

The Utility as Civic Partner: Casualty of Competition?

June 15, 2000

By James L. Creighton, Ph.D.

There was a time when utilities sat down with neighbors to listen to local concerns.

Let's bring it back. When was the last time your local utility held an open house to talk about its latest project, or how it might affect the community?

During the 1980s and early 1990s, many leading utilities learned to engage the public through open meetings whenever the siting of a new facility might prove controversial. Florida Power & Light used advisory groups to help select routes for transmission lines. Kansas City Power & Light conducted an open house on electric and magnetic fields (EMF) that drew more than 1,000 participants--with staff serving as baby-sitters while parents participated! Cincinnati Gas & Electric even sponsored a national conference on public participation.

Utility associations got into the act as well. Edison Electric Institute (EEI) sponsored a public participation guide. EEI, the American Public Power Association, and the National Rural Electric Cooperatives Association all scheduled training courses on public involvement. Public concerns about possible health effects associated with EMF led EPRI and the Tennessee Valley Public Power Association to offer training courses and guides on communicating with the public about those possible risks.

But sometime during the 1990s, public involvement disappeared. The utility industry became focused on issues related to deregulation. Many of the siting issues that drove them to work with the public were put on the back burner. Now utilities that once had extensive public participation programs have been out of that practice for five years. Many have "down-sized" and, in the process, lost staff with expertise in public participation.

But wasn't that at least one of the reasons for deregulation: to get away from all the bureaucracy that slows projects and raises costs? Some argue that in the new deregulated environment, utilities will not be able to use the open deliberative processes they used in the 1980s. They will need to move more quickly to compete with unregulated companies. And, they say, competition increases the need to keep business plans confidential.

I would argue that they're dead wrong. In fact, public interest in vitally every aspect of utility operations makes the need for public involvement more important than ever. Not

only will we see utilities return to engaging the public in their plans, but we'll see them take a more direct, consensus-seeking approach. Utilities will forgo the town square meetings of yesterday in favor of working with local governments and immediate neighbors directly to solve problems.

NIMBY: Now More Than Ever

Pacific Gas & Electric hadn't done any public participation in several years when, with California's deregulation laws finally in place, it began siting new facilities once again. Two new substation projects immediately ran into problems. After meeting with major local controversy on one project, PG&E set up a neighborhood group to consult on site selection. For awhile, PG&E thought it had come up with a better solution, but it found it had just shifted the problem to a new neighborhood. Eventually, PG&E found a way other than building a substation to solve its problems.

PG&E successfully sited another substation, but only after a time-consuming process of consultation with neighbors ordered by the California Public Utilities Commission. Meanwhile, plans for a PG&E transmission line into the heart of energy-hungry Silicon Valley face a lawsuit from the mayor of San Jose, who wants to force undergrounding.

But PG&E is a regulated utility, so such scrutiny is to be expected. Certainly the unregulated energy companies don't face these problems? Fat chance.

In March, the Indiana Utility Regulatory Commission ordered a halt to a \$68 million peak power plant under construction in Henry County by a joint venture between unregulated affiliates of Cinergy Corp. and Duke Energy Corp. The commission said it wanted to discuss the project further with local policymakers. That decision followed a seven-hour public hearing in which citizens offered complaints not just about the project, but also the alleged failure of the companies to talk about it with local officials and neighbors. In the face of such opposition, other would-be builders of merchant generation have abandoned plans in Indiana. LSP-Columbus Energy and Duke Energy each have withdrawn petitions to build, respectively, a peak power plant in Bartholomew County, Ind., and a 640-megawatt plant in Delaware County, Ind.

What is ironic is that both Cinergy and PG&E once were leaders in engaging public participation. Cinergy has experienced public participation practitioners sitting on the regulated side of the business, while PG&E lost many of its public participation experts through downsizing and staff reassignment.

These may seem like isolated examples. But as other companies return to siting new facilities, they are reporting similar experiences. The political climate that once required public participation hasn't gone away. It just went underground while the utility industry was off coping with deregulation.

In fact, I would argue that the need for public participation in virtually all utility operations is increasing, and may be even greater than it was during the 1980s.

