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Prudence of Electric Utilities' Coal Contracts and Fuel Procurement Practices: The Impact on Coal Contract Negotiations

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PRUDENCE OF ELECTRIC UTILITIES' COAL CONTRACTS AND FUEL PROCUREMENT PRACTICES: THE IMPACT ON COAL CONTRACT NEGOTIATIONS

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I. INTRODUCTION

Prudence reviews of public utility decisions by regulatory commissions are not a recent phenomenon.[1] There, however, has been a sharp increase in the number and scope of such reviews conducted in the electric utility industry.[2] In recent years, a number of regulatory commissions, recognizing that fuel costs are one of the largest single factors in utility rate increases,[3] have examined utilities' fuel procurement practices in general and fuel contracts in particular to determine whether such practices and contracts are "prudent."[4] Several state commissions have held that specific contracts or contract clauses are imprudent and have disallowed significant fuel costs allegedly resulting from such imprudence. Other commissions have begun investigating utilities' procurement policies and procedures as a whole, and some have even issued guidelines covering virtually every aspect of fuel procurement.

These actions by state regulatory commissions have caused utilities to take certain steps that will effect the negotiation and administration of coal contracts.

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[1] In one of the earliest reported cases, *Re* Kohala Ditch Co., 1922A Pub. Util. Rep. (PUR) 1 (Ha. P.S.C. 1921), the Hawaiian Public Utilities Commission reviewed whether a water supply ditch was constructed larger than was justified by the available water supply.

[2] In October 1985, ELECTRICAL WORLD reported that thirty-five prudence reviews had been conducted in the electric utility industry since 1980. This is almost 400% more than in the previous forty years. *What Will You Do When Prudence Arrives?*, 199 ELECTRICAL WORLD 85 (Oct. 1985). Most of these reviews have dealt with the prudence of costs incurred in the construction of nuclear power plants, but reviews of procurement decisions are becoming increasingly common.

[3] A 1983 article in PUBLIC UTILITIES FORTNIGHTLY states that since 1965, the cost of electricity has risen at an annual rate of 7.6% (in current dollars). Since 1973, however, the annual increase has averaged 13.7%. The major cause of this increase has been the average annual 23.4% increase (in current dollars) in fossil fuel costs since 1973. Fossil fuel has increased from 69.4% of electric utilities production costs in 1965 to 78.6% in 1981. Gibbons, *Fuel Procurement—A Changing Responsibility*, 112 PUBLIC UTILITIES FORTNIGHTLY 25, 27 (1983).

[4] Regulatory review of procurement practices and fuel contracts may be in the context of either a prudence review or a management audit.

For example, some utilities have adopted written procurement policies which, in turn, will force the utilities to document adherence to these policies or to justify any departure from them. In addition, in response to pressure from state commissions, utilities probably will seek to enforce their contract rights more vigorously and will attempt to negotiate contracts that give them greater flexibility as to the quantity, quality, and price of coal.

This Article examines several recent regulatory decisions regarding the prudence of electric utilities' coal contracts and fuel procurement practices and the impact of these decisions on the negotiation of contracts between coal suppliers and electric utilities.

II. Survey of Recent Regulatory Decisions Involving Coal Contracts

A. *Review by Public Service Commissions of Individual Coal Contracts*

Utility commissions are becoming increasingly critical of management decisions regarding fuel procurement. For example, in *Metropolitan Edison Co. v. Pennsylvania Public Utility Commission,*[5] the Pennsylvania Commonwealth Court affirmed in part an order of the Public Utility Commission directing a refund to Metropolitan Edison's ("Met Ed's") customers of more than $4.6 million. The court, however, remanded the case to the Commission to make specific findings of fact as to the part of the ordered refund which was based on surcharges. The Commission held that Met Ed failed to exercise managerial prudence in the administration of three coal contracts by agreeing in 1974 to pay to coal suppliers prices higher than required by the original contracts. Met Ed stated that "its decision to accede to the brokers' demands for higher prices was sound business judgment in light of 'the runaway coal market created by the Arab oil embargo.' "[6] The court summarized Met Ed's perceived options as either to "(1) demand strict adherence to contract terms, coupled with a threat of legal action; or (2) negotiate contract modifications."[7] Met Ed argued that legal action was not a practical remedy and might have imperiled the utility's service to its customers. Met Ed also asserted that if it had refused to renegotiate the contract prices, it would have been forced to seek substitute coal in an "at least equally expensive 'spot market.' "[8] The Commission rejected these contentions, finding that Met Ed unreasonably had failed to enforce its contractual rights by not limiting the price increases to actual increases in the cost of coal production provided for in the contracts. Furthermore, it found that Met Ed had made little, if any, meaningful

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[5] Metropolitan Edison Co. v. Pennsylvania Pub. Util. Comm'n, 62 Pa. Commw. 461, 437 A.2d 76 (1981).

