



Summary of the
BLUEPRINT FOR CUSTOMER CHOICE

**An Outline of Congressional Reforms
Necessary to Promote a Competitive Electric Industry**

Summary: The Federal Power Act¹ (FPA) and the Public Utility Holding Company Act (PUHCA) are the major federal statutes that require the regulation of existing electric utility monopolies. FPA needs to be reformed to allow complete decontrol of power generation, access by all ultimate consumers of electricity to interstate electricity markets, the prohibition of federal and state regulatory barriers to the purchase or sale of electric services and products in interstate markets, and the repeal of PURPA and PUHCA.

- A. **Decontrol of Generation** - All consumers should be allowed to purchase electric services and products from multiple suppliers. Direct access by consumers has two forms: (1) access by physical interconnection to power generators, and (2) access by contract or other financial instruments. Rate-of-return regulation would be abolished for all utility-owned generators. Price regulation would be prohibited for all electric services that are provided on a competitive basis, including, but not limited to, generation, related energy services (*e.g.*, energy efficiency services), ancillary services, and certain delivery and interconnection services. States' authorities over the concept of "local distribution" are preserved with respect to public safety, welfare, and certain universal services. FERC would be the ultimate arbiter of the rates, terms, and conditions of unbundled wholesale and retail delivery services over the interstate grid.

Legislation Required: PURPA and PUHCA should be repealed and the FPA amended to more broadly define a class of competitive suppliers of electric services with unrestricted rights to sell to ultimate consumers in interstate commerce.

- B. **Nondiscriminatory Delivery, Ancillary, Back-up, and Interconnection Services** - There should be no restrictions on the ownership of transmission and distribution facilities, particularly, ownership by the users of the services. Facilities that are owned by all or most of its users, and not provided on a monopoly-franchise basis, should be self-regulated and not subject to federal or State regulation. At the discretion of the customer, low voltage distribution-level facilities that interconnect with the interstate grid may be user owned, or local delivery services may be acquired on cost-of-service basis from a municipal or privately-owned supplier in the same manner as services from existing sewage or water facilities.

Legislation Required: Congress should require the removal of barriers to entry, such as any requirement that a supplier obtain a certificate of convenience and necessity, as a pre-condition to entering interstate markets.

¹As amended by the Public Utility Regulatory Policies Act of 1978 (PURPA) and Title VII of the Energy Policy Act of 1992 (EPAct).

- C. **Competition in Retail Electric Services** - All ultimate consumers should have access to bundled and unbundled electric services from one or more suppliers, including local distribution companies, power marketers and aggregators, and power brokers. Every ultimate consumer should be allowed to designate a "primary service provider" who will be responsible for billing and other customer services. There should be no restrictions on the ability of any generator, marketer, or other entity to sell to any end user regardless of the location of the generator and the end user. This will require the preemption of existing franchising authority regulation of electric services.

Legislation Required: Amend the FPA to require the establishment of rules to assure the competitive availability, to customers of electric services, of meters, telemetry, and metering services (including load management and access to real-time information networks or RINs). Amend the FPA to require the following: An electric utility, a subsidiary of the electric utility or other affiliated entity, or other entities which possess proprietary customer billing data, may not share customer proprietary information, including information in aggregate form, with its subsidiaries and affiliates unless such information is available to other providers of basic electric services, and then only after released by the customer in writing.

- D. **Energy Efficiency Services** - Any supplier of energy efficiency products and services, conservation, or load management services, should be allowed to freely market those products and services to any end user. Market structures that encourage the marketing of energy efficiency products and services that promote overall economic efficiency should be encouraged. Competing suppliers should be allowed to bundle these products and services with basic electric services and financing. These services include various "green" pricing options, in which customers may elect to pay a premium for renewable energy or other resources or services that help achieve environmental benefits beyond federal statutory requirements.

Legislation Required: See above.

- E. **Universal Service** - A Federal-State Joint Board on Universal Service should be established. FERC should initiate and refer to the Federal-State Joint Board a proceeding to recommend rules regarding the implementation of universal service. The Joint Board and FERC should base policies for universal service on a set of predefined principles. Every provider of basic electric services (and other services that are bundled in with essential electric services) should contribute to a fund for universal service support payments on an equitable and nondiscriminatory basis, in a manner that is reasonably necessary to preserve and advance universal service.

Legislation Required: Amend the FPA to establish the Federal-State Joint Board.

- F. **Vertical De-Integration** - Repeal PUHCA.

- G. **Transition Costs** - There are no clearly defined or accepted legal or economic rules for the treatment of "stranded costs." Whether it is fair or not to allow full, partial, or no recovery is in the eye of the beholder. Clearly, full recovery would hinder the development of a truly competitive market by creating a "safe harbor" for these largely, uneconomic costs. Some utilities without this burden argue that creating such a safe harbor imposes severe anticompetitive impacts.

Legislation Required: Congress should direct FERC to promulgate rules for the consideration of net, non-mitigatable wholesale transition costs, but is prohibited from issuing any rules that unduly impede or interfere with competition. State commissions would be directed to promulgate rules for the consideration of net, non-mitigatable retail transition cost, but will also be prohibited from issuing any rules that unduly impede or interfere with competition.

BLUEPRINT FOR CUSTOMER CHOICE



INTRODUCTION

All consumers should have the right to purchase electric services in competitive markets. But customer choice in electricity requires the restructuring and deregulation of the existing monopoly-controlled industry. This will require changes to many federal and State energy laws and regulations. These changes cannot avoid a transitional period during which regulatory safeguards are needed to prevent incumbent monopoly utilities from exercising undue market power by attempting to maintain or expand market share before the requisite market safeguards are firmly in place.

