


proportionality. In this area difficult choices may have to be made by the executive or legislature between the rights of individuals and the needs of society. In some circumstances it will be appropriate for the courts to recognise that there is an area of judgement within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the Convention...'

The obligation imposed on the domestic court by the HRA to take account of the Strasbourg jurisprudence will mean that the margin of appreciation in such case law will determine the minimum standard to be applied by the domestic court but that court will then be free to refine and narrow that case law to meet domestic needs. The scope for the court to narrow the case law and fill the void left by the margin of appreciation is an opportunity which practitioners can exploit and this will be particularly so where the case law concerns a decision of the Strasbourg Court in relation to a signatory state other than the UK.

## CONCLUSION

The Bowman Committee did not recommend changes to the court rules in relation to judicial review to reflect the impact of the HRA on evidence and disclosure. Instead it followed the common law tradition of leaving it to practitioners and the courts to devise innovative solutions to meet the new challenges. It will be up to those involved in judicial review proceedings to persuade the courts to seize the opportunities which the HRA provides. 

### Jonathan Bracken

*LLB (Hons), solicitor. Partner, Bircham Dyson Bell, London. Scholar in Residence US Law Library of Congress.*

# America

## What the US needs is a new electric meter

by Edward L. Flippen

Like Presidents Nixon and Carter before him, President George W. Bush has developed a national energy policy. What is different about President Bush's policy is his proposal that the US adopt comprehensive electric industry legislation that promotes competition, encourages new generation, protects consumers, enhances reliability, and promotes renewable energy. In other words, he has made a national electricity policy a central part of his overall national energy policy.

One need not be a rocket scientist to know that the US needs additional power plants to meet increased demand during peak periods. If the answer to the increased demand is so simple, then why do we continue to experience shortages in certain parts of the country? The problem with building power plants (besides our 'not in my backyard' syndrome) is that additional plants, by themselves, are not a cost-effective answer to the electricity shortage. Whether in a state that continues with traditional rate regulation, or in a state such as California that has deregulated power plants, the consequence of adding power plants, without addressing pricing, will be the same – inefficiencies.

The real cost of power changes continuously throughout the day. Yet, with only a few exceptions, customers see only a monthly price on their bills. They, therefore, have no incentive to reduce their consumption at peak periods, and increase consumption in off-peak periods, because they do not pay for electricity on an hourly or some other interval basis. Under this traditional pricing method, building additional power plants will not necessarily ensure the availability of adequate electric supplies. The added costs of those plants will simply be rolled in with the existing cost structures of power suppliers and the average costs passed on to consumers in their monthly bills. Consumers will continue to demand greater amounts of electricity at peak periods, and more plants will be built to meet those demands instead of ensuring better utilisation from existing plants.

There is no doubt the US needs additional power plants. But, perhaps more important, we need a better pricing mechanism, such as time of use rates. Notably, however, flexibility in pricing is hampered by the limited features of the mechanical meters traditionally used by utilities to measure customer consumption. Such meters


measure only customers' kilowatt-hour consumption for a monthly billing period, but not the time of day when they consume the power, or its hourly cost. By contrast, certain large industrial customers have more advanced meters that measure electricity on a 15-minute interval basis; i.e. time of day meters. They also are charged based on their time of use. Such meters are not generally installed by electric utilities for residential or smaller commercial customers. (Moreover, even the large customers on time of day meters often have the option under state-approved tariffs to return to fixed rates if time of day rates increase above fixed rates.) If customers are charged the same rate at 5:00 p.m. as at 5:00 a.m., they are not going to be particularly concerned about when they operate their industries, stores, or offices, much less their water heaters, washers, dryers, computers, and television sets. Thus, if we continue to build power plants to meet peak periods without replacing our metering system, and charging customers based on their time of use, we will not give customers the opportunity to respond to changes in the cost of electricity. In short, we are not giving customers the opportunity to reduce or shift their consumption with the constantly changing cost of electricity.

People respond to increased prices for gasoline, groceries, clothing, and housing. They observe the law of elasticity of demand in all aspects of their daily lives. If they are given the necessary information, they also will respond to increased prices for electricity. To the extent that their responses reduce peak demand, the plant capacity that is made available by such reduction is far cheaper than the cost of adding new capacity. Again, this is not rocket science.

The dollars involved, however, are NASA-sized. There are approximately 81 million residential customers of investor-owned utilities in the US (100 million when you include small commercial customers and customers of electric co-operatives and municipal systems). The cost of the typical old-style residential meter ranges from \$20 to \$30, depending on the quantity purchased. The cost of the newer time-sensitive meter ranges from \$150 to \$190. There is no easy and inexpensive way to replace the 100 million existing meters with time sensitive meters so customers will be aware of the cost of electricity at least on an hourly or other frequent basis and charged on such basis. Yet, if we do not replace these old meters, we will not get the benefits of shifting consumption patterns. The alternative, however, is to continue to build new power plants, at even higher monetary and environmental costs, to meet an ever increasing peak demand and losing the benefits of higher utilisation of existing plants.

How important is it to induce changes in consumption and reduce peak demand? Think about it this way. If we have a 100-year supply of natural gas at present consumption levels, but our consumption actually

increases at 5 per cent per year, the 100-year supply suddenly becomes only a 36-year supply. Even if we had a 1,000-year supply, with consumption increasing at 5 per cent per year, the 1,000-year supply would last only 80 years! Natural gas is, of course, the current fuel of choice for new generating plants. Creating incentives to change consumption must be a major component of our new energy policy, but to accomplish this goal, we need to see the real price. It is that simple. We will **respond** to price changes when we can **see** the prices changing. Higher on peak than off-peak prices will cause people to purchase washer and dryers with timing delay switches, air conditioners and water heaters with timers, motion switches for lights, and other such efficiency devices. The result will be the more efficient operation of appliances and equipment and lower electric bills.

It is fortunate that President Bush is developing a national electricity policy. Let us hope his experts can find a way for customers to be given the opportunity to be informed of and respond appropriately to the constantly changing price of electricity. The adage that 'a penny saved is a penny earned' is as true today as it ever was. 

#### Edward L. Flippen

*Attorney at Law, McGuire Woods LLP, Richmond, Virginia, and a visiting professor of law at George Mason University School of Law.*