Power Plants: Fish Wars and Price Signals

On the generation side, issues as diverse as plant siting, hydropower, and plant closures draw passionate interest from public groups.

For instance, new gas-turbine generating plants pose a significant challenge to the much larger centralized generating plant of the past. The new gas-turbine generating facilities are modest in size, and aesthetically are not markedly different from a small industrial facility. Many probably will be below the size threshold for facilities requiring approval by a state regulatory agency, and that will mean fewer public hearings before state regulators. However, utilities may no longer have the option of appealing to a state public utility commission to overrule local authorities if a project becomes so controversial that local permits are not granted. Companies that are good at working with local communities may have a competitive edge in getting their permits.

Hydropower faces two significant challenges: (1) costs to restore fisheries harmed by prior dam construction, and (2) a new generation of permits due for renewal at the Federal Energy Regulatory Commission.

Several major U.S. river systems have seen a dramatic drop in the number of fish returning to breed and restock the fisheries. Many attribute these declines to instream dams that block the natural flow of fish up and down the river. While considerable evidence suggests that dams play a role in the declines, dams also are likely to be the focus of political efforts to address the decline in fish stocks because (1) it is always easier to go after a single, highly visible contributor to a problem than thousands of smaller contributors, and (2) hydropower companies have revenues that can be tapped to pay for projects.

Utilities are likely to be heavily involved in the "fish wars" for some time to come. To date, the most effective approach has not been to oppose or resist addressing the decline in fish stocks, but to work in active partnership with regulatory agencies to help solve the problem. This process often involves extensive public participation.

FERC relicensing is an issue for a growing number of utilities as the 50-year license period ends for plants built to accommodate the economic growth that followed World War II. Hydro relicensing is an opportunity for the public to raise questions that the utilities have not been forced to address for years (e.g., concerning late summer operations that can leave neighbors with a view of a mud flat). Fish and wildlife agencies also may force consideration of impacts on fisheries that were not recognized at the time the license was granted. That can result in conditions or operating regimens that can materially affect the value of the facility.

Plant closures are another issue of public interest. One implication of deregulation is that many older plants will be shut down because they are no longer economic. That holds the potential for public controversy in two areas. First, communities for whom generating plants are a significant source of employment will be concerned about

economic implications. Second, plant closures often force utilities to rush the process of cleaning up toxic discharges or other environmental hazards. It is not unusual for new environmental problems to come to light during closure. Local governments will be fearful of getting stuck with cleanup costs or an unusable site.

The closure of nuclear plants, in particular, raises some thorny issues. The Nuclear Regulatory Commission has identified these potential challenges, including stranded costs for decommissioning plants shut down before the end of their licenses, funding for decommissioning deregulated facilities, and plant safety after shutdown.

Regulators are speculating more about plant safety in the deregulated world. They worry that less regulation coupled with competitive prices will cause some utilities to operate plants less safely. As much as utilities complain about the costs of regulation, regulation often provides a "Good Housekeeping Seal of Approval" behind which they can hide. If regulations no longer provide safety assurances, utilities may find themselves having to deal with the public more directly on these issues.

In deregulated markets, environmental impacts such as air quality are supposed to be addressed by "price signals" reflecting the cost of meeting certain environmental standards. At a fundamental level, most environmentalists do not accept the philosophy of the unrestricted market, and are unlikely to accept that price signals alone can protect the environment. In particular, it is extremely unlikely that environmental groups will drop their demands for some form of priority for renewables.

Transmission Lines: EMF Is Still Out There

Few issues generate as much public debate as those related to transmission. Among the hot topics are health effects associated with EMF, the need for new projects, and environmental impacts.

The construction of new transmission lines during the '90s was slowed significantly by controversies over possible health effects from exposure to EMF associated with electric facilities. The EMF issue has been quiescent for the past few years for two reasons: (1) major reports--notably studies conducted by the National Research Council/National Academy of Sciences--appear to be creating a scientific consensus that exposure to EMF is not a problem; and (2) nobody has been building anything. Once utilities return to building facilities, the controversy likely will start anew.

