

**CONSUMER PROTECTION PROPOSALS FOR RETAIL  
ELECTRIC COMPETITION:  
MODEL LEGISLATION AND REGULATIONS**

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and the  
National Consumer Law Center

Part II

October 1996

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under contract with  
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**Regulatory Assistance Project**  
Gardiner, Maine

October 1, 1996

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## INTRODUCTION

Increased competition is coming to the electric industry. The Federal Energy Regulatory Commission has ordered utilities to open the wholesale electric transmission system to competition. Three state legislatures (California, Rhode Island and New Hampshire) have already mandated retail competition in their states by 1998. More than half the states have initiated proceedings to examine whether retail competition is either an inevitable or desirable result. Several federal legislative proposals that mandate retail competition are slated for serious attention in 1997-98.

Political and economic forces are driving these developments. The foremost economic one is that the marginal cost of generating electricity is lower in many states than the average costs reflected in rates. This has occurred for three main reasons: decreasing costs of fossil fuels, especially natural gas; reduce capital costs and improved efficiency and reliability of gas-fired combustion turbine and combined cycle power plants; and, in much of the country, excess capacity. These developments, coupled with some high-cost nuclear plants and Qualifying Facility contracts embedded in current rates, have exacerbated the disparity between current rates and marginal cost-based rates available on the spot market. This in turn has created the political push by large industrial customers and others to open up the market and get direct access to cheaper power, now technically available due to the FERC's order opening up the transmission system to wholesale transactions. The call for increased competition in the electric industry has resonated as well with the push toward privatization in many other countries and the political desire to decrease our reliance on regulation in favor of more competition in many industries such as trucking, airlines and telephone service. With regard to the latter, Congress

enacted the Telecommunications Act of 1996 which calls for competition in the local provision of telephone service, opens up the heretofore lines of business restrictions for cable and long distance telephone companies, and substitutes a long history of state and federal price regulation with calls for market fairness and consumer protection. The push for retail competition has not been far behind.

The creation of a competitive retail electricity market with the accompanying deregulation of the price of the energy portion of the customer's total electric bill has potential advantages and disadvantages for consumers. Consumers will hopefully benefit from the ability to shop among competitive providers, take advantage of a new array of products and pricing options and see lower prices. Large customers in particular will be able to pick and choose between long-term and short-term pricing options and negotiate individual contracts to meet their needs. Consumers, either individually or through aggregators (one who bundles groups of customers to increase their bargaining power), will shop for electricity based on their own energy use profile and the marketing power of various retail suppliers. For this ideal situation to occur, a significant number of decisions must be made, not the least of which is over the highly charged debate about "stranded costs" — the difference between the embedded costs in rates today and the marginal cost of electricity in a competitive market. Indeed, the decisions about stranded costs has dominated the debate about electric restructuring at both the state and federal level. It is the "big kahuna" in the electric restructuring debate, and its resolution will determine whether consumers see any reduction in rates in the short term.

In addition, to the stranded cost issues and other matters relating to market structure, one group of frequently identified, adverse impacts due to retail competition include the loss of what

are often referred to as “public benefits” associated with the historical regulation of electric utilities: low-income assistance; energy efficiency and DSM programs; research and technology development; oversight of safety and reliability of the electric grid; and the inclusion of long-term costs, risks, diversity of supply and environmental costs in the evaluation of utility generation planning.

Legislators and other policy makers have been understandably focused on stranded costs and market structure issues. And national and regional environmental and energy activists have brought the long-term planning, renewables and environmental implications to the fore in every state. Less often discussed is the potential danger of losing the overall acceptance of restructuring if price deregulation is accompanied by increased fraud, misrepresentation, redlining and discrimination against vulnerable customers or those unsophisticated in shopping for electricity. Traditionally, state utility regulators have established minimum consumer protection standards for most aspects of the residential consumer’s interaction with their monopoly electric utility: application for service; credit terms; contract terms; protection of vulnerable customers (low income, elderly, those with medical emergencies); late fees; security deposits; disconnection and collection practices; dispute resolution procedures; and prohibited geographic price discrimination. These standards have established reasonable expectations by most consumers that their interactions with their electricity provider will be regulated to right the historical imbalance between a monopoly and individual customers who lack both bargaining power and alternative providers. While most consumers may have perceived (dimly to be sure because of the lack of substantial public attention or publicity) that change is in the wind and that the rates for at least part of their electric bill will no longer be regulated, most consumers do not

yet understand that the entire regulatory scheme with its detailed consumer protections is also undergoing scrutiny and will probably change as well.

It is unlikely legislators or regulators can deliver the benefits of competition (customer choice and lower prices) without wholesale changes in the regulatory approach and jurisdiction of the state public utility commission. While the electric restructuring legislation enacted in California, Rhode Island and New Hampshire have promised the continuation or potential expansion of low-income programs and a reference to the need for continued consumer protection regulations, there is a distinct lack of detail or direction to regulators on how to retain basic consumer protections or even whether and how regulators should establish licensing standards for retail energy suppliers, many of whom may not otherwise be subject to the commission's jurisdiction.

The purpose of this report is to explore the basis for a new relationship between consumers and their electric supplier and between retail suppliers and regulators. If the regulatory approach for public utilities has historically been dominated by the traditional model of total price and entry controls, the new regulatory model will emphasize minimum consumer protections and lower barriers to entry for new firms with little or no price regulation. Instead of the control of monopoly power, with its focus on allocative efficiency and the establishment of prices to avoid "waste", the focus of the new regulation will shift to a control of "unfair" competition to avoid externalities and compensate for inadequate information and unequal bargaining power for a commodity widely regarded as a necessity. The new consumer protection focus will require utility commissions to acquire new tools and make innovative use of older ones: setting criteria for licensing as a screening function to reinforce standards or



norms defined in regulations; educating customers to enhance the potential for the development of a competitive market based on informed choice; responding quickly to unfair and deceptive marketing and advertising practices; policing standards of conduct between holding companies and affiliates to assure the development of a competitive market structure; and umpiring disputes between competitors and between customers and their suppliers.

It is fair to ask whether there should be any special regulation of the retail sale of electricity other than the significant array of consumer protection laws that already exist for most competitive businesses. Unfair Trade Practices Acts at both the state and federal level, Fair Credit Reporting Act, Equal Credit Opportunity Act, Fair Debt Collection Practices Act, Truth in Lending Act and a myriad of state laws regulate marketers and creditors. In other words, should electricity be regulated more than food or other necessities of life provided through the competitive market? There are four key reasons legislators and regulators should adopt specific consumer protection rules as part of their move to retail competition.

First, the public is not ready for drastic changes. While consumers may be willing to endure market structure and bill changes (e.g., unbundling of charges) to achieve lower electric bills (as little as ten percent lower in some jurisdictions), most consumers neither understand that this deregulation could include the loss of consumer protections nor voice any complaints about the nature of the consumer protections associated with traditional regulation of their electric service. Therefore, reasonable expectations suggest that changes in consumer protection regulations be done narrowly and targeted to prevent unnecessary barriers associated with the development of a competitive market.

Second, electricity is a necessity. Not only is it required to power most of our modern

appliances, including electric heat and electric hot water (where installed), but it is required as well to operate any centralized heating system (motors and fans) and defined in every local building code as a requirement for decent housing. A household disconnected from the electric grid suffers the same consequences in either a competitive or regulated market. The fact that there are alternative providers of retail electricity does not obviate the need for oversight of the conditions under which a household can be deprived of electricity. For example, if competitive providers can rely on the a consumer's credit history with one supplier to deny credit (or create a sufficiently high hurdle in the form of a deposit so as to have the same result) and have the ability to order the distribution company to disconnect service on their behalf, it will do no good to point to the existence of competition to assure sufficient access to electric service. A mistake here will cost lives.

Third, electricity is not food. While no one could argue with the notion that food is also a necessity, food is available in many forms, from many suppliers, including self-provision from backyard gardens. In addition, the safety of the food sold in interstate commerce (and complemented by numerous state laws) is highly regulated by the U.S. Department of Agriculture inspection system and the federally-mandated labeling disclosures concerning nutrition content. Furthermore, there is an elaborate taxpayer and privately-funded network of food suppliers available to those in need. The Food Stamp program funded by the federal government is a multi-billion dollar annual effort. In 1993, 27 million Americans participated in the food stamp program in an average month and 15 percent of all mothers of childbearing age received food stamps to help purchase food for their 13.7 million children. In addition, numerous private and public agencies provide food to those in need. Electricity, on the other hand, is

provided through only one set of poles and wires via a centralized transmission and distribution system, the access to which can be opened to numerous sellers and generators. This suggests the need for continued regulation of at least the bottleneck facilities, i.e., the distribution system, as well as those aspects of the customer's interaction with competitive suppliers that might result in the customer's disconnection from those bottleneck facilities. The safety net associated with assuring adequate food for those in need cannot be created outside the current structure for electric regulation overnight, and, in any case, it is unlikely to be available in the short term due to budget constraints that prevent the initiation of new welfare programs at both the state and federal level.

Fourth, many specialized competitive businesses are regulated by state authorities because it has been determined that the special problems or issues associated with that industry are either highly technical or could cause serious harm to wide numbers of consumers without sufficient oversight. Examples include the banking, credit and insurance industries where an elaborate series of state and federal licensing requirements and regulations that govern their contracts with consumers. Many of these requirements are designed to erect modest entry barriers (registration, licensing), not because there is any economic benefit associated with limiting the number of entrants, but because it is the most convenient method to prevent fraud, share the risk in the event of business failure and assure compliance with substantive contract and disclosure regulations. The same will be true of the yet-to-emerge electric supply business. Most consumers will be unable to shop intelligently simply because of their lack of experience in shopping for electricity and because the implications of various pricing schemes and marketing pitches will be complicated and perhaps deliberately obscure. This will be particularly true

during the early years of the development of the competitive market. One need only remember the avalanche of fraudulent and unconscionably priced telephone service options that bloomed shortly after the deregulation of long distance telephone service (1-900 calls triggering disconnection of local service, alternative operator services, blocking access to providers at pay phones or hotel room phones, soaring complaints about telemarketing<sup>1</sup> to agree with the proposition that deregulation without some forethought might be adverse to the success of electric restructuring.

Having justified the need for continued and revised consumer protection regulation as an integral part of electric restructuring, the type of regulation suggested in this report is intended to provide a basic floor of minimum disclosure and contract regulation practices that should encourage, not stifle, competition in the customer's choice of an electric supplier. If customers can be assured that basic protections are in place, they can concentrate on the real hallmarks of competitive suppliers — price and service quality. If, however, customers fear fraudulent practices and fly-by-night suppliers, competition itself will be slowed.

It is not the purpose of this report to decide whether full retail competition is good or should be undertaken. Several states have already made that decision. Rather, the report describes those consumer protections necessary to allow retail competition to succeed. The proposed legislation and accompanying regulations assume a retail competition model where individual consumers can enter into contracts for the sale of electricity from multiple suppliers, but where the distribution and transmission functions remain monopolies that are regulated by

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<sup>1</sup>All of these schemes have led to both legislative and regulatory action at the state and federal level, action that was far too late to prevent millions of customers from annoyance to significant economic loss.

state and federal authorities. The report does not contain the necessary language to implement retail competition per se, but rather suggests approaches for implementation of key consumer protections, at least for the transitional period when the development of the market is in its infancy.

In addition to the more typical consumer protection agenda, this report also seeks to integrate traditional consumer protection issues with those particular issues raised by the need to retain and improve the state's public policy commitments to environmental benefits and least-cost planning. There are several issues that have both customer service and renewable energy/environmental implications for electric restructuring. These include the authority of the commission to order the distribution company and retail suppliers to disclose key usage and fuel source information to assist the consumer in shopping for the best deal for electricity; how to bill and collect for energy efficiency improvements; how to allow for the marketing, billing and collection for "green power"; and how to regulate the labeling and marketing of "green power".

The report is organized as follows: There are four Titles that correspond to the major legislative proposals contained in the report. The key policy issues and recommendations for all four Titles are presented separately, followed by the actual model legislative language and agency regulations.

Title I describes the changes in jurisdiction and new mandates that will be required of the revised state public utilities commissions. This section also contains the definitions of key terms used throughout the report.

Title II contains the generic consumer protections that should be applicable to the new retail market for the sale of electricity.

Title III proposes the specialized obligations incumbent on the monopoly distribution company, its form of regulation and role in Universal Service and consumer protections.

Title IV suggests the type of jurisdiction and regulation that should be imposed on retail electric suppliers in a competition electric market.

Appendix A is a report by Barbara Alexander, Consumer Affairs Consultant, prepared for William Spratley & Associates, that outlines the consumer protection and Universal Service policies at risk in electric restructuring and compares those protections with existing federal and state consumer regulation of competitive businesses.

Appendix B is an analysis and comparison by Nancy Brockway, Utility Analyst and Attorney with the National Consumer Law Center (with assistance from MassPIRG), of key jurisdictional provisions of current law applicable to public utility regulation in New England and selected other states. This report forms the background for the suggested legislation in Title I.

Appendix C is a report and analysis by Deborah Schachter, Esq., formerly with N.H. Legal Assistance, on the consumer outreach and education obligations that should be undertaken by public utilities commission to prepare consumers for the new world of electric competition. This report was also relied upon for the proposals in Title I.

## **TITLE I: DEFINITIONS, COMMISSION JURISDICTION AND OBLIGATIONS FOR CONSUMER EDUCATION AND OUTREACH**

The purpose of this Title is to make sure the commission has sufficient jurisdiction over competitive retail electric suppliers, aggregators, marketers and brokers so as to implement the proposals of this report. In addition, this Title contains the statutory directives necessary to implement the suggestions of Appendix C, Deborah Schachter's article on Public Outreach and Education in Electric Utility Restructuring.

**Section 1. Definitions.** Definitions are crucial to make sure the commission's jurisdiction reaches out to include entities that in some states would not be classified as "public utilities", at least not without a contorted use of current statutes that were drafted for vertically-integrated public utilities. The proposed definitions are drawn from the recently-enacted California legislation, A.B. No. 1890 (August 31, 1996) and the Rhode Island legislation, An Act Relating to the Utility Restructuring Act of 1996, Chapter 316 (August 7, 1996). Throughout this model legislation, the term "retail electric supplier" is used to refer to those entities that will sell or offer to sell electricity to retail consumers. This term will include the retail sales affiliates of traditional public utilities; newly formed entities who will sell electricity from supplier-owned generation facilities located both in or out-of-state; and aggregators, marketers and brokers who will sell electricity which they do not own or operate, but for which they will have the requisite right, title or interest to contract with end-use customers. This term does not include entities who offer only to sell services, such as demand-side management, energy efficiency or metering equipment and other enhancements to the sale of electricity. The intent is to incorporate those entities that will own or have the authority to sell electrons that will be delivered via the

transmission and distribution grid, whether or not these entities also engage in the sale of energy efficiency services.

The term “distribution company” refers to the regulated public utility that will provide access to the electric grid and own or operate the poles and wires that transmit electricity from the transmission system, regulated by FERC, to end-use customers.

**Section 2. Jurisdiction.** The purpose of this section is to make clear that the commission will have jurisdiction over nontraditional providers of electricity (the retail electric suppliers) for the purposes of licensing and regulating unfair trade and marketing practices, customer disputes and billing and collection practices. The alternative to jurisdiction by the commission (or another specialized state agency) is to rely on private enforcement and the jurisdiction of the state Attorney General to regulate retail electric suppliers who are not traditional public utilities under the traditional consumer protection statutes. The latter option would rely almost entirely on the state and federal Unfair Trade Practice Act or its equivalent. Regulation of contract disclosures, marketing and advertising practices, debt collection, credit evaluation and substantive contract terms will require federal consumer protection laws implemented by the Federal Trade Commission, such as the Fair Debt Collection Practices Act, Fair Credit Reporting Act and Equal Credit Opportunity Act <sup>2</sup>. This option is not particularly efficient or desirable.

The court system is a channel through which private parties may press grievances they have against other parties and seek redress. Breach of contract is one area where parties commonly seek resolution of disputes on a case-by-case basis. Private enforcement through the

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<sup>2</sup>See Appendix A for a detailed discussion of these statutes.



courts can be costly, however, so in practice it is not a feasible option for smaller claimants.

At the federal level, authorities that will likely play an enforcement role in the restructured energy services market are the Department of Justice and the Federal Trade Commission. The Attorney General will play a similar role at the state level. These agencies can impose fines as well as damages on firms that violate their market rules. However, these agencies have a workload far in excess of their ability to react to anything other than the most widespread and outrageous conduct. Furthermore, it is far more efficient to place the burden for most enforcement on the state regulatory agency that has the expertise and resources to monitor the electric supply system and the interaction between the new suppliers and core residential and small commercial customers. The state utilities commission has the background and historical mission to regulate the continuing monopoly provider of distribution and transmission services and will need to supervise the interaction of distribution companies and retail suppliers in any case to assure the safety and reliability of the electric grid. While regional authorities and power pools will have an important role to play in these areas, it is unlikely that the state would completely cede oversight responsibility for safety and reliability to a regional organization.

Although the market oversight and consumer protection focus will require the development of new skills ( in place of traditional rate of return analysis), establishing two regulatory agencies with jurisdiction over separate aspects of the new electric industry would be inefficient and probably opposed by customers. Imagine telling a customer who calls the commission that she can be assisted only with the portion of her bill that relates to distribution services. Questions about the energy portion of her bill must be referred to a different agency!

This could be complicated even further by the fact that the commission will no doubt

retain jurisdiction over retail sales affiliates of traditional public utilities (who will become the future distribution companies). This jurisdiction will be important to retain to monitor interactions and prevent self-dealing that could adversely impact the emerging competitive market. Unless the commission is given clear jurisdiction, however limited, over all retail electric suppliers, the commission could end up with jurisdiction over consumer transactions with some retail suppliers but not others.

Whether the state public utility statutes already contain sufficient jurisdictional authority for the commission to regulate retail electric suppliers, aggregators and marketers will require a detailed analysis in each state. A preliminary analysis of the New England state public utility statutes (see Appendix B of this report) indicates that sufficient questions may exist in some states. In addition, legislative guidance will be necessary to establish the policies applicable to the commission's form and manner of regulation of retail suppliers and guide how regulations for the future distribution company should differ from price and entry regulation for today's utilities. Since most states have assumed that some legislative changes will be required in any case to implement a full retail competition market, there will be a logical opportunity to clarify the commission's role to license, monitor, regulate and enforce minimum market standards of conduct on all the major participants. Indeed, state electric restructuring statutes enacted to date in California<sup>3</sup>, Rhode Island<sup>4</sup> and New Hampshire<sup>5</sup> either assume or make clear the commission's

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<sup>3</sup>A.B. No. 1890, Section 1(d), Section 394.

<sup>4</sup>96-H 8124B, Chapter 316, Section 1, adding a new §3901-2.7.1 to Title 39 of the General Laws; subsection c specifically requires registration with the division of public utilities.

<sup>5</sup>HB 1392, Chapter 129, Section 374-F:2, "Electricity suppliers means suppliers of electricity generation services and includes actual electricity generators and brokers, aggregators, and pools that arrange for the

jurisdiction over the new market entrants for the purposes of registration or licensing and, at a minimum, consumer complaints. Rhode Island's legislation establishes a Retail Electric Licensing Commission which is required to submit to the Legislature by January 1, 1997, among other items, "...proposals for consumer protections, access to books and records, and other requirements the retail licensing commission determines to be reasonable, necessary and in the public interest."

The model legislation does not address the many issues concerning market structure, creation of power pools or independent transmission authorities, stranded costs and timetable for initiating full retail competition. Nor does it make recommendations concerning what additional regulation over aggregators may be necessary beyond those applicable to retail electric suppliers. Nor does this report address the complications that will surely arise in states where there are very different regulatory schemes applicable to publicly-owned (municipal or rural cooperatives) electric utilities. Whether the electric restructuring directives will apply to publicly-owned electric utilities in the initial stages is unclear, and the degree of commission jurisdiction in each state is quite different. However, consumer advocates and policy makers involved in this debate will want to consider that it would be unfair to exempt publicly-owned electric entities from the "fair play" requirements imposed on other retail electric suppliers, whether traditionally regulated or not. If a publicly-owned electric department or cooperative seeks to enter the competitive market to sell electricity to the general public, it seems reasonable to include them in the overarching consumer protection approach outlined here.