This document is a preliminary outline of Congressional actions necessary to successfully implement an efficient transition from the current industry structure to a truly competitive electricity marketplace. Naturally, the proposed actions closely parallel recent legislation to increase competition in the telecommunications industry.

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PURPOSE, GOALS, AND FINDINGS

Consistent with legislation pending to promote a competitive telecommunications industry, the purpose of the reforms proposed in this document is to increase competition in the electric industry and provide for an orderly transition from regulated markets to competitive and deregulated electric services markets consistent with the public interest, convenience, and necessity.

Like H.R. 1555 and S. 652, legislation should be enacted to establish a national policy framework designed to rapidly accelerate the private sector development of advanced electrotechnologies and services to all Americans by opening all electric services to competition, and to meet the following goals:

- (1) To promote and encourage advanced interstate electric networks capable of enabling users to access and receive affordable, high-quality electric services.
- (2) To improve international competitiveness markedly.
- (3) To spur economic growth, create jobs, and increase productivity.
- (4) To deliver a better quality of life and a cleaner environment through the more efficient delivery of electric services.

We believe that after due consideration of the proposed actions described herein, Congress will make findings that are similar to the findings of S. 652:

- (1) Competition, not regulation, is the best way to spur innovation and the development of new technologies and services. A competitive marketplace is the most efficient way to lower prices and increase value for consumers. In furthering the principle of open and full competition in all electric services markets, however, it must be recognized that some markets today are more open than others.
- (2) Retail electric service is predominantly a monopoly service. No consumers now have a choice of retail suppliers. Some States have begun to consider opening retail electric markets to competition. We need a national policy framework to accelerate the process.

- (3) Because of their monopoly status, electric utilities have been prevented from competing in certain markets. It is time to eliminate these restrictions. Nonetheless, transition rules designed to open monopoly markets to competition must be in place before certain restrictions are lifted.
- (4) Transition rules must be truly transitional, not protectionism for certain industry segments or artificial impediments to increased competition in all markets. Where possible, transition rules should create investment incentives through increased competition. Regulatory safeguards should be adopted only where competitive conditions would not prevent anticompetitive behavior.
- (5) More competitive American electric services markets will promote United States technological advances, domestic job and investment opportunities, national competitiveness, sustained economic development, a cleaner environment, and improved quality of American life more effectively than regulation.
- (6) Congress should establish clear statutory guidelines, standards, and time frames to facilitate more effective electric industry competition and, by doing so, will desirably reduce business and customer uncertainty, lessen undue regulatory process, court appeals, and litigation, and thus encourage the business community to focus more on competing in the domestic and international markets.
- (7) Where competitive markets are demonstrably inadequate to safeguard important public policy goals, such as the continued universal availability of basic electric services at reasonable and affordable prices, particularly in rural America, Congress should establish workable regulatory procedures to advance those goals, provided that in any proceeding undertaken to ensure universal availability, regulators shall choose the most pro-competitive and least burdensome alternative.
- (8) Competitive electric services markets, safeguarded by effective Federal and State antitrust enforcement, and strong economic growth at home which such markets will foster are the most effective means of assuring that all segments of the American public command access to advanced electric services and technologies.
- (9) Achieving full and fair competition requires strict parity of marketplace opportunities and responsibilities on the part of incumbent electric service providers as well as new entrants into the electric services marketplace, provided that any responsibilities placed on providers should be the minimum required to advance a clearly defined public policy goal.

- (10) Congress should not cede its Constitutional responsibility regarding interstate and foreign commerce in electric services to the Judiciary through the establishment of procedures which will encourage or necessitate judicial interpretation or intervention into the electric services marketplace.
- (11) Ensuring that all Americans, regardless of where they may work, live, or visit, ultimately have comparable access to the full benefits of competitive electric services markets requires Federal and State authorities to work together affirmatively to minimize and remove unnecessary institutional and regulatory barriers to new entry and competition.
- (12) Effective competitive electric services markets will reliably ensure customers the widest possible choice of services and technologies, tailored to individual desires and needs, at prices they are willing to pay.
- (13) Investment in and deployment of existing and future advanced electrotechnologies and information systems will be fostered by minimizing government limitations on access to the interconnected electric network.



Decentralization of Generation -- All consumers should be allowed to purchase electrical services from multiple suppliers. Direct access has two forms: (1) Access by direct physical interconnection, and (2) Access by contract.