[6] *Id.* at 466, 437 A.2d at 80.

[7] *Id.*

[8] *Id.*

effort to ascertain whether the price increases demanded by the coal suppliers were justified by the production costs of the coal.

In 1982, the Delaware Public Service Commission assessed damages of $2.26 million against Delmarva Power and Light Company for imprudence in purchasing coal under long-term contracts for its Indian River plant.[9] The Commission specifically criticized Delmarva's:

(1) use of a price escalator based on a combination of the Consumer Price Index and the Wholesale Price Index, which caused the contract price to exceed the market price, without securing protection against excessive price increases;

(2) decision to enter into a second coal contract with a supplier who had previously defaulted on a similar contract;

(3) failure to negotiate a more favorable price with a supplier in light of the coal company's need for Delmarva's business;

(4) waiver without consideration of a right to insist that coal not delivered by one of the suppliers be made up;

(5) failure to be more flexible in a changing market;

(6) failure to have more skilled and knowledgeable negotiators; and

(7) failure to have a written policy governing coal purchases.[10]

The Delaware Superior Court affirmed in part and reversed in part the Commission's disallowances,[11] holding that the Commission's determination of imprudence in the use of an unprecedented price escalator in one of the coal contracts was justified because (1) the escalator was not based on coal production costs, but on indices driven by rapidly escalating oil prices resulting primarily from the Arab oil embargo and (2) there was no cap or ceiling on the escalator clause.[12] The court also affirmed the Commission's determination of imprudence as to

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[9] *In re* Application of Delmarva Power & Light Co., No. 81-39 (Del. P.S.C. Apr. 12, 1982).

[10] Delmarva countered that (1) it had at all times employed a competitive bidding process, (2) contracts had always been awarded to the lowest qualified bidder, (3) all contract negotiations had been conducted at arm's length, (4) no fraud, bad faith, or self-dealing had been alleged or proved, and (5) despite the massive price and supply disruptions which had affected the energy markets during the period in question, the actual price paid by Delmarva for low-sulfur compliance coal was reasonable. The Commission was unpersuaded by these arguments.

[11] *In re* Application of Delmarva Power & Light Co., 486 A.2d 19 (Del. Super. Ct. 1984), *rev'd*, 508 A.2d 849 (Del. 1986). The court reversed the Commission's disallowance of (1) $2 per ton because the Commission's finding that the volatility factor in the coal was reflected in heat output rested on an "uncertain foundation" and (2) $3 per ton on the grounds that the Commission's determination that the price Delmarva paid was too high in view of the coal company's weak bargaining position was not supported by substantial evidence. *Id.* at 32.

[12] *Id.* at 27-28.

Delmarva's decision not to make up deliveries interrupted by a mine labor strike, but instead, to purchase higher-priced spot market coal.[13]

The Supreme Court of Delaware recently reversed the Superior Court's decision on the ground that it was based on an erroneous standard of "prudence."[14] The court remanded the case to the Commission to make new findings based on the proper standard of review (*i.e.*, the Commission would be required to allow all expenses legitimately and properly incurred which the Commission had not demonstrated to have resulted from "abuse of discretion, bad faith or waste").[15] Even though the Commission's application of the prudence standard was reversed, this case demonstrates the new activism of regulatory commissions in reviewing utility management decisions in the area of fuel procurement.