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supply of electricity generation to meet retail customer demand, which may be municipal or county entities."

**Section 3. Outreach and Education.** The proposed minimal requirements for a commission-led outreach and education program are derived from Deborah Schachter's paper attached as Appendix C to this report. Her key recommendations reflect her analysis of the New Hampshire pilot program for retail electric competition initiated in May, 1996 (for three percent of the state's residential customers) and experiences in California's extensive outreach effort to educate customers about their privacy rights associated with Caller ID and other similar new telecommunications service options. The move to electric competition cannot be accompanied merely by bill inserts from the distribution company to all its customers. Preparing customers to shop for electricity and respond rationally to the marketing messages they will receive will require a significant and professional outreach and educational effort. Customers will need frequent messages from a variety of sources to understand the nature of the changes and their new rights and responsibilities. Commissions wishing to avoid large volumes of consumer complaints and subsequent legislative responses will lead the way. Sufficient funding and resources requirements should be anticipated to prepare for dramatic changes that will eventually affect every household. The commission must have the resources to respond promptly to the increases in phone calls and letters from customers who will want to know what is happening and why their electric bill has changed. A dramatic change in the relationship between every customer and their electric utility cannot be accomplished with modest efforts and good intentions.

## TITLE II: MINIMUM CONSUMER PROTECTION STANDARDS

**Section 1. Findings and Statement of Purpose.** The purpose of Title II is to set forth the minimum requirements for consumer protections that should be applicable to the purchase of electricity by residential and small commercial customers in a competitive retail electric market. These requirements are derived in part from the traditional consumer protection regulations existing in some form at every state commission and in part from the principles contained in consumer protection legislation applicable to competitive businesses. Appendix A, “The Consumer Protection Agenda in the Electric Restructuring Debate” discusses in more detail these generic consumer protection statutes and their relationship to traditional utility regulation.

**Section 2. Minimum Consumer Protection Standards.** These standards are applicable to transactions by both distribution companies and retail electric suppliers with residential and small commercial customers. It is assumed that transactions with large customers do not need standardized protections and that large customers are familiar with existing contract and commercial law practices. Most existing consumer protection regulations do not apply to nonresidential customers. The standard to trigger the commission’s ability to adopt rules that go beyond the specific provisions in the model legislation is intended to give the commission sufficient discretion to respond to future developments, but, at the same time, to limit granting broad rulemaking authority to an administrative agency.

**A. Privacy.** Consumers today have a reasonable expectation that their utility billing and payment records are confidential. There is no federal law, however, that compels this, and in many states, there is no statute that specifically protects such records. California is an exception. PUC Code §§585 and 588 establish narrow exceptions for commission and law enforcement

access to customer-specific billing and payment records by requiring that any exception provide for “...the protection of the reasonable expectation of customers of public utilities in the privacy of customer-specific records maintained by that utility.” Even in providing for access to such information by law enforcement officials, a customer’s usage is protected from access without a court order or subpoena. Whether stated in state law or not, most consumers believe that their individual records are not subject to disclosure without their permission.

In addition, utilities protect this information from disclosure and do not routinely sell or make available their customer-oriented research and survey results. Even at commission proceedings, utilities often seek to protect their customer profile information, claiming it is proprietary and subject to protection under “trade secret” exceptions to the rules of evidence. In a retail competition scenario, the distribution company will have valuable information concerning its customers that retail suppliers will want to obtain. This becomes problematic in a competitive structure because regulated distribution companies will naturally want to give access and use preferences to their unregulated retail sale affiliates. Indeed, since the distribution company and the marketing section of most current public utilities are one organization, this information is being routinely exchanged now and, depending on who gets the billing and accounting computer, will continue in the future unless there is a specific prohibition.

The statute must strike a balance between the need for fair dealings in the use and access to this information to enable the development of a competitive market and the reasonable expectations of customers that their personal billing and payment information will remain private. After all, customers can potentially benefit from the release of certain customer-specific information by the distribution company to competitive suppliers. The proposal strikes this

balance by allowing the release of generic information to enable retail suppliers to seek new customers and market their products but generally prohibits the release of customer-specific information without the permission of the customer. This will require the distribution company to obtain individual customer permission to release information to its retail sale affiliate or any other supplier. Furthermore, distribution companies will be required to make the information, if it chooses to make any information available, at nondiscriminatory prices to prevent sweetheart deals or set prices below market value for its affiliates.

It is possible that a supplier would seek even generic information from a distribution company for purposes prohibited under the Equal Credit Opportunity Act. For example, a supplier could seek information about all customers with certain zip codes to target its marketing to upscale neighborhoods or avoid poorer neighborhoods. If the supplier's marketing scheme has the effect of excluding racial minorities and potential customers on public assistance or makes credit decisions based on a criteria protected by the ECOA , the "effects test"<sup>6</sup> is triggered. These regulations would require a distribution company to refuse to supply such information. The commission should have jurisdiction to hear and resolve such disputes.

The one category of customer-specific information that would jump start the creation of a competitive market and as a result be beneficial to customers if it was made available to all retail electric suppliers is name and address. Therefore, this proposal allows the distribution company to sell its customer list to any retail supplier upon request. More controversial is the inclusion of the customer's telephone number and usage. A utility may very well include a

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<sup>6</sup>For a more complete discussion of the impact of the ECOA on electricity sales, see Appendix A, pp 6-7.

customer's unlisted number in its records for debt collection purposes. Therefore, this proposal does not allow a distribution company to provide telephone numbers because the utility records do not distinguish between listed and unlisted numbers. A number of databases are available that supply household telephone numbers.

More controversial is the notion that distribution companies should make a customer's annual usage profile available to suppliers. This goes to the heart of the notion of expectations about privacy. Even the previously-cited California statute allows the local District Attorney to gain access to utility records, but prohibits access to the usage information without a court order. On the other hand, the usage profile will be key to a supplier's marketing and pricing decisions. Some suppliers will target only high-use customers for whom the installation of hourly-pricing meters may be cost effective. Others will direct mass appeals to low-use customers, perhaps at higher prices. This proposal does not recommend that a customer's usage profile be available without permission of the customer, although such an approach could be implemented after a determination of public reaction and expression of customer expectations following the implementation of retail competition. This is similar to the privacy decisions of the recently-enacted Telecommunications Act of 1996. Section 222(c) prohibits the disclosure or use of Customer Proprietary Network Information (CPNI) — information relating to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer — by any telephone company except to conduct billing for the service or to provide services used by or provided in connection to the service. A telephone company must obtain a customer's affirmative written consent to disclose CPNI.<sup>7</sup> California's

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<sup>7</sup>Discussed and confirmed in FCC Report and Order, CC Docket No. 96-115, August 7, 1996.



law is also specific. PUC Code §2891 prohibits a telephone company from disclosing a residential customer's personal calling patterns, credit or other personal financial information, the services which the consumer purchases or demographic information without written consent.

The model regulations adopt a specific exemption to allow disclosure of usage information by a distribution company or retail supplier to an energy management company participating in a commission-approved and ratepayer-funded demand-side management program. This transfer of information is akin to the sharing of information by a principal with his agent and similar to the exemption in the Telecommunications Act that allows the disclosure to provide the service subscribed to by the customer. There will be, hopefully, many firms that will offer energy management services who will have access to the customer-specific information because they are delivering a service via the supplier and included in the supplier's bill. These entities will be disclosed in the customer's contract with the supplier and be itemized separately on the customer's bill (see Title II, section 3). Other energy management services delivered independently of the distribution company or suppliers will not have access to customer-specific information for marketing purposes unless the customer has signed written permission for such access. Such entities will have access to generic load profile information from either the distribution company or supplier.

The intent of this provision on privacy is not to change the

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ability of the distribution utility or retail supplier to communicate customer-specific information for lawful purposes described in the Fair Debt Collection Practices Act or Fair Credit Reporting Act.

**B. Metering.** The purpose of this section is to ensure the continuation of the distribution company's obligation to install the typical, mechanical meter as a condition of providing service to new customers and to enable customers to participate in the competitive retail market without investing in expensive real-time meters. Real-time meters record hourly usage to take advantage of real time pricing, i.e., prices that change hourly (or less) to reflect the price of the pool or an electricity spot market. These price variations can have a dramatic impact on some customer bills because electricity is much cheaper at certain times of the day and year. For some customers, this lower price can more than offset the higher prices at peak demand times. Such meters are expensive (\$100 plus installation fees according to one study<sup>8</sup>) and would pose a particular hardship to low-income and modest-income customers. This would effectively deny them access to the competitive market. California's Public Utilities Commission decided residential and small commercial customers would not be required to obtain such meters, but larger

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<sup>8</sup>Tellus Institute (Stutz, et.al.) and Wisconsin Energy Conservation Corp. (Edgar and DeForrest), Can We Get There from Here?, April, 1996. The price of the meter alone does not include the cost of communication equipment or energy management services, estimated at over \$500, to take full advantage of real-time pricing and load shifting among the customer's appliances.

customers must do so at their expense over a three-year period<sup>9</sup>. This does not solve the problem of inequitable access to the advantages of real-time pricing.

Norway has adopted Guidelines for Metering and Settlements of Electricity Trade (November 5, 1994) that seem to solve this problem without requiring a complicated process. Large customers (400,000 kilowatt-hours per year) must obtain real-time meters, and they are billed according to their actual hourly usage. Other customers do not need a special meter. Their bills are based on the adjusted load profile of the network (distribution area) in question and calculated based on the difference between the network owner's system load profile (adjusted for network losses) and the usage by end users with real-time meters. These load profiles are calculated quarterly.

Customers who would save more than the cost of the real-time pricing meter can obtain such meters and, if offered by the distribution company or supplier, finance them via their monthly bill. Customers who would not realize any significant savings<sup>10</sup> would not have to buy expensive meters, and their bill would reflect the usage profile typical for all customers without hourly meters. The model regulations adopt this approach.

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<sup>9</sup>California Public Utilities Commission, R.94-04-031, I.94-04-032 (Majority Opinion), December, 1995, at 76-78.

<sup>10</sup>The Tellus Report concludes that the vast majority of residential customers would not see bill savings that would justify the installation of real-time meters because their usage is so low.

One potential complication is the effect on the customer's bill if the customer also installs or makes use of energy efficiency and demand-side management programs. The effect of these programs would be to alter the customer's load profile vis a vis other customers. Unless the customer's total usage drops, the effect of the energy efficiency programs (such as load shifting) would not be evident on the monthly bill. Customers will have to calculate the potential bill savings associated with usage reduction alone versus the bill savings associated with energy efficiency measures that can be more accurately recorded with the use of a real-time meters to determine whether the investment in a real-time meter is cost effective. It is both hoped and expected that purveyors of demand-side management programs, with significant bill impacts due to load shifting will bundle their products with hourly meters. Another possible response to this problem is the use of impact evaluations of energy efficiency programs to alter the more standardized load profiles. This would allow a customer who has installed energy efficiency measures of a certain type to be billed pursuant to a load profile specific to those measures.

**C. Bills and billing practices.** A key to the development of a competitive electricity market will be informed consumers. Consumers will need information on price and generation source, as well as a variety of new products and services, to make informed choices. This information should not be subject to distortion, manipulation and deception via the customer's monthly

bill. In today's regulated electric market, the disclosures required on the customer's monthly or bimonthly electric bill are typically regulated by the commission. The proposed minimum disclosures in this report are based on typical state billing and credit regulations. They stipulate the information consumers will need to recreate how their bill was calculated, including information on the meter reading period, whether the bill was estimated and how the customer can contact the issuer of the bill for further information. Unless the commission is authorized to impose minimum billing disclosures on all suppliers as well as distribution companies (and their retail sales affiliates), customers will be subject to widely different information (which in some cases will lack key information). Furthermore, unless there are no billing disclosure requirements for any entity – an approach not recommended here – it will be important to impose uniform disclosure requirements to prevent unfair competition. The development of a competitive market for electricity also raises new disclosure issues that have not been the subject of prior regulation. Whether a customer receives a bill for all aspects of unbundled electric service from the distribution company (under contract with the customer's supplier) or two separate bills (one by the distribution company for transmission and distribution services and another by the retail supplier), this report recommends the following minimum disclosures:

(1) The price of the electricity and its generation source should be disclosed in a simple and uniform manner to make

comparison shopping possible. The policy justification for this regulation is similar to that for the Truth in Lending Act<sup>11</sup> which governs the disclosure of credit terms and requires a uniform method of disclosing the interest rate. If consumers are to benefit from a competitive market, there must be a level playing field so that some marketers or suppliers cannot gain an unfair advantage based on misrepresentation or failure to disclose key facts. If competition is beneficial to society, it is because informed and rational consumers will make choices that are more efficient. It is in the public interest to assure that consumer choices are rational and that can only occur with full and fair disclosure rules. Because the price of electricity will vary widely depending on the time of day or time of year it is sold and the variety of pricing options that will presumably be available, consumers will need a fixed disclosure method to compare offers. This proposal (and the contract provisions in Title IV) recommends that all prices be stated on the monthly bill in cents per kilowatt-hour. This will allow comparative shopping based on a disclosure method that is familiar to customers today. For suppliers offering variable rates, those variable rates should be disclosed as well. Customers should be encouraged to estimate their projected monthly bill based on their usage profile obtained from the current electric bill.

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<sup>11</sup>15 U.S.C. §1601 et seq.

(2)The proposal to require suppliers to disclose the fuel type of their generation source marketed to customers is derived from recent survey data that indicates that customers want to consider environmental and efficiency impact when shopping for electricity. Suppliers in New Hampshire often emphasized this aspect as part of their marketing efforts. It may be technically impossible to guarantee that the electrons in the transmission and distribution grid are from the specific fuel source sold by the supplier. Nonetheless, this disclosure is important for customers to decide what fuel source they wish to support. Eventually, if customers vote with their choices for more renewable energy, more of that type of supplier will be entering the market and showing up in the settlements with the network operator. This disclosure will require the commission to authorize certain categories of fuel sources, including the use of the term "renewable." The report recommends defining renewables the way they are defined in the Public Utility Regulatory Policy Act and by FERC to mean a Qualifying Facility, taking into consideration limitations on ownership and size.<sup>12</sup> This definition is widely used at commissions to refer to renewable energy sources, i.e., a facility which relies upon solar, wind, waste, biomass, similar renewable resources or geothermal sources as its primary energy source. This disclosure

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<sup>12</sup>16 U.S.C. §796(17).

should be accurate to within some percentage (ten percent is recommend here). If the supplier relies on power pool supplies, a breakdown in fuel source for the pool should be used. This fuel source disclosure may vary seasonally or even more frequently. Therefore, the disclosure should require the supplier to provide the average fuel mix for the prior six month period. The intent is not to require a degree of accuracy that would be administratively difficult to assure but to provide customers with a general indication of fuel mix.

(3) An additional requirement that responds to this same policy imperative is the proposal to require monthly disclosures of a customer's prior usage history for the last 12 months on the bill. If a customers are to shop intelligently for power by comparing prices and rate designs, they must know not only what electricity costs, but their usage history as well. Most utilities today provide a 12-month usage history on the monthly bill, and this proposal continues that approach. A distribution company that continues to read meters and issue combined bills will be able to comply with this requirement most easily. A supplier who chooses to bill independently will need to obtain the meter reading data from the distribution company and design a bill format to provide this information.

(4) Another controversial billing issue that has arisen in some states is whether separate charges should be identified on the distribution portion of the bill to show some or all of the access charges associated with public benefits, such as energy



efficiency and low income programs. This proposal prohibits the distribution company from including such line items for two main reasons. First, a line item draws unfair attention to only certain costs and makes these programs targets for opposition. There is no policy reason to distinguish between a legislator or regulator's decision on executive salaries, travel and office furniture for utility management, regulatory assets such as cost overruns on nuclear generation plants, misjudged prices in a fuel procurement contract or low income programs. Second, the net costs to serve low-income customers are embedded in many utility accounts and are not reflected in a direct payment assistance program or a targeted DSM program. These programs have savings as well as costs. Some of the benefits associated with preserving utility service during the winter period (or during sweltering heat in many large urban areas) are not easily calculated. Calculations do not reflect the prevention of death and injury to the elderly, children and their parents who rely on unsafe methods of providing heat and lights when the electricity has been disconnected for nonpayment.

**D. Basic service.** Every state that has considered the implications of a move to retail competition in the sale of electricity has determined that a Basic Service option (also referred to as a "Standard Offer") must be provided to customers who do not choose an alternative supplier, are refused service by a retail supplier, are disconnected by a retail supplier and/or where the supplier fails to provide service (that is, one that

has been "disconnected" by the distribution company or network operator). The largest group of customers on this list, at least initially, are those customers who are ignorant or uninterested in choosing an alternative supplier. Customers who have been refused service or whose service by a retail supplier has been disconnected for nonpayment are those who may be viewed as "at risk" or "payment-troubled". It is important, however, not to characterize all these at-risk customers as being low-income or to assume that all low-income customers are at risk. All state commissions and legislatures to date have agreed that those customers who simply fail to select an alternative supplier must be provided electricity without interruption, at least for a lengthy transition period, and that at risk customers should be provided with a mandated "last chance" or "safety-net" supply option.

The purpose of the Basic Service for customers who have options, but do not exercise them, is different than the purpose of safety net service for those who are denied service. With regard to the first group, it will be important to provide a stable electric service without significant price fluctuations and, at the same time, provide sufficient education about options and benefits of competitive electric service, so as to stimulate customer choice and interest. If there is too little change, these customers will not see the point of choosing. If there is too much change, insecurity and lack of understanding will cause a backlash against retail competition. As in all other aspects of

restructuring, the market price and number of competitors will have a great deal to do with customer reaction to and interest in any new system.

The purpose of ensuring a safety net service, however, is related to the Universal Service policy goals and the need to assure access to the electricity system for all customers. Whether technically low-income or not, these customers have a basic need for continuous electric service, and society has an interest in preventing unnecessary risks to household health and safety might significant interruptions in the supply of electricity could cause. Nothing would do more to cause an uproar and adverse reaction to competition than either a significant increase in disconnections of customers who encounter difficulties dealing with competitive suppliers or the inability of large numbers of customers to obtain service from competitive providers due to high credit costs and/or demographic hurdles. Presumably these customers are in transition and having shopped before, will do so again if provided with affordable options. However, this service will always be needed and should not be confused with the transitional need for a Basic Service for non-choosing customers. The model statute does not distinguish between the various purposes for Basic Service.

The most controversial aspect of the Basic Service offer is who is going to provide it. If customers can, by doing nothing, remain customers of what seems to them their current utility, then the distribution utility's retail sales affiliate has gained

a tremendous competitive advantage to the significant detriment of other competitors.<sup>13</sup> Competitors will have an uphill battle to penetrate this almost guaranteed market share. This may, in turn, discourage competitors from trying, especially in a relatively small markets. In Massachusetts and other jurisdictions, the incumbent utility has argued strenuously for the right to provide electricity to at least the first group of customers via its retail sales affiliate. Potential competitors have just as strenuously objected, pointing out that this approach would "give" a significant share of the emerging market to the incumbent and would prevent, or at least delay, the development of a competitive market.

There are at least three options to provide Basic Service:

(1) Anoint the distribution company as the provider of Basic Service and mandate the use of the spot market price, i.e., the price any customer would pay for access to short-term supplies of electricity. This option has some appeal but would probably lead to a more volatile pricing scheme than most customers would accept and would unnecessarily slow the development of a competitive market because no customer would actually see an alternative service provider.

(2) Mandate that customers choose via a ballot system. Then

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<sup>13</sup>Customers cannot, of course, avoid any change. The distribution utility will presumably be prohibited from selling electricity in the retail market except through a separate retail sales affiliate or, if divestiture is required, not at all. So even under the most favorable approach to the Basic Service offer for incumbent utilities, the customer will see an unbundled bill and the identity of a separate retail supplier with the electricity portion of the bill.

randomly spread those who do not select a specific supplier to one of several suppliers who have registered and indicated a willingness to accept such customers. The commission could have the authority to mandate certain basic minimum terms which suppliers would have to meet to provide Basic Service. This has the advantage of forcing the development of a competitive market, but the disadvantage that customers may simply not be ready to accept the forced necessity of the change in their electricity supplier. In fact, this approach has been used in the long distance telephone market, but only after the local telephone company had installed the advanced switching necessary to support direct dialing of competitive providers. This approach was not used, for example, at the onset of competition, and AT&T reaped enormous advantage as a result.

