for extra precautions, Mr. Jensen has transplanted a bit of nature. He has used big flat slabs of rock brought for the purpose from a quarry in Wisconsin, and has laid them to simulate the horizontal stratification of the natural rock formation. Layer is laid on layer with puddled clay for mortar (except in the case of waterfalls where cement mortar is used) and the joints are raked out six inches or more. Pockets of

earth are left everywhere for vines and wood plants, and the illusion of naturalness is carried out by rough stepping-stones from the higher to the lower levels.

In these sunny woodland pools, a few steps from flourishing factories, the city child has a taste of the country boy's pleasures, and perhaps borrows a little grace for his soul from the pleasant ways of Nature.

DEADLOCK IN PUBLIC UTILITY REGULATION

VI. MUNICIPAL ACTION TO BREAK THE DEADLOCK

BY JOHN BAUER

Consultant on Public Utilities

The municipal governments as constructive advocates must plead the grievances of their constituents before the utility commissions and must equip themselves by a pooled technical service on which numerous cities may draw. :: :: :: :: :: :: :: :: ::

IN previous discussions of this series, the conditions were considered that have led to practical deadlock in public utility regulation. This final article is devoted to an outline of municipal action to break the deadlock.

In every city of considerable size, the most important local problem centers around public utility rates and service. This has been the chief issue in a number of municipal elections the past year, and is bound to be the principal ground of contention throughout the country. The solution must be based upon a positive program of sound economic and public policy.

The controlling fact in the establishment of such a program is that the cities must rely upon themselves; that they cannot depend upon the public service commissions except as machinery through which to function. The locally

elected officials are much closer to the needs of the people than are any other governmental agencies, and are inevitably responsible for important municipal matters. They must determine for themselves what is needed and decide upon a definite policy, and then appear before the commissions to translate such purposes into accomplishment.

An earlier article considered the character of the public service commissions, explaining the unusual combination of legislative, administrative and judicial powers. The fact was emphasized that, while the commissions have been charged with the responsibility of promoting the public welfare, because of their judicial responsibility they have not actively pressed the local public interests where there would be a clash with private interests. The com-

missions could hardly be expected to make trouble for themselves, and for the most part they have started proceedings for the reduction of rates or improvement of service only upon clamoring municipal insistence. For this reason, the cities must determine for themselves the proper policies, and then use the commissions, clothed with the police power, to carry out the established purposes. If the cities appear before the commissions with a definite program and the facts supporting it, effective action can be obtained, especially if the force of public opinion is properly marshalled.

The writer believes that the commissions endowed with the unusual combination of powers constitute a necessary part of the machinery to carry out desirable local policies as to public service corporations. But, they are not suited to the purpose of formulating such policies and carrying them out on their own initiative. The policy-making function, as experience has amply demonstrated, properly belongs to the local municipal authorities, who are elected by the people, and are more responsive to public needs. The cities themselves, therefore, ought actively to assume the responsibility of working out their public utility problems; then appear with their programs and facts before the commissions and use these special bodies, with their police power, to carry out the local purposes. The commissions will exercise their powers when thus actively confronted by the organized desires of the cities, but will do practically nothing, as experience has shown, if left to their own initiative and responsibility.

VALUATION FIRST

The first point in a positive municipal program is to establish once and for all the valuation of the properties upon

which the investors are entitled to a return, and that valuation must be definitely recognized by the public as entitled to a return. As explained previously, the matter of valuation has furnished a continuous battleground of rate regulation, and with comparatively few exceptions nothing has ever been definitely settled. This must be cleared up before other constructive measures can be carried out. The rights of the investors must be clearly defined, and in turn the duties of the public must be definitely fixed. Otherwise the constant disagreement between public and private claims will continue, the processes of regulation will remain unwieldy, and deadlock will prevail.