<p>ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET</p>	<p>EXISTING STATUTORY AND REGULATORY BARRIERS</p>	<p>PROPOSED CHANGE TO FEDERAL LAWS</p>
<p>1. Access, by direct physical interconnection, with an exempt wholesale generator, qualifying facility, or other generator. This arrangement results in the physical "wheeling" of power from the generating source to the user, although, maintenance, back-up, and supplemental services may be purchased in a spot market. This arrangement allows an end user to negotiate contracts with third-party owned generators that are inside or outside the fence. The transaction may also involve the sale of steam or other forms of thermal energy.</p> <p>2. Access, by contract, with any alternative supplier, including, distant utilities, power marketers or brokers, aggregators, and distant independent producers. These arrangements are largely financial in nature, although physical delivery is feasible at certain voltage levels. If both buyer and seller are in the same control area, the power contracted for is not actually "delivered" to the consumer. Even when the supplier is located in a distant control area, the power will not always be scheduled for delivery to the buyer's control area. Nonetheless, delivery and coordination services are used and should be paid for.</p>	<p>A QF has limited capability to sell at retail and retain its qualifying status, but an EWG can sell only at wholesale.</p> <p>The FPA defines a "transmitting utility" as an entity that owns or operates transmission facilities used to effect wholesale sales (16 U.S.C. §796(23)). Thus, the owner or operator of transmission facilities used to consummate a retail physical interconnection transaction would not necessarily be deemed a "transmitting utility" under the FPA. A "retail transmission merchant" would not be subject to the reporting requirements of FPA §213(b) and could not be the subject of a §211 wheeling order.</p> <p>Given FERC's jurisdiction over the interstate grid, unless a physical interconnection qualifies as "local distribution," FERC would regulate under FPA §§ 205 and 206 the rates, terms, and conditions of service.</p> <p>The primary obstacles to access by direct physical interconnection arise at the state level with siting laws and the States' more sweeping definitions of "electric utility" or "public utility." Any sale of power to an ultimate consumer could be construed as involving the provision of electric service "to the public," leading to regulation of the seller as an electric utility.</p>	<p>Development of Competitive Electric Services Markets -- Repeal PURPA and PUHCA and amend FPA to more broadly define a class of competitive suppliers of electric services with unrestricted rights to sell to ultimate consumers in interstate commerce. States' authorities over the concept of "local distribution" are preserved with respect to public safety, welfare, and certain universal services. FERC would be the ultimate arbiter of the rates, terms, and conditions of unbundled wholesale and retail delivery services over the interstate grid. See "Removal of Barriers to Entry" on page 6, below.</p> <p>Abolition of Rate-of-Return Regulation and Termination of Price Regulation -- Using § 101 of H.R. 1555 (which adds new §§ 247(b) and 247(c) to the Communications Act of 1934) as a model, rate-of-return regulation would be abolished for all utility-owned generators. Price regulation would be prohibited for all electric services that are provided on a competitive basis, including, but not limited to, generation, related energy services (e.g., energy efficiency services), ancillary services, and certain delivery and interconnection services.</p>

Nondiscriminatory Delivery, Ancillary, Back-up, and Interconnection Services -- These services, if provided at all, were traditionally bundled with basic retail electric services. In a competitive marketplace, these services should be "unbundled" and provided competitively to the maximum extent possible.

<p>ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET</p>	<p>EXISTING STATUTORY AND REGULATORY BARRIERS</p>	<p>PROPOSED CHANGE TO FEDERAL LAWS</p>
<p>1. Delivery Services -- There should be no restrictions on the ownership of transmission and distribution facilities. Overtime, ownership of these assets should gravitate to those who value them most highly, i.e., the users of transmission services. This could provide private user-owners a powerful incentive to self-regulate the use of the grid. Hence, a long-term objective should be the minimization, if not elimination, of federal and State regulation of these services.</p> <p>The terms "transmission" and "distribution" should be discontinued and the term "delivery" adopted and applied to all such services used in interstate commerce. Adoption of the new term implies exclusive FERC jurisdiction of the "wires" during a transition period until self-regulation is permissible. Preserving separate and distinct transmission and distribution functions presumes some arbitrary allocation of authority between FERC and the States. This is unnecessary and could impede efficient operation of the marketplace. At the discretion of the customer, low voltage distribution-level facilities that interconnect with the interstate grid may be user owned, or local delivery services may be acquired on a cost-of-service basis from a municipal or privately-owned supplier in the same manner as services from existing sewage or water facilities.</p>	<p>FERC regulates wholesale transactions and interstate transmission, and the "local distribution" function is regulated by the States. FPA § 201(b). [NOTE: The net effect of FERC's open-access rulemaking is to extend FERC's jurisdiction over a greater amount of "wires" and facilities as transmission services are unbundled.]</p> <p>FPA § 212(g) prohibits FERC from issuing orders that are inconsistent with any State law which governs the retail marketing areas of electric utilities, and FPA § 212(h) prohibits FERC from issuing orders conditioned upon or requiring the provision of transmission of electric energy "directly to an ultimate consumer" or to any "sham" wholesale entity that would sell power directly to an ultimate consumer. Certain "non-sham" wholesale entities are allowed, but for the time being, FERC's rulemaking on stranded costs effectively forecloses those options.</p> <p>The FPA reserves to the States exclusive jurisdiction over facilities used in "local distribution." States assign retail franchise areas by territorial-type statutes or by certificates of public convenience and necessity. These statutes, explicitly or implicitly, impose an obligation to serve on the utility, and an obligation to buy on ultimate consumers.</p>	<p>Rates, Terms, and Conditions of Unbundled Delivery Services -- Congress should direct FERC to promulgate rules (e.g., within 18 months of enactment) defining the rates, terms, and conditions of unbundled delivery services in interstate commerce. Those services should be provided on a nondiscriminatory basis to any wholesale or retail customer who wishes to buy or sell electricity products and/or services in interstate markets.</p> <p>Removal of Barriers to Entry -- Congress should require the removal of barriers to entry, such as any requirement that a supplier obtain a certificate of convenience and necessity, as a pre-condition to entering interstate markets. Proposed statutory language: <i>No State or local statute, regulation, or other legal requirement shall effectively prohibit any supplier or other person from entering the business of providing interstate or intrastate electric services, including, but not limited to, the provision of interstate or intrastate delivery, ancillary, back-up, and interconnection services.</i> [NOTE: This language is adopted, almost word for word, from § 101 of the House telecommunications bill, H.R. 1555, which adds new § 243 to the Communications Act of 1934.]</p>

ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET

2. **Ancillary Services** – These services, which include spinning reserves, voltage support, compensation for losses, and black-start service, are used by grid operators or supply coordinators to support the efficient operation of the grid and to meet instantaneous changes in system load. Most, if not all, of these services can be provided competitively.