(3) Mandate that the distribution company arrange, by bid, for the provision of Basic Service from one or more retail suppliers. The selected bidder (or perhaps two bidders offering different rate designs) would obtain the right to serve Basic Service customers for a set period of time. This would require the distribution company to assume the responsibility for arranging for the service, but customers would see a change in their electricity supplier. The distribution company will act as an agent for the customer and pass through the actual costs of electricity charged by the winning bidder. Obviously, the distribution company should act in a fiduciary capacity on behalf of its customers in conducting and awarding the bid so that its

customers get the best deal possible given the conditions of the offer stated in the bid. Under this approach, the commission would oversee the bid process and mandate the key terms for Basic Service: rate design, billing options, term of service, etc. This option has the advantage of providing a regulated service option with the least amount of change to customers but would build upon the competitive aspects of the new electricity market. Customers would see a change and be stimulated to seek out alternatives when the Basic Service pricing options did not respond to their needs. In addition, this option does not provide any unfair advantage to the incumbent utility or its retail sales affiliate. One potential disadvantage to this approach is the lack of control over the priced charged for Basic Service. Some states (reflected in the discussion below of the recently-enacted legislation in Rhode Island) have sought to link the provision of Basic Service by the distribution utility with the entry level prices charged to customers at the onset of retail competition. This would reflect the reduced prices associated with the treatment of stranded costs.

The model statute recommends the third option (the provision of Basic Service via a bid process conducted by the distribution company) where the retail sales affiliate of incumbent utilities can bid for the right to supply Basic Service. The statute also allows for the implementation of the "ballot and spread" approach when the commission finds that the market is sufficiently robust and the notion of competitive suppliers accepted by customers.

Other issues resolved by this proposal include whether nonresidential customers can gain access to Basic Service, whether customers should be charged a fee to either terminate or obtain Basic Service, and who bears the risk of bad debt and losses associated with the provision of the Basic Offer.

On the latter point, the proposal requires that one of the conditions of the bid is that the distribution company provides billing and collection services as part of the provision of Basic Service. This service should be paid for by the supplier either in the form of a separate fee (with perhaps incentives built in to stimulate the distribution utility to collect overdue accounts efficiently) or reflected in the lower energy price charged to all Basic Service customers. Any bad debt expense that exceeds the negotiated amount (an amount that should reflect the competitive nature of the business) should then be carried on the books of the distribution company, subject to regulation by the commission and inclusion in the distribution company's cost of doing business, i.e., the distribution company's access charge imposed on all customers. The commission should have the discretion to treat this expense as subject to performance standards in the rate regulation plan imposed on the distribution company (discussed further in Title III). The commission will also regulate the conditions under which customers can be disconnected from Basic Service and the interaction of Basic Service with the delivery of Universal Service programs.

Under this proposal, after entering the competitive market,

customers can affirmatively opt for or come back to Basic Service as an alternative to other retail suppliers. However, to prevent gaming and the use of Basic Service as merely a hedge against a sudden spike or normal seasonal variation in prices in the retail market, customers who select Basic Service more than once in any 12-month period can be charged a flat fee. The commission should establish this fee based on the administrative costs associated with establishing a new account plus an additional charge to send a price signal that diminishes the economic incentive to use Basic Service to "play" the market. This additional fee should not be applicable to those customers who are denied credit or who are disconnected by any retail supplier, and the commission is authorized to exempt low-income customers from any fee.

The approach is different than that adopted in California or Rhode Island. The California restructuring law does not mandate a separate Basic Service offer and states that customers who do not choose an alternative provider will remain customers of their existing public utility "or its successor in interest", presumably the retail sales affiliate of the incumbent.<sup>14</sup> This legislation affirms the California PUC's December, 1995, decision to rely upon the distribution company to provide as well as to deliver electricity to customers who do not want to change their status quo. The Rhode Island legislation<sup>15</sup> mandates the use of

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<sup>14</sup>A.B. No. 1890, §366(a).

<sup>15</sup>Chapter 316, §39-1-27.2(d) and (f).



the incumbent utility's wholesale power supplier to provide a Standard Offer to customers who have not elected an alternative supplier. The price for this service must not exceed the bundled price for electricity in effect for the year prior to the onset of competition. This service is only available once. The customer who then enters the competitive market cannot return to the Standard Offer. In addition, the distribution company must arrange, by bid, for a last resort power supply for customers who are not eligible to receive service from the Standard Offer or cannot obtain or retain service from alternative suppliers. The winning bid must require the lowest fixed contribution from the distribution company for this service. Excess costs associated with this service must be included in the distribution rates charged to all customers. This separate last resort service is available at any time.

Only residential and small commercial customers should have access to Basic Service. Other commercial and industrial customers should be able to negotiate their own power supply needs. Their loads and electricity needs are likely to be different enough so as to make procurement of electricity difficult and potentially expensive if required to be included in the bid price for Basic Service.

Some commissions have suggested that the price for Basic Service should be regulated and established to be less than the

rates in effect immediately prior to retail competition.<sup>16</sup> There is political appeal to such an approach. Certainly, the entire purpose of electric restructuring is to make way for lower prices. However, the biggest obstacle to lower prices is the resolution of the stranded costs issue. Any mandated reduction in stranded costs in current rates will have the result of lowering rates for all customers, even if some amount of stranded costs are paid for through a nonbypassable access charge (or "competitive transition charge" in California). If Basic Service customers pay higher prices as a result of a bid solicited by the distribution company, it is likely that all customers are seeing the same phenomenon. Therefore, this proposal does not recommend any commission price regulation of Basic Service or benchmark price comparison.

**E. Universal Service.** How to address the impacts of a more competitive electricity market on vulnerable customers has been one of the thorniest issues in the electric restructuring debate. In every state there are programs embedded in utility rates, either directly or indirectly, designed to assist low-income and elderly customers maintain affordable electric service. These include winter disconnection moratoria, flexible payment arrangements, bad debt and customer service expenses, bill payment counseling and assistance programs, rate discounts,

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<sup>16</sup>See, e.g., the Rhode Island legislation above, and the Maine PUC Draft Plan for Electric Restructuring, Docket No. 95-462, July 28, 1996.

percentage of income payment plans, arrears forgiveness, targeted energy efficiency programs and weatherization. The direct costs associated with targeted discounts and energy management services are relatively easy to identify (although the benefits to ratepayers are often not easy to identify), but the indirect programs are not. In a strictly competitive market, these programs will disappear. There will be no obvious obligation to comply with public service objectives by retail suppliers. Distribution companies, although regulated, will have a much narrower role. Policy makers have legitimately asked whether electricity should be treated like food or gasoline – industries in which the government's role to assist those without sufficient resources is handled through the tax system. Most commissions – California, Massachusetts, Vermont, New Hampshire, Rhode Island , Pennsylvania, Wisconsin and New York – have announced their support for the continuation of programs and policies that address low-income customers and others with special needs. The legislation adopted in California, Rhode Island and New Hampshire also all mandate the continuation of current programs, their expansion and potentially the development of new programs based on a declaration that the public benefits of the prior utility system must be retained. Only a few jurisdictions, including Michigan, have set a course that does not include funding direct protections for low-income customers as part of the restructured electric industry.

There is no reason why the needs of low-income customers and

others vulnerable to the loss of electricity, even temporarily, cannot theoretically be handled via the tax system or through a fee or tax assessed on all energy suppliers. The real question is whether an alternative system will be in place prior to the onset of retail competition for gas and electricity. There is an extensive series of financial assistance programs available for basic needs (Food Stamps, Medicare and Medicaid, AFDC, Low Income Housing and Homeless Shelters, Elderly Meals on Wheels, and LIHEAP for home heating expenses) that have developed in the last 50 years as part of the social safety net at both the federal, state and local level. During this same time period utility regulation has provided a cushion, modest to be sure in some states, for vulnerable customers. The replacement of the informal and formal protections with a fully funded equivalent delivered outside the utility structure will be painful for state and federal legislators facing significant budget deficits and cuts in all social service programs.

Furthermore, it is not clear that it would be more efficient to fund or deliver these programs outside the utility structure. All households consume electricity and because low-income households on average consume less than their middle class neighbors,<sup>17</sup> the so-called regressive nature of funding these programs via a kilowatt-hour charge is not necessarily true. Furthermore, a per kilowatt hour charge is spread among all

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<sup>17</sup>Saunders, Margot, and Spade, Maggie, Energy and the Poor--The Crisis Continues, National Consumer Law Center, May, 1995.

customers, not just residential customers, which means all customer classes contribute in some manner to the social obligation to maintain service for vulnerable customers. The relatively small kilowatt hour charge associated with low-income programs is not the source of the significant rate increases of the past several years in any state.

Most commissions to date have correctly concluded that, at least for a transitional period, the move to retail competition must not be accompanied by a diminution of existing programs and protections. Large industrial customers who stand to benefit the most from electric restructuring in high cost states have also concluded that the continuation or even expansion of these programs is a small price to pay for a politically palatable deal that will in the long run will no doubt provide far larger benefits to them. <sup>18</sup>

The proposed model legislation contains two alternative funding mechanisms for Universal Service. Alternative A is similar to the approach being taken in most states with existing programs targeted to low-income customers, including the Rules to Govern Electric Restructuring proposed by the Massachusetts DPU<sup>19</sup> and the recently-enacted electric restructuring statutes in

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<sup>18</sup>In Massachusetts, for example, the largest electric utility, New England Electric System or NEES, supports the continuation of low-income rate discounts as part of their support for electric restructuring.

<sup>19</sup>Docket D.P.U. 96-100, Investigation of the Dept. of Public Utilities, May 1, 1996.

California, Rhode Island and New Hampshire.<sup>20</sup> This approach includes the cost of identified low-income programs in the distribution company access charges, thus spreading these costs to all customers. However, this report, unlike the Massachusetts DPU or the three state laws, also adds a requirement that suppliers contribute to the funding of these programs as a condition of doing business in the state. The total amount of funding will vary by state and should reflect each state's historical level of expenditures, as well as level of need.

Alternative B proposes the creation of a Universal Service Energy Fund in which all energy suppliers contribute based on their share of the energy market in the state. Under this model, low-income program assistance is administered in a coordinated fashion by the commission (or another state agency). This approach is similar to that adopted by Vermont for funding its Universal Service obligations in telecommunications. That Fund combines funding for low-income programs with programs that equalize the cost of obtaining telephone service in higher cost, rural areas with lower-cost areas.<sup>21</sup> The all-fuels approach has the advantage of sharing the burden for funding such programs

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<sup>20</sup>Rhode Island: "Special rates for low income customers in effect as of the effective date of this Act shall be continued, and the costs of all such discounts shall be included in the distribution rates charged to all other customers." §39-2-1.2(b). New Hampshire: "Electric service is essential and should be available to all customers....Programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements should be included as part of industry restructuring." §374-F:3(V).

<sup>21</sup>Vermont Public Service Board, Universal Service in a Competitive Era, January, 1996 (A Report to the Vermont General Assembly).

among all energy suppliers, but it requires the political cooperation of previously-unregulated fuel suppliers (fuel oil, propane, kerosene). This may be difficult to achieve.

Alternative A only addresses the funding for an electricity program. This is fair because that is the industry undergoing a radical transformation. Core customers stand to lose almost 100 years of regulatory oversight in return for the possibility of lower prices, and low-income customers want something more than a promise that they will not be left out in the cold (literally) if competitive electricity markets focus on upscale customers.

There are two options for delivering Universal Service programs to low-income customers. The first is to focus on the distribution company bill as the vehicle for delivering rate assistance and energy efficiency programs. Another option is to require that all suppliers be required to deliver low-income programs, similar to the portfolio requirement often suggested as a method to maintain an adequate mix of renewable energy supplies in the power pool. This report uses the distribution company as the focus for the delivery of low-income programs. The distribution company will remain subject to regulation by the commission, and its rates and charges will play a significant role in the funding of these programs. Second, it is unlikely that all suppliers would agree to participate in and implement low-income programs as a condition of entry into the state retail energy market. Furthermore, the administrative oversight of these programs by the commission is much easier if the focus is on the

distribution companies and not on the potentially hundreds (in larger states) retail suppliers.

The model regulations also contain two alternatives to implement programs via the distribution company. Alternative A is designed for those states with a clearly defined low-income assistance programs already embedded in rates. Alternative B works in those states with no current program to provide direct assistance to low-income customers. In either case, states should aim to design and implement cost-effective programs – programs that spend ratepayer dollars wisely and efficiently. Whether or not the savings from such programs equal or exceed their costs, the programs should be designed to obtain the maximum contribution from the low-income customer, increase the regularity and amount of customer payments, coordinate delivery with existing community-based energy assistance agencies and target the greatest assistance to those with the greatest inability to pay, as reflected by the burden of the annual bill on the customer's household income. This determination of need should, in turn, result in the delivery of targeted energy efficiency and education programs to, wherever possible, reduce the amount of the bill.

**F. Credit and collection standards.** The proposed model legislation grants authority to the commission to adopt minimum credit and collection standards applicable to both distribution companies and retail suppliers. Of course, most commissions have this authority and have exercised it for electric utilities with



varying degrees of specificity and with varying amounts of legislative oversight. The intent of this model legislation is to clarify commission jurisdiction in this area with regard to suppliers, but to leave the details of specific regulations to the commission's discretion. In states such as New York, where the customer's rights and responsibilities are contained in statute,<sup>22</sup> the statute itself must be amended to address the particular issues that will arise with the introduction of competition in the supply of electricity and the presence of multiple suppliers. The proposed regulations are designed to respond to the changes brought about by restructuring and address specific issues that are potentially the source of unfair practices and those likely to impede competition.

There are some credit and collection activities that will be the subject of competition among suppliers. If some suppliers seek to emphasize their "Cadillac" services for upscale and high-use customers, other will hopefully find value in providing a "Neon" version for plain vanilla, low-use customers. The latter will emphasize their easily understood pricing schemes and will market to a mass audience with credit terms reflecting the payment habits of the majority of customers. The intent of this proposal is to allow competition with respect to credit terms, contract price and the source of generation for the supplier's

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<sup>22</sup>Home Energy Fair Practices Act, New York Public Service Law §30 et seq.

electricity. In a competitive market, a seller does not have access to a collection device that would prohibit the nonpaying customer from obtaining the same product from alternative sellers. It would be patently unfair and anti-competitive for a supplier to make use of the power of physical disconnection by the distribution company to collect its unregulated sales of electricity or deny the nonpaying customer access to electricity from other suppliers. Therefore, these proposed regulations prohibit the disconnection of service (which can only be accomplished physically by access to the meter owned by the distribution company and cannot be distinguished from a denial of access to the distribution system itself) by a supplier for a customer's failure to pay any portion of the supplier's bill. Of course, suppliers must be able to discontinue their services to nonpaying customers, but this can be accomplished by notice to the customer and the distribution company without physical disconnection of the customer from the grid. If the distribution company fails to obtain specific instructions from the customer, the customer who is "disconnected" by a supplier will be provided with Basic Service, which is subject to actual disconnection according to commission-approved procedures. Suppliers will be able to use standard collection options of any competitive business. They can contact and attempt to directly collect an unpaid bill, use debt collection agencies, Small Claims Court, and, in more serious cases, file a civil complaint in a court of general jurisdiction. Suppliers will also be able to report

customer credit histories to credit reporting agencies and make use of this information in determining credit terms for applicants. This approach will avoid a host of regulatory disclosure requirements and the potential for significant customer confusion and "in terrorem" payments to avoid the loss of a vital service as a means of collecting a bill for an unregulated service. The disconnection of local basic service for failure to pay for an unregulated service contained on the same bill has bedeviled the telephone industry. Some long distance companies, although deregulated by the FCC, continue to use the local telephone company's disconnection notice to collect their overdue amounts. The FCC has proposed to halt this practice,<sup>23</sup> and several states have already done so.<sup>24</sup> It should not be allowed to occur in the electric industry.

A closely related issue is the allocation of partial payments. If a customer pays only a portion of a total bill issued by a distribution company under contract with the customer's supplier, a rule must be established to allocate the partial payment between the regulated and non-regulated service. Since the distribution and transmission charges are regulated and the electricity sales are not, it is entirely proper to allocate

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<sup>23</sup>FCC No. 95-281, CC Docket 95-115, Notice of Proposed Rulemaking, Amendment of the Commission's Rules and Policies to Increase Subscriberhip and Usage of the Public Switched Network, July 13, 1995.

<sup>24</sup>E.g., Pennsylvania, New York, Ohio.

the customer's payments first to those services subject to disconnection (and for which there is no alternative). This is the approach typically taken today when a regulated utility bills for non regulated services, such as the sale or lease of water heaters by a gas utility or the provision of "jobbing" or contract work by a water district hired to unfreeze a meter or dig the trench for the service line to the customer's premises.

Another set of issues revolves around the billing, by either the distribution company or the supplier, for demand-side management services or products. To the extent that the distribution company is performing a regulated service (and several commissions have proposed this approach) in marketing and providing demand-side management and energy efficiency programs, it is appropriate to treat these services as "regulated" for the purposes of allocating partial payments and making disconnections. To the extent, however, that these services are not regulated, they should not be able to use the distribution company's disconnection notice as a collection device, and unpaid amounts should not be subject to disconnection or treated as regulated payments under the partial payment rule. The inclusion of such programs and services on the distribution company's bill should not be discouraged, and most customers will find it convenient and affordable to obtain these services via their electric bill. Indeed, whether or not disconnection is a collection option, most suppliers will probably find the use of the distribution company bill a valuable alternative to

individual billing because the vast majority of customers do pay their bill on time. However, only those programs and services regulated by the commission should trigger the potentially severe disconnection option as a collection device.

Another attribute of a competitive market is that creditors cannot require payment owed to another creditor as a condition of payment to a new one. A supplier should not be able to require a customer to pay a prior bad debt owed to a different supplier as a condition of becoming a customer. The new supplier may well want to impose credit terms that reflect poor credit history, but no business can collect unpaid debt owed to others without becoming a debt collection agency subject to regulation under the Fair Debt Collection Practices Act.<sup>25</sup> This means that a distribution company should not by contract be able to accomplish what a supplier cannot do directly. A distribution company should not be able to combine a customer's credit history with prior suppliers (even within its own records) and seek payment of supplier bad debt as a condition of service from the distribution company. Of course, the distribution company should be able to collect prior bad debt owed to itself from a customer as a condition of service at a new location, subject to the traditional restraints associated with landlord-tenant situations.

The conditions under which the commission will regulate the

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<sup>25</sup>15 U.S.C. §§1692-1692o.

supplier's ability to refuse service and its determination of credit worthiness of applicants will be particularly difficult to determine. The commission must strike a balance between the historical public utility obligation to serve and the long-standing policies of prohibition of rate discrimination and geographic deaveraging with the desire to create a competitive market with low entry barriers and stimulate the development of new pricing alternatives and energy services. This proposal leans in the direction of the development of a retail electric market with minimal obligations other than those that already exist in the Equal Credit Opportunity Act .<sup>26</sup> This approach will allow more "discrimination" than is currently allowed by fully regulated public utilities. A supplier can choose its own marketing area and choose not to serve customers in certain parts of the state. This will not be actionable unless the marketer has violated the ECOA. This may open the door to geographic deaveraging, which would result in different prices charged to customers in different parts of the state. Whether there is any likelihood that suppliers would find any competitive benefit in charging more in urban (due to transmission system constraints) or rural (due to the desire to retain a concentrated marketing area with centralized service areas or to reflect price differentials in transmission rates) areas is unclear. This is an

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<sup>26</sup>See a discussion of the ECOA, redlining and the effects test in Appendix A.

issue that will bear close watching and the commission will retain jurisdiction to pursue additional regulation in this area if adverse trends become evident. Baring that result, suppliers under this proposal can deny credit or charge different prices within the area it chooses to serve, subject to the provisions of the ECOA and the disclosure requirements of the Fair Credit Reporting Act<sup>27</sup> when credit reporting agencies are used to make credit determinations.

