

24

MARTIN MARIETTA ENERGY SYSTEMS LIBRARIES



3 4456 0382384 2

oml

ORNL/CON-378

OAK RIDGE NATIONAL LABORATORY

MARTIN MARIETTA

MAKING A DIFFERENCE: TEN CASE STUDIES OF DSM/IRP INTERACTIVE EFFORTS AND RELATED ADVOCACY GROUP ACTIVITIES

Mary English
Martin Schweitzer
Susan Schexnayder
John Altman

OAK RIDGE NATIONAL LABORATORY

CENTRAL RESEARCH LIBRARY

CIRCULATION SECTION

4200N POCOM 17E

LIBRARY LOAN COPY

DO NOT TRANSFER TO ANOTHER PERSON

If you wish someone else to see this
report, send it in in with report and
the library will arrange a loan.

ORNL/CON-378

MANAGED BY
MARTIN MARIETTA ENERGY SYSTEMS, INC.
FOR THE UNITED STATES
DEPARTMENT OF ENERGY

This report has been reproduced directly from the best available copy.

Available to DOE and DCE contractors from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831; prices available from (615) 576-8401, FTS 626-8401.

Available to the public from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

**MAKING A DIFFERENCE: TEN CASE STUDIES OF DSM/IRP INTERACTIVE
EFFORTS AND RELATED ADVOCACY GROUP ACTIVITIES**

Energy Division

Mary English*
Martin Schweitzer
Susan Schexnayder*
John Altman*

March 1994

Sponsored by

The Pew Charitable Trusts
and
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
and
Energy, Environment, and Resources Center
University of Tennessee, Knoxville

Prepared by the
OAK RIDGE NATIONAL LABORATORY
Oak Ridge, Tennessee 37831
Managed by
MARTIN MARIETTA ENERGY SYSTEMS, INC.
for the
U.S. DEPARTMENT OF ENERGY
under Contract DE-AC05-84OR21400

*Energy, Environment, and Resources Center; University of Tennessee, Knoxville

The opinions expressed in this report are those of the authors and do not necessarily reflect the views of
The Pew Charitable Trusts



3 4456 0382384 2

CONTENTS

ABBREVIATIONS	vii
ABSTRACT	xi
1. INTRODUCTION	1
ABOUT THIS REPORT	1
2. THE CALIFORNIA UTILITIES COLLABORATIVE AND NATURAL RESOURCES DEFENSE COUNCIL ACTIVITIES TO INFLUENCE DSM	5
SUMMARY	5
INTRODUCTION	5
CONTEXT	6
KEY DSM/IRP ACTIVITIES OF THE NRDC	9
THE CALIFORNIA COLLABORATIVE	16
CONCLUSIONS	20
RESPONDENTS	22
3. DAYTON POWER AND LIGHT COMPANY COLLABORATIVE AND RELATED ACTIVITIES	25
SUMMARY	25
INTRODUCTION	25
CONTEXT	26
KEY SIERRA CLUB AND CCAP ACTIVITIES	29
THE DP&L COLLABORATIVE	35
CONCLUSIONS	43
RESPONDENTS	46
4. GEORGIA COLLABORATIVE AND RELATED ACTIVITIES	49
SUMMARY	49
INTRODUCTION	50
CONTEXT	50
KEY SELC AND CPG INITIATIVES	54
THE GEORGIA COLLABORATIVE	59
CONCLUSIONS	69
RESPONDENTS	74
5. LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION ACTIVITIES TO PROMOTE DSM IN FLORIDA	77
SUMMARY	77
INTRODUCTION	77

CONTEXT	78
KEY DSM/IRP INITIATIVES OF LEAF	86
CONCLUSIONS	92
RESPONDENTS	96
6. NEW ORLEANS COLLABORATIVE AND ALLIANCE FOR AFFORDABLE ENERGY ACTIVITIES TO INFLUENCE DSM	97
SUMMARY	97
INTRODUCTION	98
CONTEXT	98
KEY ALLIANCE INITIATIVES	102
THE NEW ORLEANS COLLABORATIVE	108
CONCLUSIONS	117
RESPONDENTS	120
7. PACE ENERGY PROJECT—NEW YORK EFFORTS TO PROMOTE DSM	123
SUMMARY	123
INTRODUCTION	123
CONTEXT	124
KEY DSM/IRP INITIATIVES OF PEP	130
THE NIAGARA MOHAWK COOPERATIVE ARRANGEMENT	134
CONCLUSIONS	139
RESPONDENTS	144
8. PUBLIC SERVICE COMPANY OF COLORADO COLLABORATIVE AND OTHER LAND AND WATER FUND ACTIVITIES TO INFLUENCE DSM AND IRP IN COLORADO	145
SUMMARY	145
INTRODUCTION	145
CONTEXT	146
KEY DSM/IRP ACTIVITIES OF THE LAW FUND	148
THE PSCO COLLABORATIVE	149
CONCLUSIONS	157
RESPONDENTS	159
9. THE PUGET POWER COLLABORATIVE AND NORTHWEST CONSERVATION ACT COALITION ACTIVITIES TO INFLUENCE DSM	161
SUMMARY	161
INTRODUCTION	162
CONTEXT	162
KEY DSM/IRP ACTIVITIES OF THE NORTHWEST CONSERVATION ACT COALITION	166

THE PUGET POWER COLLABORATIVE	168
CONCLUSIONS	177
RESPONDENTS	179
10. VIRGINIA'S CONSERVATION AND LOAD MANAGEMENT	
TASK FORCE AND RELATED ACTIVITIES	181
SUMMARY	181
INTRODUCTION	182
CONTEXT	182
KEY SELC INITIATIVES	185
THE CLM TASK FORCE	188
CONCLUSIONS	194
RESPONDENTS	196
11. THE WESTERN MASSACHUSETTS ELECTRIC COMPANY	
COLLABORATIVE AND RELATED CONSERVATION	
LAW FOUNDATION ACTIVITIES	197
SUMMARY	197
INTRODUCTION	198
CONTEXT	199
KEY DSM/IRP INITIATIVES OF CLF	203
THE WMECO COLLABORATIVE	206
CONCLUSIONS	214
RESPONDENTS	219
SELECTED BIBLIOGRAPHY	221
ACKNOWLEDGMENTS	231

ABBREVIATIONS

AFL/CIO	American Federation of Labor/Congress of Industrial Organizations
AG	Office of the Attorney General
ALAV	American Lung Association of Virginia
the Alliance	Alliance for Affordable Energy
APA	American Planning Association (Florida Chapter)
APCo	Appalachian Power Company
Bonneville	Bonneville Power Administration
C&I	commercial and industrial
Cal/Neva	California/Nevada Community Action Association
CBAAUUP	Colorado Business Alliance Against Unfair Utility Practices
CCLM	Customer-Controlled Load Management
CEC	California Energy Commission
CEO	chief executive officer
CG&E	Cincinnati Gas and Electric Company
CLECA	California Large Energy Consumers Association
CLF	Conservation Law Foundation
CLM	Conservation and Load Management
CO OCC	Colorado Office of Consumer Counsel
CO PUC	Colorado Public Utilities Commission
CPG	Campaign for a Prosperous Georgia
CPUC	California Public Utilities Commission
CT	combustion turbine
CUC	Consumers' Utility Counsel
DCA	Florida Department of Community Affairs
DEP	Florida Department of Environmental Protection
DER	Florida Department of Environmental Regulation
DNR	Department of Natural Resources
DOE	Department of Energy
DOER	Massachusetts Division of Energy Resources
DP&L	Dayton Power and Light Company
DPU	Massachusetts Department of Public Utilities
DRA	CPUC Division of Ratepayer Advocates
DSM	demand-side management
DSWG	Demand-Side Working Group
ECAC	Energy Cost Adjustment Clause
EPA	Environmental Protection Agency
FCAN	Florida Consumer Action Network
FEECA	Florida Energy Efficiency and Conservation Act
FEO	Florida Energy Office
FIPUG	Florida Industrial Power Users Group
FPC	Florida Power Corporation

GIG	Georgia Industrial Group
GSU	Gulf States Utilities
GTMA	Georgia Textile Manufacturers' Association
GWh	gigawatt hours
HEAT	Housing Energy Action Team
IEC	Industrial Energy Consumers
IRM	integrated resource management
IRP	integrated resource planning
kW	kilowatt
LAW Fund	Land and Water Fund of the Rockies
LCIRP	Least Cost Integrated Resource Plan
LCP	least-cost planning
LEAF	Legal Environmental Assistance Foundation
LP&L	Louisiana Power and Light Company
LPSC	Louisiana Public Service Commission
LRACs	long-run avoided costs
M&E	measurement and evaluation
MASSPIRG	Massachusetts Public Interest Research Group
MW	megawatts
NCAC	Northwest Conservation Act Coalition
NEES	New England Electric System
NMPC	Niagara Mohawk Power Corporation
NOI	Notice of Inquiry
NOIEUG	New Orleans Industrial Energy Users Group
NOPSI	New Orleans Public Service Inc.
NPPC	Northwest Power Planning Council
NRDC	Natural Resources Defense Council
NU	Northeast Utilities
NUPs	non-utility parties
OCC	Office of Consumers' Counsel
OEC	Colorado Office of Energy Conservation
OPC	Florida Office of Public Counsel
PEP	Pace Energy Project
PG&E	Pacific Gas and Electric Company
PII	Public Interest Intervenors
PRAM	periodic rate adjustment mechanism
PSC	Public Service Commission
PSCo	Public Service Company of Colorado
PUCO	Public Utilities Commission of Ohio
Puget Power	Puget Sound Power & Light Company
RIM	rate impact measure
SCC	State Corporation Commission
SELC	Southern Environmental Law Center
SEPCo	Savannah Electric and Power Company

SPUR	Seniors with Power United for Rights
TECo	Tampa Electric Company
TRC	total resource cost
TURN	Toward Utility Rate Normalization
Virginia Power	Virginia Electric Power Company
WICFUR	Washington Industrial Committee for Fair Utility Rates
WMECO	Western Massachusetts Electric Company
WSEO	Washington State Energy Office
WUTC	Washington Utility and Transportation Commission

ABSTRACT

This report discusses the activities of organizations that seek to promote integrated resource planning and aggressive, cost-effective demand-side management by utilities. The activities of such groups—here called energy efficiency advocacy groups (EEAGs)—are examined in ten detailed case studies. Nine of the cases involve some form of interactive effort between investor-owned electric utilities and non-utility parties to develop policies, plans, or programs cooperatively. Many but not all of the interactive efforts examined are formal collaboratives. In addition, all ten cases include discussion of other EEAG activities, such as coalition-building, research, participation in statewide energy planning, and intervention in regulatory proceedings.

Data for the case studies were collected by assembling and reviewing a variety of written material (e.g., utility plans, regulatory orders, EEAG reports); by mailing out a survey to obtain preliminary, written information; and, most important, by conducting a number of extensive telephone or face-to-face interviews with utility staff, regulatory personnel, and representatives of various non-utility groups, including EEAGs. Information was gathered over a period of approximately 1.5 years and is current as of late 1993.

1. INTRODUCTION

As used in this document, the term “energy efficiency advocacy groups” (EEAGs) refers to groups that advocate the aggressive use of cost-effective demand-side management (DSM) by utilities. EEAGs, as well as other non-utility groups interested in energy-related issues, participate in a myriad of activities concerning DSM and IRP. Some of the EEAG activities are designed to build widespread knowledge and acceptance of DSM and IRP through, for example, networking and coalition building, research and publications, media contacts, lobbying, the drafting of legislation, promotion of statewide energy planning, and community service projects. Other EEAG activities are designed to influence the policies, plans, and programs of a particular utility or regulatory body.

The EEAGs’ traditional means of influencing the actions of utilities and regulatory bodies has been adversarial debate, using forums such as regulatory intervention, settlement negotiations, or litigation. EEAGs continue to use these adversarial tactics to some extent. However, since the late 1980s—especially with the groundbreaking work of a few EEAGs such as the Conservation Law Foundation and the Natural Resources Defense Council—cooperative utility/nonutility arrangements have become increasingly common. Arrangements of this type are referred to in this report as “interactive efforts.” They include but are not limited to formal collaboratives between utilities and non-utility parties (NUPs). Typically, in a collaborative there is a measure of shared decision-making power, interactions are frequent, and funds are provided by the utility to enable the NUPs to hire their own technical consultants. In addition, however, a variety of other interactive arrangements such as advisory groups and task forces are possible.

ABOUT THIS REPORT

This report presents ten detailed case studies of EEAG activities to promote IRP and the use of cost-effective DSM by investor-owned electric utilities. The case study project has been undertaken by the Oak Ridge National Laboratory and the University of Tennessee’s Energy, Environment, and Resources Center under the sponsorship of The Pew Charitable Trusts, the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy, and the University of Tennessee. An overview of the project findings is presented in a companion document (Schweitzer, English, Schexnayder, and Altman 1994).

Nine of the ten cases focus on selected interactive efforts involving EEAGs, and all discuss other EEAG activities as well—in particular, other activities intended to influence the “partner” utility(ies) in the interactive effort. (Thus, the case studies do not attempt to explore *all* of the activities of the EEAGs in question.) EEAGs have been chosen as the main subject of inquiry because of their consistent emphasis on promoting cost-effective DSM and because the major sponsor of this research, The Pew Charitable Trusts, has funded the work of such groups. In all but one of the cases, Pew has provided EEAG funding. The New Orleans case was added

to enhance the geographic balance of the project. The EEAGs that are considered, the utilities involved in the interactive efforts examined, and the respective regulatory agencies are listed in Table 1.1.

Data for the case studies were collected through several methods. A variety of written materials was assembled, including, for example, memoranda of understanding, regulatory orders, utility plans, newsletters, newspaper clippings, and annual reports of utilities, EEAGs, and regulatory agencies. During the first year of the project, a survey seeking background information was mailed out to a number of respondents. The main thrust of the data-gathering effort was, however, the extensive telephone or face-to-face interviews conducted during both the first and the second years of the project. Those interviewed included utility staff, regulatory agency personnel, and representatives of various non-utility groups, including EEAGs. To a large extent, the same people were interviewed both years, but not altogether: the roster of interviewees during the second year was slightly different, largely because of the evolution of issues being considered and the availability of respondents.

The case study interviews were guided by protocols consisting of both focused and exploratory, open-ended questions, with somewhat different protocols for the different categories of respondents. While factual information was sought, the primary purpose of the interviews was to develop an understanding of the various respondents' experiences and perspectives. Interviews were conducted between April and November 1992 and again between June and November 1993. Thus, the case studies contained in this report are current as of late 1993.

Table 1.1. Energy efficiency advocacy groups studied and associated utilities and regulatory agencies

Energy efficiency advocacy groups	Utilities	Regulatory agencies
Alliance for Affordable Energy	New Orleans Public Service Inc. and Louisiana Power and Light Company ¹	New Orleans City Council
Campaign for a Prosperous Georgia and Southern Environmental Law Center	Georgia Power Company	Georgia Public Service Commission
Conservation Law Foundation	Western Massachusetts Electric Company	Massachusetts Department of Public Utilities
Land and Water Fund of the Rockies	Public Service Company of Colorado	Colorado Public Service Commission
Legal Environmental Assistance Foundation	Florida Power Corporation	Florida Public Service Commission
Natural Resources Defense Council	Pacific Gas & Electric Company	California Public Utility Commission
Northwest Conservation Act Coalition	Puget Sound Power and Light Company	Washington Utilities and Transportation Commission
Pace Energy Project	Niagara Mohawk Power Corporation	New York Public Service Commission
Southern Environmental Law Center	Virginia Electric Power Company and Appalachian Power Company	Virginia State Corporation Commission
Sierra Club (Ohio Chapter) and Center for Clean Air Policy	Dayton Power and Light Company	Public Utilities Commission of Ohio

¹Both utilities are subsidiaries of the Entergy Corporation.

2. THE CALIFORNIA UTILITIES COLLABORATIVE AND NATURAL RESOURCES DEFENSE COUNCIL ACTIVITIES TO INFLUENCE DSM

SUMMARY

The Natural Resources Defense Council (NRDC) has worked for nearly two decades to encourage utilities in California and elsewhere to implement energy efficiency programs. NRDC has initiated or been involved in interventions (and settlements), filing of testimony, litigation, and various interactive efforts with California utilities and before the California Public Utilities Commission (CPUC). NRDC also devotes considerable effort to research and publications that it believes will influence the attitudes of utilities, regulators, appliance manufacturers, and the public toward energy efficiency measures and their use of such measures.

In 1988 NRDC began documenting the decline of California utility DSM programs and expenditures. Largely because of this NRDC activity, CPUC requested that a blueprint for DSM use be developed collaboratively by interested utilities and NUPs. Four utilities, NRDC, and several other traditional intervenors submitted to the CPUC *An Efficiency Blueprint for California, Report of the Statewide Collaborative Process* in January 1990.

Utility-NUP interactions have continued since the collaborative. Immediately following it, each of the utilities worked separately with interested NUPs to develop utility-specific DSM programs and incentive mechanisms, in keeping with the *Blueprint*. These utility "advisory committees" continue to provide input to the individual utilities regarding their DSM programs and other DSM issues. DSM savings measurement and program evaluation (M&E) protocols that rely on *ex ante* estimates of savings have been developed cooperatively through a CPUC workshop modeled after the original DSM collaborative.

Since the beginning of the collaborative, the net benefit of California DSM programs has been \$1.9 billion. The 1993 DSM budget of Pacific Gas and Electric (PG&E), an electric utility serving northern and central California, represents a 154% increase over its pre-collaboration budget. PG&E expects 75% of its 1990-2000 load growth to be met by DSM savings. Although tremendous DSM savings have been earned and are expected, anticipated changes in California utility regulation may affect future DSM use.

I. INTRODUCTION

This case study examines the formal collaborative that occurred in California between August 1989 and January 1990, the product of which was a "blueprint" for DSM in the state (*An Efficiency Blueprint for California, Report of the Statewide Collaborative Process*). The collaborative involved four electric and/or gas utilities and seven other traditional intervenor groups, including NRDC. California utilities have continued to interact individually with NUPs

(through advisory committees and negotiated settlements) since the collaborative has ended. Because each utility's interactive efforts occur independently, this study focuses on the post-collaborative interactions involving a single utility (PG&E), NRDC, and other NUPs. The information in this case study is current as of November 1993, when data collection was completed.

II. CONTEXT

Political Environment

California utilities' DSM efforts have received considerable national attention (e.g., network news coverage, documentaries, PG&E's receiving the President's award for conservation, and a recent visit by U.S. Department of Energy Secretary Hazel O'Leary to the PG&E energy efficiency showcase). However, in-state attention (e.g. from the governor, the legislature, the news media, and the public) seems to be less. Media coverage has been infrequent; the governor rarely mentions DSM; and, with the exception of a recent bill that would focus more utility DSM dollars on industrial processes, the legislature has been quiet on the issue since putting in place the DSM mandates agreed to in the collaborative.

Economic Environment

California's economic decline is a cause of considerable concern. Industries have scaled back operations or moved away, and California unemployment has recently averaged 8-9% in the north and 10-11% in the south. As a result, more attention is being paid to attracting and keeping industry. Utility rates, consequently, have become a short-term focus. In response, PG&E and Southern California Edison have implemented austerity programs. In general the utilities have built their DSM programs with the recession in mind and have diverted unspent new-commercial DSM dollars to industrial programs with CPUC approval. However, the ultimate effect the economic decline will have on DSM remains uncertain.

Regulatory Environment

Private utilities in California are regulated by the CPUC, which establishes rates and the rules and conditions of service. The CPUC requires general rate case filing every 3 years. Rates are based on a future test year. Additionally, utilities may be under the jurisdiction of the California Energy Commission (CEC), which certifies thermal-electric plant sites over 50 MW in California and encourages energy conservation and research and development.

The CPUC is a five-member body; however, one position has been vacant for about 2 years. Appointments are made by the governor for 6-year staggered terms. Only current commissioner Patricia Eckert served before the collaborative process. The commissioners (Wilk and Hewlitt) who most strongly supported DSM and the collaborative process no longer are commission members. Current commissioners have less background in energy matters in general and DSM

in particular than did previous members. Their backgrounds are varied, however, and include a law professor, an attorney, an accountant, and an ex-Congressman.

CPUC acceptance of policies and programs designed in the collaborative and in other interactive processes that followed it signals its satisfaction with these processes. Although CPUC in its rulemaking has generally implemented the policies established in the collaborative and approved expanding conservation budgets, there appears to be some change in attitude regarding DSM. In general, the CPUC has increased its near-term focus on rates, which may negatively affect DSM, and it has increasingly scrutinized spending on, and results of, DSM programs. In full-panel hearings, the Commission president has voiced concerns about DSM, questioning, for example, whether programs are resulting in savings. Commissioner Eckert remains supportive but has argued for stricter measurement and evaluation standards.

Currently, the CPUC is engaged in a complete review of electric utility regulation, with a mind toward possibly restructuring it. A January 1993 report, commonly referred to as the "Yellow Report," from the CPUC Strategic Planning Division examines the historical background of California's electric utility industry, lays out current regulatory and industry issues, and concludes that the state's regulatory policies are inconsistent with the market. Since the release of the report, three full-panel hearings have been held regarding utility regulation. Formal proceedings have not been opened, but CPUC plans to make some informal statement on regulation in February 1994. The Commission is considering regulation [probably incentive (or price cap) regulation] that would increase competition among utilities and encourage them to lower costs in order to maximize profits. DSM is not a central issue in the discussion, but it would be affected to the extent that it influences utility costs. The utilities favor such reform, and two have filed incentive proposals.

Utility Environment

California utilities have sufficient resources to meet near-term load, and future growth depends on the impact of the recession being experienced in California. The four utilities that were involved in the collaborative are described briefly, and additional information is provided about PG&E because the discussion of post-collaborative interactive efforts focuses on it.

San Diego Gas and Electric Company, the smallest utility that participated in the collaborative, serves approximately 1.1 million electricity customers in San Diego County and part of Orange County. Population growth has slowed in its service territory, but electric energy and peak demand sales continue to grow. In the early 1990s the new customer growth rate was about 2% per year, and electricity sales increased by about 7% annually. The company's annual revenues are over \$1.25 billion.

Southern California Edison supplies energy to a 50,000-square-mile area of central and south California (including Los Angeles) with a population of approximately 10 million. The company has over 4 million electricity customers and yearly revenues of over \$7 billion.

Southern California Gas Company is a gas transmission and distribution company serving southern and central California. Though not originally in the collaborative, Southern California Gas Company was later admitted at its own insistence.

PG&E supplies electric and natural gas service to a population of approximately 12 million throughout northern and central California. The company has over 4 million electricity customers. PG&E gross revenues in 1992 were approximately \$10 billion. Its 1993 DSM budget is \$275 million (with a potential of increasing to \$300 million). Seventy-five percent of PG&E's projected load growth (1990-2000) is to be accommodated through efficiency. The load growth projected over this period is 3300 MW, and DSM programs are expected to conserve 2500 MW by 2000.

Management at PG&E has been reorganized recently so that DSM planning and programs are under the purview of the Marketing Products and Services Division. Although PG&E representatives view that change as having elevated the visibility of DSM at PG&E and afforded better delivery of DSM to customers, PG&E acknowledges that the restructuring does not elevate DSM to an organizational level equal to that of supply-side resources.

Other Key Groups

The parties that historically have been most active in California DSM issues are the California Department of General Services, the CEC, the California Large Energy Consumers Association (CLECA), CPUC's Division of Ratepayer Advocates (DRA), and Toward Utility Rate Normalization (TURN), which are described in the following paragraphs, and NRDC, which is described in the next section.

Advocating positions of ratepayers are the DRA and TURN. The DRA has only three people who work on DSM issues; they are fighting skepticism toward DSM on the part of DRA management (particularly since California's economic decline). DRA has been involved in the collaborative, the workshops regarding M&E, and all four utilities' advisory committees, in addition to engaging in litigation. TURN is a 30,000-member ratepayer advocacy group that supports DSM but does not support strong financial incentives for DSM. Unlike the other groups, TURN has not had consistent representation during the interactive efforts; its representative to the collaborative and its current representative in interactions are not the same person. Because the Energy Foundation is unlikely to continue funding TURN's DSM work, TURN is likely to focus less on DSM issues in the future.

The California Department of General Services is one of the state's largest consumers of energy. CLECA represents industrial customers and other large energy users in California. Both organizations were involved in electric utility regulation through CPUC proceedings before the collaborative, were represented in the collaborative, and are represented in ongoing interactive efforts regarding DSM. Consultants with several years' experience in energy issues represent each of these organizations in these processes.

The CEC has regulatory authority on siting power generating facilities over 50 MW and some transmission facilities, and conducts long-range demand forecasting. It also functions to oversee state energy policy, encourage energy efficiency, and support research and development. Although CEC participated fully in the collaborative, budgetary constraints have limited its participation in the advisory committees. In fact, there was a push to abolish CEC during California's recent fiscal crisis. Strong support from NRDC helped to keep CEC alive.

III. KEY DSM/IRP ACTIVITIES OF THE NRDC

Background

NRDC is a national environmental organization staffed primarily by lawyers and scientists who attempt through research and litigation to influence government and corporate behavior affecting the environment. Founded in the late 1970s, NRDC now has 170,000 members and an annual income of about \$18 million [from member contributions (59%), charitable foundations, and court award fees] and maintains large offices in New York, Washington, D.C., and San Francisco.

In the mid 1970s, NRDC began trying to encourage energy efficiency programs in the northwest. Ralph Cavanagh and David Goldstein joined NRDC in 1979 and 1980, respectively, and initiated The Energy Project, one of NRDC's semi-autonomous environmental programs. The Energy Project's goals are to minimize the environmental and social costs of energy by encouraging and promoting energy efficiency and conservation. NRDC considers its most important work to be technical and scientific research, but has participated in utility commission proceedings and filed lawsuits to assert its position, gain credibility, and focus attention on its research. Little time is devoted to lobbying, and public education is achieved by working through the news media, whose attention NRDC solicits frequently, and through NRDC publications.

NRDC staff (based in San Francisco) who work on California DSM issues are one lawyer and four physical scientists who specialize in energy efficiency. Each of these individuals spends 50 to 75% of his or her time on California DSM and interactions with utilities. Elsewhere in the country are another five NRDC staff who work on utility issues, including DSM.

NRDC's past activity that has most significantly affected DSM in California is the research for and publication of *The Decline of Conservation at California Utilities: Causes, Costs, and Remedies*, which documented the decline in California utilities' DSM budgets and programs. The report and the media attention NRDC solicited spurred CPUC to action.

Current DSM/IRP Activities

Many NRDC activities to influence DSM are not utility-specific but do ultimately influence CPUC and California utilities because the activities and their products are highly visible and

focus attention on efficiency and DSM. They include, for example, research about building energy-efficient appliances and analysis of the role of environmental costs and benefits in resource planning. NRDC has also sponsored the "Golden Carrot" competition to encourage appliance manufacturers to develop and produce energy efficient appliances.

Utility-specific NRDC activities have included the California multi-utility DSM collaborative that began in August 1989 and ended in January of 1990. The collaborative marked a new era in utility-nonutility interactions in California and served as the springboard for the current interactive efforts between PG&E and NUPs. The collaborative is discussed at length in Section IV. The more recent interactions between PG&E, NRDC, and other NUPs are discussed in the following paragraphs.

Two major types of activity have succeeded the collaborative: (1) utility advisory committees (established for each utility that participated in the collaborative) and (2) various activities that result from commission proceedings and NUP interventions.

Advisory Committees

Once the collaborative ended, individual utilities were left with the responsibility of developing DSM programs in keeping with the blueprint of the collaborative. Some of the collaborative participants—particularly DRA, CEC, and TURN, but also NRDC to a lesser extent—worked with each utility between January and April 1990 to structure its DSM plans. From these beginnings evolved utility advisory committees. Each utility has at least one committee.

In October 1990, CPUC sent a formal letter to all utilities stating its support for the advisory committees so that the involvement of various parties in DSM program planning, implementation, and evaluation might continue. PG&E describes three purposes for its advisory committee: (1) to develop DSM program plans, (2) to identify new program areas, and (3) to meet with NUPs quarterly. It emphasizes the "advisory only" nature of the committees, whose purpose is to "help and enhance" and reserves the right to make all filings. NRDC is in apparent agreement with PG&E regarding the purpose of advisory committees. Ralph Cavanagh states that the committees are to give "a sense of ownership and provide useful advice to the utilities. They are not there to create consensus around text, but to contribute to better conservation programs. But it is the utility's responsibility to manage those programs."

However, the advisory committee process has been anything but static. Participant satisfaction with the process, though varied among participants and across utilities, was mixed but generally minimal at the outset of the advisory committee process. The low level of satisfaction was partly the result of purely practical and logistical problems. Meetings were scheduled in conflict with each other and with other proceedings, and participants were not receiving materials needed to prepare for the meetings. In response to these difficulties, CPUC formalized the advisory committee process in June 1992, requiring that a single coordinator

schedule meetings, meetings be held quarterly, schedules be announced 1 year in advance, and materials be provided in a timely fashion.

In addition to the logistical problems, other aspects of the advisory committees' functioning caused considerable frustration among several participants early in the process.¹ The evolution of PG&E's advisory committee is offered by non-utility participants as an example of changes that have occurred (most of which are considered to be positive) and problems that remain. Of all the NUPs, NRDC seems least critical of the advisory committee process, emphasizing that the process is not consensus based.

Other parties, having just been involved in the collaborative—an elaborate consensus building endeavor—likely carried over similar expectations to the advisory committee process. Thus, they were quite concerned that PG&E originally was unwilling to include them seriously in program planning. They describe PG&E as having been unresponsive to their comments and concerns and as having sought rubber-stamp approval of PG&E proposals. However, the NUPs' position was strengthened when PG&E proposals were dealt with in hearings. NUPs expressed strong objections to the PG&E proposals and were able to effect major changes in the programs. Having been made aware that interaction would not prevent significant intervention, PG&E now takes comments and suggestions more seriously, although it does not seek absolute consensus.

Not all parties are yet satisfied with the advisory group format, however. TURN is disturbed that PG&E presents briefings to committee members regarding already well-defined programs rather than soliciting open discussion from members. These briefings are sometimes given by various industry or technical experts hand-picked by PG&E to support its position. Inadequate time and financial resources, TURN suggests, prevents the NUPs from countering effectively. Both DRA and TURN find it problematic that utility advocates outnumber ratepayer advocates in the meetings and that the utility dominates the meetings. For example, at PG&E meetings, four to six PG&E staff sit at the table (compared with about eight non-utility persons), and another ten PG&E staff and consultants flank the room.

In fact, PG&E's policy advisory committee meetings are headed by PG&E staff (no facilitator is used, as consensus is not the goal). Agendas for quarterly meetings are planned by PG&E, taking into account some input from NUPs at previous meetings or between meetings. Agendas are driven largely by upcoming utility activities (e.g., PG&E began to discuss its general rate case filing at advisory committee meetings a year before the case was filed). Closure to agenda items also is determined by outside time constraints associated with utility activities. PG&E uses technical experts—primarily various industry representatives who have committee membership. Although NUPs are not restricted from using consultants, their financial resources have not allowed them to do so. NUPs are not compensated by the utility directly or through CPUC for their participation in advisory committees unless it can be shown that their participation directly led to settlement of a CPUC proceeding. (Additional information about

¹SDG&E is mentioned as the exception to this statement, and is offered by several respondents as the "model" advisory committee.

intervenor funding is found in Section IV.) Only transitory, issue-specific alliances have developed. Votes on programs or aspects of programs are taken at PG&E discretion. Not all members are voting members, however. One representative from each of the primary, traditional intervenors except TURN is a voting member, as are a few building industry representatives and one Lawrence Berkeley Laboratory scientist.

Other Activities

Various activities have arisen as a result of formal CPUC hearings and proceedings. One was the interactive effort known as CPUC workshops, primarily the M&E workshop held during the summer and fall of 1992. This workshop was hosted by CPUC to revise M&E procedures then in use. It occurred under the auspices of an ongoing DSM docket and was modeled in many respects after the DSM collaborative of 1989. The same parties participated, but they negotiated with the assistance of a third-party facilitator chosen by CPUC. Respondents suggest that CPUC mandated a facilitator to balance the power among the participants as they dealt with divisive issues. However, NRDC is credited by other participants with having helped to resolve many issues. When consensus was unattainable, NRDC worked to narrow the acceptable options and laid the framework for CPUC discussion of the issue.

Another activity was participation in the settlement negotiations arising from interventions. NRDC describes the two processes (interventions and negotiations) as “melding.” Adversarial dockets give rise to settlement negotiations, as was the case in the 1993 PG&E general rate case. Although PG&E had worked through several DSM-related issues with its advisory committee, disagreements remained, and PG&E and DRA filed separate cases. Several parties urged a settlement, and representatives of PG&E, DRA, and other parties negotiated. The joint recommendation, subsequently presented to the CPUC as joint testimony from DRA and PG&E, was agreeable to almost every party. However, neither TURN nor NRDC signed the agreement—the former because it believed the agreement was too costly for ratepayers, the latter because it wanted an opportunity to counter TURN’s opposing testimony.

Another activity in which several NUPs engaged was the filing of testimony in response to a CPUC inquiry regarding financial incentives. Although it agreed at the outset of the 1989 collaborative that financial incentives for DSM are necessary, CPUC is reexamining the issue altogether. CPUC contracted an independent examination of DSM shareholder incentive programs (Wisconsin Energy Consultants Corporation 1993) and solicited testimony after receiving the report in January 1993. In September 1993, CPUC reaffirmed the concept of financial incentives and began the second phase of the inquiry, which questions the form in which incentives should occur.

Outcomes

Consensus on key policy and program design issues. Absolute consensus is not sought in advisory committee meetings (nor was it sought in the precursor to the advisory committees,

where utility-specific DSM programs were designed) and therefore is not a measure of the success of the committees.

The outcome of the M&E workshop was agreement to replace *ex ante* estimates of savings with *ex post* verification and to use net-to-gross ratios in measuring DSM results. Parties agreed to form utility-specific measurement committees (much like advisory committees) that serve as a formal certification system for utility DSM programs. Disagreements over other issues remained, however. Led by NRDC, the parties laid out a comprehensive framework for discussing the issues on which consensus was not reached. These issues included whether to use load impact studies (favored by DRA) or performance and retention studies (favored by the utility), the frequency of the studies, and the timing of returns to the utilities.

Broad-based agreement, but not complete consensus, was the product of the negotiations between intervenors and PG&E regarding the DSM aspects of its 1993 general rate case filing. Although NRDC did not sign the agreement, its refusal was not due to lack of support; rather, NRDC wanted to strengthen the agreement by providing testimony to counter dissenting opinions. NRDC emphasizes that absolute consensus is not always the desired outcome. Rather, broad-based support (i.e., from groups that traditionally oppose each other) is often the preferred outcome.

Regulatory Approval of Filings and Programs

Whether programs and filings are cooperatively developed in advisory committees, CPUC workshops, or negotiated settlements, CPUC endorsement and approval of programs, policies, and settlements has reflected the degree of consensus reached in negotiation. That is, CPUC has readily approved filings that have broad support from the NUPs. For example, when presented with the product of the M&E workshop, CPUC concentrated its attention on M&E issues where agreement was not reached and approved with little change aspects of the M&E protocol that were settled.

Comparison of Outcomes

Advisory committee members and PG&E agree that programs developed with input from advisory committee members are better products than they would otherwise be. Most committee members believe that the programs reflect their opinions. PG&E attributes this improvement in programs largely to the participation of members who bring "market realities" to the table. PG&E also echoes the opinion of the NUPs, who suggest that their collective broad experience with DSM and technical expertise improves the programs considerably.

Absent an interactive effort, traditional proceedings might focus on relatively unimportant aspects of programs or policy; and commissioners, who have less expertise than the NUP and utility representatives, might make decisions that neither utilities nor NUPs like. However, committee (or workshop) involvement results in programs that most participants at least feel comfortable with, even if they are not the ideal solution for any participant.

Since the beginning of the collaborative, the net benefit of California DSM programs has been \$ 1.9 billion. All activities related to DSM, including the collaborative, revised regulation, and DSM program development have contributed to these savings.

PG&E's 1993 DSM budget of \$275 million marks a 154% increase over its pre-collaborative DSM budget (in nominal terms). About 3% of PG&E expenditures are now directed to DSM, compared with 1.5-2.0% in 1990. Also, through its DSM programs, PG&E expects to save 2500 MW—an amount equal to 75% of the projected 3300-MW increase that would have occurred between 1990 and 2000.

Implementation. DSM programs basically have been implemented as intended, although not all programs have met expectations. However, some parties—NRDC in particular—do not construe the latter point a poor outcome. If everything had worked, it would suggest that California was trying only safe, easy approaches. NRDC stresses that program implementation is entirely the responsibility of the utility.

Satisfaction of participants' objectives. Most respondents view current interactive efforts and settlement negotiations as extensions of the interaction begun in the collaborative and have not delineated separate objectives for each phase. Accordingly, general objectives are discussed with respect to the collaborative in Section IV. PG&E's objective for the advisory committee is to meet with all parties regularly (i.e., to maintain cooperative, productive contact with them). TURN is satisfied that the current processes ensure a balance of programs among rate classes. DRA's objective of settling as many issues as possible has been fairly well met through recent interactive processes, as has the Department of General Services' goal of maximizing the utility programs available to large energy users. And finally, CPUC's goal of "working out the nitty-gritty details of DSM" has been well satisfied.

Changes in relations among participants. Respondents suggest that relationships among participants changed during the collaborative, but have changed little since then. Only those individuals new to the interactive processes and other activities have noted much change occurring during them. For example, through its work with the utilities (both in advisory committees and in negotiated settlements) DRA has seen a reduction in conflict with the utility and acquired increased knowledge of what "tickles" the utility. However, DRA notes that this improved understanding and relationship does not prevent fierce debates in hearings. TURN's representative finds its relationship with other parties evolving, as a new representative tries to build one-to-one rapport with other participants.

Savings of time and money by participants. Most participants believe that the time and money they have spent on advisory committees and workshops are slightly less than or equal to what they would spend (or could spend, given their financial limitations) in adversarial proceedings. PG&E finds that these processes, having reduced the time PG&E spends in adversarial proceedings, allow it to use its time more efficiently and effectively developing and implementing programs. Spending time in advisory committees forces trade-offs for some participants. For example, some participants cannot attend all meetings, workshops, or hearings;

others do not have the time for technical analyses. TURN finds the process costly and time-consuming since it participates in interactive processes and then frequently opposes the settlement (that it has not signed) in proceedings. NRDC, conversely, believes that interactive efforts save time and money because in their absence, NRDC would spend its time in litigation and then in conference with other parties trying to salvage programs poorly formed by CPUC.

Continuation of interactive efforts and other activities. As long as participants feel that advisory committees, workshops, and negotiations serve their interests, they will continue to participate. These processes themselves are more influenced by CPUC, whose endorsement of them and acceptance of their products (negotiated settlements and minimally opposed filings) suggest that the processes are likely to continue.

Future Prospects

Any future interactive efforts in California will proceed from formal commission proceedings and directives, as was the case for the collaborative and for workshops and settlements. Even the advisory committees have CPUC mandates supporting their existence. This is in keeping with past efforts, where the purpose and interaction were well defined according to CPUC directives. Therefore, neither NRDC nor another party is likely to initiate any interactive effort without formal CPUC support.

Outstanding issues that are likely to be resolved at least partly through utility-nonutility interactive efforts include developing utility-specific financial incentives. Utilities are likely to develop incentives proposals with the assistance of their respective advisory committees and/or will be directed to negotiate a settlement with intervenors. The expected result is some type of performance-based incentive system that will narrow the disparity between the various utilities' current incentives and will key base financial consequences more to program success or failure (given that the new M&E protocols allow better assessment of program success).

Most participants agree, and CPUC commissioners have stated, that the final word on M&E is yet to come. A reexamination of it, after a few years of using the current protocols, is expected. The format for this reexamination and how NUPs will participate in it is difficult to anticipate since it will likely occur a few years hence.

Another pending issue that will affect DSM is utility regulation. There are strong indications that CPUC will adopt incentive regulation (or price or revenue cap regulation). If the new regulation is oriented toward minimizing near-term costs, utilities may slash DSM expenditures to maximize their profits. CPUC has turned down informal proposals to handle the issue through a 1989-like collaborative process. Therefore, NUPs have lost what was likely their greatest opportunity to influence regulation and insulate DSM from potential cuts.

IV. THE CALIFORNIA COLLABORATIVE

Initiation

In 1988, NRDC began documenting the decline in California utility conservation programs. As the research progressed, Ralph Cavanagh of NRDC began meeting with utilities, intervenors, and commissioners about the decline and what could be done about it.

In June 1989, the CPUC issued a notice of an *en banc* hearing and a request for comments to examine CPUC policies regarding conservation. NRDC submitted its report, *The Decline of Conservation at California Utilities: Causes, Costs, and Remedies*, as its testimony to the hearing. Cavanagh began distributing it to other participants and encouraging them and commissioners to support and participate in a collaborative process to address DSM issues. During the *en banc* hearing in July 1989, commissioners let it be known that they wanted a collaborative process; and they requested that the product of such a process be a blueprint for DSM utilization in California, to be delivered to the CPUC in 6 months. The collaborative began meeting in August.

Participants

The CPUC invited *all* interested parties to participate in the collaborative, which originally dismayed some participants who thought the process might become too unwieldy as a result. Most if not all participants soon came to believe that comprehensive participation improved the process. Only after considerable work had been done in the collaborative was membership closed.

The 4 utilities previously described (see Section II) and 11 other parties participated in the collaborative. The parties that were most active in the collaborative include the California Department of General Services, CEC, CLECA, CPUC/DRA, TURN, and NRDC. Other collaborative participants included Enercom, the Association of California Water Agencies, the California Manufacturers Association, the California Energy Coalition, the Independent Energy Producers Association, and California/Nevada Community Action Association [Cal/Neva]. Most participants express regret that Cal/Neva, or another low-income group, was not able to participate more actively in the collaborative (and subsequent interactions).

Purpose

The purpose of the collaborative was to establish consensually a framework for the use of DSM by California utilities. This task included establishing DSM budgets (\$147 million in 1991—an increase of 96% over the utilities' combined pre-collaborative DSM budgets) and guidelines for financial incentive mechanisms (allowing each utility to use a different mechanism) and resolving numerous policy issues. Policy issues included measurement mechanisms and the role of rate impacts on determining levels of DSM funding. The fine details of specific programs

and the approval of financial incentives were not within the purview of the collaborative but were worked out on a utility-by-utility basis after the collaborative ended.

In its report to CPUC, the collaborative defined the scope of its work as follows:

1. to establish priorities for improving and expanding utility DSM programs with emphasis on energy efficiency programs;
2. to identify promising options for creating performance-based incentives for utilities to operate energy efficiency programs; and
3. to define a mutually agreeable framework for determining appropriate levels of DSM investment and activities, and to frame for policy makers the major unresolved policy issues surrounding the integration of DSM into utility resource and investment plans.

In addition to accomplishing those tasks, each organization had discreet objectives for its participation in the collaborative. Each party held as its major objective the pursuit of, support for, or provision of cost-effective DSM. Representatives of the various participating organizations phrased this objective differently, but in accordance with the organization's position. For example, TURN emphasized that its objective was to make DSM work as cheaply as possible so that rates could be kept down. PG&E also emphasized controlling costs and minimizing rate impacts, in addition to providing the most effective DSM measures. A primary objective of NRDC was to pursue all practicable and cost-effective DSM. DRA's DSM team, in light of the schism regarding support for DSM within DRA, expressed a more moderate objective of establishing sustainable DSM budgets and ongoing DSM programs.

NRDC elaborates upon its primary objective, adding that its general objective is to provide an energy future that is lower in both social and environmental costs yet provides the energy services a healthy economy needs. Its goal is to give energy efficiency a fair opportunity to be part of the solution to the problem of minimizing the cost of energy services.

An additional objective of PG&E was (1) to identify all major stakeholders and (2) to understand the issues of concern to them and help them understand issues important to PG&E. Although all parties noted that this kind of understanding has resulted from the collaborative and subsequent interactions, only PG&E identified it as an objective of its participation.

Process

The 1989 California collaborative participants agreed at the outset to make decisions by consensus and agreed upon the scope of their work (as outlined in Section IV). Members met initially every other week and then more frequently as the CPUC-imposed January deadline approached. The group structured its work in three phases and imposed deadlines for each. The phases were (1) fact-finding on technologies and programs, (2) development of policy options,

and (3) synthesis and report writing. Unable to reach consensus on some issues, the group asked the CPUC facilitators to request an extension, but the facilitators declined.

The collaborative operated with two organizational levels: the general collaborative and a spin-off measurement subcommittee whose purpose was to develop measurement protocols. Two staff members of CPUC's Division of Strategic Planning were assigned as facilitators of the collaborative, but they acted primarily to rotate the facilitator's role among other participants and to serve as communication links between the commissioners and the collaborative. The role of mediator was not assumed by these individuals, but by other participants according to the issue being addressed. For example, NRDC's representative, Ralph Cavanagh, often found himself in a middle position between the extremes represented by the utilities on one side and TURN or DRA on the other. Therefore he frequently mediated disputes. When NRDC's position was an extreme, other parties stepped in to mediate.

The utilities provided no money for NUPs to hire outside consultants, but they did provide a pool of money to cover overhead expenses of the process, including bringing in outside experts to speak to the entire group. California has a mechanism through which non-profit intervenors can recover the costs they incur related to formal CPUC proceedings. An intervenor must first petition for eligibility and, once the proceeding is completed, file for recovery of its costs. Because the collaborative arose from a formal CPUC proceeding (the *en banc* hearing), reimbursement for expenses incurred by non-profit organizations (e.g., NRDC and TURN) was available. However, these parties assert that the entire cost of their participation is never recovered through the CPUC intervenor funding mechanism.

Related Policies and Interactions

Because the duration of the collaborative was finite, it was not affected by other interactions between NUPs and the utilities. Also, because the collaborative proceeded under the directive of the CPUC, and through its facilitators could interact with members of the CPUC, it adhered to policy direction acceptable to the CPUC.

Outcomes

Consensus on key policy and program design issues. Although consensus was not reached on some issues considered by the collaborative, parties in the process were satisfied with the outcome. It is likely that both time limitations and widely divergent positions were causes of lack of consensus. Consensus was reached on the appropriate DSM budget and on financial incentive mechanisms for each utility (although program design and the specifics of the financial incentive mechanisms were left for each utility to determine). The *Blueprint* called for investment in DSM to increase 96% by the end of 1991. Consensus was also reached on the use of *ex ante* savings estimates (rather than *ex poste* verification). All parties agreed to using a total resource cost (TRC) test to determine cost-effectiveness, but they could not agree whether annual (percentage) increases in DSM spending should be capped.

Regulatory approval of filings and programs. The *Blueprint* was presented to CPUC in January of 1990 and accepted by the commission. Major portions of the plan are now encoded as California public utilities code.

Comparison of outcomes. The collaborative included unprecedented cooperation among utilities and between utilities and NUPs. Participants agree that an outcome reached through the posturing and extreme viewpoints often presented in the traditional process would have been different from the cooperatively developed *Blueprint* because CPUC would have accepted one party's plan for DSM and reworked it to incorporate other parties' opinions. The resulting plan, say participants, likely would have included financial incentives but probably would have called for smaller DSM budgets than those agreed to by the collaborative.

Implementation. Program implementation is not a relevant measure of the collaborative, since the collaborative did not propose specific DSM programs. Guidelines and policies established in the collaborative's *Blueprint* have been followed by utilities as they plan and implement DSM programs.

Satisfaction of participants' objectives. Most participants believe that their objective of planning for cost-effective DSM was served well by the collaborative and that the collaborative enhanced their opportunities to contribute to DSM planning. TURN remains dissatisfied with regard to keeping DSM costs down, as it feels that financial incentives are unnecessary for effective DSM. PG&E found that the interaction between itself and other parties in the collaborative did meet, and likely was the only way to meet, its additional goal: understanding issues important to other stakeholders and helping them to understand issues important to PG&E.

Changes in relations among participants. The format of the collaborative resulted in changed relationships among representatives of the many participating parties. For example, NRDC believes that its relationships with representatives of other intervenors remained relatively unchanged, but that its relationship with the utilities improved considerably. Several participants remarked that as they became increasingly familiar with other participants' personalities and communication styles, the cooperative process was enhanced. All participants note, however, that improved personal and working relationships among participants did not change where each organization stood on issues, but did allow participants to better understand the driving principles and points of view of other organizations. (Changes in relationships that have occurred post-collaborative, particularly among new participants, are discussed in Section III.)

Savings of time and money by participants. Participants do not think the collaborative resulted in notable savings of time or money, but they suggest that given the issue and the goal of the collaborative, the time and money spent were used efficiently.

Continuation of interactive effort. The collaborative met the CPUC-imposed deadline of January 1990 for delivery of a blueprint for DSM utilization in California. The collaborative itself was thus completed, although subsequent and related interactive efforts followed.

Future Prospects

The DSM collaborative of 1989 served its intended purpose and successfully accomplished its goals (i.e., laying the framework for DSM use in California). Recent moves by CPUC suggest that it wants to reserve decision-making authority on some issues (e.g., M&E and incentives). Other issues are utility-specific (e.g., DSM program development) and thus have not been addressed by a collaborative, per se. Remaining issues likely fall into one of those two categories; therefore, other interactive efforts are expected in the future, but not a full-scale collaborative (in which consensus is the goal).

V. CONCLUSIONS

Recommendations of Respondents

Although respondents' recommendations for successful interactive processes were varied, a great number of them focus on the participants themselves. Noting the absence of a low-income, residential customers' representative, some respondents emphasized that all energy policy stakeholders should be involved. The persons representing various organizations should be those who have decision-making power (i.e., individuals who have major influence over their respective organizations' internal approval process and who have regulatory influence). It was widely noted that the process is more effective when the same staff members represent an organization throughout the process.

Bridging the gap between recommendations about participants and those about process was a widely-voiced recommendation regarding how individual participants should interact. Most respondents suggested that developing relationships with other participants facilitated decision making and understanding of other participants' positions. Occasional one-to-one interactions, seen by some participants as beneficial to the process, are also made easier when there exists a relationship between individuals. (However, one person characterizes the current "collegial" nature of the interaction as compromising the effectiveness of interaction. Not surprisingly, therefore, that respondent recommended that participants be alert and skeptical in interactive processes.)

With regard to the process itself, several respondents emphasized the absolute need for commission support and a clear statement of what it wants addressed. Absent this, there is no assurance that the commission will accept the outcome. Support from top-level management of each participating organization, including the utility, was also recommended.

Other recommendations focused on the working group—its purpose and the process of consensus building. One participant asserted that the role of the group should be clearly established at the outset, whether it be to build consensus, make decisions, or simply act as a sounding board. Others, including the utility, identified the elements necessary for successful interaction as (1) a deadline with discernable consequences (e.g., an adverse commission

decision) and (2) a specific focus regarding the content to be addressed. Acknowledging that consensus building can be frustrating and that attaining consensus is not always possible or desirable contributed to the success of interactive efforts.

Our Observations and Recommendations

NUPs and utilities in California seem to have struck a satisfactory balance of cooperative interaction and adversarial proceedings. As consensus is not the goal of the former, parties can participate fully without the fear of having to compromise their positions too dramatically. However, each party retains its strength because the "stick" (i.e., the adversarial proceedings and the NUPs' history of strength and success in adversarial proceedings) looms large.

NRDC has demonstrated its effective and strategic use of research reports and the news media. Its staff of nationally recognized energy efficiency experts documented the decline of DSM in California in the 1980s in a manner that brought very little challenge from the utilities involved. This approach, combined with timely solicitation of media attention, refocused California's attention on DSM and has subsequently highlighted DSM successes.

Absent NRDC involvement, particularly the publication of *The Decline of Conservation in California*, DSM in California would likely have continued to languish for some time, as neither CPUC nor the utilities were independently spurred to action. It may be that DSM would have regained the spotlight only if controversial supply-side measures were proposed. NRDC has been applauded by some representatives of the utilities and by CPUC and some intervenors for its activities to spur DSM in California and for its role in planning DSM programs and evaluation. The zeal of NRDC staff has also been noted positively by participants. This enthusiasm and NRDC staff expertise have contributed significantly to negotiations and consensus building that have occurred in the 1989 collaborative and subsequent DSM interactive efforts. Ralph Cavanagh is well known for his familiar phrase, "Surely, we can agree." NRDC's strong support for positive financial incentives for DSM has removed barriers to utilities' adopting large DSM budgets.

Without the collaborative and subsequent interactive efforts, DSM in California would likely be different from its present form, yet it is difficult to say exactly how. Nonetheless, one can speculate that DSM planning and adoption would have proceeded more slowly without the strict deadline imposed upon the collaborative. Also, without the input of NRDC and other intervenors, DSM programs would likely be vastly different from those that have been proposed or hammered out in committee meetings.

As CPUC membership has changed during DSM planning and implementation, the collaborative and other ongoing interactive efforts have provided continuity that otherwise might not have existed. However, these changes in CPUC members and the problematic California economy could in the future change the course of DSM in California.

Having publicly expressed doubts about DSM incentives and program expenditures and their impacts on utility rates, current members of CPUC seem poised for a more critical review of DSM. Although in reexamining financial incentives for DSM, CPUC remained supportive of them in principle, it will likely scale back the “richer” and “richest” incentive mechanisms being tested by utilities now. The struggling California economy may yet take its toll on DSM, as political pressure to aid industry is applied. The procedure most threatening to future DSM use in California is the anticipated utility deregulation. CPUC has already declined informal proposals to use a collaborative process to redesign utility regulation. NRDC, given its current staff, appears to be most effective through collaboration and negotiation. Therefore, its opportunities to protect DSM from cuts that might occur as the deregulated utilities institute cost savings measures may already have been reduced.

Although NRDC appears publicly to be down-playing the possible effects of deregulation on DSM, we are certain it realizes fully the potential for DSM to be cut. NRDC, as a national organization, participates in energy planning in states other than California. NRDC, through Cavanagh or an equally competent individual, must be riveted to the California utility regulation proceedings if it wants to protect DSM budgets. Otherwise, the tremendous gains earned during the last 3 years may be whittled away.

Financial compensation for such involvement should be available, as not-for-profit intervenors can recoup some (though not all) of their costs for activities related to formal CPUC proceedings. However, the broad expertise and general research activities (acquired and employed outside of specific CPUC proceedings, and thus not eligible for compensation) are significant contributors to NRDC’s successful interventions and interactions. It is for these activities that NRDC relies on foundation support and general contributions. Because NRDC has a substantial operating budget, its continued participation in DSM activities in California is not immediately threatened by the loss of a single funding source (as is the case for other intervenors who lose specific funding sources or experience state cutbacks). However, NRDC’s resources to devote to energy issues are not unlimited, and reduced funding levels would likely result in curtailed (but not discontinued) activity unless NRDC perceived a critical threat to DSM.

RESPONDENTS

Utility

Bruce Matulich	Manager, Marketing Products and Services, PG&E
Paul Hansen	Senior Planner, PG&E

Non-profit groups

Ralph Cavanagh	Attorney, NRDC
Eugene Coyle	Energy Analyst, TURN

Business groups

Dian Grueneich Grueneich Resource Advocates, Legal Representative for California
Department of General Services

Regulatory staff

Policy staff

Scott Sanders Advisor to CPUC Commissioner Patricia Eckert, CPUC

Advocacy staff

Ali Miremadi Analyst, CPUC Division of Ratepayer Advocates

Scott Logan Analyst, CPUC Division of Ratepayer Advocates

3. DAYTON POWER AND LIGHT COMPANY COLLABORATIVE AND RELATED ACTIVITIES

SUMMARY

For the last several years, the Ohio Chapter of the Sierra Club and the Center for Clean Air Policy (CCAP) have undertaken a variety of efforts to influence both the Public Utilities Commission of Ohio (PUCO) and Ohio utilities to pursue cost-effective DSM options more aggressively. The approaches used include intervening in PUCO proceedings, participating in collaboratives, and engaging in various networking activities with like-minded organizations throughout Ohio.

The settlement of a contentious Dayton Power and Light Company (DP&L) rate case in November 1991 included an agreement by the utility to spend \$60 million on DSM over a 4-year period, an amount that appears to be larger than it would otherwise have been. Another element of the rate case settlement was the establishment of a new collaborative involving DP&L and approximately a dozen non-utility parties (NUPs). Neither the Sierra Club nor CCAP was directly involved in the negotiations leading to the November stipulation, although other groups [e.g., the Ohio Office of Consumers' Counsel (OCC), Local Government Utility Coalition] with whom the Sierra Club and CCAP have been aligned in other cases were key players in the settlement process. The Sierra Club intervened in the case shortly after the November agreement was reached and became one of the charter members of the collaborative. While the collaborative does not appear to have had an effect on the total amount of money allocated to DSM resources, it does seem to have influenced how that money is spent.

In February 1993, DP&L and intervenors in its 1991 and 1992 IRP cases reached a stipulated agreement that specified acceptable DSM programs for future implementation and called for continuing the DP&L Collaborative and hiring an outside consultant to assist in its operations. Most participants say that the programs contained in this agreement—whose selection was almost certainly influenced by prior collaborative negotiations—are better than they would have been without the participation of the non-utility groups. Since the agreement was accepted by the PUCO, the collaborative has continued to meet regularly, working primarily on review and refinement of the utility DSM programs.

I. INTRODUCTION

This case study has two distinct, but related, focuses. The first is the current DP&L Collaborative,² which began in February 1992 as the result of a rate case settlement requiring

²Not to be confused with a short-lived joint planning process undertaken by DP&L and the Ohio Office of Consumers Counsel in 1990, when they worked together on the development of a residential conservation pilot program.

the utility to spend \$60 million on DSM programs over the ensuing 4 years. In addition to describing the collaborative process and outcomes, this case study also examines other activities undertaken by the Ohio Chapter of the Sierra Club and CCAP with the intention of influencing the IRP and DSM policies and actions of DP&L and the PUCO. Final data collection for this study was completed in early November 1993, so the following discussion is current as of that date.

II. CONTEXT

Political Environment

DSM does not seem to be a hot issue within Ohio state government generally, although some respondents have characterized the governor as being supportive of it. The news media in Ohio have not paid much attention to IRP and DSM in general, but local media attention often is focused on individual utility actions. Also, DP&L has been publicizing its DSM programs recently, and the publicity has probably increased overall community awareness of DSM. The use of coal—and the question of using scrubbers vs. low-sulphur coal to attain clean air compliance—is a significant issue in Ohio because of the potential impact on the state's mining industry. National Clean Air Act provisions also are relevant to the use of DSM because of the potential that energy-efficiency measures will reduce the operation of generating facilities and associated emissions. Other topics of interest at the national level (e.g., retail wheeling, the role of independent power producers) are potentially important in Ohio but are not currently of significant public concern at the state level.

Economic Environment

Southern Ohio, like most of the nation, was touched by the recent recession. However, economic conditions are not often mentioned in debates over preferred energy policy at the state or local level. The one major exception is that industrial customers frequently raise the issue of their cash shortages and the corresponding need for short payback periods on DSM investments. Also, industrial customers have cited the need to keep electricity prices low because of their need to compete with companies in other service territories.

Regulatory Environment

PUCO has five members who serve staggered 5-year terms. All the commissioners are appointed by the governor, but no more than three can be of the same political party. Assistance on IRP/DSM matters is provided by five full-time members of the PUCO staff—two economists, one engineer, one mathematician, and one communications specialist. Not surprisingly, PUCO has interacted substantially in recent years with DP&L. It also has interacted frequently with key intervenor groups, particularly OCC, Industrial Energy Consumers (IEC), and the Sierra Club. During the study period, the Regulatory Assistance Program, run by David Moskovitz and Cheryl Harrington, has presented workshops and training sessions for PUCO staff and OCC

representatives on key issues such as avoided cost calculations, use of externalities, and the Clean Air Act amendments.

PUCO has taken a number of actions in recent years to encourage utility IRP and use of DSM, as well as greater utility interaction with non-utility groups. Those actions include requiring utilities to prepare integrated resource plans every 2 years; allowing the recovery of DSM-related program costs and lost revenues (during rate cases) and the collection of incentive bonuses (equalling 10% of net DSM-induced benefits); approving the November 6, 1991, stipulation filed by DP&L and various intervenors that calls for spending \$60 million on DSM programs over a 4-year period and establishing the DP&L collaborative; ordering two other Ohio utilities to participate in collaboratives in the fall of 1992; and approving a forecasting case settlement establishing a collaborative for two additional utilities.

Recently, many key parties involved with Ohio utility issues have characterized PUCO as being cautious in its support of IRP/DSM. Some respondents characterize this cautiousness as reflecting a practical concern with cost-effectiveness and a desire to see clear results in Ohio before making further commitments; according to them, it does not indicate any erosion of support for IRP/DSM. Others speculate that the regulators may be backing away from the intensity of their earlier support. Most of those interviewed describe the regulators as being cautious on the topic of utility-NUP collaboration as well. Despite its recent decisions favoring the establishment of collaboratives, it appears that the commission would prefer that those groups focus on delivering programs rather than on making major policy decisions. One collaborative participant seemed to describe the current situation accurately by saying that PUCO does not want collaboratives to get too far ahead of the regulatory process.

Utility Environment

DP&L is an investor-owned utility that sells electricity and natural gas throughout a 6,000 square-mile area of west central Ohio with a population of 1.2 million (about one-tenth of the state's residents). It has total annual operating revenues of nearly \$750 million and employs approximately 3,000 people. The company has over 400,000 customers (i.e., households) in the residential sector, about 39,000 in the commercial sector, approximately 2,500 in the industrial sector, and about 5,000 customers of other types (e.g., public authorities). DP&L sells about 13,000 GWh of electricity annually: about 4,000 GWh each to residential and industrial customers; nearly 3,000 GWh to the commercial sector; and almost 2,000 GWh to other customers. DP&L generates about 99% of its own electricity and purchases the remaining fraction. The system's peak load is approximately 2,600 MW.

Including DP&L, there are eight investor-owned electric utilities doing business in Ohio. In terms of annual sales, the largest is Ohio Power Company (an affiliate of the American Electric Power Company that serves much of southeast and east central Ohio), followed by Ohio Edison (headquartered in Akron and serving much of northern Ohio), Cincinnati Gas and Electric Company (CG&E), Cleveland Electric (a Centerior Energy Corporation holding), Columbus Southern Power (another American Electric Power affiliate), DP&L, Toledo Edison

(another Centerior company), and Monongahela Power (which is headquartered in West Virginia and serves very few customers in Ohio). All Ohio utilities provide some DSM programs to customers, but the level of effort is uneven. In terms of the number of different programs offered, DP&L is the most active, followed fairly closely by Cleveland Electric and Toledo Edison. However, both Cleveland Electric and Toledo Edison exceed DP&L in the number of commercial and industrial programs that they offer.

Most Ohio utilities are currently involved in some kind of collaborative effort. In the fall of 1992, CG&E and Columbus Southern Power Company both were ordered by PUCO (in rate case proceedings) to establish collaboratives with appropriate groups in their service territories. This represents the second time that CG&E has participated in a collaborative. In December 1992, Centerior (which controls Cleveland Electric and Toledo Edison) established a collaborative as a settlement to a forecasting case.

Other Key Groups

The major non-utility groups involved in utility issues in Ohio fall into three general categories: environmental/energy conservation advocacy groups, business organizations, and government agencies. The two most active environmentalist groups are the Sierra Club (Ohio Chapter) and CCAP, which provides the Sierra Club with considerable technical support (both are described in more detail in the following section). IEC is the most active business organization, intervening in cases throughout the state that affect industrial interests. IEC is an ad hoc group whose members change from case to case, depending on the companies affected by a particular utility's actions. Commercial/industrial customers that have been directly involved with utility issues include Lazarus, Kroger, General Motors, and Appleton Paper. Statewide, the government agencies most actively involved with utility-related affairs have been the Ohio OCC and the PUCO advisory staff. Local government groups that have been active within their own jurisdictions include the Local Government Utility Coalition (in the Dayton area), the Legal Aid Society of Dayton (representing low-income interests), and the Montgomery County Community Action Agency.