[NOTE: In PG&E's *Direct Access Proposal*, supply coordinators procure power and other services on behalf of direct access customers and coordinate the delivery through the grid operators. Supply coordinators are just another form of market intermediary that could help ultimate consumers minimize transaction costs.]

EXISTING STATUTORY AND REGULATORY BARRIERS

No federal or State barriers currently single out ancillary services for special treatment because these services have traditionally been bundled, and thus, regulated in conjunction with wholesale and retail sales.

However, most ancillary services are provided by generating units. These units are subject to the same restrictions and entry barriers faced by today's independent power producers. Thus, existing statutory or regulatory restrictions on expanding competition in generation will likely apply equally to expanding competition in the markets for ancillary services.

PROPOSED CHANGE TO FEDERAL LAWS

See proposed statutory changes in support of "Decontrol of Generation," on page 5, above.

See proposed statutory language on "Removal of Barriers to Entry" for "Nondiscriminatory Delivery, Ancillary, Back-up, and Interconnection Services," on page 6, above.

ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET

3. Interconnection Rights -- Every generating unit must arrange for the physical interconnection with the grid. Strict engineering standards for interconnection should be observed to assure system reliability and public safety. In a competitive market, interconnection would likely be arranged with either or both the owner of the transmission line (or substation) at the point of interconnection, and the local grid operator. Some entity (such as, but not necessarily, the Commission) should be assigned the responsibility to order and certify the interconnection (e.g., something like a building permit), to protect the rights of the generator. In the transition, incumbent utilities should be required to interconnect new generators on a nondiscriminatory basis.

Interconnection "rights" is a major headache to independent producers, such as cogenerators, in the current regulatory regime. It will also be a transitional problem as some incumbent utilities try to preserve market share, while they still retain their market power as monopolists. Once a truly competitive industry is established, grid owners will actively solicit (and not impede) new business.

EXISTING STATUTORY AND REGULATORY BARRIERS

PURPA § 210 streamlined the process by which a cogenerator or small power producer could interconnect with the grid. PURPA amended the Federal Power Act to give FERC the authority to order the interconnection without adhering to the very cumbersome criteria previously required by the FPA. Some State laws (e.g., siting laws) may unwittingly create interconnection barriers.

PROPOSED CHANGE TO FEDERAL LAWS

Interconnection -- See "Removal of Barriers to Entry" in "Nondiscriminatory Delivery, Ancillary, Back-up, and Interconnection Services," on page 6, above.

ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET

EXISTING STATUTORY AND REGULATORY BARRIERS

PROPOSED CHANGE TO FEDERAL LAWS

4. Maintenance, Back-up, and Supplemental Power Services -- PURPA § 210 requires that, upon the request of a qualifying facility (QF), each utility shall provide maintenance, back-up, and supplemental power at just and reasonable, nondiscriminatory rates. Maintenance power is supplied by the utility to the QF when a generating unit is taken out of service for scheduled maintenance. Back-up (or standby) power is supplied by a utility to meet a cogenerator's electrical requirements for those limited times when the QF is unexpectedly out of service. By definition, back-up power is not scheduled. Supplemental power is usually firm power that is supplied to a QF to satisfy a load in excess of the amount of power generated by the QF.

In competitive markets, each of these services -- which collectively can be referred to as "back-up" services -- would be provided on a fully competitive basis. Back-up power would likely be bought directly on a spot market if other contractual arrangements were not made. Buyers should be allowed to blend contracts and spot purchases to meet their needs and risk preferences.

In a transition to a competitive market, incumbent utilities should be the fall back for these services under traditional regulatory practices.

There are no explicit federal impediments to the provision of these services on a competitive basis. Under PURPA, utilities are required to provide these services to interconnected QFs. However, existing federal and State restrictions on direct sales by generators to ultimate consumers impede the provision of these services. These generating units are subject to the same restrictions and entry barriers faced by today's independent power producers. Thus, existing statutory or regulatory restrictions on expanding competition in generation will likely apply equally to expanding competition in the markets for back-up, maintenance, and supplemental services, or access to a spot market.

Back-up Services -- See proposed statutory changes for "Generation," above. Preserve the PURPA § 210 requirements for maintenance, back-up, and supplemental power until a competitive market for these services has been established. Extend these services to all generators.

See proposed statutory language on "Removal of Barriers to Entry" for "Nondiscriminatory Delivery and Ancillary Services" above.

Competition in Retail Electric Services -- The traditional bundled package of retail services should be "unbundled." Most services can be offered in fully competitive markets without regulatory oversight or other forms of government interference.