In part this approach is justified because of the existence of Basic Service. Any customer who is denied service by a supplier or who cannot locate service at a reasonable price (using Basic Service as a benchmark) can obtain Basic Service. If the competitive market develops with significant discriminatory aspects (either demographic or geographic), this will inflate the rolls of Basic Service and contribute to a general adverse reaction to the notion of electric competition.

This approach is also justified because of the practical difficulties in preventing increased credit and price discrimination with the onset of retail competition. One possibility would be to require each retail supplier to file a map of its intended marketing area with the commission and prohibit the supplier from refusing service or altering the terms

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<sup>27</sup>15 U.S.C. §§1681-1681t. It should be noted that a distribution company becomes a credit reporting agency when it provides credit history information to third parties, such as retail suppliers. And it would of course be totally unfair to allow the distribution company to supply such information solely to its own affiliates.

of its service offer within that service territory. However, this is probably an onerous burden for a competitive business and one easily avoided by filing many maps, each with a slightly different service territory and pricing scheme. The clear implication of competition is the power to discriminate in a manner not allowed in a highly regulated utility environment. Whether the actual development of discriminatory patterns cause a legislative or regulatory backlash to retail competition remains to be seen.

There are several provisions of many state utility credit and collection regulations that should probably not be imposed on competitive suppliers. For example, rules may require that deposits not exceed an estimated two-month bill, without establishing the criteria for requiring a deposit. This decision lies at the heart of the competitive business's ability to legally discriminate among its applicants. As long as the provisions of the ECOA are not violated and the disclosure provisions of the Fair Credit Reporting Act complied with when a consumer report is used to deny or alter the credit terms, there is little in the way of regulation that is practical. This may cause many marginally qualified customers to be denied service or be subjected to deposit requirements. Again, these customers can obtain Basic Service which will be subject to the commission's historical regulation of the conditions under which a deposit can be obtained. The same is true of late fees and the conditions under which late fees are charged.



It may not possible to protect tenants whose landlord has been disconnected for failure to pay the landlord's Basic Service bill. In a multi-unit structure, the tenants may not have the option to put service in their name because the building is master metered. Therefore, the proposed regulations require that when this situation exists, the tenant may not be disconnected. Instead the supplier or distribution company may seek to collect the unpaid debt by filing a lien on the building.

A special provision has been added as well concerning medical emergencies. It has been the hallmark of utility regulation in many states that a customer whose licensed physician declares a medical emergency may avoid disconnection of service for some period of time. That practice is continued for both suppliers and distribution companies. Customers in such situations should be able to retain their supplier's services (or, of course, request Basic Service if desired) and make arrangements for late payment during a maximum 90-day period. A customer with a medical emergency should not be required to take Basic Service and lose what may be a lower-priced option (depending on the customer's usage profile and the supplier's rate design) as a consequence of a temporary condition.

**G. Unfair trade practices; marketing.** The commission should have jurisdiction to define and prevent unfair trade practices in all aspects of the retail sale of electricity. While the state Attorney General will no doubt have jurisdiction over the competitive portion of the industry via the state mini-Unfair

Trade Practice Act, it will not be either administratively efficient or beneficial to consumers to split regulatory duties between the commission and other state agencies to prevent fraud, unfair and deceptive advertising or unconscionable contract terms. While it may not be necessary to actually exclude the retail sale of electricity from the state's Unfair Trade Practice Act<sup>28</sup> (or its equivalent), jurisdiction should be granted to the commission. Electricity would then be regulated by a specialized agency similar to the oversight of the banking, insurance and credit industries. If jurisdiction is maintained at the regulatory commission, it will allow customers to continue to call a single office with questions and complaints on electric service and provide an enforcement focus that can be linked to the decision concerning licensing and license revocation or renewal. This recommendation also has implications for the staffing needs of the regulatory commission. While customers will continue calling the commission, they will call about different issues and require answers by staff trained in different laws and practices. Of course, this may well result in close coordination and even consultation with the state Attorney General's offices that are trained to handle customer inquiries and education concerning Unfair Trade Practices Act matters.

Several marketing practices are already the subject of proposed state action with regard

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<sup>28</sup>Many state and federal consumer protection statutes exclude transactions subject to regulation by a utility commission. See Appendix A.

to electric restructuring. Most state commissions have recommended regulations to prevent “slamming”, switching the customer’s provider without permission or with permission obtained fraudulently — a practice that has been the subject of widespread complaint and condemnation in the telephone industry. This course of conduct is sufficiently likely to occur with competitive electric providers that all of the state restructuring legislation has either prohibited the practice outright or authorized the commission to take action to prevent it. Obviously, when the customer personally communicates with the distribution company to authorize the switch, there is no difficulty in relying on oral communication. But what if the provider has initiated the contact with the customer and has obtained his valid consent? Should the distribution company be allowed to switch the customer’s supplier upon notice from the new provider? What if the customer has cashed a check from the new supplier which states that cashing the check will cause the customer’s electricity supplier to be changed?<sup>29</sup> The danger in opening up the authorization to include anyone other than the consumer opens the door to fraud. Even a requirement that the authorization be signed by the consumer (thus preventing telemarketing alone from finalizing the sale) is, as the check cashing scheme demonstrates, fraught with difficulty.

This report relies heavily on the approach contained in the recent California legislation.<sup>30</sup> Customers who are solicited by a provider or his agent to switch electric suppliers must not be switched until the new supplier complies with the independent, third-party verification

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<sup>29</sup>A practice started by telecommunications providers and copied by PSNH (\$25) during the N.H. retail competition pilot program.

<sup>30</sup>A.B. No. 1889, §366(e).

procedures described in the regulations. In addition, customers will have the right to rescind any contract for electricity within three business days after their receipt of the written contract itself which is required as a condition of any sale (see Title IV). Failure to receive the written contract verification will extend the right of rescission. This will stimulate suppliers to confirm their sales promptly because suppliers will remain liable to the network operator for usage incurred due to a failure to conform to the right of rescission disclosures and any violation of the slamming rules. This approach will not be as burdensome as requiring the customer to sign every authorization to switch their provider. Such a requirement would favor the incumbent provider and serve as a disincentive to the many customers who will want to switch their supplier easily and without the bother of written documents. This three-day period is coordinated with the three-day period given to distribution companies to effectuate a change in supplier on behalf of the customer. This change will probably require a separate field visit to read the meter and a change in billing records, which in turn must be reflected in settlements between the old and new supplier and the network operator.

Another practice that surfaced in the New Hampshire retail competition pilot in the summer of 1996 was the use of prizes and other inducements to choose a particular provider. These gifts varied from a modest \$18 bird feeder (to emphasize the provider's "green" connections?<sup>31</sup>) to a significant prize. One supplier offered free electricity for the two-year pilot to the first ten customers who signed up!<sup>32</sup> These types of marketing schemes resemble the banking wars in the 1980s when banks were trying to solicit new customers with what started out

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<sup>31</sup>Granite State Energy

<sup>32</sup>Unitil Resources, Inc.

to be toasters and roared into a frenzy of valuable prizes and gifts until interest rates on deposits were repealed. This report proposes to prohibit anything but modest gifts and inducements. The use of gifts and inducements prevent a fair comparison of electricity prices. This prohibition does not affect a supplier's ability to couple their offer of electricity with energy management or demand-side management services. Both electricity and the DSM service are presumably being sold for a price that is either bundled or unbundled. If bundled, the supplier will have an obligation to disclose the price of the electricity as a cents per kilowatt-hour charge, and the consumer can then compare this offer (electricity plus DSM) with other bundled and unbundled offers. Therefore, the model regulations prohibit suppliers from providing a gift or inducement with a value in excess of \$50. This dollar figure is of course subject to change. It is worth noting that the vast majority of gifts and inducements offered in the New Hampshire pilot had a stated value of less than \$50.

A common misconception in the electricity restructuring debate (confirmed by questions asked by consumers in the New Hampshire pilot) is that the prices being marketed by competitive suppliers represent the total price of electricity. In fact, prices are only about 20-30 percent of the bill in New England. The percentage will become larger with the pay out of stranded costs (which will appear on the distribution portion of the bill), and the projected increase in electricity prices due to the end of the regional surplus. The model regulations prohibit any attempt to market the price of electricity without reference to distribution and transmission charges that will be a part of every monthly bill.

A marketing and disclosure issue that is sure to remain controversial is whether disclosures associated with advertising an electricity source as "green", "renewable", "less polluting", or

“environmentally-friendly” should be regulated and, if so, by who and how. Recent national and regional surveys have confirmed that many customers want to shop for electricity based on environmental criteria. The marketing campaigns conducted as part of the New Hampshire pilot confirmed this trend. Customers were assailed with pitches ranging from “We donate one percent of your power bill to groups working to protect New Hampshire’s environment” (Working Assets) to “Now is the time to start saving money and saving the planet” (Green Mountain Energy Partners, selling Hydro Quebec power). The potential for misleading advertising is obvious.

Both state and federal laws prohibit deceptive advertising<sup>33</sup>. The Federal Trade Commission implements the Federal Trade Commission Act,<sup>34</sup> and the state Attorney Generals typically have the primary authority for their state consumer laws relating to advertising and marketing deception. The FTC has adopted formal guidelines to define unfair or deceptive advertising claims.<sup>35</sup> In addition, the FTC requires that all marketing claims, whether express or implied, must be substantiated.<sup>36</sup> The FTC has adopted specific guidance for eight typical environmental claims: general environmental benefit claims, degradable/biodegradable, compostable,

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<sup>33</sup>The following summary draws heavily on a Memorandum of Law by an intern at the Conservation Law Foundation: Parmer, Diana, “Regulating green advertising by electric utilities”, printed in Green Certification Workshop Meeting Packet, July 19, 1996.

<sup>34</sup>15 U.S.C. §45

<sup>35</sup> See Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs., Inc., 103 F.T.C.110, 174 (1984); Federal Trade Commission Statement Regarding Advertising Substantiation, appended to Thompson Medical Co., Inc., 104 F.T.C.648, 839 (1984), Federal Trade Commission Unfairness Policy Statement, appended to International Harvester Co., 104 F.T.C. 949 (1984).

<sup>36</sup>49 Fed. Reg. 30,999 (1984).

recyclable, recycled content, source reduction, refillable and ozone safe/friendly.<sup>37</sup>

Most state statutes track the language of the federal Act, and many state statutes require the Attorney General to follow the FTC interpretations of the federal law to guide action under the state law. The National Association of Attorneys General (NAAG) has adopted green marketing guidelines as well, National Association of Attorneys General, The Green Report II, Recommendations for Responsible Environmental Advertising (1991). According to the Parmer Memorandum, environmental advertising claims are restricted specifically by law in 22 states, including California, Indiana, Maine, New Hampshire, New York and Rhode Island. These state statutes focus particularly on terms such as “recyclable”, “degradable” and “reusable”. Some states have taken the approach of “eco-labelling”, that is, mandating the description of certain environmental aspects of a product or service by the state agency that monitors and enforces the licensing of a state-sponsored logo. Again, the typical focus is on the term “recycled”, “recyclable” and “reusable.”

An eco-label is a form of certification that a product meets certain standards in its intended use or manufacturing process. This certification can be provided by either a state or local agency or private organization. Environmental and energy advocates are considering the pros and cons of all approaches, as well as whether a national or regional approach will be most effective. Some of the stickier issues include whether large-scale hydroelectric power plants should be labeled as “green” when many conservationists and others oppose the development of large hydroelectric dams and how nuclear power plants should be allowed to advertise their impact on

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<sup>37</sup>FTC Guides for the Use of Environmental Marketing Claims. 16 CFR § 260.

the environment (the lack of air pollution must be traded off with long-term storage of nuclear wastes).

In the short run, it is unlikely that there will be any official governmental “seal of approval” or certification of “green” electricity. Whether one or more private certification efforts are successful in starting up and gaining credibility remains to be seen. Both or either development would be welcome. However, during this period of transition, the key question is whether reliance upon the FTC and the state Attorney Generals is sufficient. While case-by-case enforcement and the use of trade regulation guidelines will be useful, this report recommends that the public utility commission be granted authority to take certain proactive steps and given the responsibility to monitor the development of a competitive, retail electric market and develop specific rules to prevent unfair and deceptive conduct.

This report suggests several modest steps that, taken together, will provide a good beginning for the competitive electricity market. First, as described in Section B, Bills and Billing Standards, all customers should see information about the basic nature of the fuel source used by the supplier’s source of electricity. Second, the commission should have the necessary jurisdiction to act, perhaps in concert with the State Attorney General or federal authorities, when marketing and contract disclosure abuses arise. The most efficient action by the commission will be a combination of rulemaking authority and the use of the licensing stick to act when abuses cause harm to customers. Only the commission, if granted the authority to register or license retail electric suppliers, will be able to bring to bear the most efficient and effective regulatory tools. Relying solely on the Attorney General will require a lengthy and litigious process of case-by-case enforcement and little in the way of active supervision of the



nascent industry simply because of the office will lack both the financial and staff resources as well as expertise in electricity regulation. The model regulations propose green marketing guidelines modeled on the FTC Guidelines for Environmental Marketing, 16 C.F.R. §260.

**H. Dispute resolution.** The proposal requires the supplier to maintain a dispute resolution program and keep records on customer disputes. Customers must be offered an opportunity to refer their dispute to the commission if it cannot be resolved to their satisfaction. This is almost a universal right in every state, and it will be important to retain this practice for two reasons. First, customers have an expectation that their electric service is subject to close supervision, and it would be a dramatic shift to not allow customers to avail themselves of the commission's authority to review and make a decision on their dispute. This is particularly true when one-half to two-thirds of the total bill remains regulated. Second, this dispute resolution authority will allow the commission to monitor sales practices and compliance with the basic consumer protection rules proposed here. The three recently-enacted electric restructuring legislation in California, Rhode Island and New Hampshire specifically grant the commission the authority to hear and resolve customer complaints with the new suppliers.

**I. Change of supplier.** The proposed rules allow suppliers and customers to contract for terms to terminate service, including the required notice and termination penalty, if any. These will be important terms for customers to use in their comparison shopping. Customers without hourly meters may be restricted in their frequency of change in suppliers, based on the need to rely on quarterly load shape curve samples, but even in these cases, a customer must be able to change suppliers by paying a penalty. Distribution companies must respond promptly to any request to change the customer's supplier (subject to the slamming rules in Section G, Unfair

Trade Practices, above) by obtaining a meter reading and effectuating the change in their billing records. Except for the initiation of Basic Service (see Section D for the conditions under which a fee can be charged for the initiation of this service), the distribution company can charge a reasonable fee based on the company's actual expenses incurred in reading the meter and changing its billing records. The distribution company must offer the option of obtaining a self-reading of the customer's meter to reduce the costs of changing the customer's supplier.

**TITLE III: OBLIGATIONS OF THE DISTRIBUTION COMPANY  
AND FORM OF REGULATION**

**Section 1. Statement of Purpose.** The purpose of this Title is to set forth the specific aspects of the rights and obligations of a distribution company that should be altered or clarified in an electricity market dominated by retail competition. Therefore, this model legislation does not repeat the traditional obligations or the current jurisdictional authority of the commission over public utilities.

**Section 2. Right of Access.** The proposed model legislation and rules redefine the duty of the distribution company from a company obligated to serve to one obligated to provide access to the electric grid in a nondiscriminatory basis. This right will continue to be subject to regulation by the commission who will define the conditions under which a distribution company can refuse service or will set as a condition of service compliance with a security deposit or payment or payment arrangement of prior unpaid debt owed to the distribution company. Note in Title II, Section 6, a distribution company cannot require a customer/applicant to pay unpaid bills owed to a retail electric supplier and so cannot require payment or base a request for a security deposit on unregulated charges as well.

The distribution company must enter into a contract with every licensed retail electric supplier that seeks to do business in the distribution company's service territory within two weeks of a request to do so. This requirement, accompanied by an affirmative obligation to deal fairly with all retail electric suppliers and not to favor its own affiliates, will assure that customers will have access to the electricity supplier of their choice. The recommended Code of Conduct to govern the interactions of a distribution company and their affiliates is drawn from

the proposed Electric Restructuring Rules of the Massachusetts Department of Public Utilities.<sup>38</sup>

**Section 3. Unbundled Rates.** While it will be important for the commission to require electric utilities to unbundle their current rates, customers could be confused with a plethora of categories. This, in turn, would hinder the development of a competitive market. Furthermore, as suggested by Title II, there is little to gain and much to lose if public benefit costs for energy efficiency, renewable and universal service programs are highlighted on the bill. Regulators must track the costs and benefits of these programs, and policy makers can and should have a role in determining their proper weight in the overall costs of the distribution services. That is not meant to suggest, however, that these programs should be identified separately from other public benefit functions of a the distribution company. Therefore, this proposal suggests only four categories of charges for electricity, one of which — stranded costs — is temporary. The three basic divisions of current electric rates into transmission (regulated by FERC), distribution (regulated by the state commission) and electricity sales (unregulated price) will appear on the customer's bill and provide a simple method to compare rates and increase understanding of the nature of the electric industry and the composition of the total bill. This provision is not intended to prohibit the separate itemization of any other service on the customer's bill, such as energy management services, special metering, etc., but to limit the extent to which further charges associated with electricity are itemized.

**Section 4. Performance Based Regulation/Service Quality Index.** There is a good deal

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<sup>38</sup>Docket 96-100, May 1, 1996

of written work in the area of PBR.<sup>39</sup> This model legislation does not purport to provide comprehensive direction and policy with respect to the details of a PBR plan but focuses instead on those aspects relating to service quality and consumer protection programs. A distribution utility will remain responsible for most key aspects of service quality because of its retained ownership of the distribution system, i.e., the poles and wires that deliver electricity to each customer's home and place of business. Therefore, a distribution utility will remain responsible for service reliability (outages, their frequency and duration), installation of service (meters and service drops, as well as line extensions in previously unserved areas), disconnection of service, complaint resolution concerning distribution services, change-orders for customer-supplier relationships and billing and collection for at least distribution charges and perhaps for suppliers as well.

PBR typically retains strict control over basic service rates for core customers by either freezing prices or revenues or establishing a formula that restricts the utility's ability to raise prices or revenues for these customer groups. The utility is usually given significant pricing and marketing flexibility over more competitive services and the ability to retain earnings. A hallmark of these alternative schemes is the multi-year nature of the deal. The utility is offered the opportunity to earn higher profits over a two to five year period in return for stricter controls on prices charged to core customers.

Most utility commissions have struggled with how to retain

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<sup>39</sup> April, 1996 issue of The Electricity Journal.

sufficient oversight of customer service and reliability during the term of the PBR. The early decisions did not contain any special provisions for maintenance of customer service.<sup>40</sup>

Commissions reasoned that they would rely on their existing rules and investigatory authority. Many commissions have found this approach to be insufficient. In particular in the 14-state US West Telecommunications region, states are scrambling to address deteriorating service quality that occurred after incentive regulation was approved.<sup>41</sup> More recent alternative regulatory plans contain a specific customer service and reliability index that monitors key attributes of service quality and establishes penalties in the form of customer rebates or earnings reductions if performance deteriorates during the term of the plan. The proposed model legislation and regulations provide the basic tools to create a customer service and reliability index that can be included in an alternative rate plan for any distribution utility.<sup>42</sup>

There are several compelling reasons why regulators should include a specific set of performance criteria for customer service and reliability categories in any alternative rate plan:

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<sup>40</sup>See, e.g., the FCC price cap plan for AT&T, as well as some of the early U. S. West incentive plan orders.

<sup>41</sup>Davis, Vivian, et.al., Telecommunications Service Quality, National Regulatory Research Institute, Columbus, Ohio, March, 1996.

<sup>42</sup>This section draws heavily on Alexander, Barbara, "How to Construct a Service Quality Index in Performance-Based Ratemaking Plans, The Electricity Journal, April, 1996.

(1) Degraded service quality is more likely to occur when a utility can increase profits by slashing customer service and service quality. Once a utility is allowed to keep cost savings for long periods of time, it is only natural for corporate management to reduce operations and maintenance budgets under the guise of efficiency and divert the resulting savings into more lucrative markets. Indeed, even well-meaning managers who seek to improve efficiency may suffer from basic incompetence and engage in such an orgy of downsizing and centralization of far flung local offices that, even though not intended, the result is poor service quality. Since distribution utilities will not have competition to stiffen their service quality backbone, it is crucial that commissions do not lessen their oversight of this key attribute of monopoly service.