Most of the active non-utility groups have had several years of experience with utility-related issues. However, their staffs are generally quite small, most having the equivalent of one or fewer full-time staff members involved in DSM issues. The major exception is OCC, which devotes significantly more staff time to IRP/DSM.

Most of the non-utility groups characterize themselves as weaker or much weaker than DP&L in terms of DSM funding and influence with state regulators (although PUCO staff obviously have a special relationship with the commission). Several organizations consider themselves stronger in terms of technical resources than in funding or influence, but it still is rare for groups outside state government to consider themselves equal to the utility in that regard. OCC, PUCO staff, IEC (and its associated industries), and the Sierra Club/CCAP probably are the strongest groups in terms of both funding and technical resources, while the commercial customers and low-income groups probably have the fewest available resources.

The active non-utility organizations typically have relied heavily on litigation in addressing utility issues. The use of settlement and other consensus building techniques is also very popular and has been increasing recently with the proliferation of collaboratives in Ohio. In addition, a few groups make substantial use of educational approaches. A majority of non-utility groups report that they generally agree with DP&L about what the important DSM issues are, but that they agree less about the proper way to address them.

III. KEY SIERRA CLUB AND CCAP INITIATIVES

Background

The Sierra Club is a national environmental advocacy organization founded in 1892 that is actively involved with environmental issues (including energy-related topics) throughout the United States. The Ohio Chapter of the Sierra Club, organized in the 1960s, has approximately 17,000 members. Its energy-related goals are to promote energy efficiency and thereby reduce pollution and the associated dangers of acid rain and global warming. The Ohio chapter's approach to utility issues has traditionally been to litigate before PUCO, placing less emphasis on consensus building and education, although recently it has put somewhat more emphasis on education. Also, with the advent of the various Ohio collaboratives, the emphasis on settlement and consensus building is probably increasing.

The Ohio chapter has the equivalent of only a single full-time paid employee, but the work of many unpaid volunteers adds to the organization's clout. However, nearly all of the chapter's energy-related activities are organized and carried out by a single dedicated member, Ned Ford, who works full time on energy issues largely without pay. Mr. Ford (who is not a paid employee of the Sierra Club) recently began receiving a small salary from CCAP for part-time consulting related to his work on Ohio collaboratives. In addition, the Sierra Club state chapter contributes a small amount of money to cover expenses related to his energy initiatives (e.g., mailings, phone calls), and the local chapter has provided some funding this year to hire experts for a regulatory case. The direct efforts of the Sierra Club are supplemented by technical assistance from a CCAP staffer, as well as by legal representation and the occasional hiring of consultants funded by CCAP. This outside funding is essential to allow the Sierra Club to continue its energy-related activities, although the magnitude of the need rises and falls depending on the timing of PUCO hearings—during which the need for expert assistance is greatest.

The Sierra Club has advocated aggressive utility use of DSM since the mid-1980s. Its past activities include intervening in numerous PUCO cases related to IRP, rates, and acid rain compliance plans for utilities throughout Ohio; participating in many generic PUCO investigations into related matters; sponsoring educational workshops on issues related to energy and the environment; participating in PUCO investigations for an Ohio Energy Strategy; and organizing a network to coordinate, inform, and assist Ohio energy activists involved with

ongoing intervention in PUCO cases. Many of these activities are ongoing, and they will be discussed in more detail in the next section.

CCAP, based in Washington, D.C., has also been actively involved in advocating integrated planning and the aggressive pursuit of DSM by Ohio utilities. In fact, it has supported and worked with the Sierra Club on many of its initiatives. CCAP was founded in 1985 by a bipartisan, multi-regional group of governors to develop innovative solutions to contentious environmental and energy problems. The Center is a tax-exempt research and educational organization that receives over half of its funding from foundations (both national and regional) and most of the remainder from federal and state governments. The overall goal of CCAP's ongoing Ohio Energy Conservation Initiative, begun in 1991, is to encourage Ohio utilities to develop cost-effective DSM as an acid rain compliance strategy. Initially, CCAP's efforts focused almost entirely on intervention in key cases, but the emphasis has now shifted to policy development and implementation (e.g., work with the Sierra Club on Ohio collaboratives) and grass-roots organizing and education, aimed at developing an informed constituency.

CCAP has been advocating the benefits of DSM as a means of controlling utility emissions since its formation in 1985, but it has been involved in DSM program development and implementation only since 1990. It has undertaken a number of activities in Ohio since 1991 as part of an umbrella effort that it calls the Ohio Energy Conservation Initiative. The key components of this initiative are supporting the Sierra Club on several important interventions (rate cases and environmental compliance plan reviews), including some that led to the establishment of collaboratives; developing a network of energy conservation advocates throughout the state; and working with low-income groups in various Ohio communities to help them address energy-efficiency issues. (These activities are discussed in more detail in the following section. The DP&L Collaborative, in which both CCAP and the Sierra Club were actively involved, is discussed in a separate section.)

CCAP employs the equivalent of nine full-time staff members. It devotes the equivalent of 2.5 full-time employees to the Energy Conservation Initiative, including one employee who works on it full-time, a few others who work on it part-time, an outside attorney (as needed) and several consultants (again, as needed). The non-consultant employees have backgrounds in policy analysis and public affairs.

Current DSM/IRP Initiatives

During the past year, the Ohio Chapter of the Sierra Club has continued its efforts to influence both PUCO and the state's utilities to pursue cost-effective DSM options more aggressively. A number of different approaches have been used. Although formal intervention in PUCO proceedings is an option the Sierra Club has used repeatedly in the past,³ the

³The Ohio Chapter of the Sierra Club (often with support from CCAP) has intervened in five IRP cases, four Environmental Compliance Plan cases, and four rate cases. Representatives of the organization also have participated in approximately half a dozen generic PUCO investigations into related matters.

organization's major focus this year has been maintaining its network of Ohio energy activists, participating in the Ohio Energy Strategy investigation, and playing a key role in the various Ohio collaboratives.

During its Ohio Energy Strategy investigation, PUCO developed about two dozen questions related to what the state should do in the energy arena. Mr. Ford of the Sierra Club submitted approximately 100 pages of direct comments and 350 pages of appendices in response to the PUCO queries. The intent was to make a strong impression on the regulators as to the large number of practical things that could be done to promote energy efficiency. PUCO issued a draft report documenting its investigation; the Sierra Club was critical of the report because it made no focused recommendations. To date, no final report has been issued.

The Ohio Energy Activists Network was developed by Ned Ford to coordinate and assist Ohio DSM advocates in their interactions with the state's utilities and regulators. The most visible part of this effort is the publication every 2 or 3 months of an informational newsletter that is distributed to key groups and individuals to keep them up to date on important energy-related events and the activities of like-minded organizations. In addition to putting out the newsletter, Mr. Ford talks on a regular basis with other participants in Ohio collaboratives throughout the state and has participated in various workshops on utility-related issues in Ohio and elsewhere in the United States. The overall purpose of these networking activities is to defend DSM and clarify the understanding of key issues by DSM supporters and other interested parties.

It is important to remember that most of the Sierra Club's non-litigative activities have been carried out more or less single-handedly by Ned Ford, an arrangement that inherently limits how much can be done. Clearly, the efforts in Ohio have been limited by the finite availability of committed personnel. Funding limitations also have been significant. If he had more money, Mr. Ford would like to bring in more experts from other states, most notably those who have had positive experiences with developing and implementing DSM programs for the industrial sector.

CCAP continues to support the Sierra Club on PUCO interventions, which historically have been an important way for environmental/energy advocacy groups to influence utility and regulatory policy. In early 1993, intervenors in DP&L's 1991 and 1992 IRP cases reached a settlement with the utility (subsequently accepted by PUCO) which specified acceptable DSM programs for future implementation and established that the DP&L Collaborative would be continued with assistance from an outside consultant. Although CCAP has not abandoned the intervention option, it has shifted to a greater emphasis on other activities in the past year, most notably developing a network of energy conservation advocates throughout Ohio and assisting low-income groups in addressing energy-efficiency issues.

CCAP's networking efforts complement but do not duplicate those described for the Sierra Club. The goals and strategies of the two organizations are very well coordinated, although their individual actions are not taken in concert. David Festa of CCAP describes his group's efforts as "pretty typical grass-roots organizing." In general, the Center takes an informal approach to

identifying potential players and their needs and encouraging them to become active. When successful, this approach serves the function of magnifying CCAP's effectiveness and getting other groups with similar interests to share the burden of addressing energy-related issues in Ohio.

In the past year, CCAP has undertaken a number of different networking activities. It has run training programs for mixed audiences that have included a wide variety of groups, such as OCC, county governments, and consumer advisory panel members. Since January 1993, CCAP has run 6 full days of training sessions, including two 2-day sessions in Cleveland on collaboratives. These collaborative training sessions serve a broad range of NUPs and have covered everything from negotiating techniques to technical issues like cost-recovery. In addition to its training sessions, CCAP also gives talks to interested organizations and has worked individually with key groups like the Ohio Environmental Council and the Ohio Office of Energy Efficiency (which cosponsored the collaborative workshops mentioned earlier) to help increase these agencies' expertise on energy matters and get them more actively involved on important issues within the state.

Another distinct CCAP thrust is its work with low-income groups on energy issues. Currently, CCAP is working with existing organizations in Cleveland, Columbus, Dayton, and Cincinnati. Most of these groups are involved in ongoing collaboratives and some also are intervenors in ongoing cases. The Center helps them analyze potential DSM programs and provides them with other types of technical assistance to support their collaborative positions and/or their interventions. In some cases, CCAP also provides funding for these low-income groups to hire consultants. Although an organization does not have to be involved in a collaborative to receive CCAP support, the Center especially likes to help collaborative participants because that interactive process provides a forum for its ideas.

As mentioned earlier, CCAP has participated in a number of Ohio collaboratives in active support of the Sierra Club. In addition to advocating its own position, CCAP uses its collaborative involvement as an opportunity to educate other participants, an audience that it sees as very important. CCAP's involvement with the DP&L Collaborative will be discussed more fully in another section.

Outcomes

A clear outcome of interventions by the Sierra Club and other non-utility groups is the stipulation reached with DP&L in February 1993, and later accepted by PUCO, settling the utility's 1991 and 1992 IRP cases. The negotiations that settled this case took place outside the DP&L Collaborative and involved only those parties that had intervened in the case (although some of the same issues also were discussed at collaborative meetings). Parties to the agreement were the utility, PUCO staff, OCC, Sierra Club, Miami Township Board of Trustees, General Motors, and Appleton Paper Company. Although not a signatory to the agreement (because of its lack of intervenor status), CCAP was intensely involved in the negotiations and supported the

settlement. The Legal Aid Society of Dayton and IEC did not sign the stipulation, but they did not oppose it.

The main features of the February 1993 agreement are as follows:

- The forecasts and need for additional generating capacity presented by the utility in its integrated resource plans are found to be reasonable.
- The utility will meet the overall 4-year DSM expenditure level of \$60 million set in November 1991 as part of a rate case settlement, despite spending less than \$15 million on DSM in 1992.
- The \$60 million to be spent by DP&L will include only program costs, *not* lost revenues.
- The utility eventually will be allowed to recover program costs and lost revenues and to collect shared savings on 15 recommended programs and six additional programs, pending demonstration of their cost-effectiveness under the TRC test.
- The utility can implement 10 education, demonstration, or pilot programs but will recover only program costs for these efforts.
- DP&L will continue to work with the existing collaborative on the development, design, implementation, monitoring, and evaluation of DSM programs and will fund a consultant to assist the collaborative in its ongoing efforts.

The portfolio of DSM programs included in the stipulation and accepted by state regulators was influenced by the IRP settlement negotiations and by the collaborative process. Before the settlement, the programs originally proposed by the utility—and subsequently augmented in collaborative sessions—were analyzed by PUCO staff, who ranked the available programs according to their cost-effectiveness and suggested some modifications. This modified list of programs was then discussed and revised slightly by the negotiating parties. However great (or small) the effects of this process in altering the nature of the programs the utility would have developed, it is clear that the *total amount* of projected DSM expenditures (\$60 million) owes a great deal to earlier rate case interventions and is larger than it would have been otherwise. In both settlements, however, agreements on DSM issues were accompanied by agreements on key supply-side issues: agreement on conversion of the Zimmer plant to a coal-fired facility in the rate case, and acceptance of the need for additional generating capacity (without signing off on any specific facility) in the IRP case.

By all accounts, the DSM programs agreed to in the February 1993 stipulation are being implemented as intended.

It seems that the non-litigative efforts undertaken by the Sierra Club and CCAP have had real effects on other groups and individuals concerned with energy issues in Ohio. CCAP's and

Sierra Club's networking and assistance efforts have probably strengthened the energy advocacy abilities of the targeted groups and thereby increased the overall magnitude of the effort to achieve aggressive utility pursuit of DSM options in Ohio. Interest in energy issues and belief that positive solutions to current problems exist probably also have increased, at least among the groups and individuals reached by the Sierra Club/CCAP efforts. The extent to which these abilities and attitudes have influenced regulatory attitudes and utility actions is still an open question, but one key respondent suggested that the persistent pro-DSM initiatives of the energy advocacy groups might have helped offset the more conservative industrial position and kept regulatory policy from tipping in that direction.

Both the Sierra Club and CCAP appear satisfied with the results of their efforts to influence utility actions. They point to increased DSM activities in Ohio and the associated environmental benefits as evidence that things are moving in the right direction. The Sierra Club representative also suggested that the organization's networking activities have increased understanding among the non-utility groups involved in Ohio energy issues.

Future Prospects

It is likely that the major initiatives undertaken by CCAP and the Sierra Club will continue for at least the next year or two. These groups will probably intervene in future cases before PUCO related to utility planning, DSM activities, and rates. And both organizations appear eager to continue their networking activities with interested groups and individuals throughout the state. However, these groups' continued activities depend on the continued availability of supporting resources. In the case of CCAP, its Ohio Energy Conservation Initiative is totally dependent on continued funding from foundations and government groups. As for the Sierra Club, it has relied to a large extent on CCAP to provide the legal and technical expertise needed to support its interventions and would be forced to find other sources of assistance or curtail its efforts if CCAP aid were withdrawn. Also, if its key volunteer were no longer available on a full-time basis, the Sierra Club's ability to maintain its networking activities and extensive collaborative participation would be seriously threatened.

Assuming that Ohio's key environmental/energy advocacy groups continue to mount the intervention and networking efforts that they have in the past, there is still some question about the future results of such efforts. Well-chosen interventions are likely to continue to result in some degree of success, provided that adequate legal services and technical expertise are available to support them. It is unclear, however, how much an ongoing network of concerned groups and individuals will be able to influence public opinion and the actions of Ohio utilities and regulators. The success of these efforts will probably depend to a large extent on the availability of funds (which is limited) and the mood of PUCO (which has recently been characterized by many observers as cautious).

Even without continuing efforts by non-utility groups, there are some indications that DP&L's increased commitment to DSM programs will continue, at least over the next few years. First, there are the company's legal obligations. In its November 1991 rate case settlement, it

promised to spend \$60 million over the ensuing 4 years; then, in its February 1993 stipulation with key intervenors, it identified the specific programs it would pursue to make good on its earlier commitment. But even when these specific obligations are discharged, there is some reason to believe that the utility's DSM efforts will continue at least at the level established in the preceding years. Certainly, DP&L's greater familiarity with DSM programs and the associated benefits is likely to lead it to continue in the same direction. But another factor pushing the utility to continue its DSM efforts is the substantial size of its DSM staff. Between June 1992 and June 1993, the utility's inhouse DSM staff increased from about 15 to 100. This contingent of employees has substantial expertise in the DSM arena, as well as a vested interest in continuing an active DSM effort even when the terms of the company's settlement agreements have been satisfied.

IV. THE DP&L COLLABORATIVE

Initiation

In mid-1989, OCC offered to work collaboratively with any interested Ohio utility on DSM program development. A few months later, PUCO passed new rules requiring all electric utilities in Ohio to file integrated resource plans every 2 years and stating that DSM programs should be implemented whenever they are shown to be cost-effective in comparison with supply-side options. Shortly thereafter, in January 1990, the first DP&L Collaborative was established as part of a settlement of an ongoing case. This collaborative was a limited effort focusing on a residential pilot program and involving only the utility and OCC.

The current DP&L Collaborative was established about a year after completion of the first collaborative. In the months since the first collaborative had been concluded, PUCO had adopted guidelines for DSM cost recovery, lost revenue recovery, and shared savings incentives. Also, DP&L had filed an application for a substantial base rate increase, which was hotly contested by many non-utility groups, including OCC, IEC, and the Local Government Utility Coalition. The agreement to collaborate was part of the November 6, 1991, stipulation settling the issues under contention, including the conversion of the Zimmer plant to a coal-fired facility. This stipulation was written by the parties themselves; PUCO's only involvement was to accept it as a reasonable resolution of the pending case. While neither the Sierra Club nor CCAP was directly involved in the negotiations leading to the November stipulation, the Sierra Club intervened in the case shortly after the settlement was reached and consequently became one of the charter members of the new collaborative (advised by CCAP, which participates as an active nonvoting member).

Participants

The DP&L collaborative involves more than a dozen parties: one utility, two non-profit groups (both of them environmental advocates), five business groups (representing commercial and industrial interests), five governmental agencies (representing various local and federal

entities as well as consumer and low-income interests), and the PUCO advisory staff. The participants represent a broad range of interests, and there was general agreement among the respondents that no important constituent groups were unrepresented. The Sierra Club, CCAP (as the Sierra Club's advisor), OCC, PUCO staff, Legal Aid Society of Dayton, and several industrial parties (General Motors, Appleton Paper) have all been actively involved with the collaborative during 1993, while commercial representatives have been largely inactive. The Sierra Club, CCAP, and OCC have probably been the strongest voices advocating aggressive use of DSM.

DP&L's power plants are mostly coal-fired units. The utility has no nuclear plants and burns very little oil or gas, except in its peaking units. The utility projects a moderate (1-2%) annual growth rate in its peak load. DP&L anticipates needing additional peaking units within the next 5 years, which makes the recent settlement of the company's IRP case doubly attractive: not only does the stipulation state that the signatories accept the need for additional generating capacity as presented by the utility, but also the agreement includes specifics on new DSM programs that could help postpone the need for additional units.

DP&L's DSM programs are the responsibility of a department called Operation Synergy, which is in charge of program design, implementation, and evaluation. It works closely with the utility's Regulatory Affairs Department and other customer-oriented departments (e.g., Communications, Service Operations). Staff members within Operation Synergy have official performance goals related to overall DSM expenditures and costs per customer served.

Respondents were unanimous in characterizing DP&L management as being supportive of DSM, although there were differences of opinion over the strength of that support. A few collaborative participants characterized utility support as being somewhat cautious, but the majority saw the utility as moderately to strongly in favor of DSM. A few used terms such as "receptive" and "knowledgeable," and a number of comments were made concerning the dedication and enthusiasm of the utility's DSM staff. Many of those interviewed noted that the attitude of the utility has become more positive (some said "much more" positive) toward DSM since the beginning of the collaborative.

Utility attitudes toward the collaborative itself were seen as less positive than toward DSM. Most saw the utility as being neutral to mildly in favor of the collaborative, although several noted that DP&L's attitude toward it has improved over time. Some respondents characterized the utility as being serious about taking collaborative input and following up on suggestions made by the NUPs, while others saw the utility as participating only because it had agreed to do so, rather than from any genuine desire to take part.

Purpose

The objectives held by the various participants in the collaborative varied considerably, and many of those interviewed held multiple objectives. Both environmental/energy advocacy groups wanted to protect the environment by promoting the benefits of energy efficiency and reducing

the need for electricity generation and subsequent power plant emissions. A few other NUPs—one from the government sector and one representing business interests—also shared this concern with protecting environmental quality. Several other participants, from both the government and the business sector, hoped to develop DSM programs that were beneficial to their constituents. One government representative hoped to maximize the amount of DSM adopted by the utility, and one participant from the business sector wanted to ensure that the \$60 million earmarked for DSM was spent cost-effectively. The objectives of the utility and PUCO staff fit together nicely: the former wants to get a customer and regulatory perspective to help it develop programs, and the latter wants to provide sufficient input to ensure that the chosen programs reflect staff judgement about what is and is not acceptable to PUCO.

The collaborative has addressed both procedural and substantive issues during its lifetime. Key procedural issues include collaborative membership and structure, the use of consultants, and the role that the collaborative should play in developing and designing DSM programs for adoption by DP&L. The issue of hiring collaborative consultants was very contentious and was eventually resolved in the February 1993 stipulation discussed earlier. No written agreement on collaborative structure and functions was ever reached, but the parties agreed to proceed without one as long as things continue to run smoothly.

Substantively, the collaborative has focused largely on reviewing DSM programs proposed by the utility and suggesting additions and revisions. The group has discussed individual programs and, to a lesser extent, the overall mix of programs by type (e.g., education vs. direct action), customer class, and cost-effectiveness. However, the collaborative has *not* been directly involved in detailed program design. During 1993, the collaborative has addressed the question of how to perform program monitoring and evaluation in addition to examining specific programs. A few policy issues (calculating long-run avoided costs, addressing externalities) have been raised, but the group has agreed not to discuss these in any depth, partly because the utility believes these issues fall into its own domain and partly because there has not been a strong need to do so.

Process

Collaborative structure and functions. Since its initiation in February 1992, the DP&L Collaborative has operated without formal rules regarding its structure. This situation has not changed over time, and the utility continues to be opposed to developing a written agreement describing the collaborative's form and functions. However, in the last year, meetings have become more regular and the agenda for each meeting has been established several months in advance. Some participants note that the collaborative has been more productive in 1993 than it was previously and that the focus has shifted "from conceptualization to implementation." Practically speaking, the collaborative has a two-level structure, with a collaborative group (consisting of representatives from all parties) to handle most important issues and smaller, ad hoc subcommittees to deal with more technical issues as the need arises. The subcommittees were not used before fall 1992, but several have been established since then to deal with highly focused issues (e.g., problems with a particular program). Still, the whole group remains the

collaborative's chief decision-making body. The collaborative has *not* attempted to achieve consensus on a complete DSM portfolio.

The DP&L Collaborative does not have a formal facilitator, but the utility tends to act in this capacity. Meetings are set up by the utility, and a utility representative chairs the first part of each meeting. The chair is then given to any group that has a particular issue to raise. While the agenda is set well in advance, items can be added to the agenda by mutual consent of the participants.

According to most participants, the utility has shown a willingness to share power on decisions concerning program specifics once the need for a given program has been established. But the utility does not share power on day-to-day operations or overall policy issues. It seems to regard the collaborative as a good source of information on customer needs and desires rather than as a partner in planning and policy decisions. Several NUPs characterize their role in the decision-making process as being relatively small, with the utility typically initiating and designing programs and then presenting its work to the group for input on necessary changes.

During the life of the collaborative, time constraints have been established for the completion of key tasks, both by the participants themselves and by PUCO. The chief externally-imposed constraint has been for the completion and filing of DP&L's Integrated Resource Plan (which technically applies to the utility and not the collaborative). Internally, deadlines for various tasks (e.g., for the completion of specific pieces of work by the consultants) have been imposed by the collaborative participants. The effects of these constraints are unclear, but it seems that a group understanding of what has to be done and when it is due provides some guidance for the collaborative process.

Funding of non-utility groups. Only the Sierra Club and CCAP have received assistance from foundations or other non-utility groups. Although the Sierra Club would probably have been able to participate in the DP&L Collaborative without the help it received from CCAP, its efficacy has been greatly enhanced by this technical assistance. In turn, CCAP would be unable to participate in the DP&L Collaborative without its own funding from foundations and other sources. Although some participants noted that CCAP is located outside Ohio and raised some questions as to why it is involved, it seems to have been accepted as a legitimate player by the other participants.

Use of outside consultants. Early in the collaborative, the NUPs asked for utility funding so they could obtain technical assistance from outside experts, but DP&L saw such assistance as unnecessary. A few months later, all parties compromised and agreed to hire consultants to serve in a more limited capacity than the NUPs had originally desired. Subsequently, consultants were selected by group consensus to provide information to the entire group; these outside experts were paid by DP&L and ultimately were answerable to the utility. The consultants presented seminars on what had been done in other states and on how to evaluate programs, but they did *not* evaluate specific DP&L programs. The NUPs continued to push for the hiring of collaborative consultants to take a detailed look at the company's programs, and this issue

continued to be very contentious until it was settled by the February 1993 IRP case stipulation. A few months later, a consulting firm that was acceptable to all collaborative participants (Xenergy) was hired. The utility pays for the consultant's services, and the firm reports to the collaborative as a whole. This arrangement seems to be widely accepted, although some NUPs have expressed a little uneasiness that the utility might have more influence with the consultant than the NUPs do.

In addition to the group consultants, a few of the intervenor groups have hired their own technical experts to help review DP&L's IRP filings, and this information has been used to some extent in their collaborative efforts. The utility also has used its own experts to help develop the Integrated Resource Plan, but these consultants have not been directly involved in the collaborative process.

Development of coalitions. During the first year of the collaborative, the NUPs seemed to form a loose coalition that allowed them to present a united front (more or less) when negotiating with the utility. Rather than resenting this coalition, DP&L actually seemed to welcome it, because it let them know what the NUPs, as a group, wanted. This kind of "utility vs. NUPs" arrangement seems to have faded over time, but some parties still tend to stand together much of the time. The Sierra Club and CCAP always act as a unit, and their positions are usually in line with those of OCC, Legal Aid, and the Local Government Utility Coalition. Unlike in some other collaboratives, the industrial parties have not advocated less aggressive pursuit of DSM to avoid potential rate increases. In general, the relations among the NUPs have been very cooperative and have not been characterized by significant factionalization.

Conflict and conflict resolution. Most respondents noted that there had been substantial conflict between the utility and the NUPs early in the life of the collaborative, focusing primarily on procedural issues. The most contentious topic was whether and how to employ outside consultants. Since the February 1993 stipulation settled the consultant issue, the collaborative has not been marked by any serious conflicts, and mutual trust between the utility and the NUPs seems to have increased significantly. Relationships among the NUPs themselves have been peaceful throughout the life of the collaborative. The conflict between environmental groups and industry that has been evident in many collaboratives has not emerged here, probably at least in part because of the agreement to avoid cross-class subsidization of DSM programs that was part of the November 1991 stipulation.

No third-party mediator was employed to help resolve difficult issues, leaving the collaborative participants to work things out on their own. Several respondents pointed out that, early in the collaborative, the parties just stuck to an issue until they could reach some kind of agreement. Other participants noted that difficult issues were sometimes deferred, either until later in the collaborative process or until the PUCO hearings. During the collaborative's second year, subcommittees were used to help resolve thorny or highly technical problems. These subcommittees were formed on an ad hoc basis to address such issues; then any agreement reached by this smaller group could be taken back to the full collaborative for its consideration.

Most but not all of the respondents said that they sought guidance on important issues from their senior management or organizational board. This means that, in the event of difficulty during group interactions, most collaborative participants can get help from the upper levels of their organization. However, no mechanism exists for bringing together senior managers from the different parties to talk to each other about issues that the collaborative group cannot resolve on its own.

Related Policies and Interactions

The November 6, 1991 rate case stipulation that established the new DP&L Collaborative and required the utility to spend \$60 million on DSM programs over the ensuing 4 years also specified that DP&L will use the TRC test to judge the cost-effectiveness of potential DSM options. A few weeks later, PUCO issued an order requiring all Ohio utilities to evaluate the impact of including the economic costs of environmental externalities when comparing supply- and demand-side options. To this date, DP&L continues to use the TRC test, but it does not quantify externality costs in these calculations.

PUCO adopted guidelines in April of 1991 that allow utilities to recover all expenditures on qualifying DSM programs, that allow the recovery of lost revenues resulting from successful conservation programs, and that allow utilities to receive a portion of net DSM-related savings as a financial incentive. Changes ordered by PUCO in October 1992 slightly expanded the range of programs eligible for cost/lost revenue recovery. In general, PUCO seems to be trying to allow Ohio utilities greater flexibility in its design and implementation of DSM programs; this movement could be due, in part, to a greater familiarity with utility needs engendered by staff participation in the collaborative.

During part of the time that collaborative participants were discussing the characteristics of the new DSM programs to be established by DP&L and the hiring of collaborative consultants, the same issues were being debated in separate negotiating sessions between the utility and intervenors. A number of parties, several of them key collaborative participants, had intervened in response to the utility's 1992 Integrated Resource Plan—filed in June 1992 without collaborative consensus. The settlement negotiations were aimed at resolving the outstanding differences between the key parties and eventually led to the February 1993 stipulation.

Outcomes

Consensus on important issues. The collaborative as such never filed a set of agreed-upon DSM programs or policies⁴ with PUCO or signed a memorandum of understanding specifying future procedures to be followed by the collaborative group. However, input from the NUPs did influence the nature of the DSM programs contained in the Integrated Resource Plan filed by DP&L in June 1992. Because these programs did not represent a consensus filing, the

⁴As noted earlier, the DP&L Collaborative did not address general policy issues in any depth and did not attempt to reach consensus on those topics.

collaborative continued to examine, and suggest revisions to, the utility's portfolio of programs. At the same time, several key parties intervened in response to the utility filing, and negotiating sessions aimed at settling the IRP case were initiated. Eventually, the utility and key intervenors signed a stipulation specifying mutually acceptable DSM programs, the continuation of the collaborative, and the employment of a consulting firm to aid collaborative operation. This agreement contrasts with the results of collaborative discussions, which led to no such formal agreement. However, the stipulation owes much to the efforts of the collaborative, since all the key intervenors were also collaborative participants and presumably brought the information, contacts, and perspectives cultivated through previous and continuing collaborative interactions to the official negotiating sessions for the IRP case.

Perhaps the reason agreement was reached in the settlement negotiations and not in the earlier sessions of the collaborative is that settling a pending case provided the utility with more incentive to reach agreement than did the more abstract goal of developing a consensus filing before intervention against its plan.

In June 1993, the utility filed its 1993 Integrated Resource Plan. No attempt was made to reach consensus on this plan, which differed relatively little from DP&L's 1992 Integrated Resource Plan and will not be subject to PUCO hearings.

Approval of DSM programs by regulators and courts. In May 1993, PUCO approved the February 1993 stipulation between DP&L and key intervenors and allowed the company to defer (until its next IRP case) the appropriate level of program costs, lost revenues, and shared savings for the programs specified in the stipulation. PUCO also approved of the continuation of the collaborative and the hiring of consultants, as specified in the agreement. The order noted that "while this Commission is never bound by a stipulation, we believe that agreements which have been accepted by all parties of record are entitled to our careful consideration."

Program implementation. Even before the utility's IRP filing was approved by PUCO, DP&L began to implement a few of the DSM programs contained therein with the intention of recovering program costs after obtaining PUCO approval. Following commission approval, program implementation has proceeded consistent with the Integrated Resource Plan, with the inclusion of a few new technologies that will be addressed in subsequent applications for accounting modifications.

Satisfaction of participants' objectives. Most participants reported that their objectives have been met, to varying extents, by the collaborative. Government groups seem to have been the most satisfied with collaborative results, focusing to a large extent on the nature of the programs developed. Environmental/energy advocacy groups also report being satisfied with collaborative results, but they focus as well on the greater potential for DSM in Ohio that has not yet been realized. The utility sees the effort as fairly successful overall, while commercial and industrial groups seem to be reserving judgement for the time being.

Savings of time and money for participants. Participants were split about evenly on the question of whether the collaborative saved them time and money compared with the projected resources required to resolve issues through the traditional adversarial process. Government organizations generally saw the collaborative as saving them time. PUCO staff noted that the familiarity with key issues that it gained through its collaborative participation allowed it to evaluate the utility-intervenor stipulation much more quickly than would have otherwise been possible. Several other groups, including environmental/energy advocacy and industrial groups, believed that the collaborative was more time-intensive. However, most of these groups also noted that the collaborative process has resulted in superior products.

Nature of policies, DSM programs, and outcomes compared with results of traditional process. The collaborative has not resulted in any changes in the methods used by DP&L to determine the cost-effectiveness of potential DSM options or to factor in the costs of environmental externalities. However, the changes ordered by PUCO in October 1992 in the treatment of program cost and lost revenue recovery (which seem to allow increased flexibility) might have been influenced in part by the participation of PUCO staff in the collaborative.

Respondents were asked to compare the collaborative's outputs with what they would have expected to accomplish through the traditional adversarial process. All the responding environmental and government organizations reported that the programs approved by PUCO in May 1993 are better than they would have been without the collaborative. These programs were variously described as having greater variety, being better designed and targeted, and leading to greater energy savings. Some participants noted that direct participation by various customer classes (e.g., industry, low-income groups) resulted in better programs. A few respondents reported that DP&L programs would have been about the same even without the collaborative, and one participant opined that the programs are probably slower in coming out because of the collaborative.

DP&L investment in DSM programs and the size of the staff assigned to the programs are substantially greater than they were before the November 1991 stipulation that called for \$60 million in DSM expenditures over a 4-year period. The collaborative, which was created by the same stipulation, seems to have had an effect on how that money is to be spent, but it does not appear to have increased the total amount allocated to DSM.

Changes in historic relations among participants. Nearly all respondents reported that relationships among the parties have improved as a result of the collaborative. Specific benefits that were noted include improvement in mutual trust, understanding of each others' positions, and the exchange of information. However, one party pointed out that the longevity of these changes is still unknown.

Decision by key parties to continue interacting. All of the organizations that were initially involved continue to be members of the collaborative, although the intensity of involvement has changed for some participants. In particular, the involvement of industrial parties seems to have increased somewhat during 1993, while participation by commercial customers has dropped off

considerably.⁵ Despite these fluctuations, the collaborative as a whole seems healthy and is expected to continue at least through 1995 (the year in which the \$60 million DSM investment agreed to in the November 1991 stipulation will have been completely allocated). Obviously, many key NUPs continue to see the collaborative as a viable forum for helping shape utility DSM programs.

Future Prospects

The DP&L Collaborative is expected to continue at least through 1995, the end of the period covered by the November 1991 stipulation. It is likely that the new collaborative team assembled by the utility and the improving climate of trust and cooperation could allow the collaborative to reach consensus on more items than in the past. The primary focus of these efforts is likely to be on refining existing programs based on the results of program monitoring and evaluation. However, it would still be difficult for the entire group to agree on the overall mix of DSM programs and even more difficult to reach consensus on key policy issues, largely because the utility seems intent on keeping the collaborative focused on program characteristics rather than on those broader, policy-related issues that it sees as falling within its own planning domain. And the current cautious mood of PUCO makes it unlikely that it will push the utility in the near future to expand the scope of the collaborative's activities.

V. CONCLUSIONS

Recommendations of Respondents

Concerning collaboratives. The piece of advice most frequently offered on how to run a successful collaborative was to establish clear structural guidelines early in the process. According to collaborative participants, this includes defining what parties should be involved, how decisions will be made, and what the purpose of the collaborative is. Several participants suggested that these guidelines should be put in writing, but DP&L has disagreed with this position throughout the life of the collaborative.

Another point made by many respondents is that technical experts should be hired early in the process. Several people expressed the belief that having expert assistance is crucial to "level the playing field" for the NUPs. Ideally, these experts should have credibility with the utility, even if they are hired to serve the NUPs alone. It was also suggested that the use of "peer experts" could be helpful—that is, bringing in someone with considerable DSM experience from a particular sector (e.g., industry) to talk to collaborative participants from the same sector who lack a depth of knowledge about available DSM options and their likely performance.

⁵The decrease in involvement by commercial customers may only be a temporary phenomenon, reflecting the fact that the collaborative has not focused on commercial programs during the past year.

Regulators should be clear about what they expect from the collaborative (which could mean commenting on key points of the stipulation creating the collaborative if it is developed without involvement from regulators). The regulatory agency should be willing to give consistent guidance on policy issues. Regulators also should support the collaborative process and convey this support by sending its staff to meetings, requiring the collaborative to give periodic progress reports, and setting deadlines for the development of DSM programs.

Several NUPs suggested that the utility should be committed to participating in the collaborative and making group decisions and should be willing to provide needed technical information to the NUPs.

A number of attributes were suggested that would be helpful in *all* participating organizations. These include a willingness to compromise; a commitment to strive for consensus; a willingness to share information with the other participants; credible representatives; consistent attendance; clear goals; and adequate funding.

Concerning other initiatives by non-utility groups. The Sierra Club and CCAP suggested a number of factors that are important for groups interesting in influencing utility and regulatory policies and actions. A group must have credibility with state regulators and their staff and, if possible, with the utility as well. To achieve credibility, it can be helpful to establish alliances with other organizations that are willing to disseminate the same basic message concerning the importance of IRP and DSM. It is important to build a “critical mass” of public interest in IRP/DSM issues and to earn public acceptance of the specific positions of the advocacy group. In addition to building coalitions with like-minded groups, using “peer experts” (discussed earlier) could be helpful toward this end.

Group personnel must have the time and perspective to participate professionally in those interventions, communications, and other activities that are necessary and appropriate to the situation. Financial and technical support from outside benefactors, especially foundations, are essential to enable environmental/energy advocacy groups to hold their own with well-funded utilities and industrial groups. Finally, the goal of any intervention must be well-defined, focused, and realistic. Intervenors should avoid broad critiques of utility or regulatory policies and should be careful about making demands that are likely to be widely perceived as naive, unreasonable, or extreme.

Our Observations and Recommendations

While we agree with virtually all the respondent recommendations, we think that a well-defined collaborative structure, strong regulatory support and guidance, and the availability of outside experts for NUPs are especially important to ensure collaborative success. Outside the collaborative arena, we think it is critical for environmental/energy advocacy groups to have clear, realistic goals for their initiatives and sufficient funding and staff to allow them to intervene in important cases (and hire the necessary legal and technical expertise to do so

adequately), keep abreast of important events in the IRP/DSM arena, communicate with potential allies, and engage in community organizing as necessary.

After considering the various approaches undertaken by the Sierra Club and CCAP to influence utility actions and regulatory policy, it seems that interventions in regulatory hearings by these groups and others with similar interests have had the greatest direct impact on DP&L's DSM activities. It was a rate case intervention that led to the November 1991 stipulation that required DP&L to spend \$60 million on DSM over the following 4 years and established a new collaborative.⁶ And it was an IRP intervention that led to the February 1993 agreement on a set of DSM programs and the hiring of a collaborative consultant. Successful interventions rely on knowledgeable staff who are able to identify important cases and on the availability of legal and technical expertise which, in turn, requires adequate funding. In this case, the Sierra Club and its full-time volunteer was assisted by CCAP, which itself is totally dependent on funding from foundations and government agencies. Support by The Pew Charitable Trusts, the George Gund Foundation, the Joyce Foundation, and the Energy Foundation were indispensable to CCAP's ability to work with the Sierra Club as it did.

Although we see those interventions as having had the greatest *direct* impact, it would be a mistake to discount the importance of the other activities undertaken by the Sierra Club and CCAP. It is our belief that the work of the collaborative in studying the array of potential DSM programs and rating their relative attractiveness contributed to the ability of the utility and key intervenors to reach an agreement in their IRP case settlement negotiations. Similarly, collaborative group discussions and subcommittee work on the consultant issue probably helped pave the way for the stipulated agreement to hire a collaborative consultant. It is difficult to see the precise effect that Sierra Club and CCAP networking and educational activities had on the IRP case settlement that they helped negotiate, but the support that their efforts have generated among other state and local groups probably had some influence on the other parties.

We agree with many of the NUPs that, in the absence of the collaborative and the IRP case settlement, the DSM programs currently being implemented by DP&L probably would not have been as well designed or effective. And without the earlier rate case settlement setting the \$60 million DSM target, it is very unlikely that the utility would be pursuing DSM to the extent that it is. We believe that the Sierra Club and CCAP (along with other non-utility groups like OCC and PUCO staff) have been important players in the events that have unfolded in Ohio in the last several years.

A number of contextual characteristics have also had an important influence on events in Ohio. In both the settlements mentioned above, DP&L had possible strategic reasons for reaching the agreements that it did. In the November 1991 rate case settlement, it was able to resolve the issue of the Zimmer plant conversion once and for all and received a substantial

⁶While the Sierra Club had not intervened in the rate case prior to the November 1991 stipulation, it did so shortly thereafter and became one of the original members of the collaborative.

increase in annual revenues. In the recent IRP case, the utility got intervenors to accept its forecasted need for additional peaking units.

Several elements of the regulatory environment have also been significant. The IRP requirements established in late 1989 set the stage for future collaboration and regulatory hearings by requiring the state's electric utilities to file plans every 2 years. Also, PUCO guidelines for DSM cost recovery, lost revenue recovery, and shared savings incentives—which took effect in April 1991—made DSM potentially more profitable, and by extension more attractive, to DP&L and other Ohio utilities.

As mentioned earlier, it is likely that the Sierra Club and CCAP will continue to be able to affect utility DSM activities through well-chosen interventions, backed by adequate legal services and technical expertise. Continued collaboration with DP&L also is likely to influence the nature of the utility's DSM programs, but the NUPs are not expected to have any major effect on DP&L's overall planning or policy decisions. While networking and educational activities also are potentially valuable, especially in influencing long-range public and regulatory opinion, the payoff is a little more speculative and temporally distant.

RESPONDENTS

Utility

Stephen P. Bramlage DP&L, Director of Operation Synergy

Non-profit groups

Ned Ford Sierra Club, Chair of Ohio Chapter Energy Committee and
Vice-chair of national Sierra Club Energy Committee

Rebecca Callahan Klein CCAP, Senior Policy Analyst

David Festa CCAP, Senior Policy Analyst

Business/industry groups

Gerald Sturm Lazarus, Energy Manager

Dick Rosenberry Industrial Energy Consumers, Attorney

Government agencies

Keith Sargent Ohio OCC, Utility Rate Analyst Coordinator

Ross Pultz Ohio OCC, Utility Rate Analyst Supervisor

Janine Migden Local Government Utility Coalition, Attorney

Ellis Jacobs

Legal Aid Society of Dayton, Attorney

Regulatory commission

Ashley Brown

PUCO, Commissioner

Regulatory advisory staff

Steve Puican

PUCO Staff, Economist with Forecasting Division

4. GEORGIA COLLABORATIVE AND RELATED ACTIVITIES

SUMMARY

The Southern Environmental Law Center (SELC) has been actively involved in energy-related issues in Georgia since 1991, while Campaign for a Prosperous Georgia (CPG) has worked on similar issues in the state for the past decade. Both groups have intervened in all cases related to IRP in Georgia in recent years; and CPG also has been involved in a number of other initiatives to influence regulatory and utility policies and actions—most notably, direct interaction with the Georgia Public Service Commission (PSC) and state legislators and contacts with news media representatives. In addition, SELC, CPG, and other NUPs have been involved since early 1992 in a collaborative with Georgia Power⁷ to work on the development of DSM programs and related issues.

Interventions filed by SELC, CPG, and others—and the negotiations undertaken to settle these cases—have had substantial influence on utility DSM programs and related policies. A stipulated agreement reached by Georgia Power, SELC, CPG, and PSC staff in December 1992—and later approved by the Georgia PSC—established a cost recovery system for the utility's residential DSM measures and a performance-based incentive/penalty mechanism. A few months later, Georgia Power, PSC staff, and several parties representing large commercial and industrial (C&I) interests signed a stipulated agreement on the utility's C&I DSM programs. While CPG and SELC did not endorse this agreement, their involvement in the negotiating sessions probably was important in getting the signatories to agree to expanding customer eligibility for rebate programs and might have kept C&I programs from actually being reduced. The rate riders approved by the PSC for both residential and C&I programs were challenged by several ratepayer groups and subsequently overturned by the Fulton County Superior Court; the PSC has failed to join Georgia Power in appealing that decision to a higher court.

The collaborative itself seems to have stimulated increased utility use of DSM resources in the residential sector. It also is likely that the stipulated agreements reached by Georgia Power and several intervenors on cost recovery and incentive mechanisms was influenced to some extent by the fact that these issues had been discussed previously in the collaborative. Ironically, the C&I programs approved by the PSC in August 1993 were substantially less aggressive than those originally proposed by the utilities at the beginning of 1992, immediately prior to the advent of the collaborative. However, this outcome seems to owe more to direct pressure from the industrial parties and to the utilities' heightened concern with competitiveness than to collaborative activities.

⁷Savannah Electric Power Company (SEPCo) also was involved in the collaborative for a while, but it withdrew in the latter half of 1992.

I. INTRODUCTION

In January 1992, Georgia Power Company and Savannah Electric and Power Company (SEPCo) submitted integrated resource plans as required under a 1991 state law and associated PSC regulations. A month later, these utilities and a number of interested NUPs began a collaborative effort aimed at reaching consensus on "the development and implementation of comprehensive demand-side programs." During the life of the collaborative, state regulators have revised the utilities' integrated resource plans and required them to submit modified DSM programs to be considered in certification hearings. At the same time, many of the collaborative participants have intervened in the PSC cases related to these issues.

Two of the key NUPs involved in the collaborative and simultaneous interventions are CPG and the SELC, environmental/energy conservation advocacy groups with a strong interest in influencing Georgia utilities and the state's regulators to pursue the use of DSM more aggressively. CPG has been active in energy-related issues in Georgia for about a decade, while SELC became involved in Georgia utility issues about a year before the collaborative began. This case study describes the workings of the Georgia Collaborative through early November 1993. It also examines other initiatives (including interventions and associated negotiations) undertaken by CPG and SELC to influence actions by Georgia Power Company (by far the largest of the state's investor-owned utilities) and the state PSC related to IRP and DSM.

II. CONTEXT

Political Environment

Most respondents agreed that state officials, public interest groups, and the news media have given some attention to DSM in recent years, but that DSM is not a particularly hot topic. A few non-utility groups expressed the opinion that the attitudes of the state legislature toward utility issues are determined to a large extent by Georgia Power, which is very influential with state lawmakers. Recently, there has been some evidence of the influence that industrial parties also exert with state lawmakers. In early 1993, a bill was introduced and passed in the state senate—with strong industrial support—that would take away nearly all of the PSC's current staff and place the regulatory advocacy function in a separate state office. For now, the bill has stalled in the state House of Representatives, and it could not come up again until the Legislature reconvenes in January 1994.

According to some respondents, the National Energy Policy Act and Clean Air Act amendments could have significant effects on utility and regulatory actions in Georgia, because of their energy efficiency standards, treatment of retail wheeling and purchased power, and requirements for reduced power plant emissions.

Economic Environment

Georgia's economy was hurt by the recent recession, much like the rest of the nation. Representatives of the industrial sector have expressed real concern with the possibility that electricity rates might rise as a result of increased utility reliance on DSM programs, and that this in turn would adversely affect their cost of doing business in the state. Other non-utility groups—including the Consumers' Utility Counsel (CUC), SELC, CPG, and the PSC—also have indicated their interest in rates.

Regulatory Environment

The Georgia PSC has five Commissioners (two of whom are attorneys), who are elected for staggered 6-year terms. The Utilities Division of the PSC has approximately 50 staff members, most of whom are trained in finance, accounting, or engineering.

In interviews conducted in 1992, most respondents described the PSC as being supportive or very supportive of utility use of DSM. When contacted a year later, many respondents painted a somewhat different picture, characterizing the Commission as being more cautious than it had previously been toward DSM. Some of those interviewed explained that attitudes and positions varied substantially among the different Commissioners, with some supporting "bold and aggressive" DSM while others focused on avoiding rate increases to prevent negative effects on the state's business climate. One intervenor characterized the Commission's recent acceptance of Georgia Power's scaled-back C&I DSM programs as a significant step back from its prior support for DSM. Another pointed out that concerns about cost impacts and cross-subsidies from DSM in the C&I sector appeared in the Commission's original July 1992 IRP Order. As for PSC attitudes toward utility-NUP collaboration to develop DSM plans and programs, some respondents reported that the regulatory agency likes the idea of parties resolving issues prior to formal hearings, while others saw the PSC as neutral or distant toward collaboratives. One respondent expressed the opinion that the PSC has never seen the Georgia Collaborative as a positive development, viewing it instead as an attempt to develop consensus and usurp the regulators' authority.

Respondents noted that the PSC has had substantial interaction with intervenor groups in recent years and very substantial interaction with the state's utilities. For a number of years, the relationship between the PSC and Georgia Power had been very adversarial, revolving around highly charged rate cases and controversial nuclear power plants. However, in recent years, Georgia Power has attempted to establish its credibility in the planning arena and to work with the PSC to reduce the adversarial nature of their contact. According to utility representatives, relations with the PSC have, in fact, improved in recent years.

In December 1991, shortly before the Georgia Collaborative was initiated, the PSC adopted rules to implement state legislation requiring all regulated Georgia electric utilities to prepare and submit integrated resource plans and applications for certification of new supply- and demand-side resources. These regulations also required utilities to consider environmental

impacts when assessing potential resource options, acknowledged utility eligibility to recover DSM program costs (without specifying the appropriate mechanism), specified that lost revenues are to be considered by the PSC, and approved the concept of financial incentives to utilities to encourage the use of DSM. Key regulatory Orders issued since that time have done the following:

- approved integrated resource plans for Georgia Power and SEPCo with a stronger DSM emphasis than those proposed by the utilities, and required the utilities to submit revised programs for the upcoming certification hearings (July 8, 1992);
- approved the McIntosh Combustion Turbine (CT) project with 6 CTs (480 MW) for Georgia Power and 2 CTs (160 MW) for SEPCo (January 4, 1993);
- approved specific residential DSM programs, cost recovery methods, and incentives/penalties for Georgia Power (January 5, 1993);
- approved specific C&I DSM programs, cost recovery methods, and incentives and penalties for Georgia Power (August 5, 1993); and
- certified two new CT units (160 MW) to be built by Georgia Power at Warner Robins Air Force Base, approving an updated Integrated Resource Plan consistent with this certification and the approved DSM programs (September 7, 1993).

In early November 1993, the PSC backed away from its earlier approval of using rate riders for DSM program cost recovery by failing to join Georgia Power in its appeal of a Superior Court decision invalidating the use of such mechanisms. By January 1995, Georgia electric utilities are required by law to submit new integrated resource plans.

Utility Environment

Georgia Power Company and SEPCo, subsidiaries of the Southern Company, are the state's only two investor-owned electric utilities. Georgia Power is by far the larger of the two, having annual operating revenues of over \$4.2 billion and employing about 14,000 people. Nearly 1.6 million customers are served by Georgia Power, almost 1.4 million of them residential households; most of the remaining customers are commercial and industrial establishments. Total electricity sales are approximately 70,000 GWh, approximately half of it going to commercial and industrial customers. Georgia Power generates over 90% of its own electricity: about four-fifths from coal; one-sixth from nuclear; and the remaining fraction from hydropower, oil, and gas (in that order). The utility anticipates becoming more dependent in the future on oil and gas for peaking units. The system's peak load is over 13,000 MW.

SEPCo is a much smaller utility—only about one-twentieth the size of Georgia Power—with annual revenues of approximately \$200 million and about 650 employees. SEPCo serves approximately 110,000 customers in and around Savannah, Georgia, and sells about 3,200 GWh

of electricity annually, nearly half of it to the C&I sectors. SEPCo purchases much of its energy from the Southern Company; the power it produces itself nearly all comes from coal. SEPCo's peak load is approximately 650 MW.

Both Georgia Power and SEPCo filed integrated resource plans in January 1992 and submitted revised certification applications for DSM programs for all customer sectors during the fall of that year. However, Georgia Power has worked more closely with non-utility groups than has SEPCo, especially in the last year. Not only has SEPCo not been involved in the Georgia Collaborative during 1993, but also the utility did not reach any stipulated agreements with key intervenors about its DSM program characteristics and rate treatment specifics as Georgia Power did.

Other Key Groups

A number of different groups have been involved with utility issues in Georgia. These organizations can be placed into three distinct categories: environmental/energy conservation advocacy groups; business organizations; and government agencies. From the environmental sector, the two groups who have been most active in the energy arena in Georgia are CPG and SELC. Both of these groups and their activities will be discussed in greater depth in the following section. Those business organizations with the greatest involvement with utility issues in the state are the Georgia Textile Manufacturers' Association (GTMA) and the Georgia Industrial Group (GIG), both representing industrial interests. The most influential government agencies are probably the CUC and PSC staff, but the Governor's Office of Energy Resources and the regional offices of the U.S. Department of Energy (DOE) and Environmental Protection Agency (EPA) also are interested in state-level energy issues.

The non-utility groups reported that they frequently engaged in litigation before the PSC when dealing with utility issues, but they likewise stated that settlement and other consensus building techniques were heavily used and that education and lobbying were somewhat important as well. It appears that more effort has been made to settle issues (through the collaborative process and negotiating sessions between the utility and intervenors) in recent years.

The non-utility groups generally tended to see themselves as much weaker than the utilities in terms of funding and technical resources, and the utilities agreed with this appraisal. PSC staff, CUC, and the industrial parties are probably the non-utility groups with the greatest financial and technical strength. In terms of influence with state regulators, all responding non-utility groups characterized themselves as being stronger relative to the utilities than they were in the funding or technical arenas. Some non-utility groups saw themselves as having nearly as much influence with the PSC as did the utilities, while others said they sometimes had *more* influence than the utilities, depending on the issues and the Commissioners involved. While some key intervenor groups (e.g., CPG, SELC) may have gained influence over time, the substantial power of the industrials (both with the PSC and the state legislature) has become apparent in the last year. PSC staff, CUC, and the utilities also have substantial influence with state regulators.

III. KEY SELC AND CPG INITIATIVES

Background

SELC is a regional organization that was formed to protect natural resources in the southern United States through legal advocacy. SELC began operations in 1986 and has offices in Charlottesville, Virginia, and Chapel Hill, North Carolina. It currently undertakes projects in six states: Virginia, North Carolina, South Carolina, Alabama, Georgia, and Tennessee. This organization began its involvement with utility issues in Georgia in early 1991 with the initiation of its Energy Project, designed to promote utility use of DSM resources. SELC took as its model for this project the work of the Conservation Law Foundation (CLF) in New England and the NRDC on the west coast, but it recognized that its own efforts would have to be tailored to the specific circumstances of the southern states. SELC puts equal emphasis on the litigation of cases before the PSC and the use of settlement negotiations and other consensus building techniques. To a lesser extent, it also employs educational and lobbying approaches.

SELC has a paid staff of approximately 20, but most of them are not involved with the Energy Project. Early in the life of its utility-related activities, SELC had only a single staff member (an attorney) working in this area. Since the summer of 1992, the organization has had two full-time attorneys working on energy issues. SELC receives funding from a number of foundations, including The Pew Charitable Trusts, the Energy Foundation, and the Educational Foundation of America. The first two foundations are those that primarily support SELC's Energy Project. Without this funding, SELC's involvement with energy issues in Georgia and elsewhere would not be possible.

In addition to its involvement in the Georgia Collaborative (discussed in Section IV), SELC has intervened in all Georgia Power cases related to IRP since 1991. This includes the case dealing with the utility's January 1992 IRP filing and separate certification cases involving the utility's residential and C&I DSM programs and supply-side applications. SELC also has intervened against SEPCo, but it hasn't been as actively involved with those cases. In addition, the group intervened in the recently-decided case pertaining to certification of CT units at the Warner Robins Air Force Base. SELC also has been involved in Clean Air Act compliance hearings in Georgia. More detail on this group's interventions is provided under "Current DSM/IRP Initiatives."

CPG, based in Atlanta, was formed in 1983 by people from various grass-roots organizations that had been actively involved in energy and environmental issues in Georgia for many years. The focus of the new organization was on environmental and economic problems associated with Georgia Power's construction program, especially its Vogtle Nuclear Plant. Since its formation, CPG has been actively involved in attempting to lessen environmental and economic impacts in Georgia by avoiding unnecessary power plant construction and operations. A major element of CPG's activities has been to promote utility and regulatory policies and actions that support cost-effective DSM programs. The group uses a number of different

approaches—litigation, settlement/consensus-building, lobbying, and education (including contacts with local news media)—all of which it considers important.

CPG employs the equivalent of approximately five full-time staff members, but not all of their time is devoted to energy issues. Currently, one person works full-time on energy-related issues and another works about three-quarters time on this subject. In January 1994, another person will be added to the staff, and this person will work nearly full-time on energy issues. Current staff members have backgrounds in agriculture, public policy, math, appropriate technology, and energy management. The newest team member will have training in land resources, energy analysis, and public policy, with some math and engineering. Over the years, the background of the staff has become increasingly technical, to match the changing nature of the work.

In the last 2 years, CPG's staff has doubled and its funding has improved. Current supporters include the Educational Foundation of America, the W. Alton Jones Foundation, the Lyndhurst Foundation, and the Energy Foundation. Consistent foundation funding is essential to support CPG's activities, especially if the group hopes to hire people with the desired levels of technical expertise.

Like SELC, CPG has participated in the Georgia Collaborative and all Georgia Power and SEPCo IRP-related cases (including both supply- and demand-side certifications). CPG also was involved in Clean Air Act compliance hearings and in gas utility IRP proceedings. Other CPG activities include interacting directly with the PSC and the state legislature; promoting its views through contacts with news media representatives; researching the structure and function of state regulatory agencies; and working with other environmental groups to increase public awareness of and interest in energy-related issues. These initiatives will be discussed in more detail in the following section.

Current DSM/IRP Initiatives

As mentioned above, SELC has intervened in all IRP-related cases in Georgia since 1991. The subjects covered in these cases include Georgia Power's and SEPCo's integrated resource plans as well as certification of the utilities' proposed supply- and demand-side programs. To support its interventions, SELC has provided testimony, cross-examined witnesses, and participated in negotiating sessions aimed at reaching a settlement on the contested issues with the utilities and other intervenors. To support its position, SELC has hired expert witnesses to testify on its behalf at key points in the regulatory proceedings. For example, in late March 1993, both SELC and CUC hired outside experts⁸ to testify against the joint stipulation on C&I programs filed a few days earlier by Georgia Power, PSC staff, and various industrial parties. Hiring high quality experts is expensive and can tax the resources of organizations with limited

⁸Testimony for SELC was provided by Paul Centolella of Science Applications International Corporation, and CUC obtained the services of John Stutz of the Tellus Institute.

budgets. And keeping up with ongoing interventions is labor-intensive, meaning that the number of cases in which an organization can participate is limited by its staff size.

CPG, which is closely aligned with SELC, also intervened in all IRP-related cases in the state. Because CPG's resources are more limited than those of SELC, it has relied to some extent on SELC for technical assistance, especially in the hiring of expert witnesses. However, CPG has also pursued a number of other energy-related initiatives in addition to its interventions.

CPG has interacted with the PSC in an effort to influence its IRP/DSM policies. CPG representatives attend PSC administrative sessions, which is where Commission decisions are made. While CPG cannot directly participate in these sessions, it attends so as not to miss key decisions and to be available to the news media if a comment on PSC actions is required. CPG also attends Energy Committee meetings, which are more informal than the administrative sessions, and participates in these discussions. In addition, CPG representatives attend meetings of appropriate state legislative committees and provide input, as necessary.

In addition to making themselves available to the news media at PSC sessions, CPG also initiates some contacts with reporters and editorial writers for Georgia newspapers and gives them information that it considers important, answers questions, and points journalists to important meetings and hearings.

Recently, CPG has conducted research on the structure and function of regulatory agencies in other states. The results of this study could provide useful background information to help inform the current debate on PSC restructuring. It also could be used internally by the PSC to help it assess its own situation.

Finally, CPG has worked on energy-related issues with various other environmental groups. CPG has not had a lot of ongoing interaction on energy issues with other groups in Georgia (although it has acted with them on solid waste and transportation matters). However, CPG does some networking with other groups on a national level. Specifically, CPG is the Georgia representative to the State Environmental Leadership Conference, which was started in 1989 to give different groups working on the same issues the opportunity to share information and experiences with each other.

One respondent succinctly summed up the resources needed to successfully carry out these various initiatives as "passion, power, and money." Passion means having a strong desire to exert influence on utilities and regulators and embodying this in a consistent presence at appropriate forums for dealing with key issues. Power refers to the ability to influence legislators, regulators, utility personnel, and other key parties; in the case of environmental/energy conservation advocacy groups, this often comes from having strong public support for one's positions. Money is essential to follow and participate in the complex regulatory process, maintain inhouse staff with a high level of expertise, sponsor expert witnesses, attend meetings, and make contacts with the various lawmakers, regulators, and non-utility groups that are important players in state and local energy matters.

Outcomes

Interventions filed by SELC, CPG, and others—and subsequent negotiations undertaken to settle these cases—have had substantial influence on utility DSM programs and policies. A number of parties intervened in response to Georgia Power's September 1992 filing of revised residential DSM programs, leading to a stipulated agreement between the utility and several key intervenors in December 1992. In this stipulation, Georgia Power, SELC, CPG, and PSC staff agreed on a cost recovery system for the utility's residential DSM measures that uses both capitalization (for all direct costs) and expensing (for administrative costs). All costs are to be recovered through a "Residential Demand Side Option Rider" (based on a charge per kilowatt hour) to be adjusted annually. This mechanism replaces the \$1 per month surcharge proposed previously by the utility. A 3-year incentive mechanism also is included in the agreement, whereby the utility will receive shared savings if it achieves 50% of its projected energy savings but will pay a penalty if it achieves 40% or less of its target participation levels.

The stipulated agreement was reached through a negotiating session, held separately from the regular collaborative meetings, that was open to all parties to the intervention. It is possible that reaching agreement was easier than it might otherwise have been because the issues of incentives and cost recovery had been discussed previously by collaborative participants, many of whom were involved in the settlement negotiations. A month after the stipulated agreement was reached, PSC approved the regulatory treatment specifics contained therein. Later that same year, the Fulton County Superior Court struck down the DSM riders approved by the PSC, and the Commission declined to appeal that decision.

In December 1992, Georgia Power filed revised C&I programs that projected substantially less demand reduction than predicted in the utility's January 1992 Integrated Resource Plan. These less aggressive programs reflect the clearly-expressed opposition of industrial customers to any programs that could raise their electricity rates, as well as the utility's interest in keeping prices low in the face of increasing competition from other power suppliers. During February and March of 1993, intervenors in the C&I DSM proceedings participated in a series of negotiating sessions aimed at resolving their differences over the modified utility programs. In late March, Georgia Power, PSC staff, GIG, GTMA, and two other large C&I parties filed a joint stipulation with PSC modifying the utility's revised C&I DSM programs.

Under this agreement, rebates would be available to more C&I customers than allowed in the utility's December 1992 filing because the definition of "small" users was expanded to include all customers with up to 200 kW of load. However, rebates would be limited to \$1,200 per customer per year, the average total that was projected for customers of the previous 30-kW limit. Customers with a demand exceeding 200 kW are eligible for interest-rate buydown money from Georgia Power to ensure that the financing rate for DSM measures will not exceed prime plus 1%. Energy analysis and design assistance also are available. In addition, the stipulation called for the utility to file additional information on expanding the custom lighting program and to develop new rates to reduce peak demand. SELC and CPG participated in the negotiations that led to this settlement and probably were very influential in getting the involved parties to

expand the eligibility for rebate programs. They also may have kept C&I programs from actually being reduced. However, they did not endorse the stipulation because they saw the agreed-upon programs as inadequate and the exclusive reliance on the custom approach for large C&I customers as “discriminatory” because it treats these large customers differently than residential and small business customers are treated. CUC voiced similar concerns.