<p>ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET</p>	<p>EXISTING STATUTORY AND REGULATORY BARRIERS</p>	<p>PROPOSED CHANGE TO FEDERAL LAWS</p>
<p>1. Basic Electrical Service -- Access to bundled and unbundled electrical service from one or more suppliers, including local distribution companies, power marketers and aggregators, and power brokers. Every ultimate consumer should be allowed to designate a "primary service provider" who will be responsible for billing and other customer services. There should be no restrictions on the ability of any generator, marketer, or other entity to sell to any end user regardless of the location of the generator and the end user.</p>	<p>The primary impediments to customer choice are federal prohibitions on direct sales by generators or power marketers to ultimate consumers, and State franchise and public service laws which prohibit end-use consumers from directly accessing interstate markets for electrical services.</p>	<p>Preemption of Franchising Authority Regulation of Electric Services -- Amend FPA directing the following: Within 18 months after the date of enactment, require each electric utility to file a restructuring proposal with each State commission which has jurisdiction over it. § 101 of H.R. 1555 (which adds new § 244 to the Communications Act of 1934) would serve as a model for this requirement. FERC review would be required for rates, terms, and conditions for interstate services. Nothing in this requirement would affect the ability of a State to impose, on a competitively neutral basis and consistent with requirements established for universal service (see below), requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued reliability of basic electric services, and safeguard the rights of consumers.</p> <p>§ 106 of H.R. 1555 should be a model for preemption language with regard to retail franchises. If, after notice and an opportunity for public comment, FERC determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with the above requirements, FERC shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.</p>

<p>ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET</p>	<p>EXISTING STATUTORY AND REGULATORY BARRIERS</p>	<p>PROPOSED CHANGE TO FEDERAL LAWS</p>
<p>2. The Service Meter and Meter Rack -- Consumers should be allowed to own their own metering and load control equipment, to lease or rent it from competitive suppliers, and to assign and reassign responsibility for reading or operating this equipment to their primary service provider.</p>	<p>States have exclusive jurisdiction over all "local distribution" functions. Clearly, the meter is one such function. If the metering function is bundled with a personal computer and an ultimate consumer uses PC-based software (or the U.S. mail) to buy power in interstate markets, does the "meter" become FERC jurisdictional or nobody's jurisdiction? A strong argument can be made that ultimately States will only control the meter rack or what is left of it.</p>	<p>Competitive Consumer Availability of Customer Premise Equipment -- Using § 203 of H.R. 1555 as a model, establish rules to assure the competitive availability, to customers of electric services, of meters, telemetry, and metering services (including load management and access to real-time information networks or RINs).</p>
<p>3. Customer Billing Information and Usage History -- The data that incumbent utilities currently collect and store (often on microfiche) can be very valuable market research information. The incumbent utility should not be allowed to retain exclusive access to, or control of, this information. Customers should be able to transfer their contribution to this data base to any third party at their discretion. Customers should also be able to block the usage of this information.</p>	<p>States have exclusive jurisdiction over a utility's use of this information, notwithstanding the value of this information to facilitate customer-oriented transactions in competitive retail electric services markets.</p>	<p>Access by Competitors to Information -- Amend the FPA to require the following: An electric utility, a subsidiary of the electric utility or other affiliated entity, or other entities which possess proprietary customer billing data, may not share customer proprietary information, including information in aggregate form, with its subsidiaries and affiliates unless such information is available to other providers of basic electric services, and then only after released by the customer in writing. Customer proprietary information that is individually identifiable, and other proprietary information, may be shared with a subsidiary or affiliated entity, or another provider of basic electric services, only with the written consent of the person to which such information relates or from whom it was obtained.</p>

ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET

4. Energy Efficiency, Conservation, and Load Management Services -- Any supplier of energy efficiency products and services, conservation, or load management services, should be allowed to freely market those products and services to any end user.

Market structures that encourage the marketing of energy efficiency products and services that promote overall economic efficiency should be encouraged.

Competing suppliers should be allowed to bundle these products and services with basic electric services and financing. These services include various "green" pricing options, in which customers may elect to pay a premium for renewable energy or other resources or services that help achieve environmental benefits beyond federal statutory requirements.

EXISTING STATUTORY AND REGULATORY BARRIERS

States have exclusive jurisdiction over existing demand-side management (DSM) services. Congress has, in fact, encouraged (and in some instances, required) States to consider implementing these programs. Some State laws also require these programs, including a prescribed mechanism for subsidizing DSM costs in rates.

PROPOSED CHANGES TO FEDERAL LAWS

Competition in Energy Efficiency Services -- Repeal PURPA (P.L. 95-617), the Pacific Northwest Electric Power Planning Act (P.L. 96-501), and the Energy Policy and Conservation Act (P.L. 94-163), the Energy Conservation and Production Act (P.L. 94-385), the National Energy Conservation Policy Act (P.L. 95-619), and the Emergency Energy Conservation Act (P.L. 96-102). Amend Omnibus Budget Reconciliation Act (P.L. 97-35).

See discussion, below, on "Universal Service."

ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET

5. Universal Service -- Where competitive markets are demonstrably inadequate to safeguard important public policy goals, such as the continued universal availability of essential electrical services at reasonable and affordable prices, particularly in rural America and inner city neighborhoods, Congress should establish workable regulatory procedures to advance these goals, provided that in any proceeding undertaken to ensure universal availability, regulators shall choose the most pro-competitive and least burdensome alternative.

Universal service is an evolving level of intrastate and interstate services that the Commission determines should be provided at just, reasonable, and affordable prices to all Americans. Eligible customers would receive a package of services called, "essential electrical services" which may be a subset of basic electrical services.

EXISTING STATUTORY AND REGULATORY BARRIERS

Each State has laws or regulations regarding universal service in electricity. These regulations include the provision of lifeline rates, procedures for service disconnections, and the treatment of uncollectible accounts and security deposits. Traditional electric utilities are also used to distribute federal subsidies to low-income customers (e.g., the Low-Income Home Energy Assistance Program or LIHEAP distributes \$1.3 billion of federal and \$92 million of State funds. The money is given to approximately 6.2 million households. The Weatherization Assistance Program distributes \$186 million of federal funds to 87,000 households).