The Florida Public Service Commission has held that Gulf Power Company acted inprudently in renewing a multiple-year coal contract for the full-term and not terminating the relationship when the price of coal provided for under the contract exceeded the price of alternate fuel sources.[16] The Commission required refunds of more than $2.5 million for the three years in which the contract price exceeded the weighted average market price of comparable coal. The Commission ordered Gulf Power to refund an additional $100,000 because it did not request British thermal unit ("Btu") adjustments to which it was entitled under the contract for the coal company's failure to properly dewater the coal. This decision

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[13] In reaching its decision, the court applied the following standard:

> The basic standard which evolves then is one of reasonable care under the circumstances but, because of the special trust-like relationship which a public utility bears to its customers, the utility is required to exercise skill and caution in the expenditure of funds so as to minimize the risk that its ratepayers will suffer through mismanagement. Whether this obligation when exercised in the area of fuel purchases be viewed as "special," a designation which Delmarva disputes, is not important. Because the fuel adjustment clause provides the utility with a quick and relatively inexpensive alternative to rate increase proceedings and in view of the size of the expenditures sought to be passed on to ratepayers, the utility is required to exercise a degree of skill and caution commensurate with the magnitude of the risk. This standard requires that the utility know what skillful persons knowledgeable in the area of fuel purchases should know and that it act to recognize and guard against potential problems. It is not chargeable with predicting future events but it is charged with foreseeing those problems which skillful persons might reasonably anticipate and, in the exercise of caution, protect against their consequences.

Id. at 26.

[14] Delmarva Power & Light Co. v. Public Serv. Comm'n, 508 A.2d 849, 860 (Del. 1986).

[15] *Id.*

[16] *Re* Investigation of Fuel Cost Recovery Clauses of Electric Utilities, No. 820001-EU-A, Order No. 13452 (Fla. P.S.C. June 22, 1984). The utility's witnesses testified, however, that Gulf Power did not have the right to terminate the contract unless it had "good cause," which it did not believe it had in this instance. The Commission dismissed this argument, stating that "[t]here is no evidence of record to show that Gulf [Power] actually sought to have the contract terminated or that it sought to determine whether termination was a possible option." *Id.* at 7.

was upheld by the Florida Supreme Court in *Gulf Power Co. v. Florida Public Service Commission.*[17]

In June 1985, the Ohio Public Utilities Commission ordered Cincinnati Gas and Electric Company ("CG&E") to refund over $1.5 million to its customers for money spent on coal stockpiled in anticipation of a 1984 United Mine Workers' strike.[18] The Commission found that CG&E's purchase of higher-priced coal from contract suppliers, as opposed to spot market purchases, was not "fair, just and reasonable." However, the Commission stated that the record did not support a finding that (1) CG&E's receipt of make up in quantity due to force majeure events and (2) the exercise of its option under the contract to take a ten percent reduction of monthly quantities was unreasonable. The Commission ordered CG&E to provide more thorough documentation of its fuel procurement strategies, and admonished the utility to "exercise flexibility in its coal procurement practices in order to maximize economic benefits to its customers."[19]

B. *Review of Utilities' Fuel Purchasing Policies and Practices Generally*

Regulatory commissions have broadened their review of utilities' fuel decisions to include fuel procurement policies and practices generally. For example, in the early 1980s, the Federal Energy Regulatory Commisison ("FERC"), in *Virginia Electric and Power Co.*,[20] conducted a sweeping private investigation of the management prudence of Virginia Electric and Power Company, specifically examining the utility's negotiation and administration of four coal contracts. The matter was resolved upon FERC's direction that Virginia Electric and Power report every six months for three years on its progress in controlling costs and prudently managing in the area, among others, of coal procurement. A special audit committee of FERC was established to review these periodic reports.[21]

In a 1982 rate proceeding, the District of Columbia Public Service Commission examined whether Potomac Electric Power Company ("PEPCO") had

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[17] Gulf Power Co. v. Florida Pub. Serv. Comm'n, 487 So.2d 1036 (Fla. 1986).

[18] *In re* Regulation of the Electric Fuel Component contained within the Rate Schedules of the Cincinnati Gas & Electric Co., No. 84-13-EL-EFC (Ohio P.S.C. June 26, 1985). This decision was pursuant to an Ohio statute that requires the Commission to review each electric utility's fuel component once every six months. As part of that review, the Commission examined (1) whether CG&E was taking sufficient initiative to procure as much Ohio coal as was economically, technically, and environmentally possible, (2) whether CG&E's decision to renegotiate a long-term contract with one of its suppliers was reasonable in light of the poor performance of the supplier in meeting quality and quantity requirements, (3) whether a sulfur bonus/penalty provision was advantageous to CG&E, and (4) the percentage of coal purchased by CG&E under contracts versus that purchased on the spot market.