In August 1993, the PSC approved Georgia Power’s C&I programs as proposed in its December 1992 filing and modified by the March 1993 stipulation. The Order also approved stipulated regulatory treatment provisions regarding cost allocation; capitalization of direct costs; and an incentive/penalty mechanism. The Order departed from the stipulated agreement, however, by calling for riders related to DSM performance. It is possible that the inclusion of a rider mechanism, which was not supported by the industrial parties, was influenced by the presence of a similar mechanism in the residential DSM stipulation previously negotiated by SELC, CPG, and PSC staff. And it is likely that the aggressive pro-DSM positions long advocated by SELC (in its interventions) and by CPG (through its interventions *and* other initiatives) had some influence on the PSC decision to put language in the Order stating that it will require the utility to provide “the more traditional rebate programs” for large customers if the custom approach does not result in sufficient energy efficiency. However, the PSC decision not to appeal the Superior Court ruling that invalidated the use of rate riders could indicate some reduction in the extent of the Commission’s support for aggressive DSM usage.

The residential programs approved by the PSC in January 1993 are currently being implemented as planned, and early indications show a high level of activity. Implementation plans are now being made in preparation for instituting the C&I programs accepted by the Commission in August. In September 1993, the utility filed a proposal for new time-of-use rates and an evaluation of expanding the C&I custom lighting program, as called for in the March 1993 stipulation.

The industrial parties and the environmental/energy conservation advocacy groups each have experienced some success as a result of the agreements described. The former group was fairly well pleased by the C&I settlement, while the latter was relatively satisfied with the outcome of the residential case negotiations. However, one respondent suggested that the fact that both parties have achieved some of their objectives through the negotiating process might have deepened the adversarial positions of each.

Intervening in regulatory proceedings is not the only way that non-utility groups can influence utility and regulatory actions. As mentioned, the PSC’s August 1993 decision on Georgia Power’s C&I programs was probably influenced to some extent by actions taken by CPG in addition to its interventions. These initiatives include its direct interactions with the PSC and state legislature and its contacts with the news media, all of which help to establish the legitimacy of the group and its positions on key issues and to rally public support. It is likely that CPG’s long history of such activities in Georgia helped influence the initial passage of state IRP legislation and associated regulations and facilitated the PSC’s July 1992 decision on the utilities’ integrated resource plans that called for “bold and aggressive” DSM programs.

Future Prospects

Regulatory proceedings related to Georgia utilities' integrated resource plans and related DSM program certifications seem to be over until the utilities file their next integrated resource plans, probably at the very end of 1994. Although Georgia Power (as required by state regulators) recently filed information on expanding its custom lighting program, it is unlikely that the PSC will order the utility to add additional DSM programs to its C&I portfolio. However, if the utility were to file any new certification applications (whether on the supply or demand side), SELC, CPG, and probably other non-utility groups almost certainly would intervene. It is likely that CPG will continue its direct contacts with the state legislature, the PSC, and the news media aimed at influencing energy-related policies and actions in Georgia. The PSC is planning to address the treatment of lost revenues due to DSM programs and to examine other IRP issues related to the Energy Policy Act of 1992. The PSC also plans to review existing DSM programs in the context of annual reauthorizations, with the possibility of making program design changes. At present, the outcome of Georgia Power's appeal of the Superior Court decision invalidating the use of rate riders is uncertain.

IV. THE GEORGIA COLLABORATIVE

Initiation

Consumer advocacy and environmental groups (e.g., CUC, CPG) intervened in numerous cases involving Georgia Power for many years. In April 1990, CPG proposed an "All Parties' Conference" (an interactive arrangement resembling a collaborative) for the discussion of important issues. In response, the utilities began to host IRP workshops open to all interested parties. About a year later, SELC began interacting with the utility concerning its planning and DSM efforts. The combination of the efforts of these groups with new utility-related state legislation, the passage of new IRP regulations by the PSC, and the openness of the utility to considering a major change in the traditional balance of its resource portfolio led to the initiation of the Georgia Collaborative. The utility did not receive any important concessions from intervenor groups (such as settlement of an outstanding case) in return for their agreement to participate in the collaborative.

The Georgia Collaborative began officially in February 1992 with formation of the Demand-Side Working Group (DSWG), a month after Georgia Power and SEPCo had filed their 1992 integrated resource plans and applications for certification of specific DSM programs and CTs. Accordingly, the DSWG was charged with the somewhat confusing dual task of developing programs for the utilities' 1993 filings and reviewing the utilities' 1992 filings. It was understood that the utilities might amend their 1992 applications if consensus could be reached on any improvements or additions to those applications before the PSC ruled on them, but that was not certain.

Participants

Originally, both the Georgia Power Company and SEPCo participated in the Georgia Collaborative. SEPCo dropped out of the process in the latter half of 1992, when it became clear that the primary focus of the collaborative was on the much larger Georgia Power. Two non-profit, environmental advocacy groups—SELC and CPG—have been active participants throughout the life of the collaborative. GTMA and GIG, representing industrial interests, also are key players. From the government sector, DOE and the EPA regional offices are full parties to the collaborative, but they play a relatively small role in the process. At the very beginning of the collaborative, the Governor's Office of Energy Resources was involved, but it withdrew in April 1992 after gas utilities were denied full membership in the DSWG. For the same reason, the Georgia CUC stopped attending meetings (but it did not officially quit the collaborative), and the Georgia PSC staff participate only as observers. In a new DSWG Agreement signed by all collaborative parties in summer 1993, CUC is officially listed as an observer rather than a full participant.

The CUC respondent suggested that residential customers are no longer represented now that CUC is not actively involved, but another respondent asserted that CPG represents residential consumers. One respondent expressed the opinion that commercial consumers are not really represented, and another mentioned that some natural-resource-oriented groups (like the state Department of Natural Resources and the forestry association) serve definite constituencies but are not involved in the collaborative. There has been no direct involvement in the collaborative by energy service companies or product distributors.

The relative power of the key groups involved with utility issues in Georgia was described in Section II under "Other Key Groups." Because the same groups described there are also collaborative participants, a detailed discussion of their relative strength would be repetitive. But to reiterate the highlights, most NUPs consider themselves much weaker than the utilities in terms of funding and technical resources, but in a stronger relative position when it comes to influence with state regulators. PSC staff, CUC, and the industrial parties appear to be the strongest NUPs, both in terms of financial/technical resources and ability to influence the PSC. The influence of CPG and SELC, while probably not as great as that of the above-named organizations, seems to have grown over the life of the collaborative. All the intervenors have been represented in the collaborative by the same people (nearly all attorneys) who handle their utility intervention, while the utilities have been represented by their lawyers and the same upper level managers who testify in PSC hearings as expert witnesses.

In 1990, when the IRP workshops began, Georgia Power projected the need for additional peaking capacity in 1993 or '94, meaning that it would have to start planning new DSM resources immediately to get them on line soon enough to avoid future shortages. In late 1992, the utility received PSC certification for its McIntosh Project, which will see four 80-MW CTs in commercial operation in 1994 and two more CTs of the same size on-line in 1995. In September 1993, the PSC certified two additional 80-MW CTs to be built at Warner Robins Air Force Base; these units are scheduled to come on-line in 1995. This latest approval of peaking

units was based in part on the company's reduced C&I DSM savings estimates (compared with its January 1992 Integrated Resource Plan). The utility, which is growing at an annual rate of just over 2%, does not expect to need baseload capacity before 2002.

Georgia Power's organizational structure and planning processes were recently reorganized to put more emphasis than it previously had on DSM development and implementation, and the utility is in the process of establishing DSM goals for departments and individuals to reward them for good performance. Of course, the utility also sets sales goals. Overall, the attitude of utility management toward DSM seems to be cautiously supportive. Management seems willing to support DSM program development and implementation as long as competitive rates are not compromised and good earnings are allowed. However, one respondent expressed the opinion that the utility's enthusiasm toward DSM has decreased since it filed its Integrated Resource Plan in January 1992, because of serious resistance by industrial customers and the lack of a definitive PSC decision on the issue of lost revenue recovery. As for its attitude toward the collaborative, the utility describes itself as being very supportive of the process and some NUPs agree. Others, however, question the utility's genuine enthusiasm toward the collaborative as a source of new ideas.

Georgia Power's DSM planning is mostly done by marketing staff involved with sales and research. These staff members also work closely with system planners, who are responsible for integrated planning. Supply- and demand-side resources are linked through avoided cost modeling.

Purpose

Objectives varied from participant to participant, and often a single party hoped to accomplish more than one thing through its collaborative interactions. Many NUPs hoped to achieve a better product through collaboration than would have been developed in its absence. The participants reporting this objective were all from government agencies or environmental/energy conservation advocacy groups, and their vision of a better product was usually a well-designed integrated resource plan with a substantial component of cost-effective DSM resources. A number of other respondents—from both the government sector and the utility—reported that they had entered the collaborative hoping to discuss and resolve important issues outside traditional adversarial channels, limiting the number of topics that would have to be addressed in regulatory proceedings. A few participants from government and industrial groups expressed a desire to get more information on the positions held by other participating parties and, in one instance, on specific DSM programs and their performance. Finally, a few representatives of environmental/energy conservation advocacy groups reported that one of their objectives had been to work with other interested parties in the pursuit of mutually acceptable outcomes.

During its first 6 months of operation, the collaborative focused primarily on a number of important policy issues. These included clarification of collaborative objectives; cost-effectiveness screening methods; regulatory treatment (i.e., program cost recovery, lost revenue

recovery, financial incentives and penalties); environmental externalities; and allocation of DSM program costs among customer classes. Most collaborative participants thought it was important to attempt to resolve these issues early on with the hope of developing clear guidelines for future DSM planning decisions. However, consensus was not reached on the key policy issues addressed at the outset of the collaborative. Since then, the collaborative has shifted much of its attention to DSM program development issues. Beginning in summer 1992, collaborative participants have addressed the design, implementation, monitoring, and evaluation of residential and C&I DSM programs. A few policy issues also have been addressed during the past year, most notably avoided costs focusing on the costs of Clean Air Act compliance and transmission and distribution (T&D) costs.

Process

Collaborative structure and functions. Collaborative functions are carried out by the DSWG, which meets about once a month. There is no management group above the DSWG to handle dispute resolution and, officially, there is no technical support group below the DSWG, making this (technically) a single-level collaborative. In practice, however, focused work sessions with fewer participants have been held that have functioned as a de facto technical committee. These sessions include the meetings between DSWG consultants and utility staff to refine mutually acceptable DSM programs for the utilities' September 1992 refiling of their residential certification applications. They also include more recent—and more regular—meetings between the technical coordinators, DSWG consultants, and utility staff to discuss technical issues (e.g., avoided costs) and clarify topics for future discussion by the entire collaborative.

The DSWG is served by two technical coordinators, Jane Nelson (formerly with the PSC staff) for the NUPs and Garey Rozier (a current employee of Georgia Power) for the utilities. Their functions include preparing work plans, coordinating activities among utility staff and any consultants to the DSWG, preparing progress reports, and providing other technical assistance, as necessary. In addition, the NUPs' coordinator is responsible for keeping her constituent groups informed as to what the collaborative is, and will be, doing. She apparently has been well-supported by all NUPs except the industrials.

Most participants agree that the utility has not really shared its decision-making power with the NUPs, and that this situation has been fairly constant over time. The NUPs have provided input on a variety of issues and the utility has considered their positions, but the group generally has not pushed for consensus. The utility seems to have taken NUP input especially seriously on the development of residential programs (where the parties were able to agree on a set of options) and C&I programs (where the utility apparently was strongly influenced by the position of the industrial parties). It is clear, however, that the utility ultimately is in charge of its planning and program decisions. One collaborative participant noted that perhaps the utility would have shared more power if the NUPs had presented a joint position on more issues, rather than being split into different camps as was usually the case.

Time constraints, both internally- and externally-imposed, were used in the Georgia Collaborative to encourage the timely completion of key tasks. Internal deadlines were set by collaborative participants themselves for such items as the review and critique of existing utility DSM programs and the discussion of the avoided cost issue. External deadlines were set by the PSC, most notably for revising and refiling certification applications for the utilities' DSM programs. Some respondents reported that internally-imposed time constraints had a positive effect on process design and program development tasks, while others said that their effect was negligible. However, a number of respondents reported that the effect of deadlines in the litigation dockets had been negative because the short time allocated for completing key tasks (like the design of revised residential DSM programs) was not sufficient to allow a full give-and-take among the utilities and all collaborative participants. In contrast, at least one respondent believed that the pressure imposed by external deadlines was very helpful in stimulating the involved parties to compromise on difficult issues.

Funding of non-utility groups. Two non-utility groups—CPG and SELC—have received assistance from foundations located outside the immediate area. As described earlier, this funding is considered essential for their continued pursuit of their energy-related activities.

Use of outside consultants. Since the initiation of the collaborative, the utility has provided limited funding to allow the hiring of experts to assist the NUPs and/or the DSWG as a whole. The NUPs are provided with a technical coordinator who has, from time to time, hired subcontractors to assist her. Both the technical coordinator and the subcontractors were chosen by the NUPs from a list approved by the utilities. In August 1992, consultants were hired to assist the entire DSWG by working with the utilities on refining residential DSM programs for their upcoming refilings. More recently, Georgia Power has funded a consultant to represent the industrial parties on the topic of C&I programs. This consultant was selected by the industrials themselves, with the approval of the utility and the somewhat reluctant concurrence of the other NUPs. Although this consultant gets his directions from the industrial parties, all other NUPs are allowed access to him. Currently, no other consultants are provided to serve the collaborative group.

In addition to the consultants discussed above, some NUPs (e.g., CUC) have hired their own consultants to serve the interests of their own organizations. The utilities have also employed their own consultants to help on plan preparation, program development, and evaluation. Another method used by the NUPs to help increase their technical expertise is the informal sharing of information with each other and the review of utility program planning materials and procedures.

Development of coalitions. All respondents reported that there are two major, and opposing, coalitions existing within the Georgia Collaborative. On one side are the environmental/energy efficiency interests (SELC and CPG), who tend to favor more aggressive pursuit of DSM options. On the other side are the industrial parties (GTMA and GIG) who are opposed to utility actions (in this case, related to DSM) that could raise electricity rates. Utility positions often fall somewhere between the positions laid out by these two sets of participants.

The two coalitions seem to be stable and long lasting, and their members stand together on many issues. Other parties have aligned with one or the other of these coalitions on various issues. PSC staff positions were fairly close to those of SELC and CPG concerning the overall IRP and residential DSM programs when these issues were the major focus of discussion. More recently, however, the PSC staff (as well as large commercial interests) have sided with the industrial coalition on the issue of C&I programs. One respondent suggested that the PSC staff has experienced a definite shift in position during the past year to bring it closer to the industrial camp, at least in part because of pressure from industrial representatives. Another suggested that PSC staff may believe that C&I customers are more likely already to use DSM measures, and are therefore more concerned about cross-subsidy and competitiveness issues for these customers.

Conflict and conflict resolution. Many participants reported that there has been substantial conflict among the intervenor groups, particularly between the environmental/energy efficiency coalition and the industrial coalition. Issues on which reaching agreement proved most difficult in the early months of the collaborative included regulatory treatment questions, particularly lost revenue recovery; the use of environmental externalities; and allocation of DSM program costs among customer classes. Certain program design questions, such as how much utilities should pay in customer incentives, also proved difficult to resolve. More recently, the issue of cross-subsidization of program costs, especially *within* user classes (i.e., the question of “custom” programs versus rebates for C&I customers) proved most contentious.

Collaborative participants have addressed difficult policy issues by engaging in extended discussions over a period of months. This has resulted in some limited agreement, but whole-group consensus on policy specifics has proved elusive. When dealing with program design specifics, the collaborative participants operated under much more stringent deadlines, attempting to iron out their differences before certification filings were due at the PSC.⁹ In the residential area, intensive interactions between DSWG consultants and the utility proved helpful in reaching agreement on some program elements. Sometimes difficult issues (especially related to C&I programs) were deferred because it was understood that everything would ultimately be resolved in the regulatory proceedings.

No third-party mediators were used to resolve disputes in the Georgia Collaborative. The collaborative does have two facilitators, but one of these is aligned with the NUPs and the other with the utility and neither has any formal training in dispute resolution. The PSC has no formal relationship to the collaborative and does not mediate its disputes. It does, however, act as the ultimate arbiter of contested issues through its issuance of regulatory orders in the litigation dockets.

For a few of the participating groups (CPG, CUC), the representative to the collaborative is also the organization’s top manager. In most other cases, the collaborative representatives

⁹This effort was more successful for residential than for commercial/industrial programs.

meet with management personnel to get a sense of their organization's preferred positions, either on a regular basis or on those occasions when input is considered necessary. It is very rare for there to be no upper management involvement with collaborative affairs.

Related Policies and Interactions

As mentioned earlier, the PSC regulations promulgated just before the formation of the Georgia Collaborative required utilities to consider environmental impacts when assessing potential resource options; these regulations also endorsed utility recovery of DSM program costs, consideration of lost revenues, and the concept of financial incentives for utilities, without establishing any specific mechanisms to be used in those areas.

The July 8, 1992, PSC IRP order was very specific about cost-effectiveness tests, specifying that utilities must use the societal cost test (including the use of monetized estimates for externalities) to screen resource options in the future. Again, no specific mechanisms were established for recovering program costs and lost revenues or determining utility DSM incentives, but the use of penalties to punish poor DSM performance (to balance the incentive concept) was endorsed.

In recent decisions on Georgia utilities' DSM certification applications, the PSC addressed the issues of DSM program cost recovery and performance-based incentives. In January 1993, the Commission approved provisions for residential DSM program cost recovery and performance-based incentives/penalties for Georgia Power that had been agreed to by the utility, PSC staff, SELC, and CPG in prior negotiations. A decision on regulatory treatment specifics also was issued for SEPCo, but this did not have the prior approval of any of the intervenors. In August 1993, the PSC approved the use of riders and incentives related to Georgia Power C&I programs and instituted similar mechanisms for SEPCo. While Georgia Power had discussed these issues with the intervenors during settlement negotiations, the C&I program stipulation between Georgia Power, the PSC staff, and C&I parties only included an incentive mechanism and some cost recovery principles partly modeled on the residential stipulation and decision. The parties did not agree on the use of a rider mechanism.

Outcomes

Consensus on important issues. Collaborative participants have been more successful in reaching consensus on procedural issues than on substantive ones. Specifically, the DSWG has agreed on the hiring of a NUP coordinator and various consultants. Also, collaborative participants reached agreement on a 1993 work plan early in the year, and the active DSWG participants signed a new agreement in summer 1993 extending collaborative operations at least through the end of the year.

To date, collaborative participants have not reached consensus about the preferred cost-effectiveness test(s) on which to base resource selection decisions.¹⁰ Collaborative participants likewise have not achieved consensus on whether (and if so, how) to monetize externalities; industrial groups most strongly oppose the use of externalities and environmental groups favor it. No consensus has been reached on regulatory treatment specifics, although several parties (Georgia Power, PSC staff, SELC, and CPG) signed a stipulated agreement on this topic for residential programs. While the settlement was reached outside the collaborative, this agreement might have been facilitated to some extent by the fact that these issues had been discussed previously in the collaborative. Finally, the issue of lost revenue recovery is still unresolved, and this is the topic where the difference between the parties is probably greatest. The industrials and CUC apparently do not see the recovery of lost revenues as necessary; and other NUPs, while supporting lost revenue recovery in principle, differ with the utilities about just how it should be accomplished. This issue will be addressed in a separate PSC docket.

During intensive interactions in late summer, 1992, DSWG consultants reached agreement with Georgia Power concerning some (but not all) elements of a revised set of residential DSM programs; these revised programs were subsequently filed by the utility in September. This agreement was facilitated by the fact that the industrial parties largely withdrew from considering residential issues because they would not be responsible for paying for them. The revised C&I programs filed by Georgia Power in December 1992 included only customized programs for all but its smallest customers (those with less than 30 kW of demand). This custom approach, whereby prospective users pay for their own programs with the assistance of low-interest loans from the utility, is strongly favored by the industrial parties as an alternative to rebate programs but is not widely supported by the other NUPs. The stipulated agreement reached by Georgia Power, PSC staff, and key commercial and industrial groups in March 1993 kept the custom approach for large users but allowed limited rebates to be available to more customers (those with up to 200 kW of load). This agreement, which covered programs, financial incentives, and some issues related to cost recovery (excluding the question of riders), did not have the support of all members of the collaborative working group and was actively opposed by several parties, including CPG and SELC.

Approval of DSM programs by regulators and courts. In July 1992, the PSC approved integrated resource plans for Georgia Power and SEPCo. These plans were not the product of collaborative consensus. The plans originally submitted by the utilities in January 1992 were developed before the collaborative was formed, and the plans eventually approved by the PSC were modified versions of plans developed by the PSC staff's consultants. While the intervenors had no direct input into these plans, their testimony during the IRP hearings in the spring of 1992 influenced the content of the plans that ultimately were approved.

On January 5, 1993, the PSC approved residential DSM and standby generation programs filed by Georgia Power, with certain modifications recommended by PSC staff. The residential

¹⁰Although the PSC has ruled that externality information must be provided by utilities, the question of which test(s) to use in the selection of resources is still unresolved.

programs included elements that resulted from DSWG collaboration. The PSC decision incorporated key regulatory treatment specifics agreed to by Georgia Power, PSC staff, SELC, and CPG in their December 1992 stipulation. As mentioned earlier, the use of rate riders was later invalidated by the Fulton County Superior Court and this decision is currently being appealed by Georgia Power. The PSC also approved SEPCo's residential and small commercial programs, in principle. The utility was directed to submit detailed implementation plans before going forward with its new DSM programs. The SEPCo decision also includes a DSM rider and an incentive mechanism (without penalty provisions).

On August 5, 1993, the PSC approved Georgia Power's C&I programs, as proposed in the December 1992 filing and modified by the March 1993 stipulation. The stipulated agreement kept the custom approach for large users that had been proposed by the utility but allowed limited rebates to be available to more customers (those with up to 200 kW of load) and reduced the interest rate for large customers' DSM financing. As specified in the stipulation, the Order establishes an incentive/penalty mechanism and some provisions related to cost recovery; and it requires the utility to file additional information on expanding the custom lighting program and to develop new rates to reduce peak demand. The PSC Order differs from the stipulated agreement, however, by approving the use of DSM riders to recover program costs. The Order calls for two separate riders (later overturned and appealed to a higher court), one for small and one for large C&I customers. The incentive mechanism allows the utility to receive up to 15% of DSM-induced savings but to be penalized if more than 40% of the planned measures are not installed. The Order states that if the "customized program" approach does not result in sufficient energy efficiency, the PSC will require the utility to provide "the more traditional rebate programs" for large customers.

Program implementation. As mentioned earlier, Georgia Power's new residential DSM programs are currently being implemented as planned, and preparations are under way to institute the utility's recently-approved C&I programs.

Satisfaction of participants' objectives. Very few participants reported being either generally satisfied or completely unsatisfied by their collaborative experience. Nearly all respondents reported that their objectives had been partially satisfied through the collaborative process. For example, some participants reported being pleased with the residential programs approved by the PSC but not with the utility's C&I programs. Similarly, other respondents reported that some, but not all, of their objectives had been satisfied or that an objective had been satisfied to some extent, but not fully. The partial satisfaction reported by most participants might not provide sufficient motivation for continuing the collaborative process. Despite having some of their objectives satisfied, a few key players expressed unhappiness with the current state of the collaborative, which they said does not provide a productive forum for developing mutually acceptable solutions.

Savings of time and money for participants. One respondent reported that participating in the collaborative had cost them about the same as they probably would have spent in the absence of this effort, and a few others suggested that the collaborative had probably required

slightly less time than would otherwise have been the case because some issues had been identified and resolved outside of regulatory proceedings. The majority of participants, however, stated that the collaborative had cost more than the traditional adversarial approach to resolving contentious issues. The reason, according to these respondents, is that the collaborative adds another layer of interaction that requires considerable meeting and preparation time without cutting participants' litigation load proportionately.

Nature of policies, DSM programs, and outcomes compared to results of traditional process. A number of respondents reported that the outcomes of the collaborative were not substantially different from what would have been accomplished if the parties had engaged in the traditional adversarial process that is normally used to settle differences among parties. Several other participants, however, reported that the revised residential programs submitted by the utilities in September 1992—which were shaped in part by collaborative discussions and intensive interactions between the utility and DSWG consultants—pursued DSM more aggressively and will lead to greater energy savings than would otherwise have been the case. It also was suggested that the stipulated agreement reached by Georgia Power and several intervenors on residential cost recovery and incentive mechanisms was influenced to some extent by the fact that these issues had been discussed previously by collaborative participants, many of whom were involved in the settlement negotiations.

It is ironic that the C&I programs approved by the PSC in August 1993, after a year and a half of collaboration between utility and NUPs, were substantially less aggressive than those originally proposed by the utility in its January 1992 Integrated Resource Plan. Respondents expressed different opinions as to whether collaborative interactions actually led to this scaling back of C&I programs. Several participants claimed that the program revisions owed nothing to the collaborative but were caused instead by changes in the PSC's position and by the efforts of the industrial parties, who are very sensitive to anything that could raise their electricity rates. A few respondents, however, reported that dialogue within the collaborative did, in fact, influence the utility to back off on the scope of its C&I programs.

Changes in historic relations among participants. A few participants reported that the collaborative had resulted in no change in relationships among those involved, but most reported some degree of improvement. Nearly all of those reporting a beneficial effect, however, saw the change as relatively small. Several said that at least some of the parties involved got along a little better with each other as a result of their collaborative interactions. A few others stated that the players had gotten to know each other and each others' positions slightly better. The greatest effect was reported by one participant who noted that the parties involved had developed greater sensitivity to each others' positions and had become able to agree on some issues.

Decision by key parties to continue interacting. Current collaborative members have all agreed to continue interacting at least through 1993 and the utility has agreed to fund the NUP coordinator and C&I consultants until the end of the year. The number of full participants is three less than it was at the beginning of the process because of the withdrawal of SEPCo and the Governor's Office of Energy Resources and the conversion of CUC to observer status.

Although the PSC staff continues to attend meetings as an observer, it does not appear to be a strong advocate of using the collaborative process at this time; staff noted that the Commission itself will not delegate its authority.

Future Prospects

As of this writing, CPG and SELC have expressed their intention to drop out of the collaborative at the end of December 1993. Until that time, substantive collaborative discussions are likely to remain focused on avoided costs and on monitoring and evaluating existing programs. Should CPG and SELC actually withdraw, the only active full participants remaining in the DSWG would be the industrial parties, and it is likely that the collaborative would disband at that time.

Recent discussions between Georgia Power, SELC, and CPG have explored the possibility of replacing the collaborative with a series of regular meetings to be organized and run by PSC staff or by Georgia Power. These meetings would involve Georgia Power and all interested non-utility groups in an exchange of information and ideas regarding the implementation of existing DSM programs and the development of the utility's new integrated resource plan. This new group would allow the NUPs to ask questions and receive needed information from the utility on what it is planning; in turn, the non-utility groups would provide the company with comments concerning its proposed activities. The new arrangement would differ from the collaborative in two important ways: (1) it would be open to all parties wishing to participate, including the formerly-excluded gas utilities; and (2) it would not attempt to reach consensus on any issues or develop joint filings, but rather would function more like an informal discovery process.

The type of group described above would not allow the NUPs to share in the decision-making process in the way that a consensus-seeking collaborative ideally does. However, it would still have definite value for the participants, allowing them to define and understand issues in advance of regulatory proceedings and maybe to have some influence on program contents. The perceived need for this new group comes from the fact that the collaborative does not include all interested parties and is characterized by some non-involved organizations (most notably the gas utilities) as a closed, exclusionary group. Also, it is somewhat of a political liability for some non-utility groups because the NUP coordinator (and any consultants that might be used) are funded by the utility. Probably the strongest motivation for NUPs to leave the collaborative is the fact that there has not been group consensus on any substantive issue in over a year, throwing the decision-making power of the DSWG into doubt.

V. CONCLUSIONS

Recommendations of Respondents

Concerning collaboratives. A number of insightful suggestions were offered concerning the context and organizational basics of a collaborative planning effort. A few NUPs pointed out

the importance of having strong and consistent PSC support for the collaborative and for DSM in general and of getting clear policy directives from state regulators on key issues, like regulatory treatment. An environmental group representative suggested that having a common objective that is shared by all participants (e.g., to develop more aggressive DSM programs for all classes) would be very beneficial to the group's ability to reach consensus. Another respondent emphasized the importance of mutual trust, stating that the involved parties must believe that the other participants are sincere and are making an effort to work together productively. Many participants pointed out that having a collaborative operating at the same time that the participants are involved in litigation tends to heighten adversarial relations among the parties and makes them less likely to compromise in the collaborative. One respondent noted that it would be helpful to resolve pending issues before the collaborative starts and for the group to then work on relevant issues as a collaborative before the utility files its plans and programs with the PSC. According to another respondent, the choice of coordinators is important, and people should be sought who have good skills in working with all key interest groups to reach consensus. One active participant offered the insight that a collaborative is not a magic solution to all problems and should only be initiated if conditions seem conducive to productive operations.

Several respondents commented on the selection of appropriate issues and problem-solving approaches. An industrial representative suggested that the collaborative should focus on key issues of contention, emphasizing the search for decisions; according to this respondent, each party should clearly state what it wants during collaborative negotiations, and the group should identify those areas where it is likely that a cooperative effort could take place. Other participants cautioned against direct confrontation, especially early in the life of the collaborative, suggesting instead that a strong collaborative process should be established and key policy issues should be explored before initiating negotiations on points where the parties already have clearly defined positions. Another respondent expressed the opinion that the collaborative group should not look just at policy issues but should work also on program specifics. And a utility representative suggested that the collaborative parties should agree that they do not have to reach consensus on every issue.

Many participants offered recommendations concerning collaborative participation. Several respondents suggested that all important constituencies should be involved and that an effort should be made to ensure that the participants have adequate time to devote to the collaborative. A few NUPs pointed out that the decision not to include gas utilities as full participants led government groups to stop attending meetings, which in turn led to many important decisions being made outside the collaborative. One participant expressed the opinion that a collaborative works best with two basic parties (the utilities and a unified coalition of NUPs), an arrangement that becomes increasingly difficult as more diverse interest groups are represented. A willing utility, as was the case in Georgia, was cited as an important component of collaborative success. In addition, an environmental group representative suggested that all NUPs should be committed to the collaborative process and that it would be best if all parties (including the industrials) supported the use of DSM resources. One NUP reported that PSC staff, and commissioners if possible, should have an active role in the collaborative process, but a PSC

representative pointed out that the Commission itself cannot be directly involved in the collaborative.

Utility financing of technical consultants was mentioned as an important means of ensuring meaningful participation by NUPs. One respondent warned about the problems that could be caused by using inexperienced consultants, and another suggested that each interest group should have its own consultants. Several key non-utility groups suggested that the utilities should provide participants with open access to all important materials, such as information on its internal planning and marketing processes. Finally, a few respondents suggested that all collaborative participants should be willing to approach group interactions with an open mind and be willing to change their positions; specifically, utilities must be willing to implement NUP suggestions.

Concerning other initiatives by non-utility groups. CPG and SELC suggested a number of factors that are important for the successful initiation of other activities aimed at influencing utility and regulatory policies. A PSC that supports aggressive pursuit of cost-effective DSM was cited as being very important. Also, the intervenor group hoping to exert influence must have a strong local presence; in Georgia, SELC (which does not have offices in the state) worked with CPG (which has been active in this area for years).

A strong desire to be effective, consistent and continuing involvement on important issues, the ability to influence key parties (which is bolstered by strong public support for one's positions), and adequate technical and financial resources all are important for a non-utility group to be successful. A lack of money is a very real problem, because it makes it difficult for a group to sponsor technical witnesses in its interventions; this can severely limit a group's effectiveness because the ability to present expert testimony in regulatory proceedings is essential. Lack of resources can be a serious detriment not just for pursuing interventions, but also for various outreach activities aimed at the public and for the hiring of much-needed inhouse technical experts. Both CPG and SELC noted the extreme importance of foundation funding for supporting a broad array of intervenor activities.

Our Observations and Recommendations

We agree with nearly all the points made by our case study respondents. In addition, we wish to make several observations of our own. The combination of long-running intervention by committed consumer/environmental groups (i.e., CPG and CUC), the more recent entrance by an enthusiastic and well-funded group from outside the immediate area (SELC), state enactment of planning-related legislation, the passage of new IRP regulations by the PSC, and the openness of the utility to considering significant changes to its resource portfolio seems to have been successful in leading to the initiation of this collaborative. Since its formation, however, the collaborative has been weakened by the reduced participation or outright withdrawal of several parties—most notably the active and influential CUC. The collaborative also has been weakened by its inability to reach consensus on any substantive issue since the joint development of revised residential DSM programs in late summer of 1992.

Establishing a collaborative with a clear mission and with adequate time to accomplish that mission is extremely important for making the process a success. The Georgia Collaborative experienced problems in both these areas. It was not certain whether the utilities would amend their 1992 DSM certification applications in line with collaborative suggestions or if the first real chance for meaningful collaborative input would come with the 1993 utility filings. In any case, the DSWG did not really have the leeway to develop a brand new plan, since its work on the 1992 filings was clearly an incremental type of task and its work on the 1993 filings would of necessity follow the general direction established in 1992. This situation was engendered by the fact that the collaborative did not begin until a month after the utilities had filed their integrated resource plans, rather than 6 months to a year before, which would have been much more desirable. Adding to the difficulties encountered by the group was the decision to address all major policy issues (e.g, appropriate cost-effectiveness tests, regulatory treatment, externalities) during the first 6 months of the DSWG's operations.

It is probably not a good idea to have collaboration and litigation going on simultaneously. Hearings *can* put pressure on parties to go back to the collaborative to seek a settlement, and there is some evidence that these time constraints can stimulate the parties to agree on various items quicker than they might have otherwise. However, these tight deadlines, and the prospect of facing a binding PSC decision if group consensus cannot be reached, can focus the thinking of the parties more narrowly than is optimal and limit the search for creative, mutually beneficial solutions. Also, the fact that the collaborative representatives are largely the same people who are involved in the regulatory hearings makes it difficult to get past an adversarial approach and develop genuine trust.

Where there are two or more NUPs or NUP coalitions with radically different positions (as with the environmental groups and the industrial parties in this case), it is very difficult for the collaborative as a whole to reach consensus. The easiest way around such an impasse is for one of the parties to excuse itself from discussing topics that do not directly affect its interests, as the industrial parties ultimately did concerning residential programs. However, where all parties have an interest in an issue, as with C&I programs in this case, there is no easy way to achieve agreement. Perhaps this is where a third group with a less polarized position should try to mediate a mutually acceptable compromise. Also, a clear message from the PSC that a consensus is strongly desired might provide the contending parties with an adequate incentive to reach agreement. In this case, no such message came from the PSC and it seems there was not a strong effort to achieve group consensus on most issues.

The Georgia Collaborative appears to have been successful in stimulating increased utility use of DSM resources in the residential sector. Intensive interactions between DSWG consultants and utility staff resulted in Georgia Power and SEPCo submitting revised residential programs in September 1992 that were more aggressive than those contained in their earlier integrated resource plans. But the *direct* accomplishments of the collaborative seem limited to that. Consensus was not reached on specific cost recovery or penalty/incentive mechanisms nor on the content of revised C&I programs. Rather, agreements between utility and non-utility groups on these issues were made in separate negotiating sessions held outside the collaborative to settle

various interventions. While this clearly shows the potential of interventions by CPG, SELC, and other interested parties to influence utility decisions, it does not necessarily establish them as superior to the collaborative as a way of influencing utility actions. We believe that the groundwork laid by prior collaborative discussions made it easier for the utility and intervenors to reach agreement on DSM cost recovery and incentive mechanisms. Similarly, past collaborative interactions might have contributed to the August 1993 PSC decision to establish C&I DSM riders for Georgia utilities. However, it seems that the regulators' decision to approve scaled-back C&I programs owes much more to direct pressure brought by the industrial parties and by the utilities' heightened concern with competitiveness than to collaborative activities. The PSC decision not to appeal the Superior Court ruling against DSM riders seems to indicate strong regulatory concern with rate impacts.

The previous discussion indicates our belief that both collaboration and intervention have affected utility and regulatory decisions in Georgia. We cannot guess at the results of the collaborative if there had not been simultaneous regulatory proceedings. But we do believe that collaborative interactions facilitated negotiated settlements and influenced regulatory decisions.

In addition to collaboration and intervention, other activities undertaken by CPG over the years probably have contributed to regulatory policies and utility actions. This group's long history of interaction with the PSC, state legislature, and mass media have contributed to the perceived credibility of its positions on key energy-related issues and have probably influenced—to some extent—the contents of state IRP legislation and PSC decisions on IRP and DSM certification cases.

Several recent PSC decisions indicate apparently diminishing regulatory support for aggressive utility use of DSM resources and a heightened concern with rate impacts. The first is the PSC's August 1993 approval of C&I DSM programs that project significantly smaller savings than indicated in the utilities' January 1992 integrated resource plans. The second key decision was made when the PSC declined to join Georgia Power in appealing a superior court ruling striking down the use of rate riders for DSM cost recovery. This apparent withdrawal of support for riders—which facilitate utility recovery of DSM program costs—could also indicate a less aggressive posture toward promoting utility use of DSM in general. Finally, some observers might say that the PSC's September 1993 approval of two new CTs for Georgia Power, justified in part by the company's reduced C&I savings estimates, presents added evidence of a change in regulatory direction. However, a case could also be made that these newest CTs would have been justified anyway by the latest load forecast and the ramp-up period required before the full effects of utility DSM programs can be felt. Regardless of how one interprets the CT decision, it appears that current PSC support for DSM is somewhat less aggressive than it had been at the time of its 1992 IRP Order. As mentioned earlier, pressure from industrial groups and a concern with maintaining competitive rates have probably been strong influences on this apparent shift in regulatory policy.

To sum up, the recommendations made by us and our respondents suggest a number of ways to successfully initiate and sustain collaboratives and other activities aimed at influencing utility use of DSM. For collaboratives, these include the following:

- establishing a clear mission;
- allocating sufficient time for collaborative activities;
- addressing program specifics as well as policy issues;
- involving all important constituencies;
- procuring utility financing of technical consultants;
- obtaining collaborative participants who are open-minded and willing to compromise;
- avoiding simultaneous litigation and collaboration; and
- getting help from a third party or the PSC to push consensus when there are two parties locked in strongly-opposing positions.

The Georgia Collaborative has operated counter to a number of those suggestions, and it appears likely to disband in the near future. For other initiatives, important factors include a strong local presence by the intervenor group; consistent and continuing involvement by this group on important issues; influence with regulators and other key parties; and adequate technical and financial resources, of which foundation funding is an extremely important element.

RESPONDENTS

Utilities

Garey Rozier	Georgia Power Company, General Manager for Bulk Power Markets (and Technical Coordinator for Utilities)
Fred Williams	Georgia Power Company, Senior Vice-President for Bulk Power Marketing
James Rayburn	SEPCo, Vice President for Planning and Marketing

Energy efficiency advocacy groups

Deborah Sheppard	CPG, Executive Director
Jeff Gleason	SELC, Staff Attorney

Business/industry groups

Peyton Hawes GTMA, Attorney

Government agencies

Warren Zurn U.S. DOE, Atlanta Support Office, Technology Marketing Specialist

Nancy Gibson Cowles Georgia CUC, Counsel

Regulatory commission

Bobby Rowan Georgia PSC, Chairman (in 1992)

Regulatory staff

Beverly Knowles Georgia PSC Staff, Director, Utilities Division

NUPs coordinator

Jane Nelson NUPs Coordinator

5. LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION ACTIVITIES TO PROMOTE DSM IN FLORIDA

SUMMARY

Although no collaboratives between utilities and EEAGs have been formed in Florida, a variety of hearings, meetings, and workshops have taken place recently that have allowed the Florida Public Service Commission (PSC), electric utilities, EEAGs, and others to interact informally on issues affecting DSM. Such interactions have helped bring interested parties together to raise concerns and exchange ideas; they have also yielded some tangible outcomes.

Groups such as the Legal Environmental Assistance Foundation (LEAF) have seen considerable progress over the past year, as they seek to encourage increased implementation of utility-sponsored energy efficiency programs. Recent events include the PSC's adoption of new rules regarding utilities' conservation goals; the opening of dockets on decoupling and incentives for Florida's second-largest investor-owned electric utility, Florida Power Corporation (FPC); the release of the Florida Energy Office report on a statewide study of DSM and its potential in Florida; and the Power Plant Siting Board's adoption of recommendations for restructuring the power plant licensing process.

The end results of those events remain to be seen, and the next few years should be telling ones. As things now stand, state policies appear to be moving in a direction more favorable to DSM—partly because of the regulatory commission's new makeup and partly because of the current state administration's interest in energy and environmental concerns, but also because of the combined efforts of Florida's EEAGs. An important ingredient has been LEAF's work in the regulatory arena. Together with essential, complementary work by other groups in lobbying and grassroots education and mobilization, considerable strides have been made toward more comprehensive consideration of energy efficiency possibilities in Florida.

I. INTRODUCTION

This case study concerns the activities of the LEAF Energy Advocacy Program and, more generally, the setting in which these activities take place. LEAF's Energy Advocacy Program, initiated in late 1991, seeks to promote utility investment in DSM and renewable resources. To this purpose, it is attempting to influence the actions of Florida's investor-owned electric utilities and the Florida PSC. No DSM collaboratives exist in Florida at this time.

The study is based on written information (e.g., annual reports, newsletters, copies of correspondence) provided by the PSC and EEAGs, and on detailed interviews with individuals at these and other organizations. The information was collected over a period of approximately 1.5 years, beginning in the spring of 1992, and is current as of November 1993.

II. CONTEXT

Political Environment

In the state legislature, a handful of legislators have tried to promote energy efficiency measures and have recently had some success. In the 1993 legislative session, the Florida legislature passed the Florida Building Energy Efficiency Rating Act, which directs the Department of Community Affairs (DCA) to develop a uniform statewide system for rating the energy efficiency of new and existing residential and commercial buildings. It also directs the DCA to establish goals and strategies for increasing the use of solar energy in Florida. In addition, in March 1993, the Florida legislature passed legislation allowing electric utilities to recover costs incurred on or after April 13, 1993, that are associated with reducing emissions to comply primarily with the Clean Air Act: utilities prepare an environmental compliance plan, the commission reviews the plan, the utility brings the costs to be recovered before the commission, and the commission decides whether to approve their recovery. Recoverable costs include devices such as scrubbers, as well as upgrades to boilers or combustion systems, but not energy efficiency measures.

However, while DSM issues are receiving some attention, especially in the House, most legislators continue to be sensitive to the views of utilities. In addition, some state legislators have tended to be unsupportive of the Florida Energy Office (FEO), an organization whose main function is to provide information to the governor, the legislature, and citizens on energy efficiency issues. For example, in the 1992 legislative session, the FEO was moved from directly under the governor's office to the DCA, and its budget and staff were cut—moves that were seen by EEAGs as potentially weakening it.

In contrast, the executive branch of Florida government has become increasingly supportive of energy efficiency in recent years, especially with the November 1990 election of Governor Lawton Chiles (a Democrat who succeeded the former Republican governor) and Lt. Governor Buddy MacKay. This support is indicated by such events as the FEO's 1992 DSM study and the Power Plant Siting Board's 1993 action on the power plant licensing process—which are discussed in the next two sections—and recent PSC appointments, which are noted in the discussion of "Regulatory Environment."

The 1992 DSM study. Prompted in part by LEAF and Terry Black, a Pace lawyer who helped start the LEAF Energy Advocacy Program, FEO director Jim Tait initiated a statewide DSM study in early 1992 to assess the potential for DSM in Florida. The study was conducted by a consulting firm under the guidance of a steering committee that included the PSC staff, electric utilities, the Florida Office of Public Counsel (OPC), legislative staff, customer groups, and LEAF. The DSM study had three phases: a baseline assessment, to determine how Florida's energy conservation efforts compare with those of other states; an assessment of the technical potential for DSM in Florida; and an assessment of the achievable potential. The final report, which was issued in May 1993, is intended to ensure that DSM measures—including energy

conservation, load management, and cogeneration—receive equal consideration with supply-side options in considering Florida's future electricity needs.

The study was fairly well-received but not unqualifiedly endorsed. Because the figures for technical and achievable potential were based largely on the utilities' own estimates, some people were concerned that the report was slanted. In addition, some were concerned that the study, which was quite technical, left less technically-sophisticated participants behind. However, most see the study as useful: as having brought diverse parties together to work toward a common goal, as a reasonable compromise between the perspectives of environmentalists and utilities; and as a potentially helpful guideline for utilities when setting their conservation goals (discussed further under "Regulatory Environment"). But in setting those goals, the utilities will, in effect, need to redo this study, taking their individual loads and avoided cost into account.

The Power Plant Siting Board resolution. On October 20, 1992, the governor and the elected cabinet (sitting as the Power Plant Siting Board) adopted a resolution directing the Florida Department of Environmental Regulation (DER) to conduct a comprehensive analysis of whether changes in the existing power plant licensing process were needed. According to Florida's Power Plant Siting Act, proposals for new or expanded power plants were to be subject to need determination hearings. The act also directed that the need for a unit should be balanced with the environmental impacts resulting from its construction and operation. Since 1980, the licensing process has been split, with the PSC first determining need, the DER coordinating environmental review (taking into account relevant federal and national laws), and the Siting Board granting the permit. However, DER has desired to be involved earlier, before a utility's need for a particular type and size plant has been established by the PSC.

The first public hearing concerning the licensing process was held on November 23–24, 1992. Representatives of the utilities and the PSC favored the status quo, but representatives of the cogeneration industry wanted to change the process so that utilities would have to look more closely at the possibility of using cogeneration before building new plants. Three more sets of hearings were held during December 1992, dealing with nuclear power, air pollution, environmental externalities, and a summary of the entire hearing process. Most of the parties involved in the hearings apparently came away with a sense of accomplishment.

On July 1, 1993, the DER and the Department of Natural Resources were consolidated to form Florida's Department of Environmental Protection (DEP). The final report concerning the licensing process, *Comprehensive Review of the Florida Power Plant Licensing Process*, was released by the DEP on July 20. The DEP report included such recommendations as decoupling utility revenues from profits to promote energy conservation, taking DSM programs into consideration before new power plants are approved, allowing non-utility generators and energy service companies to compete with utilities to supply new resources, taking environmental factors into consideration much earlier in the process, streamlining the siting process by eliminating some unnecessary steps, and determining which fuels should be allowed in new plants. The report also states that the best possible solution is to minimize the need for electricity generation.

On August 12, 1993, the Power Plant Siting Board voted unanimously to adopt the DEP report and set in motion the process of forming a task force to consider how the recommendations should be carried out, including drafting implementing legislation and suggesting rules and policies for various agencies. According to at least one respondent, the resultant proposed legislation is biased toward non-utility generators. Furthermore, DSM is not addressed in the legislation; it is only addressed in resolution form. The Power Plant Siting Board will consider the recommendations of the task force in February 1994.

Economic Environment

Overall, Florida's economy is relatively strong compared with those of other states. Nevertheless, poor economic conditions are cited by some, especially industrial customers and their utilities, as an argument against increased DSM: they assert that increased rates would cause industries and jobs to leave the state.

Regulatory Environment

The PSC is composed of five commissioners. Each is proposed by the PSC Nominating Council (a nine-member body that narrows the applicant pool and nominates at least three names for each opening), appointed by the governor for a 4-year term, and confirmed by the senate. Historically, the PSC has supported the concept of energy efficiency but has not aggressively pursued DSM; currently, however, it appears to be more strongly pro-DSM.

The 1980s. In 1980, the PSC required electric utilities generating more than 500 GWh to adopt programs to meet the requirements of the newly enacted Florida Energy Efficiency and Conservation Act (FEECA). This act directed the PSC (1) to adopt overall energy conservation goals and encourage the use of renewable energy sources, highly efficient systems, cogeneration, and load control; and (2) to require each utility to develop plans and implement programs for increasing energy efficiency and conservation within its service area, subject to the approval of the PSC.

The early 1980s saw several moves by the PSC to enhance energy efficiency in Florida. In addition to promulgating rules in response to FEECA, the PSC initiated the Energy Conservation Loan Guarantee program in 1981. This program guaranteed that loans to residential customers for approved energy conservation measures would be repaid if the customer defaulted. An additional program, the Energy Conservation Loan Test, was initiated in 1986 to encourage wider participation in the loan guarantee program through a 4% interest subsidy on loans for residential energy efficiency improvements.

During the 1989 legislative session, the Florida legislature conducted a sunset review of FEECA. The renewed statute included provisions that encouraged cogeneration. In November 1989, the PSC issued an order directing electric utilities to submit new and updated conservation plans and programs in order to implement the legislative intent embodied in FEECA, as revised. The PSC subsequently approved most of the utilities' conservation program submittals.

In late December 1989, Florida experienced unprecedented cold weather that caused peak electrical demands to exceed then-available generating capacity. As a result, rotating blackouts were employed by some Florida utilities. In March 1990, in response to its investigation of the December blackouts, the PSC issued an order directing Florida's electric utilities to prepare a severe weather emergency plan. In December 1990, the PSC adopted the Florida Electrical Emergency Contingency Plan, which addresses actions to be taken by Florida electric utilities during a generating capacity shortage.

In October 1990, the PSC promulgated new rules relating to planning hearings on new power plants proposed by Florida electric utilities. Under the new rules, the PSC periodically reviews the generation needs of the individual utilities as well as those of the state as a whole, taking into account load forecasts, generation expansion planning studies, and cogeneration prices. In addition, the PSC adopted rules to encourage cogeneration by eliminating the risk factor previously used in calculating payments to qualifying facilities and by requiring utilities to offer qualifying facilities a levelized payment option.

Despite these initiatives, during the 1980s there was little concerted effort within the PSC to focus on energy efficiency measures. In fact, by the late 1980s, the numerical goals embodied in the December 1980 conservation goals rules had been replaced with non-quantitative goals. However, much has happened in the last few years to move the state toward more aggressive energy efficiency efforts. This shift is partly due to changes in the composition of the regulatory commission.

Recent developments. Four of the five PSC members are relatively new, having been appointed by Governor Chiles. Two commission seats are up for reappointment in January 1994. The commissioner who was not appointed by Chiles resigned from his position in September 1993, and the governor then sought a nominee to fill out the remainder of this term and start the new term in January. (Diane Kiesling was named by Governor Chiles to this position, but the seat is being contested in the Florida Supreme Court because of a controversy concerning the nominating process). The other commissioner, appointed by Chiles in 1992 to fill out an unexpired term, has been nominated for reappointment in January. As a whole, the PSC is becoming more focused on issues involving DSM and IRP, and one of the recently appointed commissioners is particularly interested in energy conservation. The new commission, while it is proceeding cautiously, seems to favor utility-sponsored energy efficiency measures and appears to be dissatisfied with the utilities' performance in this regard.

Nevertheless, some of the PSC's key staff—who primarily serve in an advisory role, although they do sometimes act as a party to cases—continue to be skeptical of the appropriateness of aggressive DSM. They contend that there are no good evaluation data supporting mechanisms such as decoupling and incentives, and they think the prior focus of the PSC on load management is largely sufficient. They also caution that before adopting aggressive DSM approaches, it should be determined who would be made better off and who worse off: customers should not be charged for energy efficiency programs if they do not or cannot participate in them. Some key staff are also opposed to environmental externality adders such

as those in the societal cost test, contending that externalities will be taken into account sufficiently if the DEP is allowed to select the fuel type for new power plants. For reasons such as these, some key PSC staff are arguing against DSM that fails the rate impact measure (RIM) test. (According to one respondent, LEAF is trying to persuade the PSC to order its staff not to advocate the RIM test in their speaking engagements.) Apparently, however, a contingent within the PSC, particularly within its legal division, is somewhat more favorably disposed toward aggressive DSM.

To date, the utilities have focused mostly on load management programs and have tended to avoid utility-based energy efficiency programs. The PSC has rarely denied or altered proposed DSM programs, nor has it required additional programs. However, new rules on the conservation goals required by FEECA were recently promulgated, which could have an effect on utility DSM.

PSC hearings on the new conservation goals rules were held in mid-December 1992. The rules, which were adopted in April 1993, require each utility to submit a proposal for numerical goals for energy savings and demand reduction. (Utilities will submit proposals to the PSC in March 1994, and the commission will conduct hearings on the proposals in June 1994. A commission decision is scheduled for late August.) Once a utility's proposal is approved by the PSC, it must, within 90 days, propose specific programs to reach its goals. After a utility's goals and programs have been approved, it must annually report the results of its implementation efforts to the PSC. In preparation for this effort, PSC staff held a workshop on October 20, 1993, to discuss possible programs. Though the new conservation goals rules are seen as a positive step by most Florida EEAGs, some are concerned about the difficulty of monitoring the actual savings achieved by the utilities. Furthermore, some are concerned that the goals do not encourage the adoption of IRP. (On this point, PSC staff have indicated that while they are interested in IRP, they feel that it should include natural gas substitution as part of the planning.)

One important issue confronting the PSC is the relative importance of the RIM test and the TRC test in determining whether a DSM program is cost-effective. As noted, some key PSC staff prefer RIM. While the PSC has not repudiated RIM, since the development of the new conservation goals rules, the commission has required the utilities to submit evaluation data using not only RIM but also TRC and the participants test when proposing DSM programs. The commission will review the results of all three tests to determine cost effectiveness. Previously, the PSC had allowed utilities to screen DSM programs using only RIM.

To a large extent, the PSC is currently in a wait-and-see mode. Having promulgated the new conservation goals rules, they are waiting to see utility conservation goals proposals. At that time, the PSC will also consider the issue of decoupling, incentives, and IRP for electric utilities other than FPC, whose proposals are currently under review.

Utility Environment

Florida's four largest investor-owned electric utilities are Florida Power and Light Company (FP&L), FPC, Tampa Electric Company (TECo), and Gulf Power Corporation. At present, FPC seems the most open to the possibility of changing the way it addresses DSM, although all the utilities are being required to address the issue further through their conservation goals.

FP&L serves about 3.2 million customers, with annual electric sales of approximately 67,645 GWh producing annual revenues of approximately \$5.1 billion, and has a peak generating capacity of approximately 13,757 MW. FP&L has become cautious financially as a result of a fairly recent change to more conservative top management. The company sees itself as doing all that is feasible and cost-effective on DSM, especially given its reluctance—in light of competition from natural gas and cogeneration—to raise rates. FP&L has been relatively distant with LEAF and opposed LEAF's involvement in its October 1992 need determination case. As discussed in Section III, its request to build two 416-MW coal-fired units was turned down by the PSC.

FPC serves an average of 1.1 million customers, with annual electric sales of approximately 27,000 GWh producing annual revenues of approximately \$1.7 billion, and has a net winter system peak load of approximately 6,623 MW. FPC's CEO was formerly in charge of the utility's DSM programs, but FPC, like other Florida utilities, focuses more heavily on load management than on net demand reduction. FPC has been a strong advocate of RIM, partly because, given current regulatory policies, it has not been financially advantageous to pursue energy efficiency programs aggressively. This may change if the PSC approves FPC's recent decoupling and incentives proposals.

TECo serves about 467,000 customers, with annual electric sales of approximately 13,500 GWh producing annual revenues of approximately \$1 billion, and has a total net generating capacity of approximately 3,275 MW. According to some people, TECo has had one of the most lackluster energy conservation records of the Florida utilities and has lobbied the most aggressively against utility-sponsored energy efficiency programs. TECo's holdings in the coal mining and transportation industries contribute to this position; in addition, it has lost revenue to cogeneration and does not want to lose more to conservation. (There are a large number of phosphate mines and chemical industries in TECo's service area. When rates rose, these industries began to adopt cogeneration.) But TECo, like FPC, is being required by the PSC to look further at its conservation possibilities as an outcome of recent need determination cases. (In early 1992, the PSC approved TECo's 1991 request to build a 220-MW integrated coal gasification combined-cycle power plant, and it approved two of the four new gas combined-cycle power units requested by FPC in 1991. However, both utilities were required to file new DSM plans 1 year prior to their next needs petition.)

Gulf Power serves about 300,000 customers, with annual electric sales of approximately 9,500 GWh producing annual revenues of approximately \$535 million, and has a system peak load of approximately 2,173 MW. Gulf Power is concerned that it remain competitive with

natural gas; it thus is not inclined to raise rates to cover more DSM programs. In addition, Gulf Power lost 20% of its sales when the Monsanto Corporation went off the utility's system in August 1993 and began its own generation using natural gas. Excess capacity is being sold to Gulf Power, and Monsanto projects that it will save \$10 million annually on its electric bill.

While the four utilities have somewhat different interests and corporate personalities, they share similar views. Most think that they have a reasonably good working relationship with the PSC. Most are not keen on the idea of a formal interactive arrangement with EEAGs, especially if it entails giving funds to those groups. And most of the utilities have mixed feelings at best about both the perspectives and adversarial tactics of groups such as LEAF. In particular, although all of the utilities have a variety of DSM programs—residential and commercial as well as industrial—all are firm believers in the RIM test, and they see EEAGs as promoting DSM that is not cost-effective.

At present, only FPC has sought decoupling and incentives arrangements, and without such arrangements, most of the utilities emphasize load management rather than a reduction in total energy consumption. Load management is all the more important because Florida's electricity usage is still growing fairly rapidly: most of the utilities project approximately 2 to 3% growth annually in both peak capacity and energy use.

Other Key Groups

The Office of Public Counsel. The OPC, a state consumer advocacy agency, plays a significant role as an intervenor in rate cases. However, it has stayed out of controversies over cost-effectiveness tests, energy efficiency measures, and plant sitings. Instead, OPC is interested primarily in maintaining reasonable rates for all ratepayers—the industrial sector as well as the commercial and residential sectors. Some utilities have approached OPC staff and encouraged them to support the RIM test. While OPC staff are determined to avoid taking an official stance on that issue, they generally prefer the RIM test because they believe it keeps rates lower for consumers. OPC staff also question whether decoupling mechanisms must be accompanied by incentives mechanisms, and they fear that such mechanisms would allow the utilities to earn more than the allowable rates of return.

Ratepayer groups. To date in Florida, the industrial sector has adopted the most significant energy efficiency measures, yet this sector is the most resistant to expanded DSM programs. According to the Florida Industrial Power Users Group (FIPUG), an organization that represents large industries in many PSC cases, Florida industries believe that decoupling and aggressive DSM would lead to rate increases. They argue that to keep their businesses financially viable, they have done what they could on demand management—mainly through cogeneration—and do not want their rates increased to pay for DSM for other sectors. To keep their rates low, industrial customers favor the RIM test. FIPUG also argues that those who sell electricity should not be implementing electricity-saving measures for their customers, and that consumer education is needed instead. The industrial sector is also represented by the Associated Industries

of Florida, which does not act as a party to rate cases but has appeared before the governor and the cabinet to argue against aggressive DSM.

In the residential sector (which constitutes a relatively large portion of Florida's total electricity usage), there have not been comparably organized efforts concerning utility rates and programs, although some members of that sector—especially retirees—are concerned about their utility bills. However, because new rates do not usually go into effect until mild seasons, residential customers may not notice the impact of higher rates. Commercial customers also appear to be largely unaware of their energy efficiency potential (perhaps because their electricity costs are often included in their rents), even though some EEAGs think the greatest potential for DSM programs is in the commercial sector. Apart from the OPC, which seeks to be neutral concerning the rate classes, residential and commercial users are represented by EEAGs.

Energy efficiency advocacy groups. In addition to the LEAF Energy Advocacy Program, other advocacy groups have directed a significant amount of effort toward energy conservation since 1990. In particular, those active have been the Florida Public Interest Research Group (FPIRG), the Florida Solar Energy Industries Association, the Florida Consumer Action Network (FCAN), and the Florida chapter of the American Planning Association (APA). The newest organization to become involved in energy efficiency issues is the Project for an Energy Efficient Florida—an ad hoc coalition of 350 individuals and organizations that have formed an extensive network for gathering and sharing information regarding energy conservation and power plant siting issues in Florida, including PSC and service territory hearings.

Unlike LEAF, the other EEAGs tend to steer clear of regulatory involvement, although some do appear before the PSC. (For example, FCAN has intervened in rate cases, and FPIRG and APA have been involved in some need determination cases.) Mostly, however, these groups concentrate on providing policymakers and others with information, technical support, educational materials, and assistance in strategic planning and coordination of services. They have sought to influence legislators, the governor, and the governor's cabinet through lobbying, grassroots education, and news media interactions. (Although the news media have been interested in energy issues, their views have not always been in concert with those of EEAGs. Various groups, including LEAF, have met with editorial boards and have also sought to inform reporters at the daily papers and local television and radio stations.)

The EEAGs have been criticized, especially by PSC staff, for lacking technical expertise and hard data on how increased energy efficiency would affect Florida economically, although the advocacy groups see the statewide DSM study as filling that gap. In addition, their missions may in some instances be perceived as self-interested: for example, the Florida Solar Energy Industries Association wants to promote the sale of solar devices. However, the EEAGs apparently do have allies within the PSC and the utilities. It appears that, in particular, the APA and Project for an Energy Efficient Florida have good working relationships with both the PSC and the utilities. This is most likely due to their focus on education and lobbying, which are not

as threatening to the PSC's authority and the utilities' strategic needs as regulatory intervention and litigation.

III. KEY DSM/IRP INITIATIVES OF LEAF

Background

Inception. The Pace Energy Project (PEP), which is part of the Pace University School of Law's Center for Environmental Legal Studies, was one of the groups that various organizations (e.g., the Surdna Foundation, the Energy Foundation, The Pew Charitable Trusts) called together in early 1991 to develop a national strategy for energy conservation and to assist nascent organizations in developing energy efficiency advocacy efforts. Richard Ottinger of PEP talked with various people in Florida about the legal and coalition-building aspects of energy efficiency advocacy, and in July 1991, PEP decided to recommend LEAF as a spearhead for energy efficiency advocacy in Florida. Most of LEAF's prior advocacy efforts had focused on the prevention and abatement of water, land, and air pollution.

In September 1991, Ottinger testified at a hearing of the Florida House of Representatives Subcommittee on Public Utilities with respect to DSM programs and their potential importance to Florida. Also in the fall of 1991, LEAF submitted its Energy Advocacy Program proposal to The Pew Charitable Trusts requesting program support funds. Pew agreed to give LEAF \$212,000 for a 2-year period, beginning December 1991. This support accounts for about 80% of the program's budget; additional funding comes from the Energy Foundation and the Surdna Foundation. (Recently, LEAF staff submitted a proposal for 1994-95 funding to Pew.) The program's first director was Don Hale, a utility analyst formerly with OPC. The program is now run by two staff attorneys—Ross Burnaman (full time) and Debra Swim (part time)—with assistance from a part-time paralegal. Hale is still involved to some extent and is a member of LEAF's board of advisors. In addition, since the program's inception, Terry Black of PEP has provided guidance and legal help, and Richard Ottinger serves on LEAF's board of directors.

Black, a lawyer who currently spends about 40 to 50% of his time on Florida issues (down from 75% a year ago), was the chief litigator in the FPC need determination case, has worked on the FP&L case, has advised the Energy Advocacy Program on some of its other cases, and helped initiate the statewide DSM study. He has worked closely with FPC on its decoupling and incentives dockets. PEP also has funded consultants for the cases discussed later, because LEAF had limited funds for consultants in 1992. Initially, the utilities apparently tried to discredit PEP and LEAF, labeling PEP staff as carpetbaggers who were attempting to push their policies on Florida. However, this charge has not been made lately.

Since its inception, most of LEAF's Energy Advocacy Program activities have been focused on intervention in regulatory proceedings. LEAF believes that, to put DSM on an equal footing with power plant construction, it is necessary to get the attention of the utilities and the PSC with intervention and litigation. (LEAF has, however, offered to set up collaboratives with all

of the utilities.) To date, Energy Advocacy Program intervention efforts have been directed toward need determination cases and rate cases. However, LEAF staff also have been actively involved in the various workshops and hearings put on by the PSC, as well as the DER hearings on the power plant licensing process.

