance of provider-of-last resort obligations and the protection and safety (through 911 emergency service) of their citizens. One group asked, “Will USFs even be around in 10 years?” Another remarked that federal preemption could result in unfunded mandates to the states. The special problem of rural, high-cost areas was identified. Those carriers are likely to feel the most severe impact of intercarrier compensation reform and VoIP. The overall problem was perhaps summed up by the group that asked, “What federal-state regulatory regime will best assure delivery of telecommunications to all consumers?”

Key Aspects

The small group discussions on the dimensions of the telecommunications issue were as broad as this very broad topic, and can for the most part be grouped by their focus on state jurisdiction as it relates to the regulatory goals of promoting competition and assuring universal service.

Most groups noted that states are faced with likely diminished authority under federal proposals but left with multiple responsibilities. These could easily become unfunded mandates.

A reduced role for states might be a reasonable approach for some aspects of telecommunications policy, but somebody would need to pick up the pieces in others. States are now the first stop for consumer complaints, for example. Some frustration was expressed that telecommunications services are indeed jurisdictionally hard to pin down and that solutions to policy problems are subject to limited state influence.

The commissioners in several groups said they were concerned about how to preserve fledgling competition, which is growing in many urban areas but not necessarily in rural ones. On the wholesale side, VoIP and other technologies may have arbitrage opportunities but not the same public obligations as other technological platforms. Mergers and acquisitions may increase market power but reduce regulatory effectiveness. “Who will determine if competition exists?” asked one group, and “How do we protect against duopolies or other less than competitive market structures?”

How a state will pay in the future for assuring basic telephone service to the elderly, the poor and the “landline-locked” was a key aspect of the overall problem highlighted in the

small group break-outs. Intercarrier compensation is now a huge source of support to rural companies serving consumers who could not pay for telephone service if it were priced at its full cost.

Things to Do

Commissioners by and large agreed that to tackle the telecommunications issue, they need a proactive position followed by active lobbying. “NARUC must quickly develop a concrete, viable position describing the optimal state regulatory role regarding intercarrier compensation, VoIP and universal service funding issues,” summarized one group. States must define optimal jurisdictional lines, especially on basic issues of consumer protection, 911 emergency service and the USF. Special attention needs to be devoted to the situation of rural and small local exchange carriers and their ability to collect money to cover valid costs. The NARUC position should be comprehensive and less piecemeal. The states must effectively articulate to Congress and the FCC why a state role is important. This educational and lobbying effort should include solid information on the consequences of migration to Internet-based services and USF depletion. To the degree

that jurisdictional challenges come from within the state, each state should lobby their own legislature, based on demographics and specific needs, such as for deployment of infrastructure providing broadband telecommunications. If policy changes move towards a combination of deregulation and unfunded mandates, such as a continuing responsibility for resolution of intercarrier disputes, states should consider leaving the unfunded services to the federal government or a vacuum. The overall goal is to ensure policies that foster competition in markets ripe for it and to continue bringing telecommunications to rural, high-cost, noncompetitive areas as the transition continues to new technologies.

Workshop 4:

Issues Affecting the Regulated Water Industry

by John D. Wilhelm, NRRI

Discussion⁶

Each year there are many and varied regulatory issues that are raised by the commissioners attending the Summit. Perhaps the most difficult phase of the retreat, emotionally, is paring the list down to a manageable number to discuss in more detail. One of the

most interesting facets of the 2005 Summit was the inclusion of an oft mentioned but seldom detailed topic — *the issues facing investor-owned water companies*. Needless to say, the passionate members of NARUC's water community were pleased that their fellow commissioners joined in selecting this topic for further discussion in New Orleans.

Commissioner Fred Butler of New Jersey, Chair of the NARUC Water Committee, provided his colleagues with an overview of the nation's drinking water industry, including the unique aspects associated with the provision of drinking water. He noted that the NARUC Water Committee is expanding its mission and activities to include regulated sewage utilities. He also gave his colleagues an overview of the Utility Rate School and discussed its potential value to all state commissions. John Wilhelm of the NRRI and Commissioner Butler also provided the Summit participants

with an overview of several important issues facing the regulated drinking water community. One of the items discussed in detail was the recently reported results of an American Water Works Association (AWWA) national survey of the industry's biggest issues. AWWA's findings are shown below.

The commissioners at the water issues workshop engaged in a productive exchange of information on these topics. They specifically focused on the impact, in a technical, managerial and financial context, that these and other forces have on small water companies. Various commissioners discussed their state's experience with regulatory options such as Distribution System Improvement Charges (DSIC), and Single Tariff Pricing (STP). There was general agreement that it would be beneficial for the Water Committee to include on its agenda another round of discussion regarding innovative

Top Five Critical Water Industry Issues

- **Regulatory factors (primarily associated with meeting and paying for EPA standards)**
- **Security**
- **Business factors (capital markets)**
- **Source water supply**
- **Water storage/distribution**

Source: Journal of the AWWA, October 2004

ratemaking approaches for small drinking water companies.

Other topics discussed during the workshop included infrastructure replacement and the costs associated with it, the interdependencies between water utilities and electricity, water supply management (including metering, leak detection and acceptable rates of water loss); capacity planning and development; and the existence of low-interest state revolving funds (SRF) for qualifying utilities. Several commissioners also raised the issue of industry consolidation and the policy implications of foreign ownership of U.S. drinking water companies.