[19] *Id.* at 13.

[20] Virginia Electric and Power Co., No. IN80-14 (Fed. Energy Reg. Comm'n Mar. 14, 1980).

[21] Virginia Electric and Power Co., 19 Fed. Energy Reg. Comm'n Rep. (CCH) ¶ 61, 333 (1982).

minimized fuel costs during the test year and followed prudent and cost minimizing fuel procurement practices.[22] Although the Commission concluded that PEPCO's fuel procurement policies, which "emphasize the need for flexibility," were effective, the Commission recommended that PEPCO document more thoroughly the reasons for variances between ordered and received quantities of fuel.[23] The Commission further noted that while in the past PEPCO had delayed the processing of Btu adjustments in its coal contracts, this backlog had been eliminated and thus, no further action was recommended with respect to this issue.[24]

In Re *Niagara Mohawk Power Corp.*,[25] the New York Public Service Commission, pursuant to a statewide investigation into issues concerning the fuel adjustment clause, analyzed the fuel purchasing practices of Niagara Mohawk Power. The Commission staff contended that Niagara Mohawk should implement an enforceable contractual standard on the acceptable amount of undersized coal or "coal fines." It also objected to the utility's practice of purchasing coal by weight (which would necessarily include any water, miscellaneous mine matter, and refuse contained in the coal), rather than on a Btu basis. The staff presented evidence of Niagara Mohawk's coal sampling practices which failed to comply with the American Society for Testing and Materials standards, contending that such practices contributed to the utility's inability to obtain coal from suppliers that met contract specifications. The Commission found that Niagara Mohawk's sampling practices had improved considerably, but to enhance the enforceability of contract specifications, the utility should consider purchasing coal on a Btu basis rather than on a weight basis.

Some state commissions have gone so far as to adopt guidelines with respect to fuel procurement. For example, on March 24, 1977, the Pennsylvania Public Utility Commission adopted an order promulgating guidelines on fuel procurement policies for electric utilities.[26] The purpose of the guidelines was to prevent the pass-through to utility ratepayers under fuel adjustment clauses of excessive purchase costs for coal and petroleum fuels. The guidelines contained recommendations[27] on virtually every aspect of fuel procurement, including:

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[22] *Re* Potomac Electric Power Co., 50 Pub. Util. Rep. 4th (PUR) 500, 547 (D.C.P.S.C. 1982).

[23] During the period in question, 91% of contracted for coal was received. In some instances, plant outages lessened the need for coal. In addition, dissatisfaction with a coal supplier caused PEPCO to cancel shipments. The Commission noted that "[i]t would be difficult on this record to fault PEPCO on the delivery shortfall issue." *Id.* at 550.

[24] *Id.* at 548.

[25] *Re* Niagara Mohawk Power Corp., 56 Pub. Util. Rep. 4th (PUR) 315 (N.Y.P.S.C. 1983).

[26] 52 PA. CODE §§ 69.1, 69.7 (1986).

[27] The Commission declined to make the guidelines mandatory, stating:

> [The Commission] has found that mandatory regulations, as opposed to guidelines, might tend to straight-jacket previously unregulated economic relationships between regulated utilities and non-regulated coal vendors which are largely a function of comparative bargaining power, and thus become a detriment to the interest of utilities' customers instead of the

(1) The organization and operation of utility staff involved in fuel procurement;

(2) fuel purchasing strategies that stimulate competition among numerous vendors, including small volume suppliers, and provide "lowest reasonable cost with maximum flexibility";

(3) achieving a balance of long-term, short-term, and spot purchases of fuel;

(4) sampling procedures and the inclusion of bonus/penalty provisions for Btu, moisture, ash, and sulfur content;

(5) the need for documentation of a utility's reasons for rejecting bids;

(6) investigations to insure that potential vendors have adequate "owned" or "contracted" supplies to fulfill all contract requirements;

(7) seeking contracts with greater ranges in minimum/maximum tonnage requirements to be exercised at the utility's discretion;

(8) including escalation and de-escalation clauses in long-term contracts based on measurable supplier costs, not market prices;

(9) the inclusion of audit clauses in all contracts that provide for cost escalation; and

(10) the review of contracts, escalation clauses, and terms of fuel purchase agreements by legal counsel.