Need determination cases. In August 1991, FPC sought a determination of need for four new gas combined-cycle power units, which would provide an additional 940 MW by the end of the decade. FPC claimed that these units would be needed in addition to all of the cost-effective DSM available to the utility and that building the units would be its least-cost option for meeting future power supply needs. Around the same time, TECo filed a petition for determination of its need in 1996 for a new 220-MW integrated coal gasification combined-cycle power plant. TECo's need determination study indicated that the utility planned to offset only a small portion of expected electricity use in the 1990s with energy savings (only 1.3% of estimated total energy sales by 1996).

Because of the perceived urgency of these situations, LEAF decided to become involved immediately, even though funding had not yet been received for its Energy Advocacy Program and staff had not yet been hired. LEAF and other EEAGs (FPIRG and APA) filed a motion to intervene before the PSC in the FPC need determination case. A similar motion was filed for the TECo case. Terry Black was granted permission to intervene on behalf of LEAF in these cases. As noted, the PSC subsequently issued an order authorizing the construction of two of the four units requested by FPC, and also issued an order permitting TECo to build its 220-MW plant. However, it required both utilities to substantiate future need determination requests with prior conservation plan filings.

In March 1992, LEAF filed motions for reconsideration of both the FPC and the TECo need determination cases. In May 1992, the PSC denied these motions. LEAF staff did not appeal the PSC denial of the motion for reconsideration of the FPC case, because they did not wish to alienate FPC from working together on the utility's pending rate case (discussed later). However, LEAF appealed the TECo case to the Florida Supreme Court. (LEAF did offer TECo, as an alternative, a collaborative effort to design DSM programs, but TECo rejected LEAF's offer.) The court heard oral argument on LEAF's appeal in April 1993, but in July rejected the appeal, stating that the PSC acted properly in interpreting its own rules regarding the need for conservation and the definition of cost-effectiveness. (Because the Florida Supreme Court does not reweigh evidence—instead, only determining whether affected parties have had adequate opportunity to present evidence—appeals such as LEAF's have less likelihood of prevailing.)

In May 1992, FP&L and Cypress Energy Partners sought a determination of need for two 416-MW pulverized coal-fired power units. LEAF petitioned to intervene, and the need determination hearing was held in August 1992 with eight EEAGs present, including LEAF. In October 1992, the PSC issued an order denying the two units. Cypress Energy Partners appealed the commission's order to the Florida Supreme Court in March 1993, and LEAF filed a cross-appeal arguing DSM was not adequately explored. However, since then the region's population growth has taken a sharp downturn. This development, together with some newly available

energy sources, has temporarily deferred the need for additional capacity, and Cypress Energy Partners has withdrawn its appeal. The LEAF appeal is still pending.

Rate cases. LEAF has also been active in rate case proceedings, especially one involving FPC. In 1988, the PSC reduced FPC's total amount charged to customers by \$121.5 million. In February 1992, FPC requested rate increases amounting to \$145.9 million. LEAF filed discovery with FPC to generate information needed for testimony, and then raised issues related to the utility's energy conservation efforts. Two witnesses appearing on behalf of LEAF—John Stutz of Tellus and Daniel Kirshner of the Environmental Defense Fund—addressed the need for regulatory reforms to remove the disincentives to conservation through measures such as decoupling, incentives, and shared savings. This laid the groundwork for interaction between FPC and LEAF on decoupling and incentives.

In September 1992, the PSC indicated that FPC could file decoupling and incentives proposals within 60 days of the commission's order on the rate case. One month later, the PSC issued an order granting FPC an \$85.7 million rate increase to be implemented in three phases beginning in November 1992. In addition, the PSC reduced FPC's current rate of return on shareholder equity from 12.6% to 12%. Because of a delay in the final order of the rate case, FPC did not file decoupling and incentives proposals until April 1993, at which time dockets on the proposals were opened. (LEAF staff were not involved in drafting the proposals, though they did, and still do, share information with FPC—mostly through Terry Black—on issues of decoupling and energy efficiency.) Informal workshops on decoupling and incentives were held in September 1993 (those attending included PSC staff, FPC, the other utilities, FIPUG, and LEAF), and the commission will hold a hearing in January 1994.

FPC apparently has a good working relationship with LEAF, and especially with Terry Black, who continues to work with them on energy issues. However, it is not clear if FPC's willingness to work with LEAF is due to a genuine desire for increased energy efficiency or to a strategic need to appease LEAF. Those at LEAF are optimistic about FPC's desire to implement more DSM, but some PSC staff think the utility is only trying to get LEAF off its back.

Other LEAF initiatives in 1992. By providing relevant information to lobbyists, LEAF's Energy Advocacy Program staff sought to deter efforts in the state legislature which would dismantle FEO and restrict the promotion of energy conservation in Florida. LEAF was joined in this effort by APA. LEAF also met with key officials at OPC concerning the FPC rate case, and LEAF met with various PSC staff concerning LEAF's views on energy efficiency, decoupling, and cost-effectiveness tests. In addition, LEAF was represented on the steering committee of the statewide DSM study, and LEAF also helped to prompt PSC to reconsider its conservation goals rules.

LEAF was also instrumental in the Power Plant Siting Board's decision to review the power plant licensing process: in September 1992, LEAF staff had approached the Education Commissioner (a member of the Siting Board) on environmental externalities and the power

plant licensing process, and their draft resolution helped to shape the Siting Board's subsequent resolution on October 20. Moreover, LEAF was represented on the task force established in August 1993 by the Power Plant Siting Board. The task force was charged with proposing means to implement the recommendations of the DEP report on the power plant licensing process. Although the LEAF representative did not support the task force's proposed legislation because DSM was not emphasized, LEAF is urging the cabinet to adopt policies to implement the DEP recommendations.

Current DSM/IRP Initiatives

During 1992, a number of hot issues related to energy conservation were being dealt with in Florida (e.g., the need determination cases, the statewide DSM study, the decoupling and incentives concepts, the power plant licensing process, the changes in the conservation goals rules). Many of these issues either are pending or have been resolved—for the time being, at least. Thus, during 1993 the focus of LEAF's Energy Advocacy Program shifted somewhat, as did its staffing. Although Terry Black remains involved to some extent and Don Hale continues to serve on the LEAF board of advisors, the bulk of the program efforts now falls on Ross Burnaman and Debra Swim.

A survey conducted by LEAF in late 1992 found that none of the utilities had programs targeted toward helping the low-income residential sector overcome barriers to participation in energy efficiency programs. In early 1993, LEAF began providing assistance to Florida Legal Services, to improve that group's ability to engage in PSC issues pertaining to low-income citizens. LEAF has been helping the group by conducting training sessions for its staff, by familiarizing them with DSM issues and opportunities for low-income customer participation in regulatory reform, and by assisting the group in applying for grants to finance its efforts to improve the accessibility of DSM programs to the low-income sector. LEAF also intends to promote consideration of low-income sector energy conservation needs in PSC regulatory proceedings by proposing goals and means for low-income participation in DSM programs; by seeking that utilities be required to adopt programs targeted toward low-income customers; and by advocating experimental rate designs, such as lifeline rates, and DSM cost recovery mechanisms that keep DSM investments from adversely affecting low-income customers' rates.

In other efforts, LEAF has not given up on trying to deter construction of TECo's 260-MW integrated coal gasification plant. Because TECo is receiving \$120 million from the U.S. Department of Energy for the project, an environmental impact statement (EIS) is required. In anticipation of the draft EIS, LEAF has submitted comments to the U.S. Environmental Protection Agency, citing the PSC's recently adopted conservation goals rule and the statewide DSM study as a part of its argument that TECo could better meet its capacity needs through energy efficiency.

In the spring of 1993, LEAF was given the opportunity to comment on DCA's draft strategic plan. In its comments, LEAF, which is represented on the DCA Secretary's Energy Policy Advisory Committee, noted that DCA had not yet reacted to DEP's proposed report on

the power plant licensing process. DCA subsequently did so, encouraging the DEP to give greater consideration to utility use of energy efficiency and renewable energy sources, and to environmental externalities when making power plant licensing decisions.

In July 1993, LEAF was involved in PSC hearings concerning Gulf Power's Clean Air Act compliance plan, and argued that the company did not consider DSM options sufficiently. LEAF also objected to the RIM test used by Gulf Power to screen DSM programs. LEAF contended first, that the argument that low rates are in the public interest must be balanced with a recognition that consideration of environmental externalities is also in the public interest; and second, that DSM is often a better solution to environmental externalities than are pollution control devices. In a related proceeding LEAF pointed out that Gulf Power's filing for Clean Air Act compliance cost was for costs incurred before the date stipulated in the legislation.

Outcomes

Need determination and rate cases. The need determination cases undertaken during 1991 and 1992 had mixed results. As discussed earlier, the PSC made a determination of need for some but not all of the units requested by various utilities, and it also made clear that DSM plans are a prerequisite to further need determinations.

Key policy issues. A number of key policy issues have arisen in Florida over the past 2 years: conservation goals, cost-effectiveness tests for screening DSM programs, decoupling, incentives, power plant licensing, and utility plans to achieve Clean Air Act compliance. None of these issues is as yet fully resolved; a year from now, all may be clearer, and their impacts on DSM better understood.

The new conservation goals rules promulgated by the PSC in March 1993 require utilities to submit proposals for numerical energy conservation goals and for programs to achieve those goals. But the March 1993 rules were procedural only; their real results will not be seen until at least a year later, when the PSC begins reviewing the utility proposals. In promulgating its conservation goals rules, the PSC made a tentative shift away from the RIM test espoused by utilities, their industrial customers, OPC staff, and some key PSC staff: it required that utilities also consider the TRC test and participants test, but it did not insist that the RIM test be abandoned. Some believe the utilities will submit only those programs that pass the RIM test, and LEAF continues to argue against the utilities' preempting the PSC's ability to review the results of all three tests. It is still uncertain whether the PSC will tilt away from RIM in considering the utilities' plans to implement their conservation goals.

Decoupling and incentives mechanisms are also issues that remain both controversial and unresolved. The FPC rate case resulted in the utility's willingness to submit decoupling and incentives proposals to the PSC, but some believe that those proposals may not have been serious and sincere efforts by the FPC. PSC staff argued that FPC's proposed decoupling experiment should be postponed until after a decision is made on the RIM versus TRC issue pursuant to the conservation goals hearing in June 1994, and FPC has agreed that the decoupling

experiment should be delayed. According to some observers, FPC's proposals may have been largely symbolic. Others have suggested that FPC, aware that the commission is more likely to approve a utility proposal if it has the support of an EEAG, may be using LEAF for its own ends: to attain a means to stabilize rate fluctuations due to weather and economic conditions rather than to implement DSM aggressively. It remains to be seen whether the decoupling and incentives proposals will be accepted by the PSC. Approval of those proposals or similar concepts may be more likely, however, given the recent actions of the Power Plant Siting Board.

In its August 1993 endorsement of the recommendations in the DEP report concerning the power plant licensing process, the governor and the cabinet—acting as the Siting Board—put their support behind such concepts as decoupling, considering DSM before approval of need determination, allowing energy service corporations to compete with utilities and non-utility generators in the bidding process to meet capacity needs, and considering environmental factors earlier in the licensing process. As discussed previously, the Board set up a task force to develop policies to implement these concepts, but the task force's recommended approaches apparently do not strongly promote DSM.

Finally, in an action suggesting that the PSC is by no means fully convinced that DSM is imperative, it approved the Gulf Power Clean Air Act compliance plan in August 1993. The Gulf Power plan included using low nitrogen oxide burners and burning low sulfur coal, but it did not include increased DSM. (LEAF immediately filed a motion for reconsideration, but this was rejected by the PSC. A LEAF appeal to the Florida Supreme Court is expected.)

According to some PSC staff, much of the commission's time and energy has been taken up with the issue of cost-effectiveness tests, and they add that LEAF's focus on this issue has led to confusion and stagnation and has impeded clear policy development by the commission. However, some observers say that problems with regulatory policy development rest with the commission itself, especially with its tendency to look at issues and cases on a piecemeal basis rather than with a view toward broad policies.

Satisfaction of LEAF's objectives. LEAF Energy Advocacy Program staff believe they have exceeded many of their initial objectives more quickly than they had anticipated. They think that their efforts to intervene and to demonstrate to the utilities, the PSC, and others their commitment to energy efficiency issues, together with their knowledge of and strict interpretation of the law, have enabled them to gain negotiating power on issues before the PSC. Accordingly, one of their ongoing activities is to revise and update their strategic plan, with new objectives based on the achievements already attained.

Changes in relationships among key players. LEAF's increased influence has had the effect of prompting opposing intervenors such as FIPUG to increase their efforts. But LEAF's involvement in energy conservation advocacy has also strengthened the efforts of other like-minded groups: these groups now have a stronger coalition, more recognized by the PSC and more able to do education, outreach, and lobbying. In addition, LEAF activities may have had the side-effect of increasing utility consultation with OPC, as they seek advice on how to

anticipate the EEAGs' demands. OPC, although it disagrees with LEAF on some issues, has a fair amount of respect for LEAF staff. Similarly, LEAF's presence, while irritating to the PSC staff at times, has forced that staff to deal with new sources of input.

Future Prospects

As noted above, many policy issues concerning utility regulation are now uncertain, and it is difficult to predict what their resolution will be. If Governor Chiles is reelected in November of 1994, then the make-up of the commission will probably not change significantly. The present commissioners thus would have more time to develop their policies into a coherent whole. Nevertheless, while it appears that their policies will be more pro-DSM than the PSC's were in the 1980s, it is still not fully clear what tack they will take. For example, those at FCAN believe that because of the complexity of the environmental externalities issue and opposition from the PSC staff and the industrial sector, significant changes will not occur in the utilities' planning decisions for several years.

With regard to interactive efforts, various possibilities are opening up in Florida. At present, most of them are quite informal: for example, workshops have been held by the PSC on decoupling and incentives, and on the utilities' process of setting conservation goals. The latter, especially, could lead to more formal interactive efforts between EEAGs and utilities on their future goals and plans, but only if the utilities are receptive to this possibility. At present, it is difficult to determine whether they will be. On the one hand, FPC's disinclination a year ago to establish a formal collaborative with LEAF in the development of its decoupling and incentives proposals suggests that even utilities with fairly good relationships with LEAF prefer to keep their distance. On the other hand, LEAF's persistence in regulatory intervention and litigation has led it to be regarded as a fairly important player in utility regulation, and utilities may decide that it would be prudent to find a basis for cooperation with LEAF and its allies rather than get into protracted conflict.

IV. CONCLUSIONS

Recommendations of Respondents

Respondents offered a number of different types of recommendations regarding the activities of EEAGs such as LEAF.

Strategic planning. LEAF strongly recommended strategic plan development for any organization attempting an energy conservation advocacy effort. One of the problems encountered by those doing public interest law is that they get side-tracked by "putting out fires." While flexibility and seizing the opportunity are important, attempting to deal with every issue that comes along can distract an organization from its long-range purpose and goals. By developing a strategic plan and linking all issues back to the plan, a group can remain focused on the big picture.

Education. Education, including self-education, was considered essential by EEAGs as well as by others. Advocacy groups recommended that education efforts focus on all those involved in the regulatory process: utilities, the regulatory agency, other state agencies, the news media, and the public, as well as advocacy groups themselves. The most important part of educating others, they argued, is to educate oneself first. A lot of time must go into learning about the issues surrounding electric utility regulation and energy efficiency before a group can deal with and educate others, but, in the long run, the payoff is big.

Resources. EEAGs emphasized the need for significant resources to sustain their efforts. Outside support through both funding and expertise is seen by LEAF staff and other groups as essential. LEAF has access to more resources than any of the other EEAGs in Florida, and its high level of activity in the regulatory arena is viewed as crucial by the other advocacy groups.

Insider contacts. EEAGs also stressed the importance of having people on staff with contacts at the PSC and utilities. There is sometimes much resistance to advocacy groups, especially by those in the utility and regulatory environments who have been working together closely for years and may be suspicious of newcomers. In this regard, LEAF's Energy Advocacy Program was aided during its start-up period by the fact that its program director knew the key players, even though he previously had not worked extensively on energy conservation issues.

National networking and state-specific data. EEAGs recommended learning lessons from other states and emphasized drawing upon the landmark achievements of those states when trying to promote energy efficiency in Florida. However, government officials, who view LEAF and other DSM proponents as importing data and solutions from other regions, called for state-specific data. Part of the reason for the statewide DSM study was to respond to this call. PSC staff have also asserted that empirical evidence is needed to show that approaches such as the TRC test, decoupling, and incentives are appropriate and beneficial. They want advocacy groups to produce persuasive economic figures rather than making ideological arguments for conservation. In addition, they think Florida-based consultants should be hired, not outsiders who are insufficiently informed on how Florida's peninsular geography, tropical climate, and hurricanes affect its energy picture.

Intervention. EEAGs emphasized the need to stay active in regulatory intervention to gain the attention and respect of other players, especially the utilities and the regulatory agency. Well-argued regulatory intervention and litigation can help advocacy groups convince others that they mean business. Nevertheless, some utility officials contended that while litigation may be effective in the short run, it promotes an adversarial climate that is antithetical to interactive efforts. A spirit of compromise may also be needed.

Our Observations and Recommendations

For the past 3 years, EEAGs such as LEAF have been working hard to promote energy efficiency in Florida. The long-term results of their efforts remain to be seen, but they have made a good start.

Because the current regulatory environment in Florida does not make energy efficiency programs a financially attractive option for utilities, they continue to focus mainly on load management. To date, this approach has been acceptable to the PSC. The PSC must revise its position on the crucial issue of cost-effectiveness tests for screening utility DSM programs before significant changes in those programs will take place. LEAF's ability to shape this and other DSM issues remains uncertain. But, although some key PSC staff are cautious about striking out in new directions and regard LEAF as a mouthpiece for imported views, the commission, as it is evolving, appears to think differently.

Most people agree that LEAF efforts have been instrumental in bringing energy efficiency issues to the forefront in the regulatory arena. Absent LEAF's intervention, it is possible that the PSC would have allowed utilities to continue as they had in the 1980s, without aggressively pursuing utility-sponsored energy efficiency measures. As things now stand, the PSC appears to be moving toward policies more favorable to DSM—partly because of the commission's new makeup and partly because of the current state administration's interest in energy and environmental concerns, but also because of the combined efforts of Florida's EEAGs. An important ingredient to their success has been LEAF's work on regulatory issues, and this work would not have been possible without extensive outside funding and support.

Developing a mission, a coalition, and vocal constituencies. After their first few years of effort, the EEAGs appear to have a fairly well-defined vision of their purpose and their respective roles in achieving that purpose, and they have amassed vital experience that should help them in years to come. They have achieved recognition in the state, and LEAF is now widely (although not universally) respected for its efforts in the regulatory arena. The coalition of EEAGs is a key strength, especially insofar as it enables them, collectively, to undertake a variety of strategies: lobbying and grassroots education and mobilization as well as regulatory intervention. Without evidence that they speak on behalf of a number of ratepayers and without behind-the-scenes influence in state government, they could easily be dismissed as cranks: as impassioned ideologues who represent only themselves. While the law can be a powerful tool, it is also a malleable one. Utility regulation, like other forms of public policy, is inherently political.

Balancing adversarial tactics with cooperation. Many of LEAF's early efforts focused on adversarial proceedings in rate cases and need determination cases. However, over the past year more opportunities have arisen for other, less confrontational exchanges. The potential for interaction among groups was enhanced by the DSM study, because it gave those involved an opportunity to work together on an extended, cooperative effort. Since the genesis of that study, a variety of events have taken place (e.g., hearings and workshops on the power plant licensing process, the conservation goals rules, decoupling, incentives, and environmental cost recovery) that have allowed the PSC, utilities, and other groups to interact. These forums have enabled interested parties to raise concerns and exchange ideas informally. Although they can be quite time-consuming, they can also have positive results.

But the utilities are not eager to have others involved in specific utility decisions, and the PSC has not yet committed itself to strongly pro-DSM policies. Thus, LEAF continues to believe that regulatory intervention is important and necessary. It is, but it is a tactic that should be used judiciously, as LEAF appears to recognize.

Granted, adversarial efforts are often necessary to open the door and gain recognition as real players. And granted, some interactive opportunities have been enabled by initially adversarial tactics: for example, the PSC review of its conservation goals rules was prompted in part by LEAF's contention that the previous rules were invalid. Similarly, FPC proposals for decoupling and incentives mechanisms may have resulted not only from FPC staff talking with LEAF staff and consultants about these mechanisms, but also from LEAF intervention in the FPC rate and need determination cases. As a counterexample, however, LEAF did not adopt adversarial tactics concerning the power plant licensing process; instead, it approached a member of the governor's cabinet and successfully urged review of that process.

For LEAF to sustain effective approaches to advocating energy efficiency, it must continue to balance its adversarial efforts with attention to other efforts. And it appears to be doing so: although the Florida utilities have not yet entered into formal collaborative arrangements with LEAF or any other EEAG, there have been constructive dialogues, especially with FPC. It appears that LEAF and the other Florida EEAGs are taking advantage of nonconfrontational interactive opportunities, both within and outside the regulatory arena, and it is vital that they continue to do so.

Addressing multiple issues. As noted earlier, some key PSC staff believe that LEAF's single-minded focus on eliminating the RIM test has led the commission to become bogged down in this issue. This charge may not be completely accurate: it disregards LEAF's efforts in other regards, and it disregards the possibility that the commission also thinks RIM is a watershed issue. However, it does suggest the importance, to LEAF and the other EEAGs, of tackling a number of different issues using a number of different strategies. For example, OPC staff have noted that a better system for measuring utility energy conservation efforts is needed, especially with the utilities' prospective energy conservation goals: good program evaluation techniques are necessary to make sure that the goals are feasible and, later, that they are being met. This is an issue that could be pursued by LEAF and others regardless of the cost-effectiveness test currently in use—as are a number of other issues, such as the special low-income programs that LEAF is currently pursuing.

The LEAF Energy Advocacy Program seems well-positioned to help promote more thoughtful and thorough cost-effective DSM by Florida utilities—partly because the political climate for DSM has improved in the last 3 years, but also because of the efforts of LEAF and like-minded groups. The next few years should be revealing.

RESPONDENTS

Utilities

Duncan Buzhardt	Gulf Power, Chief Economist
Jerry Kordecki	TECo, Assistant Director of Power and Resource Planning
Tom Ruthig	FP&L, Principal Analyst
Shahla Speck	FPC, Marketing Development Engineer

Energy efficiency advocacy groups

Monte Belote	FCAN, Executive Director
Terry Black	Pace Center for Environmental Legal Studies
Ross Burnaman	LEAF, Energy Advocacy Program Attorney
Don Hale	LEAF, former Energy Advocacy Program Director
B. Suzi Rule	LEAF, President
Debra Swim	LEAF, Energy Advocacy Program Attorney
Steve Warn	APA, Energy Policy Analyst

Industrial representative

John McWhirter	FIPUG's Attorney
----------------	------------------

Government agencies

Roger Howe	OPC, Deputy Public Counsel
Joe Jenkins	PSC, Director, Division of Electric and Gas
Steve Stewart	OPC, Analyst
Jim Tait	FEO, Director

6. NEW ORLEANS COLLABORATIVE AND ALLIANCE FOR AFFORDABLE ENERGY ACTIVITIES TO INFLUENCE DSM

SUMMARY

New Orleans is served by two utilities—New Orleans Public Service, Inc. (NOPSI) and Louisiana Power and Light (LP&L)—both subsidiaries of the Entergy Corporation. The New Orleans City Council regulates the business of these utilities within the New Orleans service area. Another important party involved in energy issues in New Orleans and the surrounding region is the Alliance for Affordable Energy (the Alliance), an environmental/energy conservation advocacy group that has worked to influence utility and regulatory policies since the mid-1980s. In combination, NOPSI/LP&L, the Alliance, the City Council's Utilities Regulatory Office, and a number of other NUPs have been involved since mid-1991 in a collaborative effort to address key IRP/DSM issues in New Orleans. The Alliance also has initiated various types of activities over the years (e.g., introduction of legislation, intervention in regulatory proceedings, litigation in court cases, education, outreach) that are designed to influence utility/regulator policies and actions.

The Alliance initiative that has had the clearest direct effect on regulatory and utility policies and actions is its work on behalf of least-cost planning (LCP) legislation in New Orleans. Challenges to the utility's proposed 18% gas rate hike also have had some dramatic results, but the Alliance's influence on the outcome is less clear. The three-way settlement of an Alliance lawsuit related to disallowing NOPSI's Grand Gulf costs probably affected the city's ratepayers, but the nature of those effects is seen very differently by the different parties involved. Other Alliance activities seem to have strengthened its support among some community members, but its aggressive style of intervention, litigation, and public statements seems to have seriously alienated some City Council members and may have strained relations with the utilities as well.

The New Orleans Collaborative Working Groups on Least-Cost Planning (collectively, "the Collaborative") has two structural levels: (1) the full working groups (one each for NOPSI and LP&L) that provide policy guidance and resolve disputes; and (2) committees that address detailed or technical matters as needed. The NUPs as a whole do not have their own consultants, but the city's Regulatory Office has received technical and legal assistance during the life of the collaborative from several different firms. Relatively early in the collaborative, participants reached consensus on a number of important issues. Some of these consensus agreements, most notably the one pertaining to the recovery of program costs and "lost contributions" (i.e., lost revenues) through a rider mechanism, clearly influenced the content of Entergy's subsequent plans. As of this writing, it has been over a year and a half since those agreements were reached. Collaborative participants have not achieved consensus on a single substantive issue since that time, and the collaborative has essentially become dormant, a condition likely to continue until January 1994 when the utility submits a compliance filing in response to City Council's November 1993 ruling on its Action Plan.

I. INTRODUCTION

The New Orleans Collaborative, which involves the city's two electric/gas utilities and about a dozen NUPs, was created as the result of an LCP ordinance passed by the City Council in June 1991. Through its meetings and discussions, the collaborative has addressed a broad spectrum of important issues related to IRP and DSM in New Orleans. This case study describes the workings and outcomes of the collaborative and how these have changed over time. This case also examines other activities initiated by one of the key players in the collaborative—the Alliance—that were aimed at influencing the policies and actions of New Orleans utilities and their regulators. Final interviews with key participants were completed in late November 1993, so this case study is current as of that date.

II. CONTEXT

Political Environment

The subjects of IRP and utility use of DSM have received some public attention in New Orleans in recent years, but they have not generated the intense interest that certain hot topics, like casino gambling, have. Still, the City Council—which is responsible for regulating the gas and electric utilities operating in New Orleans—has been very aware in recent years of a number of specific issues related to IRP and DSM. Key topics in this area have included the development of an LCP ordinance for the city; the contents of the subsequent Least-Cost Integrated Resource Plan (LCIRP) and revised Action Plan submitted by NOPSI/LP&L; and the impact of the proposed Entergy—Gulf States Utilities (GSU) merger. Most of these issues have received some attention from the local news media. On the state level, there appears to be relatively little interest in utility DSM programs on the part of Louisiana government officials other than the Public Service Commission (PSC) and the state departments of Environmental Quality and Natural Resources.

Economic Environment

Southern Louisiana's economy was hard hit by the declining oil prices of the mid-1980s, which weakened the oil industry and resulted in heightened unemployment. In the last year or two, the area has seen a modest economic upturn, but some industrial parties continue to express concern with any utility activity (like increased use of DSM resources, cross-class-subsidization, or the use of rate adjustment mechanisms) that could raise electricity rates and hurt area businesses. The utilities themselves are still concerned that any increase in rates could lead industrial customers to abandon Entergy and turn to self-generation or other potential suppliers.

Regulatory Environment

All electric and gas utility service in New Orleans, regardless of provider, is regulated by the New Orleans City Council and *not* by the Louisiana PSC (LPSC). The City Council has

seven members, each of them elected to a 4-year term. Five of the Council members are elected from specific districts and two are elected at-large. A recent referendum limited members to serving two terms in the same type of seat (i.e., district or at-large), making all but one of the existing Council members ineligible to run for their current seats in the next election (early 1994). However, two district Council members are running for at-large seats in the new Council that will take office in May 1994. Presidency of the Council rotates every 4 months among the two at-large members.

The City Council has a three-person Utility Committee that studies utility-related issues and reports on them to the whole Council, which has ultimate responsibility for deciding regulatory matters. Because the City Council deals with a wide range of issues, the review and screening function of the Utility Committee is very important.

The City Council is assisted on utility-related issues by a small Utilities Regulatory Office that employs three professional staff: a director and two analysts. The director is officially employed by the City Attorney's Office and serves at the pleasure of the mayor, but does not necessarily change with a new administration. The other office staff are civil service employees. The Utilities Regulatory Office is part of the City Council staff and usually reports directly to the Council Utility Committee. Because it is so small, the Regulatory Office typically is assisted by outside consultants. Technical assistance on utility issues has been provided largely by Legend Consulting Group Ltd. since 1990. From spring 1991 until the end of 1992, assistance on LCP issues had been provided by MSB Energy Associates. In addition, the city gets assistance on legal issues related to its regulatory duties from two local law firms and a Washington, D.C. firm (Verner, Liipfert, Bernhard, McPherson, and Hand). In December 1992, the Council awarded a contract amendment to Legend to continue its consulting work and allowed MSB's contract to expire, making Legend the city's sole technical (nonlegal) consultant on LCP issues. This decision was vigorously criticized by the Alliance, which asserted that Legend was far less qualified in the LCP arena than MSB; the Council, in turn, strongly supported Legend's qualifications and disagreed with the Alliance's position on this matter. The Council's stated reasons for declining to renew MSB's contract included its purported lack of knowledge of the Entergy System, its alleged ideological commitment to DSM "for DSM's sake", and its poor working relationship with the Council's other consultants.

Opinions about the City Council's commitment to DSM are varied among individuals involved in utility-related issues in New Orleans. One respondent said the Council is anxious to see some DSM programs implemented, in part because it has been several years since the city passed its LCP Ordinance. Several others also reported that the Council seems to support utility use of DSM. Another respondent notes that some Council members view DSM more favorably than do others. Yet another respondent reported somewhat negative attitudes toward DSM on the part of the Council's Utility Committee and a general lessening of interest in IRP by the Council as a whole. In interactions between utilities and NUPs, one respondent characterized the Council as generally supporting any effort that allows a broad cross-section of participation across all constituent groups. However, developments over the past year seem to indicate a diminishing level of support for the New Orleans Collaborative, with this mechanism being

supplanted by periodic meetings between the utilities and City Council's consultants (occasionally attended by a few other non-utility groups) and by formal regulatory proceedings.

In recent years, the City Council and its regulatory staff have been highly involved with NOPSI/LP&L, including the settlement of various cases, and substantial involvement with local intervenor groups. Historic relations between the City Council and the utilities have been characterized as adversarial, although not necessarily antagonistic; interactions before the utilities' LCP effort focused largely on the Grand Gulf nuclear plant, proposed rate increases, and the proposed municipal buy-out. Recent relations between the City Council and the Alliance have also been characterized as adversarial.

The June 1991 ordinance requiring utilities to engage in LCP also instructed NOPSI/LP&L to use both the societal cost test (which accounts for environmental externalities) and the TRC test to screen potential options. In addition, the ordinance allowed for utility recovery of planning expenses and DSM program costs and provided for the possibility of lost revenue recovery and the receipt of financial incentives by utilities. One respondent opined that City Council passed this ordinance to ensure itself an advance review of proposed utility actions in order to avoid any large, controversial projects like the Grand Gulf Nuclear Plant, and to address the public concern with avoiding rate increases.

In June 1993, the Council passed a resolution postponing hearings on the LCIRP filed by NOPSI/LP&L the previous December and allowing Entergy to refile its Three-Year Action Plan. This refined Action Plan was subsequently filed in New Orleans as well as in the system's other three jurisdictions (i.e., Louisiana, Arkansas, and Mississippi). The revised schedule established by the hearing officer called for a decision on the Action Plan on November 22, 1993, and a decision on the LCIRP on March 24, 1994.¹¹ The latter date was revised to April 7, 1994, and a final Council decision is expected at that time.

Utility Environment

New Orleans is served by two utilities—NOPSI and LP&L—both of which are subsidiaries of the Entergy Corporation, an investor-owned holding company. NOPSI provides natural gas for the entire city of New Orleans and electricity for all the city's wards except the 15th (Algiers), which is served by LP&L. NOPSI has about 190,000 customers, sells nearly 6,000 GWh annually, has total operating revenues of nearly \$500 million, and employs about 1,000 people. In addition to providing electric service to Algiers, LP&L serves most of southeastern Louisiana and north Louisiana, an area with a population of about 1.7 million (over one-third of the state's residents); the utility's activities outside New Orleans are regulated by LPSC. LP&L has nearly 600,000 customers, sells over 28,000 GWh annually, has annual operating

¹¹This appears to depart somewhat from the City's June 1991 LCP Ordinance which called for a decision on the Least Cost Plan within 12 months of the date of a "complete" filing. While the LCIRP was filed on December 1, 1992, the Council's advisors noted "substantial deficiencies" in it. Therefore, some have made the case that a complete filing was not actually made until much later.

revenues of almost \$1.5 billion, and employs approximately 2,300 people. LP&L is by far the largest utility in Louisiana, accounting for just over half of all electricity sales by investor-owned utilities (IOUs) in the state. Southwestern Electric Power Company accounts for just over one-fourth of the electricity sold by IOUs in Louisiana, while NOPSI and Central Louisiana Electric Company each are responsible for about 10% of the state's electricity sales.

The Entergy system, which pools its generating capacity, relies heavily on nuclear energy, natural gas in its southern region, and coal in Arkansas. The system as a whole has excess capacity, although NOPSI by itself is capacity-short.

Other Key Groups

The Alliance is actively involved in energy-related issues in New Orleans and elsewhere in Louisiana. This group and its activities will be discussed in substantial detail in the following section. Other groups that have weighed in on energy issues, locally if not always statewide, include Seniors with Power United for Rights (SPUR), representing the interests of senior citizens; the Housing Energy Action Team (HEAT), which represents low-income residents; the Sierra Club; the Alliance Against Utility Competition, representing DSM service providers; the New Orleans Industrial Energy Users Group (NOIEUG); other industrial customers (e.g., Air Products, Almonaster Michoud Industrial District); and the New Orleans City Council Utilities Regulatory Office and the city's consultants.

Non-utility groups concerned with utility issues in New Orleans have employed a variety of approaches, including intervention, litigation, settlement/consensus building, education, outreach, and lobbying. One key party noted that nonlitigative approaches dominated when the New Orleans Collaborative was most active, but that recent months have seen a return to a greater emphasis on intervention.

Not surprisingly, non-utility groups (other than the city's regulatory office) rate themselves as weaker than the utilities in terms of both funding and technical resources. Of all non-utility groups, the city's regulatory staff (with the support of the city's consultants) appears to be strongest, followed by contractor and labor groups, industrial customers, the Alliance, and residential representatives (including senior citizen and low-income advocates). In terms of technical resources, the strength of the Alliance lies in its staff's experience with energy policy and some program-related issues.

In terms of influence with City Council (which is the utility regulator in this case), the regulatory staff and consultants are the strongest. The utilities also are influential with the Council, as is the Alliance Against Utility Competition. The Alliance for Affordable Energy likewise is influential with some Council members because of its past activities, its experience, and its ability to turn out local supporters on key issues. However, the Alliance's current relationship with some other Council members is quite adversarial, in part because of its aggressive challenge of recent Council actions related to the city's energy consultants.

III. KEY ALLIANCE INITIATIVES

Background

The Alliance was officially formed in 1985 by individuals and groups who were central to then-current struggles over who should pay for the \$3.8 billion investment in Entergy's Grand Gulf Nuclear Plant, the return of regulatory control over NOPSI/LP&L operations in New Orleans to the city Council,¹² and the proposed municipal buy-out of NOPSI. Since that time, this nonprofit environmental/ energy conservation advocacy group has worked aggressively to influence utility and regulatory policies and actions in New Orleans and the rest of Louisiana. Specifically, the Alliance describes itself as hoping to create an environmentally benign community-based energy policy, both locally and regionally, that emphasizes cost-effective DSM, the use of renewables, and affordable electricity costs for consumers. The Alliance has a multi-faceted approach to energy issues, using intervention in regulatory proceedings and litigation to a great extent, but also engaging in consensus-building, public education, outreach, and related activities. During the heyday of the New Orleans Collaborative, the Alliance's emphasis moved away from regulatory proceedings and litigation, but lately it has moved strongly back in that direction.

Although the Alliance has many local members and supporters, its paid staff consists of only four and a half full-time equivalents. Two of these are involved with issues related to DSM and utility regulation. Both can be described as consumer advocates/policy analysts. The Alliance has received some relatively small grants over the years from charitable foundations to support its energy-related activities, but it has yet to receive major funding. However, the Alliance did receive a substantial settlement in the Grand Gulf prudence disallowance case to cover its attorney fees. The Alliance also has gotten some in-kind assistance, such as the use of the Environmental Defense Fund's ELFIN modeling program and some greatly discounted technical materials from the Rocky Mountain Institute and a company affiliated with the Institute.

Over its life, the Alliance has been involved in a large variety of activities aimed at influencing regulators and utilities. On the education and outreach fronts, the Alliance began an "Education Outreach Program on Least-Cost Energy Planning" in the fall of 1989 under the sponsorship of the Louisiana Department of Natural Resources (DNR).¹³ Many of the activities begun at that time—including publication of the *Bright Ideas* newsletter, presentation of energy conservation workshops, and networking with other community groups—continue despite the fact that DNR funding lasted only 2 years. In 1991, the Alliance published *Energy Investments for a Stronger Louisiana Economy: The Benefits of a Least-Cost Energy Policy*, a research report

¹²The effort to return regulatory control to the City was designed to recreate the situation that had existed in New Orleans prior to 1981, when a utility-sponsored referendum had transferred regulatory authority from the City Council to the Louisiana PSC.

¹³The Alliance's efforts in this program were recently written up by the Alliance to Save Energy in a book presenting case studies of outstanding energy education programs.

presenting a statewide energy-efficient investment strategy. The Alliance conducts community service projects, such as installing energy-efficiency measures in low-income homes, presenting exhibits for Earth Day and related events, and providing leadership training for other groups interested in the same issues. In addition, it stays in contact with the local news media, making occasional television appearances for energy education purposes, issuing press releases, and holding press conferences to publicize important group activities and energy-related events.

The Alliance also has been active in introducing and supporting energy-related legislation. In the spring of 1990, the group worked with the Public Law Center of Loyola and Tulane Universities to draft a bill to "create a framework for Least-Cost Utility Planning in Louisiana." The bill was introduced in the state senate but never passed. More recently, the Alliance proposed new statewide LCP guidelines in testimony before the LPSC. The Alliance also introduced an ordinance requiring New Orleans utilities to engage in LCP and worked intensively with the City Council, the Council's Regulatory Office, the city's consultants, and NOPSI/LP&L to reach agreement on such legislation, which eventually was passed by the city. In addition, the Alliance participated in an investigation sponsored by the City Council to address the issue of lifeline rates for low-income customers (the New Orleans Energy Assurance Program), but no legislation has yet been proposed on this subject.

Since its inception, the Alliance on many occasions has intervened in regulatory proceedings and litigated cases in court. Recent cases in which the Alliance has intervened include the following:

- NOPSI's proposed 18% gas rate hike, requested in October 1991 and resolved by a three-way settlement in spring 1992;
- NOPSI's campaign to encourage customers to switch from gas to electric water heaters;
- LP&L's 1992 proposal to give customers financial incentives to switch from gas to electric appliances, which resulted in a Council order prohibiting the activity;
- the proposed Entergy—GSU Merger before the LPSC (1992); and
- Entergy's December 1992 LCIRP, filed with the New Orleans City Council and the LPSC.

Court cases include the following:

- a suit challenging the moderation of the City Council's disallowance of NOPSI costs (related to Grand Gulf Nuclear Plant), which led to a three-way settlement in 1991 between NOPSI, the city, and the Alliance;
- a 1993 suit opposing City Council's approval of NOPSI's new gas marketing plan (developed as part of a previous settlement to which the Alliance was a party); and

- a 1993 suit against LPSC, Entergy, and GSU, protesting the approval of the merger of the utilities.

Current DSM/IRP Initiatives

As mentioned, the Alliance has done, and continues to do, substantial work in education and outreach on energy issues. When the DNR-funded education outreach program began in late 1989, the Alliance started publishing a quarterly four-page newsletter—called *Bright Ideas*—reporting on issues related to energy efficiency and LCP. Two years later, when DNR funding ended, the Alliance assumed the costs and now publishes the newsletter on a quarterly basis. The Alliance also continues to perform many of the same activities it began with DNR funding.¹⁴ In the summer of 1993, for instance, it did 16 energy efficiency workshops—attended by over 400 school age children. Alliance staff also meet with other community groups to discuss energy-related issues important to local residents, provide leadership training, and help mobilize local people to attend important meetings and hearings. In 1993, as in past years, the Alliance made numerous educational presentations on energy efficiency—in Baton Rouge and in New Orleans—on Earth Day. The Alliance also installs energy-efficiency measures in about 50 low-income homes annually as part of the local “Christmas in October” program. Finally, the Alliance uses the news media. Alliance representatives occasionally appear on local TV shows to make educational presentations related to energy efficiency. Whenever the organization does anything significant, like filing a lawsuit, it issues a press release, frequently in conjunction with other organizations. Press conferences also are given when appropriate. At times, these communiques have criticized the actions of individual City Council members.

The Alliance currently is involved in several interventions in regulatory proceedings and in litigation in related court cases. In the summer of 1992, it led a coalition of consumer groups to express their opinions against the proposed Entergy—GSU merger before the New Orleans City Council and the LPSC. The Alliance and other organizations are concerned with the possible negative effects of the merger on Entergy’s DSM efforts and with other potential impacts associated with the creation of such a large utility. The Alliance intervened in the state proceedings and, after the PSC approved the merger in early May 1993 and subsequently denied the Alliance’s motion for a rehearing, filed suit against the PSC, Entergy, and GSU. Houston Power and Light Company also is suing against the merger, while a group of large industrial customers in Louisiana is supporting it. No court date has been set, but the Alliance is actively preparing its case. The defendants in the case have argued that the Alliance failed to articulate a position during the hearings and that it presented its objections at the conclusion of the hearings, without underlying support. The Alliance also is involved in a lawsuit against the city—filed in May 1993—over its approval of NOPSI’s gas marketing plan, developed as part of a previous settlement. The Alliance objects to the plan because it lacks specific projections of what it will accomplish. As of this writing, this case has not gone to court.

¹⁴It is assisted in these endeavors by some funding from the Education Foundation of America and the Golden Rule Foundation.

In early 1993, the Alliance and several other non-utility groups (e.g., Alliance Against Utility Competition, NOIEUG) intervened in New Orleans in the LCP docket created to review the LCIRP filed by Entergy the previous December¹⁵. In addition, City Council's regulatory staff and consultants expressed specific reservations about the Entergy plan as filed. Areas of concern noted by one or more parties include the amount of proposed DSM expenditures, which was too small for some; the strong focus on load management rather than conservation; the alleged failure to incorporate the consensus recommendations of the collaborative; the purported failure to address all areas required by the city's LCP Ordinance, notably the preparation of alternative plans; and the cost recovery and allocation methods proposed. In mid-May 1993, just as regulatory proceedings were about to begin in New Orleans, NOPSI/LP&L asked City Council for permission to file a "refined" 3-year Action Plan by July 1 of the same year, as Entergy also did in Louisiana, Arkansas, and Mississippi. The utilities also requested a revised schedule that would allow the Action Plan and LCIRP to be heard separately, delaying a decision on the latter until the following year.

In late May 1993—in a special meeting also attended by the Alliance and a few other intervenors—NOPSI/LP&L and the city's consultants agreed on informational materials and analyses that the utilities were to provide in the ensuing months to address consultants' concerns with the adequacy of the December 1992 LCIRP. Most important, the utilities agreed to do the following:

- provide information and models so that the Council consultants could assess the impacts of the proposed LCIRP on New Orleans ratepayers and develop "jurisdictional specific" (rather than Entergy-wide) plans;
- analyze the impact of the Entergy-GSU merger on the proposed LCIRP;
- develop a new plan (referred to in the agreement as an "alternative plan") that would adequately address major deficiencies and incorporate a range of sensitivity analyses; and
- fully address fuel switching and competition issues in the revised Action Plan.

Shortly after this agreement was reached, City Council passed a resolution postponing hearings on the LCIRP and allowing Entergy to refile its Three-Year Action Plan. The subsequently-revised schedule called for separate proceedings on the Action Plan and LCIRP, with a decision on the former scheduled for late November 1993 and a decision on the latter anticipated in late March 1994.¹⁶

¹⁵The Alliance and some other parties also have intervened against the Entergy LCIRP before the Louisiana PSC.

¹⁶Although the Alliance and other intervenors attended the meeting, no parties other than the utilities and the City's consultants officially endorsed the agreement. That agreement was a condition of the City's granting of the deferred schedule requested by NOPSI.

The revised Action Plan filed by Entergy on July 1, 1993, reduced the number of DSM programs proposed and emphasized pilot (rather than full-scale) programs. System-wide, the revised plan was projected to realize less than half the peak reduction of the earlier plan but slightly greater energy savings. CCLM—involving the installation of a fiber optics network in the New Orleans service area—was the dominant element of the new plan, and fuel-switching was not addressed because the utility said it had inadequate information on this topic. In addition, the new filing did not include the incentive package from the December 1992 filing (consistent with the utility's position of not seeking incentives for pilot programs) and suggested that the recovery of costs and lost revenues not begin until January 1996. The Alliance, NOIEUG, and several other non-utility groups expressed strong dissatisfaction with various aspects of the new Action Plan, including its strong emphasis on CCLM, the absence of fuel-switching measures, and the purported overall inadequacy of its DSM program design.

During the early summer of 1993, NOPSI/LP&L filed direct testimony on their refined Action Plan. A few months later, the Council's consultants and intervenors filed their direct testimony. This included an alternative set of DSM programs developed by the city's consultants, which included more full-scale programs and did not include CCLM. The Alliance did not file expert testimony—reportedly primarily because of its financial limitations—and it was criticized by a City Council member and by the utility for not offering its position for the official record. However, the Alliance did participate in cross-examination. At the very end of September—in response to the utilities' earlier agreement with the city's consultants—the utilities filed additional information (commonly referred to as a "Reintegration Analysis"), consisting largely of sensitivity analyses related to the Entergy—GSU merger.

In early October 1993, City Council and LPSC jointly sponsored a public hearing in New Orleans in conjunction with the regulatory proceedings. The Alliance, HEAT, and SPUR expressed opposition to the utility plan for not pursuing DSM aggressively enough. The Alliance, South Central Bell, and Cox Cable opposed the promotion of CCLM to such a large extent. Shortly thereafter, the utilities filed a motion to withdraw the CCLM program from consideration in the Action Plan hearings and to consider it instead in the later proceedings on the LCIRP. This motion was opposed by the Alliance and other intervenors, but it nonetheless was approved by the Council.

In late October, evidentiary hearings on the Action Plan began, and the City Council issued a resolution announcing its decision at a special hearing on November 22. This resolution adopted—with a few modifications—the DSM programs suggested by the city's consultants in its September testimony. This plan nearly doubles the local DSM expenditures and capacity savings that the utility proposed for the next 3 years in its revised Action Plan of July 1993, and it more than triples projected energy savings. In its decision, City Council required the utility to submit additional information within 60 days on several different topics; this supplementary package is to include a pilot fuel-switching program (from electricity to natural gas) and more detail on utility plans for DSM program implementation and lost revenue recovery.

Outcomes

The Alliance initiative that has had the clearest direct effect on regulatory and utility policies and actions is its work on behalf of LCP legislation in New Orleans. Without the Alliance's introduction of an ordinance in early 1991 requiring NOPSI and LP&L to engage in LCP and its strong testimony and negotiations on its behalf, it is very likely that New Orleans would not have passed LCP legislation as early as it did, and it is possible that such legislation might not have passed at all. However, it is important to note that the city's consultants had suggested IRP before the Alliance's ordinance was introduced, that Entergy had committed itself to future use of LCP, and that the City Council and its consultants played an important role in shaping the ordinance that eventually was passed.

Challenges to the utility's proposed 18% gas rate hike also have had some dramatic results, but Alliance influence on the outcome is less clear. Although the Alliance thinks its intervention in the case kept gas rates in New Orleans from increasing precipitously, the Utilities Regulatory office asserts that the efforts of Council consultants secured rate relief. As for the Alliance lawsuit related to the disallowance of NOPSI's Grand Gulf costs, the Alliance asserts that the three-way settlement between it, NOPSI, and the city increased the magnitude of disallowed costs and avoided significantly higher electricity rates. The Utilities Regulatory Office, on the other hand, suggests that the settlement resulted in higher costs to the consumer, and that it would have been unnecessary if the Alliance's "extreme" position had not prevailed in a state appellate court, resulting in U.S. Supreme Court acceptance of the case and the necessity of settling to avoid an adverse decision.

More recent interventions and litigation have not, to this date, resulted in any outcomes that can be clearly linked to them. The November 22, 1993, City Council resolution increasing the magnitude of Entergy's proposed local DSM efforts is compatible with the Alliance's historic position in favor of more aggressive DSM usage and may have been influenced to some extent by it. But the decision is linked much more directly to the alternative Action Plan suggested by the city's consultants than to any Alliance proposals. The eventual effects of the Alliance's lawsuits challenging the Entergy—GSU merger and NOPSI's gas marketing plan, as well as its intervention related to the Entergy LCIRP, still remain to be seen.

As for the Alliance's education, outreach and lobbying efforts, past and present, it is hard to prove their effect. Clearly, the Alliance programs have provided needed information to organizations and individuals in the New Orleans area with an interest in energy issues. Also, those activities have created or improved relationships with other groups that have compatible interests and have helped strengthen support for the Alliance and its ideas among some community members. These less tangible outcomes can contribute importantly to an organization's effectiveness. At the same time, the Alliance's aggressive style of intervention, litigation, and public statements seems to have seriously alienated some City Council members, resulting in a rapport with the regulatory body that one respondent characterizes as being at "an all-time low." NOPSI/LP&L also recently criticized the Alliance's litigation strategy for allegedly being inefficient for the regulator and other parties.

Future Prospects

Undoubtedly, the education and outreach efforts of the Alliance will continue into the foreseeable future. At the same time, a substantial portion of its energy and resources in the near future likely will be devoted to ongoing intervention and litigation. At least until Entergy's LCIRP is decided in April 1994, the regulatory proceedings will continue to be a key concern for the Alliance, the utility, City Council, and all other local non-utility groups with an interest in energy-related issues. The future of LCP and DSM in the New Orleans area will be strongly influenced by the actions of the new City Council that takes office in Spring 1994 and the actions of Entergy's other regulators. Also, Alliance relations with the City Council Utility Committee, which currently are strained, could improve with the new City Council. Finally, the fate of the Entergy—GSU merger, and the subsequent effects on the baseload and peaking needs of the utility serving this area, could be an important factor in determining how aggressively DSM will be pursued.

IV. THE NEW ORLEANS COLLABORATIVE

Initiation

As discussed earlier, an LCP Ordinance was introduced by the Alliance, modified by City Council and its consultants, refined in subsequent negotiations, and eventually passed by City Council in June 1991. Among other things, the ordinance called for the creation of an LCP Collaborative to advise the City Council and the utilities in developing LCPs. The legislation specified that the collaborative would consist of two working groups, one for NOPSI's service area and one for LP&L's. In addition to utility members, it was mandated that the working groups would have representatives of the following five constituencies: the City Council regulatory staff; residential customers; industrial customers; commercial customers; and traditional providers of demand-side services (e.g., contractors, design professionals, suppliers).

Participants

All key interests seem to be represented in the New Orleans Collaborative, although not all have been equally active. Two operating units of Entergy—NOPSI and LP&L—are key participants. They are joined by four nonprofit organizations: the Alliance; SPUR; HEAT, which represents low-income residents; and the Sierra Club. In addition, other residential customers and other senior citizens have separate, ad hoc representatives. Industrial interests are represented by Air Products Corporation,¹⁷ while traditional suppliers of DSM services and technologies are represented by the American Federation of Labor/Congress of Industrial Organizations (AFL/CIO) and the Alliance Against Utility Competition. In addition, commercial

¹⁷In the first year of the collaborative, a representative of Martin Marietta Corporation was the primary industrial participant.

customers and minority vendors have their own ad hoc representatives.¹⁸ Finally, the New Orleans City Council Utilities Regulatory Office, along with the city's consultants, is the only government agency participating. The relative strength of the key parties involved is discussed in Section II, under "Other Key Groups."

As mentioned earlier, the Entergy system as a whole has excess capacity, although NOPSI by itself is capacity-short. The merger with GSU would add considerable supply-side resources to the overall system.

Collaborative participants were asked to characterize the attitudes of utility management toward DSM and interaction with non-utility groups. Most respondents reported that attitudes within the utility have changed over time, and that NOPSI/LP&L is more supportive of DSM now than it was several years ago. However, one key party expressed the opinion that the utility is less supportive of DSM now than early in the life of the collaborative. As for utility attitudes toward the collaborative itself, a few respondents described management as supporting the process, but a number of others characterized the support as half-hearted. Several collaborative participants reported utility resistance to doing collaborative program design, and one respondent stated that the utility has retreated from its former willingness to work with the collaborative—largely because of the utility decision to do all filings system-wide rather than for each jurisdiction separately.

The DSM planning process involves many different departments within the utility, including strategic and LCP personnel, marketing staff, and other groups involved with topics such as regulatory issues, finance, and distribution. The utility representative stated that Entergy is moving to an incentive-based system that rewards employees for DSM performance. It is important to note that Entergy sees DSM as a system-wide resource, and not something to be pursued for each of its individual utilities separately. One respondent observed that the utility has experienced substantial staff changes recently, related at least in part to an increased orientation toward working at the system level.

Purpose

Participants reported a variety of objectives for participating in the collaborative. The single most widely-reported objective was to serve the interests of a specific customer class or constituency, such as industrial users or low-income customers; typically, these participants hoped to get the utility to offer programs aimed at their particular group. Another commonly-held objective was to develop a good LCP containing cost-effective programs that serve the community in general. A principal objective of the utility seems to have been to improve relations with its regulators and help ensure approval of key items in the Action Plan.

¹⁸Commercial customers have been represented by a member of Corporate Realty, and minority vendors have been represented by the proprietor of Perfect Timing.

The city ordinance that created the collaborative instructed participants to deal immediately with the following eight issues:

1. developing principles and procedures for collaborative planning and program design efforts;
2. developing appropriate resource selection criteria (including the treatment of environmental externalities) and processes for their application;
3. determining the values that appropriately reflect avoided costs;
4. determining a mechanism for the recovery of DSM program costs and recommending alternatives concerning recovery of lost revenues and utility financial incentives;
5. determining the appropriate discount rate;
6. developing pilot DSM programs for implementation prior to filing of the initial plan;
7. developing a work plan and timetables for addressing all-source bidding and the role of DSM service providers in program implementation; and
8. determining the appropriate percentage of DSM programs to be implemented by disadvantaged business enterprises.

Most of these issues were settled during the first 8 months of the collaborative.

Following issuance of the collaborative's March 1, 1992, recommendations, the major issues that still needed to be resolved, and which became the focus of subsequent negotiations, were the determination of appropriate avoided cost values; the design of DSM pilot programs; and the treatment of all-source bidding and DSM service procurement (including the appropriate role of Entergy's subsidiaries in providing DSM services). In addition, the issue of how DSM program costs should be allocated among user classes, while not given much attention early on, was seen as very important—and potentially contentious—by some participants (particularly industrial customers).

Process

Collaborative structure. Functionally, there is only *one* New Orleans LCP Collaborative, established to address IRP issues for the entire city. But technically, there are *two* working groups, one dealing with NOPSI's service area and the other focusing on LP&L. This is considered necessary because the two utilities, while sister subsidiaries of Entergy, are separate legal entities with their own respective franchises and different rate structures. In practice, the two working groups have largely functioned as a single group, with the business of both groups addressed at the same meetings. Also, NOPSI and LP&L have the same collaborative representatives and the positions of both utilities have been basically the same. Nearly all the

NUPs involved in the NOPSI working group are also involved in the LP&L working group, and the individuals representing each organization are the same for both groups. The only differences are that the NOPSI working group has a commercial representative (which the LP&L working group does not have) and that the LP&L working group has additional representatives for residential customers and senior citizens.

All meetings of the working groups are open to the public and are cochaired by a utility official and by staff members of the City Council's Regulatory Office. The cochairs (who are responsible for calling all meetings) are instructed to strive for consensus on all major issues. Members with differing positions are allowed to prepare minority positions if consensus cannot be reached, but no minority opinion has ever been drafted. The City Council regulatory staff participates in all decisions, even though they also are responsible for providing advice on regulatory matters to the Council. Any working group decisions endorsed by the staff do *not* bind the City Council in any way.

Formally, the collaborative has two structural levels. At the top level are the working groups, which are intended to provide policy guidance and resolve disputes as necessary. Generally, the participating organizations are represented on the working groups by senior staff, so no real need is seen for a higher organizational level to set policies or resolve difficult issues. City Council's technical consultants also participate in working group meetings. These consultants are employed directly by the City Council's Regulatory Office, whose staff reports to the Council's Utility Committee. In addition, the Council's outside legal advisors attended all meetings.

The lower level of the collaborative consists of committees that are responsible for addressing detailed or technical matters, as needed, and reporting their findings back to the working groups. The four committees are: (1) the DSM Program Committee (which primarily has addressed the design of DSM pilot programs); (2) the Technical/Scheduling, Adherence, and Priorities (T/SAP) Committee (responsible for schedules and priorities as well as highly technical issues such as avoided costs); (3) the Procurement Committee (a consolidation of the former Disadvantaged Business Enterprise Committee and the All-Source Bidding Committee); and (4) the Education Committee (which has primarily worked on internal education for working group members). These committees were made up primarily of working group members and alternates.

During much of 1992, the actual collaborative process differed somewhat from the hierarchical two-tier arrangement described above. The T/SAP Committee assumed preeminence, addressing key technical issues *and* providing general policy guidance. This committee consists of utility managers and their technical experts, City Council's consultants, and a representative from the Alliance. The T/SAP Committee met frequently during 1992 and occasionally presented its findings to the working groups. During this period, the working groups went from meeting once or twice a month to meeting only once every several months. Some NUPs (including the Alliance) objected to this arrangement because they believed the non-utility groups, with the exception of Council's regulatory office, were being excluded from the decision-making process.

Shortly after Entergy filed its LCIRP in December 1992, the collaborative became largely dormant. After meeting twice to discuss the newly-filed utility plan, the working groups did not convene again for 6 months. The committees also were inactive during that period. The occasion for the working group participants to come back together was the filing of Entergy's refined Action Plan in 1993. Following a July 1993 meeting to discuss the new utility offering, no date or agenda was established for the next meeting; and some participants suggested that the collaborative not meet again until after City Council issues its decisions on the Action Plan and LCIRP. The real decision-making forums in 1993 seem to be the periodic meetings between NOPSI/LP&L and City Council's consultants to discuss key issues, and the regulatory proceedings, which began with the establishment of a revised schedule in mid-year.

Most collaborative participants, including the utility, agree that the utility has shared little decision-making power with the NUPs through the collaborative process. Collaborative participants provide input, but the utility itself makes all final decisions on plan contents—subject to regulatory approval. Although some NUPs appear to be unhappy with this arrangement, it is what the utility and regulatory staff had envisioned going into the collaborative process. Many participants noted that the collaborative's influence over utility decisions has diminished over time, becoming almost non-existent in the last year. The NUP with the greatest current influence on the utility is clearly the regulatory staff, through the direct interactions of the city's consultants—outside the collaborative process—with Entergy personnel.

The legislation creating the New Orleans Collaborative mandated deadlines for completing two major tasks by the working groups: completion of a set of recommendations on eight key technical and policy issues (by March 1, 1992); and the filing of a "complete" LCP by each utility (by Dec. 1, 1992). In addition, participants themselves set several internal deadlines for the completion of key tasks during the first year of the collaborative. In 1992, some participants expressed the opinion that both the internally- and externally-imposed time constraints had negative effects on the performance of key tasks. However, there have been virtually no internal deadlines since mid-1992, and some respondents recently suggested that this might have been detrimental to the collaborative.

Funding of non-utility groups. The utilities reimburse basic out-of-pocket expenses incurred by working group members related to completion of collaborative activities. None of the participating organizations (including the Alliance) has gotten any direct monetary support from outside groups related to participation in the collaborative. However, as mentioned earlier, the Alliance has gotten some in-kind assistance from like-minded groups that have supported its collaborative efforts.

Use of outside consultants. According to the collaborative's charter, each working group has the authority to retain outside experts as necessary to serve the entire working group; these consultants would be hired by consensus and paid by the utilities. To date, no such consultants have been hired. A few requests have been made by various NUPs for such assistance, but these have been rejected because of a lack of working group consensus. The most recent such request came at the July 1993 collaborative meeting, but it was turned down by the utilities and the

city's regulatory office. This refusal to hire working group consultants contributed to the NUPs' decision to suspend collaborative meetings.

The collaborative charter also specifies that utility-funded experts can be hired for individual working group members when City Council gives prior approval to the selection and expenditure as prudent and recoverable; this has not happened either. To date, the only technical experts who have been hired are consultants who have been retained by the utilities and by City Council's regulatory office. Each of these parties selects its own consultants, supervises their work, and pays them. However, the regulatory office's consulting costs are recoverable from the utilities through the city's regulatory fee. NOPSI/LP&L has paid approximately \$1.5 million in recent years to cover consultants retained by City Council to assist it on LCP.¹⁹ As mentioned earlier, the city's choice of consultants in late 1992 was vigorously opposed by the Alliance.

Development of coalitions. This collaborative has not taken the form of a two-party interaction, with the utilities on one side of the issues and all the NUPs on the other side. There has been a stable, long-lasting coalition among the Alliance, HEAT, SPUR, and the Sierra Club, which actually predates the collaborative. On many issues, the minority business representative also has sided with this coalition. The Alliance Against Utility Competition and the AFL/CIO have supported each others' positions on many issues. In addition to these stable affiliations, various groups have formed temporary alliances with each other which have shifted from issue to issue. For example, the industrial representative has sided with regulatory staff on some issues and with the utilities on others.

Conflict and conflict resolution. In general, the collaborative has not been characterized by a lot of conflict. However, that could be, as one respondent pointed out, because it has had no real power. Several participants did note some conflict between the Alliance and the city's regulatory staff and consultants. One respondent suggested that the adversarial nature of the relationship between the city and the utilities has diminished over time.

The issues that have proved most difficult to resolve are the determination of exact values for long run avoided costs (with the utilities pushing for the use of system-wide values and the NUPs and regulatory staff insisting on New Orleans-specific avoided costs) and procurement/all-source bidding (focusing on the provision of DSM services by large energy service companies, including those owned by Entergy, which concerns smaller energy service providers).

In general, difficult issues were assigned to appropriate committees, where the key parties discussed them and searched for mutually acceptable solutions. Often, a single party developed a position and the others responded to it. After continual discussion and debate in committee, difficult issues were returned to the full working groups for a final decision. No neutral third-party mediator was ever used. When the Alliance, City Council staff, and NOPSI/LP&L could all agree, the other parties generally went along. Relatively early in the collaborative,

¹⁹Not all of this consulting assistance was related to the collaborative process per se.

participants reached consensus on several difficult issues (e.g., externalities, Pilot Program) but they have not been able to agree on any other substantive questions since then.

The involvement of upper management in collaborative operations has varied among participating organizations. Both the Alliance and the utilities have had upper management involved in the working groups as well as in internal decision-making. In other organizations, the representatives to the collaborative reported back to their organization and got feedback and guidance (especially on key issues) from upper level managers and sometimes from members.

