

Hon. Richard D. Cudahy

*Electric Deregulation After California: Down But Not Out*

54 Admin. L. Rev. 333 (2002)

Abstract by Carl Tugberk

Judge Cudahy discusses the history, development, and current status of electric deregulation, with a focus on California. The goal of electric deregulation was to offer consumers a choice of electric suppliers which would increase competition and ultimately reduce the price of electricity. Judge Cudahy indicates that although it may have been possible for electricity prices to fall in a monopolized market after the 1970s energy crisis, deregulation was an attractive alternative in light of its history in England and the post-Cold War economic climate. In addition, the idea of an efficient market was further enhanced by the stock market boom in the beginning of the mid-90s. Lastly, it created consumer choice, serving both ends of the political spectrum: conservatives against regulation and liberals against monopolies. In theory, electric deregulation appeared to be the solution to the high electricity prices, but in fact, was the exact opposite.

Judge Cudahy critically analyzes electric deregulation in California and how it has and will affect other states in the country. In March 1998, California instituted a deregulation bill, which had been proposed by the California Public Utilities Commission, and at the time, the bill was expected to be a model for other states. However, the California legislature failed to realize the potential problems that deregulation would create. In 2000, the problems became very evident due to a major power shortage and increasing wholesale prices which led to rolling blackouts and drastically increased retail rates. The California government was not idle in response to these threatening issues. Specifically, California began to purchase power on behalf of the utility companies with its own credit and planned on purchasing the state's electric transmission system from those utilities. In addition, Governor Gray Davis requested assistance from President Bush and the Federal Energy Regulatory Commission (FERC) in the form of price caps on wholesale prices, but did so almost to no avail. President Bush's conservative political preference and party ties did not support market intervention, but FERC implemented some indirect price restraints. As a result of deregulation, there were two unintended effects. First, the popularity of public power increased, and second, the federal-state regulatory balance shifted toward the federal government. Despite these consequences, California's government was able to intervene enough to stabilize prices to some extent.

Although the crisis in California has not answered all the questions on deregulation, Judge Cudahy believes that it has shed some valuable light on the subject from which other states can learn. Judge Cudahy concludes that the situation in California has inadvertently created a hybrid system of deregulation with occasional emphatic regulation aimed at maximizing the benefits and minimizing the costs of using a system at either extreme.