As the above summary indicates, regulatory agencies' increased scrutiny of electric utilities' fuel procurement decisions, policies, and practices has had an effect on the way in which utilities purchase fuel. The following section addresses the effect of such increased regulatory scrutiny on companies in contract negotiations and in dealings with electric utilities. Although these observations may not necessarily reflect the practice of the electric utility industry as a whole, they are indications of the types of provisions some utilities have insisted on in contracts and the changing attitude of the electric utility industry toward coal suppliers in general.

III. Impact of Recent Decisions on Coal Contract Negotiations

A. *Utilities Tougher in Negotiations and Contract Enforcement*

With increased regulatory scrutiny of utilities' coal contracts and procurement practices, electric utilities have become more knowledgeable about coal markets

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> intended protection. However, utilities will be called upon to provide proper justification for any deviation from Commission guidelines.

7 Pa. Bull. 1087 (1977).

and negotiating coal contracts. Partially in response to pressure from state commissions,[28] utilities are devoting more resources to (1) hiring in-house and outside experts on fuel procurement, (2) educating and training employees as to procurement issues and negotiation techniques, and (3) using or developing sophisticated computer models and other contract evaluation techniques.

In addition, utilities have become more aggressive in enforcing their contract rights, particularly with respect to coal quality.[29] Stricter quality control is usually sought in the form of increased use and enforcement of adjustments for quality variations (*e.g.*, Btu, sulfur, and ash penalties) or more stringent sampling provisions. Utilities also are expanding their contractual remedies for delivery of nonconforming coal to include (1) demanding assurances from a supplier that any quality deviations have been corrected and will not recur, (2) refusing to accept further shipments of coal until the supplier demonstrates to the utility's satisfaction that the coal meets contract requirements, and (3) canceling the contract or seeking specific performance if the supplier fails or refuses to provide the requested assurances or continues to ship nonconforming coal for a specified period. Some utilities have gone even further and have made each specification a material provision of their coal contracts. Consequently, the failure of any coal shipment to comply with any one specification is a material breach of the contract and grounds for rejection of that shipment and, perhaps cancellation of the entire contract.

B. *Utilities Include Contract Provisions to Increase Purchasing Flexibility*

The trend of public service commission scrutinization of individual coal contracts, coupled with the movement toward building smaller generating units, has caused some utilities to enter into shorter-term contracts to avoid being locked into arrangements preventing them from taking advantage of decreases in the market price. In addition, utilities may contract for the supply of only a portion of an electric generating station's or unit's coal requirements instead of its total fuel requirements. This further increases contract flexibility by reserving to the

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[28] As noted above, Delmarva Power & Light was critized in 1982 by the Delaware Public Service Commission for (1) failing to negotiate a more favorable price with a coal supplier in light of that supplier's need for Delmarva's business and (2) failing to have more skilled and knowledgeable negotiators in general. Specifically, the Commission found that (1) the principal contract negotiator for Delmarva had not actually negotiated a coal contract previously and (2) Delmarva had failed to obtain legal counsel to advise it as to its contract rights. *See* In re *Application of Delmarva Power & Light Company*, No. 81-39, Findings and Recommendations of Hearing Examiner, at 24, 37.

[29] Both Metropolitan Edison and Gulf Power Company have been criticized by their state commissions for failing to enforce their contract rights as to limitations on price increases and Btu adjustments, respectively. *See* discussion, *supra* notes 5-8 and accompanying text as well as notes 16, 17 and accompanying text.

utility the right to purchase some coal from other suppliers and, in some cases, to switch fuels altogether.

Coal companies also can expect utilities to bargain for the inclusion of various types of "escape" clauses. For example, some utilities are attempting to negotiate ceilings or caps on the price of coal. In addition, they may ask for price reopener provisions allowing them to renegotiate the contract if the contract price substantially departs from the market price of coal.[30] Cost reimbursement pricing arrangements probably will be avoided in favor of fixed price contracts or contracts with "initial" or "base" prices subject to adjustment in accordance with some reliable (usually government) indexes. Paradoxically, while utilities will demand more contract flexibility from their coal suppliers, once a regulatory agency has "blessed" a particular contract provision or set of terms, coal companies may find utilities extremely reluctant to deviate from these for fear of incurring renewed regulatory criticism.[31] In essence, regulatory commissions may become silent partners at the negotiating table.