Related Policies and Interactions

As noted earlier, the city ordinance that created the collaborative instructed NOPSI/LP&L to screen potential DSM options using both the societal cost test and the TRC test. The ordinance also allowed for utility recovery of DSM program costs and provided for the possibility of the utility's recovering lost revenues and receiving financial incentives. On November 22, 1993, the Council granted assurance of recovery of prudently-incurred costs and directed that such recovery would occur through a new rate adjustment mechanism. As of this writing, City Council has not issued a ruling on a mechanism to allow the utility to recover lost revenues or receive performance-related incentives. However, this decision is expected on April 7, 1994. Although the collaborative is not active as of this writing, many of the issues addressed through that process are the subject of the current regulatory proceedings.

Outcomes

Consensus on important issues. As reported in its March 1, 1992 recommendations, the collaborative reached consensus on several important issues. It was agreed that the utilities should be allowed to recover planning/DSM program costs and lost revenues through an LCP rider; this monthly rider acts like a fuel adjustment clause, allowing early recovery of costs. The utilities agreed not to ask for financial incentives at that time, but they reserved the right to ask for these on a program-specific basis. It was also agreed that externality adders should be used as the mechanism to account for environmental effects when screening resources with the societal cost test (but not when using the TRC test). The agreed-upon method uses adders of up to 10% for highly-polluting resources and credits of up to 10% for nonpolluting DSM measures. In addition, consensus was reached on an official discount rate to be used during plan preparation, and on the proportion of disadvantaged businesses and local workers to be used when implementing DSM programs. Collaborative participants also reached consensus on a DSM Pilot Program.

Since filing its recommendations in March 1992, the collaborative has not reached consensus on any additional policy- or program-related issues, although it did agree on some Pilot Program refinements. While some parties agreed on selected aspects of how avoided costs should be calculated, a consensus could not be achieved; this was largely due to Entergy's insistence on using system-wide avoided costs in contrast to the desire of the regulatory office and other NUPs to look at costs from a jurisdictional perspective. The Alliance and its allied groups were in

favor of all-source bidding, while the utility and several other parties opposed it. Program design issues (other than for the Pilot Program) were not addressed by the collaborative.

Neither the Entergy LCIRP filed on December 1, 1992, nor the refined Action Plan submitted on July 1 of the following year was a consensus document. However, several components of these plans followed closely from the consensus positions presented in the collaborative's March 1992 recommendations. The LCP rider suggested by Entergy in its LCIRP for the recovery of program costs and lost revenues was similar to the mechanism recommended previously by the collaborative; the major difference was that it employed contemporaneous recovery, using before-the-fact estimates of program costs and effects and a subsequent true-up mechanism. The rider included in the utility's revised Action Plan returned to the after-the-fact arrangement originally suggested by the collaborative, but it postponed the start of cost/lost-revenue collection until January 1996.²⁰ Although the collaboratively-developed Pilot Program was not included as such in the Entergy plans, elements of it appear in the utility's residential audit and retrofit program. Also, the Entergy plans reflect the earlier consensus agreement on an official discount rate and the use of disadvantaged businesses and local workers.

Although the collaborative's March 1992 recommendations included an agreement on the use of adders and credits to account for environmental externalities, the way Entergy applied this mechanism in preparing its plans did not satisfy all collaborative participants. While the LCIRP included the results of screening potential options using the adders and credits (as well as the results of other cost-effectiveness tests), the proposed plan minimized direct costs without internalizing the cost of environmental effects. No alternative plan was presented that used the results of the externality analysis in the resource selection decision (as opposed to using it only for screening), to the dismay of some NUPs. The LCIRP proposed a shared savings mechanism to reward the utility for exemplary DSM performance, even though the collaborative had not recommended additional financial incentives in March 1992. However, the revised Action Plan did not include incentives, consistent with the utility's position of not seeking incentives for pilot programs.

Approval of DSM programs by regulators. City Council never approved the proposed Pilot Program submitted by the collaborative in December 1991 and again (with modifications) in March and July, 1992. The delay could have been due, at least in part, to a fear of prematurely setting a precedent on program specifics or cost recovery approaches before the filing of the LCIRP in December 1992. Once the LCIRP was filed, it became the focus of Council attention and the Pilot Program was no longer considered as such. As mentioned previously, City Council issued a resolution in late November 1993 requiring Entergy to significantly increase the magnitude of its short-term local DSM efforts from the level proposed in its revised Action Plan of July 1993. As of this writing, City Council has not yet ruled on the entire LCIRP; a decision on this is scheduled for early April 1994.

²⁰ Although the recovery of costs and lost revenues would not begin until 1996, accrual of these would date from the present.

Program implementation. As of this writing, the City Council has approved several full-scale DSM programs and has not yet received the additional information on program implementation that it has requested. Accordingly, implementation of most programs has not yet begun. However, some of the utility's proposed research and development efforts are being initiated. Also, Entergy has begun public demonstrations of its CCLM program.

Satisfaction of participants' objectives. None of the participating groups is strongly enthusiastic about how the collaborative has addressed its objectives. A few participants, including the utility and the city Regulatory Office, can be described as moderately satisfied with how they have been served. A few key NUPs reported that their objectives had been partly satisfied early in the life of the collaborative but that their needs have not been met since then. And a few other NUPs stated that their objectives have not been satisfied to any significant extent to date.

Savings of time and money for participants. Virtually all participants reported that collaboration is a very time-consuming process. More than half of the respondents said that they have committed more resources to the collaborative than would have been required by the traditional adversarial approach to plan development and approval. One of these parties—the Alliance—noted that participation in a collaborative *plus* a full intervention is more expensive than intervention alone. However, this group observed that it entered the regulatory proceedings with a better sense of the content of the utility plan than it would otherwise have had. A few other organizations reporting that the collaborative has increased their expenses explained that they would not have been involved in these issues had it not been for the opportunity to collaborate. A few other respondents remarked on the considerable investment of time involved in collaborative participation but did not venture to compare it with the adversarial alternative. And the utility suggested that the collaborative approach has the potential to reduce regulatory costs and efforts. However, in this case, nearly \$3 million in collaborative and consultant costs have been proposed for recovery by NOPSI.

Nature of policies, DSM programs, and outcomes compared with results of traditional process. The consensus decisions of collaborative participants on the recovery of program costs and lost revenues clearly influenced the contents of Entergy's plans in this important policy area. Entergy's plans also reflect the earlier consensus agreement on an official discount rate and the use of disadvantaged businesses and local workers. In addition, the collaborative's jointly-developed Pilot Program appears to have influenced the design of Entergy's residential audit and retrofit programs. Other collaborative influences, if any, on the content of specific DSM programs in the utility filings are hard to identify. Some respondents said that the collaborative probably resulted in more utility use of DSM than would otherwise have been the case. Others disagreed, seeing the collaborative's effect on program contents as minor. It seems clear that, whatever the effect of the collaborative on the programs contained in Entergy's December 1992 LCIRP, the program revisions suggested in the July 1993 Action Plan (projected to reduce peak

savings considerably from the earlier filing) were not influenced to any significant extent by the collaborative.²¹

Changes in historic relations among participants. A few respondents said that communications among the parties involved have improved as a result of the collaborative. A few suggested that relations are about the same as before the collaborative began. But about half of those interviewed reported that relations among the parties have actually deteriorated over the life of the collaborative. According to these respondents, interactions among the involved parties—which some described as having improved early in the collaborative—have become increasingly adversarial since about mid-1992, particularly those between the Alliance and the Council's utilities regulatory staff.

Decision by key parties to continue interacting. The New Orleans Collaborative, while officially still in existence, has met only twice during 1993. Although none of the participating organizations has officially dropped out, the collaborative is essentially dormant.

Future Prospects

The New Orleans Collaborative is not expected to reconvene until January 1994, when the utility submits a compliance filing in response to the City Council's November 1993 ruling on its Action Plan, after the LCIRP has been decided by City Council. At that point, the collaborative working groups might start meeting again to discuss implementation and refinement of the programs that have been approved. However, the collaborative's inability to reach consensus on any substantive issue since March 1992 indicates that, unless a significant change were to occur, the working groups could have difficulty in reaching agreement in the future. Accordingly, the enthusiasm of the participants—utility and NUPs alike—is likely to be limited. But it should be noted that an aggressive push for DSM and utility—NUP interaction by the new City Council could revitalize the collaborative.

V. CONCLUSIONS

Recommendations of Respondents

Concerning collaboratives. Respondents offered many insightful recommendations about how to ensure successful collaborative interactions. Several participants (including the utility and regulatory staff) pointed out that a collaborative needs a focused purpose and clear tasks. Other suggestions concerning collaborative structure and operations were that regulators should clearly define how they intend to use collaborative output, that the utility should give NUPs full access to essential information, and that the collaborative should utilize a neutral moderator, if possible.

²¹The single most compelling piece of evidence in support of this assertion is that the collaborative did not meet from mid-January 1993 until after the refined Action Plan was filed in July.

Many of the recommendations pertained to the nature of collaborative participants. Several respondents suggested that participants should have solid technical knowledge in key utility-related issue areas. In recognition that all parties generally do not have a high level of technical expertise, several commenters noted the importance of providing utility-funded consultants to serve collaborative participants. A few of those who noted the importance of consultants also suggested that the NUPs should be allowed to exercise some amount of independent control over these outside experts. It was noted that any consultants that are hired must be knowledgeable in the appropriate area(s). It was further suggested that if a single group (like the Council Regulatory Office) uses more than one consultant, the positions espoused by all the consultants should be consistent. Several respondents said participation of a cross-section of community interests is important, and that the parties involved must be willing to compromise.

Several participants emphasized the importance of regulators and utilities to the collaborative process. One key NUP stated that both regulators and utilities should strongly support the collaborative process and any consensus decisions emerging from that process. And several respondents suggested that the utility should make a strong commitment to sharing decision-making power with the non-utility groups involved.

Concerning other initiatives by non-utility groups. The Alliance made a few suggestions pertaining to the involvement of non-utility groups in other efforts to influence regulatory and utility policies and actions. Non-utility groups, it was noted, have a strong need for foundation funding to allow them to support the inhouse staff and hire the expert witnesses and other services needed to allow effective participation in regulatory proceedings and court cases. In addition, the Alliance suggested that non-utility groups save their resources for litigation in cases where the other parties are not serious about making a collaborative effort work. Based on its own performance over the years, the Alliance also seems to endorse a continuing long-term commitment to energy issues on the state and local level; involvement with as many important issues and cases as organizational resources will allow; and use of a multi-faceted approach, involving intervention in regulatory proceedings, court cases, introduction of legislation, consensus-building, education, outreach, and related activities.

Our Observations and Recommendations

The authors agree with virtually all the respondent recommendations. On the subject of collaboratives, we believe that four of the participants' points are especially important and bear repeating. First, both regulators and utilities should strongly support the collaborative process and the consensus decisions that it produces, and should make this support clear to all interested parties on an ongoing basis. Second, the utility must be willing to allow the NUPs to have a real effect on important policy- and program-related decisions. Third, the utility should fund technical experts to provide needed information and services and help "level the playing field" for the NUPs, and multiple consultants hired by a single party should speak with a single voice. Finally, all participants must be willing to compromise.

Based on our own observations of the New Orleans Collaborative, we would suggest two other key points. For a collaborative to enjoy any genuine decision-making ability, it is important to keep the primary group (in this case the collaborative working groups) involved in all major discussions and negotiations. And the move toward system-wide planning (i.e., away from NOPSI and LP&L separately and toward Entergy as a whole) may create serious difficulties for those engaged in jurisdiction-specific collaboratives.

The decline of the New Orleans Collaborative—specifically, its inability to reach consensus on any substantive issue after March 1992—illustrates the validity of the points presented above. The City Council's failure to move rapidly on the recommendations made by the collaborative in March 1992 seems to have signaled some key participants (notably the utility) that the collaborative output would not be taken as seriously as they had formerly assumed. This probably contributed to apathy among some group members and helped discourage the utility from interactive decision-making. In addition, the presence of several different City consultants at collaborative meetings and their failure to present a unified position created substantial confusion for the utility and other key parties who did not know which firm, if any, was speaking for the city. Finally, when the most active forum for discussion and debate switched from the whole working group to a small technical committee with minimal representation, the ability of most participants to influence decisions was severely reduced. When the locus of decision-making shifted once again, this time to the extra-collaborative meetings between the utility and the city's consultants, the real power of the collaborative largely evaporated.

Other efforts in which the Alliance has been involved over the years have resulted in some outcomes that are in line with the group's objectives. The settlement reached in the previously-described NOPSI gas rate case resulted in lower rates for consumers, but the importance of the Alliance role in achieving this is in dispute. The effect of the Alliance's lawsuit related to the disallowance of NOPSI's Grand Gulf costs was very beneficial for consumers, according to the Alliance; however, the Council's Utilities Regulatory Office asserts that the settlement actually *raised* costs for the utility's customers. It seems safer to say that the Alliance's efforts on behalf of LCP probably speeded up, and possibly even brought about, city passage of a LCP Ordinance and the creation of the New Orleans Collaborative. Ironically, that collaborative, which was seen by the Alliance as a way of ensuring that NOPSI/LP&L would aggressively pursue cost-effective DSM resources, has not had the desired effect to date. The programs proposed by Entergy, especially in its refined Action Plan of July 1993, fell far short of what the Alliance and a number of other non-utility groups had wanted. However, the utility-proposed rider for recovering program costs and lost revenues owes much to the earlier efforts of the collaborative, and it holds the promise of encouraging additional utility use of DSM resources in the future. Also, City Council's November 1993 decision requiring significantly more DSM than Entergy had proposed in its refined Action Plan might have been influenced to some extent by the Alliance's historic stance in favor of aggressive pursuit of DSM resources.

The Alliance has used litigation—both in regulatory proceedings and in court—and has worked with local lawmakers to develop LCP legislation. The ongoing education and outreach efforts of the Alliance have probably strengthened its position with some community members;

but its aggressive intervention, litigation, and related efforts seem to have weakened its rapport with the local regulatory body and possibly with the utility as well. While the recent results of the New Orleans Collaborative have been disappointing, the collaborative is not without its accomplishments; and a changed regulatory and/or utility environment could allow the early successes of the collaborative to be repeated. In the meantime, the Alliance's multi-faceted approach to state and local energy issues where all options (including future collaboration) are kept open seems to be warranted. The Alliance and other non-utility groups would be well served by future efforts to obtain outside funding to support their activities and to cultivate good working relations with the utilities and regulators with whom they interact.

RESPONDENTS

Utilities

Steve Dingle	Entergy Services, Inc., Senior Lead Least Cost Planning Analyst
Matt Jordan	Entergy Services, Inc., Manager Least Cost Planning
Dale Crawford	Entergy Services, Inc., Manager Resource Planning
Mark Tipton	Entergy Services, Inc., Manager Commercial Energy Services

Non-profit groups

Tom Lowenburg	Alliance for Affordable Energy, Director of Research
Gary Groesch	Alliance for Affordable Energy, Executive Director
Quillie Parker	SPUR
Earline Roth	HEAT, Board member

Business/industry groups

Carolyn Harris	Martin Marietta Corporation, representing industrial customers
Art Arseneaux	Air Products, representing industrial customers
Patrick Maher	Corporate Realty, representing commercial customers
Walter Augustine	Perfect Timing, representing minority vendors

Regulatory agency

Joseph Giarrusso	New Orleans City Council, councilman and member of Utilities Committee
------------------	--

Regulatory advisory staff

Michael Tiff New Orleans City Council Utilities Regulatory Office

Jacquelyn Frick New Orleans City Council Utilities Regulatory Office

7. PACE ENERGY PROJECT—NEW YORK EFFORTS TO PROMOTE DSM

SUMMARY

Since the late 1980s, New York's Public Service Commission (PSC) has been strongly supportive of DSM, and by now, New York's seven investor-owned electric utilities all have substantial DSM programs. New York has been hard hit by the economic recession felt nationwide, however, and there are few signs of relief in the immediate future. The poor economic picture has contributed to a slack period in electricity demand which, together with excess capacity and growth of non-utility power generation, has created a climate inconducive to aggressive DSM. In addition, large industrial ratepayers have been exerting pressure on utilities and the PSC to reexamine their rate structures and remove inter- and intra-class "subsidies" for DSM. And looming on the horizon is the possibility of retail wheeling, which could further erode the foundation for aggressive, utility-sponsored energy efficiency programs. While DSM is well-entrenched in New York, it is at a critical juncture.

The Pace Energy Project (PEP) was started in 1987 as part of the Center for Environmental Legal Studies at Pace University School of Law. It focuses primarily on commenting on utility plans, preparing position papers, and participating in various formal and informal meetings concerning utility regulation. While it does not lobby or conduct grassroots education and mobilization, it is affiliated with other energy efficiency advocacy organizations in New York that do take on such tasks.

Over the past 6 years, and particularly over the past 4, PEP has established itself as a strong, well-respected player in utility regulatory issues. PEP sees itself as fighting a continuing war, however: it has won some battles, but the threat to DSM is greater than it was 4 years ago. This threat is due to the conditions noted earlier, most of which are not within PEP's control. Nevertheless, respondents had a few suggestions about how groups such as PEP can maximize their effectiveness. In particular, these concern the optimal allocation of time and resources, the development of vocal ratepayer constituencies to complement coalition building among environmental/energy efficiency advocacy organizations, the continuing development of in-house expertise and research, and a day-to-day presence in regulatory settings. We also note that while groups such as PEP need to continue to develop persuasive arguments for DSM, they also may need to "reinvent" DSM to take into account the new realities that electric utilities now face or may soon encounter if a major restructuring of the industry occurs.

I. INTRODUCTION

Since 1987, the Pace Energy Project (PEP), which is affiliated with the Center for Environmental Legal Studies at Pace University School of Law, has worked to promote aggressive DSM. The focus of its efforts has been New York's seven investor-owned electric utilities and their interactions with New York's Public Service Commission (PSC), although

beginning in 1991 it began to address DSM issues in Michigan and Florida as well. The latter effort is described in our case study of the Legal Environmental Assistance Foundation's energy efficiency advocacy activities in Florida.

The case study at hand concerns PEP's recent efforts in New York. It includes discussion of a short-term cooperative arrangement between PEP and Niagara Mohawk Power Corporation (NMPC) but also covers other PEP initiatives in New York. Information for the case study came from a variety of sources—documents, news clippings, etc., as well as extensive telephone and face-to-face interviews. It was gathered over a period of approximately 1.5 years, concluding in November 1993.

II. CONTEXT

Political Environment

Despite a conservative faction in the state senate, the state legislature and the state as a whole have been fairly supportive of energy efficiency measures. Mario Cuomo, New York's long-time governor, has generally favored energy conservation and has been open to arguments against supply-side energy policies.

For example, in March 1992 the New York Power Authority canceled a 20-year contract to buy 1000 MW of power from the planned HydroQuebec complex in the subArctic James Bay region. It did so at the recommendation of Governor Cuomo, who said that it would be cheaper to rely on energy conservation and other energy sources. PEP was instrumental in this recommendation, having assembled the first economic arguments against the HydroQuebec contracts. (A separate contract for 800 MW is still in place as of late 1993; it remains to be seen whether it will be canceled. However, Governor Cuomo's recent appointment of David Freeman, a well-known energy efficiency advocate, as CEO of the Authority makes it more likely that it will take pro-DSM stances.)

In addition, in 1988, Governor Cuomo directed the State Energy Office; the Department of Public Service, which is the staff arm of the PSC; and the Department of Environmental Conservation to develop an integrated energy resource plan. The state energy plan, which was issued in October 1989, attempted to balance the need for energy security, environmental quality, and economic competitiveness and said that a 8 to 10% reduction in forecasted energy use should be achieved by the year 2000. Although this was a goal, not a requirement, the PSC stated that the utilities should attempt to reach the goal "within the limits of maintaining cost-effective programs."

An interagency effort to update the plan began almost immediately, focusing in particular on how the 1990 Clean Air Act amendments affect electricity generation, on planned utility DSM programs, and on implementing competitive bidding programs to secure energy supplies from non-utility sources. The update was issued in March 1992. It preserved the principles of

the 1989 plan while placing increased emphasis on renewable resources and environmental impacts. It also recommended actions to improve efficiency in transportation, buildings, and natural gas use, as well as the generation, transmission, and use of electricity.

In July 1992, a state law was enacted which gave additional clout to the state energy plan process: state agencies are to be bound by the goals established in future plans. The next plan is due in mid-1994; it is being prepared by a State Energy Board composed of the three main participants in past plans—the State Energy Office, Department of Public Service, and Department of Environmental Conservation. One year following its release, each utility is to prepare an integrated resource plan that takes into account the state energy plan goals. An update of the plan is required only every 4 years, but the State Energy Office intends to do annual status reports and biennial forecasts as well.

While state government policies have in recent years been generally favorable to energy conservation, this trend may be changing. The legislature, concerned about the state's flagging economy, is considering a bill that would allow discounts for large utility customers. It is also possible that the legislature will take up the possibility of "retail wheeling" (the deregulation of retail electricity sales). Both could have the effect of undercutting utility-based DSM programs. However, recent legislation at the federal level provides a counterweight to this trend.

The Clean Air Act amendments of 1990 continue to exert an influence in New York, as elsewhere. Beyond being taken into consideration in New York's 1992 state energy plan and its 1994 update, the 1990 amendments also have provided a further impetus for integrated resource plans and for a renewed look by the PSC at environmental externalities. These issues are discussed further under "Regulatory Environment."

Economic Environment

New York has been hit hard by the recession, and ratepayer groups are not enthusiastic about the idea of rate increases. As discussed later, Multiple Intervenors—an association of large manufacturing industries—has opposed utility-sponsored DSM programs, especially if they involve rate increases or cross-class subsidization. Given the possibility of losing large industrial ratepayers through cogeneration or through plants' closing or moving elsewhere, utilities are especially sensitive to the views of those customers. The threat of further economic decline because of more plant closings has also sensitized state government to utility rate issues.

Regulatory Environment

PSC members are appointed by the governor and confirmed by the state senate for 6-year terms. The governor also appoints the chair. While a minimum of five members (with bipartisan representation) is required by law, for a number of years the commission had seven members.

Between 1987 and 1992, a seven-member commission with basically the same composition was in place. Over the past couple of years, however, its membership has changed substantially.

Three members were replaced, and in February 1993, the governor reduced the commission to five members. (It lost both a DSM critic and a DSM advocate.) Despite these changes, the tenor of the commission remains pro-DSM, but tempered by a growing concern about economic competitiveness.

The philosophy of the commission has been shaped partly by Peter Bradford, who has been chair of the PSC since 1987. Bradford, a lawyer who previously served as a member and chair of the Maine Public Utilities Commission and as a member of the U.S. Nuclear Regulatory Commission, supports DSM but believes that regulators should focus on providing utilities with the proper context to undertake cost-effective programs, not on the details of program performance. His view has been that the utilities themselves must take responsibility for their actions. In other words, his stance—and that of the commission as a whole—has been that the role of the PSC is to get the setting for DSM right, and to expect (subject to prudence reviews) that utility management will make the right decisions.

The commission is located within the Department of Public Service, and the PSC chair is its chief executive. There has been little staff turnover in the department, although the relative power of some staff positions has been altered somewhat because of organizational changes made in 1990. Senior staff advise the commission but also at times serve as advocacy staff; although this arrangement has sometimes provoked criticism, it generally has not been a major problem.

In the years immediately following the 1987 appointment of new commission members, the PSC promoted DSM quite aggressively. In 1987, the PSC ordered the electric utilities to begin implementing DSM programs, and it directed the utilities to file their first long-range DSM plans by April 1988. In 1988, it invited the utilities to suggest DSM incentive mechanisms for PSC consideration, and in 1990, it began to approve agreements with the individual utilities to decouple electricity sales from revenues. (In early 1990, the PSC decision to allow rate incentives for successful DSM programs was challenged by Multiple Intervenors but was upheld in court.) In 1988, the PSC also rejected the nonparticipants test, or RIM test, as a primary criterion in estimating the costs and benefits of DSM programs. New York utilities must now use the TRC test in comparing their electric resource options. In addition, in 1988 the PSC directed utilities to establish competitive bidding programs for needed capacity; under these programs, the utilities must issue requests for proposals by independent power producers and DSM providers to meet future power needs.

During 1989 and 1990, the PSC established 14 task forces to address a range of issues. Among them were a task force on DSM, which worked on the concept of decoupling and also on the development of a Utility Low Income Energy Efficiency Program; a task force on the utilities' competitive bidding programs, which helped to develop a process for assigning values to environmental externalities; a task force on the existing fuel adjustment charge, which recommended incorporating an indexing procedure as an added incentive to utilities to hold down fuel costs; and a task force to examine rate moratorium agreements that the PSC had approved during the second half of the 1980s to stabilize rates, which previously were escalating.

Since 1988, the PSC had encouraged the electric utilities to incorporate integrated resource planning in their strategic planning processes; in 1991, the utilities were instructed to file integrated resource plans. (This action was spurred partly by the 1990 Clean Air Act amendments, which offer a utility the possibility of a "bonus" sulfur dioxide emission allowance if it is following a least-cost planning process that has been accepted by its state regulatory commission.) The utilities' integrated resource plans were filed a year later, together with their 1993-94 and long-range DSM plans. In October 1992, the PSC instituted a proceeding to examine the integrated resource plans, and in June 1993, they were approved from a procedural standpoint, to satisfy the stipulation of the Clean Air Act. The substantive review of the utilities' IRP processes is still going on.

In late 1992, the commission instituted proceedings concerning (1) the implementation of renewable resources; and (2) the values that should be placed on environmental externalities in estimating long-run avoided costs (LRACs). The former was spurred by the 1992 state energy plan update, which recommended that New York accelerate the cost-effective development of renewable resources; the latter, by a prior proceeding concerning LRACs. In a June 1992 order, the PSC had lowered the values approved in 1990 for LRAC estimates, arguing in part that the process of measuring avoided costs should better reflect the prices being quoted under the newly-instituted competitive bidding system. However, it had deferred to a separate proceeding the question of environmental externalities and Clean Air Act compliance and their effect on LRACs.

As of late 1993, a settlement concerning renewable resources was under consideration by the PSC. (It was opposed by Multiple Intervenors but agreed to by other parties to the proceeding, including PEP.) The environmental externalities proceeding was, as of late 1993, still going on. Two studies under way provide a backdrop to that proceedings: (1) a PSC-initiated study of the costs of environmental damages caused by the various New York utilities, being undertaken by the Empire State Electric Energy Research Corporation, the New York State Energy Research and Development Authority, and the Electric Power Research Institute; and (2) a study of the total costs of dispatch for New York's utilities, initiated by the New York Power Pool at the suggestion of PSC staff.

In the past couple of years, although the commission has continued to support the concept of utility-based DSM programs, it has been less inclined to tip the scales in their favor. For example, at a PSC public session on June 3, 1992, the director of the Office of Energy Efficiency and Environment commented regarding DSM incentives:

We wanted to do the so-called kick-starting for DSM programs. We did it. It worked. We do not have to do it any more. We want to see the DSM incentives, the dollar amount, come down through time so that companies would at best only be rewarded for doing something above and beyond what would normally be expected of them. That is where we are heading.

The PSC is also being forced to reexamine the role of DSM because of a confluence of factors that have made utilities more acutely aware of their rate competitiveness: the poor economy, which has prompted large commercial and industrial ratepayers to seek the lowest utility rates possible; the increase in non-utility generation of power; and the prospect of competition from other utilities. As the rate moratoria of the late 1980s come to an end, DSM budgets are coming under increasing scrutiny, particularly because of pressure from industrial customers. Detailed debates are taking place concerning, for example, the cost-effectiveness of various DSM programs, how programs are to be evaluated, whether incentives are being earned, and especially, the inter- and intra-class rate impacts of DSM programs.

Utility Environment

The seven investor-owned electric utilities in New York include Consolidated Edison, which is by far the largest; Long Island Lighting Company (LILCO), New York State Electric & Gas, and NMPC, which are of intermediate size; and three somewhat smaller utilities—Central Hudson Gas & Electric, Orange & Rockland Utilities, and Rochester Gas & Electric. A number of the utilities have experienced supply-side problems, especially because of construction, licensing, and operating difficulties with nuclear power plants. Nevertheless, all of the utilities were fairly uncomfortable with DSM until the late 1980s, when they were prompted to adopt it by the decoupling and incentives approaches made available by the PSC. But, as discussed later on, several are now trying to scale back their DSM investments.

In part because of rapid development of the independent power production industry in New York during the late 1980s and early 1990s, the New York Power Pool is projected to have surplus capacity for the next decade or so. (NMPC and New York State Electric & Gas have been especially hard hit in this regard.) All of the utilities have extensive DSM programs in place, but several, in their 1993-94 DSM plans, cut back the dollar amount proposed to be spent on DSM in the near term from that indicated in their 1991-92 filings, and all but one—Orange & Rockland—projected substantially less long-term DSM investment. In the utilities' 1991-92 plans, the proposed long-range DSM budgets for the period 1990-2000 totalled \$4.3 billion, whereas in the 1993-94 plans they totalled about \$1.1 billion less. The projected total of 6% energy savings remained the same: in other words, they planned to achieve the same net bang for fewer bucks. Nevertheless, actual DSM expenditures may well be less than even those forecasted in the 1993-94 plans, especially if DSM budgets are cut in rate cases.

Other Key Groups

State agencies. State agencies active in DSM issues (apart from the Department of Public Service) include the State Energy Office, the Department of Law, and the Consumer Protection Board. The Department of Environmental Conservation also becomes involved to the extent that a DSM issue concerns, especially, environmental externalities, but it is less involved in other aspects of utility regulation.

The State Energy Office has been engaged in DSM issues since its inception in the mid-1970s and has several staff people who work on DSM. While its staff rarely get involved in litigation, they comment on utility plans and work closely with the PSC on a number of issues. The State Energy Office is the lead agency for preparation of the state energy plan and its 1994 update; to this purpose, its staff have talked with a number of groups across the state and also held a series of issue forums in the summer of 1993.

Like the State Energy Office, the Department of Law (i.e., the Attorney General's Office) has generally been pro-DSM. For example, it has argued that the PSC should order, not simply recommend, that utilities attain the goals set forth in the state energy plan. Bureaus within the Department that deal with utility issues include the utility section of the Consumer Frauds Bureau and the Environmental Protection Bureau; the latter, especially, has been an enthusiastic advocate of DSM and has provided extensive testimony on DSM issues.

The Consumer Protection Board—a cabinet-level office in New York State—tends to be less enthusiastic about DSM than the State Energy Office or the Department of Law. It sees itself as representing residential interests, especially; it is opposed to utility rate increases and is concerned about equity issues that arise with low participation rates in DSM programs. It also does not favor collaboratives or negotiated settlements, which it regards as having the potential for excluding diverse viewpoints; instead, it prefers simply to present testimony and litigate if necessary. It apparently has, however, aligned with PEP on some issues, including the nascent issue of "retail wheeling."

Multiple Intervenors and Public Interest Intervenors. Two of the most active and vocal intervenor groups have been Multiple Intervenors and Public Interest Intervenors (PII). These two groups often represent diametrically opposed viewpoints.

Multiple Intervenors is an association of large, upstate New York companies that are predominantly engaged in manufacturing; it generally advocates imposing limitations on utility DSM programs. For example, in its comments filed September 14, 1992, on the utilities' 1993-94 DSM plans, Multiple Intervenors applauded the utilities for responding to changing conditions by adjusting their DSM program spending to more modest levels; in particular, for reducing rebate levels and offering fewer programs. In those comments, it also advocated capping the rate impacts of the utility DSM plans, adopting mechanisms to reduce free ridership and interclass and intraclass subsidies, phasing out shareholder incentives for the utility DSM programs, and having DSM plans reviewed as an integral part of utility rate cases.

PII is a coalition of environmental and consumer groups that, organized and led by PEP, commented on the 1991-92 and 1993-94 DSM plans filed by New York utilities. PII has also participated in a number of other PSC proceedings. (The activities of PII, especially its reviews of DSM plan filings, are discussed further in Section III.) The stance of the coalition is strongly pro-DSM; its makeup varies somewhat depending upon the issue. For example, those commenting on the 1993-94 plans included PEP, the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), counsel for Long Island Lighting Company

Ratepayers, and the Environmental Planning Lobby (an association of 100 New York environmental groups). Those providing a 1993 position paper on environmental externalities and LRACs included PEP, NRDC, EDF, and the New York City Department of Telecommunications and Energy and Department of Environmental Protection.

Other intervenor groups. Other groups sometimes active on DSM issues include, for example, the New York City Department of Telecommunications and Energy, which represents New York City views and sometimes aligns with PII; and the Public Utility Law Project of New York, which speaks on behalf of low-income electricity customers and, while interested in DSM, tends to align with the Consumer Protection Board because of rate concerns. Energy service companies and Independent Power Producers of New York also are active on various DSM and IRP issues. The latter have aligned with PEP recently in areas where they find a common ground (e.g., concerning the application of environmental externality values in decisions regarding existing plants), even as they continue to be adversaries in certain other regards.

III. KEY DSM/IRP INITIATIVES OF PEP

Background

Located in White Plains, New York, PEP is part of the Center for Environmental Legal Studies, which in turn is part of Pace University School of Law. PEP was established in 1987 by Richard Ottinger, a member of the Pace Law School faculty and a former representative to the U.S. Congress. It has sought to promote energy efficiency. PEP's current annual budget is about \$750,000; it receives support from about 20 foundations or charitable funds, including The Pew Charitable Trusts. Since its inception, PEP has expanded significantly and now has a regular presence in Albany at meetings, PSC hearings, etc. Its current staff (6 FTEs) includes several lawyers and an economist, as well as administrative and support staff. The executive director, David Wooley (hired January 1990), previously worked in the New York State Department of Law; the Program Director, Terry Black, was formerly director of the Office of Energy Programs at the Michigan Public Service Commission and director of the Michigan Energy Office; the Economic Analyst, Thomas Bourgeois, was previously with the New York State Department of Economic Development.

Much of PEP's work to date has focused on preparing comments and intervening in DSM and rate case proceedings; for example, in September 1990 PEP—taking the lead for PII—submitted detailed comments on the utilities' 1991-1992 annual and long-range DSM plans. In addition to utility-specific comments, PII called more generally for least-cost planning and comprehensive DSM program designs; a focus on lost opportunities, direct installation, personal customer contact, and ample technical assistance; and customer incentives set at full incremental cost unless program experience indicated that participation could be obtained with lower incentives.

In November 1990, the PSC issued an order requiring the utilities to review the comments of intervenors, meet with them, and then report the results of their deliberations to the PSC. By May 1991, the utilities had submitted revised DSM plans with slightly increased levels of spending. PEP and its coalition of intervenors filed a second round of comments urging that the PSC require the utilities to go further. In its August 1991 order regarding the revised 1991-92 DSM plans, the PSC indicated that it would consider more aggressive DSM program goals when it reviewed the utility filings for 1993-94.

On September 14, 1992, PII submitted extensive comments on the 1993-94 DSM and IRP filings. PEP, coordinating a team of 11 consultants, again took the lead in preparing the comments. In them, PII sounded a note of alarm: although some of the utilities (notably Con Ed and LILCO) had continued to improve their programs, some (notably NMPC, Central Hudson, and New York State Electric & Gas) had proposed large reductions in their DSM budgets. In addition to specific comments on the individual utilities, PII called upon the PSC to recognize the continued need for aggressive DSM, despite the current excess capacity; to reject subscription programs that allow customers to "opt out"; to require the utilities to make greater use of fuel switching and joint electric and gas delivery of DSM; and to be proactive, rather than leaving DSM program changes to utility discretion. In addition, PII urged the PSC to keep DSM proceedings separate from rate cases: according to PII, biennial DSM/IRP planning proceedings should be retained, but they should be staggered so that all utilities are not under review at the same time.

In addition to efforts targeted toward the DSM plans of New York's electric utilities, PEP's efforts have included a cooperative arrangement with NMPC (discussed in Section IV); participation in deliberations on the state energy plan update and in PSC policy-setting proceedings, such as those on LRACs; and energy efficiency education and research. With respect to the latter, PEP in 1990 released an extensive study, *Environmental Costs of Electricity*, concerning externality values. Some of PEP's staff members teach in the Pace University Law School, and PEP supplies law students with the opportunity to gain experience in utility reform issues.

Current DSM/IRP Initiatives

In late 1992, PEP put considerable effort into combating NMPC's proposed subscription service program for its large industrial customers; and in early 1993, it also worked to negotiate an alternative approach at another utility, Rochester Gas & Electric. With the latter approach, the amount that large industrial customers contribute for DSM in their rates is set aside to fund their energy efficiency projects, but if the funds are not used, they are made available to other customers.

During 1993, PEP staff have met with utility staff concerning their DSM programs, both at meetings organized by the PSC and on a one-on-one basis. PEP staff also have participated extensively in the PSC proceedings noted earlier (including, especially, proceedings on environmental externalities and renewable resources), as well as sitting on an advisory committee

to the PSC concerning DSM evaluation methods. In addition, they have participated in the effort led by the State Energy Office to revise the state energy plan.

To make the case that DSM can be good for the economy, PEP has proposed to undertake, with the State Energy Office, a study of the employment and earnings impacts of DSM technologies as compared with supply-side options. In addition, PEP has sought to make the case that New York should impose a carbon tax, as an instrument to promote both energy efficiency and economic development. To lay the groundwork for such a tax in New York, PEP has proposed to undertake (with Tellus Institute, a consulting firm) a study to determine what the impacts of such a tax would be and how it might be offset by reductions in other taxes.

Outcomes

Program and policy issues. Important recent issues include the 1993–94 plan filings and their aftermath, and recent rate cases—notably, the NMPC rate case and its DSM subscription service program for large commercial and industrial customers. These issues have now been resolved. However, equally important are the policy issues now under consideration by the PSC, the forthcoming update of the state energy plan, and rate cases on the horizon. Their outcomes remain to be seen.

PII's reviews of the utilities' 1993–94 DSM/IRP filings were extremely detailed but did relatively little to alter the PSC directive concerning the utilities' proposed DSM programs and expenditure levels—except, as noted below, with respect to program evaluation. The PSC order on the plans, issued in early 1993, required one utility (Central Hudson Gas & Electric) to submit program revisions, and it also responded favorably to PII's criticism of expensive DSM programs that merely shift usage from peak to off-peak times. For the most part, however, the PSC continued its policy of refusing to “micro-manage” the utilities and largely approved their DSM plans as submitted.

The PSC order did impose a requirement that each utility consider the recommendations of parties that had commented on the utility's 1993–94 plans; participate in a public meeting organized by PSC staff on program delivery issues raised by the comments; and then, within 2 months, explain to PSC staff and commenting parties how it had or hadn't responded to the comments. But this directive simply set up a procedure for utility response to comments: it did not require the utilities to make substantive changes, and according to more than one respondent, it did not work as well as expected. (In fact, while one respondent indicated that the utilities produced “a lot of rhetoric, but also some significant changes,” another commented that they simply “stonewalled.” The former went on to add that there had not yet been time for detailed analysis of changes actually made following comments on the plans.)

Included in PII's reviews of the utilities' 1993–94 plans were comments on how utilities planned to evaluate their DSM programs (including, for example, baseline estimation, participation rates and costs, and participation persistence). The commission directed the utilities to respond to intervenor and PSC staff comments on their evaluation methods. On this score, however, the commission's order had more “teeth” to it: it required that each utility response

be reviewed and approved by the commission, and it also required that the utilities establish an evaluation fund equal to 0.15% of their DSM and related budgets (a total of approximately \$450,000 annually) to be used for independent technical review and verification of the utilities' savings estimates.

During negotiations prior to settlement of the NMPC rate case, PEP staff argued for tempering the DSM budget cuts proposed by NMPC. They had some success in this regard but were not able to completely block NMPC's proposed subscripitive service program. However, as discussed further in Section IV, they did help modify the program somewhat, and they also helped contain the subscripitive service approach to NMPC: the PSC decided that it would not be tried by other utilities until the NMPC trial program had been evaluated.

Satisfaction of objectives. By now in New York, the concept of utility-sponsored energy efficiency programs is well-recognized: the question is not "whether," but "how" and "how much." Thus, with respect to New York, PEP's primary objective is to promote policies that ensure that DSM is treated as a viable option and to hold the line against policies that have the effect of eroding DSM. On this score, PEP gives the impression of achieving some "wins" but also of fighting a continuing war—one that may be escalating. PEP staff are concerned that pressures on the utilities (and on the PSC) to have competitive rates may lead to a stampede away from aggressive DSM. They are also frustrated with the PSC's continuing refusal to specify what the utility DSM programs should look like—a frustration shared by some staff within the Department of Law.

Changes in relations among parties. Since its inception, and especially over the past 3 to 4 years, PEP's influence has grown within New York: it is now regarded as an important, respected player in utility regulation issues. It has achieved this recognition through its comments on utility documents, its statements before PSC and adjudicatory proceedings, its participation in less formal meetings held by the PSC and the State Energy Office concerning utilities, its coalition-building in New York, its interaction with a national network of like-minded groups, and its research on energy issues. Nevertheless, PEP is not the only influential intervenor in utility regulation issues.

As noted above, Multiple Intervenors continues to actively promote its goal of keeping its clients' utility rates down, partly by limiting utility-sponsored DSM programs. Multiple Intervenors' influence appears to be growing, in part because of changes in the economic climate. For example, a 1990 collaborative concerning New York State Electric & Gas Company's DSM programs—a collaborative that included the utility, the Conservation Law Foundation of New England, PEP, the State Energy Office, and Multiple Intervenors—resulted in a DSM plan filing that substantially revamped and extended the utility's DSM programs. This plan was supported by all of the collaborative participants except Multiple Intervenors. In contrast, in mid-1992, the concept of a DSM subscripitive service program for NMPC's large industrial customers was strongly pushed by Multiple Intervenors and was subsequently accepted by the PSC, despite vehement opposition from PEP.

Future Prospects

New York utilities and DSM. The next couple of years will be telling ones for DSM in New York—especially as the PSC releases orders on the as-yet-unresolved substantive and procedural questions noted earlier, as the updated state energy plan is issued, as utilities submit new integrated resource plans, and as rate cases continue to come before the PSC. There is little indication that the adverse economic climate in New York will alleviate in the near future, which suggests that DSM will continue to be met with ratepayer challenges, especially from large industrial customers. Furthermore, the prospects for most of New York's electric utilities include both excess generating capacity and continued competition from non-utility generators, as well as the possibility of utility deregulation. In addition, the utilities and the PSC face an increasingly important issue: that of the viability of extending the lives of existing power plants versus retiring them, especially if they have difficulty complying with stringent air quality requirements.

PEP's work in New York. With the utilities' increased DSM/IRP planning activity, with new rate cases, and with the PSC's proceedings and informal, cooperative meetings on policy issues, the opportunities for intervenors to participate in utility regulation have increased significantly since PEP got going 6 years ago. While PEP's staff is also larger now, it has difficulty covering all of this activity. In addition, most of its budget depends on foundation grants, and according to its most recent annual report (for the fiscal year ending August 31, 1993), it expects decreased support from some of its major funders because of their funding cycles or changed priorities. The annual report indicates that this decrease in support will limit the funds available for FY 1993-94 for consultants to analyze utility filings and to provide expert testimony in PSC proceedings, and will also prevent PEP from hiring an attorney to be located in the state capital. (Currently, only one staff member, an economic analyst, is located in Albany. The others are in White Plains, a 3-hour drive away.)

PEP currently is exploring new funding sources, including research contracts to support its proposed studies. In addition, collaborative efforts with utilities remain a possibility. So far, however, the only collaboratives in which PEP has participated are the 1990 New York State Electric & Gas collaborative mentioned earlier, with the Conservation Law Foundation as the lead EEAG; a collaborative concerning Con Edison's DSM programs in which PEP has assisted NRDC, the lead NUP; and the Niagara Mohawk cooperative arrangement described in Section IV.

IV. THE NIAGARA MOHAWK COOPERATIVE ARRANGEMENT

In the spring of 1992, a cooperative arrangement was undertaken between NMPC and PEP. It was directed solely toward designing a commercial and industrial (C&I) new construction DSM program to be included in NMPC's 1993-94 DSM plan to be filed in May 1992. This was basically a two-party affair: partly because of its limited subject and time span, no other participants were directly involved. The NMPC/PEP arrangement also was not a "collaborative"

in the fullest sense of that term: NMPC preferred to regard the consultants hired by PEP (with NMPC concurrence) as they would other consultants hired directly by the company.

Initiation and Purpose

In its September 1990 comments on the 1991–92 utility DSM plans, PII had proposed that the PSC direct the utilities to begin collaborative design negotiations with public interest and industry intervenors and the State Energy Office. The 6-month process would be monitored by PSC staff, and disputes would be referred to them. The PSC declined to adopt this proposal, but did instruct the utilities to meet with the intervenors. Three senior management personnel of NMPC then met with David Wooley of PEP, PEP's consultants, and Robert Watson, a representative of the NRDC. The meeting was initially somewhat hostile, but tension eased as it progressed. In particular, NMPC was impressed with Watson and Wooley's pragmatic stance and with their connection to a national network of organizations that could help bring outside expertise to NMPC.

In the summer of 1991, after NMPC held a forum on amendments to its 1991–92 DSM plans, PEP proposed a DSM cooperative arrangement. PEP suggested that NMPC provide \$30,000 to PEP for commercial program design experts; consultants would be selected by PEP but would have qualifications acceptable to the utility. PEP also proposed that, while the design team would consist of the PEP consultants and NMPC staff, issues on which agreement could not be reached would be presented to a committee of senior representatives of NMPC, PEP, and any other party to the discussions. PEP further noted that, if agreement was reached, it would support NMPC in its DSM plan filing; otherwise, it would be free to advance its positions directly to the PSC.

NMPC at first declined, but when PEP again raised the idea of a cooperative arrangement in February 1992, the utility was more interested—in part because the May 15 filing date for its 1993–94 plan loomed. An arrangement was worked out for PEP to assist in developing a DSM program that would capture lost opportunities in the construction of new commercial and industrial buildings. The utility accepted all aspects of the PEP proposal except the provision concerning the committee to resolve disputes: NMPC's Manager of Marketing Programs & Services noted in a letter to PEP that the utility ultimately had to take responsibility for its DSM programs and that its relationship with PEP would be similar to that between NMPC and all other consultants. With this issue resolved—on paper, at least—an agreement was reached in mid-March and the design process began.

Participants

The Pace Energy Project is described in Section III. A brief description of NMPC follows.

NMPC is the second largest investor-owned electric utility in New York. Headquartered in Syracuse, its service area covers much of western New York State and includes a population of approximately 3.5 million people. As of 1991, it had annual electric sales of about 36,700 GWh

and total electrical operating revenues of about \$2.9 billion. Its electricity sales are fairly evenly divided among the residential, commercial, and industrial sectors. Along with two nuclear power plants (Nine Mile I and II), it has four fossil fuel steam plants and various combustion turbine and diesel generating units. These power sources, together with purchased power (e.g., from the New York Power Authority), constitute more than 90% of its supply-side resources; the remainder is primarily hydroelectric.

Partly because of a policy against load-building marketing activities adopted in the 1970s (in reaction to the oil crisis) and maintained into the late 1980s, and partly because of slow population growth in its region, NMPC's total electric sales were stagnant during the 1980s. The CEO who had been in place since the mid-1970s retired in 1988; his replacement, a longstanding NMPC employee with a background in operations, put increased emphasis on customer service but still has had to deal with a capacity surplus situation. Low sales, combined with added capacity from the Nine Mile II unit that began operation in 1987 and from a fairly large segment of non-utility generator power, have led to a capacity surplus that is expected to continue past the turn of the century. The company has also had to deal with substantial financial problems.

In part because of problems with its Nine Mile I and II nuclear power units, NMPC experienced severe financial and operational difficulties in the late 1980s. (Nine Mile I had a 3-year outage; Nine Mile II had delays and cost overruns during its construction.) To protect NMPC's customers, the PSC established a task force to develop a strategy to increase the company's accountability while improving its financial stability. This led to an "NMPC Global Settlement Agreement" establishing a negotiating framework to allow interested parties to settle a number of PSC cases involving NMPC, including rate and prudence proceedings. NMPC was also required to initiate a comprehensive management self-assessment to improve its performance for the benefit of its ratepayers. In June 1991, the PSC approved a NMPC Financial Recovery Agreement that set new rates and tied an incentive plan to implementation of the recommendations of the self-assessment. These included reducing costs and improving service through measures such as eliminating layers of management, strengthening nuclear power plant operations, and being more responsive to environmental issues. The June 1991 agreement also encouraged NMPC to adopt cost-effective DSM by decoupling profits from sales and tying them to achievement of annual DSM goals. On July 1, 1992, the PSC approved a \$22.8 million incentive award for NMPC based on its success in meeting a wide range of performance goals for June–December, 1991.

NMPC began its DSM programs in earnest after the PSC indicated that the DSM plan filed by the utility in 1988 was not adequate. In addition, in the wake of problems with its nuclear power and fossil fuel plants, NMPC had become aware that supply-side approaches are not necessarily risk-free; instead, it had begun to embrace the concept of IRP and to move forward with DSM. However, NMPC was hampered in its DSM program development by its lack of a strong customer service capability (which had been eroded by its anti-marketing philosophy of the 1970s and 80s) and by the speed with which it had to develop programs. For these reasons, it gradually became amenable to the idea of entering into a cooperative arrangement with PEP concerning an area of mutual interest and concern—new construction and lost opportunities.

Process

A contract for \$30,000 was signed by NMPC and PEP in the spring of 1992 and two consultants were hired by PEP; both consultants were from outside New York but had extensive experience in DSM and some familiarity with the New York DSM scene. Tasks to be done by the consultants, with NMPC and PEP representatives, included reviewing data on the new construction and renovation market, developing program concepts and detailed program design, and presenting a plan by April 24, 1992.

On April 11, the consultants delivered a detailed program design to NMPC. The material was discussed at an April 13 meeting with NMPC staff and State Energy Office staff. Both groups then made detailed written comments. Although NMPC and PEP, with its consultants, subsequently agreed on most of the program elements, they disagreed on a few issues, the most important of which was program participation goals. PEP argued that NMPC was tapping only a small portion of the available market; NMPC argued that you must "walk before you run"; that it would take several years to establish a full-scale program.

On May 15, 1992, NMPC filed its 1993-94 DSM plan. Because agreement had not been reached on all aspects of the C&I program, PEP did not endorse it. However, the lack of a consensus filing did not necessarily indicate friction between the parties: it was mainly due to the pressing May 15 deadline. During the next couple of months, NMPC staff and PEP consultants continued to exchange comments about the C&I program, and at a meeting in early August between PEP and NMPC DSM staff, it appeared that the areas of disagreement might eventually be resolved. But prospects for agreement, especially on the key issue of program participation and budget size, became dimmer with NMPC's subsequent settlement concerning a pending rate case.

Related Policies and Interactions

On September 14, 1992, NMPC, PSC staff, and Multiple Intervenors executed a settlement agreement on NMPC's pending rate proceedings. The agreement provided, among other things, that NMPC's 1993 DSM budget would be \$48 million, not the \$54.3 million specified in its May 15 filing; that its shareholder incentives would be capped at \$5 million; and that large C&I NMPC ratepayers could, for a 3-year trial period, participate in a "DSM subscripitive service program." In this program, they could elect not to participate in the NMPC base DSM programs and thereby avoid paying for costs associated with DSM-related rebates and NMPC earnings incentives. PEP was a party to the discussions leading up to the settlement but declined to sign the agreement because of its opposition to the subscripitive service program.

In October 1992, NMPC filed a revised 1993-94 DSM plan to reflect budget changes indicated in the rate case settlement. Included was a change in the C&I new construction program which showed a 1993-94 program budget of \$2,480,500—slightly less than the \$2,500,000 budget filed in May. Projected program participation was down radically for both years (for 1993, 8 customers as opposed to 33 in the earlier filing; for 1994, 10 as opposed to

46), but projected annualized energy savings were up (for 1993, 6,525 megawatt hours as opposed to 5,898 in the earlier filing; for 1994, 8,156 megawatt hours as opposed to 7,374).

In preparing their September 14 comments on the 1993–94 DSM/IRP filings of the seven utilities, Public Interest Intervenors had not yet seen the revised NMPC DSM plan, but they could anticipate what it might look like. In their comments, they applauded NMPC for having increased, in its May 15 filing, its 1993–94 DSM budget 30% over the 1991–92 period. However, they noted that the energy savings in that plan still represented only half of the achievable DSM potential and would be well under the state energy plan targets, and they expressed their strong concern about the effects of the rate case settlement agreement on the 1993–94 DSM plan. With respect to the C&I new construction program, they emphasized that this program should be ramped up to full scale in 1994, noting that as now planned by NMPC, the program would treat only a very small portion of the C&I square footage added annually in NMPC territory.

Outcomes

On November 30, 1992, after taking extensive testimony both supporting and opposing the NMPC rate case settlement, Administrative Law Judge Frank Robinson recommended that the PSC approve the settlement agreement, but with the provision for the subscripitive service program deleted. On December 16, the PSC decided to follow the PSC staff recommendation and basically approve NMPC's revised 1993–94 DSM plan. However, a decision concerning the proposed subscripitive service program was postponed until the PSC decision on the NMPC rate settlement, and NMPC was directed to provide further details on this program, including its goals and an expanded evaluation procedure.

One month later, in January 1993, the commission reached a decision on the NMPC rate settlement. The commission accepted the subscripitive service program, but with several modifications that had been sought by PEP. These included such provisions as requiring audits of customers who wished to participate in the program, to identify energy efficiency opportunities; precluding other New York utilities from adopting this approach for the time being, until the NMPC program could be evaluated for its effect on these customers' net energy savings; and increasing NMPC energy savings goals. The commission made clear that if significant savings were not achieved, the experiment would be canceled.

Future Prospects

During the cooperative arrangement concerning the design of the C&I new construction program, there was some discussion between NMPC and PEP of whether the arrangement should be renewed to cooperate on implementation of the program. However, following completion of the program design, both PEP and NMPC staff had been too preoccupied with other issues—including the biennial plan and the rate case—to pursue the possibility of further collaboration.

Despite their differences on the rate case and its subscription service program, a future cooperative arrangement between NMPC and PEP remains a possibility. Recently, PEP and NMPC have been consulting informally regarding a "green pricing" option being considered by the utility. But at this time, a cooperative arrangement does not appear to be imminent.

Three factors diminish the likelihood of a formal cooperative arrangement between NMPC and PEP: (1) NMPC now has greater sophistication and experience with DSM programs; its need for groups such as PEP may be less. (2) NMPC finds it difficult to fund a group that takes a strong stance opposing it. (3) NMPC's DSM programs may be significantly curtailed in the near future. Of these factors, the last is the most significant.

NMPC is under continuing pressure from its large C&I customers to keep their energy bills down, and these customers, according to one person interviewed, have a "fixation" on DSM. Although non-utility generation is at least as great a cause of NMPC rate problems as DSM, these customers target DSM, seeing it as social engineering while seeing unregulated generation as a sign of a healthy free market. NMPC thus may be heading toward the possibility of eliminating both inter- and intra-class "subsidies" from its DSM programs, which could have drastic effects on those programs. NMPC now has a DSM staff of about 50 people, but one observer has commented that it is likely to be a lot less before long. It appears that, while NMPC's projected energy savings figures have not yet been revised, they may need to be reexamined to determine whether they are being and will be actually attained.

V. CONCLUSIONS

Recommendations of Respondents

Various people interviewed had a number of recommendations for EEAGs such as PEP.

Cost-effective allocation of time and resources. To some extent, respondents disagreed on where groups such as PEP should direct their time and resources. A key area of disagreement concerned the extensive review of the 1993-94 utility DSM plans done by PEP for PII. PII's comments were over 300 pages long (in contrast, Multiple Intervenors' were about 50 pages) and were costly to prepare because they involved a number of consultants. When combined with the costs for consultants hired to oppose NMPC's DSM subscription service program, PEP had difficulty covering its expenses during the past fiscal year; in fact, it apparently had to curtail its use of consultants toward the end of the year. Respondents disagreed on whether the amount of effort and money put into review of the utility plans was worth it.

PSC staff, especially, said that while the PII review was of high quality, it was a misallocation of PEP resources. They also said that, because of the staff time required to digest and assess the PII review, it led to a misallocation of limited PSC resources. PSC staff appeared frustrated that, although they held a meeting to indicate areas where they would like comments on the utilities' plans from intervenor groups, PII ignored their call for brevity, for focus on

program evaluation over program delivery issues, and for a general focus on policy rather than on “program minutiae.” PEP staff contend, however, that the comment length recommended by PSC was ludicrously short (25 pages). They—together with at least one other respondent—also see the plan review problem as resting primarily with the PSC: with the fact that it is short-staffed and that it continues to refuse to direct the utilities concerning their DSM programs. Furthermore, PEP staff indicated that their extensive comments were intended not only for the PSC but also for the utilities, to influence them. In addition, they said they wanted to establish two solid rounds of review of the utilities’ plans, but that in future years, their comments might be more limited and targeted.

At issue is whether extensive, expensive comments on proposed utility actions (and other forms of regulatory intervention) are worth it. The answer to this question lies both in the short term, in the extent to which an intervenor’s activities can alter either PSC directives or the utilities’ voluntary courses of actions, and in the long term, in the extent to which they help to establish the credibility of the advocacy group.

Advocacy group coalitions and ratepayer constituencies. There was virtually universal praise among the respondents for the coalition-building that PEP has done, especially in getting PII started 4 years ago. Before that time, there was no strong, united energy efficiency advocacy voice; now, PII is widely recognized and respected within utility regulation circles. However, some respondents also noted that a coalition of EEAGs is not enough; that the coalition also must have a clear constituency, if it is to effectively influence the PSC and the utilities. Multiple Intervenors was cited as a group that has a very obvious and powerful constituency; in contrast, a couple of respondents suggested that PII and PEP sometimes appear to represent themselves and their own ideals, not ratepayers.

PII is handicapped in that, unlike Multiple Intervenors, the people it represents are diffuse and much less individually influential. Thus, whereas Multiple Intervenors can get a utility’s attention by bringing one or two of its large industrial ratepayers to the table, PII’s strength has to lie in numbers. PEP sees its mission as primarily one of regulatory intervention; it does not have members, and it mostly leaves to other EEAGs the task of grassroots interaction as well as political lobbying. Nevertheless, as one respondent noted, utilities respond with greatest alacrity to “things they’ve heard from their own customers.” And, as another noted, PEP gets the best expertise available, but it also needs to get “live customers.”

Daily presence, internal expertise, credible research. Several respondents noted the importance, for a group such as PEP, of having someone who can participate on a routine basis in the regulatory proceedings and informal meetings taking place in the state capital. In addition, respondents noted the value of having internal staff expertise. While respondents saw PEP’s effectiveness as having increased when it hired a staff member to be located in Albany, there were criticisms from more than one respondent that PEP tends to rely on consultants rather than on strong internal expertise. As one person commented, “They need to know their numbers better.” Nevertheless, most PEP staff were widely recognized as smart and competent, and PEP

was also seen by some as a source of good research. On this score, one respondent noted that a key asset of a group such as PEP can be research, "if it sheds light and isn't posturing."

Pragmatic stances. One respondent noted that at times, utilities may feel skeptical about how much groups such as PEP can contribute to "good utility practice," seeing them instead as dogmatic ideologues. He went on to note, however, that PEP staff generally have a "here to help" attitude that increases utility receptivity to them. Several people emphasized, though, that groups such as PEP must make the case for doing DSM in a competitive environment, and that to do so, they must balance between remaining committed to their principles and being flexible.

National networks. An asset that EEAGs can bring to utilities and state agencies, according to several respondents, is the national network of expertise to which they have access (although one respondent noted that this may be less important now than it was a few years ago, when DSM in New York was just beginning to ramp up). Some respondents also noted, however, that ideologies and expertise should not be imported wholesale; instead, differences among states and utilities should be recognized. The current national network of EEAGs, according to one respondent, was not working extremely well in terms of formal written communication but was still effective because of informal exchanges.

Informal meetings. A number of respondents said that informal meetings are a valuable means of getting parties with different perspectives together to exchange views and iron out differences. In New York, the PSC strongly endorses this concept and uses it frequently. Its efforts in this regard are generally praised, although PEP staff did note that it can tax their scarce staff resources. In addition, another respondent commented that when the PSC holds meetings, everyone is at the table, and thus people tend to "grandstand." Perhaps more valuable, he indicated, are private, one-on-one meetings between a utility and an intervenor group.

Collaboratives. Enthusiasm for collaboratives was much less widespread. PEP staff spoke highly of the notion of collaboratives, both as a way to deal with potential areas of conflict in a nonconfrontational manner and as a way to finance consultants to interact with a utility's experts. However, PEP staff are realistic about the prospects for collaboratives in New York, which appear to be limited at best.

The utilities vary in their receptivity to collaboratives, but most apparently are reluctant to enter into them if they entail a significant tilt toward shared decisionmaking power, rather than simply obtaining consultant advice. (Furthermore, as one respondent noted, a utility may not be keen on funding the consultants of groups that have been opposing them before the PSC.) Furthermore, the PSC is lukewarm about collaboratives that dilute responsibilities that should, in its view, properly remain with the utilities. Other state agencies appear to have reservations about collaboratives, as well: more than one state agency respondent said that the adversarial alternative is not necessarily bad, in that it gives everyone a chance to participate—sometimes more cost-effectively.

In addition, one respondent commented that the 1990 New York State Electric & Gas collaborative had “poisoned the well” for collaboratives in New York, because some out-of-state energy efficiency advocates involved in the collaborative had been smug but ill-informed about New York specifics. However, PEP staff—whom he praised as having “held the collaborative together”—have noted that the 1990 collaborative provided them with a valuable learning opportunity, partly because of the involvement of the more experienced out-of-state energy efficiency advocates. There appears to be general agreement, though, that out-of-state mentors are most effective if they can spend an extensive amount of time *in situ*.

Promoting institutional change. One respondent who is sympathetic to energy efficiency advocacy noted that the central goal should be institutional change over the long term, but that this can be very difficult both to achieve and to measure. The recommendations related previously would all have the end goal of promoting institutional change; in addition, a few others were mentioned. For example, one respondent commented that workshops held by neutral organizations, but with presentations by groups such as PEP, could help utilities and regulators to think about issues in new ways. In addition, a respondent suggested that one effective strategy for an EEAG is to focus on one or two utilities in a state: the other utilities—and the regulatory agency—may then follow. And finally, a respondent noted that commenting in regulatory proceedings may not be enough, since the agenda remains driven by the PSC. Instead, it may sometimes be necessary to adopt more aggressive, adversarial tactics such as bringing suit.

Our Observations and Recommendations

Clearly, the message from New York (especially from NMPC, but also from other utilities) is one of concern about competitiveness and its potential effects on utility-sponsored energy efficiency programs. This concern is being driven in part by recent federal policies that promote competitiveness in wholesale power production. It is also being driven by ratepayers who, especially in poor economic times, want their rates to be held as low as possible. The desire for pared-down rates is being expressed especially vociferously by large industries and commercial establishments, for whom the cost of power is one factor affecting their own ability to compete. They are pressing for rate structures that do not “subsidize” the DSM programs of other rate classes; the possibility of retail wheeling is also becoming increasingly attractive for some of them. As a result of these pressures, competitiveness has become a byword for both utilities and regulators: a main goal now is to “get the price right.”

EEAGs in New York are thus faced with an especially difficult task. Previously, a utility operated in a fairly closed system: it determined how best to meet the demand within its service territory. Now, that system has been opened up. And while DSM is not incompatible with competitiveness, it works best when utility resource planning is both long-range and holistic. In other words, it promotes measures that are intended, over the long haul, to keep everybody’s energy bills down and to reduce the environmental costs of energy production. In the long run, cost-effective DSM will enhance competitiveness. But in the short run, DSM may be unappealing when measured against the cheapest power sources available—even though those power sources may not be very energy efficient or environmentally appropriate. Furthermore,

as ratepayers object to the notion of inter- and intra-class “subsidization” through utility-sponsored DSM programs, the latitude for creative programs that will benefit everyone in the long run is hampered.