During the roundtable discussion of important water topics, many commissioners provided the group with specific examples of situations and solutions in their states. This was especially valuable because it served as an information exchange between the participants on the water issues that were most important to them.

Finally, Commissioner Butler thanked his colleagues and assured them that, as Chair of the Water Committee, he had gained additional insights into pressing water issues and creative alternatives from around the country.

He planned to bring these topics to the Committee as it crafts its agenda to meet the needs of the states and the NARUC community.

Other Issues Identified During the Summit Roundtable Discussion Session

A number of other interesting and important issues were proposed by commissioners at Monday morning's roundtable session for consideration in the workshops. As noted in the evaluation and feedback section, several commissioners suggested that the 2006 Summit include a final roundtable session so that these issues could also be discussed in more detail by interested participants. It is important to note that although these issues were not discussed in a facilitated session, commissioners clearly took advantage of the numerous opportunities to discuss them during the networking functions and at the retreat. The additional issues raised in the roundtable are provided in the following bulleted lists and organized by industry sector or functional area.

Electricity

As detailed in the earlier sections of this report, the commissioners chose to focus attention on nuclear

issues. These are the other important electricity topics that came up.

- Dealing with organized electricity markets, including accountability and comparisons of the retail/wholesale costs and benefits across regions; LSEs joining RTOs and having only a small footprint in the state; companies forming something less than the FERC “RTO;” identification of the alternatives to RTOs; and assuring adequate supply in the face of uncertain ratebase and numbers of market participants.
- Generation and rate issues dealing with transition to baseload generation (e.g. financing); scheduling for new generation and retiring existing baseload units; the new round of rate cases and pressure on related generation plants (e.g. high reliance on natural gas); and siting baseload.
- What is the state’s role in transmission siting and pricing and who pays for new transmission?
- How can we find out about the existence and availability (including legal access and confidentiality issues) of data for analyzing and comparing markets in the traditional state model versus an RTO model?
- Interconnection issues associated

with standards and distributed generation.

- Issues associated with the end of rate freeze periods in restructured states.
- Identifying the provider of last resort.

Natural Gas

The fuel diversity workshop reported on earlier had its roots in concerns regarding natural gas supply and rising gas prices. The other gas items mentioned at the Summit are listed below.

- Long term gas supply issues.
- The need for comprehensive resource management in response to high gas prices.
- Understanding natural gas price risk management, prudence, hedging, volatility and metrics for pass-throughs.
- Electric reliability – is there enough capacity?

Telecommunications

There were numerous variations on the telecommunications topic that were consolidated into the third key issue workshop material presented earlier in this report. Other issues recorded in this sector are as follows.

- Is there a need for new definitions and policies regarding “competition” in rural and urban areas?
- With respect to UNE, what are the impacts of customers switching carriers and how do we deal with the results, price increases, etc.?
- What is the state’s role in supporting competition and technology deployment in telecommunications; including continuing to support those things under the 1996 Act that enable competitive carriers and support new technology?
- Maintaining telecommunications service quality and viability, especially in the unregulated wireless environment.

Finance

PUCHA issues have been discussed in detail at the last two Summits. Several commissioners noted its importance again this year.

- How can commissions develop capabilities and staff expertise to deal with holding company issues such as oversight, affiliated transactions and prudence, regional cooperation among states and dealing with mergers and acquisitions?

Environmental

Environmental considerations are often embedded in larger utility issues and were certainly a driver behind the nuclear and fuel diversity workshops. They were also a component of the water workshop. Additional issues raised by commissioners follow.

- Understanding and addressing the global and local issues associated with climate change.
- Discussing clean coal, carbon sequestration, renewables and resource management.

Commissions and Consumers

It is very common for participants to discuss commission staff issues, legal considerations, commission role and processes, and consumer concerns outside of the facilitated sessions of the Summit. This year several of these were raised as potential areas to discuss further.

- What is the state role with respect to FERC and the FCC – name it and claim it; and how can we use joint boards?
- Ex parte communications.
- The ability of low-income households to pay their energy and other utility bills.

Endnotes

¹ *Missions, Strategies, and Implementation Steps for State Public Utility Commissions in the Year 1995: Proceedings of the NARUC/NRRI Commissioners Summit* (Columbus, OH: NRRI, 1995)

² *Proceedings of the Second NARUC/NRRI Commissioners Summit* (Columbus, OH: NRRI, 1998)

³ *The State of Regulation: A Preview of the Big Issues Facing Commissions in 2002, Proceedings of the Commissioners-Only Summit* (Columbus, OH: NRRI, 2002)

⁴ *The State of Regulation: A Preview of the Big Issues Facing Commissions in 2003, Proceedings of the Commissioners-Only Summit* (Columbus, OH: NRRI, 2003)

⁵ *The State of Regulation: A Preview of the Big Issues Facing Commissions in 2004, Proceedings of the Commissioners-Only Summit* (Columbus, OH: NRRI, 2004)

⁶ The commissioners participating in the water issues workshop decided to hold a large group, roundtable discussion rather than breaking up into small group teams. Accordingly, there was no *Key Issue Workshop Sheet* developed during this session.