(2) During the term of an alternative regulatory plan, traditional rate cases will not occur. The commission will not, therefore, be able to review compliance with customer service rules and customer satisfaction with utility services as part of a review of operations and maintenance expenses. This, in turn, means that a common practice of using a rate case as a means of reviewing service quality (and sometimes adjusting the rate of return to reflect poor service) is not available to regulators. While regulatory lag has often been assumed to provide benefits to core customers because of the delay in price changes associated

with rate case litigation, the lack of rate cases also has a liability with respect to service quality concerns. If, in addition to agreeing to automatic or flexible price changes, the commission does not have statutory authority to assess fines or penalties for violation of its rules, the void created with the elimination of base rate cases effectively means no enforcement of customer service rules.

(3) While some commissions have detailed customer service rules in some areas, most are deficient in some areas. For example, while most states regulate the disconnection process, many do not regulate such modern service quality issues as the performance of a utility's phone center, installation and repair deadlines, complaint resolution procedures, bill accuracy and customer satisfaction surveys.<sup>43</sup> Even the model telephone service quality standards put together by NARUC<sup>44</sup> address technical standards for telephone companies (e.g., dial tone quality) but do not include measurements of service reliability and outages – the true measure of service quality from a customer's perspective. A utility-specific service quality index can overcome these deficiencies without a lengthy rulemaking proceeding.

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<sup>43</sup>The NRRI Telephone Service Quality report (Id.) contains information on current state consumer protection regulations for telephone service.

<sup>44</sup>Staff Subcommittee on Telephone Service Quality, "Model Telecommunications Service Rules", NARUC (Washington, D.C., July 22, 1987)



(4) To respond to inadequate service quality, a commission must investigate, make findings and then seek remediation and possibly penalties. These procedures are lengthy, costly and stacked against the consumer. The utility has the resources and will to litigate and avoid findings adverse to their interest. The commission may lack the resources or the political will to fight over this issue, unless of course, the degradation of service quality grows to immense proportions. Even then, the delay and lack of prompt remediation or penalties means that customers suffer poor quality of service from their monopoly supplier of a vital service.<sup>45</sup> If designed correctly, a service quality index will provide a swift and sure response to degradation in service quality.

The design of a Service Quality Index starts first with the identification of the program performance measurement categories. What to measure is a function of the type of utility, its previous record on customer service compliance, current "hotspots", existing state statutes and regulations and the availability of the utility's historical data. However, most service quality monitoring plans include selections from the following types of customer service measurements:

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<sup>45</sup>Even where the commission has the authority to assess fines and penalties, the length and cost of such litigation and further court appeals is not an effective response to poor service quality. The Montana Public Service Commission voted to sue U.S. West in October, 1994, and the case was not settled until mid-1996.

**Customer satisfaction.** Utilities are measuring how customers react to service quality by asking customers what they think. While most utilities have for years surveyed their customers to ask the "Do you love me?" question, a more useful set of survey questions are being asked of customers with recent transactions at the phone center or with field personnel (installation or repair visits). These questioners often ask whether the customer thought the utility representative was knowledgeable and responsive to their request or concern and whether service was provided courteously, promptly and professionally. Customers are then asked to rate their overall satisfaction with the contact. The general survey of customers who have done nothing more than receive a bill and pay it is not as good a predictor of service quality as the responses of those customers who have initiated a request for service or called the utility with a question or concern on their bill. These transaction-based surveys should be done routinely (monthly or quarterly), by telephone or postcard, and should show a statistically valid response rate.

**Business office performance.** Typical measurements in this area include the performance of the phone center (percentage of calls answered within 30 second, busy out rates, average speed of answer, etc.), response time on customer complaints, as well as the performance of field personnel (percentage appointments kept, repair or installation delays, accuracy of meter readings). Other items that could be included in this

category are billing error rates (percent cancel and rebill) and violations of commission rules determined by commission-sponsored audits.

**Service reliability.** Customers expect continuous and high quality service. Electric utilities have monitored outages and collected such data for many years via the System Average Interruption Frequency Index (SAIFI), Customer Average Interruption Duration Index (CAIDI) and Customer Average Interruption Frequency Index (CAIFI).

**Regulatory performance measurements.** Included in this category are measurements that reflect programs in effect in the utility's jurisdiction that respond to Commission mandates: ratio of complaints appealed to the Commission per 1,000 customers, penetration ratios for low-income programs (such as Lifeline Telephone assistance or an electric or gas utility's low-income bill payment assistance program), performance measurements for DSM programs and utility credit and collections programs. For example, a commission concerned about the commitment to a low-income weatherization program could include a penetration target for delivery of the program to eligible customers or a tracking account for expenses associated with the program that, at least, removes the incentive to the utility to cut these costs in its drive for efficiency and greater profits. The purpose of a tracking account would be to require the utility to monitor and track expenditures for a certain program and require spending below

the target to be returned to ratepayers (and conversely for spending above the target to be recovered from ratepayers). Another program area of vital concern to low-income advocates is the utility's disconnection policies and procedures. A utility being driven by a price cap plan emphasizing the bottom line may seek tougher collection policies, fewer payment arrangement extensions, swifter disconnection for nonpayment and stiff reconnection requirements. The potential for these changes suggest a closer monitoring of payment arrangements and disconnections, particularly with respect to residential and small business customers. A service quality index could track the frequency of disconnection compared to historical performance and prevent a significant increase in this performance category by assessing penalties for an increase over the baseline.<sup>46</sup>

One of the most perplexing issues that confront commissions in establishing a service quality index is how to set the baseline from which to measure changes in service quality over the term of the alternative regulatory plan. The answer to this problem is relatively easy if the utility's service quality performance has been above average or even adequate in the recent past. In that case, the utility's own historical data should be used to establish a baseline that reflects the most recent performance.

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<sup>46</sup>Burns, Robert E., Alternatives to Utility Service Disconnection, National Regulatory Research Institute, Columbus, Ohio, May, 1995.

A more difficult challenge exists when the commission determines that current service quality is inadequate and should not be used as the baseline from which to measure future performance.

Historical data should be used to determine if recent degradation in service can be detected and removed from the calculation to arrive at an acceptable baseline. If such data does not exist, next best options include:

- Use standards that exist in commission rules. Obviously if the utility's recent performance does not meet these mandated standards, the baseline should be set to assure compliance.
- Use actual performance of comparable utilities or other industries in the state or region. If a nearby utility can achieve higher results, the burden should be on the non-performing utility to demonstrate why similar results cannot be achieved.
- Litigate or negotiate the performance goal or objective and then establish a gradual movement toward that standard during the term of the plan.<sup>47</sup>

Again benchmark data from other utilities or even from a nonregulated business may provide guidance. For example, a common service quality standard for phone center performance is to answer 80 percent of all calls within 30 seconds. There

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<sup>47</sup>New York Public Service Commission, "Proceeding on Motion of the Commission to Investigate Performance Based Incentive Regulatory Plans for New York Telephone-Track 2, Case 92-C-0665, Order, August 16, 1995.

is no reason to believe the utilities should be held to a lesser standard.

In general the utility should not be rewarded for service quality above the baseline performance level. The basic purpose of a service quality index is to make sure the utility does not degrade service during the term of a multi-year rate plan. It is an insurance policy against the short-term desire to reduce spending on customer service to increase earnings. This basic policy orientation suggests that the penalty-only approach is better. If service quality is adequate, the purpose of the index and the penalty is to prevent bad performance. In the long run, satisfied customers increase a company's profits through better debt collection and increased market share. The commission's main objective is to prevent short-term degradation of service. A penalty-only approach is best suited to that objective.

Even where current service quality is below par, the use of both incentives and penalties has not had much success. In a recent New York case involving New York Telephone, the NY Public Service Commission approved a complex series of penalties (for performance below stipulated levels) and incentives (to obtain improved service quality in some targeted areas of the state and for some service quality measurements).<sup>48</sup> Over a year later, NYNEX is paying huge penalties (\$55 million for 1995 performance alone) and has not

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<sup>48</sup>Id.

earned any of the incentives.<sup>49</sup> In Maine, on the other hand, the Commission rejected NYNEX's attempt to obtain a reward for performance in excess of the baseline because the Company's historical service quality was excellent, and the Commission sought only to prevent its degradation.<sup>50</sup>

It is probably not a good idea to allow the utility to offset less than acceptable performance in one measurement with excellent performance in another category. Presumably each item was selected for the index because its performance was valued independently of other items. Customers who suffer missed service installation appointments are not consoled by the fact that the phone center handled their complaint promptly. In the same vein, utilities who violate commission rules cannot offset that violation by complying with another one.

The United Kingdom privatization of its electric utility industry has been accompanied by close monitoring of service quality. Specific service quality requirements are established by the Director of the Office of Electricity Regulation and imposed on the Regional Electric Companies (RECs) who have a monopoly for the distribution of electricity for customers with less than one

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<sup>49</sup>The New York PSC's decision on New York Telephone's alternative rate plan increased the penalty dollars at risk such that had these amounts been in effect during 1994 the Company would have paid a \$80 million penalty. Case 92-C-0665 at 39;43. Part of the justification for the substantial increase in penalties was that a prior 1994 Service Quality Plan offered the Company a potential incentive payment of up to \$121 million. The Company's actual service quality performance in 1994 was so poor that almost none of these dollars were earned.

<sup>50</sup>Maine PUC, Docket 92-123 at 85.

MW demand, until at least 1998. The minimum service quality standards are enforced with customer-specific rebates. During the 1991-92 fiscal year the REC's and two Scottish companies reported a failure ratio of .1 percent in all services rendered and incurred penalty payments of 140,000 Pounds. The media interest in the Director's annual report on service quality compliance is significant.<sup>51</sup> This approach has the advantage of targeting the utility penalty dollars to those directly affected. Several states have taken this approach to the US West service quality debacle. For example, the Colorado PUC requires a telephone utility who fails to keep an appointment for installation of new or upgraded service by more than four hours to provide the affected customer a credit equal to one-third of the installation fee. A rule change is also currently pending which would require the utility to provide alternative service, including vouchers for cellular service, when a new installation order is held more than 30 days.<sup>52</sup> These innovative, customer-specific remedies are important tools to fashion a means to obtain the attention of utility management. They are particularly useful when there is a specific customer who is affected by the service quality. They will not work as well to assure adequate phone center performance, service reliability or delivery of low-income

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<sup>51</sup>Henney, Alex, A Study of the Privitisation of the Electricity Supply Industry in England and Wales , EEE Limited (London, 1994)

<sup>52</sup>"Oversight Group agrees on US West Benchmarks", Connections (Newsletter of the Colorado PUC), December, 1995 at 4.



programs.

The penalty amount is a matter of wide discretion and should obviously be set as a function of the size and revenues of the utility. It is absolutely crucial that the penalty amount be sufficient so as to have a deterrent effect on utility managers. A paltry sum, i.e., one that is small in relationship to O&M expenditures or utility revenues, will not have the proper impact. In addition, it is proper to take into account the utility's recent service quality performance. If, as in the New York Telephone case, the utility has been the subject of prior commission investigations and unkept promises, the dollars should be set at a significantly higher level than for a utility where service quality has generally been good. Furthermore, the publicity that may accompany a failure to meet the service quality index may result in a loss in public confidence. Barring any unusual circumstances, a maximum penalty equal to .5 percent of the company's jurisdictional revenues is reasonable.

Each item in the index should be assigned points (usually ten for ease of calculation). Performance would be compared to the baseline value, with the percentage change in performance being related to the ten points assigned to that item. If the penalty dollars are assigned to points (X dollars per point), the total points for all categories are then added and penalty dollars assigned accordingly. If there are eight items in the index, each of which are worth ten points, and the utility reports performance at 80 percent of the baseline in two of the

eight categories, the result is 76 points out of a maximum of 80 points. If each point is worth \$100,000, the utility pays a penalty of \$400,000.

This penalty must be paid in a way that benefits ratepayers, i.e., as a one-time credit on customer bills or, where identity is possible, in the form of rebates to affected customers (e.g., free installation for those who suffered late or missed appointments). Alternatively, the amount can offset any rate increase otherwise due under the alternative rate plan. In any case, customers should be informed of the failure to achieve adequate service quality levels on a bill message or in another similar communication from the utility. The Maine Commission has ordered NYNEX to return any future service quality penalty as a one-time credit on customer bills labeled as "REBATE FOR BELOW STANDARD SERVICE QUALITY."

**TITLE IV: REGULATION OF RETAIL ELECTRIC SUPPLIERS: LICENSING AND  
MINIMUM CONTRACT TERMS**

**Section 1. Intent.** While most commenters in the electric restructuring debate might agree that a minimum code of conduct should be required for all competitors in the new retail electric market, positions will certainly differ about which of the various categories of rules outlined in Title II should apply to which types of entities. For example, most would agree that rules to ensure system operations should apply to all entities whose actions may affect the electric system, in particular, to all competing retail electric service providers, including generation suppliers and aggregators. In contrast, many commenters do not agree on the extent to which private, competitive firms should be subject to industry-specific rules dealing with competitive behavior or contracts with customers. Some parties argue for a more laissez-faire approach, while others feel market rules to ensure fair competition should be broadly applied, even to include energy efficiency providers because efficiency competes in the generation market. Consumer protection rules, some parties assert, should apply to all firms that deal directly with retail consumers. Finally, some parties have indicated a need for rules to govern relations between competitive firms and regulated monopolies, to ensure a fair competitive playing field with no special advantages for retail sales affiliates of the monopoly utility.

This model legislation takes a broad approach and proposes to impose some rules for all types of market participants. The terms "supplier" and "retail electric supplier" are used interchangeably to refer to the entire class of competitive firms that will be subject to certain market rules. This term includes aggregators and marketers to the extent they have the authority to contract for the retail sale of electricity, i.e., they have some right, title or interest in the output from a generation source via ownership or contract. The term does not apply, however, to those who do not engage in the sale of electricity. In other words, the regulations do not generally apply to energy service or demand-side management providers except to the extent certain disclosures of their services are required when they make use of bills issued by the electric supplier or distribution company.

**Section 2. Licensing Requirements.** The classic regulatory options to assure oversight of a competitive business ranges from registration to certification to licensing. Registration requires would-be market participants to disclose relevant information to a public entity, which would make that information available to the public. For example, under electric restructuring rules proposed by the Massachusetts Department of Public Utilities in May, 1996 (Rule 11.07), a generation provider seeking to do business in Massachusetts would have to disclose: (a) its legal name and all names under which it conducts business, (b) its

business address, (c) information concerning the organization structure, e.g., if a corporation, a copy of its Articles of Incorporation and the name, address and title of each officer and director, plus proof that the corporation is in good standing, (d) proof that the entity is authorized to do business in the state (if the entity is incorporated out-of-state), (e) name, title and telephone number of the customer service person, (f) name, title and telephone number of the regulatory contact person, (g) description of the nature of business being conducted and (h) evidence of financial soundness such as surety bonds. All registered market participants would be required to update their information quarterly and whenever there is a material change. Licensing should also require reporting of all information needed for disclosure and/or labels. As the market evolves, additional information requirements could be imposed as well. Both the information provided and applicants would be subject to audit.

Certification (or accreditation) is similar to registration, but instead of being under the authority of a public agency, it would be implemented by an industry watchdog organization. Certification gives the industry a chance to supervise itself, with the understanding that government could impose a more heavy-handed approach if the industry fails to do an adequate job.

Many industries and businesses whose activities can affect public health and safety (hospitals, nursing homes, insurance companies) are required to have licenses. Like registration,

#### ***Title IV: Regulation of Retail Electric Suppliers***

licensing requires that providers submit detailed information and that they meet very specific criteria. In addition, many licensed businesses are closely regulated and subject to inspection. In the event that a business violates a regulatory requirement, its license may be revoked. In some cases, the employees of a licensed entity must have individual professional licenses. Industries where this approach is typical include insurance, banking, debt collection, non-bank lenders and businesses that have an unfortunate history of fraud and misrepresentation, such as door-to-door salesmen and home repair contractors.

A bonding requirement is often imposed in conjunction with licensing or certification. The amount of the bond should be set high enough to compensate those parties adversely affected by the firm's failure to perform. Requiring a bond (like a performance bond on a construction project) or a letter of credit has at least two beneficial consequences. First, the firm's ability to obtain a bond or a letter of credit is a proof of its financial soundness. Second, the bond provides a source of funds that could either pay for system-wide costs and/or compensate to individual parties.

This model legislation proposes a licensing scheme that carries with it the presumption that the application will be approved within a relatively short time frame. The licensing proposal should not be a barrier to entry posed by the typical Certificate of Convenience and Necessity used for most public

utility licensing today. Rather, the role of the Commission will be to ensure financial safety, system reliability and basic consumer protections. Continuing market oversight entails the periodic or continuous disclosure of information by the firm about its activities and its condition. The information would be disclosed to a public entity that would review it for conformance with required standards. The oversight entity may be required to keep the information confidential, unless it is required as evidence in investigating a potential problem. The oversight entity would have the authority to order a full audit of the firm if the disclosed information suggested a possible violation. Such market oversight is sometimes referred to as "light-handed regulation" and implicitly contains the potential for heavy-handed regulation if firms do not cooperate with disclosure requirements or if other problems arise.

California's restructuring legislation requires all retail suppliers to register with the commission, but the statutory requirements are not extensive. They require only the legal name, telephone number, address, and agent for service of process.<sup>53</sup> However, the California PUC's Restructuring decision contemplates a more extensive licensing and oversight procedure. The Commission's March, 1996 "Roadmap" decision (its description of the procedural steps and working group agendas to implement

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<sup>53</sup>Section 394.

retail competition)<sup>54</sup> stated a wider oversight role:

[I]t is essential that we establish guidelines and rules for new entrants and potential direct access providers. These include both operational rules and consumer protection measures, which must be adopted in time to allow both customers and new entrants to make informed choices.

And later:

The rules for new market participants should be closely coordinated with parties working on consumer protection issues and should include, at a minimum, proposals for determining financial fitness, the need for industry expertise, access to consumer information, preventing unfair marketing practices, the need for tariffs and the applicability of service and safety standards.

The Rhode Island legislation authorizes the commission to register retail electric providers and establishes a revocation procedure, thus appearing more like a licensing procedure than a registration. The registration information must include name; business address; name of state where organized; date of organization with a copy of official organization documents; name and address of officers and partners; name, address and telephone number of a customer service contact person; name, address and telephone number of a regulatory contact person; name and address of an agent for service of process; brief description of the nature of the business being conducted; and evidence of financial soundness, such as a surety bond, recent financial statement or other mechanism specified by the commission. In addition, the commission has the authority to promulgate rules that require

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<sup>54</sup>D.96-02-022



additional information "to protect the public interest".<sup>55</sup>

The New Hampshire legislation states the principle that "generation services should be subject to market competition and minimal economic regulation..."but does require that retail suppliers that do not own transmission and distribution facilities (presumably in New Hampshire) "...should, at a minimum, be registered with the commission." Furthermore, "the rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market."<sup>56</sup>

This proposal is modeled on the proposed rules in Massachusetts and the Rhode Island legislation, but includes several key additions based on the work to date of the California Direct Access Working Group (August 1 Draft Report) and the California PUC Rules governing new entrants to local telephone competition .<sup>57</sup> This model legislation requires the typical registration requirements that reflect the Massachusetts proposal, as well as more significant or substantive filings by an applicant: a bond or Letter of Credit in an amount that reflects the entity's volume of business within the state and information on the supplier's history in other states. It also

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<sup>55</sup>Section 39-1-27.1

<sup>56</sup>Sections 374-F:3(III) and (VII).

<sup>57</sup>California PUC Order R.95-04-043, I.95-04-044, Appendix B, December, 1995.

establishes a process to review and hold contested proceedings if there is evidence that the applicant has a history of fraudulent or anti-consumer conduct in other states. Specific authority for a revocation proceeding is set forth. If there is no authority to revoke a license or to limit its terms and conditions, registration is nothing more than a paper-pushing exercise of little value to consumers.