The push by groups such as Multiple Intervenors to have DSM programs and plans taken into consideration in rate cases is an indication both of the fact that DSM now constitutes a significant portion of the New York utilities’ budgets and of current pressures on utilities and regulators to rethink whether those budget allocations are appropriate. And rate cases can pose particular problems for groups such as PEP: it is more difficult to intervene effectively, since it is more likely that a settlement will be worked out between the utility and PSC staff, and when a settlement has been reached, it cannot be altered piecemeal. While groups such as Multiple Intervenors face similar problems with settlements, they have the advantage of having far more resources to fund experts and staff lawyers, so they are far more able to stay on top of rate cases.

The push to hold DSM under a microscope in rate cases points to a dilemma that New York regulators and utilities are having to face: in the current, competitive climate where concern about today’s rates and energy bills is paramount, what role should long-term planning play? How can it still be forceful and relevant? This issue is currently being addressed by the PSC, and it is not clear how it will be resolved. It is complicated by the PSC’s continuing desire to provide only general policy guidance rather than dictate specific utility actions. Yet the PSC is at a juncture where it will have to consider whether it still wishes to promote DSM aggressively, and if so, whether its current set of policies can still do the job.

How can PEP and its fellow EEAGs best promote cost-effective DSM in these uncertain times? Many of the recommendations that we have echo those given by respondents. In particular, though, we would emphasize the following:

The need for a strong home-grown presence. PEP is now widely accepted as a key player in utility regulation in New York. To the extent possible, it needs to build on its reputation by further strengthening its internal capabilities and its presence in Albany, and by encouraging its constituents to voice their opinions to their respective utilities and to the PSC—including constituents whose rates would be adversely affected if retail wheeling were adopted as a policy.

The need for diverse and stable funding. Large-scale collaboratives do not appear to be in the offing in New York. Lacking this forum for interaction and funding of advocacy group efforts, PEP needs (and is pursuing) other sources of funding—including forming unlikely alliances, if doing so can further a particular cause. However, a core level of fairly stable funding will continue to be necessary for PEP to remain an effective player in New York utility issues.

The need to “reinvent” DSM. Along with other EEAGs, PEP has begun to advance new arguments for DSM, to show how DSM can be an economic advantage to states in hard times as well as good times. While these new arguments are crucial, they may not be enough. PEP

and others may need to reexamine not only the classic reasons for DSM, but also how it classically has been done. Retail wheeling and resistance to inter- and intra-class rate “subsidies” may be the wave of the future, at least for the next few years. While these movements can be fought, alternatives that take them as realities—along with new realities more conducive to DSM, such as the Clean Air Act amendments—may need to be posited. PEP, with its in-house expertise and its connection to Pace Law School students interested in utility policy, is uniquely positioned to make a substantial contribution in this regard.

RESPONDENTS

Utility

Martin Nott Acting Director, Marketing Programs and Services, Niagara Mohawk Power Corporation

Energy efficiency advocacy groups

Richard Ottinger Co-Director, Pace Center for Environmental Legal Studies

Chris Robertson Consultant, NMPC/Pace Cooperative Arrangement

David Wooley Executive Director, Pace Center for Environmental Legal Studies

Business/industry groups

Barbara Brenner, attorney for Multiple Intervenors, declined to be interviewed but supplied a copy of the Multiple Intervenors’ September 14, 1992 comments on the utilities’ 1993-94 DSM plans.

Government agencies

Richard Bossert Chief, Utility Systems Analysis, New York State Consumer Protection Board

Laurence DeWitt Director, Office of Energy Efficiency and Environment, New York State PSC

James Gallagher Chief of Planning and Evaluation, Office of Energy Efficiency and Environment, PSC

Sarah Johnston Environmental Policy Assistant, Environmental Protection Bureau, New York State Department of Law

John Reese Director of Development, Planning, and Evaluation, New York State Energy Office

Peter Smith Director of Planning, New York State Energy Office

8. PUBLIC SERVICE COMPANY OF COLORADO COLLABORATIVE AND OTHER LAND AND WATER FUND ACTIVITIES TO INFLUENCE DSM AND IRP IN COLORADO

SUMMARY

The Public Service Company of Colorado (PSCo) is the largest utility in the state, providing 70% of the power used. The PSCo Collaborative began in July 1991 as part of a settlement of a PSCo rate case. The purpose of the collaborative was to identify and implement cost-effective DSM programs. The Colorado Public Utilities Commission (CO PUC) approved a settlement agreement drafted primarily by the Land and Water Fund of the Rockies (LAW Fund), which was intervening for the first time in a rate case. The agreement established the collaborative and also opened dockets on three related issues: decoupling PSCo revenues from its sales and establishing financial incentives to encourage PSCo to implement DSM; IRP; and assistance for low-income customers. These three dockets were carried out through traditional processes.

Resolutions to each docket were reached in early 1993. The collaborative agreed on and the CO PUC approved six DSM programs, targeting all sectors and projected to save 119 GWh by 1995 at a total budget of \$24.2 million. The collaborative completed its work and has ended. On two of the other dockets, LAW Fund and PSCo were at odds. The CO PUC framed an IRP process based largely on a LAW Fund proposal, but sided with PSCo on an incentive mechanism (and against revenue-per-customer decoupling supported by LAW Fund).

LAW Fund was an influential and extremely active participant in these processes, but like other participants found the collaborative to be an exhausting process. It has continued to attempt to influence DSM use and regulation in Colorado by participating in the development of PSCo's first Integrated Resource Plan and in a new docket examining the issue of decoupling and incentives.

I. INTRODUCTION

In July 1991, as part of a settlement to a PSCo rate case, CO PUC accepted a proposal from intervening parties and PSCo to open four dockets related to DSM and IRP. One of the dockets was the formation of a collaborative process to examine, propose, and implement DSM programs for PSCo. This case study describes the work and products of this collaborative. It also examines interactions related to other DSM-related and IRP dockets established along with the collaborative, with an emphasis on one of the key players in these processes, LAW Fund. The case study is current as of November 1993, when interviews with participants in these processes were completed.

II. CONTEXT

Political Environment

The Colorado legislature is more focused on the impact of energy production on air quality and water quality than on DSM. The governor has not been vocal on DSM and IRP, but has consistently supported efforts of the Colorado state Office of Energy Conservation (OEC) and has paid some attention to the issue of assisting low-income consumers.

Big events, such as rate case settlements and CO PUC approval of the DSM programs, receive news media attention. But public awareness of energy efficiency issues is stimulated primarily by national attention to the environmental impacts of producing energy (e.g., global warming and acid rain). About 5 years ago, there was concern that air pollution in Denver (the "brown cloud") was caused by three local power plants owned by PSCo. A study of the cause of the pollution concluded that the contribution of the power plants was relatively small.

Economic Environment

Economic growth in the region serviced by PSCo is occurring more rapidly than was recently expected. For example, PSCo is experiencing 5-7% growth in parts of its service territory.

Regulatory Environment

In the mid-1980s, the CO PUC began addressing DSM and IRP issues. The appointment of the deputy director of OEC to CO PUC helped PSCo and the commission as a whole to become attuned to DSM-related issues. In 1990, CO PUC initiated a general inquiry to establish policies regarding DSM; the results of that inquiry were drafted in December of that year. The policies were broad guidelines intended to be implemented through future CO PUC proceedings.

In November 1990, the CO PUC ratified the framework and mechanics for full cost recovery for DSM programs (labeled *Demand Side Management Cost Adjustment*). This mechanism, hammered out by OEC and PSCo, allowed the utility to capitalize equipment purchases, rebates, and software costs associated with DSM programs. These capitalized costs would earn the company's authorized rate of return until fully amortized after 7 years. All other DSM-associated expenditures would be expended in the period in which they were incurred. A bonus of 5% of the avoided cost per MW would be paid over a 10-year period. The bonus can be adjusted based on project costs or expected measure life.

Three commissioners, appointed by the governor for 4-year terms, make up the CO PUC. Commissioners must be from both major political parties. CO PUC membership has changed during the last few years. What formerly was characterized as a "strong pro-DSM commission" is now mixed, but not antagonistic toward DSM. One new commissioner has little experience

with energy issues. Colorado has an *ex parte* rule separating CO PUC advisory and advocacy staffs, which together total about 80 people.

Utility Environment

Of the three large utilities operating in Colorado—PSCo, Tri-State Generation and Transmission (Tri-State G&T), and West Plains—PSCo is the largest, supplying 70% of the power used in Colorado. PSCo has both gas and electric operations. PSCo's electric generation, transmission, and distribution operations have about \$2 billion in identifiable assets and produce over \$1 billion in revenues. PSCo purchases 40% of its power and generates 60% of it, primarily with coal-fired plants.

The PSCo service territory has a population of about 3 million people, two-thirds of whom are in the metropolitan Denver area. Approximately 50% of its electric sales are to commercial customers, 25% to residential customers, and the remaining 25% to industrial and other customers. In contrast, approximately 88% of PSCo's customers are residential, 11% are commercial, and only 1% are industrial.

Other Key Groups

Some organizations have assumed a more reactive position with regard to DSM and IRP. These include ratepayer advocates, such as the Colorado Office of Consumer Counsel (CO OCC), which traditionally has relied on intervention and litigation; and CO PUC staff, who intervene in all cases. State and private organizations that promote or oversee conservation activities include OEC, the Energy Conservation Association, and the LAW Fund, which is described in Section III. OEC strongly advocates DSM use and IRP and has in the past relied primarily on litigation and education to effect DSM and conservation, although it now prefers to focus on settlements and other cooperative efforts.

Several business and industry groups intervene in cases primarily in an attempt to minimize utility rates. Although they are not opposed to DSM, they are cautious and concerned that it will result in significant rate increases. Independent power producers are becoming more active and visible.

A primary difference among intervening groups is the degree to which each one focuses on energy issues. For some organizations (e.g. LAW Fund and OEC) it is a primary focus, while for other organizations (e.g., business groups), energy issues are secondary. Likewise, CO OCC has many consumer advocacy tasks in addition to utility-rate advocacy.

III. KEY DSM/IRP ACTIVITIES OF THE LAW FUND

Background

The LAW Fund is a regional environmental law center that provides free legal services to grassroots environmental groups in the Rocky Mountain region. It was incorporated in 1989 and began operating in 1990. LAW Fund's Energy Project, which began in early 1991, operates somewhat differently from the rest of LAW Fund in that in addition to representing client groups, it also intervenes on its own behalf. In 1992, the Energy Project had a technical staff of two lawyers (one of whom is also an economist) and an engineer. Its goal is to promote energy efficiency. The products of LAW Fund's first intervention (i.e., the collaborative and the related dockets) are the primary subjects of this case study and are discussed in Section IV.

Current DSM/IRP Activities

In addition to its participation in the collaborative, the related dockets, and the follow-up decoupling/incentives docket, LAW Fund is involved in other DSM and IRP issues related to PSCo and before CO PUC. It is working to encourage CO PUC to mandate integrated resource plans for gas utilities, and it is working on the CO PUC certification of PSCo's proposal to convert the decommissioned Fort St. Vrain nuclear plant to a combined cycle facility. LAW Fund also recently participated in PSCo's first integrated resource plan. A LAW Fund representative attended each of nine public meetings PSCo held to solicit input to the Integrated Resource Plan. LAW Fund questioned and commented extensively, and PSCo responded (acceptably to LAW Fund) by running models to investigate its concerns and questions.

During the collaborative and since then, LAW Fund and its staff have published several reports and articles about various DSM- and IRP-related issues, such as nonparticipant DSM rate impacts. These publications helped to assert LAW Fund's position as a credible and reasonable organization. A newspaper editorial (encouraged by LAW Fund) and responses to it, combined with the national attention LAW Fund gained through its publications, helped to garner attention from PSCo and, most likely, CO PUC.

Another ambitious undertaking of LAW Fund, intended to influence regional energy issues, is its planned "Vision Piece," a vision of the region's energy future. The Vision Piece and its development are intended to be a comprehensive examination from a regional perspective of the role of fossil fuels in the region; "underdeployments of DSM and renewables"; the regulatory structure; regional energy flows; environmental impacts of energy production, conservation, and consumption; and the language with which all these issues are discussed. LAW Fund plans to develop this report in collaboration with regional electric utilities and environmental and community activist organizations. The process of developing the Vision Piece and the report itself is also intended to be an educational tool and a networking device. LAW Fund has held meetings with more than 100 grassroots environmental and community activist groups and local chapters of national groups to solicit their input. Another goal of LAW Fund in conducting this

activity, in addition to become familiar with the goals of these other organizations, is to build networks and alliances among the groups.

Future Prospects

The likely course for LAW Fund activities in the near future is a steady one. LAW Fund, in addition to furthering the Vision Piece, will continue to intervene before CO PUC and other commissions, to conduct research about issues relevant to the Colorado and regional situation and publish the findings, and to build alliances with and among other parties.

IV. THE PSCO COLLABORATIVE

Initiation

In January 1991, PSCo filed a rate case that would increase gas rates but would decrease electric rates by less than 1%. PSCo and CO OCC negotiated a settlement to the rate case, and CO PUC held open meetings on the settlement in June 1991. CO PUC was concerned that the settlement was unclear on financial issues, that the CO PUC staff had not been party to the agreement, and that the concerns of LAW Fund and OEC were not included.

On June 18, 1991, a week after the open meetings on the rate case settlement, a second settlement agreement (drafted primarily by LAW Fund) was submitted. Signatories to this agreement were OEC, LAW Fund, CO OCC, and PSCo. The agreement proposed opening a docket to establish a collaborative to identify and implement DSM, a decoupling and financial incentives docket, a low-income docket, and an IRP docket. With some revision and the added signature of the CO PUC staff, the settlement agreement was approved by CO PUC in July 1991, and collaboration among PSCo and NUPs began.

Participants

Participation in the collaborative was open to any intervenor in the DSM docket (91A-481EG). Only people who provided expert testimony on any of the dockets established in the settlement agreement were excluded from the collaborative.

More than 15 parties participated in the process. The primary utility was PSCo, although small gas and transmission-oriented utilities did participate. Government organizations included CO OCC, OEC, and the city and county of Denver. The principal environmental/energy conservation group was LAW Fund. Several large business and industrial interests participated. Among them were Climax Molybdenum, CF&I Steel, and the Colorado Business Alliance Against Unfair Utility Practices (CBAAUUP). CBAAUUP represents primarily heating/air-conditioning and building contractors to ensure that utility contracts are made available to them.

PSCo, for whom the DSM programs were developed, projects that it will need new capacity in 1996 and that because of a constrained transmission system, it cannot purchase power to meet this need. The net firm peak electric demand of PSCo has been increasing an average of 2% per annum for the past 5 years. Accordingly, PSCo solicited proposals this year for supply-side options. The company's evaluation of proposals indicated that none was a better option than its own proposal to convert the decommissioned Fort St. Vrain nuclear power plant to a combined cycle facility.

PSCo favors DSM at "prudent" levels because of concern about rate impacts. It began pilot DSM programs in 1989, and in 1990 it let out two bids of 50 MW each for DSM savings. By the end of 1993, 26 MW had been verified.

Purpose

The collaborative defined its purpose as being "to develop . . . a number of DSM programs which are agreed to be clearly cost-effective, to have an acceptable rate impact, and to have the potential to save large amounts of electricity." It was also to develop monitoring and evaluation plans for each DSM program.

Respondents consider the collaborative's general goal (i.e., to identify and implement DSM programs) also to be their individual organizational objective. LAW Fund, PSCo, and OEC did not idealistically or unrealistically expect to move mountains during the collaborative process. Rather, they intended their participation in the collaborative to establish a solid core of DSM at PSCo so that PSCo could later build upon it. OEC acknowledges that this is a lesser objective than its ideal, which would be to get *all* cost-effective DSM. PSCo, conversely, sought a "prudent and moderate" amount of DSM. LAW Fund and PSCo emphasize their independently held objective of achieving consensus with a broad range of constituencies and avoiding litigation on DSM programs. CO OCC's objective was to reach decisions about DSM that would be better than those made in litigation.

Climax Molybdenum and CBAAUUP had unique objectives that reflect their particular respective positions. Climax's objective was to minimize the rate impact of DSM—that is, "to perform damage control." CBAAUUP's intent was to ensure that its members would have opportunities to provide contractor services related to implementing DSM programs.

The overriding issue dealt with by the collaborative is described by a participant as "the whole agenda on DSM." This agenda has included identifying where the largest potential energy savings exist and how customer behavior can be affected. DSM program designs, marketing strategies, evaluation methods, and megawatt-hour targets were also considered. The overall DSM budget was a highly contentious issue. The industrial interests and CO OCC argued for small-scale pilot programs with low budgets, and the LAW Fund and OEC argued for comprehensive, well-funded programs.

No firm decisions were required or made regarding the policy issues of DSM cost effectiveness (and whether environmental externalities are to be considered) and lost-revenue and cost recovery. Those issues were covered in the other related dockets. However, they did have to be considered as the screening and selection of DSM programs progressed. Other issues raised in related dockets were the relation, if any, of low-income assistance and energy efficiency, and the content of a utility integrated resource plan.

Process

The collaborative work plan established a formal structure, including several organizational levels and roles. The primary level and decision-making body of the collaborative is the steering committee. It is supported by an attorneys' group and a technical group. The attorneys' group advised the steering committee on legal issues including (1) antitrust concerns with utility DSM programs, (2) access to PSCo proprietary data, (3) conflicts of interest among collaborative participants, and (4) ongoing study of collaborative procedures. The technical working group, composed of the technical staffs and consultants of the utility and non-utility groups, performed and reviewed the technical work of the collaborative. A public participation group, open to the interested public, was to provide input to the collaborative. A collaborative administrator coordinated communications among all the collaborative groups and committees, and a non-utility coordinator was to coordinate information from the technical working group to the NUPs and facilitate the public participation group meetings.

In practice, however, the collaborative operated very informally, with most meetings including members of the steering committee, the technical group, and the attorneys' group. The technical group and the attorneys' group did meet separately as necessary to discuss issues within their purview. No public participation group meetings occurred. Instead, interested parties were simply invited to steering committee and technical group meetings.

Meetings were held as often as three times a week at the outset. They were facilitated by PSCo's legal counsel. Each participant was allowed to air concerns and issues freely, a practice that sometimes caused meetings to last all day. Decisions were made by consensus of the steering committee. Consensus meant all parties were in agreement, and silence was assumed to indicate agreement. Some participants contend that despite the consensus requirement, PSCo had disproportionate weight in the process because it proposed programs, while the other parties reviewed, revised, and approved/ disapproved them. PSCo characterizes itself as having been "a compromiser—often finding itself placed between extremes." Other respondents suggest that PSCo basically "ran the show" and worked to get other parties to come to the position it staked out. However, decisions were made in a generally cooperative and collegial atmosphere.

The collaborative agreed to a \$400,000 budget²² to be provided by PSCo to fund collaborative overhead expenses and independent technical consultants for, and selected by, the NUPs (Pacific Energy Associates from Portland, Oregon) and for PSCo (Barakat and Chamberlin, Inc.) This financial arrangement served to narrow the disparity in resources among parties and equalize their relative strength in the process. However, no other funding was available to participants.

The collaborative established for itself four milestones with associated deadlines. Milestone I involved developing a work plan that specified the structure and work of the collaborative. The work plan was filed with the CO PUC on October 1, 1991. Occasionally the tasks within each of the other three milestones were modified, but the overall scope of the milestones was maintained. Milestone 2 was the identification and initial screening of DSM programs, completed on schedule in December 1991. By April 1992, the collaborative had completed milestone 3: the development of program concepts, performance of cost-benefit and rate impact analyses, and selection of programs for implementation. Milestone 4, detailed applications for each program selected, was scheduled to be completed in October 1992 but was postponed—with CO PUC approval—to 30 days after the CO PUC issued an order regarding decoupling and incentives for DSM. The final report completing milestone 4 was submitted to CO PUC on February 16, 1993.

For its detailed program screening performed for milestone 3, PSCo used the Comprehensive Market Planning and Analysis System (COMPASS) computer model developed by Synergic Resources Corporation. COMPASS is used to perform detailed analysis of DSM technologies, programs, and strategic marketing options. Because the IRP process that would include a mandatory resource benefit/cost test had not yet been established, the collaborative screened programs for cost effectiveness using the TRC test,²³ but selected programs using the procedure of the California Standard Practice Manual that includes the TRC test, the utility cost test, the societal cost test, the participant test, and the RIM test.²⁴

Informal and transitory, issue-specific coalitions arose during the collaborative and with regard to the other related dockets. For example, LAW Fund and OEC through their collective persistence have contributed to the CO PUC's second examination of DSM cost- and lost-revenue recovery mechanisms and were instrumental in proposing the collaborative and the other dockets. They also share considerable interest in the low-income docket and in aggressive DSM programs. The CO OCC and industrials worked together to implement loans rather than rebates for some individual DSM investments. They have found themselves aligned with each other and

²²PSCo wanted a larger budget (about \$500,000) that included charges for utility personnel working on the collaborative. OCC and industrial intervenor groups wanted a smaller budget so that future rate impacts of the collaborative would be smaller. About 20% of the \$400,000 budget has been set aside for program review and evaluation.

²³Participants agreed that using the TRC test was not an endorsement of it.

²⁴All programs passed all tests except the RIM test.

with CO PUC staff on the issue of rate impacts. However, with regard to the IRP process, CO PUC staff finds itself aligned with LAW Fund, OEC, and the independent power producers against PSCo, which opposed a strong IRP process.

The CO PUC commissioners themselves were not involved in the collaborative process and, because of an *ex parte* rule, could not monitor the collaborative's negotiations, although the collaborative did provide CO PUC with progress reports. However, in making its decision on the collaborative's proposal, CO PUC had to assume that consensus indicated agreement that the proposal was made in the public interest.

Related Policies and Interactions

The low-income, DSM decoupling and incentives, and IRP dockets, opened along with the DSM programs collaborative docket in July 1991, are integrally related to the collaborative's activity and outcomes.

IRP docket. In February 1992, LAW Fund, having worked with the support of OEC, submitted a proposed IRP rule to CO PUC that provided a detailed outline for developing an integrated resource plan and specified the contents of the final report. They proposed that integrated resource plans be produced every 3 years, with annual progress reports made in the intervening years. LAW Fund also wanted evaluation of monetized environmental externalities. PSCo's proposal included less public control than was supported by LAW Fund and no provision for considering environmental externalities in the cost-effectiveness test. LAW Fund and PSCo were encouraged by CO PUC to try to come to agreement, but the parties were unable to narrow their differences.²⁵

CO PUC held hearings on the IRP process in the summer of 1992 and ruled on the IRP process in December 1992. The rule requires PSCo to conduct a public process for the planning of its resource needs every 3 years. Supply- and demand-side resources will be evaluated in an integrated fashion to meet load at the lowest cost and to ensure reliability of the electric supply. CO PUC will hold hearings to review the plans and will rule on them. The rule calls for a qualitative evaluation of environmental externalities (i.e., if two programs have the same cost, the one with the lower emissions would be the better program).

DSM decoupling/incentives docket. CO PUC received testimony on decoupling and incentive mechanisms in August 1991, supplemental testimony in October, and answering testimony in November. Rebuttal testimony was filed in April 1992, and hearings were held in June.

²⁵In contrast, LAW Fund met with Tri-State G&T who argued that because they were a publicly held company with 34 member coops, LAW Fund's proposed IRP process was not applicable. LAW Fund recognized the differences and in subsequent testimony encouraged the CPUC to require Tri-State to file IRPs but to apply the IRP rule differently to Tri-State.

The various positions of the participating parties were as follows. PSCo originally proposed a decoupling mechanism based upon total revenue, use of future test year, and a 3-year trial period, but later filed a statement of position on decoupling and financial incentives withdrawing its support for decoupling revenues from electricity sales. In lieu of decoupling, PSCo now supports incentives for DSM that recover DSM-induced lost revenues, provide recovery of expenses, and provide a premium to compensate the utility for risk.

In the first round of testimony, OEC sponsored the testimony of David Moskovitz, a nationally renowned expert in energy and regulatory matters. Moskovitz proposed decoupling utility revenues from sales and establishing regulatory incentives for utilities to encourage the implementation of DSM programs. LAW Fund submitted testimony supporting the decoupling mechanism developed by Moskovitz. LAW Fund's position was that lost revenues caused by the implementation of DSM programs could cause problems for utility shareholders under then-current regulation.

The CO PUC staff and CO OCC proposed delaying the consideration of decoupling and financial incentive mechanisms for DSM until the IRP process was complete and it was determined that DSM is a cost-effective and significant resource. CO OCC opposed financial incentives, stating that PSCO should not need incentives for implementing cost-effective energy-efficiency programs. CO OCC stated that if CO PUC determines that there is a disincentive for utilities to implement DSM programs, then an Allowance for Funds used for Demand-Side Management (AFDSM) should be adopted.

CO PUC planned a final set of hearings on nondecoupling proposals in September 1992. The day before the hearing, PSCo, CO OCC, CO PUC staff, and the industrial concerns reached agreement on a performance-based incentive plan that would award PSCo a \$200 bounty for each kilowatt saved minus a percentage of utility rebates offered to customers. LAW Fund and OEC objected strongly to the proposal in hearings.

In its ruling, the CO PUC agreed with LAW Fund's concern, but did not agree that decoupling was acceptable. In the absence of some type of decoupling/incentives mechanism, the collaborative's work on DSM would have been derailed. After more than a year and a half of testimony and hearings, CO PUC found itself with no viable alternative to the PSCO agreement. In January 1993, CO PUC approved the agreement on a short-term basis and only for DSM programs developed by the collaborative, and opened another decoupling/incentives docket (93I-199EG) to examine other regulatory mechanisms.

CO PUC received testimony on the new decoupling/incentives docket in late spring 1993. In its testimony, LAW proposed statistical recoupling, an approach that links utility profits to the number of customers but that is geared to leave risks associated with fluctuations in the economy and the weather with utilities and their shareholders. PSCo has proposed a performance-based incentive plan that ties lost-revenue recovery and incentives to performance (as measured against the integrated resource plan).

PSCo Rate Case

In its October 1993 ruling on PSCo's general rate case, CO PUC allowed PSCo virtually none of the \$80 million rate increase it had requested and denied PSCo a future year test to determine rates. PSCo's primary opponents in the case were CO OCC and CO PUC staff.

Outcomes

Collaborative products. The collaborative recommended CO PUC approval of six DSM programs and one multiprogram monitoring and evaluation program to review program-specific evaluation plans and to develop a monitoring database. The six DSM programs target the residential, commercial, and industrial sectors and include replacements, retrofits, and new construction. They are as follows:

- a residential new construction program,
- a residential equipment replacement program,
- a residential direct installation program,
- a nonresidential new construction/ major renovation program,
- a nonresidential equipment replacement/remodel program, and
- an industrial process efficiency program.

The budget for the programs over 3 years, 1993–1995, is \$24.2 million. The programs are projected to save 37 MW of winter peak, 20 MW of summer peak, and 119 GWh of annual energy by 1995, with savings persisting over the entire life of the equipment installed through the program. Programs are evaluated by combinations of methods, including engineering estimates, billing analyses, customer surveys, and end-use metering.

Regulatory approval. The CO PUC approved, without revision, the DSM programs developed by the collaborative. On the decoupling/incentives docket, the CO PUC approved the settlement worked out by PSCo and other parties but applied it only to collaborative DSM programs and immediately initiated a process to find an alternative. On the IRP docket, CO PUC accepted an IRP process modeled largely after the LAW Fund proposal, but incorporating a PSCo proposal for qualitatively evaluating environmental externalities.

Satisfaction of participants' objectives. With one exception, respondents indicated a degree of satisfaction of their respective objectives. Participants who are strong proponents of DSM attribute their satisfaction to having had realistic objectives, rather than having hoped to get *all* cost-effective DSM. Industrial interests remain generally concerned that unnecessary rate increases will result.

Implementation. Whether DSM programs are being implemented as intended cannot yet be ascertained, since the programs are still in their first year of operation. However, most respondents have confidence that they will be well run. One respondent attributes this assumption to the quality of the PSCo staff that oversee the programs.

Savings of time and money by participants. All participants believe the collaborative to have been very time consuming, at least as much as—and most likely more than—the traditional process. One respondent attributes this in part to what he describes as “attorney-laden policy,” but admits that the amount of satisfaction relative to the time expended is probably greater than it otherwise would have been. The utility finds the process to have been more expensive than the alternative.

Difference in outcomes. Some respondents believe that PSCo would have increased its DSM use very little or not at all without the collaborative. All respondents agree that the programs designed in the collaborative are better than litigation would produce. They believe the programs are better because they include a broad perspective and cover all classes. Only one respondent suggested that litigation might have yielded more comprehensive programs, but emphasized that the fundamental difference is that the programs are consensus products.

A primary difference between the processes, all participants assert, is that the collaborative process is an educational one. Therefore, a notable outcome is that the participants, representing separate and broad constituencies, are knowledgeable about DSM programs and about the positions and objectives of other parties.

Changes in relations among participants. Because LAW Fund was a newcomer to the scene, the collaborative marked the building of its relationships with other parties, but no change. In general, participants characterize their relationships with others in the collaborative as cooperative and congenial, whereas they previously were characterized by conflict.

Continuation of the effort. The formal collaborative that was initiated in July 1990 to develop DSM programs and program measurement methods completed its primary work upon submitting the DSM programs proposal to CO PUC. However, some work related to program review and evaluation remains. Review and evaluation activities are being carried out through infrequent meetings and informal interactions that lack the intensity of the DSM collaborative.

Future Prospects

Collaborative participants describe themselves as exhausted by the intensity of the 2 years of arduous, time-consuming collaboration. One respondent suggests the collaborative resulted in “significant brain drain.” While the parties seem to remain supportive of nonadversarial alternatives to litigation, they indicate they will not participate in another collaborative in the near future. However, settlements and workshops are processes the collaborative participants will likely encourage.

The collaborative, having reached consensus and gotten CO PUC approval, has no outstanding issues; but the decoupling/incentives docket does. The CO PUC will approve some mechanism for recovering lost revenues and/or providing incentives for achieving energy savings through DSM, but there is no indication whether the mechanism will be the net lost revenue adjustment, statistical recoupling, or another alternative.

V. CONCLUSIONS

Recommendations of Respondents

Regarding all activities. Participants suggested that collaboration is not the best process for every issue. LAW Fund expanded that response by adding that there is a “best process for every issue.” LAW Fund recommended that each issue, the commission and utility history, and the merits of the processes available be weighed and considered carefully before a party chooses to become involved in or proposes use of a particular process.

LAW Fund contended that an NUP’s effectiveness in any process is maximized if it has on staff a senior technical support person who is knowledgeable about policy issues and strong on litigation.

Regarding collaboratives and DSM planning. Having DSM-related policy and an integrated resource plan facilitates DSM program decisions. Two participants recommended, therefore, that issues such as cost effectiveness, utility return on DSM, and future resource needs be resolved (through the establishment of regulatory policy and the development of an integrated resource plan) before program decisions begin.

Respondents recommended broad participation in the collaborative to ensure that the product will reflect the concerns and objectives of most interested parties and to prevent or minimize subsequent litigation. One respondent commented that what was missing in the process was knowledge of public opinion and suggests that public opinion be ascertained before negotiation begins.

Those who participate should be committed to the process, or at least to representing their organization’s interest in the process, and should be full participants attending every meeting. One respondent suggested that individual parties can be more effective by forming coalitions with “partners” (i.e., natural allies).

Regarding integrated resource plans. One respondent—who is not dependent on outside funding—expressed concern that funding organizations move too quickly from trend to trend and that they would soon move away from IRP to renewables. He emphasized the importance of bringing funding organizations to an understanding that integrated resource plans are “the heart and guts of energy efficiency and renewables.”

Another party expressed concern that integrated resource plans allow utilities to “self-deal” (i.e. to manipulate the process for their own ends) and suggested that an independent third-party review might ensure a fair look at all resources.

Our Observations and Recommendations

The primary regret of collaborative participants is that the process was excessively time consuming. We believe this to have resulted in part from the absence of regulatory policy and of an integrated resource plan, both of which would resolve such issues as cost effectiveness, decoupling/incentives mechanisms, and future resource needs. In the absence of such policies, the collaborative had the additional, time-consuming burden of agreeing to or formulating procedures to use in lieu of regulatory policy. We agree with those respondents who suggested that policy be established before substantial program development activities occur, and we believe that established policies would have expedited the process and probably would have made it more efficient.

We also believe, however, that participants' perceptions of the time required in the collaborative process might be slightly exaggerated. We suspect this because activities related to all four dockets occurred simultaneously and sometimes blurred because they were integrally related.

It is likely that the interaction that occurred among parties in the collaborative positively affected the parties' ability to interact on the other ongoing dockets. That is, having a working relationship, even if it is limited to one topic, generally makes it easier to talk about other things, too. Although having such a relationship does not necessarily affect the outcome of any process, it may affect which processes are used. We cite the informal meeting between PSCo and LAW Fund in which they tried (unsuccessfully) to narrow their differences about the IRP process and the incentives agreement reached by several parties.

The PSCo participants in the collaborative were managers—not upper level PSCo management (e.g., directors and vice-presidents).²⁶ This fact suggests to us that DSM is not yet firmly rooted in the “corporate culture” of PSCo. The collaborative—and its crash course on DSM—might have been the prime opportunity to bring about that commitment. We have some concern that this lack of high-level attention to DSM may affect future adoption of DSM by PSCo. We note, however, that the new regulatory policies and PSCo's Integrated Resource Plan may offset any negative effect. We further note that a PSCo vice-president attended every public meeting held for PSCo's first Integrated Resource Plan.

Without LAW Fund there would have been no collaborative, as it was primarily a LAW Fund proposal that initiated the collaborative, and other parties were lukewarm to the idea. Determining what level of DSM would exist without the collaborative is difficult. The original settlement agreement for PSCo's 1991 case did not mandate additional DSM use. Collaborative participants other than LAW Fund and PSCo believe that the DSM programs would not have come about otherwise. LAW Fund—noting that the programs increase PSCo's DSM by about one-third and that only 2–3% of PSCo revenue is spent on DSM—suggests that more

²⁶This does not imply that the managers' participation was unsatisfactory or that they are incompetent. On the contrary, respondents found PSCo's representatives to be highly competent.

comprehensive programs might have resulted from litigation. We tend to disagree, believing that CO OCC, CO PUC staff, and the industrial concerns would have prevailed upon the commission, and that out of concern for rate hikes the CO PUC would have approved less DSM.

The entirely new, and still changing, regulatory environment for DSM may make DSM increasingly acceptable if, for example, the utility is able to recoup all costs associated with it and earn incentives for good performance. However, with 130 MW of new generating capacity to be provided by the converted Fort St. Vrain plant (pending CO PUC approval) in 1996 (and a total of up to 685 MW to be phased in), it will be some time before PSCo requires substantial additional resources.

LAW Fund's most significant opportunities to encourage DSM use by PSCo will now be through PSCo's Integrated Resource Plan. LAW Fund should participate in plan development to maintain DSM levels and, more important, should intervene if it perceives PSCo to be breaching the plan.

As a new organization, LAW Fund is learning how to maximize its influence. Two techniques, neither of which targets a specific utility or commission, have been and are being tried by LAW Fund and seem to hold promise. The first is increasing the visibility of itself and its positions by using its own publications and the general press. The former will continue to attract attention from commissions and utilities, while the latter can work to sway public opinion that in turn can sway the commissions and the utilities. The second technique is developing alliances with like and dissimilar organizations in cases where the issues and positions are the same or complementary. Presenting a united front will likely win more ground for LAW Fund and its allies than separate activities of individual organizations could gain collectively.

LAW Fund has influenced DSM in Colorado both through the collaborative and, probably in a more lasting fashion, through its IRP process proposal. Considering that the organization's Energy Project was initiated less than 3 years ago, and that it operates in six states with only three staff members, LAW Fund's efforts and influence are exceptional. In separate statements, two LAW Fund staff members attributed LAW Fund's success to the dedication and expertise of its staff. One respondent surmises that LAW Fund's influence on the commission's attitudes is "a force of the personalities in the institution of LAW Fund, not the institution itself." The only other factor we find that closely rivals staff quality is funding. LAW Fund's Energy Project was established with foundation grants and is still supported primarily by them. Foundation funding is essential to sustaining LAW Fund's Energy Project and its influence.

RESPONDENTS

Utilities

Mark Davidson

Attorney for PSCo

Jane Finleon

Manager of integrated resource planning (previously manager of DSM), PSCo

Mark Minich Senior Attorney, Colorado Interstate Gas Co.
John Moore Director of PSCo

Energy efficiency advocacy group

Eric Blank Attorney at LAW Fund

Business/industry groups

Paula Connelly Attorney at Gorsuch, Kirgis, Campbell, Walker, and Grover;
representing Climax Molybdenum

Bill Schroer Executive Director, CBAAUUP

Government agencies

Jay Brizie OEC

Wanda Grude Senior Economist at CO OCC (now at Nevada Public Service
Commission)

Regulatory staff

Wendell Winger CO PUC staff

9. THE PUGET POWER COLLABORATIVE AND NORTHWEST CONSERVATION ACT COALITION ACTIVITIES TO INFLUENCE DSM

SUMMARY

A primary task of the Northwest Conservation Act Coalition (NCAC), since its foundation in 1981, has been to encourage use of DSM. NCAC's regional focus has been carried out by working to influence Bonneville Power Administration (Bonneville) by developing and conducting technical analyses of regional energy plans. In 1990 NCAC focused its attention for the first time on a particular utility, the Puget Sound Power and Light Company (Puget Power).

In mid-1990, Puget Power, the Natural Resources Defense Council (NRDC), NCAC, and Washington state Public Counsel proposed to form a collaborative in response to a Washington Utilities and Transportation Commission (WUTC) request for comments on regulatory barriers to implementing least cost plans for electric utilities. The proposal to collaborate was accepted by the WUTC.

The collaborative evolved into three distinct working groups: The Policy Collaborative, the Technical Collaborative, and the Rate Design Collaborative. The Policy Collaborative had oversight responsibility for the other two working groups.

Although the collaborative did not reach consensus on the implementation details of a regulatory reform package, the process has been instrumental in changing the regulatory environment so that utilities will not lose revenues as a result of implementing DSM programs. WUTC approved a two-part mechanism proposed by Puget Power (developed with some assistance from the collaborative) to decouple Puget Power's revenue from the amount of power it sells. The cost recovery mechanism allows Puget Power a revenue-per-customer recovery of fixed costs (decoupling) and real time recovery of hydroelectric power costs, weather related impacts, conservation investments, and purchase contracts [a periodic rate adjustment mechanism (PRAM)]. Although Puget Power also proposed a consensus-based financial incentive program for demand- and supply-side resource acquisitions, WUTC approved the plan only for 1991 demand-side programs. Finally, Puget Power proposed significant rate design changes that were developed in the collaborative.

The collaborative received a somewhat negative response from WUTC in a second ruling dealing with performance incentives. When Puget entered a general rate case in 1992, the collaborative participants were again adversaries; and collaboration—except for some work by the Technical Collaborative group—ceased. New life was breathed into the collaborative when WUTC, in its September 1993 ruling on Puget Power's general rate case, ordered Puget Power and interested parties to work together on several issues.

I. INTRODUCTION

This case study examines the process and outcomes of the Puget collaborative and other activities through which NCAC attempts to influence Puget's DSM use and WUTC regulation affecting DSM. The discussion of these activities is current as of November 1993, when data collection was completed.

II. CONTEXT

Political Environment

In 1990, the Washington state legislature mandated that WUTC consider policies to improve energy efficiency while protecting utilities from a short-term revenue reduction due to increased efficiency. The notice of inquiry (NOI) issued by WUTC in May 1990, requesting comments concerning barriers to least cost planning, was in part a response to this legislation.

In 1991, at the governor's request, the Washington state legislature directed that a committee of 20 citizens and public officials be appointed to draft an energy strategy that, according to the committee chairman, "would assure [Washington] of adequate, economic, and reliable energy while protecting the quality of [Washington's] environment." *Washington's Energy Strategy: An Invitation to Action*, the report that lays out the strategy, was published in 1993. The strategy with regard to DSM is that "All cost-effective conservation and efficiency opportunities should be pursued aggressively in both public and private utility markets." The Northwest Power Planning Council (NPPC) was created in 1980 by Congress to develop a least-cost regional (four-state) electricity plan for meeting demand while protecting and restoring the fish and wildlife resources of the Columbia River Basin. The *Strategy* reiterates the NPPC goal of saving an average of about 800 MW in Washington before the end of the decade. The committee also states its support for "regulatory approaches that align private utilities' financial interests with the successful implementation of their least-cost plans."

There is extensive news media coverage of energy-related issues in western Washington, especially by the two major newspapers in the region—*The Seattle Times* and *The Bellevue Journal-American*. Coverage of energy issues increased in 1992, especially with regard to Puget Power's rate increase request. The impact of the drought on rates and the resulting need to conserve has been featured.

Economic Environment

The regional economy, especially the economy of Puget Power's service territory, until very recently was robust and outperformed the national economy. High-technology industries such as biotechnology and software have begun to move the local economy away from its dependence on the cyclical aerospace and logging industries. Nonetheless, the annual growth rate of the

economy has slowed as Boeing has scaled back its activity, and the local economy now approximates national growth statistics.

Regulatory Environment

WUTC has three commissioners, appointed by the governor for staggered 6-year terms. Both major political parties must be represented on the commission. Two commissioners, both Democrats, are serving their second consecutive terms, having first been appointed in 1985. The third commissioner is a Republican appointed by a Democratic governor in 1993. The commission chair, Sharon Nelson, is a past president of the National Association of Regulatory Utility Commissioners and favors alternative dispute resolution techniques for selected issues. In a 1990 article in a leading periodical of the utility industry, Nelson said that while the adversarial process is still necessary, a cooperative planning process is better for addressing issues where flexibility is needed to consider options, such as when developing least cost planning rules.

WUTC began requiring electric utilities to file least cost plans in 1987. The commission comments but does not rule on them.

Regulatory treatment of DSM expenditures has changed over time. A 1980 state law allowed Puget Power to earn an additional 2% return on conservation expenditures once they were in the rate base. For different reasons, this method was problematic for the utility and NUPs. Its shortcomings, from the utility perspective, are that it did not fully compensate the company for lost revenues from conservation because the increase in revenues due to the additional return was less than what the conserved kilowatt hours would have earned, and that there was a delay in earning a return on conservation expenditures until a rate case. NUPs believe the method encouraged expensive DSM measures that did not produce substantial energy savings. WUTC suspended this return in September 1991 when decoupling occurred. Furthermore, it has been eliminated by legislation except for DSM efforts targeted toward low-income and elderly utility customers.

Starting in 1989, WUTC made decisions that significantly affected Puget Power's revenues and pressured the utility to find alternative ways to increase them. First, 1989 was the last year that Puget Power could include accumulated deferred investment tax credits in nonoperating income. This credit had been a significant source of income for the utility (\$32 million in 1987, \$26 million in 1988, and \$23 million in 1989). Second, in January 1990, the WUTC eliminated the Energy Cost Adjustment Clause (ECAC) that allowed for automatic recovery of fuel costs and secondary market hydropower costs. In doing so, WUTC encouraged Puget Power to pursue good-faith least cost planning that incorporated substantial DSM savings.

Utility Environment

Puget Power recently has experienced rapid growth in demand for electricity. From 1987 (when the first least cost plan was completed) to 1991, the local economy grew rapidly, and

nearly 100,000 customers were added to the Puget Power system. The annual average rate of customer growth was 3.5%, about double the national average for U.S. electric utilities. During this period, the annual average rate of load growth exceeded 4%, with load growing by an average of over 85 average megawatts per year.

Puget Power's customer and load growth has slowed since 1991 because growth in the local economy has slowed. Increases in conservation programs and improvements in building codes have also contributed to slower load growth. Both customers and load are growing at an annual average rate of about 2%. The company serves slightly more than 800,000 customers, of which 89% are residential. Load served by the company is about 47% residential, 33% commercial, and 20% industrial. In recent years, load growth has been most rapid in the commercial sector, which has accounted for about half of the growth in system load.

Puget Power relies heavily on power purchases to meet load. The company purchases about two-thirds of its electricity and produces the balance with its own hydroelectric and coal-fired steam plants and with gas-fired turbines. Puget Power emerged in the mid-1970s weakened by its attempt to build six nuclear power plants, none of which is now operating. The 1980s were a surplus energy period, but the region began experiencing an energy deficit in 1992. Consequently, long-term power purchase contracts are more difficult to obtain. Given current growth rates, Puget Power will have a load deficit by the late 1990s. Faced with this prospect, it is committed to using DSM programs to meet a larger share of its growing load. In Puget Power's 1991 annual report, John Ellis, now chairman of the board of directors, and Richard Sonstelie, now president and CEO, wrote, "Our first response to growing demand remains conservation and efficiency."

In its second least cost plan, Puget Power asserted that, to be successful, least cost planning must represent a utility's most profitable course of action. Puget Power postulated that there is a conflict between traditional rate making (which bases revenues on the kilowatt hours a utility sells) and the desire for conservation. Therefore, Puget Power stated its desire for the following: timely and predictable cost recovery for conservation; financial compensation for reducing electricity sales; incentive for the utility to invest in DSM programs and to pursue cost-effective power purchases; and regulation that promotes cooperation among interested parties to achieve the goals set forth in the least cost plan.

There have been significant changes in Puget Power's organization in recent years. A new president/chief operating officer, chief financial officer, and vice-presidents of corporate planning and power planning were appointed. The reorganization and personnel changes reflect the elevated importance of and support for DSM at Puget. A vice-president oversees DSM, and DSM support is centered in the long-range planning division and in the customer service division, which has responsibility for DSM. Its finance division has supported DSM more cautiously, depending on its impact on shareholders.

Company executives' compensation is performance-based. From 15% to 34% of compensation paid to senior management depends on the attainment of prescribed performance

goals, including financial goals and the company's Energy Plus program goals. The Energy Plus program includes annually at least one goal directly related to DSM programs.

Puget Power supports the use of nonadversarial interaction with traditional intervenors and interested parties and has a history of working with them. Ongoing cooperative efforts are Puget Power's consumer panels and the technical advisory committee of the least cost planning process. The consumer panel program is designed to obtain input from customers (especially in the residential sector). Participants volunteer to receive information and to provide recommendations on issues that they and the company would like investigated. The technical advisory committee reviews and provides input to the least cost planning process. The committee is composed of about 20 regional energy experts.

Bonneville is a large regional power producer and supplier. It depends heavily on hydropower and recently has reduced its conservation programs. Bonneville markets its power through its network of transmission lines, which represent 80% of all large lines in the Northwest. Puget Power purchases little power from Bonneville.

Other Key Groups

The primary environmental/consumer advocacy group involved in electric utility issues in Washington is NCAC, described in the next section. NRDC, a large nationwide environmental organization that advocates the use of all cost-effective DSM and that is a founding member of NCAC, also has acted to influence utilities and utility regulation in the Northwest.

Industrial interests that have intervened in utility issues are the Boeing Company and two multi-industry organizations—Industrial Customers of Northwest Utilities and the Washington Industrial Committee for Fair Utility Rates (WICFUR), which is dominated by Boeing.

Government groups acting to influence utilities and their regulation are the state's Public Counsel, the NPPC (described in Section II.A), and the Washington State Energy Office (WSEO). WSEO was created in 1975 in response to concerns over the long-term supply of electric energy in Washington. It performs several functions, including reporting to the legislature on energy issues, providing information to the public, and administering federally funded state energy conservation activities. WSEO has also provided technical support for regional energy conservation programs (through Bonneville, according to the NPPC regional plan) in the 1980s. Through its core programs, WSEO provides support by way of coordination and technical analyses for utilities, planners, and regulators. The *Washington Energy Strategy* directed the WSEO to realign its programs, prioritize its activities, and conduct studies in support of the *Strategy*.

III. KEY DSM/IRP ACTIVITIES OF THE NORTHWEST CONSERVATION ACT COALITION

Background

NCAC was founded in 1981 following passage of the Pacific Northwest Electric Power Planning and Conservation Act (the Act) that established the NPPC and mandated regional least-cost energy planning. The coalition of regional public interest groups organized so that environmental and public interests would be represented in the implementation of the Act. Founding organizations of NCAC—including NRDC, the Sierra Club and the League of Women Voters—had previously been involved in regional energy policy. Among the coalition's 60-plus members are three low-income and ratepayer groups in Puget Power's service area and other ratepayer organizations. National, state, and local environmental groups, consumer groups, community action agencies, labor organizations, and publicly-owned utilities are members.

The fundamental principle of NCAC's work is that energy services "should be provided at the least total cost to society, including environmental costs." NCAC advocates energy efficiency as "the first and best answer" to minimizing total costs.

Having had a budget of less than \$10,000 at its inception and \$70,000 five years ago, NCAC now operates with about \$350,000 and eight staff members. Half of NCAC's funding is provided by foundations. Staff members are primarily policy analysts; no lawyer is on staff. NCAC's board recently seated a new executive director, Sarah Patton, who previously served in the conservation section of Seattle City Light and who is described as being "regionally savvy." The previous executive director now serves as NCAC's policy director.

Though the goal of NCAC remains undisputed, the shake-up at NCAC reflects a recent internal struggle to define NCAC's strategy. That is, various factions at NCAC have differing opinions about how NCAC should direct its resources (time and dollars) most effectively, given the current situation.

NCAC has historically directed its energies at a regional level almost exclusively to nonadversarial processes (i.e., developing technically defensible plans and programs). NCAC may continue to focus most of its resources in this area or may redirect them toward education or court suits, venues strongly supported by factions within NCAC. There is also debate about whether to influence the region by continuing to work with Bonneville (which NCAC finds has brought little success) or by focusing on three major utilities in the area—Puget Power, Portland General Electric, and Seattle City Light—which account for about a quarter of the region's electric power needs and over a third of its new load. Also being debated is whether strategies should be carried out by staff or by activating NCAC member organizations.

NCAC's primary work has been the development of regional least cost power plans in response to the directive of the Northwest Power Planning Act. In April 1982, NCAC released its first plan—800 well documented pages—calling for utilities to rely heavily on energy

efficiency. The NCAC plan became the working draft used by the NPPC and, with revision, became NPPC's first least cost plan. NCAC's subsequent regional plans and technical research have identified additional potential energy savings, emphasized environmentally responsible power supplies, and influenced subsequent NPPC regional least cost plans. NCAC was also represented on the Washington Energy Strategy Advisory Committee.

Current DSM/IRP Initiatives

As a regional organization, NCAC is involved in regional energy power planning issues and has worked with and intervened with specific utilities and utility commissions in each state within the region. For example, by acting as a member of a citizen's advisory committee reporting to the Seattle City Council and providing technical analysis, NCAC encouraged Seattle City Light to commit to DSM programs that would result in no net load growth. In Montana, NCAC is representing two of its member organizations in their efforts to develop a decoupling proposal.

NCAC primary activities to influence Puget Power have been collaboration with Puget Power and other non-utility parties (NUPs) regarding DSM programs and regulation (discussed in Section IV), and continued participation in development of the regional least-cost plans mandated by the Northwest Electric Power Planning and Conservation Act. NCAC successfully intervened in the 1993 Bonneville rate case to force an explicit commitment to a tiered wholesale rate structure for the next rate proceedings, and it has been involved consistently in Bonneville's long-term power sales contract negotiations.

Intervention before WUTC in Puget Power cases has been used selectively by NCAC. Having limited resources and expecting no major policy activity, NCAC did not intervene in Puget Power's second PRAM filing, but it did intervene in its general rate case. Because the rate case and its outcome are related to and affect the continuation of Puget Power's collaboration with NUPs, the intervention is discussed in Section IV.

Outcomes

NCAC has been highly successful in getting regional power plans to reflect NCAC positions supporting DSM and environmentally responsible power supply. However, it is far from satisfied with implementation of the regional plans. NCAC's opinion is that Bonneville is not pursuing DSM as aggressively as is directed in its least cost plan, and that the NPPC, having become increasingly politicized, is not exercising its statutory control over Bonneville decisions (particularly its right to review resource acquisitions for compliance with the regional plan). As evidence, NCAC cites Bonneville's reduced conservation budget and programs and the current Bonneville restructuring proposal that severely curtails DSM efforts. NCAC points out that Puget's DSM programs have saved as much as programs in the entire Bonneville system. NCAC also points to Bonneville's recent open resource bidding in which Bonneville selected gas combustion turbines over renewable and DSM projects that were less costly.

Future Prospects

Forecasting NCAC's future activities is at best a guessing game, given the level of uncertainty within NCAC about its future strategies. However, because NCAC is frustrated with its ability to influence Bonneville DSM through NPPC's least cost planning process, it is highly probable that NCAC will look for alternative methods of influencing Bonneville or will redirect more resources to specific utilities. The latter choice may be problematic because NCAC could well need additional resources to exert influence equal to that which could be achieved in an effective regional planning process.

IV. THE PUGET POWER COLLABORATIVE

Initiation

In 1987, WUTC required Washington electric utilities to begin least cost planning. The WUTC rule, only about a page long, was an effort to have utilities compare supply- and demand-side programs on an equal footing. In May 1990, WUTC issued an NOI questioning whether there are regulatory barriers to electric utilities' carrying out least cost planning. In addition to filing separate comments on the NOI, Puget, NRDC, NCAC, and Public Counsel jointly proposed to enter into "good faith negotiations" to prepare an experimental regulatory reform plan for Puget Power and to submit the plan to WUTC within 8 weeks. Making such a proposal built upon the Puget Power DSM manager's previous assurance that Puget Power would abide by good faith consensus directives of a group of NUPs who later became the Technical Collaborative. The proposals also anticipated the outcome of the NOI, which was a determination that regulation did discourage utilities from maximizing least cost resources, particularly DSM. WUTC accepted the proposal.

The groundwork for the proposal had been laid during the previous few years; its included Puget Power's work with David Moskovitz and Eric Hirst—both DSM and regulatory reform specialists—to develop its least cost plan. Moskovitz was consulting with Puget Power when the NOI was issued. Puget Power had also hinted at a collaborative in its comments on its second least cost plan about cooperation among interested parties. Also, the WUTC chairwoman had indicated in her published writings her support for nonadversarial processes.

Participants

Puget Power was the only utility involved in the collaborative effort, and at the peak of the effort had ten people involved in the various collaborative groups. No NUP that sought participation was excluded, and parties could participate selectively in the three collaborating groups. For example, in the Rate Design Collaborative, residential customers were represented by persons who had previously served on Puget Power's consumer panel.

Collaborative participants included NCAC and indirectly the organizations it represents, including NRDC. Other nonprofit organizations that participated include Evergreen Legal Services and the Opportunity Council of Bellingham, representing the Washington State Association of Community Action Programs.

Several C&I interests were represented. They included the Boeing Company, represented by the manager of its energy office, the Building Owners and Managers Association, the Industrial Customers of Northwest Utilities, the Northwest Cogeneration and Industrial Power Coalition, and WICFUR, represented by their attorneys.

WUTC rate staff participated fully at the outset. They decreased their participation when WUTC expressed dissatisfaction with the process and its outcome in the second PRAM proceeding, and practically ended their participation when Puget Power's general rate case was filed and adversarial proceedings ensued. Accountants, economists, and financial analysts make up the rate staff.

Government agencies participating in the collaborative were NPPC, WSEO, and the Washington state Public Counsel.

Purpose

The Puget Power collaborative convened to develop a regulatory reform plan to remove barriers to least cost planning. Some participants, given the benefit of retrospect, believe that the purpose—as viewed by the commission and some participants—was specifically to develop a decoupling proposal.

The enormity of the issues related to least cost planning led the collaborative to establish separate working groups, each dealing with a specific set of issues. The Policy Collaborative dealt with removing disincentives to DSM and proposing financial incentives, and was to review general rate case filings and PRAM submittals. It also oversaw and reviewed the work of the other collaborative groups. The issues of risk and allocation of costs were primary focuses of the group, and different opinions about those issues were a primary reason that separate cost recovery proposals were made in October 1990. The company and other parties disagreed on the baseline allocation of costs and risk between ratepayers and shareholders, and on whether DSM-associated risks are reduced by decoupling. NCAC held the position that decoupling and risk allocation are altogether separate issues.

The Technical Collaborative focused on what Puget Power should be doing to pursue DSM aggressively and on what DSM savings are achievable. Because Puget Power already had DSM programs in place and had an experienced DSM staff, the Technical Collaborative primarily refined and expanded existing DSM programs, set annual DSM targets, developed a DSM measurement and evaluation plan, and defined a mutually acceptable test for determining cost effectiveness.

The Rate Design Collaborative addressed policy issues related to cost of service (allocation and classification of costs to rate classes), the role of marginal cost in rate design, and rate design for all customer classes. It agreed that marginal costs should be considered but decided that marginal-cost-based pricing would be difficult to implement. The group considered questions such as whether there should be low-income rates for residential customers and whether industrial customers should be compensated for voluntarily curtailing their loads when asked to do so by the utility. It did not attempt to deal with rate spread.

To do DSM well was a fundamental objective of participation in and direction of the collaborative, according to Puget Power, NCAC, and WUTC. There also were various other objectives for participating.

NCAC and Puget Power entered the process with a long-term objective of building productive relationships with each other and all other parties, believing that such relationships would lead to better public policy. Puget sought to use the collaborative to extend its previous community participation activities in which the goal was to determine the direction and emphasis the public wants. Puget Power believes the public—or various factions thereof—have been represented by the NUPs in the collaborative.

Another objective of Puget Power was to maintain financial stability while pursuing DSM. NCAC and WUTC staff echo this objective with their own: to provide the utility a fair rate of return. The objective of WUTC staff was to do so within the bounds of traditional regulation, which it believes had served well.

Public Counsel and Boeing participated to protect the interests of their respective ratepayer constituencies. This objective, they note, also applies to adversarial processes. Boeing specifically wanted to influence regulation that impacts industrial facilities, while Public Counsel sought to effect fair and reasonable rates. Public Counsel sought assurance that costs would not be shifted from the company to ratepayers and sought to prevent “an experiment paid for by [Public Counsel’s] clients.”

Process

At the outset, collaborative participants recognized that their work involved two tasks: establishing policy and working out technical details. Accordingly, they established two working groups: the Policy Collaborative and the Technical Collaborative. In April 1991, WUTC directed the formation of a third group, the Rate Design Collaborative, to address rate-related issues.

A representative of Puget Power acted as facilitator of each collaborative; therefore, Puget exercised significant control of the meetings. Issues were dealt with first by looking for points of agreement among parties and then by ascertaining whether middle ground could be found or trade-offs made. Issues that arose but that were not addressed included fuel switching and externalities. According to NUPs, risk allocation—that is, aligning the shareholders’ rate of return with the amount of risk incurred—was insufficiently addressed.

No specific mechanism exists for utilities or WUTC to fund intervening parties. However, Puget Power did contribute \$15,000 to NCAC in partial compensation for its participation and in recognition of NCAC's contribution to DSM.

To aid the Technical Collaborative, Puget Power hired consultants that were jointly selected by the collaborative participants to review program design issues and the magnitude of the proposed DSM targets. The consultants had experience in DSM services, regional planning, and/or other collaborative efforts. Puget used David Moskovitz as its consultant to the Policy Collaborative, and other parties were able to hire their own consultants if desired. A task force comprising residential customers assisted the Rate Design Collaborative.

The collaborative faced deadlines set by WUTC in its order establishing the PRAM. The financial incentive proposal and the measurement and evaluation strategy were to be filed by June 15, 1991 and a rate design filing was to be made by April 1992. Within these guidelines, the collaborative set its own schedule and met all deadlines.

WUTC operates with a strong *ex parte* rule that prevents commissioners and rate staff from talking to each other off the record about cases being considered by the commission (e.g., filed rate cases). At the time of the collaborative, the WUTC policy staff had been virtually decimated and was unable to provide sufficient policy guidance to the commission. Rate staff, believing there was insufficient guidance on policy-related issues from WUTC, became increasingly uncomfortable with the process, particularly when WUTC expressed dissatisfaction with the process and its outcome.

Related Policies and Interactions

Adversarial proceedings related to work done by the collaborative have ensued since collaborative activity has waned. In proceedings related to the second PRAM filing, Public Counsel introduced the possibility of using the TRC test to determine cost effectiveness. Previously, WUTC had required no specific cost-effectiveness test, and Puget had used avoided cost (i.e., any measure, over the life of the resource, must be delivered at or below the company's avoided costs as established by the company's Power Supply Department). Although the Technical Collaborative had agreed to use the utility cost test, some confusion apparently remained about how utility cost should be defined, and Public Counsel was dissatisfied with Puget's implementation of the test.²⁷ Realizing that the cost of service could be affected considerably by the cost effectiveness of DSM programs, Public Counsel's witness introduced the issue in testimony. WUTC ordered Puget to use the TRC test and required the Technical Collaborative to work out the details.

²⁷The utility cost test, as applied by Puget Power, allowed it to direct over half of residential DSM expenditures to electric heat pump installations that saved little energy and allowed Puget to retain load. Public Counsel believes that in doing so, Puget Power acted in bad faith.

In October 1992, Puget filed a general rate case (UE-921262) as directed by WUTC in its September 1992 decision on the second PRAM filing. Puget requested a \$117 million general rate increase and a \$76 million PRAM increase (the PRAM mechanism is discussed in Section IV). Most of the latter increase was the result of including Public Utility Regulatory Policies Act cogeneration projects in the rates. Puget Power's financial witness argued that DSM is risky because the company acquires no assets, and that it adversely affects the company's debt-to-equity ratio.

NCAC intervened in Puget Power's general rate case, arguing the merits of collaborative processes and suggesting the use of a third-party facilitator. NCAC also argued that the benefits and reduced risks of DSM needed to be applied in Puget Power's computation of equity, so that the net risk of DSM is not overstated and shareholders are compensated appropriately for the actual amount of risk incurred.

The WUTC ruled on Puget Power's rate case in September 1993 and allowed Puget a \$22 million general rate increase and a \$33 million PRAM increase deferred until the next PRAM (June 1994). WUTC extended the PRAM experiment for another 3 years but again tinkered with the PRAM, moving some fixed resource costs out of base costs into resource costs. WUTC also revived the collaborative, ordering Puget Power to work with other parties to examine the issue of DSM cost recovery and to consider some interim changes to the PRAM.

Outcomes

Filings and regulation related to the collaborative's work. The collaborating parties generally agreed on the principles of regulatory reform that would allow Puget to pursue DSM aggressively without losing revenue. However, parties disagreed with Puget about the level of risk exposure to the company and Puget's desired rate hike. Unable to reach agreement, the collaborative participants filed four separate proposals. Puget Power and Public Counsel made separate decoupling proposals in which the company's revenues would be based on the number of customers it served. WUTC staff proposed a least cost planning tracker that would adjust rates for new power contracts and DSM investments so that the company would not lose revenue for pursuing DSM. WICFUR proposed to reinstate an ECAC-type mechanism for cost recovery. NCAC basically supported Public Counsel's allocation of base and resource costs and tried to get ECAC-related decisions delayed so that it would have bargaining leverage on setting utility performance standards.

From among the proposals, WUTC approved with some modification Puget's proposal that incorporated input from the collaborative. The new regulation under which Puget Power operated for an initial 3-year test period (1991-1993) allowed Puget to recover costs through a two-part mechanism; its return has been "decoupled" from the number of kilowatt hours it sells. The first part allowed Puget Power a revenue-per-customer recovery of fixed costs (e.g., transmission and distribution costs and other non-energy expenses), thereby decoupling Puget's return from the number of kilowatt hours itself. The second part allowed real-time recovery of hydroelectric power costs, weather-related impacts, conservation investments, and purchase

contracts (i.e., a periodic rate adjustment mechanism, or PRAM. The two separate cost-recovery mechanisms are often referred to collectively either as “decoupling” or as “PRAM.”) The WUTC has extended this regulation for a second 3-year test period.