If the valuations are once fixed, so that the rights of the investors as well as the duty of the public are clearly defined, then the technical processes of rate making could be made exceedingly simple. To the valuations would be added all subsequent additional investments for improvements and extensions, and provisions would be made for the complete maintenance of the properties, including adequate reserves for depreciation, renewals and contingencies. The books of the companies would thus continuously show the amount of the investment entitled to a return, and a record of the receipts and costs of operation would show also whether or not the investors are receiving the return to which they are entitled. The necessary facts upon which rates are properly based would be available at any moment from the accounts and records kept under the commissions' supervision. If in any case the earnings above current operating costs and reasonable provision for reserves and contingencies become greater than the necessary return upon investment, the fact would appear clearly from the accounts and the rates could be readily

reduced without affecting the rights of the investors. Similarly if the earnings become inadequate, the rates could be promptly increased without placing an unjustified burden upon the public. The facts would be constantly available, and rates could be fixed almost automatically without injury or special benefit to private or public rights.

In clearing up the confusion as to valuations, it is necessary that proper principles and methods be used so that no unreasonable burdens be placed upon the public and that no real private investments be confiscated. The basis of valuation would be exceedingly important, and its determination would require the greatest regard by each municipality as well as maximum co-operation between cities. Correct principles ought to be vigorously urged before the commissions. With the support of public opinion and with co-operation and vigorous action by cities, valuations based upon sound principles could be generally established fairly quickly and applied to all the properties with reasonable expedition; definite amounts entitled to a return could thus be fixed within two years' time even in the most complicated situations. Then subsequent rate making would be a simple process, based upon agreed facts, without the acrimony of litigation and without profit or loss to private or public rights. Deadlock will inevitably continue until such an automatic machinery has become operative, based upon fixed valuations, definite rights, and constantly established facts.

PROGRESSIVE METHODS

The second point in a municipal program is to establish the most economical methods of operation. As set forth previously the companies are employing to a large extent antiquated

or inadequate plant and equipment, are maintaining unduly costly methods of operation, and particularly have permitted the accumulation or continuance of undue overhead expenses. These conditions result in excessive costs, poor service, and high rates. The commissions have done very little in promoting progressive economies, such as forcing the companies to install proper plant and equipment, and furnishing proper service at minimum cost. If the public wishes to keep abreast with the advance in the arts and to obtain the benefit of rates based upon maximum economy, the cities must take the initiative themselves. They must show wherein the management is uneconomical; then place the facts and recommendations before the commissions and thus use this special machinery with its police power to require the companies to employ all possible economy in providing service.

CONSISTENT FOLLOW-UP

The third point in the program is that the cities must keep regularly in contact with methods of operation, costs, and returns, so as to plan intelligent action based upon facts. While the commissions' police power ought to be used by the cities to carry out their program, there must be exact and adequate knowledge to prepare a program, and there must be an organization for that purpose. The original intention of the public utility laws in establishing the commissions was undoubtedly that these special bodies were to take the requisite initiative in procuring proper management with the lowest possible cost and rates to the consumers. But this reliance upon the commissions has been futile; the cities themselves must provide the means by which desirable municipal policies may first be developed, then using the commissions as

vehicles for carrying out the municipal purposes.

Heretofore the cities have done practically nothing on their own initiative in the development of consistent policies, and have acted only when partial crises had developed. Then, in most instances, they were not prepared for intelligent action; while floundering they called in experts, appropriated large sums of money, made lavish expenditures, and obtained little in desirable permanent results. In particular cases the cities have secured reductions in rates or prevented increases, or even brought about improvements in service. In general, however, they have acted spasmodically, and have made little effort to keep constantly informed about conditions and costs of service and to develop and carry out a systematic program in the interest of the public.

If, then, the cities wish to have the best possible service at the lowest possible cost to the public, they simply must have systematic organization to get the facts, and to develop and carry out regularly the desirable municipal purposes. In most instances, however, the cost to the cities would be prohibitive if they were to place such an organization among the regular municipal departments. The services of the highest grade of financial, accounting and engineering experts would be required, and if each city were to maintain such an independent organization, the expense would be overwhelming and any thoroughgoing policy impracticable.