PROPOSED CHANGE TO FEDERAL LAWS

Joint Board to Preserve Universal Service -- Use § 101 of H.R. 1555 (which adds new § 246 to the Communications Act of 1934) as a model to establish and preserve universal service.

Amend the FPA to establish a Federal-State Joint Board on Universal Service. FERC should initiate and refer to the Federal-State Joint Board a proceeding to recommend rules regarding the implementation of universal service. The Joint Board and FERC should base policies for universal service on a set of predefined principles. Every provider of basic electric services (and other services that are bundled in with essential electric services) should contribute to a fund for universal service support payments on an equitable and nondiscriminatory basis, in a manner that is reasonably necessary to preserve and advance universal service.

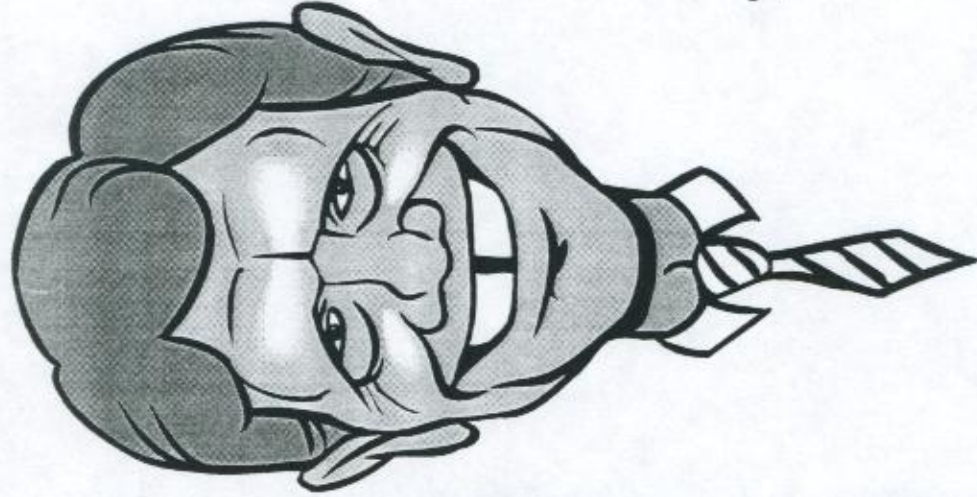
States may adopt regulations to implement FERC's determinations on universal service, or to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within that State, to the extent such regulations do not conflict with FERC's rules. FERC, for interstate services, or a State, for intrastate services, shall designate at least one "essential service provider" in each geographical area where the provision of universal service is deemed necessary. Each designated essential service provider becomes eligible to receive universal service support payments that FERC may allow.

Development of Competitive Markets -- The Federal Power Act is but one federal law that should be changed to facilitate a competitive electric industry. There are others.

<p>ESSENTIAL FUNCTIONS OF A COMPETITIVE MARKET</p>	<p>EXISTING STATUTORY AND REGULATORY BARRIERS</p>	<p>PROPOSED CHANGE TO FEDERAL LAWS</p>
<p>1. Vertical De-integration -- There should be no federal or State statutory requirement for a vertically integrated industry structure. Other than stringent enforcement of the antitrust laws, there should be no restrictions on the ownership of a corporation that exists to buy power at wholesale and resell at retail.</p>	<p>PUHCA is the primary obstacle to unrestricted ownership of companies engaged in the production, transmission, or distribution of electricity. Absent legislative reform, any entity that acquires an electric utility asset could become subject to PUHCA provisions as a result of the acquisition. PUHCA also strongly favors a vertically-integrated industry structure. PUHCA is rife with provisions that either expressly or implicitly rely on or defer to State or local regulatory action. The Act is coordinated with and complements State regulation of utility affairs.</p>	<p>Repeal PUHCA.</p>
<p>2. Transition Costs -- Some utilities have assets whose book values under regulation may exceed a market value under competition. These assets may include high cost generating units, power contracts, fuel contracts, and so-called "regulatory" assets.</p>	<p>Utilities with potential transition costs (or "stranded cost" liabilities) argue for full recovery from current ratepayers. There are no clearly defined or accepted legal or economic rules for the treatment of these costs. Whether it is fair or not to allow full, partial, or no recovery is in the eye of the beholder. Clearly, full recovery would hinder the development of a truly competitive market by creating a "safe harbor" for these largely, uneconomic costs. Some utilities without this burden argue that creating such a safe harbor imposes severe anticompetitive impacts.</p>	<p>Transition to Competitive Pricing -- Congress should direct FERC to promulgate rules for the consideration of transition costs, but is prohibited from issuing any rules that unduly impede or interfere with competition. State commissions would be directed to promulgate rules for the consideration of retail transition cost, but will also be prohibited from issuing any rules that unduly impede or interfere with competition.</p>

Top Ten List

The Most Frequently Used Excuses to Argue Against Retail Competition in the Electric Utility Industry



