CHAPTER 8

The Authority of Regulatory Commissions to Review Coal Supply Agreements

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Synopsis

§ 8.01. Introduction.

Coal supply agreements necessarily require the involvement of a seller and a buyer. When the buyer is an electric utility company,(1) another participant is involved in the transaction, the public utility regulatory commission. According to one commentator, "perhaps the most significant factor which is now influencing the negotiation and content of long-term coal contracts is the close regulation of utility coal procurement activities by public utility regulatory commissions."(2) By recognizing the ability of regulatory commissions to affect coal supply agreements, buyers and sellers can avoid potential obstacles to fulfilling their contractual obligations.

§ 8.02. Basis of Public Utility Regulation.

The justification for regulating electric utilities, or for that matter, any company deemed to be a public utility,(3) is based on both economic and legal grounds. Public utilities are considered to be "natural monopolies"(4) whose technological characteristics render competition ineffective at producing the most efficient results.(5) The economies of scale of production and distribution are so significant that it is more efficient for one firm to provide the service for than a group of competitors to do so.(6) In these circumstances, competition would actually increase the average cost of production and unnecessarily duplicate the facilities needed to serve consumers.

The absence of competition, however, allows a natural monopoly the opportunity to exact monopoly profits by producing less and charging more.(7) In order to avoid monopoly abuses, regulation is economically justified as a substitute for competition.(8)