**Section 3. Minimum Contract Disclosures.** The supplier's contract for the sale of electricity and the minimum consumer protections in Title II (billing disclosures, credit and collection, marketing practices, etc.) comprise the minimum rules of conduct required of all suppliers. The minimum contract disclosures will establish a level playing field for the competition based on price and services. Suppliers can compete on customer service provisions if all entrants are required to disclose their key terms for the provision of electric service. Furthermore, the level playing field will not provide an advantage to either new entrants or retail sales affiliates of the former monopoly utility.

The emphasis is on disclosure rather than price regulation. This proposal does not require suppliers to file their prices with the commission or subject price and rate design decisions to the commission prior to their implementation. However, the proposal does require that prices be uniformly disclosed so comparison shopping can occur (see Title II, Sec. 3 for billing

disclosures) Other key disclosures required in writing in the contract include: the supplier's generation fuel source (similar to the billing disclosure required in Title II, section 3), how to file a complaint with the supplier and the commission, and all material terms of the bargain, including termination procedures and fees, late fees and bill payment options.

While the rules governing access to private and public customer information are more fully discussed in Title II, Section 1, the contract must inform the customer about privacy rights and what type of information may be disclosed and to whom. A separate written disclosure must be made in a form provided to the customer to obtain permission to disclose customer-specific information.

**Section 4. Obligations to Distribution Companies.** Section 4 states the obligation of the retail supplier to enter into a contract with the distribution company to address billing and collection issues, as well as settlements of wholesale usage. The contract should be filed with the commission but does not require commission approval.

**Section 5. Universal Service Disclosure.** Section 5 requires all suppliers to provide a written disclosure to their customers concerning the availability and type of universal service programs available for qualified residential customers. While the supplier may not provide any such programs directly, the intent of this disclosure is to ensure that all customers are informed

about the existence of such programs and know where they can apply for assistance. The supplier could include such a disclosure in its standard contract provided to all its customers or in a separate mailing. If, pursuant to the option in Title II, Section 5, the state requires all suppliers to contribute to the funding of universal service programs, such a funding mechanism should be referenced in Subsection b.

**Section 6. Access to Books and Records; Investigations;**

**Fines.** The commission's access to the supplier's books and records and its investigatory authority is intended to provide a similar authority to that which it has over traditional public utilities. As a practical matter, the commission is unlikely to conduct routine audits but should have the authority to conduct investigations upon reasonable cause and obtain access to books and records, at a location within the state upon reasonable notice. If the commission does not already have the authority to order restitution to affected consumers or to levy fines or penalties, such authority should be obtained as part of the restructuring legislation. While commissions without such authority have wielded their regulatory powers via rate cases and other certification procedures required for traditional public utilities (for example, assessing a penalty on a rate of return for violation of consumer protection rules or mismanagement), such tools will not be available for retail suppliers. Even the rate case tools have been unusable by commissions faced with

system-wide degradation of service in many of the states served by US West Telecommunications, Inc. and have sought legislative authority to assess fines (e.g., Wisconsin, Washington). If commissions do not have the authority to order restitution or fines, they will most likely be unable to respond promptly and forcefully to an emerging pattern of fraud or violation of consumer protection rules. If this is the case, they may be forced to make use of their license revocation authority when a lesser penalty might be more appropriate.

MODEL LEGISLATION

TITLE I: DEFINITIONS; JURISDICTION; AND  
CONSUMER OUTREACH AND EDUCATION

Section 1. Definitions.

A. Aggregator. "Aggregator" means any marketer, broker, public agency or special district that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission and other services on behalf of these customers.

B. Broker "Broker" means a person who arranges the sale and purchase of electric energy, transmission and other services between buyers and sellers but does not take title to any of the power sold.

C. Commission "Commission" means the state's regulatory agency with jurisdiction over electric utilities.

D. Distribution company "Distribution company" means an electric utility that owns, operates or manages a system of distribution of electricity to end-use customers.

E. Marketer "Marketer" means a person who buys electricity, transmission and other services from an electric utility and other suppliers and then resells those services to an end-use customer.

F. Residential customer "Residential customer" means a person who applies for or who is granted service from a distribution company and who uses electricity primarily for personal, family or household use.

G. Retail electric supplier "Retail electric supplier" means a person engaged in the business of producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for sale to end-use customers in this State. A retail electric supplier shall not be subject to regulation as a public utility except as provided in this Act. A broker is not a retail electric supplier unless the broker has the capacity to negotiate a purchase and sale of electricity with end-use customers on behalf of a producer, generator or marketer.

H. Small commercial customer "Small commercial customer means a customer who uses electricity for nonresidential purposes, but whose maximum peak demand in any calendar year is less than [ ]".<sup>58</sup>

I. Renewable "Renewable" means a source of electricity that complies with the requirements of a Qualifying Small Power Production Facility pursuant to the Public Utility Regulatory Policy Act, 16 U.S.C. §796(17).

## **Section 2. Jurisdiction.**

A. Legislative intent. The commission shall have jurisdiction over retail electric suppliers for the purposes set forth in this Act. It is the intent of the Legislature that the commission exercise any discretionary authority granted by this Act to stimulate the development of a competitive market for the retail

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<sup>58</sup>In the California restructuring legislation, this is defined as a customer that has a maximum peak demand of less than 20 kilowatts.

sale of electricity while at the same time ensuring this market operates efficiently and fairly for all consumers. The commission may take into account the needs of consumers when entering a period of transition from a period of monopoly services to a more competitive market.

B. Report to the Legislature. The commission shall report annually to the Legislature on the progress made to implement the provisions of this Act and any further recommendations concerning the State's ability to assure the development of a fair competitive market for the sale of electricity, while at the same time preventing fraud, abuse and adverse impacts on consumers generally and particularly residential and small commercial customers. The commission's report shall contain the number of retail electric suppliers licensed in this State, the number of licenses granted and revoked in the past year, the number and type of consumer complaints resolved by the commission, its activities with regard to the requirements of Section 3, Consumer Outreach and Education Programs and the result of any investigations or rulemakings undertaken pursuant this Act.

**Section 3. Consumer Outreach and Education.**

A. Commission obligation. A smooth and orderly transition to a competitive electric industry requires an informed and involved public. The commission shall be responsible for ensuring and overseeing a comprehensive public education program.

B. Minimum requirements. The commission's comprehensive public education program shall be designed to maximize public



participation in the commission's decision-making process undertaken pursuant to this Act, minimize customer confusion about the changes being undertaken in the electric industry and equip all customers with the means to effectively participate in a competitive electric market. The commission's outreach and education plan shall include:

(1) The dissemination of information by means of interactive approaches, as well as brochures or other written materials, and a variety of mass media outlets.

(2) An explanation in clear, accessible language of the basic concepts of electric restructuring, information that rates, consumer protections and low-income programs may be affected by decisions of the commissions; an explanation of customer risks and responsibilities; an explanation of current consumer protections and a comparison with those recommended or approved by the commission under a retail competition market structure; information about how to assess and make use of a household energy profile to shop for electricity; advice on how to select a retail electric supplier; information about aggregation; information about dispute resolution mechanisms, including the role of the commission in resolving disputes with retail electric suppliers; and a notice of how to obtain additional information.

(3) Well-publicized public forums conducted in several geographical areas of this State to obtain public input and provide opportunities for exchange of questions and answer.

(4) The active involvement of community-based organizations in developing messages and devising and implementing education strategies.

(5) Targeted efforts to reach rural, low-income, elderly, non-english speaking, disabled, minorities and other traditionally under-served populations.

(6) The use of focus groups to gather public input on both broad restructuring issues and concerns, as well as on public education needs.

(7) A toll-free hotline to provide guidance to consumers seeking advice about personal energy needs, the selection of a retail supplier, aggregation or dispute resolution.

(8) The use of pre-established outcome measures of customer awareness, understanding and ability to act to evaluate periodically the success of the commission's education and outreach efforts.

D. Required commission information. The commission shall make available, without charge, the following information that is regularly updated and revised:

(1) Listings of licensed retail electric suppliers

(2) Information on service quality and price comparisons

(3) A summary of the total number and type of consumer complaints filed and resolved.

E. Public alerts. The Commission shall issue public alerts about any unauthorized or fraudulent companies attempting to do business in this State.

F. Commission resources. The commission shall assign at least one full-time person to act as the coordinator of the Commission's outreach and education effort and assign sufficient additional staff to public assistance, dispute resolution, education and related functions so as to assure the compliance with the minimum provisions of this Section.

G. Intervenor funding. The Commission shall fund nonprofit citizens groups to participate in formal and informal collaborative proceedings sponsored or endorsed by the commission so as to ensure that a representative number of consumer and community organizations participate effectively in proceedings designed to implement this Act. Compensation shall be authorized for actual expenses and shall be limited to that funding the commission finds necessary to respond to a showing of financial hardship, including where the economic interests of the group or organization is small in comparison to the cost of effective participation, and where participation is necessary to make a substantial contribution to the proceedings. The commission may order some or all of the costs of participation, based on the organization's degree of financial hardship and its intended level of participation. The commission shall respond to requests for funding under this subsection at any time after a proceeding, whether formal or informal, has commenced.

H. Electric consumer education trust. The commission shall establish an Electric Consumer Education Trust to support grants to community-based organizations to conduct education and

outreach efforts. The commission may charge a licensing fee to every retail electric supplier not to exceed [\$ ] per kilowatt-hour sold in this State to fund the Trust. The commission shall appoint an advisory committee composed of a representative sample of consumer interests, state government officials, retail electric suppliers and distribution companies to review grant requests and advise the commission on the award of grants.

**TITLE II: CONSUMER PROTECTION REQUIREMENTS FOR  
RETAIL ELECTRIC COMPETITION**

**Section 1. Findings and Statement of Purpose**

The Legislature declares that the goal of increasing retail competition in the sale of electricity must be accomplished with minimum consumer protections to enhance customer understanding, prevent unfair trade practices and establish minimum criteria to govern the sale of electricity between consumers and retail energy suppliers and between consumers and their electric distribution company. The Legislature hereby declares that electricity is a basic necessity of modern life, that generation, sale and distribution of electricity has been imbued with a public purpose that is still relevant today, and that the deregulation of the price of retail sales of electricity must be accompanied by reasonable consumer protections regarding the terms and conditions of contracts for the retail sale of electricity and with due regard for customers who are at risk if left without electricity.

**Section 2. Minimum Consumer Protection Standards**

The commission shall adopt rules that establish the following minimum consumer protections as a condition of allowing retail competition in the sale of electricity in this State. These rules shall be applicable to all persons who sell, offer to sell or distribute for sale electricity to retail customers in this State. The commission may adopt rules that contain additional consumer protection standards or that expand the

minimum standards listed below unless it finds that such regulation impedes the development of a competitive market and that the benefits of the competitive market outweigh the protections of the proposed legislation. The commission shall report annually to the legislature any action it has taken or proposes to take with respect to this provision.

**2.1. Right of privacy** The expectation by consumers that their utility billing and payment records will remain confidential is reasonable. Distribution companies and retail electric suppliers shall protect a customer's usage, billing and payment history from disclosure unless the disclosure is authorized by law, or has been approved by the customer in writing. This prohibition shall not be interpreted to prevent a distribution company or supplier from selling or releasing generic information concerning the usage, load shape curve or other general characteristics of customers as a group or rate classification. The commission may protect the generic information of any customer group or class if it determines that the release of this information would lead to a prohibited practice, such as unlawful discrimination, or that the release would reveal individual customer information because of the size of the class or the nature of the information. A distribution company is authorized to release a list of its customers and their addresses to any retail electric supplier under such conditions as specified by the commission by rule. The

commission may authorize the release of customer-specific information by a distribution company or supplier if it determines that the access to the identified information would not be harmful to individual customers and the benefits to the customers whose information would be released will outweigh any detriments.

**2.2. Meters** A distribution company must offer to install a mechanical, watt-hour meter (or other meter typically installed or required for service for the customer class in question) as a condition of providing service to any residential and small commercial customer. No residential or small commercial customer shall be required to obtain a special meter to participate in the choice of a retail electric supplier. The commission shall adopt guidelines for settlements of electricity sales that allow any customer to participate in the retail electric market without obtaining a real-time meter.

**2.3. Bills** The commission shall adopt rules that govern the minimum disclosures that must be included in all bills issued by distribution companies and retail suppliers of electricity. These minimum disclosures must include a requirement to disclose the fuel type and location of the generation source used to supply the electricity sold to the customer. The commission's rules shall contain a uniform method of disclosing the price of the electricity sold to the customer so that customers can compare prices and shop

for electricity based on their own usage profile. Distribution companies shall be required to offer billing and collection services to retail electric suppliers, and the commission may regulate the minimum terms for this service, but suppliers shall not be required to buy this service and may bill and collect directly from their customers. The commission's rules shall also describe the method by which a distribution company or supplier may bill customers for energy efficiency services or products in addition to the sale of electricity.

#### **2.4. Basic service**

(a) Every distribution company shall arrange for the provision of Basic Service to any residential or small commercial customer who does not choose a specific retail supplier by a specific date after the initiation of retail competition and customer choice, who specifically requests Basic Service or who has been refused or denied service by a retail supplier for any reason. The intent of this provision is to provide a default source of electricity service for those residential and small commercial customers who would otherwise be without electricity as a result of the initiation of retail electric competition.

(b) The distribution company shall conduct a bid to choose the retail electric supplier for Basic Service and bill and collect for this service for qualified customers. The commission shall determine the minimum requirements for



the provision of Basic Service. The bid shall be conducted annually and require at least one option for a price that does not vary by time-of-day or season and may require additional rate design features as required by the commission. If there are less than three suppliers that bid for this service, the commission shall approve the selection of the retail supplier for Basic Service.

(c) There shall be no administrative or fixed fee associated with initiating Basic Service charged to the customer, except that the commission may authorize a fee for a customer who requests Basic Service more than once in any 12-month period. The commission shall exempt low-income customers or those who are denied or refused credit by a retail supplier from any such fee. The commission shall regulate the conditions under which the distribution company may disconnect Basic Service.

(d) As an alternative to Basic Service for those customers who do not select a retail electric supplier within a reasonable time after the initiation of retail competition and after notice and opportunity to select a supplier, the commission may require a program that randomly assigns such customers to approved retail electric suppliers. The commission may initiate such a program when, in its judgment, there are sufficient retail electric suppliers willing to accept such customers and the retail market for the sale of electricity is sufficiently robust

and enjoys a high degree of satisfaction with a majority of customers. If the commission initiates such a random assignment approach, Basic Service shall continue to be available through the distribution company as described in paragraphs (a)-(c). The commission shall report to the [committee with jurisdiction over energy and utility matters] no later than three years after the enactment of this section on the extent of the use and price of Basic Service and recommend whether customers who have not chosen an electricity supplier should continue to automatically receive Basic Service or whether in the future customers should be assigned randomly to electricity suppliers who indicate a willingness to accept such customers.

#### **2.5. Universal Service**

(a) Electricity is an essential service and should be affordable to all customers. The commission shall continue existing programs and initiate new programs targeted to low-income customers and others who may be vulnerable if electricity is unavailable, even if only temporarily. Improved or additional programs shall be initiated if the commission finds that electricity is unaffordable for a significant number of customers. The commission's regulations to implement this overall policy shall be designed to target assistance based on need, as defined by the size of the household annual bill as a percentage of household income, adjusted for family size. The commission

may vary the amount and type of assistance based on appliance and usage characteristics. The commission shall coordinate its program with financial assistance available to the household for the payment of energy bills from state, federal, private and other sources and shall adopt a delivery structure for its program that is cost-effective and coordinated with other energy assistance programs.

(b) The commission shall initiate programs that

(i) reduce the amount of the total annual bill to an affordable amount based on need as defined above;

(ii) assist the customer to reduce the amount of the electric bill by means of energy efficiency measures and customer education;

(iii) regulate the disconnection of service during the winter period so as to prevent health and safety risks to low-income and other vulnerable customers during cold weather months; and

(iv) increase the ability of the consumer to make timely and consistent payments toward the full amount owed.

(c) The commission shall require the distribution company to deliver or arrange for the delivery of the Universal Service program and, in order to reduce administrative costs, the distribution companies shall make use, to the fullest extent practicable, of existing community-based organizations who administer one or more fuel assistance and

energy efficiency programs.

(d) A customer who participates in the Universal Service program is not required to use Basic Service as a condition of the receipt of assistance. The distribution company shall provide any bill reduction or discount in the bill issued by the distribution company, but the amount of the bill reduction shall be calculated based on the customer's total electricity bill, including that portion provided by the retail electric supplier.

(e) The provision of Universal Service programs pursuant to this section shall be funded as follows:

**ALTERNATIVE A**

Universal Service programs shall be funded by a fee levied on all retail electric suppliers authorized to do business in this State and distribution companies. The fee shall be collected from retail electric suppliers in proportion to their revenues for the retail sale of electricity in this State. The fee from distribution companies shall be calculated and collected as part of the company's revenue requirement. The amount of the fee shall reflect the commission's determination of the need and scope of the program on an annual basis.

**ALTERNATIVE B**

There is hereby created an Energy Universal Service Fund, the purpose of which is to assure that affordable energy is

available to all households. The Fund shall be administered by the [commission or other state energy agency]. The Fund shall be composed of a fee assessed on all suppliers of residential energy (except fuels used primarily for transportation) doing business in this State based on their proportional share of the sales of all energy to customers in this State. The Fund shall be designed to collect sufficient funds to target assistance to households with an energy burden in excess of 15 percent of their total household income. In order to determine the most practical and equitable amount and method of collection of the fee, the Commission for the Establishment of a Energy Universal Service Fund is created. It shall be composed of nine members, two of which are appointed by the Speaker of the House, two by the President of the Senate, two by the Governor, the Chairman of the commission, the [state's public advocate] and the director of the [state energy office or state planning office]. At least one member shall represent energy fuels not regulated by the commission, one shall represent a distribution company, one shall represent low-income residential customers, and one shall represent a retail supplier of electricity. This Commission shall report to the Legislature no later than six months after the enactment of this subsection with its recommendations on the amount and method of collection of sufficient revenues to achieve the goal of the Fund.

**2.6 Credit and collection practices** The commission shall adopt rules that contain minimum credit and collection procedures and practices applicable to retail electric competition, including:

- (a) application for service;
- (b) credit evaluation and deposits;
- (c) when disconnection of service can be used as a method of collection, the timing of notices of disconnection and required disclosures, disconnection procedures and a customer's right to a payment arrangement to prevent disconnection;
- (d) a customer's right to retain service during a temporary medical emergency;
- (e) a tenant's right to avoid disconnection of service when a landlord fails to pay an overdue bill and the tenant's right to obtain service in his or her own name;
- (f) limitations on the transfer of previously unpaid debt from one customer's account to that of another and from a customer's account at one location to an account at another location,
- (g) limitations on the billing of previously unbilled amounts;
- (h) when late fees may be assessed and limitations on their amount and method of application to an overdue amount;
- (i) reconnection rights and limits on reconnection

fees; and

(j) rules concerning partial payment and the allocation of payments and credits to regulated and unregulated portions of the total electric bill when the distribution company bills for the electricity supplier or when the distribution company bills for both regulated and unregulated services.

The commission's rules may distinguish between distribution companies and suppliers in the establishment of its minimum standards, between the rules applicable to Basic Service and those applicable to less regulated suppliers and products and between rights and remedies for residential and nonresidential customers.

**2.7. Unfair trade and marketing practices.** The commission shall monitor the trade regulation and marketing practices by retail electric suppliers and may exercise the authority to adopt unfair trade practice rules applicable to retail suppliers upon the same grounds and with the same remedies as contained in \_\_\_\_\_

[reference to state mini-Unfair Trade Practices Act]. The commission shall specifically adopt regulations to prevent the unauthorized change in a customer's supplier (so-called "slamming") and allow any customer the right to rescind without charge their choice of electric supplier no later than midnight on the third day following the customer's receipt of a written confirmation of an agreement to

purchase electricity.