John P. Hughes

Director - Technical Affairs

The Electricity Consumers Resource Council

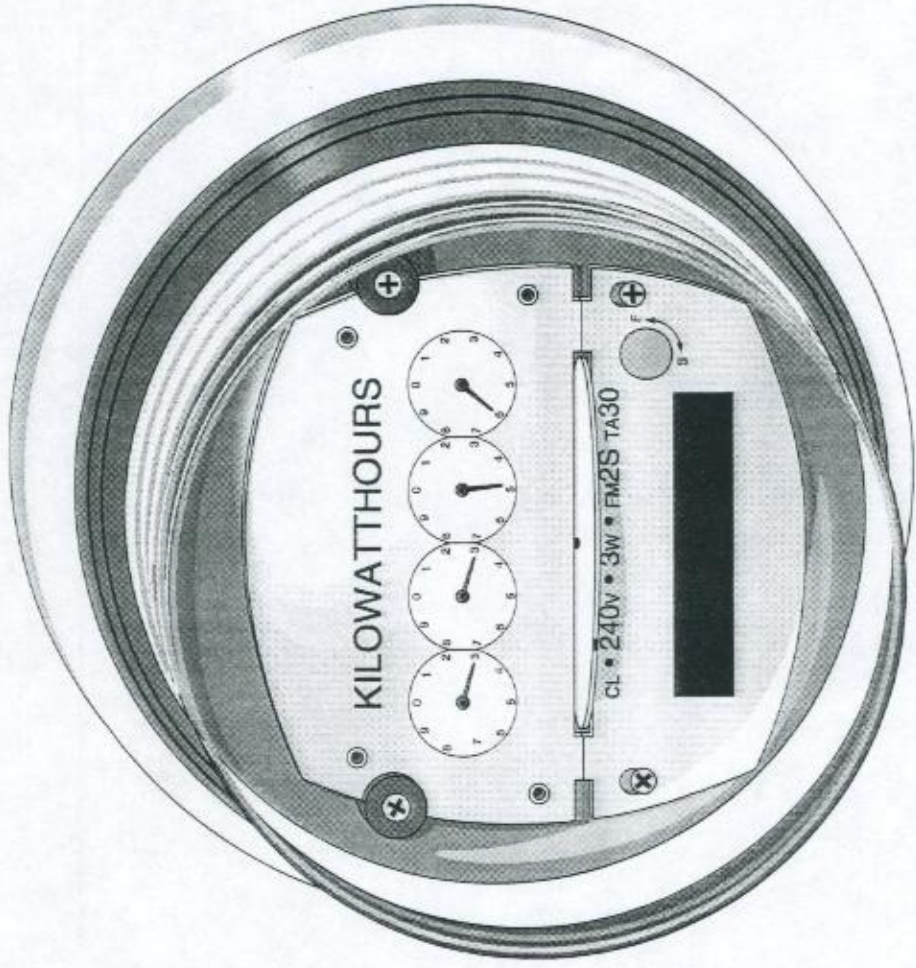
ELCCON

Presentation to the Interstate Natural Gas Association of America
Government Affairs Offsite Meeting

Tides Lodge ❖ Irvington, VA ❖ October 28, 1995

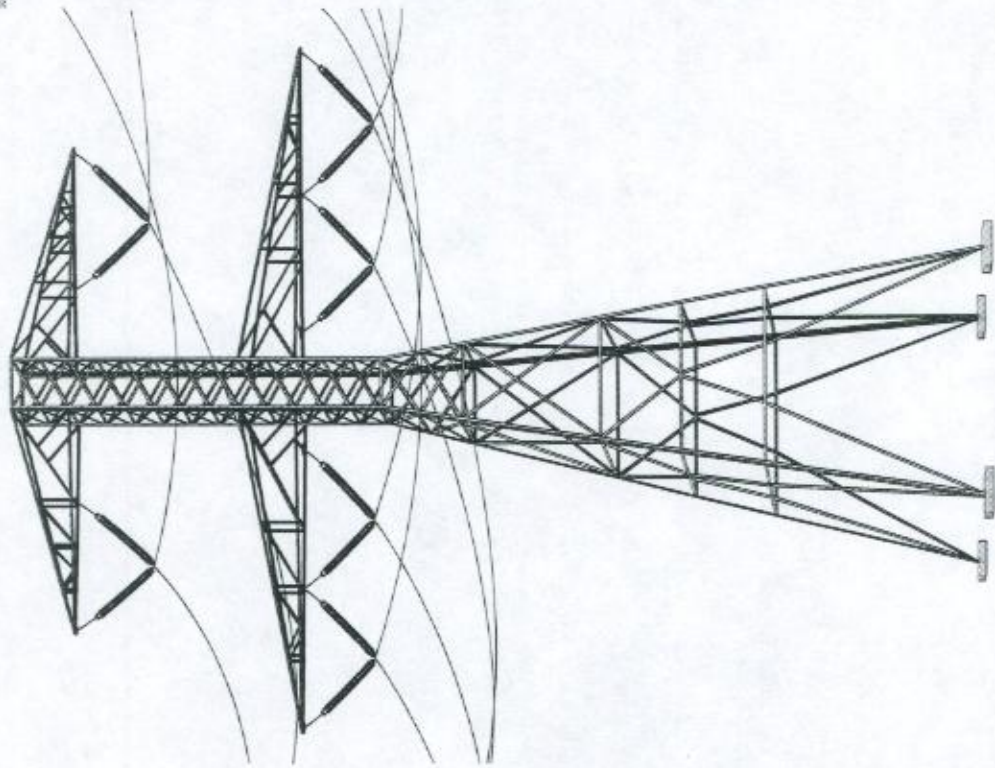
Myth N^o. 10

The Existing Industry Is Already Efficient. There Are No Additional Benefits to Be Had from Retail Competition.



Myth N°. 9

Competition Will
Harm System
Reliability.