Even though the science now suggests that EMF is not a health problem, EMF will remain a political problem. So long as power lines are ugly--and only engineers believe they are not--people will object, claiming their objections are based on concern about health effects. Health concerns are a far more potent political argument than aesthetics. The new scientific evidence may give local officials more backbone in the face of controversy. But some people will continue to be genuinely concerned about health effects, others will continue to exploit the issue for political advantage, and some local officials will genuinely or cynically embrace EMF as an issue.

Whether a new project is needed at all is always debated. People don't want to talk about alternative routes unless they're convinced the project is needed. In the past, state regulatory bodies provided a certificate of need. It is not clear whether that will continue. If the industry is really going to be put on a free-market basis, then the market may decide whether there is a need.

Applying this same market logic to transmission, state regulators conceivably could say that it is unnecessary to issue a certificate of need for transmission lines. The utility may be free simply to decide to invest its own money at its own risk. The good news is that that would reduce regulatory costs. The bad news is that the public, unused to letting market economics decide whether a transmission line is needed, may spend more time challenging project need. If the state bows out of determining project need, local land use plans will continue to be in force. Utilities siting lines soon may need to deal with a plethora of local entities, all of which have veto rights.

Environmental studies are a different matter. In most states requiring the preparation of environmental impact studies and reports, these requirements do not go away because of deregulation. Except in the rates and marketing arena, FERC and the state PUCs do not have the authority to remove most of the environmental regulations that require participation and provide public access to information.

Deregulation? It's No Excuse

Under deregulation, rates and services presumably will be more market-driven. The need for extensive rate hearings could be eliminated. On the other hand, large public purchasers of power, such as city or county governments, may subject companies to extensive public processes in order to choose suppliers. Price may be the major determinant, but the reputation of the supplier also may be a factor.

Utilities now are embroiled in two areas of public controversy related to operation of existing facilities: (1) watershed management plans, and (2) the Environmental Protection Agency's Right to Know Act.

A number of utilities are developing watershed management plans as a tool for protecting water quality in reservoirs created by hydropower dams. Many utilities are recognizing the need to consult with the public on these plans, because they raise thorny environmental issues and could result in curtailment of existing land uses such as grazing or some forms of recreation.

Further, under new EPA rules, utilities now come under the provisions of the Right to Know Act and will be required to release far more information to the public about air emissions and the discharge of toxic or chemical materials. This requirement is likely to engender new controversies that will require working with communities.

Building Consensus: Never Out of Fashion

Based on this analysis, I predict several trends. First, as mentioned, public participation will continue to be needed in the deregulated environment; if anything, its strategic importance may be greater. But there will be a movement away from large public hearings toward more direct, consensus-seeking approaches to public participation.

Many of the requirements for formal public hearings will be reduced, although requirements for public hearings associated with environmental impact studies may continue. Hearings may have made sense in the regulatory setting, where the greatest concern is visibility and equality of treatment. But without those requirements, the utility's greatest concern will be solving problems in ways that are acceptable to local governments and immediate neighbors. Most people in the public participation field recommend interactive approaches like advisory groups, coffee klatches in neighbors' homes, workshops, open houses or door-to-door visitation.

The goal shifts from satisfying procedural requirements to getting the political consensus needed to proceed with the project. This shift necessitates a different kind of public participation, as shown in the table, "A New Approach to Public Outreach."

Finally, in coming years utilities will develop organization-wide public participation strategies and skills-building programs. Utility management will begin to see public participation as a management issue, not just a siting concern. When they do, they will find that they have lost much of the expertise they once had, and will need to train staff and hire new staff with the skills needed for effective public participation.

Although public participation initially will be seen as a necessary but unfortunate requirement of doing business in deregulated markets, management may soon find it to be an important competitive tool. As staff become more attuned to public expectations and needs, they will be better able to anticipate public concerns and develop products that address those needs.

James L. Creighton, Ph.D., is president of Creighton & Creighton Inc. in Los Gatos, Calif. He has been involved in designing and conducting public participation programs for more than 50 utility industry projects. Creighton is the author of EEI's "Public Participation Manual," and co-author of EPRI's "Sourcebook for Utility Communications on EMF." Contact Creighton at jim@CreightonandCreighton.com