**2.8. Dispute resolution.** The commission shall establish and advertise a citizen's electricity market hotline with a toll-free 1-800 number that shall respond to consumer questions and complaints about their electric service and the transition to a more competitive retail electric market. The commission's rules shall include a requirement that all distribution companies and suppliers notify their customers at the time service is initiated, and upon the receipt of a complaint from a customer, of their right to informally appeal their complaint to the [state public utility commission] at [address} and by calling the commission's toll-free number. No distribution company or electricity supplier may disconnect or discontinue service to a customer for a disputed amount if that customer has filed a complaint that is pending with the commission pursuant to the commission's rules. The phrase, "receipt of a complaint" means, with respect to a distribution company and supplier, that a customer (or applicant) has notified the company orally or in writing that he or she is not satisfied with the company's initial response to their complaint. The commission shall have the authority to investigate, mediate if possible, hear and resolve any complaint submitted by a customer except that the commission may not award damages.

**2.9 Right to change supplier.** A customer may change his or her retail electric supplier at any time, but may remain



responsible for any unpaid charges owed to a supplier if the customer fails to give proper notice. A retail supplier shall not require any notice that exceeds three business days. Any fee or penalty charged by the supplier associated with early termination of a contract shall be conspicuously disclosed in any contract between the supplier and the customer. The commission shall adopt rules that specify the type and manner of communications between the customer and the supplier and between the supplier and the distribution company to effectuate a customer's change in supplier.

### TITLE III: REGULATION OF DISTRIBUTION COMPANIES

**Section 1. Findings and Statement of Purpose.** The Legislature finds and declares that the role of the distribution company must be redefined in a competitive retail electric market. The distribution company will be required to retain its monopoly role with respect to the construction and maintenance of the distribution system for all customers, installation of service and meter reading, billing of customers for distribution and transmission services and provision of optional billing services under contract with retail electric providers. The distribution company shall provide access to the electric grid in a nondiscriminatory manner to customers, be subjected to regulation of the commission for prices and the quality of its customer service, and undertake such additional obligations with respect to energy efficiency and universal access services as determined by the commission. The purpose of this Title is to supplement existing law, and , where appropriate, substitute rights and obligations for distribution companies in an electricity market characterized by retail competition.

**Section 2. Right of Access.** A distribution company shall provide access to the distribution system to all customers in a nondiscriminatory manner and pursuant to such specific procedures as set forth by the commission by rule. A distribution company shall not discriminate in its provision of billing and service agreements with retail electric suppliers licensed to do business in this State, nor shall a distribution company take any action

that provides any benefit or favor to its retail sales affiliate in the provision of services to retail electric suppliers or wholesale or retail customers. The commission shall adopt a code of conduct that will govern the interactions of a distribution company and any affiliates. In addition, the commission shall adopt rules to govern the minimum procedures that must be followed by both distribution companies and retail electric suppliers to assure both connection and disconnection of service in a fair and equitable manner, taking into account the consumer protection and universal service obligations set forth in Title II.

**Section 3. Unbundled Rates.** A distribution company shall unbundle or separate its charges for distribution and transmission services into the following components:

**Section 3.1.** Transmission services;

**Section 3.2.** Distribution services, which shall include the costs associated with Universal Service programs and energy efficiency programs or expenses authorized by the commission, bad debt and other expenses associated with the consumer protection provisions of these rules;

**Section 3.3.** Charges for electricity supplied by a retail electricity supplier or Basic Service arranged by the distribution company in accordance with these rules; and

**Section 3.4** Stranded Cost Recovery Charge.

**Section 4. Performance-Based Ratemaking** The commission may require a Performance-Based Ratemaking plan for a distribution

company if it determines that it is more likely than not that prices or revenues relating to basic distribution services will be lower than under traditional rate of return regulation and if the plan meets the following minimum requirements:

**Section 4.1.** The term of the plan shall not exceed five years.

**Section 4.2.** The plan shall provide for an annual review of prices or revenues based on changes in an index that reflect national inflation trends minus a productivity factor. The productivity factor shall account for the expected improvement in productivity consistent with that of the average firm in the business of distribution of electricity and may also include the following components: accumulated inefficiencies, reflecting any inefficiencies that have accumulated over time in rates of electric companies under traditional rate of return regulation; a customer dividend, reflecting the increase over historical productivity of the distribution company in the electric industry that can be expected when the distribution company is regulated by Performance-Based Ratemaking; and an input price or cost differential, reflecting any difference in the change in input prices or costs between the U.S. economy and the electric industry over a relevant period of time.

**Section 4.3.** The commission may also take into account exogenous factors in the annual price review if those factors are external to the distribution company and not

subject to its control or reasonable anticipation, such as federal and state changes in tax laws, and have had a significant impact on the revenues of the company.

**Section 4.4.** The commission may provide for separate tracking of the costs associated with energy efficiency and universal service programs external from the index that governs prices generally.

**Section 4.5.** The commission may allow the distribution company substantial price flexibility for specified services within each customer class subject to a floor of [long-run marginal costs] and a cap reflecting changes in the national inflation index as described in Section 4.2. The commission may distinguish between customer classes and types of services in determining the proper degree of pricing flexibility for each distribution company, but in no case shall the distribution company shift costs associated with the pricing flexibility authority between customer classes without specific commission review and approval. The commission's pricing flexibility rules may include a reduction or elimination in filing requirements.

**Section 4.6.** The commission shall adopt an earnings sharing mechanism only for extraordinarily high or low earnings. Any earnings sharing provisions of the plan shall be designed to maximize the incentive to the utility to increase its efficiency and thereby lower prices for all customers.

**Section 4.7.** To prevent a distribution company from increasing earnings at the expense of service quality and reliability, any plan approved by the commission shall contain a Quality of Service and Reliability Index . This Index shall measure a reasonable number of service quality and reliability indicators, compare annual performance with a baseline level of performance in existence at the beginning of the plan, assess penalties on the company's earnings and provide rebates to affected customers in any year in which the company's performance fails to comply with any baseline performance level. The amount of the penalty shall not be less than .5 percent of the company's jurisdictional revenues. Customers shall be informed when a penalty is triggered in a manner approved by the commission.

**TITLE IV: LICENSING AND DISCLOSURE REQUIREMENTS  
FOR THE SALE OF ELECTRICITY BY RETAIL SUPPLIERS**

**Section 1. Purpose** The purpose of this Title is to establish the jurisdiction of the [state regulatory body] over retail electric suppliers and set forth the conditions under which such suppliers may obtain a license to sell electricity at the retail level in this State.

**Section 2. Licensing** No retail electricity supplier shall engage in the business of the sale, marketing, brokering or aggregating for the sale of electricity in this state without a valid license from the commission. All retail electric suppliers who seek to do business in this state shall file an application with the commission that includes the following information and any additional information required by the commission by rule:

- (a) legal name;
- (b) business address;
- (c) that state where incorporated; date or organization; copy of the articles of incorporation, association or other form of organization;
- (d) name and business address of all officers and directors, partners; or other similar officials;
- (e) name, title and telephone number of customer service contact person;
- (f) name, title and telephone number of regulatory contact person;

(g) name, title and address of registered agent in this state for service of process;

(h) description of the nature of the business to be conducted, and a map showing the geographic area where the supplier seeks to do business;

(i) the source of generation relied upon by the supplier ;

(j) a copy of the standard contract proposed to be used by the supplier for residential and small commercial customers;

(k) whether the applicant or any member of its Board of Directors or officers have been or are the subject of state or federal investigation, license revocation or lawsuit, and, if so, the identification of such states and proceedings; and

(l) evidence of financial soundness, such as surety bonds, a recent financial statement, or other evidence as specified by the commission.

The application shall be deemed approved after 90 days, unless the commission initiates an adjudicatory proceeding by public notice that states the reason(s) why there is reason to believe that the application should be denied. The applicant shall have an opportunity to correct any deficiency noted by the commission in writing or request a public hearing. A failure to comply with the application requirements or evidence that indicates a pattern of violation of state or federal consumer



protection laws and rules, including Antitrust laws and securities rules, shall be sufficient to deny an application. A license shall remain valid for a period of five years unless sooner revoked.

After a license is issued, a retail electricity supplier must inform the commission in writing of any substantial change in the information submitted to obtain a license from the commission within ten days of the event. The failure to provide such information in a timely manner shall be grounds for revocation of the license.

The commission may revoke a license for the retail sale of electricity for cause after opportunity for public hearing. The commission may issue an order that prevents a supplier from marketing or signing up new customers during the pendency of an investigation or revocation proceedings when it finds that there is probable cause to believe that consumers will be harmed or that the reliability of the electrical supply of this state will be harmed by the actions of the supplier.

**Section 3. Contracts for the Sale of Electricity** A retail electricity supplier shall promptly provide a written contract to a residential or small commercial customer who has agreed to purchase electricity from the supplier. The contract shall be in writing and contain all the material terms. At a minimum, the contract shall conspicuously disclose the following information:

- (a) The recurring and nonrecurring monthly charges;
- (b) The supplier's source of electricity and fuel

source;

(c) The customer's right to file a complaint with the commission (and the commission's toll free telephone number) after the customer has attempted to resolve the dispute with the supplier;

(d) The supplier's License Number from the Commission, full disclosure of all names under which the supplier does business in this state, how the consumer will receive bills and the name and address of the supplier's billing agent, if any.; and

(e) How the supplier handles the customer's personal usage, billing and payment information, how such information might be used or disclosed in a manner not obvious to the customer, what non-private information is disclosed and to whom, and how the customers can allow the supplier to release their customer-specific information.

**Section 4. Obligations to Distribution companies.** A retail electricity supplier shall enter into a contract with each distribution company that services its customers. The contract shall describe the billing arrangements between the distribution company and the supplier, how information concerning customer status will be transmitted between the two entities, whether and under what conditions upstream metering will occur to facilitate settlements of non-hourly metered customers and other settlement issues. The contract shall be filed with the commission by the retail electric supplier prior to the commencement of business by

the supplier in this State.

**Section 5. Disclosure of Universal Service Programs.** A retail electric supplier shall inform every prospective customer of the availability of Universal Service programs for qualified customers and how customers can apply for such programs. A summary of such programs shall be provided in writing within ten days of commencement of service for residential customers.

[For funding obligation, see Title II, Section 5, Alternative B.]

**Section 6. Commission Access to Books and Records; Investigation; Fines** The commission shall have access to a retail electric supplier's books and records concerning its business within this state upon reasonable notice in order to investigate, upon reasonable cause, any alleged violation of this Act. The supplier shall make such books and records available to the commission within this state at a location convenient to both parties. Upon reasonable cause, the commission may initiate an investigation of the supplier's business in this state for the purpose of determining compliance with any provision of this Act. Upon initiating such investigation, the commission shall notify the supplier and other interested parties and take such steps as are necessary and proper to protect the confidentiality of information obtained from suppliers that would unfairly impact the supplier's ability to compete in the future for sales of electricity in this state. The commission shall offer the supplier an opportunity to respond and request a public hearing.

Upon a finding that the supplier has violated one or more provisions of this Act, the commission may issue such orders as necessary, pursue a revocation of the supplier's license, order restitution to specific customers and assess fines according to section [other applicable authority to assess penalties or fines].

## MODEL REGULATIONS

### CHAPTER 1: MINIMUM CONSUMER PROTECTION REQUIREMENTS

A. Applicability. These rules shall be applicable to electric distribution companies and retail suppliers of electricity ("supplier") doing business in this State. Unless specifically stated otherwise, these provisions apply to both entities who shall be referred to as the "seller" for the purposes of this Chapter.

B. Customer Bill of Rights. The following standards shall govern the sale of distribution and transmission services and the retail sale of electricity to residential and small commercial customers:

1. Privacy. A customer shall have a right to the privacy of billing, payment and specific usage and appliance information that is obtained by the seller in the normal course of business.

(a) A seller shall obtain the permission of the customer in writing before releasing customer-specific information. Any form provided to the customer to grant permission for the release of customer-specific information must specify the type of recipient and category of information proposed to be released and describe how the customer can rescind this permission at any time.

(b) A customer may rescind a previously-granted permission at any time in writing to the person who

solicited the permission. A rescission is effective no later than three business days after the customer deposits it in the U.S. mail.

(c) A seller may at any time release generic information about a customer class or its customers in general, such as load and usage data, appliance penetration, demographic information, and payment experience. Generic customer information shall not be released without permission of the affected customers when the information concerns a customer class or group of customers that is small enough to reveal the probable usage, billing or payment behavior of individual members of the customer group or class. There shall be a rebuttable presumption that a customer class or group with less than [ ] members meets this criteria. Furthermore, no seller shall sell or release information within its possession that would, if used as a basis to grant credit, result in a credit decision on a prohibited basis set forth in the federal Equal Credit Opportunity Act, 15 U.S.C. §§1691, et seq.

(d) A distribution company shall make available a list of its current customer names and mailing addresses to any supplier upon request and for a reasonable fee.

(e) A distribution company may not release customer information, either generic or individual (with the

necessary customer permission), to any organization affiliated with the distribution company or subject to common ownership with the distribution company without offering the same information on the same terms to any supplier who requests it. The revenues received by a distribution company for the sale of this information shall be included in the determination of the company's revenue requirement. The commission may impute revenues to the distribution company to reflect the market value of the information sold or provided to any supplier.

(f) The commission and any law enforcement agency may have access to individual customer records without the permission of the customer as necessary to conduct its regulatory duties and supervise sellers for compliance with State law and these regulations. The commission shall retain any such records in its files as confidential and such records shall not be considered available to the public under any "right to know" or disclosure law without the written consent of the customer.

(g) A seller may release a customer's credit history to a third party in an attempt to collect an unpaid debt or to report on the customer's payment history to a credit reporting agency under the terms of applicable state and federal law.

(h) A retail electric supplier shall not disclose

customer-specific information relating to usage, bill payment patterns or other information ruled private by the commission without the customer's permission. A customer's permission cannot be provided with a clause in a contract for the sale of electricity. Permission can only be obtained in writing on a separate document. This prohibition shall not be applicable to customer-specific usage information provided by a distribution company to an entity who seeks to deliver energy management services to customers of the supplier pursuant to a commission-approved program .

## 2. Meters.

(a) A distribution company shall continue its obligation to furnish a standard meter for the customer class in question to any residential and small commercial applicant for service at a previously unserved location without separate charge. All other customers must install a meter that can record hourly demand and usage characteristics by [ ].

(b) A customer may install a different meter if it meets the technical qualifications and installation specifications established by the distribution company. The distribution company may adopt reasonable procedures to assure compliance with its technical qualifications and installation specifications and



shall inform its customers of these requirements promptly upon request.

(c) A supplier may vary the price of electricity based on the type and capacity of the installed meter to record hourly or seasonal prices. A supplier's terms may include a requirement that a customer with a non-hourly meter pay a separate fee or penalty if the customer cancels a contract during certain times of the year or without specified notice to the supplier.

(d) A supplier may offer to sell or lease a different meter and to bill and collect separately for the meter on the electric bill issued by a supplier or distribution company. Meter-related charges shall not be subject to regulation by the commission, shall not be included in any disconnection notice issued by a distribution company for distribution services but must be identified separately on the customer's bill.

(e) As a condition of offering electricity for sale within a territory served by a distribution company, a supplier must enter into an agreement with the party responsible for settlement of network operations. These agreements must allow for the use of average load shape curves to bill and pay for the use of electricity by customers without hourly-metered consumption. The average curves shall be calculated at least four times per calendar year for each supplier's customers without

hourly meters.

3. Bills. A bill issued by a seller must contain the following information in a format understandable by the average customer:

(a) The identity of the person issuing the bill, and if the bill is issued by distribution company under contract with the supplier, the identity of the supplier, respective addresses and telephone numbers where the customer can call or write with inquiries.

(b) The type of meter in use by the customer, the meter reading from the last bill, the current meter reading and the total kilowatt-hours used by the customer for the billing period.

(c) If the bill is based on an estimated reading, a conspicuous disclosure of this fact.

(d) Any additional services or products provided since the issuance of the last bill.

(e) The price of the electricity expressed in cents per kilowatt-hour and the price for other products or services bought by or provided to the customer, all stated in a manner that allows the customer to recalculate the entire bill amount.

(f) The type of generation source or sources owned or bought by the seller and sold to the customer. The type shall refer to the type of fuel used by the generation source to produce electricity and shall be

stated in plain language without technical jargon. For example, the terms "fuel oil", "wood", "wind", "solar", "hydroelectric dam", "coal" and "nuclear power " shall be in compliance with this provision. When a seller has obtained electricity from more than one source, the disclosure shall include the percentage (accurate to within [ten percent]) breakdown of the various sources of generation relied upon by the seller. When a seller has obtained electricity from a power pool without regard to a particular source of generation, this fact shall be disclosed, and the seller shall disclose the generic categories (with percentages where applicable) of power dispatched by the pool during the previous six months.

(g) A seller may include services or products on the customer's bill other than for the transmission, distribution and retail sale of electricity, but any such service or product shall be clearly identified and totaled separately from the sales of electricity. Except insofar as specifically authorized in Section 6, a seller shall not disconnect or threaten to disconnect the customer's electric service for failure to pay for products or services other than electricity.

(h) A disclosure of the customer's annual and monthly usage for each of the previous 12 months (or a shorter period for a customer who does not have a 12-

month history with the seller). A distribution company and supplier may coordinate this disclosure to avoid duplication and enhance customer understanding.

(i) A distribution company shall not itemize any program or charge included in the rates for services provided by or included in the rates of the distribution

company other than those specifically authorized by the commission in the company's terms and conditions. This itemization shall not include the costs of any Universal Service or other public benefit program authorized by the commission.

4. Basic Service. A distribution company shall arrange for the provision of Basic Service to any residential and small commercial customer who has not chosen a retail supplier after having been notified of their opportunity to do so, and those whose retail supplier has failed or refused to provide further service to the customer. A distribution company may arrange for the provision of Basic Service to any other customer upon request and upon mutually agreeable terms. The distribution company shall automatically provide Basic Service to any customer whose supplier has failed or refused to provide service to that customer unless the customer has given instructions to either disconnect service or switch to a different supplier.

(a) The distribution company shall annually solicit competitive bids for the provision Basic Service from all suppliers licensed to do business in this State. If three or more suppliers submit proposals that meet the minimum terms contained in the bid document, the distribution company shall accept the bid that best meets the terms of the bid

requirements and offers the lowest price for electricity. If there are less than three suppliers submitting proposals meeting minimum terms, the commission shall approve the price for Basic Service prior to the award of any bid by the distribution company.

(b) The distribution company shall include the following terms in the solicitation for proposals for provision of Basic Service:

(i) The supplier shall provide customers with a choice between a price for electricity which does not vary by time of day or season and a price that varies by time of day and season.

(ii) There shall be no administrative fee or extra charge for a customer to obtain Basic Service, except that a customer who requests Basic Service more than once in any 12-month period shall be charged a fee of [\$25.00]. There shall be no fee charged for a low-income customer or any other customer when the service is provided as a result of a supplier's failure or refusal to serve a customer.

(iii) The current rules in effect governing credit and collection activities, deposits, disconnection, late fees,

reconnection fees, winter disconnection rules or other restrictions on disconnection for vulnerable customers, payment arrangements, medical emergencies and other customer protections shall be applicable to Basic Service.

(iv) The distribution company shall bill and collect for Basic Service charges, and the supplier shall reimburse the distribution company an agreed-upon amount to reflect the costs avoided by the supplier due to this arrangement. The costs of Basic Service in excess of the revenues received, including any costs incurred to collect overdue amounts, shall be included in the rates charged by the distribution company to all its customers.

(c) After the completion of five years of experience with the provision of Basic Service, the distribution company shall report to the commission on the need for and conditions under which Basic Service should be provided to its customers and the role of the distribution company in the provision of this service.

##### 5. Universal Service.

**ALTERNATIVE A [where existing programs are in place that meet the statutory directives]:** Every distribution company shall continue its existing financial and energy assistance program targeted to low-income customers. The amount of financial assistance provided to qualified customers shall be calculated based on the amount of the customer's total monthly bill for transmission, distribution and electricity. If the distribution company does not bill for the customer's electricity supplier, the amount of the assistance shall be calculated based on the bill issued by the distribution company and the average market price for electricity for a customer with a usage profile similar to the low-income customer in question. The cost of the financial assistance and energy assistance programs targeted to low-income customers shall be included in the rates charged for distribution services by the distribution company to all its customers, including access charges to suppliers. Any assistance programs targeted to low-income customers shall be in addition to existing restrictions concerning disconnection of service for



vulnerable customers during extreme weather months.