Myth N^o. 8



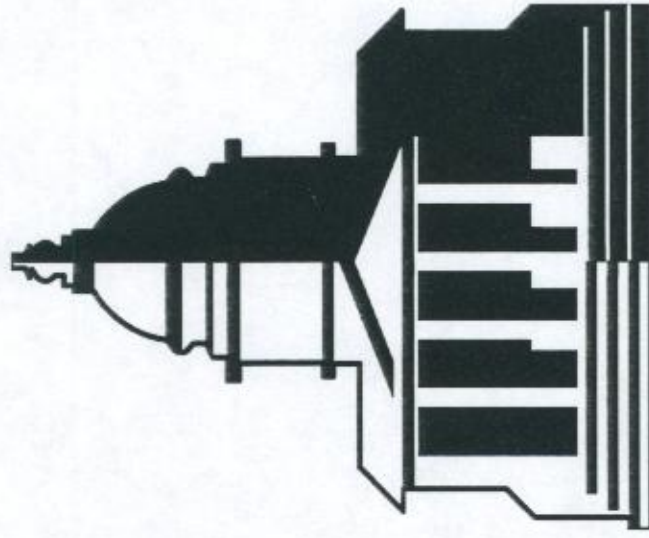
All the Benefits of Competition Can
Be Had in the Wholesale Market.

Myth N^o. 7

Customer Choice
Will Preempt the
Authorities of the States.

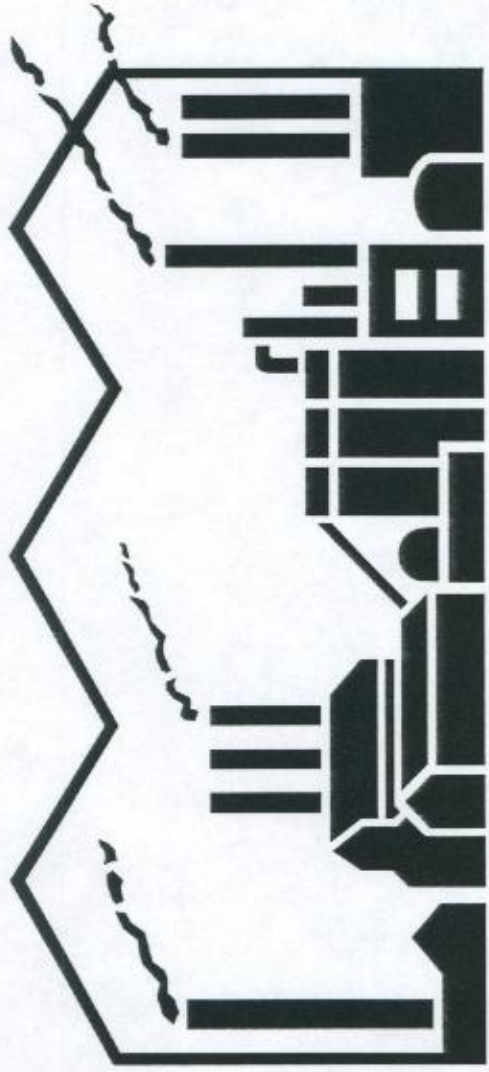


Myth N^o. 6



Minor Reforms to the Regulatory Process Will Accomplish the Same Objectives as Competition.

Myth N°. 5

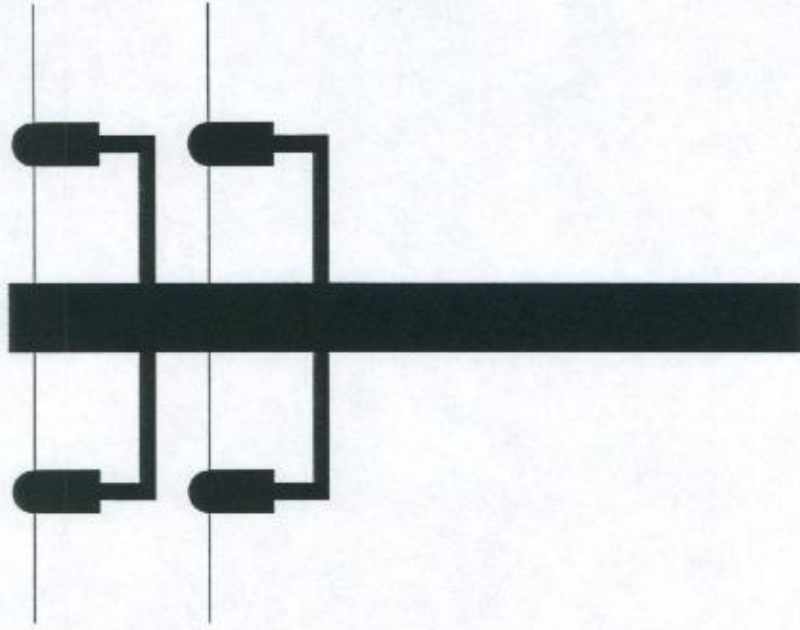


Only Large Customers Will Benefit
from Customer Choice.

Small Customers Will End Up Paying
Higher Rates.

Myth N^o. 4

Competition Can Be
Phased in On a
Piecemeal Basis. First,
Repeal PURPA and
PUHCA.



Myth N^o. 3



Residential and Other Small
Customers Do Not Want Choice.

Myth N°. 2



Competition Will Make It Impossible to
Achieve Certain Social Objectives Such
as Environmental Protection.

Myth N°. 1

You Don't Want
Competition, You Want
"PoolCo" !