Following the PRAM decision, the collaborative reached consensus on an incentives package for supply- and demand-side resources, except for deciding whether the return was in before- or after-tax dollars. Under this plan, which the commission adopted for 1991 DSM activities only, Puget is awarded or penalized based on whether it achieves specified levels of DSM, and it has an incentive to achieve a specified level of savings at or below a specified cost per average MW. These energy savings are determined by a measurement and evaluation plan designed by the Technical Collaborative. The plan uses engineering estimates and *ex post* monitoring, with the expectation that the two will converge over time.

The Rate Design Collaborative agreed to a model for rate design but did not agree to the specifics of cost allocation or rate spread. The Technical Collaborative’s program evaluation protocol was a product of consensus, as were Puget’s 1991 and 1992 DSM goals and budgets.

Based in part on the work of the collaborative and new regulation influenced by the collaborative’s work, in 1992 Puget Power invested \$58 million dollars in conservation and efficiency measures that conserved 27.92 average MW—4 MW above its goal. Its 1993 goal is an average 24 MW (the budget is \$59 million). Before the collaborative, Puget estimated that 1050 gWh of energy use (or 4.6% of sales forecasted for 2000) would be avoided through use of DSM. Its most recent plan estimates 2700 gWh of energy use (or 11% of sales forecasted for 2000) will be avoided.²⁸ Puget is meeting about one-third of its load growth through DSM.

A significant and unexpected outcome of the work of the collaborative was the apparent negative response of the WUTC. In January 1992 when WUTC ruled on the incentives plan, it also ruled against formalizing the collaborative procedure and continuing it until the end of the 3-year PRAM experiment as requested by the parties. WUTC commented, “We find ourselves uncomfortable with the structure and consequences of this particular process.” The collaborating parties were stunned by this response because they thought they had successfully met the objective of the commission by submitting a mostly consensus-based filing on incentives. WUTC’s response shook the confidence of the participating parties, and productive collaboration by the Policy Collaborative ceased. The Rate Design Collaborative continued to work until its April 1992 filing, and the Technical Collaborative met only sporadically thereafter. For example, the group did not convene to work out Puget’s DSM targets for 1993.

Regulatory approval of policies and programs. WUTC approved without change the measurement and evaluation plan and Puget’s DSM targets and budgets. Other filings that have been produced or influenced by the collaborative have required some decision by WUTC and/or have been altered at WUTC’s discretion. From among the four proposals to remove regulatory

²⁸The percentages are derived from two different sales forecasts. The recent plan forecasts slightly smaller sales than did the 1989 plan.

barriers to least cost planning, WUTC selected Puget's proposal for decoupling. The collaboratively produced incentive filing required WUTC to determine whether the awards for demand- and supply-side incentives were in before- or after-tax dollars. WUTC decided for before-tax dollars, but accepted only demand-side incentives (for 1991 only) and ruled against the proposal to formalize the policy collaborative.

Program implementation. Most collaborative participants believe the DSM programs and policies are being implemented as intended, but they acknowledge that expectations among participants differ, and that some ambiguities in agreements have allowed different interpretations. For example, because of the confusion regarding the cost effectiveness test, Puget directed substantial DSM funds to programs that were only marginally cost effective (e.g., heat pumps).

Comparison of outcomes. Participants generally believe the outcomes of the collaborative are different from what could have been achieved in an adversarial process. They characterize the collaborative outcomes as "better," having accomplished things that could not have been done in adversarial proceedings, incorporating considerations of a broad range of issues (as opposed to secondary issues that WUTC may have focused on), and representing the diverse opinions of participants. Without specifying how the outcomes would differ, participants offer several reasons why they would be different. Among them are the open exchange of ideas fostered in the collaborative and more equitable distribution of influence. One dissenting opinion was offered regarding the rate design outcome. The dissenter believed the collaborative, having offered no innovative approach to rate design, produced results similar to those expected in adversarial proceedings.

Satisfaction of participants' objectives. The range of satisfaction of objectives is as broad as it could be, with some participants exceeding their objectives and others being disappointed. At these extremes are Boeing, which perceives that it had greater influence over policy in the collaborative than it would have had otherwise, and WUTC staff, who pursued a policy direction counter to what they perceive to have been WUTC's unspoken preferred policy. Furthermore, WUTC staff and Public Counsel, who aimed to achieve fair rates and a fair rate of return for the utility, think they failed to meet their objectives because they think the utility and its shareholders are being overcompensated for the level of risk they incur.

Puget Power is fairly satisfied that it is achieving good public policy, but like NCAC, it is disappointed with regard to establishing long-term productive relationships. Puget describes the process as having reverted to the typical "lawyerly talk" soon after the decoupling was filed. NCAC feels that little "residual good will" exists since Puget's rate case. However, both parties hope that having once achieved productive communication, they can rapidly return to it.

Changes in relations among participants. Collaborative participants generally think they improved their relationships with each other without compromising their respective positions and designated purposes. There are some notable exceptions, however, and some periods during which particular parties lost standing.

NUPs, who described unfavorable the “old Puget” with which they previously fought about large power plants, generally find their relationship with the utility improved. NCAC’s presenting Puget an award for its DSM achievements reflects this improvement. Yet, some parties think Puget’s use of a collaborative was strictly self-serving. Also, Puget acknowledges that its consultant “lost some credibility” during the collaborative and was distrusted by some participants. Puget marks the beginning of its least cost planning process as the turning point in its relations with NUPs and suggests that the cooperative spirit of that process facilitated the collaborative.

NCAC, in addition to finding its relations with other parties improved, believes it gained political capital and visibility with WUTC through its participation in the collaborative. These gains were hindered somewhat when NCAC accepted the grant from Puget Power. Other NUPs feared that NCAC would be less objective because of the financial compensation; however, they currently do not think that has occurred.

NUPs think their relations with industrials have changed the least. They attribute this belief to what they perceive as the industrials’ self-serving participation (i.e., their focus on rates). This perception of the industrials may have resulted in part because they are outsiders to the informal and transient coalition among WUTC staff, Public Counsel, and NCAC. These three parties often found their positions aligned, and the utility and WUTC view them as a loose coalition.

Public Counsel finds its personal relations with participants have improved but perceives no change in the amount of conflict among parties. Public Counsel’s testimony in the second PRAM case dismayed other participants, who perceived it as a deliberate attempt to undermine and circumvent the sovereignty of the collaborative.

With regard to decision-making authority, all parties acknowledge that it ultimately remains with WUTC. They also perceive, and WUTC acknowledges, that WUTC wants to retain its authority. The collaborative has not changed this, but it has made the relationship between commissioners and rate staff difficult. Commissioners fear that the WUTC rate staff is co-opted in the collaborative process and that participants may expect WUTC to approve whatever staff members agree to. The staff, on the other hand, believes its advocacy role is not fulfilled if it cannot constructively participate in the collaborative.

Savings of time and money by participants. Saving time and money is a primary reason for using a collaborative process rather than the adversarial alternative, according to WUTC. Some parties believe small savings of time and money are achieved through such a process. The others think it requires as much, or slightly more, time and money as a traditional process. There is general agreement that the process is more efficient because it produces a better product. The amount of time required is attributed largely to the nature and complexity of the issues considered. Puget Power believes collaboration to be a slower process at the outset when trust and respect are being established.

Continuation of interactive effort. Before WUTC's September 1993 ruling on Puget Power's rate case, collaboration between Puget Power and the intervenors was at risk of ending. WUTC was uncomfortable with how the parties (particularly its staff) worked together and what they produced. As a result, the parties—using circular logic—believed that even if they participated in the collaborative, they would ultimately have to follow up by participating in an adversarial process. Their logic—it appears—was that because some parties believed the issue would be litigated, they would not negotiate in good faith; and because some parties would not negotiate in good faith, the issue would be litigated.

Also, Public Counsel was seen as having undermined the collaborative with its testimony (regarding total resource costs) in the second PRAM filing, and relationships between Public Counsel and other parties were strained. WUTC rate staff had become uncomfortable with the process because of mixed signals from the WUTC and because it had insufficient resources to devote to simultaneous collaboration and adversarial proceedings. Also, Puget Power was expected to give less support to collaboration if it did poorly in its general rate case.

These circumstances may have been made moot, however, by the September 1993 ruling on the Puget Power rate case, at which time WUTC directed Puget Power and other parties to work together. This directive ensures the continuation of a collaborative process, but it provides little added direction about what type of process and product WUTC wants. Therefore, collaborators are second-guessing and seeking additional guidance from WUTC. But they all agree that collaboration is the best arena for DSM-related issues. The collaborative—this time a single group led by Puget Power—reconvened in November 1993. Proposals and counter-proposals have been offered about collaborative organization, procedures, and issues.

The first meeting of the revived collaborative was on November 17, 1993. Puget introduced a format in which Puget would direct the meetings, and issues previously managed in the three working groups would be addressed in a single collaborative. Other parties, particularly NCAC, briefly attempted to get Puget to consider an alternative format, particularly regarding control of the meetings, but did not persist in the attempt. From the WUTC ruling on Puget's rate case, Puget has identified 11 issues to be addressed by the collaborative.

Future Prospects

Several parties—including WUTC staff, NCAC, and Public Counsel—are concerned that although decoupling shifts risk from the shareholders to ratepayers, shareholders are being compensated for higher levels of risk while ratepayers are required to share additional costs. This issue will likely be one focus of the newly initiated collaborative.

All parties, especially WUTC, view the regulatory reform as experimental and dynamic. Changes are expected. The likelihood that these changes will continue to be assisted by or made through a collaborative process is discussed above.

V. CONCLUSIONS

Recommendations of Respondents

Several recommendations offered by respondents involve what WUTC should contribute to the collaborative process. With only one exception, parties emphasized that policy direction from the commission is essential. One participant likened the need for policy direction to the relation between a provider of a tailor-made product and the customer. "Not only do you need initial guidance from the customer, but it also helps to check frequently with the customer to assure that the product is developing to his liking." It is acknowledged that a *single* policy direction may not always be possible, given the varied opinions of multiple commissioners. Only one participant believed that commission concern for the issues, without policy direction, was sufficient guidance for the collaborative.

Another type of recommendation involved how participants should prepare themselves for and conduct themselves in collaboration. One participant suggested that each should consciously examine and suspend all attitudes and assumptions about other parties and their positions. Without the burden of potentially loaded presumptions, parties are able to communicate better and accomplish more. Other advice included committing to the process by allocating sufficient time for it and by honoring the confidentiality of the group. Finally, one respondent recommended that participants remain flexible and be prepared to be prove wrong.

The third type of recommendation relates to the process itself. Several parties recommended the use of deadlines, which in addition to forcing closure to discussion and negotiation, prevent grandstanding. Respondents also recommended broad participation so that a range of ideas can be represented. Other recommendations included clarifying the role of staff, establishing explicit ground rules for conduct, acquiring and using outside technical expertise, and sharing all available information.

NCAC recommended developing a mechanism whereby intervening groups could be funded by utilities in whose processes they intervene. NCAC specifically suggested that foundations (e.g., The Pew Charitable Trusts) direct some funding to developing such a mechanism so that in the future, intervenors would not be so dependent on the "soft money" provided by foundations.

Our Observations and Recommendations

Puget Power is experiencing customer growth, operates in a region experiencing an energy deficit, and is regulated by a commission willing to break new ground. Given this context, it is no surprise that Puget Power pursues DSM. How have NCAC and the collaborative process influenced Puget Power's pursuit of DSM?

NCAC has contributed significantly in the regional arena, particularly with its influence over regional least cost planning. The regional plans and *Washington's Energy Strategy*, with their

ambitious emphasis on DSM, have established an environment that has enabled individual utilities and commissions to pursue DSM aggressively.²⁹ Absent the guidelines of these plans, the context might be less conducive to DSM.

It is quite clear that WUTC would have implemented regulatory reform even without a collaborative. The structure of regulation that would have resulted is far less clear, although advocates of decoupling—NRDC, Puget Power (as influenced by Moskowitz), and Public Counsel—might have prevailed in a traditional adversarial process. The collaborative's greatest influence likely was to push DSM targets upward and direct DSM dollars toward effective programs.

We agree with NCAC that additional direction from WUTC is needed for the collaborative to be most productive and efficient. It is our opinion that commitment to true "good faith" negotiation³⁰ in the upcoming collaborative will be maximized only if the parties believe WUTC supports the process and if a structure is developed to give NUPs more equal standing with the utility. The former could be clarified by a simple statement of purpose from WUTC (i.e., WUTC could specifically ask parties to negotiate with the goal of reaching consensus, or to explore completely and collectively all associated issues and present those issues and the various parties' positions on them. The latter appears to be WUTC's desired outcome, given its statement that an "all or nothing process is unacceptable"). Also, if consensus is the goal, consensual filings should be treated as a package by WUTC; if they are not so treated, all parties should be given an opportunity to assert their individual positions through testimony or comments.

Equalizing standing among participants could be accomplished by allowing the collaborative to make filings on Puget Power's behalf or by changing the organizational structure so that NUPs have greater control over what issues are discussed and how they are settled. This might be done through formal procedural guidelines, by using a third-party facilitator, or by rotating the job of the facilitator among parties. Parties may also become more equal participants if funding is provided through a WUTC-approved mechanism for non-profit groups who act to influence regulation and for independent consultants who can offer the collaborative objective opinions regarding specific issues.

Also, the process might be made more efficient and increase participant satisfaction if the collaborative seeks interim policy guidance from WUTC before participants expend the time and effort to fully develop a policy proposal. WUTC policy staff could contribute significantly to the process by reporting from the collaborative to WUTC and vice versa. Rate staff might more comfortably act as advocates (even continue as a signatory in the process) if policy staff provide the objective and skeptical policy appraisal WUTC desires.

²⁹This may be the plans' greatest success, given that Bonneville's conservation activities are waning.

³⁰If indeed WUTC wants parties to negotiate, as opposed to simply identify and explore issues.

With regard to its activities to influence regional DSM use, we are concerned that as NCAC becomes increasingly involved in utility- and commission-specific projects, it will be spread thin, and its resources devoted to any one project will be insufficient to influence DSM-related outcomes. NCAC, having grown rather rapidly and experiencing frustration in its attempts to influence DSM regionally through Bonneville, finds itself at a crossroads. Bonneville, too, is at a crossroads, and may soon undergo a significant reorganization. In that NCAC is unlikely to influence Bonneville's reorganization, it may be appropriate for NCAC to temporarily redirect its attention to large utilities in the region and then reassess its activities when the new Bonneville emerges.

RESPONDENTS

Utility

David Hoff	Director, Rate Planning and Administration, Puget Power
Corey Knutsen	Vice President, Corporate Planning, Puget Power

Energy efficiency advocacy groups

Kevin Bell	Convergence Research (consultant to NCAC and previously policy director of NCAC)
K.C. Golden	Policy Director (previously Executive Director), NCAC

Business/industry groups

Ken Canon	Executive Director, Industrial Customers of Northwest Utilities
John Hendricks	Manager, Energy Office, Boeing Support Services

Government agencies

Chuck Adams	Attorney, Office of the Attorney General of Washington
Kevin Winters	Utility Analyst, Office of the Attorney General of Washington

Regulatory staff

Kenneth Elgin	Assistant Director—Energy, WUTC
Sharon Nelson	Chairperson, WUTC

10. VIRGINIA'S CONSERVATION AND LOAD MANAGEMENT TASK FORCE AND RELATED ACTIVITIES

SUMMARY

SELCO, a regional organization formed in 1986 to protect natural resources through legal advocacy, has been actively involved with utility issues in Virginia since 1990. Its initiatives consist of direct contact with regulators and utilities, intervention in regulatory proceedings, and education and outreach activities—all designed to encourage the aggressive pursuit of cost-effective DSM by the state's utilities. In addition, SELCO and seven other non-utility groups were involved for a relatively brief period in a Conservation and Load Management (CLM) Task Force with the Virginia Electric and Power Company (Virginia Power) and six other Virginia utilities to examine the advantages and disadvantages of various cost-effectiveness tests.

Over the last several years, SELCO has had a number of direct contacts with Virginia's utility regulatory agency, other government offices, and Virginia Power concerning the utility's DSM efforts and related issues. It also has intervened in many regulatory proceedings, including air quality permit cases, policy investigations, and rate cases. In addition, SELCO has undertaken several education and outreach efforts, including publication of a December 1992 report on the environmental, economic, and health impacts of current energy use trends in Virginia and the potential of energy efficiency improvements. It is probable that SELCO activities have had some limited effect on DSM-related policies and actions in Virginia, although the precise impact cannot be quantified.

The CLM Task Force examined four different cost-effectiveness tests and their implications for policy decisions. The staff of the State Corporation Commission (SCC)—the agency responsible for utility regulation in Virginia—was charged with running the task force and developing recommendations on cost-effectiveness tests for the Commission. In early February 1993, the SCC staff filed its final report with SCC. Several months later, SCC issued an order requiring—in line with the staff report—that utilities conduct cost/benefit analyses using (at a minimum) all four tests examined by the task force. Inputs by SELCO and some other task force participants might have been an important factor in the SCC decision not to order the use of the RIM test as a “threshold” cost-effectiveness test,³¹ as advocated by industrial customers. Such an arrangement would have allowed less utility use of DSM than the approach chosen. However, the “four-test approach” does not represent a strong regulatory push for aggressive utility use of DSM in Virginia.

³¹A “threshold test” can be used as a first step in determining a DSM program's cost-effectiveness. If a program fails this test, it is not considered further and no other tests are run on it.

I. INTRODUCTION

SELC, an environmental/energy conservation advocacy group operating in the southern United States, participated in a task force in 1992 with Virginia Power and a number of other Virginia utilities and non-utility groups. The purpose of this effort was to develop recommendations on appropriate cost/benefit methods to use in establishing the cost-effectiveness of potential utility DSM programs. This CLM Task Force, as it was called, was established by the SCC and met actively from June through September, 1992. Subsequently, the SCC staff prepared a report on task force findings and submitted it to the SCC. In addition to its participation on the task force, SELC has engaged in various activities designed to influence the policies and actions of Virginia Power—the state’s largest utility—and state regulators. This case study describes the context in which the CLM Task Force and key SELC activities have taken place and discusses the important features and outcomes of these efforts. Information in this case study is current as of early November 1993.

II. CONTEXT

Political Environment

Issues related to IRP and the use of DSM resources seem to be generating more interest in Virginia at present than they did a few years ago. The Secretary of Natural Resources, state regulators, and various environmental/health groups all have shown a substantial interest in these issues, and the mass media seem to have recognized this. Utility customers also seem to be interested in DSM as a way of reducing their bills. In 1992, the governor signed the Virginia Energy Plan, which established energy efficiency guidelines for all state buildings and called for a 25% reduction in energy use by 1996. Still, compared with all other issues of interest to Virginia citizens and policy-makers, IRP/DSM does not seem to qualify as a hot topic.

Most non-utility groups involved with energy-related issues in Virginia reported having had some degree of interaction in recent years with other interested groups, in addition to their task force involvement.

Economic Environment

Virginia, like the rest of the nation, experienced the effects of the recent recession; but the current health of the state economy has not been a major issue raised by utilities, regulators, and other interested parties in their discussions of utility integrated planning and the use of DSM resources.

Regulatory Environment

Virginia’s SCC has three commissioners, appointed to staggered 6-year terms by the state legislature. The commission regulates all public utilities plus banks, insurance companies,

securities, and similar enterprises. None of the current commissioners has extensive previous experience in the DSM area. There are close to 100 SCC staff who are responsible for utility issues. In recent years, the SCC has had substantial interaction with Virginia Power and moderate interaction with intervenor groups.

The SCC order of March 1992 that created the CLM Task Force stated that cost-effective DSM programs are an essential component of a balanced utility resource portfolio, but that caution is necessary to avoid promoting uneconomical programs. This statement seems to indicate a positive, but somewhat reserved, attitude toward DSM on the part of state regulators. This impression is enhanced by a closer look at the order which, among other things, endorsed promotional allowances for cost-effective DSM programs, required formal review and approval for utility DSM programs (but not the entire Integrated Resource Plan), established rate cases as the appropriate venue for deciding utility-specific questions of utility cost recovery, and was silent on the issue of financial incentives to utilities.

More recent decisions are consistent with this "go-slow" approach. In June 1993, the Commission issued an order finding that "a multi-perspective approach to evaluating proposed DSM programs is in the public interest." Accordingly, utilities were ordered to conduct cost/benefit analyses using (at a minimum) the participants, utility cost, RIM, and TRC tests. The Commission rejected the use of a threshold test because it could "prematurely eliminate programs that may ultimately prove to be in the public interest." It asserted its support for cost-effective DSM programs in Virginia but stated that "it is not prudent, in our judgment, to establish fixed requirements which our utilities must meet at any cost." Two months later, the SCC approved two Virginia Power proposals for new pilot programs, one for half the number of customers requested by the utility.

When asked to characterize recent SCC attitudes toward IRP and DSM, most respondents noted that the Commission appears to be open-minded toward DSM but has not whole-heartedly embraced it. One party departed from this characterization somewhat by describing the SCC as "committed to DSM" while another suggested that the SCC has a "hands off" approach and is not inclined to get involved in utility planning issues. As for the Commission's attitudes toward interactive efforts involving utilities and non-utility groups, nearly all respondents agreed that the SCC is not opposed to such arrangements but that it is not inclined to push them either.

Utility Environment

Virginia Power is an electric utility whose service territory includes about 65% of Virginia's geographic area and over 80% of its population. The utility employs nearly 13,000 people and has total annual revenues of over \$3.5 billion. Virginia Power has approximately 1.8 million customers: slightly more than 1.6 million in the residential sector; almost 180,000 in the commercial sector; one thousand in the industrial sector; and the remainder in other categories. Virginia Power's annual sales total almost 60,000 GWh: 20,000 GWh to residential customers; almost 18,000 GWh to commercial customers; over 9,000 GWh to the industrial sector; and the remainder to other electricity users. Currently, Virginia Power generates over 80% of the

electricity it sells—nearly half from coal combustion and most of the rest from nuclear power. The utility has been a pioneer in the field of supply-side bidding, and it uses a substantial number of small generating facilities. Virginia Power's peak load is nearly 13,000 MW. The other major investor-owned utility in the state is the Appalachian Power Company (APCo), serving the eastern half of Virginia and southern West Virginia. APCo serves roughly 400,000 customers in Virginia.

In March 1992, Virginia Power announced a new 10-year plan that included a substantial expansion of its earlier DSM efforts. In fall 1992, the company established a new Energy Efficiency Department to promote the efficient use of electricity through the use of cost-effective DSM programs. In April 1993, Virginia Power filed its 1993 DSM Plan (which it calls "ConserVision") as part of its 20-year plan. According to the description of the planning process contained in this document, the utility required its package of DSM measures to provide opportunities for all customer classes, to support all types of DSM programs (e.g., conservation, load management), and *not* to cause the bills of nonparticipants to increase. The programs contained in this plan are expected to reduce peak demand by nearly 300 MW in 1993, a 25% increase over the savings specified for the first year of the 1992 plan. Combined with programs already in place, Virginia Power's new DSM efforts are expected to reduce demand by almost 1,000 MW by the end of the century, and these savings could increase substantially if proposed pilot programs are successful and are subsequently expanded. The overall plan does not require SCC approval, but applications must be made to the commission for the approval of individual programs contained in the plan to allow cost recovery by the utility. Virginia Power requested approval for two pilot programs at the same time it filed its plan and—as mentioned earlier—these were approved (one at half the proposed size) in August 1993.

Other Key Groups

The non-utility groups involved in DSM-related issues in Virginia vary substantially in terms of the length of time they have been involved in this area and the number of staff people they have devoted to related topics. They range from organizations like the American Lung Association of Virginia (ALAV), who have had limited involvement, to those like SYCOM Enterprises (an energy services company), whose mission centers on energy issues.

The methods used by the involved non-utility groups when addressing utility issues vary widely from group to group. SELC, which will be discussed in more detail in the following section, tends to use litigation a lot, but also stresses settlement and other consensus-building techniques. The other non-utility groups also rely heavily on settlement techniques but do not emphasize litigation. In addition, these groups tend to use educational and lobbying approaches to a considerable extent.

Nearly all of the responding non-utility groups considered themselves weaker or much weaker than the utilities with whom they interact in terms of funding, technical resources, and influence with the SCC. Most rated themselves as being stronger in terms of influence with regulators than in terms of the other two factors. When comparing themselves with other non-

utility groups, most respondents saw themselves as being about the same or stronger in all key areas.

III. KEY SELC INITIATIVES

Background

SELC is a regional organization that was formed to protect natural resources in the southern United States through legal advocacy. SELC began operations in 1986 and has offices in Charlottesville, Virginia, and Chapel Hill, North Carolina. It currently undertakes projects in six states: Virginia, North Carolina, South Carolina, Alabama, Georgia, and Tennessee. SELC has been actively involved with utility issues in Virginia since 1990, when it began to intervene concerning the issuance of air quality permits for a number of new Virginia Power plants. SELC's main thrust, which has continued to the present, is that DSM programs provide an environmentally benign and cost-effective alternative to new generation. Since early 1991, SELC's work in Virginia has been supported as part of its Energy Project, which is designed to promote utility use of DSM resources in the southern states. SELC puts equal emphasis on the litigation of cases before state regulators and the use of settlement negotiations and other consensus building techniques. To a lesser extent, it also employs educational and lobbying approaches.

SELC has a paid staff of approximately 20, but most of them are not involved with the Energy Project. Early in the life of its utility-related activities, SELC had only a single staff member (an attorney) working in this area. Since the summer of 1992, the organization has had two full-time attorneys working on energy issues. SELC receives funding from a number of foundations, including The Pew Charitable Trusts, the Energy Foundation, and the Educational Foundation of America. The first two foundations provide the primary support for the Energy Project. Without this funding, SELC involvement with energy issues in Virginia and elsewhere would not be possible.

In addition to its involvement in the CLM Task Force (discussed in Section IV), SELC has engaged in a number of different activities designed to influence regulatory and utility policies and actions related to the use of DSM resources. These SELC initiatives can be put into three major categories: direct contact with regulators and utilities, intervention in regulatory proceedings, and education and outreach.

Over the last several years, SELC has had a number of direct contacts with government agencies and Virginia Power about utility use of DSM in Virginia. In 1990, SELC initiated discussions with the state Secretary of Natural Resources and the SCC about the need for increased reliance on DSM by state utilities. And since 1991, SELC has engaged in a number

of informal discussions with Virginia Power concerning the utility's DSM efforts and related issues.³²

SELC sees its interventions in regulatory proceedings as an opportunity to bring about change in the SCC's regulatory policies, shifting them toward more emphasis on DSM. Since 1990, SELC has intervened in various cases concerning air quality permits for a number of new power plants that would either be co-owned by Virginia Power or sell electricity to the utility. In a policy investigation on DSM initiated by the SCC in early 1991, SELC took the position that increased use of DSM is an attractive alternative to further power plant construction. SELC also made a formal request, as part of a proposed settlement to an air quality permit appeal, that Virginia Power join it in a collaborative. In early 1992, SELC presented expert testimony in a Virginia Power rate case, supporting the need for the utility to pursue DSM options more aggressively. And during 1993, the organization has participated in regulatory proceedings on the use of cost-effectiveness tests in Virginia and has been a party to APCo and Virginia Power rate cases.

SELC also has undertaken a number of education and outreach efforts in the last few years. In 1991 and 1992, SELC helped form the Virginia Energy Coalition—an informal coalition of 31 environmental, consumer, and health organizations—to push DSM and cosponsor a report like New England's *Power to Spare*. The groups involved include, among many others, the Virginia chapter of the Sierra Club, the Virginia Conservation Council, the Virginia League of Women Voters, the Virginia Wildlife Federation, and ALAV. SELC's hope was that the report, which it would author, would generate public interest in DSM and possibly stimulate the state legislature to pass a law like those in Georgia and South Carolina requiring IRP. In December 1992, SELC released the report, entitled *Energy 2000: A Blueprint for an Energy Efficient Virginia*, which provides a technical analysis of the potential for cost-effective energy efficiency improvements in Virginia and presents a strategy for achieving this potential. SELC also has participated in a number of Virginia workshops and conferences on utility planning and related issues.

Current DSM/IRP Initiatives

In spring 1993, Virginia Power initiated a meeting with SELC to explain its DSM plan after it was filed. The two organizations may keep meeting as needed so that Virginia Power can keep SELC informed of its activities.

Shortly after the SCC staff filed its final report on cost-effectiveness tests in early 1993, SELC (as well as a number of other interested non-utility groups) filed written comments and presented oral arguments on this subject to the SCC. SELC advocated the use of the TRC test

³²This includes the suggestion by SELC in mid-1991 that the utility join it in a collaborative planning effort. To date, nothing has come of that suggestion and there are no current plans for the establishment of such a collaborative process.

as a good first test to use to identify a broad scope of available DSM options.³³ SELC also stressed the importance of the SCC's providing clear guidance on a preferred approach to determining cost-effectiveness, rather than endorsing all available tests equally.

In addition, SELC has been a party to the APCo rate case (initiated in December 1992) in which the utility seeks annual recovery of program costs and recovery of lost revenues for a set of proposed pilot programs. The utility also has suggested that incentives might be appropriate in the future for its full-scale DSM programs. In July 1993, hearings were held on this case and SELC presented expert testimony supporting APCo's request for dollar-for-dollar recovery of DSM program costs and recovery of revenues verified to have been lost as a result of DSM programs. SELC's participation in this case is particularly significant because it is the only party, other than APCo, supporting lost revenue recovery.³⁴ In mid-September 1993, the SCC staff filed a brief on the APCo rate case, recommending against recognition of lost revenues in this instance and against the proposed cost recovery mechanism. A final SCC decision is expected sometime in early 1994.

In December 1992, SELC released *Energy 2000: A Blueprint for an Energy Efficient Virginia*, which it wrote on behalf of the Virginia Energy Coalition. The report analyzes the environmental, economic, and health impacts of Virginia's current energy use trends and discusses the potential of energy efficiency improvements. This report represents a strong education effort, but it does not signal a shift away from SELC's emphasis on litigation and settlement. Still, the organization recognizes the need to build greater public and government awareness of, and support for, energy reform. Currently, it is looking for other groups to take an active role in energy education in the state and is trying to get funding for that effort.

Outcomes

SELC interventions in regulatory proceedings have probably had some effect on DSM-related policies and actions in Virginia. While a direct connection between a particular intervention and a regulatory decision cannot be established with certainty, we can identify those cases in which the likelihood is greatest that SELC involvement influenced the eventual outcome. Specifically, SELC's participation in the SCC's 1991 policy investigation on DSM might have influenced state regulators to be somewhat more positive toward utility use of demand-side resources in their March 1992 order than they otherwise would have been. Also, SELC's written comments and oral arguments related to the use of various cost-effectiveness tests might have

³³SELC's position was sometimes characterized as advocating the use of the TRC test as a "threshold test." However, SELC did not say that the RIM test could not be used to provide further information after an initial portfolio of options was established by the TRC test.

³⁴Virginia Power also would like to see SCC approve the recovery of program costs and lost revenues as a way of removing disincentives associated with the use of DSM, but it is not involved in the APCo case.

been a factor in the SCC decision not to adopt the RIM test³⁵ as a threshold test for assessing potential DSM measures, as suggested by industrial customers. In addition, SELC's direct contacts with the SCC and Virginia Power and its educational and outreach efforts might—in a gradual and subtle way—have influenced key state regulators and utility personnel to be more favorably disposed toward DSM. And, together, all of the activities described above probably have enhanced the credibility of SELC with the SCC and other key players involved with energy issues in the state.

Future Prospects

The pending SCC decision on the APCo case is important because it could set a precedent on the annual recovery of program costs and lost revenues that would affect other Virginia utilities. The SCC appears aware of the potential precedent-setting nature of its decision and, accordingly, is not likely to approve the cost and lost revenue recovery mechanisms proposed by APCo and supported by SELC. Instead, the Commission is likely to defer its policy decisions until it can conduct a more direct and detailed examination of these issues. Such a forum would be provided by the hearings that the Energy Policy Act requires the state to initiate by October 1994 on IRP and regulatory effects on DSM profitability. A decision related to this investigation would be forthcoming by the end of the following year.

SELC is likely to continue its direct contacts with Virginia Power from time to time and might initiate future contacts with the SCC as well. In addition, SELC is certain to continue intervening in cases that it sees as important. While the organization believes in the importance of education, it seems inclined to encourage other groups to become active in this arena and is not likely to repeat the intensity of its *Energy 2000* effort in the foreseeable future. SELC has no current plans to pursue actively the issue of DSM collaboration with Virginia Power, although it would be likely to participate in a collaborative with the utility if the opportunity should arise. Virginia Power, meanwhile, has no plans to initiate a collaborative but would probably become involved if the SCC staff initiated one.

IV. THE CLM TASK FORCE

Initiation

In 1990, the SCC staff recommended that the SCC initiate a comprehensive examination of its policies influencing electric and gas utility DSM programs. During the same year, SELC initiated a discussion with the state Secretary of Natural Resources and the SCC about the need for increased reliance on DSM by state utilities. The governor of Virginia and the Secretary of Natural Resources also recommended that the SCC open an inquiry/proceedings on DSM and rate reform.

³⁵The RIM test, if used as a threshold test, would result in fewer potential DSM options being passed on for further consideration than would the use of a less restrictive test like the TRC test.

In early 1991, the SCC opened a policy investigation on DSM, requesting comments from the public on a broad spectrum of related issues. SELC, the secretary of Natural Resources, ALAV, and others took the position that increased use of DSM is an attractive alternative to further power plant construction. Virginia Power urged the SCC to remove disincentives and establish incentives for utility implementation of DSM programs. Several months later, the SCC staff issued a report recommending specific rules and policies regarding DSM programs and regulatory treatment. Among its recommendations was that more information was needed on cost-effectiveness tests and that a series of technical conferences or a task force should be organized in this area. The SCC staff did not take a stand on the treatment of environmental externalities, suggesting that new legislation might be the appropriate vehicle to address this issue.

In March 1992, the SCC issued an order related to its DSM policy investigation. In its discussion of the issues, the SCC stated that cost-effective DSM programs are essential components of a balanced utility resource portfolio, but that cautious movement is necessary to avoid promoting uneconomical programs. The order called for establishing a working group (either a voluntary task force or a series of technical conferences) to study the issue of cost-effectiveness tests, but it specifically stated that this effort should *not* involve the question of how to quantify environmental externalities. As a result of this order the CLM Task Force was formed, meeting for the first time in June 1992.

Participants

Seven utilities, variously represented by management and technical staff, participated in the CLM Task Force. By far the largest of these utilities was Virginia Power. The others—in alphabetical order—were APCo, Commonwealth Gas Services, Old Dominion Electric Cooperative, Potomac Edison, Virginia Natural Gas, and Washington Gas Light. In addition to the utilities, seven NUPs were involved, representing a broad range of interests and opinions. Two nonprofit groups—SELC and ALAV—were task force members, and a third group—Virginia Citizens Action—was invited to participate but did not join the task force. SYCOM Enterprises (an energy services company) and the Virginia Committee for Fair Utility Rates represented industrial interests. From the government sector, the Virginia Department of Natural Resources and the Virginia Office of the Attorney General were involved. Finally, the task force was run by the SCC staff.

Only one of the NUPs reported being represented on the task force only by attorneys. Most of the other NUPs had attorneys involved in task force activities but, in addition, they had staff members from other professions (most commonly economists, public policy analysts, and engineers) directly involved.

Virginia Power will not need peaking capacity until around the turn of the century, and additional baseload generation should not be required until after that. The utility's latest long-range plan envisions DSM-induced savings of almost 1,000 MW by 2000, even without

accounting for the additional savings that would result from the expansion of successful pilot programs into full-scale efforts.

Virginia Power has recently undergone a major reorganization, which created a new vice-president of energy efficiency who controls DSM planning and implementation. This reorganization was cited by several respondents as indicating a greater commitment by the utility to DSM programs. In fact, nearly all of those interviewed described Virginia Power as being more supportive of DSM than it had been in the past; one respondent, for example, characterized the utility as "truly exploring new DSM programs and ideas." Most respondents observed that Virginia Power is interested in getting public input, but the utility itself noted that there are limits to this involvement and that the utility must ultimately make its own decisions.

Every department and individual within Virginia Power has formal goals. The groups responsible for DSM planning and implementation have specific goals that reflect their organizational missions. In addition, individuals' personal goals are tied to their group goals, so each employee shares in the rewards if the goals of the organization are met.

Purpose

Respondents were asked to describe their objectives in taking part in the CLM Task Force. Most reported that they entered the process to ensure that the perspective of their organization or constituency was represented. The industrial group, for instance, was interested in avoiding cross-subsidization in order to protect ratepayers. The state Department of Environmental Quality, on the other hand, wanted to make sure that the environmental perspective was heard. The SCC staff, as the convener of the task force, was distinguished by its desire to get a broad variety of viewpoints as input to the report it was charged with producing for the regulatory commission.

The CLM Task Force originally was charged with examining the advantages and disadvantages of alternative cost-effectiveness tests so that the SCC staff could issue a recommendation concerning which test(s) should be applied by Virginia utilities. The societal test was not considered because the SCC had instructed task force participants to avoid the issue of how to quantify environmental externalities, which the societal test addresses. Early in the life of the task force, the members agreed that all other major cost-effectiveness tests currently in use provide valuable information; accordingly, the task force would focus on the interactions of the various tests and their implications for policy decisions and would not try to reach consensus on a single preferred test or a hierarchy of tests. Equity considerations, focusing on the question of whether nonparticipants should subsidize participants, were discussed extensively.

In addition to discussing the merits of various cost-effectiveness tests, the task force members also talked briefly about other DSM-related issues, such as cross-subsidization of program costs and regulatory treatment (e.g., lost revenues, automatic adjustment clauses).

Process

Structure of CLM Task Force. The CLM Task Force was run by the SCC staff, who had ultimate responsibility for developing recommendations to present to the Commission in its final report. The SCC staff felt that it would be good if consensus could be reached; however, they did not really expect that this would happen and the group did not actively seek consensus. It was understood that even consensus decisions would not be binding on the SCC.

The SCC set a deadline for preparation of an interim report on the workings of the CLM Task Force, but it did not establish a due date for the draft and final reports on the uses, advantages, and disadvantages of the various cost/benefit tests. However, the SCC staff set an internal deadline for completing the task force meetings. Participants seemed to find the establishment of such time limits helpful because they moved things along more quickly than would have otherwise been the case.

Funding of non-utility groups. SELC was the only task force participant that received financial support from outside groups. As mentioned earlier, SELC's utility-related activities are funded through its Energy Project, which is supported by the Pew Charitable Trusts (the biggest funder) and other foundations (e.g., Energy Foundation, Educational Foundation of America). According to SELC, this funding is essential to allow its continued involvement with utility-related issues in Virginia.

Use of outside consultants. No outside experts were used to present different viewpoints on the strengths and weaknesses of the various cost-effectiveness tests even though, according to one respondent, many task force participants believed that such presentations—supported by the SCC or utility funding—would have been useful.

Development of coalitions. No real coalitions were formed during the life of the task force, although various parties often agreed with each other on important issues. One respondent noted that the formation of strong coalitions was not necessary because consensus was not actively sought.

Conflict and conflict resolution. Virtually all respondents reported that there had been conflict among various groups in the task force, but most characterized the exchanges as healthy. One participant noted that there had been "very intense" discussions that "brought out all sides of the issues." Another expressed the opinion that the conflict that occurred was the result of the different parties showing their genuine positions and that it would have been negative *not* to have it. The major conflicts that did occur were (1) between those parties advocating RIM as a threshold test and those favoring TRC; and (2) between the electric and gas utilities. One respondent also noted that there had been some conflict between the big utilities and smaller cooperatives. No rigorous attempt was made to resolve disputes among task members because, as mentioned earlier, consensus was not actively sought.

Related Policies and Interactions

Between February and April of 1993, task force members and other interested parties filed written comments on the staff's February report, and some parties also presented oral arguments to the SCC. While there was much support for the multi-perspective approach, some participants recommended the establishment of a threshold test or similar mechanism for determining the cost-effectiveness of DSM programs.

Outcomes

Task Force products. The SCC staff issued an interim report in July 1992. It stated (among other things) that all major DSM cost/benefit methodologies that it had considered provided valuable information; therefore, the task force would spend the remainder of its time on examining "the interactions of the various tests with each other and their implications upon policy decisions" and would not attempt to recommend a preferred test or tests.³⁶ The CLM Task Force did not meet after the summer of 1992, but during the fall, the SCC staff worked on a report discussing four major cost-effectiveness tests. In mid-January 1993, the SCC staff sent its draft report on the uses, advantages, and disadvantages of these tests for assessing DSM measures to CLM Task Force members for review. A few weeks later, the SCC staff received comments on the draft report from task force members; this review marked the end of the CLM Task Force. In early February, the SCC staff filed its final report on cost/benefit tests with the SCC. Although many of the positions discussed in the task force meetings are reflected in this document, it was not presented as a consensus filing. The staff report recommends that Virginia utilities be directed to conduct all four of the tests that were considered (participants, utility cost, RIM, and TRC) since no single test provides all necessary information and each of the tests has its own unique strengths.

Regulatory approval. In late June 1993, the SCC issued an order finding—in line with the staff's task force report—that "a multi-perspective approach to evaluating proposed DSM programs is in the public interest." Accordingly, utilities were ordered to conduct cost/benefit analyses using (at a minimum) the participants, utility cost, RIM, and TRC tests. The Commission rejected the use of a threshold test because this could "prematurely eliminate programs that may ultimately prove to be in the public interest." It established a set of minimum guidelines for utility data input and modeling assumptions (as recommended by the SCC staff) and required utilities to provide a cost/benefit analysis for each individual DSM program, even if an entire package of programs is filed. The order asserts the SCC's support for cost-effective DSM programs in Virginia but states that "it is not prudent, in our judgment, to establish fixed requirements which our utilities must meet at any cost."

³⁶No threshold test was established, but the topic was discussed at task force meetings. The industrial parties supported RIM as a threshold test. Virginia Power, while it liked the RIM test, did not want to see any threshold test established. SELC wanted the TRC test to be used as a first test (but not strictly a threshold) for identifying a broad portfolio of potential DSM options. ALAV and the gas utilities also favored TRC.

Satisfaction of participants' objectives. Nearly all respondents reported that their objectives had been satisfied to some extent, but the degree of satisfaction varied considerably. The SCC staff and the utility reported the greatest amount of satisfaction. A few key NUPs reported that their objectives had been largely satisfied, but that those goals had been fairly limited. A few more NUPs reported being mildly or partly satisfied, and one is withholding judgement until after the new policy is implemented.

Savings of time and money for participants. About half of those interviewed reported that the task force had required less time and money to deal with the subject of cost-effectiveness tests than would have been required to address the same topic through the more traditional adversarial approach. The remaining participants gave a range of responses. One key NUP stated that the time required for task force participation was about the same as would have otherwise been necessary, but that the cost was less because there was no need to hire expert witnesses. One respondent characterized the costs of the task force and the adversarial alternative as about the same, but noted that the non-utility groups had better access to information through the task force. A few non-utility groups noted that they do not normally participate in the adversarial process, so they probably would not have been involved had it not been for the task force.

Nature of outcomes compared with results of traditional process. A few participants suggested that task force operations had probably influenced the contents of the SCC order on cost-effectiveness tests, but they could not say how great the effect had been. One respondent was more definite, stating that those task force members who had opposed the use of RIM as a threshold test had probably prevented its adoption. Another respondent suggested that this might be true, but noted that the same thing might have been accomplished through active participation in regulatory proceedings. The SCC staff expressed the opinion that its report was probably better than it would otherwise have been because participation in the task force allowed it to get input at an earlier stage and to hear the issues debated thoroughly. Finally, one respondent suggested that the main effect of the task force was to create a cadre of 20-30 people who are highly involved in utility-related issues in Virginia, representing a potential for future action that would not otherwise have existed.

Changes in historic relations among participants. More than half the respondents reported that the task force had provided participants with a greater understanding of each others' positions. One of those involved noted that the task force had improved participants' access to each other, suggesting that task force members now know each other better and can contact each other for needed information. One non-utility group suggested that its legitimacy with the utilities and industrial customers had been improved as a result of task force interactions. Only a single respondent reported that relations among the parties had not changed at all.

Future Prospects

The CLM Task Force officially ended in January 1993, after its members provided their comments on the SCC staff's draft report on the use of cost-effectiveness tests in Virginia. Because the SCC has since issued an order on this topic, the task force has no reason to meet

again to address this issue. Of course, the SCC could always establish another task force to examine another issue or issues related to IRP/DSM, but it currently has no plans to do so.

V. CONCLUSIONS

Recommendations of Respondents

Concerning task forces. Several respondents identified various aspects of task force structure that are related to successful operations. First, a few different participants noted that a task force must have a clear purpose and scope and an established timeframe for completing key tasks. A few others suggested that a task force should focus on a set of important issues and avoid tangential ones so that participants' time and energy will not be diverted from essential subjects. The role of the facilitator also was addressed by a number of respondents; one stated that a strong facilitator was needed to keep the process on track, while two others noted that the facilitator must be neutral and open-minded.

The greatest number of recommendations focused on the nature of task force participants. A few respondents noted the importance of having broad representation from many different groups to ensure that all major viewpoints are heard. Several of those interviewed noted that the individuals involved should have an understanding of the technical issues that are covered, but it was noted that such understanding could be cultivated through providing "primer" courses for task force participants. It also was suggested that participants must have adequate time to study the issues and formulate responses. One key NUP observed that it would be helpful to have outside experts—funded by the utilities or the SCC—present information on the various issues as a basis for subsequent discussions. And many respondents stated that task force participants must know that their input will be taken seriously, in this case by state regulators developing an order on appropriate cost-effectiveness tests.

A number of those interviewed noted the importance of support by state regulators for initiating and successfully operating a task force. And one respondent also noted that utilities must realize their stake in the process if it is to proceed satisfactorily.

Concerning other initiatives by non-utility groups. SELC observed that when a non-utility group is intervening in a regulatory proceeding, it can strengthen its case and enhance the way it is perceived by other parties by sponsoring expert testimony. However, it was noted that more limited involvement—specifically, presenting briefs and conducting cross-examination—also can be valuable. Another approach available to non-utility groups, particularly those with limited funds, is to align themselves with other organizations that have expert witnesses and other technical resources. SELC noted that, in Virginia, some avenue for overall review of utility DSM efforts is needed. Formal regulatory review of the utilities' integrated resource plans would provide such an overview, but this is not currently required by state regulators.

Our Observations and Recommendations

Although it can be argued that the CLM Task Force and the various SELC activities described earlier have probably had some effect on the policies and actions of regulators and utilities in Virginia, the results of these efforts have been neither clear nor dramatic. Without SELC participation in the SCC's 1991 DSM policy investigation, its direct contacts with the SCC and Virginia Power, and its various education and outreach efforts, state regulators and utility personnel might be less favorably disposed toward DSM than they currently are. And without the full range of task force inputs and subsequent comments and oral arguments by SELC, the SCC might have ordered the use of a threshold cost-effectiveness test (RIM) that unduly limits utility use of DSM resources. However, in the case of cost-effectiveness tests, the approach that ultimately was chosen fails to establish a preference for any test over any other and leaves the issue of environmental externalities unresolved. And, in general, the SCC approach to DSM still appears to be one of cautious support rather than advocacy; and Virginia Power's choice of DSM resources is still strongly influenced by the desire to avoid rate impacts. Neither the task force nor any single SELC initiative emerges as a clear winner in terms of influencing the state's regulators or utilities to pursue the use of DSM resources aggressively.

We agree with virtually all of the previously-mentioned recommendations concerning how to ensure smooth task force operation. Of the points made by task force participants, we believe that the following are especially important: clear goals and time limits should be established for task force operations; all interested parties should be involved; state regulators should support the process; funds should be allotted for hiring outside experts; and the input provided by participants must be taken seriously. If all these criteria are satisfied, participation in any future task force is likely to prove worthwhile for both utilities and non-utility groups.

Turning to other types of activities, it appears that intervention in regulatory proceedings will continue to be attractive to SELC and other non-utility groups as a possible means of influencing the policies and actions of regulators and utilities. This is especially true for precedent-setting cases—like APCo's current rate case—and for policy-related proceedings like the upcoming hearings on IRP/regulatory effects on DSM profitability that are required by the Energy Policy Act. As suggested by SELC, the use of expert testimony can be very helpful—but is not essential—for productive participation in such proceedings. Forming coalitions with like-minded organizations that have strong technical and financial resources can help leverage an organization's own capabilities. In addition to regulatory interventions, periodic direct contacts with utilities and regulators are potentially beneficial for non-utility groups, at least in terms of improving access to important information. As mentioned earlier, foundation funding has been critical to SELC's ability to maintain its ongoing involvement with energy issues in Virginia.

RESPONDENTS

Utility

Mary Doswell Virginia Power, Manager of Demand-Side Planning

Non-profit groups

Lucy Blackford ALAV, Associate Director of Programs

Ron Des Roches ALAV, Consultant

Jeff Gleason SELC, Staff Attorney

Business/industry groups

S. Lynn Sutcliffe SYCOM Enterprises, President and Chief Executive Officer

James Dimitri CFUR, Attorney

Government agencies

Pamela Faggert Virginia Department of Environmental Quality, Director of Air Division

Regulatory advisory staff

Bob Lacy Virginia SCC Staff, Division of Economics and Finance, Utilities Research Manager

11. THE WESTERN MASSACHUSETTS ELECTRIC COMPANY COLLABORATIVE AND RELATED CONSERVATION LAW FOUNDATION ACTIVITIES

SUMMARY

From the mid-1980s until the end of the decade, the commission that heads the Massachusetts Department of Public Utilities (DPU) was increasingly favorable to DSM. In late 1988, it set the stage for aggressive DSM with a regulatory order that established the societal cost test as the required cost effectiveness test in screening DSM programs, provided guidelines for DSM-related cost recovery, and allowed DSM program preapproval. In August 1990, it issued an order adopting a set of values for environmental externalities that were the highest adopted by any state at that time.

Since 1990, however, Massachusetts has been in an economic recession, and it has become clear that the electric utility capacity shortages envisioned just a few years before are not imminent. Instead, some of Massachusetts' eight private electric utilities have been experiencing capacity surpluses—partly because of capacity that has recently come on line, partly because of slow growth in demand. In 1991, with a change from a Democratic to a Republican governor, a new DPU commission was appointed. The commission inherited both a pro-DSM set of regulatory policies and a new economic and political climate—one in which rate competitiveness was a pressing issue. While the commission has not dismantled the prior regulatory approach, its future course regarding both DSM and integrated resource management (IRM) is uncertain.

These regulatory developments have been paralleled by developments concerning a collaborative between Northeast Utilities (NU)—the parent company of Western Massachusetts Electric Company (WMECO)—and four NUPs: the Conservation Law Foundation (CLF), the Massachusetts Public Interest Research Group (MASSPIRG), and two state agencies—the Attorney General's office (AG) and the Division of Energy Resources (DOER). This collaborative was established in 1988 as part of a brief, multi-utility collaborative to design a generic set of DSM programs for Massachusetts electric utilities. The individual collaborative to develop DSM programs for WMECO began in March 1989 and still continues.

The WMECO collaborative has evolved from basic program design to program refinement and evaluation, and relationships within the collaborative—sometimes rocky at first—have become more harmonious. However, the collaborative's long-term prospects are in doubt, as attention shifts from DSM to a more comprehensive consideration of the utility's supply and demand picture. NU is facing an especially poor economic picture in western Massachusetts, and its rates are high, in part because it is heavily invested in nuclear power. With low demand and excess capacity, it has begun to scale back its commitment to DSM spending. So far, the budget cuts have been fairly modest and are not expected to affect energy savings levels, but the utility is in a belt-tightening mode and is worried about its competitiveness, especially with the prospect of restructuring of the electric utility industry.

In response to these changes in the economic, political, and regulatory contexts within which Massachusetts utilities are operating, CLF has made a vigorous attempt over the last year to increase its lobbying and outreach efforts, to revitalize and strengthen a statewide coalition of environmental and consumer groups concerned with energy efficiency issues, and to build alliances with industries that are, or could be, proponents of aggressive DSM. In its work within collaboratives, CLF has sought to remain a strong but non-dogmatic player, committed to the concept of DSM but willing to entertain alternative routes to energy efficiency. While these strategies appear to be working, CLF is also attempting to deal with the deleterious effects that utility restructuring—especially retail wheeling—could have on IRM and DSM.

I. INTRODUCTION

There are eight private electric utilities in Massachusetts, all regulated by the state DPU. This case study addresses the DSM collaborative of one of them, WMECO.

WMECO is a retail company of NU. The collaborative, which began in 1988, is between NU and four intervenor groups: CLF; the Massachusetts Public Interest Research Group (MASSPIRG); the Division of Energy Resources (DOER), a state agency now lodged within the Executive Office of Economic Affairs; and the Massachusetts AG. The case study examines the interactions of that collaborative, as well as other related CLF initiatives to influence the DSM and IRM actions of NU for WMECO, and the DSM/IRM policies of the DPU. Information for the case study is based on a variety of sources, including documents as well as extensive, open-ended phone and face-to-face interviews. The information was collected over approximately a year and a half and is current as of November 1993.

The WMECO collaborative is only one part of CLF's collaborative activity. NU and CLF are also collaborating, together with representatives of Connecticut state agencies, on the DSM programs of an NU utility in Connecticut; in addition, CLF is in a collaborative involving another Connecticut utility, United Illuminating. CLF has also been in a long-standing two-party collaborative with New England Electric System (NEES), which has retail companies in Massachusetts, Rhode Island, and New Hampshire. Furthermore, it has engaged in collaborative activity in Vermont, and an agreement was recently reached to establish a collaborative in Maine between Central Maine Power, the Natural Resources Council of Maine, and CLF. Finally, in the past, CLF, MASSPIRG, DOER, and the AG have been co-participants in DSM collaboratives with the six other private electric utilities in Massachusetts. The collaborative with Boston Edison continues; all of the others terminated several years ago.

None of this other collaborative activity will be examined here. For earlier discussions of some of the other collaboratives (as well as the WMECO collaborative), see Jonathan Raab's 1992 dissertation, *Consensus-Building in Electric Utility Regulation*, done as part of his Ph.D. at the Massachusetts Institute of Technology; and Jonathan Raab and Martin Schweitzer, *Public Involvement in Integrated Resource Planning: A Study of Demand-Side Management*

Collaboratives (Oak Ridge National Laboratory 1992). We are indebted to Jonathan Raab for casework previously done on these collaboratives, as well as for his conceptual groundwork.

II. CONTEXT

Political Environment

When William Weld, a Republican, became governor in 1991, he followed upon the 8-year Democratic administration of Michael Dukakis. As discussed later, he inherited an economy that was in a tailspin. Weld was elected through a coalition that tried to embrace both “green” and conservative business sentiments, and his administration reflects the tension between the two.

This tension has shown up in the DPU commission appointed by Weld. In addition, the Governor’s office and heads of various state agencies have occasionally taken direct actions or applied political pressure concerning utility regulatory issues. However, the nature of this activity has not been consistently either pro- or anti-DSM; instead, it has tended to respond to various interest groups, including CLF and other groups advocating cost-effective energy efficiency programs, as well as the utilities. While utility rates are at issue, so too are energy conservation and environmental quality. Massachusetts by now has a long and well-developed tradition of environmental concern; it would be politically risky to disregard this concern totally. The legislature rarely gets actively involved in utility regulatory affairs, and there has been no major state legislation recently that affects DSM. Nevertheless, the legislature could well get aroused to action if major changes were proposed.

Helping to reinforce the case for DSM are the 1990 Clean Air Act amendments, which will require a substantial reduction in pollutants such as nitrogen oxide. Nitrogen oxide, together with volatile organic compounds, forms ozone (a primary cause of summer smog), and the ozone levels in much of New England fail to meet U.S. EPA health standards. Massachusetts utilities currently contribute less than 1% of the state’s volatile organic compound emissions but about 30% of its nitrogen oxide emissions.

In 1992, the six New England states that make up the New England power pool began—with a grant from EPA—to hold joint discussions about ways they might respond to issues posed by the Clean Air Act. Since then, a number of other regional efforts concerning the Act have occurred: for example, utilities, environmental agencies, and environmental advocacy groups in the Northeast have been negotiating ground rules for emissions trading, and the New England and New York utilities have together been modeling options to achieve Clean Air Act compliance. Since much of this and other work concerning compliance with the Act’s near- and longer-term requirements is still under way, the Act’s full effects are not yet known. Its immediate effects are most evident with utilities such as NEES, which has a relatively high proportion of coal-fired plants.

Economic Environment

During most of the 1980s, the Massachusetts economy was on an upswing, especially in the eastern part of the state. As a result, demand for electricity was high, and capacity shortages were being felt. By the end of the decade, however, the “Massachusetts miracle” had lost its magic: the state was in a deepening recession that only now may be bottoming out. Unemployment rates are high; moreover, as one person interviewed commented, people *feel* that the economy is bad—perhaps worse than it actually is—and this pessimism has exacerbated the situation. The effects of the recession have been widespread, and they have been felt by the electric utilities along with virtually everyone else. The utilities have been under pressure to contain their rates at a time when, as discussed later, they have been experiencing capacity surpluses and have in some instances assumed large debts for capital investments in long-planned power plants that have turned out not to be immediately needed.

The economic situation has been especially bad in western Massachusetts (WMECO’s service territory), which largely missed out on the boom of the 1980s and has been in economic straits for nearly a decade. There, relatively large manufacturing industries have traditionally made up a greater portion of the economy than elsewhere in Massachusetts, especially the Boston area with its “knowledge-based” industries. While the industries of western Massachusetts are by no means as large, either individually or as an economic sector, as in some other regions of the nation, their downsizing, closing, or relocation has had a severe effect on the area’s economy. This situation has led to pressure on WMECO by ratepayers—residential as well as C&I—to contain its rates.

Regulatory Environment

The DPU commission has three members. They are appointed by and serve conterminously with the governor, who also designates the commission chairman. (By law, both major parties must be represented on the commission.) From the mid-1980s onward, the commission appointed by Governor Dukakis took an increasingly pro-DSM stance. With a change of administration and new commission members in 1991, the commission’s attitudes toward DSM and IRM have been somewhat more qualified—partly because of deepening concern about rate increases attributable to DSM—but no major policy reversals have occurred.

Beginning in the mid-1980s, the DPU began issuing orders that were critical of utility DSM efforts. Then, in the summer of 1987, Massachusetts experienced a series of brownouts. Prompted by petitions from the AG and DOER, the DPU investigated the brownouts and subsequently issued an order reiterating the utilities’ obligation to pursue all cost-effective DSM. The DPU went on to make clear its position on DSM with a key order issued in late 1988.

On November 30, 1988, as part of its ongoing rulemaking process, the DPU issued an interim order (D.P.U. 86-36) requiring electric companies to expand the cost-effectiveness test to include externalities, customer costs, and other societal effects. In addition, D.P.U. 86-36 made possible DSM program preapproval, and ratebase treatment and lost revenue adjustment

for DSM investment. The order left to interested parties the task of proposing a method and specific values for calculating environmental externalities. However, in August 1990, absent a consensus on this issue, the DPU issued a final order (D.P.U. 89-239). In this order, it adopted a set of environmental adders for different pollutants—the highest set of values adopted by any state at that time—and an all-resource competitive bidding process.

The commission that came in with the Weld administration thus inherited a fairly well-established set of pro-DSM regulatory policies. In the ensuing 3 years, it has largely adapted existing policies rather than making major changes. Virtually no broad policy rulings have been issued, and one that was issued in the fall of 1992—on the values to be used in calculating environmental externalities—reaffirmed the previously adopted values. (One person interviewed commented that, since no convincing arguments were presented to reduce those values, they were left unchanged.) Early on, however, the new commission began to make clear that DSM programs necessitating further rate increases would not be viewed favorably. The concept of DSM was not at issue, but the methods and speed of implementation were being scrutinized. The new commission also did not assume the strong pro-collaborative stance taken by the prior commission, although it did not discourage DSM collaboratives.

The workings of the commission appointed in 1991 were clouded by internal and external politics. Its chair, Robert Yardley, tried to balance between conflicting views of the other two commissioners on many issues; in addition, he apparently tried to deal with political pressures to take pro-business stances and to expedite DPU's public hearings process. By the fall of 1992, Yardley had resigned, presumably due in part to these pressures; he was replaced with Kenneth Gordon, formerly a member of the Maine Public Utilities Commission.

Gordon, an economist who has been called a "free marketeer," became chair of the commission in January 1993. Despite some people's trepidations, he so far has not substantially refashioned the commission's policies—partly because he is only one of three members. The commission is not of one mind, and the various perspectives tend to balance each other; in addition, the commission is, as a whole, sensitive to the need for regulatory consistency as well as to the political fallout that could occur if it made major anti-DSM changes in regulatory policy. Nevertheless, because of both rapidly evolving attention to utility competition and continuing concern about rate levels, the DPU's regulatory policies could change. According to one person interviewed, the commission recognizes that the DPU regulations were written at a time when conditions were different from conditions now. The IRM process, especially, may be vulnerable to revision, particularly since the utilities often see it as a lengthy, time-consuming "paper requirement," especially in the current era of capacity surpluses.

The past 3 years have been unsettled times for the staff in the DPU Electric Power Division. In addition to changes in the commission, they have had numerous staff changes: for example, over the past 3 years, three different people have served as division director, and as of late 1993 the position was not filled. They also have had see-saw structural changes: the commission under Yardley's leadership was interested in having earlier staff involvement in DSM and rate cases, both through pre-filing discussions and through negotiated settlements. To this purpose, the staff,

which previously was mainly advisory, began to take on an advocacy role as well. However, this role has been downplayed over the past year, and they have not been participating in negotiated settlements. Despite these fluctuations, however, the division staff are, according to more than one person interviewed, both professionally competent and committed to DSM and IRM principles, while recognizing that they need to “keep their eyes open” to possible changes.

Utility Environment

Boston Edison and Massachusetts Electric are the two largest electric utilities in Massachusetts. Boston Edison, whose generating system includes the Pilgrim nuclear power plant as well as fossil fuel generators, supplies electricity at retail to a population of about 1.5 million in an area that includes Boston and 39 surrounding municipalities. Mass. Electric, which is part of NEES, supplies electricity at retail to a population of about 2.2 million in a territory that covers much of central Massachusetts and parts of the eastern and western sections of the state.

Three other utilities—Commonwealth Electric, WMECO, and Eastern Edison—serve populations of approximately the same size. Commonwealth Electric serves 40 communities in southeastern Massachusetts with a year-round population of about 550,000 and a large summer influx. WMECO, which is described in greater detail in Section IV, serves a population of about 450,000 in a territory that includes 59 municipalities in western Massachusetts. Eastern Edison, whose service territory includes 22 communities in southeastern Massachusetts, also serves a population of about 450,000. The three remaining investor-owned electric utilities—Cambridge Electric, Fitchburg Gas and Electric, and Nantucket Electric—all have small service territories with populations of under 100,000.

The utilities vary in their aggressiveness on DSM, with NEES clearly the leader in terms of its long-term commitment to energy conservation. The NEES commitment is not for purely altruistic reasons: during the 1980s, when it anticipated capacity shortages, it recognized DSM as a financially viable way to meet part of its capacity needs. Furthermore, because its supply-side resources include only limited commitments to nuclear power and other capital-draining power plants, it has been able to hold down its rates. In addition, it recognizes that its fairly heavy reliance on coal-fired plants is incompatible with the goals of the 1990 Clean Air Act amendments, and it plans, over the next two decades, to down-size its use of such plants while increasing its use of other resources, including DSM and renewables. Despite this commitment, DSM spending levels of NEES for Mass. Electric are simply being held level for 1994 (as they are at Boston Edison). In contrast, as discussed later (see Section IV), NU recently proposed to cut WMECO’s DSM spending. Although rate competitiveness is a concern to all of the utilities, it is of particular concern to NU. Clearly, the utilities are not as unified in their views as they once were, and they are likely to become less so, if the need to be competitive grows.