Except in the case of possibly a few very large municipalities, the reasonable course would be for the cities to act together in some form of co-operative organization, so as to distribute broadly the cost of obtaining the best experts necessary to carry out the program. The cities could thus secure the highest grade of technical skill and would be

able to pay the necessary compensation to first-class experts. Since no one city would require the exclusive services of such an organization, the cost could be apportioned so as to weigh but lightly upon each municipality.

CO-OPERATIVE SERVICE

There are two possible plans for carrying out large scale co-operation in the use of a technical organization: (1) the cities themselves organize a public utility bureau, and prorate expenses, and (2) form a private organization to work with the cities, entering into a separate agreement with each city and fixing the charges according to individual circumstances. A direct public utility bureau organized by the municipalities, would be difficult to maintain because of the inevitably cumbersome control. The alternative private association would be more easily managed and could be more readily adapted to varying needs. Safeguards could be readily provided for proper service, so that the cost to the cities would be kept within reasonable figures.

With either form of arrangement, whether a public utility bureau under the direct control of the cities or a private organization, the cost of carrying out a consistent municipal policy could be made so low that every city of considerable size could afford the service; or could not afford to go without it. The organization would first help each city work out its own particular program suited to local conditions. Then, in co-operation with the local authorities, it would obtain the establishment of definite valuations of the public utility properties. Working with a number of cities, such organization would have the advantage of presenting consistent principles and methods throughout and would thus be in a

particularly strong position to obtain fair valuations for the public.

As a necessary part of a regular program, the organization would make a periodical report to the municipal authorities covering the financial results of operation. It would investigate also the methods of operation and the physical conditions of the properties showing where improvements could be made and costs reduced. It would not only present an analysis of the facts, but would make recommendations as to any particular action that ought to be taken. And it would assist or represent the cities before the commissions and courts in all public utility actions relating to rates, service, issuance of securities, economy or any other technical matter. There would then be an assurance that the public interest be most effectively promoted in every action.

The outline here presented is, of

course, only suggestive. This much, however, is clear to the writer: Some such plan must be adopted and carried out if the existing deadlock is to be broken. Regulation has existed over fifteen years; has produced few constructive results, but has impeded the progress of economy and caused extensive impairment of the credit of the companies. The cities must act for themselves if they wish proper service at reasonable rates for the people. In order to carry out their purposes, the cities must use the commissions; but experience has demonstrated beyond doubt that reliance upon these outside quasi-judicial bodies to do vigorous planning and pushing for the local public is unjustified and useless. The local authorities simply must assume this responsibility if the rights of the public are to be properly safeguarded and promoted.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE
ACT OF CONGRESS OF AUGUST 24, 1912

Of the NATIONAL MUNICIPAL REVIEW, published monthly for April 1, 1922.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

Before me, a Notary Public, in and for the State and county aforesaid, personally appeared G. R. Howe, who, having been duly sworn according to law, deposes and says that she is the Business Manager of the NATIONAL MUNICIPAL REVIEW, and that the following is, to the best of her knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
Publisher: National Municipal League, 261 Broadway, New York, N. Y. Editor: H. W. Dodds, 261 Broadway, New York City. Managing Editor: R. S. Childs. Business Manager: G. R. Howe.
2. That the owners are:
National Municipal League, New York City, a voluntary association, unincorporated. The officers of the National Municipal League are: H. M. Waite, Pres.; Carl H. Pforzheimer, Treas.; H. W. Dodds, Secretary.
3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: None.
4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

G. R. HOWE.

Sworn to and subscribed before me this 11th day of April, 1922.

[SEAL]

HENRY J. WEHLE,
Notary Public, New York County.
(My commission expires March 30, 1923.)