**ALTERNATIVE B [where no direct assistance programs targeted**

**to low-income customers are in place]:** Each distribution company shall submit a coordinated financial and energy assistance program targeted to low-income customers by

[ ]. In its filing, the distribution company shall describe how its proposed program design meets the statutory criteria and objectives of [Title II, Section 2.5] and shall include the following minimum requirements:

(a) Customers with an annual household income of 150 percent or less of federal poverty guidelines are eligible for assistance in the payment of their annual electricity bill and energy efficiency assistance designed to make the bill more affordable and the dwelling more energy efficient. The size of the program shall be designed to achieve the maximum self-sufficiency of its intended recipients consistent with the overall objective to reduce the recipient's household electricity budget to an affordable level.

(b) The program shall be coordinated with the delivery of low-income energy assistance and weatherization programs administered by state and local agencies.

(c) Financial assistance shall be based on need, defined as the extent the burden of the total electric

bill for low-income customers exceeds the burden experienced by average residential customers. The excess burden shall be compensated as the percentage of income the total electric bill represents, taking into account family size and receipt of housing subsidies.

(d) Funds shall be targeted to those most in need, defined as those customers whose energy bill exceeds 15 percent of their household income for those who heat with electricity and ten percent of household income for non-electric heat customers. Energy efficiency services shall be similarly targeted.

(e) The amount of financial assistance shall be calculated based on the customer's total electricity bill issued by the distribution company. If the distribution company does not bill for the customer's electricity supplier, the amount of assistance shall be based on the average market price for electricity for customers with similar usage profiles.

(f) Customers shall be certified as eligible annually. The distribution company shall coordinate its certification with agencies who administer energy assistance and other means-tested aid to the greatest extent possible.

(g) The costs of the program shall be included in the rates for distribution services charged by the distribution company for all its customers, including

access charges paid by suppliers.

6. Credit and collection practices. The commission's current credit and collection regulations shall remain in effect to govern the actions of a distribution company with regard to Basic Service and the billing and collection of distribution and transmission services provided by the distribution company. The following provisions apply to the billing and collection for the sales of electricity by retail suppliers and the billing and collection for sales of electricity by distribution companies under contract with suppliers:

(a) A distribution company that offers to bill for energy suppliers shall allocate a customer's partial payment first to services regulated by the commission, including, but not limited to, distribution and transmission services, and then to the unregulated portion of the bill. For purposes of this paragraph, the term "services regulated by the commission" include energy management and efficiency services provided to the customer pursuant to commission order and billed by the distribution company.

(b) A distribution company shall not disconnect or threaten to disconnect a customer for failure to pay the retail electricity sales portion of the total bill, other than for Basic Service, but may seek to disconnect the customer, pursuant to the procedures

mandated by the commission, for a failure to pay for transmission and distribution services and any other energy efficiency service provided by the distribution company as approved by the commission.

(c) A supplier may discontinue services to a customer who fails to pay or make a reasonable payment arrangement for an overdue amount in excess of \$50 by giving notice to both the customer and the distribution company. The notice shall be in writing and conspicuously disclose the amount overdue, what the customer must do to avoid discontinuance of service, how the customer can contact the supplier to negotiate terms to avoid disconnection, and how the customer can obtain Basic Service in place of further service from the supplier. The notice shall be mailed or delivered at least [ten days] prior to disconnection of service. Once the due date has passed, the supplier may notify the distribution company who shall change the customer's supplier upon proper notice from the customer or initiate Basic Service within three business days. The supplier's obligation to the distribution company or network operator shall cease with the disconnection of service by the distribution company, the initiation of Basic Service or the commencement of service to the customer by a different supplier, whichever comes first.

(d) A retail supplier shall not refuse to grant credit to any applicant based on a prohibited basis contained in the federal Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f. In addition, no electricity supplier may require a customer to install a prepayment meter, service limiter or other device or program to require cash payment prior to the delivery of the service unless the electricity supplier requires such a device or program as a condition of service for all of its customers.

(e) Any deposit required by a retail supplier shall not exceed the applicant's estimated bill for a two-month period. The commission may waive the supplier's right to a deposit in any case in which it finds that the supplier has discriminated in its request for a deposit from an applicant. The commission may take into account the supplier's written credit and collection procedures and their application in making this decision. A request for a deposit shall be in writing and inform the applicant of the reason for the request, the source of the information that led to the request, the amount, the applicant's payment options, and how the applicant can have the deposit refunded.

(f) A retail supplier may charge a late fee if a customer's payment is paid after the due date on the customer's bill. The amount of the late fee shall not

exceed customary business practice for consumer goods.

(g) A tenant whose landlord fails to pay for electric service shall not be disconnected. Where metering facilities exist, the tenant shall be offered an opportunity to put service, including Basic Service, in his or her name. In addition to any other remedy authorized by law, a retail supplier and distribution company may file a lien on the property of any owner of a multi-unit, single-metered building for failure to pay for electricity services. This lien shall be filed in the same manner and perfected with the same procedures as those available to towns and cities for the collection of unpaid property taxes and sewer charges.

(h) The distribution company shall notify all its customers of the right to have a registered physician declare a medical emergency in the household and avoid disconnection for a period not to exceed 90 days. Upon receipt of a declaration of medical emergency, a retail supplier shall not disconnect the customer. If a distribution company receives such a declaration, it shall promptly notify the customer's supplier. During this time period the customer may request Basic Service or continue with service from his or her retail supplier. During this time period the customer may not be threatened with disconnection and the supplier and

distribution company shall accept less than payment in full. The customer shall remain liable for all unpaid amounts. At the end of a maximum period of 90 days, the customer shall either resume regular payments or pay the overdue amount in full to avoid disconnection.

7. Unfair Trade Practices; Marketing The following specific practices shall be prohibited:

(a) Slamming. No electric utility, or any person, firm, corporation or governmental entity shall make any change or authorize a different electric utility or electric marketer to make any change in the provider of electric power for any residential or small commercial customer until the change has been confirmed by an independent third-party verification company, as follows:

(i) The third-party verification company shall meet each of the following criteria:

(A) Be independent from the entity that seeks to provide the new service.

(B) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service or by any corporation, firm or person who directly or indirectly manages, controls, or directs or owns more than five percent of the entity.

(C) Operate from facilities physically separate from those of the entity that seeks to provide the new service.

(D) Not derive commissions or compensation based upon the number of sales confirmed.

(ii) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party verification company to call the resident to confirm the sale.

(iii) The third-party verification company shall obtain the resident's oral confirmation regarding the change and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the resident upon request. Information obtained from the resident through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved resident against the entity or its employees who are responsible for the violation.

(iv) Notwithstanding paragraphs (i), (ii), and (iii), a service provider shall not be required to comply with these provisions when the customer directly calls the service provider to make changes in service providers. However, a service provider



shall not avoid the verification requirements by asking a customer to contact a service provider directly to make any change in the service provider. A service provider shall be required to comply with these verification requirements for its own competitive services. However, a service provider shall not be required to perform any verification requirements for any changes solicited by another service provider.

(b) Gifts and inducements. A supplier shall not provide a gift or inducement to become a residential or small commercial customer with a value in excess of \$50 or provide any gift or inducement more than once per 12-month period to the same household.

(c) Price. A supplier shall not advertise or disclose the price of the electricity in such a manner as to mislead a reasonable person into believing that its portion of the bill will be the total bill amount for the delivery of electricity to the customer's location. When advertising or disclosing the price for electricity, the supplier shall also disclose the distribution company's average current charges for that customer class as approved by the commission.

(d) Right of rescission. In addition to any other right to revoke an offer, residential and small commercial customers of electrical service have the

right to cancel a contract without fee or penalty for electric service until midnight of the third business day after the day on which the buyer receives a written confirmation of the agreement to purchase such service. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the contract.

(e) Customer remedies. A consumer damaged by a violation of this section by an entity offering electrical service is entitled to recover all of the following:

(i) Actual damages;

(ii) The consumer's reasonable attorney's fees and court costs;

(iii) Exemplary damages, in the amount the court deems proper, for intentional or willful violations;  
and

(iv) Equitable relief as the court deems proper.

The rights, remedies and penalties established by this

section are in addition to the rights, remedies or penalties established under any other law.

(f) Guidelines for marketing renewable energy. The following guidelines shall be applicable to the marketing and contract disclosures of the sale of electricity:

(i) Any disclosure about the location and fuel used by the supplier's generation source must be specific, clear and prominent.

(ii) Any claim of environmental benefit associated with the sale of electricity shall state whether the benefit is associated with the labeling, the actual fuel source or any other component of the product itself.

(iii) Environmental attributes shall not be overstated and shall be supported by competent and reliable evidence.

(iv) Suppliers must make any comparative statements with sufficient clarity to avoid deception.

8. Dispute Resolution. Each seller shall maintain a written policy to govern the receipt, investigation and resolution of customer inquiries and complaints. This policy shall be available to any customer upon request. At a minimum this policy must include a method to track complaints by category and the retention of complaint records for a period of at least one year. If a seller has provided a good faith response to the customer and the customer remains dissatisfied, the seller shall refer the customer to the commission's toll free number for customer complaints. For a three business-day period after the referral, the seller shall not take any adverse action with respect to the customer's complaint. Upon receipt of any complaint from a customer who has attempted to resolve the matter with the seller, the commission (who may delegate their authority under this section to the staff) shall promptly notify the seller who shall take no further adverse

action with respect to the disputed amount prior to the commission's decision on the complaint. The commission may investigate and take whatever action it deems appropriate to resolve the complaint, including setting the terms for application for service, payment arrangement, billing error or dispute, allegation of violation of these rules or other matters within the jurisdiction of the commission. In no case shall the commission have the authority to award damages to a customer but may order restitution or rebate of amounts charged in error or by mistake.

#### 9. Change of Supplier.

(a) A customer may change his or her electric supplier at any time, subject to any penalty set forth in the contract with the supplier. The distribution company may charge a reasonable fee to make a change in the customer's supplier to reflect the actual cost to read the customer's meter and make changes in its billing records, except that every customer may seek a change in retail supplier without charge once in any 12-month period. When a fee is applicable, the distribution company shall offer the customer the option to self-read the meter or provide a timely meter reading at a lower cost. Any fee to initiate Basic Service shall be charged only under the provisions allowed in Section 4 of these regulations.

(b) Except for the automatic provision of Basic Service as described in Section 4, a distribution company shall not change the identity of the customer's supplier if there is reasonable grounds to believe that the notification procedures of Section 7 (a) have been violated. Instead, the distribution company shall take immediate steps to attempt to communicate directly with the customer.

(c) A distribution company may adopt a reasonable notice period to effectuate a customer's change of supplier, but this notice period shall not be greater than three business days. The distribution company shall read the customer's meter or obtain a self-reading from the customer prior to recording a change in the customer's supplier.

(d) Any change in the customer's supplier shall take effect at the time of the meter reading by the distribution company, or, if an actual meter reading is not possible after reasonable efforts to obtain an actual or customer-supplied reading by the distribution company, on midnight of the day that the change is implemented by the distribution company in its records.

## **CHAPTER 2: DISTRIBUTION COMPANY OBLIGATIONS AND FORM OF REGULATION**

1. Customer Right of Access; Duty of Distribution Company. A distribution company shall provide access to the electric grid in a nondiscriminatory manner to any person upon request. Any condition imposed by the distribution company prior to providing access shall be contained in the company's terms and conditions subject to review by the commission and be in conformance with these rules. The procedures adopted by the distribution company to provide access to retail electric suppliers shall include the following requirements.

(a) A distribution company must offer to enter into an agreement to govern metering, meter reading, transmittal of billing information or billing services, and settlement of accounts with any retail electric supplier licensed by the commission. The retail supplier shall provide at least two weeks notice to the distribution company of its intent to do business in the service territory of the distribution company. The agreement between the distribution company and the retail electric supplier must incorporate the provisions of these rules relating to the funding and delivery of Universal Service programs; implementation of the commission's requirements relating to credit and collection; bill notification and disclosure requirements; and notification between customers, suppliers and the distribution company of intent to change suppliers or obtain reconnection and disconnection services. A copy of the agreement shall be filed with the commission but shall not require commission approval.

(b) No distribution company shall discriminate against or show favor toward

any retail electric suppliers in its communications or in its course of conduct with customers or retail electric suppliers. The commission may investigate on its own motion the reasonableness of transactions between or among affiliates and distribution companies and may impose penalties and additional regulatory requirements on distribution companies and their retail electric supplier affiliates to assure compliance with this requirement.

(c) The following Code of Conduct shall govern the interactions between a distribution company in any dealings with its affiliates:

(i) A supplier offering power to an affiliated distribution company for the distribution system's stability or reserve needs shall make the power available to the market on the same conditions;

(ii) A distribution company shall supply services and apply terms and conditions to affiliates and non-affiliates in the same manner and shall uniformly enforce these terms and conditions;

(iii) A distribution company shall not give an affiliate preference over a non-affiliate in processing a request by a customer for service;

(iv) A distribution company shall simultaneously make available to any supplier any information and on the same terms as it provides to an affiliated supplier;

(v) Employees of a distribution company who have responsibility for operations of the distribution system, such as receiving requests for power purchasing power, or scheduling delivery, shall not be shared with an

affiliated supplier, and their offices shall be physically separate. Any shared facilities shall be full and transparently allocated between the two entities. Separate books of account and records shall be maintained for each affiliate of a distribution company.

(vi) A distribution company shall not condition the provision of any distribution company services on the purchase of electricity from an affiliate.

(vii) A distribution company shall establish and file with the commission a dispute resolution procedure to respond to complaints concerning violations or interpretations of these rules.

(viii) Nothing in these rules shall be construed to modify, impair or supersede the Antitrust Laws, consisting of federal and state statutes, including the Sherman Act, 15 U.S.C. §§1-7, the Clayton Act, 15 U.S.C. §§12-27, and the [state antitrust act].

2. Service Quality Index. The terms of any Performance-Based Ratemaking plan shall include a Quality of Service and Reliability Index. The Index shall be designed to conform to the following minimum requirements:

(a) The Index shall track the distribution company's performance in a range of service quality and reliability services for both residential and commercial customers, including, but not limited to, customer satisfaction surveys, business office and phone center performance, repair and installation of new service, connection and disconnection of service, delivery of commission-mandated programs, duration and frequency of outages, storm response, customer complaint



ratio (both internal and external with the commission), accuracy of meter readings and bills, as well as compliance with specific commission service quality and credit and collection rules applicable to both residential and business customers. The specific items to be measured shall be determined for each distribution company based on the type and quality of historical data that is available, the nature of the customer service programs and compliance with commission rules demonstrated by the company in the recent past. The Index shall specify the source and reporting format of the data to be used by the utility in its filings with the commission, and the commission may audit the data provided by the distribution company at the expense of the distribution company.

(b) The Index shall track the performance of the company in the selected performance areas on an annual basis in comparison to a baseline performance level that shall be set to reflect either recent historical performance of the company, taking into account a reasonable margin of error, or at a higher performance level if the commission determines that the company's recent historical performance is not adequate. If the company has not maintained historical data sufficient to establish a baseline for a particular performance area and the commission determines that the performance area should be measured, the commission may use recent data from comparable utilities.

(c) Each item in the Index shall be worth an equal number of points. Performance for one item shall not offset performance in any other item in the index. If the company's annual performance is equal to or better than the baseline

performance level, the maximum number of points for that item shall be awarded. If the company's performance is below the level established as the baseline, a percentage of the maximum points shall be awarded equal to the percentage deterioration in performance reported by the company. In other words, if the company performs at 80 percent of the baseline performance level, 80 percent of the maximum points will be awarded for that item.

(d) A specific measurement shall be adopted to assure the distribution company fulfills its Universal Service obligations. A distribution company shall annually survey the ability of its customers to afford electric service. The survey shall specifically target customers with annual household income of 150 percent of federal poverty guidelines or less but may also target higher income households as well. The survey shall obtain data on the affordability of electric service by measuring the impact of low, average and high use customers at 0-50 percent, 51-100 percent and 101-150 percent of federal poverty guidelines, using the average price charged for Basic Service during the 12-month period prior to the survey. The distribution company shall report the results of this survey to the commission. When the results of the survey indicate that one or more groups of customers with income of 150 percent of federal poverty guidelines or less pay, on average, over ten percent of their annual income for electricity (15 percent if the household uses electricity as the primary heating source), the company shall recommend an expansion or initiation of programs to assist the affected customer classes in the payment of their electric bill, to reduce the amount of the bill with

energy efficiency programs or both.

(e) A penalty shall be established for failure to achieve the baseline performance level in any year of the PBR plan with a dollar amount specified for each point in the index that is below the baseline performance level. The maximum penalty shall be determined by the commission at the beginning of the PBR plan after taking into account the recent history of the company in achieving reasonable service quality and reliability, overall revenues and expenses of the company, those revenues and expenses associated with customer service obligations and the range of earnings that may result from a deterioration of customer service and reliability during the term of the plan. The dollar amount of penalty in any one year may vary with the degree of deterioration of performance by the company, but the entire penalty shall be assessed if the company's performance in any one year shows a 30 percent deterioration in performance in the overall index. The distribution company shall not be awarded increased earnings for performance above the baseline level in any item.

(f) Any penalties incurred under the Index may be returned to all customers in the form of a one-time credit or rebate or paid to customers affected by the degradation of service, such as a failure to install new service on time, or both. In either case, in any year in which penalties are triggered, the distribution company shall inform its customers of its failure to achieve the baseline level of service quality in a manner approved by the commission.

## **CHAPTER 3: REGULATION OF RETAIL ELECTRIC SUPPLIERS: LICENSING AND CONTRACT DISCLOSURES**

1. Licensing. In addition to the requirements of Title IV, Section 2, a retail electric supplier shall submit the following information in its application for a license to sell electricity in this State.

(a) Identify the applicant's intended marketing area and specifically identify any restrictions on the type or number of customers the supplier will seek to serve.

(b) The applicant shall submit a bond or other evidence of insurance approved by the commission in the amount of [\$ reflecting number of customers served and kwh sold]. The bond must be updated annually on the anniversary of the approval of the license, based on the supplier's average number of customers and number of kwh sold in this state. The bond shall carry an endorsement that shall allow the issuer of the bond or insurer to pay such amounts and in such a manner as ordered by the commission upon a finding of fraudulent conduct toward consumers, actions which cause the electric supply system to become unreliable, revocation of the supplier's license, abandonment by the supplier, or, upon complaint, a failure to comply with the settlement's contract with the distribution company or independent system operator. The commission may order the bond proceeds to be paid to customers as restitution for fraudulent conduct, violation of state law or commission rule, or to other individuals adversely affected by the supplier's conduct.

(c) The supplier shall supply evidence of its right, title or interest in generation supplies sufficient to meet the existing and projected demands of its customers.

(d) Within 90 days of the receipt of a completed application, the application will be deemed granted and a license will be issued, or the commission will initiate a formal proceeding to obtain further information and conduct further review of the application. The commission shall make a final decision to grant or deny the license within six months of the initiation of a formal proceeding.

## 2. Contracts for Sale of Electricity

(a) The contract shall be in writing and all material terms relating to the price of the product, any penalty for cancellation or termination, options for payment of the bill, the supplier's procedures when a bill is not paid on time (including the amount of time the customer will have to arrange for an alternative supplier when the current supplier seeks to terminate the contract), any late fees, how a customer can cancel the contract, and the supplier's address and telephone number where complaints can be made shall be conspicuously disclosed.

(b) The total monthly recurring price shall be disclosed as a total cents per kilowatt-hour basis, including any fixed recurring charges.

(c) Any upfront or nonrecurring charges imposed by the supplier as a condition of providing service shall be totaled, and the effect of these charges on the recurring price of electricity during a year of service shall be disclosed.

(d) The generation's location and fuel source shall be disclosed.

(e) The supplier, if offering services other than the sale of electricity, shall

separately disclose the price of the recurring and nonrecurring alternative services.

**APPENDIX**  
**Additional Readings**

Alexander, Barbara. The Consumer Protection Agenda in the Electric Restructuring Debate. May 31, 1996.

Brockway, Nancy. Regulatory Jurisdiction to Enforce Consumer Protections Against Competitive Electricity Suppliers: The Case of New England, National Consumer Law Center, October 1, 1996.

Schachter, Deborah. Public Outreach and Education in Electric Utility Restructuring. August 23, 1996.