Other Key Groups

Apart from the utilities and the DPU, a few state agencies are active in DSM/IRM issues concerning the electric utilities. These include DOER and the AG’s office, which, together with

CLF and MASSPIRG, have participated as the NUPs in collaboratives with several Massachusetts electric utilities. All of these are described in Section IV, under the description of the WMECO collaborative participants. In addition, the state's Executive Office of Environmental Affairs is becoming increasingly active in utility issues, especially as they concern Clean Air Act compliance and environmental protection generally.

Other players in the electric utilities regulatory scene include independent power producers, especially on IRM issues, and the energy service companies, although their attempts to influence regulatory policy appear to have declined. In addition, industrial intervenors sometimes influence the utilities' views and regulatory policy on DSM. So far, however, the industrial intervenors' influence has not been dramatic, and it appears to be waning somewhat. With the exception of a group of residents in Commonwealth Electric's service territory who have been highly critical of their utility's performance, there are no other major, longstanding ratepayer groups, although groups of ratepayers occasionally form when rate increases are proposed.

III. KEY DSM/IRM INITIATIVES OF CLF

Background

CLF is regarded in New England as a strong player, one that has successfully tackled a number of different types of environmental issues. It was organized in 1966; its Energy Project began in 1980. Since then, the Project has focused primarily on the electric power sector, which is the major source of energy consumption in New England apart from transportation. The CLF focus has been two-pronged: reducing total energy demand through DSM, and reducing the environmental impacts of power plants through emissions regulation and the adoption of cleaner technologies. Until recently, however, CLF had not dealt extensively with the development of renewable energy sources. But over the past year, CLF has taken on the promotion of renewables as one of its missions. (This is especially evident in its recent collaborative work with NEES: The most recent NEES resources and business plan, *NEESPLAN 4*, includes a fairly sizable commitment to develop renewable energy sources.)

As its name indicates, CLF is primarily a cadre of lawyers, although its professional staff also includes several scientists. It has grown considerably in the 28 years since its inception, and it now has approximately 35 paid staff members and an annual budget of nearly \$2.5 million, of which about 30% is spent on energy-related issues. During its 1992 fiscal year, CLF received support from 46 charitable foundations as well as its membership. (About three-fourths of its income was from foundations. The Pew Charitable Trusts, which gave CLF a \$716,000 grant for its energy advocacy work from mid-1992 to mid-1994, is one of its largest supporters.) In addition, for collaborative work, CLF and its companion NUPs have access to consultants who are funded through independent escrow accounts controlled jointly by the utilities and NUPs.

CLF's leadership and staff have had relatively little turnover, and, as one outsider commented, "it has a crew of extraordinarily talented people." CLF's long-standing executive

director, Douglas Foy, occasionally gets involved in DSM concerns, especially in policy discussions with top management at utilities. However, CLF's overall DSM effort is led by a senior CLF attorney, Armond Cohen. A total of about 3 FTEs—all of them lawyers—work on various aspects of domestic DSM issues. Most of CLF's domestic work concerns the six New England states; in addition, CLF has provided some assistance to EEAGs outside the region and has been responsible for a national information network for such groups. CLF also acts as a mentor to a few energy efficiency advocacy groups abroad, including one in the United Kingdom (UK) that has been dealing with the issue of how to ensure energy efficiency investments in a climate of utility competition.

In addressing electric utility issues in New England, one of CLF's main strategies has been to engage in collaboratives with utilities, as noted in Section I and as discussed in Section IV with respect to WMECO. In addition, its strategies include intervening in regulatory proceedings, participating in high-level policy discussions with regulators and utilities, issuing policy documents, and assembling ad hoc coalitions. The amount of effort that it has directed to any one strategy has varied in the decade or so since the Energy Project started.

Beginning in the mid-1980s, CLF, MASSPIRG, AG, and DOER attacked the Massachusetts electric utilities—in rate cases and other proceedings such as outage hearings and facility siting cases—for their lackluster DSM efforts. These attacks helped prompt the DPU's increasingly critical stance toward the utility DSM efforts, as noted in Section II. Then, in the summer of 1987, at about the same time that Massachusetts was experiencing brownouts, the New England Energy Policy Council—a coalition of 26 consumer and environmental groups including CLF—released a report entitled *Power to Spare*. In this report, it was argued that New England's total projected electricity demand in 2005 could be cut 37 to 57% through the adoption of DSM measures. The report gave teeth to the claim that DSM was a viable alternative to supply-side solutions in an increasingly evident capacity shortage situation.

Five years later, in June 1992, CLF, together with 37 allied organizations, released *Power to Spare II*. The successor report argued that energy efficiency can help New England industries compete and expand, create new jobs, reduce energy and environmental compliance costs, provide benefits to low-income people, and provide energy technology export opportunities. In other words, *Power to Spare II* went beyond its predecessor by emphasizing that energy conservation is not only a sensible, cost-effective way for utilities to deal with capacity shortages; it also makes good sense for the economy as a whole, even when there are short-term capacity surpluses.

In the 5-year hiatus between the two reports, CLF was not idle. By mid-1988, it was involved in intensive discussions with the utilities with which it was collaborating, and it continued to intervene in regulatory proceedings. However, CLF and the other EEAGs were lulled into complacency during much of that period, because there was a pro-DSM commission at the DPU with a favorable set of regulatory policies. As CLF has admitted, over the last few years it has not done as well as it could have at nurturing a broad-based consensus on energy conservation. To rectify the situation, during 1993 CLF and the other EEAGs have sought to

meet the need for renewed political activity and coalition-building concerning DSM and related issues. Although *Power to Spare II* could be used as a tool of persuasion, other tools were needed.

Current DSM/IRM Initiatives

During 1993, CLF continued its work with the collaboratives noted in Section I, and it also continued to pursue its strategy of regulatory intervention. While these remain the meat and potatoes of CLF's energy efficiency advocacy work, it has, as noted, realized anew that such work must be complemented by unflagging and aggressive political efforts. The end goal of these efforts is to build a coalition that will be able to set the energy agenda for the region.

Over the past year, CLF thus undertook several initiatives to regain the offensive in terms of DSM. As a key part of this effort, it hired a consultant to help staff develop and implement a political strategy. This effort led to a number of different endeavors: beginning a dialogue with key industries to lay the foundation for future joint interventions and policy initiatives; publishing articles in business journals; arranging for industrial representatives to visit Governor Weld and speak in support of DSM; arranging for site visits for utility regulators, to give them a more "real world" sense of the benefits of DSM; strengthening ties to both consumer advocacy groups and public health and environmental groups; and strengthening CLF's relationships with state government, especially with the Executive Office of Environmental Affairs. Its work with industries may be especially important in the state's current straitened circumstances: CLF has promoted the argument that New England's economic well-being depends partly on maintaining a high quality of life, including a clean environment.

In addition, CLF staff have participated in national, regional, and state policy discussions on various issues that affect DSM. For example, CLF participated in the June 1993 White House Conference on Global Climate Change, and it has participated in various state and regional discussions and analytic efforts concerning Clean Air Act compliance. It also has participated extensively in regional discussions on the prospect of retail wheeling.

Outcomes

In terms of its intervention and collaborative work, CLF and its fellow NUPs have been able to keep the 1994 DSM funding for Boston Edison level while staving off deep cuts in WMECO's 1994 DSM funding. CLF also opposed attempts by industrial intervenors to cut NEES's prospective DSM budgets; NEES will have level DSM funding for 1994. Thus, for the time being at least, the tide away from DSM in Massachusetts has largely been stemmed.

In terms of CLF's political work, its immediate outcomes are more difficult to evaluate because they are less tangible. From the accounts of various people interviewed, CLF's political visibility and influence is a fair amount stronger than it was a year ago. Nevertheless, in the end the DPU is the most immediately important determinant of utility use of DSM, and it is hard to predict what the commission's future policies will be. Based on its recent case decisions, it

appears that the commission members have not turned a totally deaf ear to arguments made by CLF and its allies, including allies in industry. However, the DPU inevitably is influenced by a number of factors, ranging from national regulatory trends and regional economic issues to individual personalities. Many of these factors are outside the direct control of organizations such as CLF; they can, though, hope to nudge them one way or another. One example may be utility deregulation.

Future Prospects

CLF, and particularly Armond Cohen, has been devoting an increasing amount of time to the widespread debate over industry competition and restructuring. Cohen has advanced arguments against one prospective aspect of restructuring that he sees as particularly detrimental to DSM and IRM—retail wheeling. Drawing upon CLF experience with an EEAG in the UK, he prepared a paper that made the case for the wisdom of planning and public oversight of power system development, which, he argued, would be derailed by retail wheeling. The paper, “Retail Wheeling and Rhode Island’s Energy Future: Issues, Problems, and Lessons from Europe,” was presented to the Rhode Island Energy Coordinating Council in July 1993; as of late November, CLF expected that the Rhode Island Public Utilities Commission would reject the retail wheeling proposal before it. In addition, CLF staff have participated in informal debates on industry restructuring—for example, one held by Harvard University’s Center for Business and Government in October 1993—and planned to address the New England Governors Conference on the subject in early December. They also have been discussing these issues with public utility commissioners in several states, including Massachusetts.

In addition to its continuing intervention and collaborative work, CLF plans for the next 3 years include teaming with allies to develop several publications: a report documenting the threats to human health and the environment in New England from current and prospective power plant emissions, a white paper assessing the status and prospects of the region’s nuclear power plants, and a “vision document” outlining the potential for a New England transition toward a more environmentally benign power system. But CLF staff also recognize that some alteration of the traditional structure of utility regulation may be in the offing. To this purpose, CLF staff plan to engage extensively in the restructuring debate and to consider carefully what could and could not be accomplished with alternative regulatory structures.

IV. THE WMECO COLLABORATIVE

Initiation

In May 1988, during a hearing before the DPU on DSM as part of its IRM rulemaking process, CLF’s executive director requested that the DPU order the utilities to enter into a collaborative process. The collaboratives would design and implement DSM programs, with the utilities providing funding to intervenor groups to enable them to secure outside technical consultants. The DPU requested written comments from interested parties on the legal findings

necessary to require the utilities to comply with the CLF request, because it was uncertain about its authority to order a funded collaborative effort. The intervenor groups claimed that the DPU had the authority, but the utilities questioned whether the commission could hand down such an order. The commission never had to decide on the CLF request because, by June 1988, all eight private electric utilities in Massachusetts had agreed to engage in collaborative activity in one form or another.

NEES and CLF agreed to work collaboratively to develop comprehensive DSM programs for Mass. Electric and other NEES utilities, and to fund outside experts for CLF. Mass. Electric and CLF submitted their agreement to the DPU, which subsequently approved it. Mass. Electric did not join a larger, multi-utility Massachusetts collaborative that was being formed: it was further along in its DSM programs than the other utilities, and, although 75% of its retail sales are in Massachusetts, its programs must also be approved by the New Hampshire and Rhode Island regulatory commissions.

The remaining seven private electric utilities in Massachusetts (including WMECO) volunteered to participate in a multi-utility collaborative process with funding for outside experts. On July 19, 1988, a proposed "Agreement for Collaborative DSM Program Design and Implementation" was jointly submitted to the DPU by CLF, DOER, the AG, MASSPIRG, and the seven utilities. The DPU approved it on August 4, 1988.

The multi-utility collaborative agreement called for a half-year first phase in which all parties would work together to design a portfolio of DSM programs, which were to be adapted to each utility during a voluntary subsequent phase. The first phase was completed by the end of December 1988, and a consensus report was filed with the DPU detailing 25 different generic DSM program designs. The collaborative participants were unable to reach agreement on cost recovery issues. In January 1989, the DPU held a public hearing on the Phase I filing and agreed to provide comments but did not issue an order because the filing was deemed informational.

Individual collaboratives between the four NUPs and each utility except Fitchburg Gas & Electric began in March 1989, with each utility providing the NUPs with funds to secure outside technical expertise. As noted in Section I, only the WMECO and Boston Edison collaboratives still continue; the others terminated several years ago.

Participants

The participants in the WMECO collaborative since its inception have included NU and four NUPs: CLF, DOER, the AG, and MASSPIRG. Brief descriptions of the participants follow.

NU serves about 1 million residential customers in Connecticut and 200,000 residential customers in western Massachusetts through its operating companies, Connecticut Power and Light, WMECO, and Holyoke Water Power. In 1990, total NU sales were 29,611 GWh—an increase of somewhat less than 4% compared with 1988. However, during the same period,

WMECO's revenues increased 18%, to \$375 million, mainly through rate increases. In 1991, NU's total system sales were 39% residential, 36% commercial, and 21% industrial, with the small remainder mainly wholesale for resale. The industrial sector is declining relative to the others: by comparison, in 1969 it constituted 33% of total NU sales.

Recently, NU has had several top management changes, including a change of CEO in late 1992. However, the new CEO came from the inside: he was NU's second-in-command and has not made radical policy changes. NU continues to have a fairly traditional, strongly hierarchical top management that tends to come from backgrounds in nuclear power and to be more oriented to supply-side options than to DSM. However, NU appears to be committed to high-quality DSM programs: as more than one collaborative participant has observed, although NU has opposed aggressive DSM, when faced with the prospect of having to do it, they have done it quite well.

The current, somewhat unenthusiastic NU stance on DSM is due in part to a capacity surplus arising largely from existing utility supply resources, including several nuclear power plants: most recently Millstone 3, which came on-line at the end of the 1980s; and Seabrook 1, which came under the NU umbrella when the company acquired Public Service of New Hampshire in June 1992. In addition, its capacity surplus is attributed to increasing non-utility power generation. (Cogeneration may be a larger factor for NU than for other utilities operating in Massachusetts, because its service territory is somewhat more heavily industrialized.) In addition, inter-fuel competition is a concern to NU, especially because of its relatively high rates. The capacity surplus is anticipated to continue for the next 15 years or so, particularly within WMECO's area, where growth in electricity sales have been and are predicted to be particularly low.

For several years, NU has had the same person as its primary representative to the collaborative—Michael Townsley, an electrical engineer who is its manager of demand program planning and analysis. In addition, technical personnel at NU are involved in the program design and evaluation issues of the collaborative, and top management become involved when major budget decisions are made.

CLF, which was described in Section III, has Jeanne Solé, a staff attorney, as its current representative to the collaborative. Solé, who had been in the CLF Vermont office for 2 years, took over in the summer of 1993 from Deborah Smith, a CLF attorney who had been the CLF representative to the collaborative for several years until she moved from the Boston area. CLF has tended to take the lead in this and the other multi-party Massachusetts collaboratives, in part because it has the greatest technical and financial resources of the four NUPs. However, the others have been active as well.

DOER is a state agency that, since 1991, has been located in the Executive Office of Economic Affairs; in 1990 it was within the Executive Office of Consumer Affairs, but it had previously been a cabinet-level office, the Executive Office of Energy Resources. DOER can be characterized as somewhat more middle-of-the-road on DSM issues than the other NUPs in

the WMECO collaborative. The agency often has two representatives to the collaborative. Until recently, these included John Manning, who dealt mainly with specific program design; and Rachel Shimshak, a former MASSPIRG staff member who deals mainly with policy issues. Manning left DOER not long ago, and another staff member is now representing the agency on technical issues.

An assistant attorney general, Jerrold Oppenheim, has participated in the collaborative from its beginning; he has been in the AG's office since the 1970s and has a number of different responsibilities. Within the collaborative, he has tended to focus on residential equity concerns, including concerns about whether an adequate proportion of DSM dollars is going to the residential sector; on the proper balance between retrofit and market-driven approaches; and on monitoring and evaluation aspects of DSM programs.

MASSPIRG is a public interest group formed in Massachusetts about two decades ago; it has a small staff and deals with a number of different environmental and consumer advocacy issues. Alan Noguee, its Energy Program Director, serves as its representative to the collaborative. He too has participated since the inception of the collaborative and has tended to focus on residential DSM programs—in particular, their participation rates and their inclusion of low-income customers. Because of other commitments (including issues concerning the Boston Edison collaborative), he was not able to be active in the negotiations surrounding WMECO's spring 1992 DSM filing, but he has since been active concerning the utility's 1992 IRM filing and its most recent DSM filing.

Other parties, such as the group of industries that has intervened in DSM and rate cases, might in theory be included in the collaborative; however, as discussed in Section V, the wisdom of expanding the number of collaborative participants has been questioned.

Purpose and Process

The purpose of the collaborative has evolved from developing a comprehensive portfolio of DSM programs for WMECO to refining that portfolio and working on monitoring and evaluation techniques. However, despite a common understanding of their purpose, some of the fundamental objectives and expectations of the WMECO collaborative participants continue to be somewhat different. Among the NUPs, CLF has tended to be more concerned with the size and types of the programs and less concerned than the other NUPs with rate issues. In addition, DOER has shown an increasing interest in competitive approaches to electric supply, especially under the leadership of its current director. However, all of the NUPs have shared the philosophy that DSM should be promoted, whereas NU participation in the collaborative appears to have been partly for political reasons: to facilitate acceptance of its filings. The utility thus has been more disappointed than the other participants when the collaborative has not succeeded in deflecting conflict and delay.

As with the other Massachusetts collaboratives in which they have been involved, the NUPs in the WMECO collaborative, despite the differences of opinion and approach, have acted as a

coalition since the collaborative's inception. Their principal representatives occasionally meet as a working group outside the framework of the collaborative to discuss their policies. There was considerable friction among the NUPs in the early days of the collaborative, especially when CLF was taking the lead in day-to-day interactions with the utility and with the NUP consultants. This friction has diminished over time, especially with the introduction of a new form of coordination several years ago; although one respondent commented that diverging goals of the NUPs may be making it somewhat harder for them to present a unified front.

The NUPs' interactions with each other and with NU were substantially improved when the internal NUP process was revised to give each NUP greater direct access to the consultants and the utility, thereby helping to reduce CLF's role as both collaborative participant and "shuttle diplomat"; and when the collaborative acquired an outside technical coordinator. Paul Horowitz, who has served as the collaborative's technical coordinator since 1990, is based near NU headquarters in the Hartford, Connecticut area; prior to 1989, he had worked in Connecticut state government for more than a decade on utility and energy issues. Horowitz stays in touch with a lead coordinator, Joe Chaisson, who provides advice to several collaboratives, and both Horowitz and Chaisson are funded through their collaboratives. Apparently, Horowitz initially had to overcome the suspicions of DOER, AG, and MASSPIRG that he was actually "working for" CLF, but he soon came to be regarded as neutral.

The technical and lead coordinators' work includes such tasks as directing and coordinating the NUPs' program and evaluation consultants and coordinating interactions with NU staff, ongoing review activities, and NUP participation in the utility DSM and IRM filings. The NUP representatives themselves are involved, to a varying degree, in policies, action levels, and program and evaluation review; for the most part, their top management has tended not to get heavily involved in decisions concerning the collaborative, although discussions regarding the budget level of the most recent DSM filing did involve senior personnel at CLF. At NU, as noted, top management has become involved when commitments regarding action levels and expenditures are being made.

Outcomes

When the individual collaboratives were initiated, in early 1989, the DPU staff provided a letter to all collaborative participants stating that they were impressed with the Phase I process and emphasizing several areas needing attention during Phase II. These areas included ensuring that the cost-effectiveness tests were consistent with those outlined in the DPU November 30, 1988 order, addressing all hard-to-reach sectors, and retaining performance contracting as an option.

By September 1989, Phase II had concluded for the WMECO collaborative. Despite a lack of consensus, WMECO filed with the DPU for preapproval of its DSM programs and cost recovery, requesting financial incentives. CLF and the AG intervened, expressing their concern that WMECO was not committed to pursuing all cost-effective DSM. Subsequently, DOER, the AG, and MASSPIRG recommended against providing WMECO with financial incentives; but

CLF, in contrast, decided to support WMECO's request for cost recovery and incentives. At the end of June 1990, the DPU approved all of WMECO's DSM programs except two that were not found to be cost-effective. It directed WMECO to enrich the customer incentive in several of its programs and to accelerate and expand other programs. The DPU approved WMECO's request to recover its DSM expenditures in the year they were spent, to recover lost revenue associated with DSM, and to earn a bonus on its DSM investment. In terms of its overall structure and its measured savings basis, this bonus was similar to a bonus that had been approved by the DPU for Mass. Electric, but it had a higher threshold because WMECO's effort was seen by the DPU as somewhat less aggressive.

Shortly thereafter, the WMECO collaborative temporarily fell apart over disagreement among collaborative participants surrounding the fall 1989 filing and subsequent hearings. The NUPs were frustrated with NU's failure to consult with them and give them adequate time for review, and with the stance the utility was taking on several key issues such as customer incentives. NU, in turn, was disappointed with the lack of support that it had received from the NUPs during hearings. However, the collaborative was restarted in time to prepare for the next preapproval filing—apparently in part at the urging of William Ellis, who was the NU CEO at that time. In addition, several changes occurred in the collaborative's organizational structure: the technical and lead coordinators for the NUPs came on board, and a staff attorney took over as the CLF representative, relieving Armond Cohen of the primary responsibility for day-to-day interactions. In March 1991, WMECO filed for preapproval of its DSM programs with the consensus of the collaborative participants, and in July, the DPU issued an order approving the filing with only minor modifications.

A subsequent DSM preapproval filing was submitted by WMECO and the other collaborative participants in February 1992, the product of 6 months of discussion. The filing included a request for approval of its 1992 DSM programs, as well as its proposed programs for 1993 and beyond, until WMECO's upcoming IRM proceeding was concluded. Following the DSM filing, public hearings were held in WMECO's service territory on its proposed DSM programs and requested rate increase; partly because rates had been increased each year for more than a decade, the hearings were well-attended and comments were heated.

On April 24, 1992, WMECO, the AG, CLF, DOER, and DPU settlement staff filed a settlement agreement with the DPU to resolve issues surrounding WMECO's filing. An \$18.6 million 1992 DSM budget had been proposed in the February filing; this was reduced to \$17 million in the settlement, because of the desire of the DPU, Industrial Intervenors, and others (including NU but not necessarily the other collaborative participants) to avoid rate increases. However, the settlement agreement was contested by a group of large western Massachusetts industries, resulting in pressure on the DPU commissioners to modify the proposed DSM arrangements. Furthermore, over the past few months, the DPU commission's philosophy about holding the line on rate increases had become more entrenched. One issue in the WMECO case was whether additional levels of amortization would be considered for DSM program expenditures—in particular, for a retrofit program for large C&I customers—as a means of reducing the 1992 cost recovery. In a very unusual move, the DPU returned to the settling

parties and requested an amendment to the settlement. The settling parties then agreed to an amendment to double the amount of amortization to \$2 million in 1992, and the DPU preapproved the DSM programs.

A draft IRM filing for WMECO was submitted by NU in July 1992, and discussions on it were held. However, the DPU decided shortly thereafter that an IRM filing would not be necessary then, but that another DSM filing for WMECO should be submitted in 1993, with an IRM filing to follow in January of 1994.

During mid-1993, intensive negotiations went on concerning WMECO's proposed DSM programs. One contentious issue was program evaluation: the NUPs pressed NU to "get the numbers honest." In addition, the NUPs urged shifting the DSM portfolio toward market transformation programs—new construction, equipment replacement, etc.—and away from the less cost-beneficial retrofit programs, an approach to which NU agreed. (In fact, one respondent has commented that NU may be going overboard in this regard, and that it is important to retain the infrastructure for retrofit programs: while they tend to be less cost-effective than market-driven programs, they can be done more expeditiously if large and immediate DSM savings become necessary.)

Prior to the 1993 filing, the area of greatest disagreement between NU and the NUPs concerned proposed DSM budget levels. NU initially said that it would have to make deep cuts in its DSM spending, and a compromise was reached only after debates that involved top management at the utility and CLF. The DSM filing for WMECO was due in October 1993 but was filed slightly later, after a 2-week extension had been obtained. The filing specified that the 1994 DSM budget would be \$14.2 million, with a budget of \$15.8 million for 1995. It had the agreement of all the collaborative participants, although the NUPs agreed to it fairly reluctantly, and only because energy savings would not decline. (The programs were expected to be more cost-effective; in addition, a part of the budget decrease was to be absorbed through reductions in administrative costs.) Still, one participant has observed that "it will be a challenge to effect the same energy savings with the lower budget." NU will have an impetus to attain its target energy savings, however: as part of the negotiations before the filing, a tiered financial incentives arrangement geared to the amount of energy savings achieved was stipulated.

Future Prospects

Although neither the utility nor the NUPs have plans to pull out of the collaborative, its future prospects are uncertain. A comprehensive portfolio of DSM programs is now in place, and the emphasis of the collaborative has changed from basic program design to program evaluation and refinement. But, at least in part because of NU's economic situation, its management currently is opposed to furthering its financial commitment to DSM. And it remains uncertain whether collaboration on IRM issues will be undertaken.

One outcome of the collaborative negotiations concerning the 1993 DSM filing was an agreement that NU and the NUPs would participate in "global negotiations" concerning its draft

IRM filing due in January 1994. But, as one participant commented, given the limited time for input before the filing, major changes at that point would be difficult. The utility apparently hoped that the negotiations would help develop the NUPs' understanding of NU's resource picture; the negotiations also might lead to discussions concerning transitional levels for DSM post-1995. The draft IRM is only a starting point: after its filing there is a mandated 11-week negotiation period during which parties can comment, and a lengthy extension on the final filing is possible. Nevertheless, developments immediately following the draft IRM filing suggest that whether NU and the NUPs can work together collaboratively on IRM issues remains an open question: while both can see advantages, much more is at stake for NU since collaboration on IRM would put comprehensive and potentially contentious supply-side issues in the foreground.

NU officials have stressed that WMECO is not likely to need new capacity until well into the next decade; in addition, they continue to worry about the relatively high rates of the utility and their effects. They maintain that it is best for all those in their service territory if they retain as many customers as possible (along with helping them to become as energy-efficient as possible). NU has taken special measures to retain industrial customers: some of its new DSM programs are especially tailored for this purpose, and it also has sought to help industries in its service territory with other cost-effective environmental measures, such as reducing waste streams. Nevertheless, NU officials fear that the industrial sector will continue to shrink—partly because of plants closing or moving elsewhere; partly because of cogeneration; partly because of the prospect of utility deregulation and increased competition. In their Connecticut operations especially, they also have been experiencing the effects of defense cutbacks on electricity demand. Saddled with high costs from nuclear power plants initiated when demand was growing rapidly, NU is now belt-tightening and has begun to reduce its staff by layoffs as well as early retirements.

Although NU sees itself as well-positioned with respect to certain environmental issues—especially Clean Air Act compliance requirements and the now-voluntary reporting and curtailment of greenhouse gases to slow global climate change—the utility's immediate prognosis is not good. Its poor economic picture, together with the somewhat changed regulatory and political climate, has led NU officials to question the extent to which aggressive DSM is either necessary or prudent, and they resist the notion of a collaborative that may decrease their ability to respond flexibly to changing market conditions. Furthermore, while NU officials continue to recognize the importance of working with groups involved in the public policy process, they also are aware of the monetary costs that collaboratives can entail. (The WMECO collaborative currently costs NU about a quarter of a million dollars per year in consultants for the NUPs; it has been estimated that an equivalent amount may be spent internally on NU staff time.)

In addition, the inability of the WMECO collaborative to avert controversy following the 1992 DSM filing raised questions at NU about the political effectiveness of the collaborative. The 1992 filing and its aftermath were thought by some NU officials to take an inordinate amount of effort, especially given the small portion (10-12%) that WMECO constitutes of NU's

business. Nevertheless, some of the NUPs are seen as potentially useful allies for NU in its attempts to avert deregulation and increased competition.

On their side, the NUPs continue to regard the collaborative as a valuable and effective way to influence the utility's energy efficiency programs. They also are aware, however, that the adversarial alternative has its advantages: it would allow them to force a public debate on some of the basic issues concerning DSM and IRM. While the NUPs accepted the modest DSM budget cuts represented in the most recent DSM filing, they apparently would have let the collaborative collapse rather than accept the cuts that NU initially proposed. The prospects for the collaborative thus appear to hinge on the degree to which NU retrenches on future DSM spending, on the degree of disparity that NU and the NUPs have on more comprehensive IRM issues, and on the strategic advantages that each party can realize by operating inside versus outside the collaborative.

V. CONCLUSIONS

Recommendations of Respondents

People interviewed had several recommendations about how EEAGs should best proceed:

Lobbying and outreach. Various respondents commented that lobbying and outreach efforts are essential to the success of an EEAG. The case must be made for the long-term advantages of DSM—especially when there are capacity surpluses and heightened concern about rates, but even when conditions are favorable to DSM. One respondent commented that the DPU was so quick to approve the ramping up of DSM in the late 1980s that it was not apparent until the recession hit that the advocacy groups should have been doing substantial outreach concerning DSM. In addition, as the DPU and its staff changed, they too needed to be “educated” and “brought into the process,” according to more than one respondent. During 1993, CLF and its fellow advocacy groups tackled their political/outreach efforts with renewed vigor, and several respondents indicated that these efforts appear to be paying off. Nevertheless, one respondent noted that they still need to pay more attention to both the “smoke-filled rooms” and the “grassroots” of politics.

Building a coalition (and forming unlikely alliances). Several respondents spoke of the importance of forming broad coalitions with consumer and environmental advocacy groups, and of seeking alliances wherever common ground can be found, including alliances with industries. As a respondent noted, “Don’t assume you have enough clout to fight on your own . . . and don’t make assumptions about who your allies are.”

Education, research, and media contacts. Getting “the message” out through various means, including business journals, was a tactic emphasized by CLF over the past year, partly as a way of reaching out to organizations not usually regarded as proponents of DSM. There was a general sense among several respondents that such efforts are valuable, and that the

presentation of “hard data” in, for example, *Power to Spare II* has been useful in helping to make the argument for DSM. One respondent commented that it would be even more useful if there were more follow-up with, for example, the editorial boards of local newspapers to publicize research findings more widely, but he went on to note that follow-up can take a lot of staff time.

Building a reputation. Intensive political activity backed by good research helps to gain the respect of others, including potential opponents. Several respondents noted that it is important to be regarded as a strong player. As one commented, “Political organizing is litigation through other means. You can’t just assume that ‘we’re all reasonable people here’; you have to be willing to go to war.” An EEAg walks a fine line between enough and too much self-assertiveness, however. One respondent commented that “CLF tends to take too much credit for what they do, and regulators don’t want to be seen as being pushed around by an advocacy group,” but went on to comment that CLF is widely respected.

Seizing opportunities on the horizon. One respondent noted that the federal government’s global climate change initiative offers a possibility for EEAGs: they may be able to help shape that initiative by, for example, participating in the development of voluntary reporting guidelines for utilities. When an advocacy group is short-staffed (as most are), it needs to decide whether it can spare the staff time for endeavors that may not lead to much. However, some “long shots” can have big payoffs and should not be ignored, according to this respondent.

Networking nationally. One respondent commented that the national network of EEAGs was perhaps less important to Massachusetts groups, because they have a relatively long history of work on DSM issues there. He went on to indicate, however, that the national network is important locally because it helps to determine the larger context within which DSM is taking place: whether aggressive DSM is largely a bicoastal phenomenon (as it has been to date), or whether it can attain broad-based national acceptance and support. There was general agreement that neither DSM programs nor DSM advocacy strategies developed in New England could be transferred wholesale to other regions; instead, contextual factors (such as the generally strong pro-environment sentiment in New England) would have to be taken into account.

Those interviewed also had a number of collaborative-specific recommendations.

Clear policy directions. There was general agreement that, while “micromanagement” of DSM programs by regulators should be avoided, clear policy directions from the regulatory commission are helpful to a collaborative. In this vein, one respondent commented that 5 years ago, when there was growing demand and a shortage of capacity, the DPU commission’s priorities seemed clear, but now, partly because of changing conditions, the policy picture is “murky.”

Upper management support for and involvement in collaboratives. It was generally agreed that upper management support for a collaborative is a key ingredient to its success, and also that at times (as in the WMECO collaborative) negotiation between top management of the

utility and the NUPs may be essential to resolve disputes over fundamental issues. There was also general agreement that those entering into a collaborative should have a clear idea through, for example, a memorandum of understanding, of how the collaborative will operate, including how disputes will be resolved.

Formal and informal participants. There was generally agreement that for a collaborative to be workable, it should not be unwieldy. Several also expressed the view that special interest (rather than public interest) groups should not be included. However, some respondents indicated that, while the actual collaborative might be kept to a few parties, groups that are concerned about the issues being discussed—including regulatory staff—should be involved early on through other mechanisms such as meetings and workshops, to minimize post-filing conflicts and to build relationships of mutual understanding and trust that might carry over to other cases.

Roles of participants; need for a coalition. More than one respondent noted that the respective roles of various participants and their consultants should be clearly delineated: in particular, lawyers should not try to negotiate program details. As one respondent commented, “The more you can let the technical people do their work, the better. Have the lawyers ‘yell at’ each other; then have them get out.” In addition, there was general agreement that while the NUPs in a collaborative need to form a coalition, they also need to “live and let live”: in other words, they must accept that their colleagues may have some philosophical (or pragmatic) differences.

Continuity of participants. Continuity of key participants, especially on the NUP side, was regarded as important. One respondent noted that the NUPs tended to divide up the responsibility for various aspects of the WMECO collaborative, and when an experienced, skilled NUP representative leaves, it can be difficult for the others. However, he went on to comment that in the recent CLF personnel change, “seldom have I seen a transition work as well as the one from Smith to Solé.”

Technical/coordinating support for NUPs. There was general agreement that NUPs need funding for technical consultants. One respondent commented that good technical support is essential for getting advice that earns the respect of the utility—that is, advice that is both creative and flexible, grounded in facts rather than ideology—and noted that “the reason NU is willing to stand by the WMECO collaborative is that they get ‘value-added.’” It was also noted that, if the consultants are not from the region, they at least should be familiar with it. In addition, there was widespread agreement about the usefulness of coordinators, especially with multiple NUPs. As one respondent commented, “A key innovation with the collaborative was to get good coordinators with good interpersonal skills.”

Flexibility. It was generally agreed that collaborative participants needed to have some willingness to compromise. For example, in the WMECO collaborative’s recent DSM filing, budget cuts were reluctantly accepted by the NUPs with the understanding that energy savings would not be decreased. According to one respondent, while the NUPs were concerned that the

cuts might send the message to other utilities that their DSM budgets could be reduced, it also sends the message that they will be rewarded if they use their DSM funds effectively.

Strong stands. Several respondents commented that, despite the need for flexible, non-ideological stances, it is also important to know when to hold firm and fight—including when to risk the collapse of the collaborative. As one respondent noted, “You need to have the pressure of possible litigation. This can be hard to pull off, especially when you’re in a negotiation, but you have to be ready to litigate.”

Overall strategy. One respondent commented that an NUP’s strategy within a collaborative should be to “hang in there on the details, and try to get model programs—acorns from which mighty oaks can grow.” He added that to do this, it’s important to emphasize facts over ideology; and for this reason, evaluation is crucial, to indicate whether the programs are working.

Time and cost effectiveness; durability. Several respondents indicated that collaboratives take more time, especially up front, but there was less concurrence about whether they are cost-effective, especially in a changing utility environment. While the WMECO collaborative was widely seen as essential in getting DSM going on a large scale in the late 1980s, its future usefulness is less certain to some. One respondent noted that collaboratives such as the WMECO collaborative “give NUPs the ability to tweak the utilities’ DSM programs; to keep them honest,” and also that they allow NUPs to “present a united front and ‘horsetrade’ with utilities.” However, another respondent commented that, given the accelerating rate of change in the electric utility industry, the protracted agreements that have been made in the past may not be possible: although parties still may be able to pursue mutual interests, expectations may need to be modified.

Our Observations and Recommendations

Many of our recommendations would echo those already noted. In addition, we would stress the importance of several themes running through this case study:

Competitiveness. Competitiveness has become the byword for both utilities and their industrial and commercial customers. For utilities such as NU, this is expressed in concern about high rates due to largely to supply-side factors, but also to DSM. This concern is fuelled by their worry that their large customers, seeking to cut electricity costs to remain competitive themselves, will either relocate to a place where the costs of doing business (including electricity costs) are cheaper or, if they stay, will turn to cogeneration, to fuel-switching, or, prospectively, to purchasing power from another utility. The last option will become increasingly feasible if changes are made in the way electric utilities are regulated. For this reason, the prospect of deregulation is particularly alarming to some utilities, especially those such as NU that see themselves in a non-competitive position at present, largely because of their heavy investment in nuclear power.

Environmental protection. Counterbalancing the trend toward a “free market” approach to electricity sales are more stringent, government-imposed measures to protect the environment: particularly, the air quality standards resulting from the 1990 Clean Air Act amendments, and the recognition of environmental externalities as a true cost of supply-side resources. To the extent that air quality standards are stringent and environmental externalities are valued at a high level, DSM becomes more attractive. So too may certain forms of supply-side resources, especially if the “greenhouse” gases that provoke global climate change are also taken into account. It thus becomes difficult to predict whether a utility such as NU, which appears to be in a relatively uncompetitive position today, will be so 5 or 10 years from now. It also becomes difficult to predict whether DSM, which appears to be threatened by the combined conditions of a widespread economic recession, high utility rates, excess generating capacity, and the specter of deregulation, will in fact suffer in this new environment. What happens to DSM may be closely linked to what happens to IRM.

Integrated resource management. IRM faces a paradox: by now, it is well-institutionalized in Massachusetts, yet it may be increasingly irrelevant. How IRM is to be applied is being questioned by some, especially some utilities that would like to see it either disappear or be used on a more limited basis. Furthermore, the climate of competition, which highlights the present-day “bottom line,” does not fit well with the notion of long-term least cost planning. Yet IRM is the backbone around which the sensible allocation of resources is organized: given the large investments and long lead times required either to put a power plant in operation or to fully “ramp up” a DSM program, the appropriate planning time frame for such efforts is years, not months, into the future. The biggest challenge on the horizon for EEAGs (and others sympathetic to least-cost planning) may be to figure out how to preserve the notion of IRM and increase its relevance in a climate that is, perhaps inexorably, moving toward increased competition and deregulation.

Collaboratives. Collaboratives such as the WMECO group have offered and continue to offer substantial benefits to both the utility and the NUPs. In particular, they offer the opportunity to work together in a proactive, relatively nonadversarial manner to design and improve DSM programs; and they may make the regulators’ job easier, especially if they result in a consensus filing. Nonetheless, as the comments of respondents in this case study suggest, collaboratives are not universally regarded as an unalloyed good. Even pro-collaborative enthusiasts note that—apart from taking a lot of time and costing a fair amount of money—collaboratives also may lead to policies that are less than ideal. As one respondent noted, “You get used to them, so you think they’re better, but sometimes policies are clearer if you have litigation.” Nevertheless, they do have distinct advantages, especially if they adapt their missions to changing times.

RESPONDENTS

Utility

Michael Townsley **Manager, Demand Program Planning and Analysis, NU**

Non-profit groups

Armond Cohen **Senior Attorney, CLF**
Alan Noguee **Energy Program Director, MASSPIRG**
Jeanne Solé **Staff Attorney, CLF**

Government agencies

Daniel Greenberg **Rate Specialist, Electric Power Division, DPU**
Theo MacGregor **Conservation Coordinator, Electric Power Division, DPU**
John Manning **DOER**
Jerrold Oppenheim **Assistant Attorney General, AG's Office**
Barry Perlmutter **Rate Specialist, Electric Power Division, DPU**

Other

Paul Horowitz **Technical Coordinator, WMECO collaborative**
Joseph Chaisson **Lead Coordinator for NUPs**

SELECTED BIBLIOGRAPHY

- California Collaborative 1990. *An Efficiency Blueprint for California, Report of the Statewide Collaborative Process* (to the Public Utilities Commission of California). San Francisco, January.
- California Public Utilities Code. Chapter 4, "Regulation of Public Utilities," Part 701.1.
- California Public Utilities Commission, Strategic Planning Division 1993. *Electric Industry Restructuring*, San Francisco, January.
- Calwell, Chris, and Ralph Cavanagh 1989. *The Decline of Conservation at California Utilities: Causes, Costs, and Remedies*, Natural Resources Defense Council, San Francisco.
- Cavanagh, Ralph 1993. *The Great "Retail Wheeling" Illusion—And More Productive Energy Futures*, Natural Resources Defense Council, San Francisco, October.
- Center for Clean Air Policy 1992. *The Ohio Energy Conservation Initiative: A Proposal to The Pew Charitable Trusts*, January.
- City of New Orleans 1991. *Mayor Council Series 14629, Article VIII, Least-Cost Resource Plans*, ordinance requiring submission of a Least Cost Resource Plan for all utilities serving Orleans Parish, May 16.
- Cohen, Armond 1993. "Retail Wheeling and Rhode Island's Energy Future: Issues, Problems, and Lessons from Europe," remarks presented to the Retail Wheeling Subcommittee of the Rhode Island Energy Coordinating Council, July 22.
- Cohen, Armond, et al. 1992. *Power to Spare II: Energy Efficiency and New England's Economic Recovery*, June.
- Conservation Law Foundation 1990. *1990 Annual Report*.
- Conservation Law Foundation 1990-1993. Various newsletters.
- Conservation Law Foundation 1992. *1992 Annual Report*.
- DP&L Collaborative NUPs 1992a. *DP&L Collaborative Process Agreement (draft)*, October 13 (Presents NUP suggestions for an updated collaborative role, scope, and procedures).
- DP&L Collaborative NUPs 1992b. *Comments of the Collaborative*, October 14 (presents NUP comments on DP&L's June 1992 IRP filing).

- Entergy 1992. *Least Cost Integrated Resource Plan*, December.
- Entergy 1993. *Refined Three-Year Action Plan*, July 1.
- Florida Department of Environmental Protection 1993. *Comprehensive Review of the Florida Power Plant Licensing Process*, July.
- Florida Public Service Commission 1991. *Rules of the Florida Public Service Commission, Chapter 25-17: Conservation Goals and Related Matters*.
- Florida Public Service Commission 1992a. *1991 Annual Report*.
- Florida Public Service Commission 1992b. *Agenda* (Various newsletters).
- Florida Public Service Commission 1993a. *Agenda* (Various newsletters).
- Florida Public Service Commission 1993b. *1992 Annual Report*.
- Frick, Jacquelyn M. 1993. *CWG Member Initial Reaction to NOPSI/LP&L LCIRP, CWG Meeting of January 15, 1993*, New Orleans City Council Utilities Regulatory Office, January 15.
- Georgia Demand-Side Working Group 1992. February (Description of structure, role, and procedures of collaborative working group).
- Georgia Power Company 1992a. *1992 Integrated Resource Plan*, January.
- Georgia Power Company 1992b. *1992 Application for Certification of Demand-Side Programs, Vols. 1-4*, January.
- Georgia Public Service Commission 1991. *Rules of Georgia PSC, Chapter 515-3-4: Integrated Resource Planning*, Docket No. 4047-U, December 10 (Order requiring submission of Integrated Resource Plans for all state-regulated utilities).
- Georgia Public Service Commission 1992a. *Order Approving and Adopting Integrated Resource Plan Applicable to Georgia Power Company*, Docket No. 4131-U, July 8.
- Georgia Public Service Commission 1992b. *Order Approving and Adopting Integrated Resource Plan Applicable to Savannah Electric and Power Company*, Docket No. 4134-U, July 8.
- Georgia Public Service Commission 1993a. *Georgia Power Company Demand-Side Certificate of Public Convenience and Necessity*, Docket No. 4132-U, January 5 (Order certifying residential DSM and standby generation programs).

- Georgia Public Service Commission 1993b. *Joint Stipulation*, Docket No. 4132-U, C&I, March (Presents stipulation by Georgia Power, PSC staff, and key intervenors concerning C&I DSM programs).
- Georgia Public Service Commission 1993c. *Certificate of Public Convenience and Necessity, No. GPC-2-DSM*, Docket No. 4132-U, C&I, August 5 (Order certifying C&I DSM programs).
- Groesch, Gary, and Thomas Lowenburg 1993. *Preliminary Review of Entergy's Least Cost Integrated Resource Plan as Submitted December 1, 1992 to the City Council of New Orleans, Presented to the New Orleans Least Cost Collaborative Working Group*, Alliance for Affordable Energy, January 15.
- Hirst, Eric 1994. "The Role of Environmental Groups in Electric-Utility Regulation: A Case Study," *The Electricity Journal*, March.
- Kahn, Edward 1991. *Electric Utility Planning and Regulation*, American Council for an Energy-Efficient Economy, Washington, D.C.
- Kreith, Frank, and George Burmeister 1993. *Energy Management and Conservation*, National Conference of State Legislatures, Denver.
- LAW Fund 1993. *Memorandum on LAW Fund Energy Project Outreach Exercise to Grassroots Groups*, August 19.
- Legal Environmental Assistance Foundation 1992. *Who We Are — What We Do*, Legal Environmental Assistance Foundation, Inc., Tallahassee, Fla.
- Legal Environmental Assistance Foundation 1992 and 1993. *Quarterly Reports*.
- Massachusetts Department of Public Utilities 1991. *Massachusetts Electric Company 1992 Conservation and Load Management Program: Offer of Settlement*, DPU 91-205, December.
- Massachusetts Department of Public Utilities 1992a. *Western Massachusetts Electric Company Application for Pre-Approval of Conservation and Load Management Programs and Cost Recovery*, DPU 92-13, February.
- Massachusetts Department of Public Utilities 1992b. *Western Massachusetts Electric Company Settlement Agreement*, DPU 92-13, April 24.
- Moody's Public Utility Manual* 1991. Volumes 1 and 2.
- Moskovitz, David, and Gary Swofford 1991. "Decoupling Sales and Profits: An Incentive Approach that Works," *The Electricity Journal* 4(6), 46-53, July.

- Multiple Intervenors 1992. *Comments of Multiple Intervenors on the 1993–94 Annual and Long Range Demand-Side Management Plans of the Major Electric Utilities, Case 28223*, September 14.
- Nadel, Steven M., Michael W. Reid, and David R. Wolcott 1992. *Regulatory Incentives for Demand-Side Management*, American Council for an Energy-Efficient Economy, Washington, D.C.
- National Association of Regulatory Utility Commissioners 1992. *Incentives for Demand-Side Management*, January.
- Natural Resources Defense Council 1993. *Annual Report 1992*. San Francisco.
- New England Electric System 1991. *NEESPLAN 3: Environment, Economy, and Energy in the 1990s*, November.
- New England Electric System 1993. *NEESPLAN 4: Creating Options for More Competitive and More Sustainable Electric Service*, November.
- New Orleans City Council 1993. *Resolution and Order Acting on Procedural Motions*, Dockets Nos. UD-92-2A and UD-92-2B, June 3 (Resolution postponing hearings on LCIRP, allowing Entergy to refile its Three-Year Action Plan, and requiring the utility to address deficiencies in its 12/1/92 filing).
- New Orleans Collaborative Working Groups 1991. *Charter of the Least Cost Planning Collaborative Working Groups*, September 11.
- New Orleans Collaborative Working Groups 1992. *Recommendations of the Collaborative Working Groups on Least Cost Planning*, March 1.
- New York Public Service Commission 1990. *1989–1990 Annual Report*.
- New York Public Service Commission 1992a. *Recommended Decision by Administrative Law Judge Frank S. Robinson on Cases 92-E-0108, 92-E-0109, 92-G-0110, and 91-M-0329*, Albany, N.Y., November 30.
- New York Public Service Commission 1992b. *Review of 1993–1994 Demand-Side Management and HIECA Business Plans*, Albany, N.Y., December 16.
- New York State Department of Law 1992. *Comments on Niagara Mohawk Power Corporation's Revised 1993–1994 Demand-Side Management Program Plan and New York's Seven Investor-Owned Utilities' Long-Range and 1993–1994 Demand-Side Management Plans*, Case 28223.

- Niagara Mohawk Power Corporation 1992a. *Annual Report 1991*.
- Niagara Mohawk Power Corporation 1992b. *Demand-Side Management Progress Report*, April.
- Niagara Mohawk Power Corporation 1992d. Revised Proposal, Volume 2: 1993–1994 Demand-Side Management Program Plan Including the 1993–1994 HIECA Business Plan, October 1.
- Northeast Utilities 1992. *Conservation and Load Management Monitoring and Evaluation: Results of Six-Step Collaborative Planning Process*, March.
- Northwest Conservation Act Coalition 1990. *Proposal to the Pew Charitable Trust on Behalf of the Regionwide Conservation Advocacy Program for the Northwest Conservation Act Coalition*, Seattle, September 21.
- Northwest Conservation Act Coalition 1991. *Closing Brief*, March (Filed in WUTC Proceedings UE-90-1183/UE-90-1184).
- Northwest Conservation Act Coalition 1992a. *NCAC Accomplishments: Fifteen Years of Leadership*, Seattle.
- Northwest Conservation Act Coalition 1992b. *Petition for Reconsideration, Clarification, or Reopening of the Record*, January (Filed in WUTC Docket No. UE-910689).
- Northwest Power Planning Council 1991. "Puget De-Coupling Approved, Energy Planning Squashed," *Northwest Conservation Act REPORT*, April 22.
- Ohio Office of Consumers' Counsel 1993. *A Summary of Demand-Side Management Collaboratives in Ohio*, Demand-Side Management Seminar, Energy Resource Center, Dayton, Ohio, September 15.
- Pace University Center for Environmental and Legal Studies, Energy Project 1991-1993. *Annual Reports, Fiscal Years 1990–1991, 1991–1992, and 1992–1993*.
- Pace University Center for Environmental and Legal Studies, Energy Project 1992. *Annual Report Update*, March.
- Pacific Gas and Electric Company 1990. *Motion of Pacific Gas and Electric Company for Adoption of Settlement and for Deviation from Procedural Rules Applicable to Settlements and Decisions (Before the Public Utilities Commission of the State of California)*. Application No. 90-04-041. June 27.
- Pacific Gas and Electric Company 1992. *Annual Summary Report on Demand-Side Management Programs in 1991 and 1992*, March.

- Parker, Quillie (SPUR Senior Action Organization) 1993. *CWG Member Initial Reaction to NPSI/LP&L LCIRP, CWG Meeting of January 15, 1993*, January 15.
- Project for an Energy-Efficient Florida 1993. *Florida Energy Reporter* (various issues).
- Public Interest Intervenors 1990. *Comments on the 1991–1992 Annual and Long-Range Demand-Side Management Plans of the Major Electric Utilities*, Case 28223, September 28.
- Public Interest Intervenors 1991. *Comments on the Utility Responses to Commissions' November 27, 1990 Order and Proposed Revisions to the 1991–1992 Annual and Long-Range Demand-Side Management Plans*, Case 28223, April 29.
- Public Interest Intervenors 1992. *Comments of Public Interest Intervenors on the 1993–94 Annual and Long Range Demand-Side Management and Integrated Resource Plans of New York Electric Utilities*, Case 28223, September 14.
- Public Interest Intervenors 1993. *On Track II—Policy Issues*, position paper presented to the New York Public Service Commission, July 15.
- Public Service Company of Colorado 1990. *Form 10-K*, December 31.
- Public Service Company of Colorado 1993. *Integrated Resource Plan*, “A Balanced Approach to Meeting Customers’ Future Electricity Needs,” Denver, October 1993.
- Public Utilities Commission of Ohio 1989. Case 88-816-EL-ORD, October 31 (Presents order regarding the revision and promulgation of rules for long-term forecast reports and integrated resource plans of electric utilities).
- Public Utilities Commission of Ohio 1991a. *Finding and Order*, Case 90-723-EL-COI, February 7 (Presents finding and order regarding the provision of incentives for utility-sponsored demand-side management programs).
- Public Utilities Commission of Ohio 1991b. *Finding and Order*, Case 90-723-EL-COI, October 1 (Presents finding and order regarding the provision of incentives for utility-sponsored demand-side management programs).
- Public Utilities Commission of Ohio 1991c. *Stipulation and Recommendation*, Case 91-414-EL-AIR, November 6 (Presents stipulation by Dayton Power and Light and key intervenors to resolve pending rate case).
- Public Utilities Commission of Ohio 1992. *Opinion and Order*, Case 91-414-EL-AIR (Presents opinion and order on Dayton Power and Light’s application for a rate increase).

- Public Utilities Commission of Ohio 1993a. *Stipulation and Recommendation*, Cases 91-700-EL-FOR, 92-594-EL-FOR, 92-1175-ECP, February 17 (Presents stipulation by Dayton Power and Light and key intervenors concerning utility forecast, demand-side management programs and expenditures, and collaborative operations).
- Public Utilities Commission of Ohio 1993b. *Opinion and Order*, Cases 91-700-EL-FOR, 92-594-EL-FOR, 92-1175-EL-ECP, May 6 (Presents opinion and order regarding Dayton Power and Light forecast and demand-side management programs).
- Public Utilities Commission of the State of California 1992. *Interim Opinion on Rules Governing Utility Demand-Side Management Programs*. Decision 92-02-075. February 20.
- Public Utilities Commission of the State of Colorado 1991a. Decision No. C91-918, July (Commission order settling rate case).
- Public Utilities Commission of the State of Colorado 1991b. Docket No. 91A-480-EG, August (Testimony of David Moskowitz on decoupling and utility incentives).
- Public Utilities Commission of the State of Colorado 1991c. Docket No. 91A-481-EG, October (Demand-side management collaborative process workplan).
- Public Utilities Commission of the State of Colorado 1992a. Docket No. 91A-481-EG, January (Milestone II report).
- Public Utilities Commission of the State of Colorado 1992b. Docket No. 91A-481-EG, March (Summary of collaborative activity).
- Public Utilities Commission of the State of Colorado 1992c. Docket No. 91A-480-EG, April (Rebuttal testimonies and exhibits on decoupling and financial incentives).
- Public Utilities Commission of the State of Colorado 1992d. Docket No. 91A-480-EG, June (Statement of positions on decoupling and financial incentives).
- Public Utilities Commission of the State of Colorado 1992e. Docket No. 91A-481-EG, July (Milestone III report).
- Puget Sound Power and Light Co. 1991a. *Demand-Side Management Measurement and Evaluation Plan*, May.
- Puget Sound Power and Light Co. 1991b. *Supplemental Direct Testimony*, October (Filed in Docket No. UE-910689).
- Puget Sound Power and Light Co. 1991c. *Response to Bench Request No. 1* (Filed in WUTC Docket No. UE-910689).

- Puget Sound Power and Light Co. 1991d. *Factbook 1991, Year End Summary*.
- Puget Sound Power and Light Co. 1992. *Annual Report, 1991*.
- Puget Sound Power and Light Co. 1993. *Puget Power 1992 Annual Report*. Bellevue, Washington.
- Raab, Jonathan 1991. *The California DSM Collaborative* (Unpublished).
- Raab, Jonathan 1992. *Consensus-Building in Electric Utility Regulation* (Dissertation submitted to the Department of Urban Studies and Planning at Massachusetts of Technology).
- Raab, Jonathan, and Martin Schweitzer 1992. *Public Involvement in Integrated Resource Planning: A Study of Demand-Side Management Collaboratives*, ORNL/CON-344, Oak Ridge National Laboratory, Oak Ridge, Tennessee, February.
- Schweitzer, Martin, Mary English, Susan Schexnayder, and John Altman 1994. *Energy Efficiency Advocacy Groups: A Study of Selected Interactive Efforts and Independent Initiatives*, ORNL/CON-377, Oak Ridge National Laboratory, Oak Ridge, Tennessee, March.
- Schweitzer, Martin, Mary English, Evelin Yourstone, and John Altman 1993. *Interactive Efforts to Address DSM and IRP Issues: Findings from the First Year of a Two-Year Study*, ORNL/CON-357, Oak Ridge National Laboratory, Oak Ridge, Tennessee, April.
- Schweitzer, Martin, Eric Hirst, and Lawrence J. Hill 1991. *Demand-Side Management and Integrated Resource Planning: Findings from a Survey of 24 Electric Utilities*, ORNL/CON-314, Oak Ridge National Laboratory, Oak Ridge, Tennessee, February.
- Selected Intervenors in Georgia IRP Proceedings 1992. *Agreed Principles of Decisional Significance*, June 25 (Related to Dockets No. 4131-U and 4134-U).
- Southern Environmental Law Center 1991a. *Grant Proposal to the Pew Charitable Trusts: Energy Project*, January 15.
- Southern Environmental Law Center 1991b. *First Interim Report: Grant Award of May 16, 1991*, August 8.
- Southern Environmental Law Center 1992a. *Second Interim Report: Grant Award of May 16, 1991*, January 6.
- Southern Environmental Law Center 1992b. *Report of Activities: 1986-1991*.

- "The 1990 Utility Regulators Forum" 1990. *Public Utilities Fortnightly* 126(10), 28-36, November 8.
- Toward Utility Rate Normalization 1992. *Annual Report 1991-1992*. San Francisco.
- Virginia Power and North Carolina Power 1993. *Demand-Side Management Plan*, April.
- Virginia State Corporation Commission 1992a. *Rules Governing Utility Promotional Allowances*.
- Virginia State Corporation Commission 1992b. *Final Order*, Case PUE900070, March 27 (Final order initiating an investigation on costs/benefits of CLM programs of Virginia's gas and electric utilities).
- Virginia State Corporation Commission 1993. *Order Issuing Rules on Cost/Benefit Measures*, June 28 (Order specifying cost-effectiveness tests to be used by state's utilities).
- Virginia State Corporation Commission, Task Force on Cost/Benefit Methodologies 1992. *Investigation of Conservation and Load Management Programs, Interim Staff Report*, Case PUE900070, July 31.
- Washington Collaborative participants 1991. *Technical Collaborative Group Charter*, June.
- Washington Energy Strategy: An Invitation to Action* 1993. Washington Energy Strategy Committee. WSEO92-158.
- Washington Utilities and Transportation Commission 1990a. Docket No. UE-900385, May (Notice of inquiry concerning regulatory barriers to least cost planning).
- Washington Utilities and Transportation Commission 1990b. Docket No. UE-900385 (Comments of the Northwest Conservation Act Coalition and Washington Public Counsel on utility regulatory barriers to least cost planning for electric utilities).
- Washington Utilities and Transportation Commission 1991. Docket No. UE-901183-T/UE-901184-P, April (Third Supplemental Order).
- Washington Utilities and Transportation Commission 1992. Docket No. UE-910689, January (First Supplemental Order).
- Washington Utility and Transportation Commission Public Affairs Section 1991. *News: Washington Utility and Transportation Commission Orders Innovative Rate Structure—Denies Puget Power Rate Increase Request*. UE-901183, UE-901184/11. Olympia, Washington.

Wisconsin Energy Consultants 1993. *Review of California Public Utility Financial Incentive Mechanisms* (submitted to the Public Utilities Commission of California), January.

Yamin, Farhana, Armond Cohen, Jeanne Sole, and Tim Wolf 1993. *Energy Efficiency: Down to Details*, joint report of the Foundation for International Environmental Law and Development and the Conservation Law Foundation, April.

ACKNOWLEDGMENTS

We gratefully acknowledge all those who took the time to provide us with descriptive materials and talk with us about their views and experiences. This report would not have been possible without their help. We especially thank Charles Adams, Kevin Bell, Eric Blank, Jay Brizie, Ross Burnaman, Ken Canon, Ralph Cavanagh, Armond Cohen, Mark Davidson, J. Stephen Dingle, Mary Doswell, Kenneth Elgin, K. H. Ellison, David Festa, Jane Finleon, James Gallagher, Jeff Gleason, K. C. Golden, Wanda Grude, Donald Hale, Paul Hansen, David Hoff, Joe Jenkins, Corey Knutsen, B. B. Knowles, Bob Lacy, Tom Lowenburg, Mark Minish, John Moore, M. Jane Nelson, Sharon Nelson, Paul Nordstrom, Richard Ottinger, Steve Puican, Garey Rozier, Bill Schroer, Deborah Sheppard, Jeanne Solé, Tiane Sommer, Sam Swanson, Michael Tifft, Wendell Winger, and David Wooley, who commented on draft write-ups of the cases with which they were involved. Their comments and criticisms contributed greatly to the final report. However, this document does not necessarily represent their visions of key events, and full responsibility for the contents of this report rests with the authors themselves.³⁷ Lea Aeschliman, Eric Hirst, Patricia Patrizi, and Ed Wilson provided important guidance and feedback throughout this project. Also, we are grateful to Jonathan Raab for casework previously done on collaboratives in California and Massachusetts, as well as for his comments on earlier versions of these case studies, and to Evelin Yourstone for her work during the first year of this project on cases in California, Colorado, and Washington. Finally, we wish to thank Deborah Counce for her editorial assistance and Mariann Huskey and Ethel Schorn for their preparation of the document.

³⁷John Altman and Mary English were primarily responsible for the Florida case study, Mary English for the Massachusetts and New York cases, Martin Schweitzer for the Georgia, New Orleans, Ohio, and Virginia case studies, and Susan Schexnayder for the California, Colorado, and Washington cases.

INTERNAL DISTRIBUTION

- | | |
|---------------------|---------------------------------|
| 1. D. Bauer | 23. R. Lee |
| 2. L. Baxter | 24. P. Leiby |
| 3. V. D. Baxter | 25. J. M. MacDonald |
| 4. L. Berry | 26. V. C. Mei |
| 5. D. S. Bjornstad | 27. W. R. Mixon |
| 6. R. Braid | 28. S. Purucker |
| 7. M. A. Brown | 29. D. E. Reichle |
| 8. J. B. Cannon | 30. D. T. Rizy |
| 9. R. S. Carlsmith | 31. M. Schweitzer |
| 10. F. C. Chen | 32. R. B. Shelton |
| 11. J. Christian | 33. B. E. Tonn |
| 12. G. Courville | 34. J. Van Dyke |
| 13. T. R. Curlee | 35. J. Vancoevering |
| 14. P. D. Fairchild | 36. J. M. Veigel (ORAU) |
| 15. W. Fulkerson | 37. D. L. White |
| 16. S. Hadley | 38. T. J. Wilbanks |
| 17. L. J. Hill | 39. ORNL patent Office |
| 18. E. Hillsman | 40. Central Research Office |
| 19. E. Hirst | 41. Document Reference Section |
| 20. P. J. Hughes | 42. Laboratory Records (RC) |
| 21. J. O. Kolb | 43-45. Laboratory Records Dept. |
| 22. M. A. Kuliasha | |

EXTERNAL DISTRIBUTION

45. Dr. Douglas R. Bohi, Director, Energy and Natural Resources Division, Resources for the Future, 1616 P Street, N.W., Washington, DC 20036
46. Dr. Thomas E. Drabek, Professor, Department of Sociology, University of Denver, Denver, CO 80208-0209
47. Calvin MacCracken, President, Calmac Manufacturing Corporation, 101 West Sheffield Avenue, P. O. Box 710, Englewood, NJ 07631
48. Jacqueline B. Shrago, Director, Office of Technology Transfer, 405 Kirkland Hall, Vanderbilt University, Nashville, TN 37240
49. Mr. George F. Sowers, P. E., Senior Vice President, Law Companies Group, Inc., 114 Townpark Drive, Suite 250, Kennesaw, GA 30144-5599
50. Dr. C. Michael Walton, Ernest H. Cockrell Centennial Chair in Engineering and Chairman, Department of Civil Engineering, University of Texas at Austin, Austin, TX 78712-1076
- 51.-52. OSTI, U. S. Department of Energy, P. O. Box 62, Oak Ridge, TN 37831
53. Office of Assistant Manager for Energy Research and Development, DOE/ORO, P. O. Box 2001, Oak Ridge, TN 37831-8600
- 54.-350. External Energy and Global Change Analysis Section distribution mailing list and extra copies to E.M. Schorn, 4500N, H-19A