Some utilities have argued that certain regulatory actions may allow them to avoid unfavorable long-term coal contracts. In 1985, Northern Indiana Public Service Commission ("NIPSCO") attempted to avoid its long-term contract with Carbon County Coal Company on the ground that an order by the Indiana Public Service Commission prohibiting an increase in the fuel adjustment factor constituted an event of force majeure, thus the utility was excused from performing. The coal company sued and was awarded $181 million on the ground that NIPSCO had breached its contract because the Public Service Commission order did not prevent NIPSCO from using the coal; it merely prevented it from passing the cost of the coal on to its ratepayers.[32]

In a similar case, Houston Lighting and Power Company ("HL&P") sued two of its major coal suppliers, alleging that their contracts with these suppliers allowed HL&P to refuse to pay a price higher than that deemed by the Texas

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[30] Although the exact wording of reopener provisions varies greatly, they are basically of two types: (1) those that provide that the parties will be bound by a market price determined in accordance with applicable procedures and (2) those that provide that if either party is dissatisfied with the market price thus determined, that party can terminate the contract. From the utility's perspective, the type of reopener provision preferred will depend on whether the utility is trying to insure a continuous supply of coal (in which case the former type may be preferable) or whether its primary interest is in minimizing the price it pays for coal (in which case the latter type may be more favorable).

[31] One industry expert has suggested that utilities are going to have to "take the initiative to obtain the cooperation of the commissions and in the future, commissions are going to have to 'buy' into the utility decisions and take some responsibility for those decisions. . . ." *What Will You Do When Prudence Arrives?*, 199 ELECTRICAL WORLD 79 (Nov. 1985) (quoting Leonard R. Wass, Vice President of Cresap, McCormick & Paget, a Chicago-based management consulting firm for the utility industry).

[32] Northern Ind. Pub. Serv. Co. v. Carbon County Coal Co., No. H-85-390, slip op. (N.D. Ind. Oct. 11, 1985).

Public Utility commission to be "prudent," and therefore allowed to be passed through to ratepayers.[33] This suit is in response to the Texas Commission's decision to scrutinize the prudence of HL&P's coal contracts. During the course of the utility's annual rate proceeding, a member of the Commission staff testified that \$1.51/MBtu "seemed like a reasonable limit" on the price of coal.[34] In response, HL&P has indicated it may withhold in escrow an estimated \$100 million annually in payments under the two long-term coal contracts. This amount represents the difference between \$1.51/MBtu and the price HL&P is paying under the contracts (*i.e.*, in excess of \$2/MBtu).

Additionally, in response to increased regulatory demand for contract flexibility and to the more stringent air pollution regulations enacted in the late 1970s, many utilities now insist on clauses providing that if the utility is required to burn coal with specifications different from those stated in the contract, then the utility can request the supplier to provide coal that meets the required specifications. If the supplier is unable to supply such coal, then the utility can terminate the contract. The current regulatory climate and the spectre of acid rain legislation and other proposed antipollution measures virtually insure that utilities will continue to insist on these types of clauses.

IV. Conclusion: A Look into the Future

Increased regulatory scrutiny of fuel procurement decisions, policies, and practices has caused electric utilities to take certain precautionary measures. These measures, in turn, will affect utilities' contract negotiations and dealings with coal suppliers. The success of utilities in obtaining concessions from coal suppliers on particular issues will be primarily a function of the market and the strength of the utilities' bargaining positions. The nature and extent of commission review of utilities' fuel procurement contracts and practices will vary from state to state and will depend, to some extent, on the strength of third party opposition. If the market shifts once again in the coal suppliers' favor, regulatory commissions may be forced to relax their scrutiny of utilities' fuel procurement decisions. Coal companies should assume, however, that utilities will continue to seek concessions from suppliers, irrespective of the market and the strength of the utilities' bargaining power, to avoid regulatory and public criticism. At a minimum, utilities will be required to document their decision-making process by demonstrating that (1) they solicited bids from as large a number of coal suppliers as possible and (2) they attempted to negotiate favorable contract provisions.

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[33] *See* Houston Lighting & Power Co. v. Kerr-McGee Coal Corp., No. CA3-86-1755-R, slip op. (N.D. Dallas June 30, 1986). *See also* Electric Utility Week 1-2 (July 21, 1986).

[34] Although the basis for this figure is unclear, it is apparently based on an alleged price negotiated between the coal supplier in question and another utility.